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OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

DECEMBER 13, 2007

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

THURSDAY, DECEMBER 13, 2007

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10:45 a.m. in room SR–253, Russell Senate Office Building, Hon. Daniel K. Inouye, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

The CHAIRMAN. Since time is of the essence, I will request that all Members refrain from giving their opening statements, but place them in the record so we can spend time listening to the Commissioners.

Is there any objection?

[The prepared statement of Senator Inouye follows:]

PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

It's an exciting time for communications. We are seeing dramatic changes in the way we communicate, conduct business, educate, and entertain ourselves in this country. The future of communications holds tremendous promise, but this promise does not come without risk. As public servants, both here in Congress and on the Commission, we are challenged to ensure that our communications markets evolve in a manner that serves the public interest. We must foster an environment where consumers have choices, where businesses have opportunities, and where the rules of the regulatory road are clear.

A transparent regulatory process is essential. When agencies short-circuit the decisionmaking process, public trust in their authority erodes. With the Commission poised to make historic decisions on media ownership, universal service, broadband, and the digital television transition, public confidence in the process is not a luxury, it's a necessity.

I look forward to hearing from our witnesses and thank you for joining us for this oversight hearing.

STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Senator STEVENS. No objection.

[The prepared statement of Senator Stevens follows:]

PREPARED STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

It has been 10 months since all five of you last appeared together before the Committee. There have been a number of regulatory proposals that have drawn national attention. Some of those issues have been resolved, but other issues important to consumers remain.

As February 17, 2009 approaches, much remains to be done to assure a smooth digital television transition. Plans are in place to achieve the goal, but coordination, outreach and execution are needed on the local level to make sure that all consumers are informed. What broadcast TV means to parts of Alaska is different from what it means to Manhattan. How to get a converter box to remote Alaskan villages is also different. Because of unique needs rural America should be a top priority for the digital transition.

The 700 MHz spectrum auction for the DTV transition takes place next year. This spectrum represents great opportunities to bring new consumer services, including additional broadband. And the auction will fund a number of public safety programs that have already been put into place.

Deployment of broadband is also an important priority. The Commission has indicated that steps to provide a more accurate picture of the marketplace will be taken, and it is my hope that these actions will be taken soon. Universal Service is the most important element for the communications infrastructure our country needs in rural areas. I was glad to see that the Joint Board has outlined proposals for comprehensive reform. While Alaska is unique, it is not alone in needing Universal Service programs to deliver the benefits of broadband, telemedicine and distance learning. Universal Service has a central role in the continued development of this country's resources in rural America and any reform efforts should reflect this important role.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. Mr. Chairman?

The CHAIRMAN. Yes?

Senator DORGAN. Mr. Chairman, I've been called over to the Majority Leader's office at 11 o'clock. I have been so looking forward to this hearing. I would like to say 2 minutes' worth, at some point, after you have given your opening statement.

The CHAIRMAN. I will not make any statement.

Senator DORGAN. All right. Well, then, after Senator Stevens gives an opening statement?

Senator STEVENS. We'd be happy to yield to you. Be happy to yield to you.

Senator DORGAN. All right.

Senator STEVENS. Yes. Happy to yield to you, yes.

Senator DORGAN. And I regret the inconvenience, but I have been looking forward, for some while, to talk especially to Chairman Martin and other members of the board.

Apparently, there's a move underway to finalize a rule on cross-ownership by December 18, a rule that was just announced in November—in my judgment, abrogating all of the standards that you would normally have that would give the American people a chance to comment on a rule after a period of 60 or 90 days. This Committee passed a piece of legislation, co-authored by Senator Lott, myself, and many others, that indicated that there ought to be at least 90 days given for a comment period for the American people. If the FCC proceeds ahead with a December 18 date, I think it is a serious mistake and, I think, flies in the face of what this Committee has already said to the FCC it ought to be doing.

There are 1,400 pages that have been requested under a FOIA request that have not yet been released. The pages that have been released of information from inside the FCC tells us, at this point, that the FCC started—and I'm talking now about one of the top officials of the FCC—started with the proposition they wanted to do

research to find out how they could justify the cross-ownership elimination.

And so, I think there are a lot of questions here that need to be asked. I wish very much I could stay, but the Majority Leader has asked that I come to a meeting on the appropriations bills. I'm going to do that. But, if I—I expect that's going to last some while—but, I hope this Committee will ask tough questions of this Commission.

This Commission should not, on December 18, drive home a final rule without giving the American people the 90 days, at least, to make comments. And this Commission should not take action before it finishes its proceeding on localism, which has been shortchanged for years. And I feel very strongly about this, as do many of my colleagues, and I hope the Commission will take heed of what this Committee has done and what I believe their obligations are to the American people, to this Committee, and to this Congress.

Senator STEVENS. Since you feel so strongly, I'll be glad to yield my seat to you and take your seat at that table.

[Laughter.]

Senator DORGAN. Mr. Chairman, I'm sure you——

Senator KERRY. I think you've got a seat at that table, anyway.

Senator DORGAN. Senator Stevens, I'm sure you would, but I think I will defer on that request.

But, I hope you will take my place during the question period in asking the questions I've just propounded, because I think they need to be asked in a very assertive way.

Mr. Chairman, thank you for your courtesy.

The CHAIRMAN. I thank you very much. And, with that——

Senator STEVENS. All statements will go in the record, Mr. Chairman?

The CHAIRMAN. Yes, without objection, so ordered.

[The prepared statement of Senator Dorgan follows:]

PREPARED STATEMENT OF HON. BYRON L. DORGAN,
U.S. SENATOR FROM NORTH DAKOTA

Thank you, Chairman Inouye for holding this hearing. Before I get to the issue of media ownership, which is what I intend to focus on, let me mention just a few separate points.

First, the FCC is considering Liberty Corp's intention to purchase DIRECTV. On May 7, 2007, I sent a letter with Senator Conrad in support of the North Dakota broadcasters' petition asking the FCC to require as a condition of this transaction that DIRECTV offer local into local broadcasting in all 210 markets by the end of 2008. This is a crucial issue. You all know that I am concerned about the issue of localism. In Minot/Bismarck, only the NBC, ABC and PBS local stations are offered by EchoStar, and DIRECTV does not offer any local stations. Almost a third of the households in Western North Dakota do not have satellite access to emergency alerts, AMBER alerts, local news and local advertising. A good number of these households are watching affiliates from New York, Los Angeles and Denver. This is very troubling to me and I want to know what the FCC is doing about it. The Commission isn't hesitant to put conditions on transactions—this is a case that clearly deserves a condition of local into local carriage.

Second, the Joint Board has issued its recommendations. I want to know what the FCC is doing to move forward with comprehensive reform of Universal Service. It is crucial to the State of North Dakota.

Third, the Chairman of the FCC is aware of the recent activities by broadband and wireless carriers that raised network neutrality questions. I sent the Commis-

sion a letter on the issue of discrimination in text messaging and have not had a response. I want to know what the FCC is doing on that issue.

And fourth, I understand that the FCC still owes 1,400 pages to the Georgetown Institute for Public Representation from an August 2006 FOIA request. These documents should be turned over immediately.

Now, on to media ownership . . . The FCC has taken a series of destructive actions in the past two decades that, I believe, have undermined the public interest. Now they are preparing to do it again.

They are now working toward a December 18 vote on a change to our media ownership rules. They have rushed to finish the localism and ownership hearings with as little as 5 business days of notice for the last hearings.

Chairman Martin put out his proposed rule changes on November 13—after the comment period had closed. He didn't consult his fellow commissioners and didn't issue the rules in the *Federal Register,* but put out the rule changes in a *New York Times* op-ed and in an FCC press release.

He hasn't given the public the opportunity to comment on the actual rule changes he plans to move on December 18.

Now this seems like a massive rush to me and a big mistake. How will the public interest be served by attempting to rush through a plan to relax ownership rules?

Chairman Martin is proposing for the top 20 markets, cross-ownership of newspapers and broadcast stations that are not ranked in the top 4. In addition, he has opened a gaping loophole for mergers outside of the top 20 markets.

Chairman Martin has framed his proposal as a modest compromise. But make no mistake, this is a big deal. When nearly half of the people in this country are told that in their cities and towns the media will get the green light to consolidate, they will not be happy. The proposal also goes beyond the top 20—it would also create a greatly relaxed approval process for cross-ownership in any U.S. media market and spur a new wave of media consolidation in both large and small media markets.

Frankly I find this further concentration to be an affront to common sense. This will undercut localism and diversity of ownership around the country. Studies show that removing the ban on newspaper/broadcast cross-ownership results in a net loss in the amount of local news produced in the market as a whole.

In addition, while the FCC suggests that cross-ownership is necessary to save failing newspapers, the publicly traded newspapers earn annual rates of return between 16 and 18 percent. Let's put that in context. Major oil companies earn 16 percent. Why do we need a bailout for an industry that earns at least three times the rate you and I can get at our local bank? And the FCC neglects to mention that there is already a "failing entity" waiver process for entities that do encounter financial hardships.

I have received an FCC produced draft study obtained through a FOIA request by the Georgetown Institute for Public Representation. The FCC study is called "Financial Health of the Newspaper Industry" and is dated June 2006. It shows that: (a) the newspaper industry is not doing all it can to increase its online revenues and therefore, its profit margins; (b) for the 12 largest publicly traded companies, average profit margins went down and up in consistently (for example there was an increase in profit margins for these companies from 2001 to 2004 of 6.5 percent to 12.7 percent); (c) the report explicitly states that "the industry overall is still profitable."

Finally, the Commission fails to argue why the FCC needs to be in the newspaper business. The FCC regulates the broadcast airwaves. The FCC has no authority over newspapers, except that in the way broadcast transactions include them. The FCC need not be considering the growth and changes of the newspaper business. It is not in the Commission's purview to just make broadcast cross-ownership rule changes based on estimations of the condition of companies they aren't even overseeing.

Yet Chairman Martin is committed to moving on the cross-ownership rule. The Georgetown Institute for Public Representation FOIA request produced another interesting document. It shows evidence that the FCC's Chief Economist at the time, Leslie Marx, when planning for a series of media ownership studies started from the results the agency wanted and worked backward. According to a July 2006 research plan, Marx began the research process with "thoughts and ideas" about "how the FCC can approach relaxing newspaper/broadcast cross-ownership restriction." She then identified "some studies that might provide valuable inputs to support a relaxation of newspaper/broadcast ownership limits." The studies outlined in the document were then implemented by the FCC, and at least one researcher identified as being on the "A-list" was chosen to carry them out.

There are a number of reasons that consolidation is harmful to our democracy. But even if I disagree with the rules the FCC issues, and even if I think the FCC

should break up the big media companies rather than allow them to consolidate, the FCC must go through an honest and thorough process. They must study the questions that affect a decision of whether to adjust ownership limits. They have not done this and they will not have done this prior to a December or January or even February vote.

Bipartisan Members of this Committee have told the FCC numerous times that they need to first consider the impact of ownership on localism. They have not done this. Folding in a localism report into this rule does not do it justice and fails to answer questions about the effect of ownership on local content. The FCC should complete studies and allow for a substantial comment period on the rulemaking.

On December 4, this Committee reported out the bipartisan "Media Ownership Act of 2007," S. 2332. This bill is co-sponsored by Senators Lott, Obama, Snowe, Kerry, Collins, Bill Nelson, Craig, Boxer, Cantwell, Biden, Clinton, Feinstein, Tester, Durbin, Dodd, Feingold, Sanders, Murray, McCaskill and Casey. We and many others in Congress feel that the FCC must go through a thorough process evaluating localism and diversity, which they have not done, and then must give the public enough time to comment on the proposed rules.

We call for 90 days of comment on the actual rules. We've had a long comment period, but without any specific proposal. We also require the FCC to finish a separate proceeding on localism, with a study of the impact of consolidation on localism at the market level, and 90 days of comment on the recommendations for improving localism. This must be done before the rule changes are issued for comment. Finally, we require an independent panel on female and minority ownership to be established, and the FCC to provide this panel with accurate data on female and minority ownership. This panel must issue recommendations and the FCC must act on them prior to voting on ownership rules.

But the FCC is choosing to ignore us. And they are choosing to ignore the thousands of people from around the country that came out and testified against further media concentration. If they had told them what the Chairman's proposed rule was, they would have come out and specifically addressed it. But unfortunately, Kevin Martin only allowed them to speak vaguely against rule changes.

The last time the FCC tried to do this, the U.S. Senate voted to block it. On September 16, 2003, the Senate voted 55–40 to support a "resolution of disapproval" of the FCC's previous decision to further consolidate media. If we have to do this again we will. Members of this Committee have sent numerous letters to the FCC stating what needs to be done prior to a vote on media ownership limits and yet they are on track to move this proceeding to a vote. The FCC is clearly not listening and I'm happy they are here today so we can discuss this with them once again.

The CHAIRMAN. First witness, Chairman of the Federal Communications Commission, The Honorable Kevin J. Martin.

Chairman Martin?

STATEMENT OF HON. KEVIN J. MARTIN, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. MARTIN. Thank you. Thank you, Chairman Inouye and Vice Chairman Stevens and all the Members of the Committee, for the opportunity to be here with you today.

I have a brief opening statement, and look forward to answering the questions you might have.

This hearing comes at a particularly appropriate time, as we on the Commission, with the guidance of Members of Congress, are grappling with some of the most important and difficult issues that we may face; namely, the review of the media ownership rules and reforming the Universal Service Program.

In both instances, the Commission is faced with striking a balance between preserving the values that make up the foundation of our media and telecommunications regulations, while ensuring that those regulations keep pace with the technology and marketplace of today.

It is not an exaggeration to say that media ownership is the most contentious and political—and potentially divisive issue to come be-

fore the Commission. It certainly was in 2003, and many of the same concerns about consolidation and its impact on diversity and local news coverage are being voiced today. And it's no wonder; the media touches almost every aspect of our lives, we're dependent upon it for our news, our information, and our entertainment. Indeed, the opportunity to express diverse viewpoints lies at the heart of our democracy.

In Section 202(h) of the 1996 Telecommunications Act, Congress required the Commission to periodically review its broadcast ownership rules to determine, "whether any of such rules are necessary in the public interest as a result of competition." It then goes on to read, "The Commission shall repeal or modify any regulation it determines to be no longer in the public interest."

In 2003, the Commission significantly reduced the restrictions on owning television stations, radio stations, and newspapers in the same market and nationally. Congress and the courts overturned almost all of those changes. There was one exception. The court specifically upheld the Commission's determination that the absolute ban on newspaper/broadcast cross-ownership was no longer necessary. The court agreed that, "reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest." It is against this backdrop that the FCC undertook a lengthy, spirited, and careful reconsideration of our media ownership rules.

In 2003, when we last conducted a review of the media ownership rules, many expressed concern about the process. Specifically, people complained that there were not enough hearings, not enough studies, and not enough opportunity for public comment.

When we began, 18 months ago, the Commission committed to conducting this proceeding in a manner that was more open and allowed for more public participation. We provided a lengthy comment period, of 120 days, which we ultimately extended to 167 days. We held six hearings across the country, at a cost of more than $200,000. We spent hundreds of thousands on independent studies. Each of those I solicited incorporated input from all of the other commissioners and all of my colleagues on the Commission about the topics, authors, and peer-reviewers of these studies. We put those studies out for public comment and made all the data available to the public.

I also held the two remaining hearings on localism, a proceeding that had been initiated under Chairman Powell, and I circulated a final report containing specific recommendations and proposed rule changes on localism.

I also circulated a proposal to adopt rules that are designed to promote diversity by increasing and expanding broadcast ownership opportunities for small businesses, including minority- and women-owned businesses.

The media marketplace is considerably different than it was when the newspaper/broadcast cross-ownership rule was put in place, more than 30 years ago. Back then, cable was a nascent service, satellite television did not exist, and there was no Internet. But, according to almost every measure, newspapers are struggling. Across the industry, circulation is down and their advertising revenue is shrinking.

As the first chart that I have indicates, 16 of the 19 major newspapers in the top 20 markets saw a drop in circulation just in the last 6 months, ending in September of 2007. The *Atlanta Journal Constitution* lost nearly one in ten subscribers during that period. Newspapers in financial difficulty oftentimes have little choice but to scale back local news-gathering to cut costs. In 2007 alone, 24 newsroom staff at *The Boston Globe* were fired, including two Pulitzer Prize-winning reporters; the Minneapolis *Star Tribune* fired 145 employees, including 50 reporters from their newsroom; 20 were fired by the *Rocky Mountain News;* the *Detroit Free Press* and *Detroit News* announced cuts totaling 110 employees in that market. Allowing limited cross-ownership may help to forestall the erosion in local news coverage by enabling companies to share these local news-gathering costs across multiple media platforms.

I, therefore, propose that we allow a newspaper to purchase a broadcast station, but not one of the top four television stations, and only in the largest 20 cities in the Nation, and only as long as eight independent voices still remain.

In contrast to the FCC's actions 4 years ago, I propose not to loosen any other ownership rule. Indeed, this proposed rule change is notably more conservative an approach than the remanded newspaper/broadcast cross-ownership rule that the Commission adopted in 2003. That rule would have allowed transactions in the top 170 markets. The rule I propose will only allow a subset of transactions in the top 20 markets, which would still be subject to an individualized determination that the transaction is in the public interest.

The revised rule would balance the need to support the availability and sustainability of local news while not significantly increasing local concentration or significantly decreasing or harming diversity.

The Commission also needs to ensure that communities are served by local broadcasters who are responsive to their needs. Last month, the Commission adopted an order requiring television broadcasters to better inform the community about how the programming they air serves them.

Additionally, I presented my colleagues a final report containing specific recommendations and proposed rule changes reflecting the comments and record produced in the localism proceeding.

I have also circulated an order that proposes to adopt rules that are designed to promote diversity by increasing and expanding broadcast ownership opportunities for small businesses, including minority- and women-owned businesses.

It's my belief that all of these proposals together will serve the public interest, providing for competition, localism, and diversity in the media.

The United States and the Commission also have a long history and tradition of making sure that rural areas of the country are connected and have similar opportunities for communications as other areas. One of the core principles of the Universal Service Fund is to enhance access to advanced services for healthcare providers throughout the Nation. Deploying broadband for the delivery of telemedicine can enable patients to receive medical care without leaving their homes or their communities.

This may not seem like a big deal to those of us who need to only drive a mile or two to visit our local doctor or dentist, but it can mean everything to patients who have lived—who live hundreds of miles from medical specialists, who have limited access to healthcare in their own communities.

Last year, the Commission took action to address the lack of broadband for healthcare providers, launching a new rural healthcare pilot program. We recently awarded more than $417 million for the construction of 69 statewide and regional broadband healthcare networks in 42 states and three U.S. territories. The network is going to connect over 6,000 healthcare clinics, hospitals, and medical facilities and providers across the country.

On this chart you can see each green dot represents one of the 6,000 healthcare facilities that'll now be connected, along with the Internet backbone connections that they'll end up having.

Senator STEVENS. We can't see Alaska and Hawaii.

Mr. MARTIN. I have a special handout blown up for you, providing for both Alaska and Hawaii.

The rural healthcare program illustrates the singular importance of the Universal Service Fund and living up to our commitment to rural Americans. Changes in technology and increases in the number of carriers that receive Universal Service support have placed significant pressure on the stability of the Fund. A large and rapidly growing portion of the high-cost support program is now devoted to supporting multiple carriers to serve areas in which costs are prohibitively expensive for even one carrier.

As this final chart indicates, the CETC Universal Service Fund payments have been growing dramatically since 2002; and, specifically in 2000, such providers only received $1 million in support. Last year, they received almost a billion dollars in support. I'm supportive of several proposals for fundamental reform that could help contain the growth of the Fund in order to preserve and advance the benefits of Universal Service and protect the ability of people in rural America to continue to be connected.

The United States is in the midst of a communications revolution, and the Commission is committed to ensuring that our values keep up with our technology. At the Commission, we're working to ensure that no community gets left behind and that the benefits are felt across the country, in rural and urban areas alike. We're also committed to maintaining the stability of both traditional and new forms of media and news-gathering.

With that, I certainly look forward to answering your questions and, again, appreciate the opportunity to be here today.

[The prepared statement of Mr. Martin follows:]

PREPARED STATEMENT OF HON. KEVIN J. MARTIN, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Thank you, Chairman Inouye, Vice Chairman Stevens, and Members of the Committee, for the opportunity to be here with you today. I have a brief opening statement and then I look forward to answering any questions you may have.

Now is an important time for the Commission. I am pleased to report that since we appeared before you last, the Commission has moved forward on a number of significant issues for the benefit of the American people. The Commission has been working both on our own and in coordination with industry, other governmental agencies, and consumer groups to advance the digital transition and promote consumer awareness. Through all of our activities, the Commission is committed to en-

suring that no American is left in the dark. In addition, our policies continue to facilitate steady growth in broadband deployment according to the Commission's latest high-speed data report. Importantly, we established rules for the upcoming 700 Mhz auction which represents the single most important opportunity for us to add another more open broadband platform. And finally the Commission has continued to work to remove barriers to entry by competitors in all of the sectors we regulate such as by providing franchise relief to incumbent cable providers, new entrants, and eliminating the use of exclusive contracts for video service in apartment buildings.

This hearing comes at a particularly appropriate time as we on the Commission—with the guidance of Members of Congress—are grappling with some of the most important and difficult issues that we may face: namely the review of the media ownership rules and reforming the Universal Service Program. In both instances the Commission is faced with striking a balance between preserving the values that make up the foundation of our media and telecommunications regulations while ensuring those regulations keep apace with the technology and marketplace of today.

Media Ownership Proceedings

It is not an exaggeration to say media ownership is the most contentious and potentially divisive issue to come before the Commission. It certainly was in 2003 and many of the same concerns about consolidation and its impact on diversity and local news coverage are being voiced today. And it is no wonder. The decisions we will make about our ownership rules are as critical as they are difficult. The media touches almost every aspect of our lives. We are dependent upon it for our news, our information and our entertainment.

A robust marketplace of ideas is by necessity one that reflects varied perspectives and viewpoints. Indeed, the opportunity to express diverse viewpoints lies at the heart of our democracy. To that end, the FCC's media ownership rules are intended to further three core goals: competition, diversity, and localism.

Section 202(h) of the 1996 Telecommunications Act, as amended, requires the Commission to periodically review its broadcast ownership rules to determine "whether any of such rules are necessary in the public interest as a result of competition." It goes on to read, "The Commission shall repeal or modify any regulation it determines to be no longer in the public interest."

In 2003, the Commission conducted a comprehensive review of its media ownership rules, significantly reducing the restrictions on owning television stations, radio stations and newspapers in the same market and nationally. Congress and the court overturned almost all of those changes.

There was one exception. The court specifically upheld the Commission's determination that the absolute ban on newspaper/broadcast cross-ownership was no longer necessary. The court agreed that ". . . reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest." It has been over 4 years since the Third Circuit stayed the Commission's previous rules and over 3 years since the Third Circuit instructed the Commission to respond to the court with amended rules.

It is against this backdrop that the FCC undertook a lengthy, spirited, and careful reconsideration of our media ownership rules.

The Commission's Process

In 2003, when we last conducted a review of the media ownership rules, many expressed concern about the process. Specifically, people complained that there were not enough hearings, not enough studies, and not enough opportunity for comments and public input. When we began eighteen months ago, the Commission committed to conducting this proceeding in a manner that was more open and allowed for more public participation.

I believe that is what the Commission has done. First, we provided for a long public comment period of 120 days, which we subsequently extended. We held six hearings across the country at a cost of more than $200,000: one each in Los Angeles, California; Nashville, Tennessee; Harrisburg, Pennsylvania; Tampa Bay, Florida; Chicago, Illinois; and Seattle, Washington. And, we held two additional hearings specifically focused on localism in Portland, Maine and in Washington, D.C. The goal of these hearings was to more fully and directly involve the American people in the process.

We listened to and recorded thousands of oral comments, and allowed for extensions of time to file written comments on several occasions. To date, we've received over 166,000 written comments in this proceeding.

We spent almost $700,000 on ten independent studies. I solicited and incorporated input from all of my colleagues on the Commission about the topics and authors of

those studies. We have put those studies out for peer review and for public comment and made all the underlying data available to the public.

I also committed to completing the Notice of Inquiry on localism, something that was initiated but stopped under the previous Chairman. This included holding the two remaining hearings. All told, the Commission devoted more than $160,000 to hear from expert witnesses and members of the public on broadcasters' service to their local communities. In addition, the Commission hired Professor Simon Anderson of the University of Virginia to produce an academic paper on "Localism and Welfare", which was made available on our website last December. I have presented to my colleagues a final report containing specific recommendations and proposed rule changes reflective of the comments and record produced by the inquiry.

Finally, although not required, I took the unusual step of publishing the actual text of the one rule I thought we should amend. Because of the intensely controversial nature of the media ownership proceeding and my desire for an open and transparent process, I wanted to ensure that Members of Congress and the public had the opportunity to review the actual rule prior to any Commission action.

The Changing Media Marketplace Today

The media marketplace is considerably different than it was when the newspaper/broadcast cross-ownership rule was put in place more than thirty years ago. Back then, cable was a nascent service, satellite television did not exist and there was no Internet. Consumers have benefited from the explosion of new sources of news and information. But according to almost every measure newspapers are struggling. At least 300 daily papers have stopped publishing over the past thirty years. Their circulation is down and their advertising revenue is shrinking.

At *The Boston Globe,* revenue declined 9 percent in 2006. The Minneapolis *Star Tribune* announced an ad and circulation revenue decline of $64 million from 2004 to 2007. *The Denver Post* saw a revenue decline of 15 percent. Tribune, owner of the *Los Angeles Times,* saw ad revenues decline 6 percent in the last year—a total loss of $47 million. At *USA Today,* the most-read paper in the Nation, revenue declined 6.6 percent over the past year as the total number of paid advertising pages fell from 929 to 803. And the *San Francisco Chronicle* reported in 2006 that the paper was losing $1 million dollars—*a day.*

Newspapers in financial difficulty oftentimes have little choice but to scale back local news gathering to cut costs. *USA Today* recently announced it would be cutting 45 newsroom positions—nearly 10 percent of its total staff. In 2007 alone, 24 newsroom staff at *The Boston Globe* were fired, including 2 Pulitzer Prize-winning reporters; the Minneapolis *Star Tribune* fired 145 employees, including 50 from their newsroom; 20 were fired by the *Rocky Mountain News;* the *Detroit Free Press* and *The Detroit News* announced cuts totaling 110 employees; and the *San Francisco Chronicle* planned to cut 25 percent of its newsroom staff.

Without newspapers and their local news gathering efforts, we would be worse off. We would be less informed about our communities and have fewer outlets for the expression of independent thinking and a diversity of viewpoints. I believe a vibrant print press is one of the institutional pillars upon which our free society is built. In their role as watchdog and informer of the citizenry, newspapers often act as a check on the power of other institutions and are the voice of the people.

If we believe that newspaper journalism plays a unique role in the functioning of our democracy, we cannot turn a blind eye to the financial condition in which these companies find themselves. Our challenge is to address the viability of newspapers and their local news gathering efforts while preserving our core values of a diversity of voices and a commitment to localism in the media marketplace. Given the many concerns about the impact of consolidation, I recognize this is not an easy task. But I believe it is one that we can achieve.

Allowing cross-ownership may help to forestall the erosion in local news coverage by enabling companies to share these local news gathering costs across multiple media platforms. Indeed the newspaper/broadcast cross-ownership rule is the only rule not to have been updated in 3 decades, despite that fact that FCC Chairmen—both Democrat and Republican—have advocated doing so. In fact, Chairman Reed Hundt argued for relaxation in 1996 noting, "the newspaper/broadcast cross-ownership rule is right now impairing the future prospects of an important source of education and information: the newspaper industry." *Application of Capital Cities/ABC, Inc.,* Memorandum Op. & Order, 11 FCC Rcd 5841, 5906 (1996). And as I mentioned, in 2003 the Third Circuit recognized this fact when it upheld the Commission's elimination of the newspaper/broadcast cross-ownership ban, saying that it was "no longer in the public interest."

As a result, I proposed the Commission amend the 32-year-old absolute ban on newspaper/broadcast cross-ownership. This proposal would allow a newspaper to

purchase a broadcast station—but not one of the top four television stations—in the largest 20 cities in the country as long as 8 independent voices remain. This relatively minor loosening of the ban on newspaper/broadcast cross-ownership in markets where there are many voices and sufficient competition would help strike a balance between ensuring the quality of local news gathering while guarding against too much concentration.

In contrast to the FCC's actions 4 years ago, we would not loosen any other ownership rule. We would not permit companies to own any more radio or television stations either in a single market or nationally. Indeed this proposed rule change is notably more conservative in approach than the remanded newspaper/broadcast cross-ownership rule that the Commission adopted in 2003. That rule would have allowed transactions in the top 170 markets. The rule I propose would allow only a subset of transactions in only the top 20 markets, which would still be subject to an individualized determination that the transaction is in the public interest.

The revised rule would balance the need to support the availability and sustainability of local news while not significantly increasing local concentration or harming diversity.

Proposed Newspaper/Broadcast Cross-Ownership Rule

Under the new approach, the Commission would presume a proposed newspaper/broadcast transaction is in the public interest if it meets the following test:

1. The market at issue is one of the 20 largest Nielsen Designated Market Areas ("DMAs");

2. The transaction involves the combination of a major daily newspaper and one television or radio station;

3. If the transaction involves a television station, at least 8 independently owned and operating major media voices (defined to include major newspapers and full-power commercial TV stations) would remain in the DMA following the transaction; and

4. If the transaction involves a television station, that station is not among the top four ranked stations in the DMA.

All other proposed newspaper/broadcast transactions would continue to be presumed *not* in the public interest. Moreover, notwithstanding the presumption under the new approach, the Commission would consider the following factors in evaluating whether a particular transaction was in the public interest:

1. The level of concentration in the DMA;

2. A showing that the combined entity will *increase* the amount of local news in the market;

3. A commitment that both the newspaper and the broadcast outlet will continue to exercise its own independent news judgment; and

4. The financial condition of the newspaper, and if the newspaper is in financial distress, the owner's commitment to invest significantly in newsroom operations.

Ensuring Localism

The Commission also needs to ensure that communities are served by local broadcasters who are responsive to their needs. Establishing and maintaining a system of local broadcasting that is responsive to the unique interests and needs of individual communities is an extremely important goal for the Commission.

Last month, the Commission adopted an order requiring television broadcasters to better inform their communities about how the programming they air serves them. Specifically, television stations will file a standardized form on a quarterly basis that details the type of programming that they air and the manner in which they do it. This form will describe a host of programming information including the local civic affairs, local electoral affairs, public service announcements (whether sponsored or aired for free) and independently produced programming. With a standardized form and public Internet access to it, the public and government officials will now be able to engage them directly in a discussion about exactly what local commitments broadcasters are and/or should be fulfilling.

In addition, I have circulated a Localism Report and NPRM that addresses other actions the Commission can take to ensure that broadcasters are serving the interests and needs of their local communities. The rule changes that I propose are intended to promote localism by providing viewers and listeners greater access to locally responsive programming including, but not limited to, local news and other civic affairs programming. Among other actions, the item tentatively concludes that:

- Qualified LPTV stations should be granted Class A status, which requires them to provide 3 hours of locally-produced programming;
- Licensees should establish permanent advisory boards in each community (including representatives of underserved community segments) with which to consult periodically on community needs and issues; and
- The Commission should adopt processing guidelines that will ensure that all broadcasters provide a significant amount of locally-oriented programming.

Increasing Diversity

In order to ensure that the American people have the benefit of a competitive and diverse media marketplace, we need to create more opportunities for different, new and independent voices to be heard. The Commission has recently taken steps to address the concern that there are too few local outlets available to minorities and new entrants.

Last month, we significantly reformed our Low Power FM rules in order to facilitate LPFM stations' access to limited radio spectrum. The new order streamlines and clarifies the process by which LPFM stations can resolve potential interference issues with full-power stations and establishes a going-forward processing policy to help those LPFMs that have regularly provided 8 hours of locally originated programming daily in order to preserve this local service. The new rules are designed to better promote entry and ensure local responsiveness without harming the interests of full-power FM stations or other Commission licensees.

I believe it is important for the Commission to foster the development of independent channels and voices. Again, last month, the Commission took significant action adopting an order that will facilitate the use of leased access channels. Specifically, the order made leasing channels more affordable and expedited the complaint process. These steps will make it easier for independent programmers to reach local audiences.

I have also circulated an order that proposes to adopt rules that are designed to promote diversity by increasing and expanding broadcast ownership opportunities for small businesses, including minority and women-owned businesses. This item proposes to give small businesses and new entrants that acquire expiring construction permits additional time to build out their broadcast facilities. It also proposes to revise the Commission's equity/debt attribution standard to facilitate investment in small businesses in order to promote diversity of ownership in broadcast facilities.

In addition, among other things, the item would adopt a rule barring race or gender discrimination in broadcast transactions, adopt a "zero-tolerance" policy for ownership fraud, and commits to the Commission convening an "Access-to Capital" conference in the first half of 2008 in New York City. As with the localism item, I am hopeful that my colleagues will move forward on these proposals quickly.

The Commission is also working to ensure that new entrants are aware of emerging ownership opportunities in the communications industry. Recently, I sent a letter to our Advisory Committee on Diversity. I suggested that they help create educational conferences that will encourage communications companies that engage in transactions and license transfers to include small businesses, minorities, and women entrepreneurs, and other designated entities during negotiations on assets and properties identified for divestiture.

It is my sincere belief that all of these proposals together will serve the public interest, providing for competition, localism, and diversity in the media. My proposed change to the newspaper/broadcast cross-ownership rule addresses the needs of the newspaper industry and helps preserve their local news gathering, while at the same time preserving our commitment to localism, diversity, and competition.

The Commission must strike the right balance between ensuring our rules recognize the opportunities and challenges of today's media marketplace and prioritizing the commitment to diversity and localism. I look forward to working with my fellow Commissioners to adopt rules consistent with these goals.

Broadband and Universal Service

Continued Broadband Deployment

Broadband technology is a key driver of economic growth. The ability to share increasing amounts of information at greater and greater speeds, increases productivity, facilitates interstate commerce, and helps drive innovation. But perhaps most important, broadband has the potential to affect almost every aspect of our lives—from where and when we work to how we educate our children and deliver healthcare.

The Commission has continued to make significant progress facilitating broadband deployment. The United States is the largest broadband market in the world, and our newest report finds continued dramatic growth. In 2006, high-speed lines increased 61 percent compared to 37 percent in 2005. Today, more than 99 percent of the U.S. population lives in Zip Codes having at least one broadband subscriber.

Since I became Chairman, the Commission has taken a number of actions to help spur broadband deployment. We removed regulatory obstacles that discouraged infrastructure investment and slowed deployment. We classified cable modem, DSL, BPL, and wireless broadband as "information services" not subject to legacy regulations. We streamlined the franchise process for new entrants and incumbent cable providers and banned exclusive contracts in MDU's to spur competition in the video market—competition which is *essential* to further investment in underlying infrastructure.

There is however, more work to be done. I have proposed the Commission take additional steps to better our broadband deployment efforts. We need to gain a better understanding of who has broadband and the nature of the broadband services being deployed in the marketplace. Last fall I circulated a number of proposals to my colleagues that would revise how we collect broadband information. These proposals would:

- Ask *how many* people have broadband per Zip Code, instead of only asking whether there is one person with broadband service per Zip Code.
- Revise our current definition of "high-speed" from 200k and above to 1.5 mbps to 3.0 mbps to account for changes in technology, consumer demand, and the evolving marketplace.
- Collect information about different tiers of broadband service being offered in the marketplace.
  - First Generation data: 200k up to 768k
  - Basic: 768k to 1.5 mbps
  - High Speed: 1.5 mbps to 3.0 mbps
  - Robust: 3.0 mbps to 6.0 mbps
  - Premium: 6.0 mbps and above
- Adopt a national broadband availability mapping program, with the objective of creating a highly detailed map of broadband availability nationwide. This program will facilitate activities of other broadband initiatives by Federal and state agencies and public-private partnerships.
- Collect more accurate data on wireless broadband by separating out data "capable" handsets and counting the number of consumers with data (broadband) service plans.
- Finally, I have recommended that the Census Bureau include a question about household broadband in its American community survey.

Reforming Universal Service

The United States and the Commission have a long history and tradition of making sure that rural areas of the country are connected and have similar opportunities for communications as other areas. I believe our Universal Service Program must continue to promote investment in rural America's infrastructure and ensure access to telecommunications services that are comparable to those available in urban areas today, as well as provide a platform for delivery of advanced services tomorrow.

With each passing day, more Americans interact and participate in the technological advances of our digital information economy. A modern and high quality communications infrastructure is essential to ensure that all Americans, including those residing in rural communities, have access to the same economic, educational, and healthcare opportunities. Thus the Commission has a responsibility to preserve and advance the benefits of Universal Service.

Extending Telemedicine and Rural Healthcare

One of the core principles of the Universal Service Fund is to enhance access to advanced services for healthcare providers throughout the Nation. Deploying broadband for the delivery of telemedicine can enable patients to receive medical care without leaving their homes or communities. This may not seem like a big deal to those of us who need only drive a mile or two to visit our local doctor or dentist. But, it can mean everything to patients who live hundreds of miles from medical specialists or have limited access to healthcare in their own communities.

Last year, the Commission took action to address the lack of broadband for health care providers launching the Rural Health Care Pilot program. This program will provide funding for up to 85 percent of an applicant's costs of deploying a dedicated broadband network connecting health care providers in rural and urban areas within a state or region. It also provides funding for up to 85 percent of applicant's costs of connecting the state or regional networks to Internet2 and/or National Lamda Rail—dedicated nationwide backbones—as well as the public Internet. The Commission received an overwhelming response to this initiative. Regional and state health networks across the country submitted applications.

The Commission recently awarded more than $417 million dollars for the construction of 69 state-wide and regional broadband healthcare networks in 42 states and 3 U.S. territories. The networks will connect over 6,000 healthcare providers across the country, including hospitals, clinics, public health agencies, universities and research facilities, behavioral health sites, community health care centers, and others.

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 will be able to connect to the public Internet as well as to one of the Nation's dedicated Internet backbones: Internet2, or National Lambda Rail.

The projects include large, multi-state networks connecting hundreds of facilities, as well as smaller networks, providing critical links to connect clinics in insular and isolated areas with health care specialists hundreds of miles away. These networks will enable everything from basic clinical care to the deployment of electronic medical records. By providing access to these telehealth networks, public health officials will be able to share critical information when responding to public health emergencies such as pandemics or bioterrorism.

The Rural Health Care program illustrates the singular importance of the USF and living up to our commitment to rural Americans. Telehealth and telemedicine services provide patients in rural areas with access to critically needed medical specialists in a variety of practices, including cardiology, pediatrics, and radiology, in some instances without leaving their homes or communities. Intensive care doctors and nurses can monitor critically-ill patients around the clock and video conferencing allows specialists and mental health professionals to care for patients in different rural locations, often hundreds of miles away.

Stabilizing Universal Service

Changes in technology and increases in the number of carriers that receive Universal Service support have placed significant pressure on the stability of the Fund. A large and rapidly growing portion of the high cost support program is now devoted to supporting multiple carriers to serve areas in which costs are prohibitively expensive for even one carrier. These additional networks in high cost areas don't receive support based on their own costs, but rather on the costs of the incumbent provider, even if their costs of providing service are lower. In 2000, such providers received $1 million in support. Last year, they received almost $1 billion in support.

I'm supportive of several proposals for fundamental reform that could help contain the growth of the Fund in order to preserve and advance the benefits of Universal Service and protect the ability of people in rural areas to continue to be connected. I have circulated among my colleagues at the Commission an Order that adopts the recommendation of the Joint Board to place an interim cap on the amount of high-cost support available to competitive ETCs. I have also circulated a Notice of Proposed Rulemaking that would require that high-cost support be based on a carrier's costs in the same way that rural phone companies' support is based. I continue to believe the long-term answer for reform of high-cost Universal Service support is to move to a reverse auction methodology. I believe that reverse auctions could provide a technologically and competitively neutral means of controlling the current growth in the Fund and ensuring a move to most efficient technologies over time. I also believe that reverse auctions could enable us to begin providing support for next generation services as well. Accordingly, I have also circulated among my colleagues a Notice of Proposed Rulemaking to establish reverse auctions.

Similarly, maintaining the stability of the Universal Service contribution system is an important responsibility. That is why we took several interim steps to ensure the stability of the Fund by raising the wireless safe harbor and broadening the contribution base to include interconnected VoIP providers. The actions helped ensure that the contribution base reflects the current market realities and that contributions remain equitable and nondiscriminatory. I also remain committed to adopting and implementing a numbers-based contribution system.

Wireless Broadband

The upcoming spectrum auction is perhaps the most critical step in bringing broadband to the widest range of Americans.

The Commission's rules for the 700 MHz auction are designed to 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 adopt rules that would maximize the opportunity for a national wireless broadband service to emerge. They urged the Commission to make available at least one 11 MHz paired block, offered over large geographic areas, with combinatorial bidding so that a national service could be established. The Commission's rules meet these requirements while providing significant opportunities for small and rural carriers to obtain spectrum at auction as well.

The license winner for about one-third of the spectrum will be required to provide a platform that is more open to devices and applications. A network more open to devices and applications will benefit consumers nationwide by giving them greater choice and control over their wireless experience. Consumers using this new open platform will 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. An open platform will ensure that that the fruits of innovation on the edges of the network more swiftly pass into the hands of consumers.

I believe our efforts may already be having an impact. Recently, Verizon Wireless announced its plans to introduce a new option for customers throughout the country—an option that will allow customers to use any device and to use any applications that they choose on the Verizon Wireless network. That announcement, along with the Open Handset Alliance's previous announcement of an open platform capable of working on multiple networks, is a significant step toward fulfilling the goal of a more open wireless environment.

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

Conclusion

The United States is in the midst of a communications revolution, and the Commission is committed to ensuring that our values keep up with our technology. At the Commission, we are working to ensure that no community gets left behind, and that the benefits are felt across the country in rural and urban areas alike. We are also committed to maintaining the stability of both traditional and new forms of media and newsgathering.

I look forward to answering any questions you may have.

The CHAIRMAN. Thank you very much, Chairman Martin.

Now Commissioner Michael J. Copps.

STATEMENT OF HON. MICHAEL J. COPPS, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Commissioner COPPS. Good morning, Chairman Inouye, Vice Chairman Stevens, Members of the Committee.

This oversight hearing could not be timelier. The FCC is poised to make some bad decisions, and, seems to me, at this point, only Congressional oversight can get us back on track. My good friend Chairman Martin, in what I consider a regrettable lapse in good judgment, proposes, in just 3 business days from now, to throw open the doors to newspaper/broadcast combinations in every market in the country. To make matters worse, he would do so before

the Commission does anything meaningful and systematic to revive some of the localism that has been lost in our broadcast media, and before we develop a workable strategy to reverse the sad and embarrassing state of minority and female ownership of U.S. broadcast media.

Our attention should be on fixing these problems, that media consolidation has caused, before we feed another frenzy of big media sales and swaps. Our attention should be on the upcoming DTV transition that threatens television outages and a consumer backlash the likes of which you and I may have never seen. Our attention should be on comprehensive reform of Universal Service to bring the tools of 21st century opportunity to every citizen in the land.

The media ownership proposal in front of the Commission is presented to us as a "moderate relaxation" of the newspaper/broadcast ownership ban in the 20 largest markets. But a look at the fine print shows that the proposal would actually apply the same test in every market in the country. That's right. Any station can merge with any newspaper in just about any market. The only difference is that in the top 20 markets you start with the presumption that you meet the test, while in the other markets you must overcome the presumption. But we make that about as easy as taking your next breath. Four embarrassingly meaningless factors are provided to help applicants overcome the presumption. And you don't even have to meet all of them; it's just a list of the things that the FCC will "consider." And given how the FCC has "considered" media regulation in recent years, you can write your cross-ownership deal up today and it's pretty close to a slam-dunk you're not going to get much pushback from us.

The process here has been no better than the proposed outcome. The Commission conducted hearings, reluctantly, on ownership and localism, yet I cannot find, anywhere in the pending item, the citation of a single citizen's testimony. Were people's comments without value? Is public comment now extraneous to our decision-making? And why were some hearings called with such little notice that people often could not attend? There are other process breakdowns attending this proceeding which time precludes my discussing: inadequate studies, items written and circulated before the comment period closes, and so on. The point is, we need processes at the FCC that allay distrust rather than short circuits that create distrust.

To me, this is just plain nuts. We rush in to encourage more consolidation without addressing the damage consolidation has already caused. Is our response to the decline of localism really going to be to encourage more one media company towns often controlled from afar, rather than instituting a real, honest-to-God license renewal system where the presence of localism and diversity determine whether or not you get your license renewed? And please don't tell me that, "A little localism tweak here or there can fix the problem, so, don't worry, go ahead and vote ownership consolidation next week, and we'll come back and do a better job on localism later." We should all want a comprehensive localism package now. That's what we were told was coming when the localism proceeding was launched, not that we would rush ahead to encourage more of the

consolidation that did so much to diminish localism in the first place.

Why can't we systematically address the fact that, in a Nation that is almost one-third minority, people of color own only a scant 3 percent of all full-power commercial television stations? Is it any wonder that minority issues and minority contributions to our culture get such short shrift in an environment like that, and why minorities are so often depicted in caricature? Is our response to this really going to be to take the smaller stations where the few lucky minority and female owners exist, and put those stations into a new media bazaar?

What we have here is a stubborn insistence to finish the proceeding by December 18, disregarding both public and Congressional opinion. There is a way out, however. The Media Ownership Act of 2007 has been approved by this Committee. Our FCC conversations on media ownership should be guided by this bill's provisions. The legislation provides a simple and an eminently workable roadmap. I've had conversations with my colleagues about the need for a credible process along these lines. I am deeply disappointed that the decision has, nonetheless, been made to plunge ahead on December 18. We should have been able to reach agreement. I hope we still reach agreement. I hope we still can.

But when overwhelming majorities of citizens oppose further media consolidation, when Members of Congress write to us almost daily to caution us, and when legislation to avoid a nine-car train wreck is moving through Congress, I think the FCC has a responsibility to stop, look, and listen.

I worked here in the Senate for 15 years, and I feel a keen responsibility to listen to its members, and especially to this Committee. And I don't think the Commission is listening very well right now.

The stakes in this debate over the future of the media are so enormous. This has been my number-one priority at the Commission, as most of you members know. I've studied the history of this country, and I know how precious media is. The diversity and creativity of our culture can be enhanced or it can be diminished by the media environment. Media can reflect and nourish these things, or it can shove them aside. And there has been too much shoving aside in recent years.

Our civic dialogue can be either expanded or dumbed down by media. Lately, our policies have encouraged an erosion of the civic dialogue upon which the future of our democracy depends. I hope this Committee can yet save the Commission from itself.

Thank you for the opportunity to testify, and I look forward to your comments, your guidance, and your questions.

[The prepared statement of Commissioner Copps follows:]

PREPARED STATEMENT OF HON. MICHAEL J. COPPS, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Good morning, Chairman Inouye, Vice Chairman Stevens and members of the Committee.

This oversight hearing could not be timelier. The Commission's priorities are dangerously out-of-whack, and we urgently need this Committee's help to save us from ourselves. We have a proposal before us at the Commission to open the door to newspaper/broadcast combinations in every market in the country and the drive is

on to rush this to a vote next week. Meanwhile we have given short shrift to pressing problems like the sad state of minority ownership of U.S. media properties and the obvious decline of localism in our broadcast programming. We have also neglected the DTV transition, and have not done nearly enough to prepare consumers and broadcast stations for the rapidly approaching deadline. If we don't turn this around quickly, the DTV transition will result in widespread television outages and a consumer backlash the likes of which you and I haven't seen for a long, long time. On Universal Service, the Commission has before it a choice: down one road is action on a holistic set of recommendations that for the first time includes broadband deployment essential to the mission of Universal Service; down the other is approval of a cap on high-cost support to competitive eligible telecommunications carriers (CETCs) that has the very real potential of being the only action the FCC takes to reform the system. What a lost opportunity that would be. I fear the Commission is not going to choose wisely.

Let me begin with media ownership. The proposal in front of the Commission has been portrayed as a "moderate" relaxation of the newspaper/broadcast cross-ownership ban in the 20 largest markets. But look carefully at the fine print. The proposal would actually apply the *same test in every market in the country.* That's right—*any* station can merge with *any* newspaper in *any* market in the country. The only difference is that in the top 20 markets you start with a presumption that you meet the test, while in the other markets you don't.

And there's the rub. The four factors proposed by the Chairman are so riddled with holes that they are essentially meaningless. You don't even have to meet them all—it's just a list of things the FCC will "consider." Given how the FCC has "considered" media regulation in recent years, I don't have much confidence that any proposed combination will be turned down. In fact, I can predict the boilerplate language that will accompany such approvals: "Although applicants starting with a negative presumption face a high hurdle, in this case we find the applicant has met its burden by [fill in the blanks]."

This is not the only example of media regulation that seems like a chapter out of Alice in Wonderland. Just 2 weeks ago, an FCC majority ostensibly "denied" Tribune a waiver before turning around and granting a two-year waiver were Tribune to file an appeal. The majority turned these unprecedented legal summersaults to push Tribune to challenge the newspaper/broadcast cross-ownership ban in a court they think may be more sympathetic to their cause than the Third Circuit. To no one's surprise, Tribune filed an appeal the very next business day.

There's still more evidence of the real agenda at play. I've given Chairman Martin credit for holding six media hearings around the country, although I would have preferred more. No one knows better than the American people whether they are being served by their local media. And at each stop, all of the Commissioners seemed to agree—the public needs to be heard before the FCC acts on a subject as important as the American media.

Thousands of citizens came out at great inconvenience to themselves—and often waited for hours—to provide their testimony. Throughout the process, many openly questioned whether the hearings were real or just cover for a pre-determined outcome. This skepticism gained credence last month when our last media ownership meeting was announced for Seattle with only 1 week's notice. Listening to people or checking a box? Well, we may have our answer. I went through the draft Order to see how it handled the hundreds of public statements at these hearings. While there is a passing reference to the public hearings, *not a single citizen's testimony is specifically cited or discussed.* I was flabbergasted. The whole point of these hearings was to gather evidence from the American people—and the Order does not find a single comment worthy of mention?

So then I went through the draft to look for the public input from our six separate *localism* field hearings, which the *further notice* stated would be considered as part of the media ownership record. *Again, not a single citizen's testimony is specifically cited or discussed.* It's hard to reach any conclusion other than public comment is largely extraneous to the process. What else are we to think when a draft Order is circulated 2 weeks *before* public comment is due on the proposal?

I realize we are not taking a public opinion poll in this proceeding. But surely public comment deserves more respect than this. As anyone who attended these hearings can tell you, calls for more media consolidation were few and far between. That's not surprising—a recent survey finds that 70 percent of Americans view media consolidation as a problem. And by an almost two-to-one margin, they believe newspapers should not own TV stations in the same market and they favor Congress passing laws to make sure that can't happen. Those poll numbers are consistent across the political spectrum. So this is no red state-blue state issue. It is an all-American grassroots issue. This doesn't surprise Commissioner Adelstein or

me because that's exactly what we have seen in the scores of town meetings and forums we have attended around the country since 2002.

I recognize that there is another possibility—that this is simply a rush job to be completed any way possible by December 18, so there just wasn't enough time to consider the full record. Whatever the reason, there is only one way to do this job and that is to do it right. The issues are too important to address in the current slapdash manner.

No one on this Commission, even if some feel differently about the pros and cons of changing the ownership rules, should want to perpetuate those kinds of appearance issues about the FCC. The Commission is in dire need of a process that allays fears rather than one that creates them.

In the meantime—and before we vote to further loosen our rules—there are two policy goals on which we need to make real progress—minority and female ownership is one, localism is the other. These issues have been languishing for years at the FCC. We always seem to be running a fast-break when it comes to approving more media consolidation, but it's the four-corner stall when it comes to minority and female ownership and ensuring that broadcasters serve their local communities.

Racial and ethnic minorities make up 33 percent of our population but they own a scant 3 percent of all full-power commercial TV stations. And that number is plummeting. Free Press just recently released a study showing that during the past year the number of minority-owned full-power commercial television stations declined by 8.5 percent, and the number of African American-owned stations decreased *by nearly 60 percent.* It is almost inconceivable that this shameful state of affairs could be getting worse; yet here we are.

There are recommendations that have been presented to address the issue, both by outside commenters and our own Diversity Committee. These need to be put together in a comprehensive, systematic and prioritized response to a problem that is a national disgrace. I say that advisedly—it *is* a national disgrace to have a media environment that is so blatantly unreflective of how we look as a nation. I support Commissioner Adelstein's call, joined by many others, for an independent panel to review the dozens of proposals before us. We need to fix this problem *before* voting on any proposals permitting big media to get even bigger. Consolidation has made it infinitely tougher for women and minorities to own stations, so why would we give the green light to more consolidation before coming up with programs to give women and minorities a chance to compete? And why should we put into play, as Chairman Martin's proposal does, the very stations that small, independent, minority broadcasters could have a shot at if they had the proper incentives? Why would we even consider that?

It may be difficult for you to believe, but the Commission doesn't even have an accurate count of how many minority and female owners there are. Just last week, the Congressional Research Service issued a report on the FCC's 10 media ownership studies and it paints an anything-but-rosy picture of the record on which the Chairman proposes to act. The report raises questions about the underlying data and technical analyses used for several of the studies. In particular, it points to the lack of accurate data on minority and female media ownership. As CRS points out, the Third Circuit instructed the Commission on remand to consider the impact of any media ownership rule changes on minority ownership. CRS finds, however, that the FCC has failed to collect accurate data on minority and female ownership, and that without such data, "it is impossible to perform" the analysis required by the Third Circuit. Indeed, CRS notes that all of the researchers and peer reviewers agree that the Commission's databases on minority and female ownership "are inaccurate and incomplete and their use for policy analysis would be fraught with risk." I agree. The Commission is courting another unfavorable ruling from the Third Circuit, proving once again that the impact of further media consolidation on minority and female ownership is simply not a priority.

It's the same story on localism. A draft Notice of Proposed Rulemaking was recently circulated, apparently on the premise that asking questions is sufficient to "check the box" so a Commission majority can move forward to loosen the newspaper/broadcast cross-ownership ban. But localism should never be seen as a means to an end—it is an end in itself. It is at the heart of what the public interest is all about. All deliberate speed in getting some localism back? By all means. A rush to judgment to clear the way for more big media mergers? No way.

For today, our conversation on media ownership should start and end with the requirements of S. 2332, the "Media Ownership Act of 2007." Senator Dorgan, Senator Lott and the other cosponsors, thank you for your leadership and for your understanding that unless we have a credible process, we cannot have a credible result. Right now, the Chairman is ready to relax the newspaper/broadcast cross-ownership ban without completing 90 days of public comment on the proposed rule; be-

fore completing a separate rulemaking to promote localism that includes a 90 day comment period; before collecting accurate data on female and minority ownership; and before convening and acting comprehensively upon recommendations by an independent panel on minority and female ownership.

These fundamental procedural requirements are the heart of S. 2332. Last week, the full Commission testified before the House Telecommunications Subcommittee on this topic, and Chairman Dingell passed on some advice he received from his father: if given a choice between controlling the process and controlling the substance, his father told him, choose the process and you'll win every time. The same is true here. As minority Commissioners, we cannot control process. However, your legislation would ensure that the substance is debated fairly and transparently. Were the Commission to abide by the criteria in the Dorgan-Lott bill, I certainly would support bringing the Chairman's proposal to a vote. The bill should be the guiding principles for completing the media ownership proceeding.

I also want to point out that in all this haste to give big media a huge gift for the holidays, another critical issue is not receiving its due—the DTV transition. We are 14 short months from a massive switch-over that will directly affect millions of American households. We have just one chance to get this right. Unlike many countries that are taking a phased approach, we are turning off analog signals in every market in the country on a single date—February 17, 2009.

I recently traveled to the United Kingdom to witness the first stage of their DTV transition. I was concerned before going over there; now I am thoroughly alarmed. The UK is taking the transition seriously, and has put together the kind of well-funded and well-coordinated public-private partnership that I, and many of you, have been calling for over here.

There are two basic things that need to happen for a successful transition. Number one, consumers have to be prepared. We have a pending consumer education proceeding that could help ensure that the message is getting out in a coordinated and effective way. But no vote has been scheduled to get it done.

The second thing that has to happen is broadcasters need to prepare. Hundreds of stations must take significant actions over the next 14 months. Things like new antennas and transmitters, new tower construction and new transmission lines—all of which can require financing, zoning approvals, tower crews, or international coordination. But many broadcasters need to know what the technical rules of the road are going to be before they can move forward. Those issues are teed up in a proceeding called the "Third DTV Periodic Review." Although the record has been closed for months, a draft Order was just circulated to the Commission last week. Already, I fear that many broadcasters simply aren't going to make it. If we don't start making the DTV transition a national priority, we will almost certainly have a 9-car train wreck on our hands. And the American people will be looking for someone to blame. Those of us who plan to be on duty in February 2009 are going to need some real good answers.

Finally, let me turn to Universal Service. As a member of the Federal-State Joint Board on Universal Service, I have participated in the Board's two recent recommendations to the FCC. In May, I dissented from a recommendation that the FCC place an "interim" cap on the high-cost support received by CETCs based on my strong belief that it solves no enduring problem and that it will be interpreted by many as movement enough to justify putting the larger Universal Service reform imperative on the back-burner. As a result, it would diminish rather than enhance the prospects for near or even mid-term reform. I continue to believe that this is the case.

However, to its credit the Joint Board did not rest and last month it recommended a far more comprehensive plan for overhauling the high-cost fund. Most notable is its recommendation, for the first time, to include broadband as a supported system within the Universal Service system. While I would have acted more boldly on how to ensure that the Commission makes good on this commitment, I was enormously pleased to approve this historic finding by the Joint Board because it establishes for the first time the right mission for Universal Service in the 21st century. Congress concluded many years ago that a core principle of Federal telecommunications policy is that all Americans, no matter who they are or where they live, should have access to reasonably comparable services at reasonably comparable rates. Congress wisely anticipated that the definition of Universal Service would evolve and advance over time. The Joint Board's recommendation to include broadband in the definition of Universal Service finally puts the program in sync with the intent of the Act.

I continue to believe there are a variety of ways to promote Universal Service and at the same time ensure the sustainability and integrity of the Fund. As I testified earlier this year, much would be accomplished if the Commission were to include broadband on both the distribution and contribution side of the ledger; eliminate the

Identical Support rule; and increase its oversight and auditing of the high-cost fund. Additionally, Congressional authorization to permit the assessment of Universal Service contributions on intrastate as well as interstate revenue would be a valuable tool for supporting broadband. That being said, the Joint Board made an assortment of recommendations of its own. I agreed with some of them and not with others. Nevertheless, the FCC has before it a recommendation that I believe merits further action rather than taking an interim step that could very well short-circuit the larger discussion.

Thank you for the opportunity to testify and I look forward to your comments about these and other of the many issues before us.

The CHAIRMAN. I thank you very much, Mr. Commissioner.

Our next witness, Commissioner Jonathan Adelstein.

STATEMENT OF HON. JONATHAN S. ADELSTEIN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Commissioner ADELSTEIN. Thank you, Chairman Inouye, Vice Chairman Stevens, Members of the Committee.

I certainly appreciate your calling this hearing. I think it's critical that we get your guidance. We need it urgently. Your leadership on all the pressing issues before us really lights a productive path for us to follow. And no issue on our agenda has more far-reaching consequences than media ownership.

As we've traveled across the country, we heard a loud and unified chorus: Americans from all perspectives, whether from the left or the right, and virtually everybody in between, oppose further media consolidation. They don't want a handful of giant companies dominating their primary sources of news, information and entertainment.

Given the dangerous direction that this Commission is now headed in, it's really disappointing to see us proceed without due deference to the American public and their elected representatives.

Mr. Chairman, you led this Committee to a unanimous bipartisan vote to compel a more thoughtful process, and I would have expected the Commission to redirect its course. To do otherwise would be an unprecedented act of defiance in the face of such a clear message from our authorizing Committee. You've given us a path to resolve the lingering controversy over this proceeding. I fully support the process as set forth in your bill, the Media Ownership Act, as was introduced by Senators Dorgan and Lott. Even if not quickly adopted by Congress, we should, in the spirit of compromise, deference to this Committee, and cooperation amongst the Commissioners, follow your guidelines. I think that would restore Congressional and public faith in our review.

The proposal now before us, though portrayed as modest, as Commissioner Copps said, would actually open the door to newspapers buying broadcast outlets in every market in America. Every market in America. The standards for waiver are as loose as a wet noodle. They're so weak that combinations could be allowed in any city, no matter how small, or for any TV station, no matter how dominant.

So, we need to reassess our priorities. Across the country, people aren't clamoring for us to let newspapers buy broadcast outlets. People are concerned about making the media more responsive to their local communities, to the local artists, and to their civic and cultural affairs. They're concerned that people of color and women

are stereotyped, misrepresented, or under-represented. They're furious about the level of sexual, violent, and degrading content that they see paraded by them every night on their television screens. And they believe media consolidation has something to do with it.

So, let's put first things first. Media consolidation only takes outlets further out of the reach of women and people of color, and further from the local communities and their values. That's why, as this Committee has asked, we need to first implement improvements to diversity and localism before, and not after, we even consider loosening the media ownership rules. That's why I've called for the creation of an independent panel to help us raise the dismal level of media ownership outlets by women and minorities.

I deeply appreciate the endorsement of this Committee for that call and the wide support from leading civil rights organizations across the country. Now it's time for the Commission to act.

There's nothing sacrosanct about December 18. It's not too late for us to reach an internal agreement on a reasonable process that addresses the concerns raised by your Committee. And I'll work with all of my colleagues to try to see if we can make that happen.

Now, while we're rushing headlong toward media consolidation, another more time-sensitive issue of deep concern is where we need to show far greater leadership, and that's the DTV—the digital television—transition. Instead of straining to quickly, immediately, next week, make big media even bigger, we should have already finished our DTV education plan. We should have already provided urgently needed guidance, technical guidance that broadcasters are asking us for. Again, it's about priorities.

As I testified before you in October, and the GAO reiterated just this week, with regard to the DTV transition, nobody's in charge and we have no plan. It's high time that we create the Interagency Task Force that we talked about at that hearing in October, and the bipartisan leadership of this Committee supported, to coordinate Federal efforts and to work with the private sector. I think we still have time to turn this around, but only if we increase the level of leadership, planning, coordination, and resources that are dedicated to it.

I think more Federal attention is also needed to restore America's cutting edge in telecommunications. I'm concerned that lack of a national broadband strategy is one of the reasons we're falling further behind our global competitors.

In my written statement, I outline the elements of a broadband plan. I think we need greater national focus on this than we have today. And I greatly appreciate, Chairman Inouye, your leadership and the Committee's efforts to move a bill that would improve our understanding of the broadband challenge.

Universal Service also plays a key role in supporting rural networks, maintaining high telephone penetration, and increasing access for schools and libraries. The FCC is reexamining almost every aspect of Universal Service, and, as we consider these changes, I think we need to protect its strength, and preserve the vital role that it's played. As technology evolves, we need to channel Universal Service toward advanced services and broadband. We must conduct our management of the funds with the highest standards.

So, on all of these key issues before us, if we follow your leadership, we'll be in the best position to serve the public interest. Thank you for this opportunity to testify and for calling this hearing.

[The prepared statement of Commissioner Adelstein follows:]

PREPARED STATEMENT OF HON. JONATHAN S. ADELSTEIN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Chairman Inouye, Vice Chairman Stevens, and Members of the Committee, thank you for calling this oversight hearing on media and telecommunications matters pending before the Federal Communications Commission.

As an independent agency, the Commission's overriding statutory obligation is to promote the public interest. But it is you—the elected representatives of the American people—who are directly accountable to the public. I consider it an honor to discuss with you some of the many important issues before us. Your oversight regarding our agenda, including media ownership, the transition to digital television (DTV), broadband, Universal Service, spectrum and wireless policy is an essential part of the Commission's decision-making process. It should improve our responsiveness and service to the American people.

Media Ownership

Perhaps no issue on the Commission's agenda has more far-reaching consequences for the future of our democracy than the media ownership rules. Free over-the-air broadcasting licenses are scarce, and broadcasters have an enormous impact on the free exchange of ideas. Despite the growth of other media delivery systems, broadcasting, in combination with newspapers, are still the most pervasive of all platforms.

It is clear the public grasps the gravity of our ownership rules. As we have visited communities across the country, we have heard a nonpartisan chorus opposing any further concentration of ownership in the media industry. Americans from all walks of life and all political perspectives, whether right, left and virtually everybody in between, do not want a handful of companies dominating their primary sources of news, information and entertainment.

The Commission's current course, if unchecked, could cause lasting harm to American media for future generations. Without major changes, the pending proposal before us will decidedly hurt competition, diversity and localism. Independent voices will be silenced; women and people of color, who already own tragically few media outlets, will find them even further out of reach; and the public will not receive any quantifiable measure of more local news, information or decent family programming.

It has been disappointing to see the Commission proceed with such little deference to the American people and their elected representatives. In the wake of your leadership, Mr. Chairman, and the unanimous vote of this Committee to compel a more open and transparent process, I would have expected the Commission to redirect its course. You have given us a path to resolve lingering controversy over how to consider the media ownership rules. I fully support following the process you have laid out on bipartisan basis which was approved unanimously by this Committee. Even if it is not adopted by Congress immediately, the Commission should, in the spirit of deference, compromise, cooperation and responsiveness to Congress, follow the process outlined in the Media Ownership Act of 2007 (S. 2332). This legislation would:

- require the FCC to complete a separate proceeding to evaluate how localism is affected by media consolidation;
- give the public an opportunity to comment on that proceeding for 90 days;
- require that the localism proceeding be done separately and be completed prior to a vote on proposed media ownership rules; and
- require establishment of an independent panel on female and minority ownership and for the FCC to provide the panel with accurate data on female and minority ownership—this panel must issue recommendations and the FCC must act on them prior to voting on any proposed ownership rules.

Following these simple guidelines is a path to restoring Congressional and public faith in the Commission's procedures in the media ownership proceeding.

Failure to adhere to the guidance of elected leaders in Congress and to follow open and transparent procedures undermines public confidence. Nowhere is this more important than in our review of the media ownership rules. Yet, the Commis-

sion's approach to our final media ownership hearing in Seattle, Washington is emblematic of our shortcomings. Along with many Members of Congress, Senator Maria Cantwell and Congressman Jay Inslee requested the Commission give their constituents an opportunity to share their views about media ownership before we proposed to modify the rules. As the date of a rumored Seattle hearing approached and no official announcement was made, Senator Cantwell and Congressman Inslee again wrote the Commission to ask that the public be afforded 1 month notice so they could plan for the event. But their letter was ignored and the hearing was announced, giving the public just five business days notice—the very minimum allowed by Federal law.

The people of Seattle were rightfully outraged at the short notice, but they showed up in large numbers anyway, over 1,100 strong on a Friday night, in protest. Public witnesses expressed with passion and eloquence their concern about any steps that would further media consolidation, which they believed had gone too far already. They openly questioned how the FCC could proceed on such a course.

The next day back at the office, the Chairman announced plans in a *New York Times* op-ed and a press release on how he sought to relax the newspaper/broadcast cross-ownership rule. That was not only the first time the public learned of the plan. It was also the first time the Commissioners were notified of the details. It is hard to imagine how it was possible to review and consider hundreds of public comments made in Seattle alone before issuing the proposal the next working day. What could have been a meaningful opportunity for public input and cooperation with Congress was lost.

The proposal, which is portrayed as "modest," is fraught with substantive problems that will require serious internal Commission cooperation, consultation and negotiations. The proposal as drafted would actually open the door to dominant local newspapers buying up broadcast outlets in every market in America and potentially of any size. And it would transform the current ban on newspaper/broadcast into a nationwide bazaar that would only require buyers to meet the loosest standards for a waiver.

Even if the proposal were limited to the top 20 markets, that would account for 43 percent of U.S. households, or over 120 million Americans. But the details reveal loopholes that would permit new cross-owned combinations from the largest markets down to the smallest markets, potentially affecting every American household. The proposal would permit many cross-ownership combinations in markets in which none previously existed, but as written it would not lead to more news and information in those markets.

The waiver standards are as stiff as a wet noodle. The majority of Commissioners would be able to bend and reshape them at will. Even under the current stronger standards of a blanket prohibition on cross-ownership, the Commission has been lax in permitting waivers.

The proposal suggests four factors to be considered for waiver requests, each of which would require significant strengthening to be meaningful. First, the draft would have the Commission consider if a company will "increase the local news disseminated." With no definition, even an insignificant amount of news a year could qualify. We need real, quantifiable and substantial standards. Second, each outlet would have to maintain "independent news judgment." But there are no standards articulated for determining or enforcing what that means. Third, the Commission would consider the "level of concentration" in the market. But the proposal offers no measure by which to judge what is too concentrated, so evidence showing concentration can be dismissed on a whim. We need a meaningful and quantifiable standard by which to judge what constitutes unacceptable increases in concentration. And fourth, the Commission would consider a newspaper's "financial condition." This factor is so vague as to be virtually meaningless. We should base the standard on the financial distress requirements that are currently considered grounds for a waiver.

These loopholes also undercut the assertion that the proposal would prevent a newspaper from buying one of the top-four rated stations in the same market. That alleged protection would disappear with the wave of a hand in the market below the top 20 if these loose waiver standards were invoked, so that a newspaper could buy any TV station in any city, no matter how large.

The main public interest justification for newspaper/broadcast cross-ownership has been the claim that relaxing the rule would create more local news. A path-breaking study by leading consumer organizations, using the FCC's own data, demonstrated that claim to be wrong. They found that the data underlying an FCC-sponsored study finding more local news by cross-owned stations actually reveals that there is less local news in those markets as a whole, taking into account all news outlets. It remains unclear exactly why the overall level of local news available

diminishes. Perhaps it is because other outlets choose not to compete with the local leviathan or they lose equal access to the newspaper's investigative and news resources. But the fact is the Commission's own data reveals the other outlets in those cities reduce their news coverage more than the cross-owned outlets increase it. So not only is less news produced in the market, but an independent voice is silenced when the dominant local newspaper swallows up a broadcast outlet. We must find the root causes of this problem and address them before we proceed to relax the cross-ownership rule.

We must also study the relationship between inappropriate programming for children, such as excessively sexual or violent programs, and the concentration of media ownership. A 2005 report found that 96 percent of all the indecency fines levied by the FCC in radio from 2000 to 2003 (97 out of 101) were levied against four of the Nation's largest radio station ownership groups. The remaining 11,000-plus stations were responsible for just 4 percent of all FCC radio indecency violations, a fraction of their national audience share. While the radio report did not prove a causal link between ownership concentration and broadcast indecency, I believe the Commission has an obligation to study and understand the relationship between media concentration—station ownership and program ownership—and indecency before we permit more consolidation. A study last year by the Parents Television Council found that, in the midst of an unprecedented wave of media consolidation between 1998 and 2006, violence on TV during the evening hours of 8, 9 and 10 grew by 45, 92 and 167 percent, respectively. Commissioner Copps and I requested a full FCC field hearing to explore the relationship between media consolidation and the rising volume of material inappropriate for children in the media, but none was held.

In terms of violence, the Commission released its report on violent television programming and its impact on children last April. Since then, the Commission has not done anything proactive to address the many concerns we have heard. While there may be limitations on what we can do under current law, there is no limitation upon our ability to show leadership to confront the problem. And we have been too complacent in the face of nothing less than a crisis facing our children and families.

The debate about media concentration is fundamentally about priorities. As we solicited the views of citizens across the country, we did not hear a clamor for relaxation of the cross-ownership rules. We only hear that from media company lobbyists inside the Beltway. The public is concerned about the lack of responsiveness of their media outlets to local communities, artists, civic and cultural affairs and family programming. They are concerned that people of color and women are stereotyped, misrepresented or underrepresented. They are furious about the level of sexual, violent and degrading material they are seeing and believe media consolidation has something to do with it. And they want us to address the public interest obligations of broadcasters first.

That is why I have insisted that we first address and implement improvements to localism and diversity of ownership before—not after—we address the media ownership rules. Like this Committee, I have called for an independent, bipartisan panel to guide us on a course to implement improvements in the level of ownership of media outlets by women and minorities. Many Members of Congress and leading civil rights organizations have joined that call. And I have demanded, along with many Members of Congress, including this Committee, that we finalize the Localism Report and implement real improvements in the responsiveness of media outlets to local concerns first.

Rather than take this in order, address these lingering crises first, the Commission seems to be moving forward obsessively to allow more consolidation, notwithstanding Congressional and public concern. That would be a mistake. It is not too late for us to achieve a bipartisan agreement on a reasonable process to finalize the media ownership proceeding that addresses the many concerns raised by the public, leading consumer advocates and this Committee. I will work with all of my colleagues to achieve that goal.

DTV Transition

As we focus today on the public's access to their media—their airwaves—it is also critical that the FCC show far greater leadership on a potential disaster that is the DTV transition. As the Government Accountability Office (GAO) has noted, there is nobody in charge of the transition and there is no plan. We still have time to turn this around, but only if we increase the level of leadership, coordination and resources dedicated to this undertaking. The ongoing leadership of this Committee has been and will continue to be extremely helpful in focusing our efforts.

The GAO reiterated this week the need for us to establish a strategic plan. As I have testified before this Committee, I believe we need a national DTV outreach, education and implementation plan that coordinates the efforts and messages of all stakeholders. Here are some next steps that I believe we need to take, immediately, to get on the path of reaching and educating people in the more than 111 million U.S. television households.

Create Federal DTV Transition Task Force. It is long overdue for the FCC, NTIA and other relevant Federal agencies to formalize their relationship and develop a Federal DTV Transition Task Force with representation from the leadership of each agency. The GAO has said that the FCC has the authority to establish a task force under the Federal Advisory Committee Act. This multi-agency task force would develop benchmarks and a timeline to achieve nationwide awareness of the DTV transition. And, it would be accountable to Congress. The private sector has established a coordinating mechanism through the DTV Transition Coalition, and it is high time we do the same for the Federal Government.

The task force would need staff. The FCC, for example, should detail staff to the task force from Consumer and Governmental Affairs, Media, Enforcement, and Public Safety and Homeland Security Bureaus, and the Offices of General Counsel and Engineering and Technology. With dedicated staff from different agencies, the task force would also serve as the clearinghouse for all things related to the DTV transition national campaign and for coordinating this network of networks. The aging and disabilities communities, for example, would have access to financial and human resources to assist these at-risk groups in making the transition. The task force would be able to coordinate with public and private partners, leverage existing resources and develop a single unified Federal message, such as developing and using common terminology to describe the Digital-to-Analog Converter Box program and other DTV technology. In addition to coordinating government efforts at all levels—including state, regional, local, and tribal governments—the task force can convene joint meetings with the private sector DTV Transition Coalition to ensure a coherent, consistent message across all channels. And it can help coordinate the many public-private assistance efforts needed for at-risk communities.

Launch a Targeted Grassroots Information and Technical Assistance Campaign. The task force, working with state, local and tribal governments, the DTV Transition Coalition partners, and community-based service providers, could target communities with the highest concentration of over-the-air viewers, including senior citizens, low-income, non-English speaking, rural populations and tribal communities. It can launch a coordinated grassroots campaign, which would include posting signs in supermarkets, retail stores, churches, social service organizations, all modes of public transportation and other public places. Many at-risk citizens will need help acquiring and hooking up their converter boxes, and it remains entirely unclear who is going to help them. If it is to be done through volunteers, it will take a vast effort to vet and train them.

No Federal agency currently has the mandate or resources to help people who can't themselves hook up the boxes to their TV sets. For example, while the FCC, the Administration on Aging and its allied aging network—which includes state and local agencies, as well as community based service providers like Meals on Wheels—have been in very early discussions about various grassroots efforts, no plan is in place. People with disabilities experience great difficulty accessing closed captions and video descriptions. A technical assistance program must be established soon, with timelines for training and outreach to ensure people who need help can get it.

While these steps may require some additional funding from Congress or a reallocation of funds already appropriated, first and foremost, dedicated leadership and focus are required from the FCC—the expert agency primarily responsible for the DTV transition.

Establish Much Needed Guidance for Broadcasters Soon. In addition to these outreach and education initiatives, the Commission must take steps to ensure that over-the-air viewers are not disenfranchised during or after the DTV transition, and that all full-power stations are prepared to cease analog transmission and operate in digital by the end of the transition on February 17, 2009. Accordingly, I believe the Commission should: (1) complete the Third DTV Periodic Review as quickly as possible; and (2) prepare a report to Congress on the status of the DTV transition on February 17, 2008—one year before the hard deadline.

Because the law does not provide for any waivers or extension of time, February 17, 2009 is indeed the last day that full-power broadcast stations will be allowed to transmit in analog. There are a total of 1,812 stations that will be serving the American people after the transition but, to date, only approximately 750 are considered to have fully completed construction of their digital facilities and are capable

to broadcast in digital only in the final position from which they will broadcast. The remaining stations vary in levels of transition preparedness. Some stations need to construct their transmission facilities, change their antenna or tower location, or modify their transmission power or antenna height, while others may have to coordinate with other stations or resolve international coordination issues.

In the Third DTV Periodic Review, the Commission is contemplating rules to govern when stations may reduce or cease operation on their analog channel and begin operation on their digital channel during the DTV transition. The Commission also sought comment on how to ensure that broadcasters will complete construction of digital facilities in a timely and efficient manner that will reach viewers throughout their authorized service areas. These and other important questions, such as the deadlines by which stations must construct and operate their DTV channels or lose interference protection, should have been answered already. Broadcasters need to know the rules as they invest billions into this transition. We have lost valuable time focused on other more tangential aspects of the transition while not moving forward on clarifying urgent demands on broadcasters to get a huge job done in short order.

The Third DTV Periodic Review also proposed that every full-power broadcaster would file a form with the Commission that details the station's current status and future plans to meet the DTV transition deadline. While each individual form would be posted on the Commission's website, I believe it is just as important for the Commission, Congress and the public to get a comprehensive sense of where each full-power broadcast station is 12 month before the end of the transition. A report to Congress *one year* before the transition ends will provide both the broadcaster and the FCC sufficient time for any mid-course correction.

Universal Service

Universal service has been the bedrock telecommunications policy of the past seventy years. Indeed, Congress and the Commission recognized early on that the economic, social, and public health benefits of the telecommunications network are increased for all subscribers by the addition of each new subscriber. With a decade behind us since the 1996 Act, the FCC is re-examining almost every aspect of our Federal Universal Service policies, from the way that we conduct contributions and distributions, to our administration and oversight of the Fund. As we move forward on all these fronts, I will continue to work to preserve and advance the Universal Service programs as Congress intended.

To ensure continued success, we must remain committed to providing specific, predictable and sufficient support mechanisms based on equitable and non-discriminatory contributions. For that reason, I have supported recent Commission decisions to stabilize the base of support for Universal Service. The Commission also continues to grapple with overarching questions about how our Universal Service contribution policies should evolve as we move into the broadband age and an age of bundled, flat-rated services. As we consider further changes to our contribution rules, I look forward to working with my colleagues to ensure that we take appropriate steps to ensure that Universal Service remains on solid footing. We must also ensure scarce funds are carefully targeted and the program is run in a fiscally responsible manner.

Having a stable base of support is so critical because our Universal Service support mechanisms play a vital role in meeting our commitment to connectivity, helping to maintain high levels of telephone penetration, particularly for those with low incomes and in hard-to-serve areas, and increasing access for our Nation's schools and libraries. Earlier this year, I was pleased to help mark the 10th anniversary of the implementation of the Schools and Libraries program (E-Rate). With the help of the E-Rate program, the Internet access rate in our schools has jumped from only 14 percent in 1996 to 94 percent, today. Senator Rockefeller and Senator Snowe showed great foresight in anticipating the impact of the Internet on the way that our children learn and how our communities connect. Ten years from its inception, we must capitalize on this success and continue to improve the program. The Commission has made a number of good decisions over the past year that should make the program work better, but there is more that we can do to ensure that our schools and libraries get the increased bandwidth they need to run the most cutting edge applications and software. Our nation's school children can not be relegated to yesterday's technology if they are to keep getting the tools they need to succeed.

Ensuring the vitality of Universal Service will be particularly important as technology continues to evolve. As voice, video, and data increasingly flow to homes and businesses over broadband platforms, voice is poised to become just one application over broadband networks. So, in this rapidly-evolving landscape, we must ensure that Universal Service evolves to promote advanced services, which is a priority that

Congress made clear. The economic, public health, and social externalities associated with access to broadband networks will be far more important than the significant effects associated with the plain-old-telephone-service network, because broadband services will touch so many different aspects of our lives.

I note that the Federal-State Joint Board on Universal Service (Joint Board) recently released its recommendations on comprehensive reform of the high cost support mechanisms. While I am still reviewing these recommendations, I was pleased that the Joint Board encouraged the Commission to revise its list of services supported by Federal Universal Service to include broadband Internet access service. The Joint Board recommended that the Commission establish a Broadband Fund, tasked primarily with facilitating construction of facilities for new broadband services to unserved areas. The Joint Board also recognized the effectiveness of the current High Cost Loop Fund in supporting the capital costs of providing broadband-capable loop facilities for rural carriers. I look forward to carefully reviewing the Joint Board's recommendations, and I hope that the Commission will seek comment quickly on these proposals from a broad range of commenters.

I was also pleased to support the Commission's recent decision to expand the Federal Universal Service Rural Health Care program to include a pilot program to fund the construction of broadband infrastructure to connect rural health care providers. The telemedicine programs funded through the Rural Health Care program can have dramatic benefits for rural communities, and I have repeatedly supported efforts to improve the connectivity of rural health care providers. Without Universal Service, the high cost of telemedicine services might put them out of reach of many small communities. Yet, the Rural Health Care program has consistently been underutilized despite widely-varying levels of connectivity among rural health care providers. The adoption of a broadband pilot program has promise for increasing access to telemedicine facilities and I look forward to reviewing the results of that effort.

Finally, I believe that it is important that the Commission conduct its stewardship of Universal Service with the highest of standards. We must aggressively combat any evidence of waste, fraud and abuse.

Need for a National Broadband Strategy

Americans should have the opportunity to maximize their potential through communications, no matter where they live or what challenges they face. To achieve that ambitious goal, we must engage in a concerted and coordinated effort to restore our place as the world leader in telecommunications by making available to all our citizens affordable, true broadband, capable of carrying voice, data and video signals. An issue of this importance to our future warrants a comprehensive national broadband strategy that targets the needs of all Americans.

Right now, broadband is redefining the economic opportunities available to our communities and entrepreneurs. Broadband can connect businesses to millions of new distant potential customers, facilitate telecommuting, and increase productivity. Much of the economic growth we have experienced in the last decade is attributable to productivity increases that have arisen from advances in technology, particularly in telecommunications. These new connections increase the efficiency of existing business and create new jobs by allowing news businesses to emerge, and new developments such as remote business locations and call centers. The opportunities for rural areas that have seized the initiative are enormous.

Even as consumers are increasingly empowered to use broadband in newer, more creative ways, we are competing on a global stage. New telecommunications networks let people do jobs from anywhere in the world—whether an office in downtown Manhattan, a home on the Mississippi Delta, or a call center in Bangalore, India. This trend should be a wake-up call for Americans to demand the highest quality communications systems across our Nation, so that we can harness the full potential, productivity and efficiency of our own country. We must give all our towns the tools they need to compete in this new marketplace.

We have made progress, many providers are deeply committed, and there are positive lessons to draw on. Yet, I am increasingly concerned that we have failed to keep pace with our global competitors over the past few years. Each year, we slip further down the regular rankings of broadband penetration. While some have protested the international broadband penetration rankings, the fact is the U.S. has dropped year-after-year. This downward trend and the lack of broadband value illustrate the sobering point that when it comes to giving our citizens affordable access to state-of-the-art communications, the U.S. has fallen behind its global competitors.

Some have argued that the reason we have fallen so far in the international broadband rankings is that we are a more rural country than many of those ahead

of us. If that is the case, we should strengthen our efforts to address any rural challenges head-on.

I am concerned that the lack of a comprehensive broadband communications deployment plan is one of the reasons that the U.S. is increasingly falling further behind our global competitors. This must become a greater national priority for America than it is now. We need a strategy to prevent outsourcing of jobs overseas by promoting the ability of U.S. companies to "in-source" within our own borders.

Elements of a Strategy. A true broadband strategy should incorporate benchmarks, deployment timetables, and measurable thresholds to gauge our progress. We need to set ambitious goals and shoot for affordable, truly high-bandwidth broadband. We should start by updating our current anemic definition of high-speed of just 200 kbps in one direction to something more akin to what consumers receive in countries with which we compete, speeds that are magnitudes higher than our current definitions.

We must take a hard look at our successes and failures. We need much more reliable, specific data than the FCC currently compiles so that we can better ascertain our current problems and develop responsive solutions. The FCC should be able to give Congress and consumers a clear sense of the price per megabit, just as we all look to the price per gallon of gasoline as a key indicator of consumer welfare. Giving consumers reliable information by requiring public reporting of actual broadband speeds by providers would spur better service and enable the free market to function more effectively. Another important tool is better mapping of broadband availability, which would enable the public and private sectors to work together to target underserved areas.

I am grateful for the Senate Commerce Committee's leadership on these issues and recognition of the importance of developing a more rigorous assessment of the broadband challenge. The "Broadband Data Improvement Act," introduced by Chairman Inouye, and sponsored and supported by so many members of the Committee, would provide valuable tools for Congress, the Commission, and consumers in our joint efforts to increase access to truly affordable, high-speed broadband services. By directing the Commission to improve and expand its data collection efforts, by directing other Federal agencies to focus on this great infrastructure priority, and by facilitating partnerships at the state and local level, this legislation would help us make great progress on this critical front.

We must also redouble our efforts to encourage broadband development by increasing incentives for investment, because we will rely on the private sector as the primary driver of growth. These efforts must take place across technologies, so that we not only build on the traditional telephone and cable platforms, but also create opportunities for deployment of fiber-to-the-home, fixed and mobile wireless, broadband-over-power-line, and satellite technologies. We must work to promote meaningful competition, as competition is the most effective driver of innovation, as well as lower prices. Only rational competition policies can ensure that the U.S. broadband market does not devolve into a stagnant duopoly, which is a serious concern given that cable and DSL providers now control approximately 96 percent of the residential broadband market. We must also work to preserve the open and neutral character that has been the hallmark of the Internet, in order to maximize its potential as a tool for economic opportunity, innovation, and so many forms of public participation. We also need to encourage and support the effort by the large incumbent local exchange carriers to deploy new systems capable of delivering high-quality video services.

One of the best opportunities for promoting broadband, and providing competition across the country, is in maximizing the potential of spectrum-based services. The Commission must do more to stay on top of the latest developments in spectrum technology and policy, working with both licensed and unlicensed spectrum. Spectrum is the lifeblood for much of this new communications landscape. The past several years have seen an explosion of new opportunities for consumers, like Wi-Fi, satellite-based technologies, and more advanced mobile services. We now have to be more creative with what I have described as "spectrum facilitation." That means looking at all types of approaches—technical, economic or regulatory—to get spectrum into the hands of operators ready to serve consumers at the most local levels possible.

In January 2008, the Commission will commence its auction of the 700 MHz band, a potentially historic opportunity to facilitate the emergence of a "third" broadband platform. This is the biggest and most important auction we will see for many years to come. While the Commission recently adopted auction rules that reflect a compromise among many different competing interests, I am hopeful that there will be opportunities for a diverse group of licensees in the 700 MHz auction and that our more aggressive build-out requirements will benefit consumers across

the country. We also put in place a new approach to spectrum management by adopting a meaningful, though not perfect, open access environment on a significant portion of the 700 MHz spectrum. This decision represents a good faith effort to establish an open access regime for devices and applications that will hopefully serve consumers well and create opportunities for small providers for many years to come.

There also is more Congress can do, outside of the purview of the FCC, such as providing adequate funding for Rural Utilities Service broadband loans and grants, and ensuring RUS properly targets those funds; establishing new grant programs supporting public-private partnerships that can identify strategies to spur deployment; providing tax incentives for companies that invest in broadband to underserved areas; devising better depreciation rules for capital investments in targeted telecommunications services; promoting the deployment of high-speed Internet access to public housing units and redevelopment projects; investing in basic science research and development to spur further innovation in telecommunications technology; and improving math and science education so that we have the human resources to fuel continued growth, innovation and usage of advanced telecommunications services; and, of course, we need to make sure all of our children have affordable access to their own computers to take full advantage of the many educational opportunities offered by broadband.

What is sorely needed is real leadership at all levels of government, working in partnership with the private sector, to restore our leadership in telecommunications. This Committee's attention to this issue is exactly the kind of effort that is needed. I also believe we need a National Summit on Broadband—or a series of such summits—mediated by the Federal Government, including Congress, the Executive Branch and independent agencies, state and local governments, and involving the private sector, which could focus the kind of attention that is needed to restore our place as the world leader in telecommunications.

Thank you for holding this critical hearing, and I look forward to working with you to make sure that American media remain the most vibrant in the world, that the DTV transition is a success for the American people, and that we continue to provide opportunities for all Americans to benefit from the most cutting edge communications tools available.

The CHAIRMAN. I thank you very much, Commissioner.

Our next witness, Commissioner Deborah Taylor Tate.

STATEMENT OF HON. DEBORAH TAYLOR TATE, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Commissioner TATE. Thank you, Mr. Chairman, Vice Chairman Stevens, and honorable Members of this Committee. It is an honor always to appear before you as a member of the FCC.

As a public servant, I recognize that this is a position of trust which requires engaging in open dialogues with you, with Congress, and with the American people, and I welcome that today.

A few of the issues that have been at the top of our agenda, we will discuss today, from reviewing our media ownership rules, of course, to coordinating with the industry for a successful DTV transition, to managing spectrum allocation for new and innovative services, to encouraging the nationwide deployment of broadband, to facilitating interoperability of our public safety services, to ensuring the long-run viability of the Universal Service Program. These decisions will be among the most historically significant that this Commission will undertake and command your attention, as well as the public's.

Following a remand, as you all know, by the D.C. Circuit Court in 2004, media ownership has been a front-burner issue for this Commission. Throughout this review, the focus of our attention has been on the touchstones of competition, diversity, and localism. Over the past 18 months, as you heard, we have held six open public hearings all across the entire country, in many of your states—L.A., Tampa, Harrisburg, Chicago, Seattle. And I was glad to wel-

come the Commission to my home town of Nashville. We have, indeed, heard from thousands of American citizens in an unprecedented access to a governmental body providing them the opportunity to voice their opinion regarding the media and ownership of media outlets. Over my 20-plus years as a public servant at all levels of government, I can't remember a single time that an agency has expended this much institutional energy and investment on a single issue. We invited and received hundreds of thousands of comments, not only from the general public, but assembled expert panels of economists, TV, radio, and film producers, musicians, directors, professors, students, small and large broadcasters, and, of course, local community organizations.

During the year and a half of our ongoing hearings, we have also arranged for ten media studies, subjected those to two sets of peer review, and have made them accessible online.

Never before, of course, has so much competition existed for the eyes and ears of American consumers of news and information, wherever, whenever, however, and over whatever device they choose. This competition is now cross-platform and includes newspapers and broadcasters, and also cable, satellite, wireline, and, increasingly, mobile networks. And, as more platforms offer access to the Internet, then, of course, the breadth of the sources only expand.

I grew up in small-town Tennessee, with only a handful of radios and three TV networks. And obviously, now we have access to more media voices than ever.

A rule shouldn't account just for the needs of our generation, but also of the I-Generation, as they're called, those who live in an online YouTube world with access to local, national, and international news sources that we could have only dreamed of at their ages. Like many of you, I'm an avid consumer of news, trade publications, national newspapers, my local paper, TV news clips, online news sites, and even alerts set to my personal news preferences; yet, those sources pale in comparison to the sources utilized by the younger generation.

Like many of you and members of our Commission, I continue to be very troubled by the statistics regarding the staggeringly low rate of female and minority ownership in the industry. And I've tried, not merely just to talk about the issues, but to actively work with others to find solutions, whether participating in NAB's Education Foundation series that they've done for women and minorities, or the Hispanic Broadcasters Association Financing and Capitalization Seminar, or events sponsored by NABOB, the National Association of Black-Owned Broadcasters. We keep hearing, and we know, that financing is at the top of their concern, whether already in business or hoping to be a new owners. So, I've offered to lend my support to an annual Wall Street Conference that would focus on investment opportunities.

I'm pleased that the Commission is presently now considering a number of proposals, such as allowing minority and women broadcasters to purchase expiring construction permits, changing our equity plus debt attribution rule, and requiring nondiscrimination clauses in contracts. Let there be no doubt that women, and many of whom are African American, are, indeed, succeeding in the in-

dustry, and we need to learn from them. Look, for example, no further than Cathy Hughes, Founder and Chair of Radio One, the largest African American-owned and operated broadcast company in the U.S. And I have many other examples.

On another important issue, as co-chair of the Federal-State Joint Board on Universal Service, I'm pleased that we were able to deliver to the Commission a recommended decision, and meet our promise to you all that we would do that in November. We all agree that a modern communications infrastructure is absolutely essential, so that all Americans, those living in rural America, have access to the full array of educational, economic opportunities that are delivered via advanced communications services at comparable rates.

Finally, I remain committed to issues that are important to many of you: fighting childhood obesity, protecting children online, and reducing children's exposure to media violence. We continue to partner with you all in Congress.

I look forward to your thoughts, and I'm certainly happy to answer any questions that you have.

Senator Lott, we'll miss you.

[The prepared statement of Commissioner Tate follows:]

PREPARED STATEMENT OF HON. DEBORAH TAYLOR TATE, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman, Members of the Committee, it is an honor to appear before you today as a member of the Federal Communications Commission. As a public servant, I realize that I hold a position of public trust and recognize that protecting that trust requires engaging in open dialogues, both with Congress and the American people. Accordingly, I welcome the Committee's input and questions.

Since I arrived at the Commission in January 2006, there have been hundreds of issues before us. Some of these affect only a single party, while others are of national and even international significance. For all issues, it is our duty to carefully consider the facts and approach our analysis with the goals of fostering competition, encouraging innovation, and helping ensure this country's global competitiveness for years to come.

A few issues before the Commission have been at the top of our agenda since I arrived. From reviewing our media ownership rules, to coordinating with the industry for a successful DTV transition, to fiscal responsibility in managing spectrum allocation for new and innovative services, to encouraging nationwide deployment of broadband, to facilitating the interoperability of our public safety services, to ensuring the long-run viability of our Universal Service program, these decisions will be among the most historically significant the Commission will make and therefore should command your attention as well as the public's.

Following a remand by the D.C. Circuit in 2004, media ownership has been a front-burner issue for the Commission. Throughout this review, the focus of our attention has been on the touchstones of competition, localism, and diversity of voices. Over the past 18 months, we have held open public hearings across the entire country—literally from sea to shining sea—in Los Angeles and El Segundo, California; Tampa, Florida; Harrisburg, Pennsylvania; Chicago, Illinois; Seattle, Washington; and I was so glad to welcome my colleagues to Belmont University in my hometown of Nashville. These lengthy hearings have enabled thousands of American citizens to have unprecedented access to a governmental body while providing them the opportunity to voice their opinion regarding ownership of media outlets. Over my 20-plus years of public service—at all levels of government—I cannot remember a single time that an agency expended this much institutional energy and investment on an issue, or was this open and thorough regarding a matter of public interest. We invited comment not only from the general public, but also from expert panels of economists; TV, radio, and film producers; musicians; directors; professors; students; small and large broadcasters; and community organizations. During the roughly year and a half of on-going hearings, we also arranged for ten media studies, which

were completed over the summer, subjected to peer review, and were made accessible online.

Never before has so much competition existed for the eyes and ears of American consumers of news and information, wherever, whenever, and however, over any device they may choose. This competition is cross-platform, and it includes newspapers and broadcasters, of course, but also cable, satellite and wireline networks and, increasingly, mobile networks. And as more platforms offer access to the Internet, the breadth of the sources only expands. I grew up in a small town in rural Tennessee where our media choices were a handful of radio stations and three major television networks. Today, in cities and towns across the country, households have more access to media voices than ever.

We must structure our media ownership rules to account for the needs not just of our generation, but of the next generation. The "I-Generation," as they are often called, lives in an online, YouTube world, with access to local, national, and international news sources we could only have dreamed of at their ages. Like many of you, I am an avid consumer of news—from industry trade publications to national newspapers to my local paper, *The Tennessean,* as well as CNN clips, online news sites, and tools such as alerts that are set to my personal news preferences. Yet my list of news sources pales in comparison to the number of sources accessed by the younger generation.

While I share many commenters' concerns about the negative impact media can have, from extreme violence to exceedingly coarse language, to the impact on childhood obesity, I appreciate the many media companies that try to have a positive impact.

I also continue to be troubled by the statistics regarding the low rate of female and minority ownership in the industry. During my tenure at the Commission, I have tried not merely to talk about the issues, but to work with others to find solutions, both inside and outside the Commission, which could have a positive impact. Over the past year, I participated in the NAB Education Foundation series for women and minorities; I attended the Hispanic Broadcasters Association Financing and Capitalization Seminar; and I have also worked with the National Association of Black Owned Broadcasters. At these events, when women and minority broadcasters discuss challenges they face, financing is always at the top of the list. This is true for those who are just starting out, and those who have been in the industry for years. I am very pleased that the Commission is presently considering a number of proposals to assist women and minorities. In addition, I have offered to lend my support to an annual conference that would focus on investment opportunities. Another recommendation before the Commission is allowing minority and women broadcasters to purchase expiring construction permits, and giving them the duration of the permit, or 18 months, to complete construction. Finally, we continue to discuss changing the Equity-Debt Plus (EDP) attribution rule so that investors' concerns with ownership limits will not prevent them from making investments they would otherwise consider.

Let there be no doubt that women—many of whom are African American—are indeed succeeding in this industry. Look for example at Cathy Hughes, Founder and Chairperson of Radio One/TV One, Inc., the largest African American-owned and operated broadcast company in the United States, or Susan Davenport Austin, Vice President and Treasurer of Sheridan Broadcasting Corporation, which manages the only African American-owned national radio network. And then there is Caroline Beasley, Executive Vice President and CFO of Beasley Broadcast Group, Inc., the 18th largest radio broadcasting company in the country, and Susan Patrick, Co-Owner Legend Communications, who has been in the media brokerage business for more than 20 years. I hope that we will employ every possible avenue to have a more positive impact on the diversity of both voices and ownership.

On another important issue, as Co-Chair of the Federal-State Joint Board on Universal Service, I am pleased that the Board issued a recommendation that will ensure the sustainability of Universal Service. We all agree that a modern and high-quality communications infrastructure is essential to ensure that all Americans, including those living in rural communities, have access to the full array of educational, economic, and other opportunities that are delivered via advanced communications services. Indeed, Congress has directed that consumers in all regions of the Nation have access to reasonably comparable telecommunications and information services, including advanced services, at reasonably comparable rates. The Commission's efforts to enact sound policy with regard to our Universal Service rules reflect a firm commitment to this Congressional directive.

Finally, apart from our many Congressionally mandated obligations, the Commission remains involved in many public interest issues that are important to the members of this Committee, such as fighting childhood obesity, protecting children on-

line, and reducing children's exposure to media violence. We continue to partner with Congress and the private sector to improve the lives of children and families, through our joint Childhood Obesity Task Force and the Internet Safety Roundtable, which Senator Stevens and I recently participated in.

I look forward to hearing your thoughts and working with you on these and many other important issues facing the Commission, Congress, and our Nation.

The CHAIRMAN. Thank you, Commissioner Tate.

And may I now recognize Commissioner Robert McDowell.

STATEMENT OF HON. ROBERT M. MCDOWELL, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Commissioner MCDOWELL. Thank you, Mr. Chairman and Senator Stevens and all the distinguished Members of the Committee.

And, Senator Lott, I guess this is the last time we'll appear before you, and I'd like to thank you for your service to the U.S. Senate and the U.S. House and your country. Thank you.

Of course, the Commission has been very active since the last time we appeared before this Committee, on February 1. My written statement covers a panoply of issues that we've worked on since then, but right now I'd like to focus on media ownership, of course.

The future of our media ownership rules is the highest-profile issue before us. By far, this proceeding elicits more public passion than any other. The media can shape the debate over every other issue, because it serves as a filter, or lens, for the information the American people rely upon to make decisions about their lives and the future of our great country.

"Information," as Thomas Jefferson said, "is the currency of democracy." The founders of our country understood the important role played by the media in American society when they crafted the Bill of Rights. In fact, this Saturday marks the 216th anniversary of the ratification of the Bill of Rights. And first among them, of course, is the First Amendment, guaranteeing free expression and freedom of the press. In 1791, technology limited such expressions to word of mouth or the written word printed on the medium of paper.

Today, the media marketplace has been transformed by technological innovation into the most robust and dynamic multimedia environment in human history. Just in the past two decades, we have witnessed a brilliant technological explosion that has brought consumers five national broadcast networks, hundreds of cable channels delivering content produced by more than 550 independent programmers, nearly 14,000 radio stations, two vibrant satellite television companies, telephone companies offering video, cable overbuilders, satellite radio, the Internet and its millions of websites and bloggers, a myriad of wireless devices operating in a wonderfully chaotic and competitive environment (which has hatched the term "mobisode" for video content downloaded onto cell phones), iPods, podcasts, and much more. And that's not counting the countless new technologies and services that are rushing over the horizon, such as those resulting from our Advanced Wireless Services auction of last year or the upcoming 700 MHz auction, which starts next month. In short, consumers have more choices

and more control over what they read, watch, and listen to than ever.

These new media platforms do not live under the same regulations as traditional media. As a result, it should not be any wonder that most of the new investment, energy, and ideas are flowing into these newer and less regulated platforms. Contemplating this changing marketplace, in 1996 Congress mandated that the FCC periodically review the rules governing the ownership of traditional media platforms. Congress created an unusual statutory presumption in favor of modifying, or even repealing, ownership rules as more competition enters the market. Section 202(h) states that we must, "determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation that it determines to be no longer in the public interest." This is our mandate from the directly elected representatives of the American people. The Commission's longstanding public policy goals of promoting competition, diversity and localism continue to guide our actions in media ownership, as well.

Although the current media ownership proceeding began at my very first open meeting as a Commissioner, almost 18 months ago, this issue has been before the Commission in one form or another for almost 12 years. Since a large bipartisan vote in Congress engendered the Telecommunications Act of 1996, both Democrat and Republican Commissions have initiated several proceedings, the first starting later in that same year.

That action produced another proceeding in 1998 which ended with a report in June 2000 from a Democrat-controlled FCC, finding that the 1975 newspaper/broadcast cross-ownership ban may no longer be necessary to protect the public interest, in certain circumstances. That conclusion gave rise to the 2001 cross-ownership proceeding, which led to a 2002 rulemaking, which, finally, produced an order. The order was appealed to the Third Circuit. In the meantime, Congress overturned the FCC's relaxation of the national television cap, while the court remanded almost all of the remainder of the order. But, I emphasize the word "almost." The court also concluded that, "reasoned analysis supports the Commission's determination that a blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest."

Since then, the Commission's work on the latest iteration of this proceeding has been unprecedented in scope and thoroughness. We gathered and reviewed over 130,000 initial and reply comments, and extended the comment deadline once. We released a Second Further Notice in response to concerns that our initial notice was not sufficiently specific about proposals to increase ownership of broadcast stations by people of color and women. We traveled across our great Nation to hear directly from the American people during eight field hearings. During those hearings, we heard from 115 expert panelists on the state of ownership in those markets, and we stayed late into the night, and frequently early into the next morning, to listen to concerned citizens who had signed up to speak. And I've greatly valued hearing directly from the thousands of people who have traveled to our hearings, often on very short notice.

While we deliberate, consumers' eyeballs and corresponding ad dollars are migrating to new media platforms. The Hollywood writers' strike is a good example of this phenomenon. Creators are taking their content directly to the Internet. Under this new scenario, viewers that would usually be tuned in to broadcast entertainment are, despite the strike, able to find, download, and watch new and different programming choices directly.

Also as a result of this paradigm shift, at least 300 daily newspapers have shut their doors forever in the last 32 years, because people are looking elsewhere for their content. Traditional media is shrinking, and new media is growing.

But the good news is that all Americans will benefit from this new media world, because these new technologies, with their low barriers to entry, empower the sovereignty of the individual, regardless of who you are. All of us should weigh all of the arguments presented before us in the context of these facts.

Thank you for having us here today, and I look forward to your questions.

[The prepared statement of Commissioner McDowell follows:]

PREPARED STATEMENT OF HON. ROBERT M. MCDOWELL, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Good morning, Mr. Chairman, Senator Stevens and distinguished Members of the Committee. Thank you for inviting us to appear before you again this morning.

The Commission has been quite active since we were last before you on February 1. Time does not allow for me to discuss every issue before the Commission today, but I have included some highlights in this testimony. I will begin with a discussion of media issues. Second, I will talk about wireline issues. Last, I will touch upon wireless issues. As always, I look forward to answering any questions you may have.

Media Issues

Media Ownership. Of course, the highest profile issue before us is the future of our media ownership rules. By far, this one issue elicits more public passion than any other issue we work on. The media can shape the debate over every other issue because it serves as a filter or lens for the information the American people rely upon to make decisions about their lives and the future of our great country. "Information," as Thomas Jefferson said, "is the currency of democracy." The founders of our Nation understood the important role played by the media in American society when they crafted the Bill of Rights. In fact, this Saturday marks the 216th anniversary of the ratification of the Bill of Rights. First among them, of course, is the First Amendment guaranteeing free expression and freedom of the press. In 1791, technology limited such expressions to word of mouth or the written word printed on the medium of paper.

Today, there is no disputing that the media marketplace has been transformed by technological innovation into the most robust and dynamic multimedia environment in human history—to the point where sometimes people complain about being bombarded by "too much information." Just in the past two decades, we have witnessed a brilliant technological explosion that has brought consumers five national broadcast networks, hundreds of cable channels spewing diverse cable content produced by more than 550 independent programmers, nearly 14,000 full-power radio stations, two vibrant satellite television companies, telephone companies offering video, cable overbuilders, satellite radio, the Internet and its millions of websites and bloggers, a myriad of wireless devices operating in a wonderfully chaotic and competitive environment, iPods, podcasts, and much, much more. And that's not counting the myriad new technologies and services that are coming over the horizon such as those resulting from our Advanced Wireless Services auction of last year or the upcoming 700 MHz auction, which starts next month. In short, consumers have more choices and more control over what they read, watch and listen to than ever.

New media platforms do not live under the same regulations as traditional media. As a result, it should not be any wonder that most of the new investment, energy and ideas are flowing into these newer and less-regulated platforms. Contemplating

this changing marketplace, in 1996 Congress mandated that the FCC periodically review the rules governing the ownership of traditional media platforms. Accordingly, Congress created a statutory presumption in favor of modifying, or even repealing, ownership rules as more competition enters the market. Section 202(h) states that we must "determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation that it determines to be no longer in the public interest."[1] This is our mandate from the directly elected representatives of the American people. The Commission's longstanding public policy goals of promoting competition, diversity and localism continue to guide our actions in media ownership.[2]

Although the current media ownership proceeding began at my first open meeting as a Commissioner, almost 18 months ago, this issue has been before the Commission in one form or another for almost twelve years. Since a large bipartisan vote in Congress engendered the Telecommunications Act of 1996 containing that unusual statutory presumption in favor of deregulation, both Democrat and Republican commissions have initiated several proceedings. The 1996 Act sparked a proceeding on this matter the very same year. That action produced another proceeding in 1998 which ended with a report in June 2000 from a Democrat-controlled FCC finding that the newspaper/broadcast cross-ownership ban, enacted in 1975, may no longer be necessary to protect the public interest in certain circumstances. That conclusion gave rise to the 2001 cross-ownership rulemaking. The 2001 proceeding became the basis for the 2002 rulemaking, which produced an order. The order was appealed to the Third Circuit. In the meantime, Congress overturned the FCC's relaxation of the national television cap while the court remanded *almost* all of the remainder of the order. But I emphasize the word "almost." The court also concluded that, "reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest."[3]

Since then, the Commission's work on the latest iteration of this proceeding has been unprecedented in scope and thoroughness. We gathered and reviewed over 130,000 initial and reply comments and extended the comment deadline once. We released a Second Further Notice in response to concerns that our initial notice was not sufficiently specific about proposals to increase ownership of broadcast stations by people of color and women. We gathered and reviewed even more comments and replies in response to the Second Notice. We traveled across our great nation to hear directly from the American people during six field hearings on ownership in: Los Angeles and El Segundo, Nashville, Harrisburg, Tampa-St. Pete, Chicago, and Seattle. We held two additional hearings on localism, in Portland, Maine and here in our Nation's capital. During those hearings, we heard from 115 expert panelists on the state of ownership in those markets and we stayed late into the night, and sometimes early into the next morning, to hear from concerned citizens who signed up to speak.

We also commissioned and released for public comment ten economic studies by respected economists from academia and elsewhere. These studies examine ownership structure and its effect on the quantity and quality of news and other programming on radio, TV and in newspapers; on minority and female ownership in media enterprises; on the effects of cross-ownership on local content and political slant; and on vertical integration and the market for broadcast programming. We received and reviewed scores more comments and replies in response. The comments of those who did not like the studies are also part of the record. I have also greatly valued hearing directly from the thousands of people who have traveled to our hearings, often on short notice.

Almost no one has disputed the data that shows we live in a media world that is far different from the one that existed even at the time of the 1996 Act. Consumers' eyeballs and corresponding ad dollars are migrating to new media platforms. The Hollywood writers' strike is a good example of this phenomenon. The strike is all about following the audience and ad revenue. Creators are taking their content directly to the Internet. Under this new scenario, viewers that would usually be tuned in to broadcast entertainment are, despite the strike, able to find, download and watch new and different programming choices directly.

Moreover, as a result of this paradigm shift, at least 300 daily newspapers have shut their doors forever in the last 32 years because people are looking elsewhere for their news, information and entertainment. During the third quarter of this year, ad revenue for newspapers dropped by 9 percent and circulation for a similar

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[1] 47 U.S.C. § 303, note.
[2] *See 2002 Biennial Review Order,* 18 FCC Rcd 13620, 13627 (2003).
[3] *Prometheus Radio Project* v. *F.C.C.,* 373 F.3d 372, 398 (3d. Cir. 2004)

period dropped by almost 3 percent. In view of these developments we must ask: has this new era of competition been helpful or harmful to localism and diversity? On the one hand, some argue that combinations that may have been dangerous to diversity in 1975 are no longer any threat due to the existence of an unlimited number of delivery platforms and content producers. The record demonstrates that not only are there more hoses to deliver the information, there are more spigots to produce the information. On the other hand, most people still rely primarily on television broadcasts and newspapers for their local news and information. With local broadcasters and newspapers still producing a large share of local online content as well, are there really more diverse sources of local journalism than before? All of us must handle this question with great care.

Another vexing question is: what can the FCC do to promote ownership among people of color and women? Many positive and constructive ideas before the Commission may be constrained by Supreme Court prohibitions against race-specific help on one side, and a lack of statutory authority for doing much more on the other side. Whatever the FCC or Congress does must withstand Constitutional muster. So let's focus on the possible—and the legally sustainable. I am hopeful that many of the ideas before us for a vote on December 18 can be adopted so America can start back on the path of increased ownership of traditional media properties by women and people of color.

As we debate and deliberate these important matters, traditional media is shrinking and new media is growing. But the good news is that all Americans will benefit from this new paradigm because new technology empowers the sovereignty of the individual, regardless of who you are. All of us should weigh all of the arguments presented before us in the context of these facts.

Digital Transition. One of the biggest challenges the Commission faces over the next fifteen months is moving our Nation from analog to digital television with minimal consumer disruption. The Commission, particularly our Media Bureau and Office of Engineering, is working diligently on digital transition issues to make the February 17, 2009, transition date a reality. Much more work remains to be done, but we are all striving to make the transition as smooth as possible for the industry and for consumers so that the benefits of digital television technology can be enjoyed by the public.

Since Congress established the transition deadline, the Commission has moved beyond simply ensuring that stations were capable of operating in digital to focus on facilitating broadcasters' construction of their final, post-transition channel facilities. In early August, the Commission issued the final table of allotments, which provides over 1,800 television stations across the country with their final channel assignments for broadcasting following the DTV transition on February 17, 2009. Last week, Chairman Martin circulated to the Commissioners an order that proposes procedures and rule changes to ensure that broadcasters can begin digital operations on time. I look forward to working with my colleagues to provide broadcasters the certainty they need to move ahead with the transitions for their individual stations.

The natural next step for the Commission is to review how cable multichannel video programming distributors (MVPDs) will carry the broadcasters' digital signals after the conclusion of the digital transition. At our October meeting, we adopted an order regarding the obligations of cable operators to ensure that the digital signals of "must carry" stations are not materially degraded and are viewable by all cable subscribers, as required by law. The order requires cable systems that are not "all-digital" to provide must-carry signals in analog format to their analog subscribers. This requirement will sunset 3 years after the broadcast digital transition hard date, with review by the Commission of the rule within the final year. Our decision strikes the appropriate balance between ensuring that broadcast signals are not materially degraded and permitting cable operators to use their technology efficiently to produce both high quality video and high-speed broadband offerings for consumers. We must now consider the appropriate requirements for DBS and other MVPD competitors. I thank key players in the private sector for their efforts to find workable solutions for the benefit of all the parties, especially consumers. I look forward to working with my colleagues on these issues in the near future.

DTV Consumer Education. Both government and industry have begun consumer education campaigns about the transition to DTV. At the FCC, we have a consumer education website about the transition, *www.dtv.gov,* with helpful consumer and product information. This fall, we have held three consumer education workshops to address the transition generally and to ensure that senior citizens, minorities and non-English speakers are prepared for the transition.

We are also considering an order regarding what types of consumer education efforts the Commission should require of broadcasters, MVPDs, manufacturers, retail-

ers and others, including winners of the 700 MHz spectrum auction and participants in the Low Income Universal Service Program. The order proposes to implement rules suggested by Congressmen Dingell and Markey in a letter to the Chairman dated May 24, 2007. I have some concerns regarding whether the Commission should regulate heavily in this area, given that the industries involved—particularly broadcasters, MVPDs and retailers—have an overwhelming economic incentive to ensure that the transition goes smoothly, and given the enormity of their voluntary consumer education campaign commitments. I also have questions regarding whether we can adopt some of the proposed regulations consistently with the First Amendment and the Commission's limited jurisdiction over some of these entities. Nonetheless, the Commission should do all that it can to work with all stakeholders to ensure a seamless digital transition.

Video Franchising and MDU Access. I am pleased by recent actions the Commission has taken to promote additional competition among video competitors in an already competitive environment. To help create an environment where investment, innovation and competition can flourish, it is imperative that government treat like services alike, preferably with a light regulatory touch. This is especially true given the advent of the "triple play" of video, voice and high-speed Internet access services being offered by cable, telephone and other companies. The Commission has recently taken action to achieve regulatory parity between incumbent cable companies and new entrants into the video markets.

At our October agenda meeting, we adopted an order that helps give many consumers who live in apartment buildings and other multiple dwelling units (MDUs) the hope of having more choices among video service providers. The order could affect up to 30 percent of the U.S. population. The Commission found that contractual agreements granting cable operators exclusive access to MDUs are harmful to competition. Accordingly, we now prohibit the enforcement of existing exclusivity clauses, and the execution of new ones, as an unfair method of competition. Although I have some legal reservations about abrogating existing exclusive agreements only 4 years after permitting them, I agree that increased competition among video providers in MDUs will result in better service, innovative offerings to consumers, and lower prices.

Also, at our October meeting, we adopted a video franchising order that levels the playing field by extending to incumbent providers many of the de-regulatory benefits we provided to new entrants in our first order on that issue last December. No governmental entities, including those of us at the FCC, should have any thumb on the scale to give a regulatory advantage to any competitor. Our latest order will provide regulatory certainty to market players, enhance video competition, accelerate broadband deployment and produce lower rates for consumers. Furthermore, as with our earlier action, I am confident that our recent action is fully supported by substantial legal authority.

Wireline Issues

Universal Service Reform. As I have consistently stated, the Universal Service system has been instrumental in keeping Americans connected and improving their quality of life. However, it is in dire need of comprehensive reform. To reform the system, we must:

1. slow the growth of the Fund;
2. permanently broaden the base of contributors;
3. reduce the contribution burden for all, if possible;
4. ensure competitive neutrality; and
5. eliminate waste, fraud and abuse.

The Commission now has several options squarely before us. We have received two *Recommended Decisions* from the Federal-State Joint Board: one, on May 1, 2007, to adopt an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (CETCs) receive for each state based on average level of CETC support distributed in that state in 2006; and another on November 19, 2007, which proposes more comprehensive permanent reform. We sought comments on the interim cap recommendation on May 14, 2007, and the comment cycle closed on June 21, 2007. I advocate seeking comment on the permanent reform recommendation quickly so that we can consider all the options to reform the system.

Furthermore, we have a proposed order that would adopt an interim cap on CETCs at 2007 levels. Already this year, the Commission adopted a condition in both the Alltel order of October 26 and the AT&T-Dobson order of November 15, which subjects these wireless carriers to an interim cap. Potentially, 60 percent of

the funds allocated to CETCs have been capped through these transaction reviews. Accordingly, it may make sense to work on *permanent* reform now in light of the fact that Fund expenditures will continue to slow down. Other proposals before the Commission are elimination of the identical support rule and adoption of reverse auctions. If we complete the comment cycle on the Joint Board's recommendation for permanent reform soon, we will be in a terrific position to consider the panoply of options during the first half of 2008.

On November 19, 2007, the Commission announced the award of $417 million for Rural Health Care Pilot Program projects. The purpose of these awards is to facilitate the construction of 69 statewide or regional broadband telehealth networks throughout the Nation. This will not only bring advanced telehealth care to rural areas, but it will also facilitate broadband deployment throughout rural America. I am pleased to have supported this pilot project and look forward to learning from the experience of this program how we can utilize the Rural Health Care fund in the future.

Special Access. On July 9, 2007, the Commission issued a Public Notice seeking further comment in the Special Access proceeding. While the record contains some data, such as the GAO Study and carrier specific examples on a localized basis, we need a more complete record of exactly where special access facilities are located on a more granular basis before we can determine the appropriate level of long-term regulation—or deregulation—for special access services. I look forward to continuing to work with my colleagues on this important matter.

Forbearance. Closely related to special access is our recent action on several forbearance petitions that have required findings on the extent of competition in specific special access markets. The Commission has tried to strike a thoughtful balance. In the AT&T and Embarq/Frontier orders, we found that the number of competitors in the broadband services provided by the petitioners warranted limited relief from tariffing and discontinuance of facilities requirements. Specifically, we granted limited Title II and *Computer Inquiry* relief for existing packet-switched broadband telecommunications services and existing optical transmission services. In the ACS of Anchorage order, we partially granted relief from dominant carrier regulation of interstate switched access services in the Anchorage, Alaska study area and granted Title II and *Computer Inquiry* relief for specified enterprise broadband access services in the Anchorage study area. On the other hand, we have determined that certain requests for forbearance have exceeded the parameters of our authority to grant relief in Section 10. We have denied or excluded relief to ACS, AT&T, Embarq, Frontier and Verizon for their TDM-based service offerings, such as DS–0, DS–1 and DS–3 services.

On December 10, the Commission unanimously denied Verizon's forbearance petitions seeking wholesale unbundling relief in six East Coast cities. The petitions were denied due to a lack of evidence demonstrating sufficient competition under the Qwest Omaha standard to warrant relief from Section 251(c)(3).

While we're focused on forbearance, on November 27, 2007 the Commission took an important step to bring clarity to the uncertainty surrounding the forbearance petition process by initiating a rulemaking proceeding. Only Congress can amend Section 10, which is simple and clear in its mandate; but the Commission can take steps to improve its implementation. And that is what we are attempting to do by initiating this rulemaking. Among the important issues raised for public comment in the Notice are: the specificity required for relief requested by the petitioner; the level of justification required for grant of relief; and the necessity for affirmative Commission action granting or denying a petition. It is also appropriate to examine the effect that forbearance petitions have on our broader rulemaking responsibilities. I am hopeful that we will evaluate our forbearance regulations in a timely manner and implement rules that we find are necessary to improve the forbearance process.

Dominant Carrier Relief for Long Distance Services. In August 2007, the Commission granted relief from dominant carrier regulation of the Bell Operating Companies' (BOCs') in-region, interstate, long distance services. Until this relief was granted, the BOCs were required to comply with structural, transactional and accounting requirements in Section 272 of the Act. This is a classic instance where regulation had been appropriate to protect emerging competitors and consumers, but where the relevant long distance market has become sufficiently competitive to warrant less onerous regulation, while continuing to protect consumers.

Broadband deployment. In April, we adopted two items that signaled the Commission is taking important steps to update and refine our efforts to determine the current state of broadband deployment in the U. S., including the market, investment and technological trends of advanced telecommunications capabilities. In the *Data Collection Notice of Proposed Rulemaking,* we sought comment on how we can fur-

ther refine our information collection on broadband deployment to more accurately reflect service to rural areas and to include advanced wireless technologies. In the *Section 706 Notice of Inquiry,* our focus is on how to define advanced telecommunications capability, the status of deployment of broadband capability to all Americans, the reasonableness and timeliness of the current level of deployment, and what actions can or should be taken to accelerate deployment. We are in the process of reviewing the comments in both of these proceedings as part of the Commission's ongoing effort to continue to increase the rate of broadband penetration and foster more choices for all types of consumers. We should continue to seize every opportunity to move America forward in this important area.

In the meantime, in October, the Commission released its latest report on High-Speed Services for Internet Access. This report, which reflects the status of broadband deployment in the U.S. as of December 31, 2006, demonstrates continued acceleration of broadband penetration. Specifically, the number of high-speed lines (those that deliver services at speeds exceeding 200 kbps in at least one direction) increased by 27 percent during the second half of 2006 and by 61 percent during all of 2006, for a total of 82.5 million lines. The number of advanced services lines (those that deliver services at speeds exceeding 200 kbps in both directions) increased by 17 percent during the second half of 2006 and by 36 percent during the entire year, for a total of 59.5 million lines. As for geographic coverage, the Report estimates that high-speed DSL connections were available to 79 percent of the households where incumbent LECs could provide local exchange service at the end of 2006, and that high-speed cable modem service was available to 96 percent of the households where cable operators could provide cable television service. While these figures are encouraging, we can and will do more to strengthen America's progress in broadband deployment by maximizing competition and encouraging investment.

Wireless Issues

White spaces. I am delighted that the Commission is taking the additional time necessary to analyze and field test numerous additional prototype devices to operate in the "white spaces" of the TV broadcast spectrum. I have long advocated use of the white spaces, provided such use does not cause harmful interference to others. I am hopeful that a flexible, deregulatory, unlicensed approach will provide opportunities for American entrepreneurs to construct new delivery platforms that will provide an open home for a broad array of consumer equipment.

At the same time, the Commission has a duty to ensure that new consumer equipment designed for use in this spectrum does not cause harmful interference to the current operators in the white spaces. I have enjoyed learning from various parties who are engaged in the healthy technical debate surrounding the best use of this spectrum. Assuredly, the discussions will become ever more intense as we move forward. But, at the end of the day, we will have a resolution. Inventors will continue to invent, and a workable technical solution will develop. We should let science, and science alone, drive our decisions. If we don't pollute science with politics, powerful new technologies will emerge, and American consumers will benefit as a result. And, who knows? This may spark a new wave of economic growth that we can't even imagine right now.

700 MHz auction. 2008 will soon be here, and the Commission is on track to meet Congress' mandate to commence the 700 MHz auction no later than January 28. In fact, the auction is scheduled to start on January 24, 2008. The Commission spent a great deal of time this spring and summer hammering out new service and auction rules for this valuable spectrum. After careful deliberation, I respectfully disagreed with my colleagues regarding the best path to achieve wireless device and application portability.

My original vision for the 700 MHz auction was for our rules to maximize investment, innovation, and consumer choice by promoting competition through the crafting of a wide variety of unencumbered market and spectrum block sizes. I am concerned that the open access requirements set forth in the new rules trade the benefits of rural deployment by small and regional licensees, and their strong record of providing service to their customers, for—at best—speculative gains. Let me be clear: I am not opposed to a winning bidder employing an open network voluntarily. I am pleased to learn that several possible new entrants plan to participate in the upcoming auction. Like every other market, the wireless marketplace will be energized by the positive disruption only new blood can bring.

In the meantime, the wireless marketplace has continued to respond to consumer demand by delivering device and application portability. A broad array of wireless carriers offers numerous devices that are compatible with *any* Wi-Fi network. This capability allows consumers to wirelessly navigate the Internet just as they can on

their home computer, and download software such as Voice over Internet Protocol applications, or popular search engines.

In early November, the Open Handset Alliance introduced Android, a Linux-based software stack that consists of an operating system, middleware, a user interface and applications. The Android kit, which has been in development since 2006 and is expected to be released early next year, will allow software entrepreneurs to freely access the source code and customize applications for their individual purposes. Most recently, and after almost a year in the making, Verizon Wireless and AT&T Mobility each announced initiatives to allow customers to use any wireless device and to employ elective applications on their respective networks. Sprint Nextel has long operated with an open network as evinced by the carrier's supporting "Java" applications and Amazon's "Kindle," for instance.

Currently, the Commission's staff is busy analyzing auction applications, which were filed on December 3. I applaud and appreciate the work of the incredibly hard working Wireless Bureau team, and eagerly anticipate watching the auction process unfold.

Early Termination Fees. In addition to wireless carriers, DBS providers, traditional phone companies, and cable providers all allegedly assess early termination fees. Earlier this year, Chairman Martin indicated his intention to tackle this thorny issue. I am pleased that, since that time, the market has responded. For example, four wireless companies (Verizon Wireless, and more recently AT&T Wireless, T-Mobile and Sprint) have individually announced consumer-friendly policy changes. I would strongly encourage the stakeholders to continue their efforts. The private sector is better at solving such issues than the government.

Conclusion

Thank you for having us here today, and I look forward to answering your questions.

The CHAIRMAN. I thank you very much, Commissioner McDowell.

Today's hearing may be the last opportunity for Senator Lott to participate in a Senate hearing as a Senator. And therefore, with the gratitude of this Committee for his leadership and his counsel, I recognize you, sir.

STATEMENT OF HON. TRENT LOTT,
U.S. SENATOR FROM MISSISSIPPI

Senator LOTT. Thank you very much, Mr. Chairman, for your many kindnesses over the years, and for being who you are. You are one of our heroes. We all admire you. It's been a pleasure serving with you. Your word is your bond, and your courtesies are endless. And I appreciate you allowing me to go first today. And I appreciate you having the Committee picture taken when I could be here, because I've really enjoyed this Committee. A lot of people think a lot of the different committees in the Congress, the House or Senate, are the most important Committee, but I don't believe there's a more enjoyable Committee with a wider degree of jurisdiction than this Committee, and I have only fond memories of all of my experiences here, especially those occasions when I couldn't win a vote on the Republican side, so I meandered over to the Democratic side——

[Laughter.]

Senator LOTT.—and was trying to herd cats. It's been a lot of fun.

And I do think that, for me at least, it's very poignant that on my last Commerce Committee hearing, we're having a hearing in the telecommunications area. It's an area I've really enjoyed working in over the years, and was involved in reform, and have had opportunity to work with each one of these Commissioners in their roles now, and previously, including the Democratic members of this Commission.

I really think this is one of the best Commissions we've ever had. Do you disagree? Sure. Do you defend your positions vigorously? Of course. But you're all capable, thoughtful, and sometimes even listen to us.

[Laughter.]

Senator LOTT. And so, I admire you all.

And I'm—I want to say a bit on a personal note, too. A few years ago, I guess I was in a position of occasionally blocking nominations and messing up nominations, but I also had occasion to work with Tom Daschle to get a lot of nominations done. I remember, one day we did 81. One day. And one of the ones that I turned and supported was Commissioner Adelstein, and he's just done a magnificent job. I've been very proud of supporting him. He's up for renomination. The White House has sent his nomination up here. I don't know if I can influence it now, but I hope that, before I leave, our leaders on both sides will get together and do a nomination package, and it will include this very capable Commissioner, who will continue, I'm sure, to do an excellent job.

So, thank you for allowing me to, you know, make those personal notes.

Mr. Chairman and members of the Commission, last week we passed S. 2332, the Media Ownership Act of 2007. My record in this area is long, and obviously one that I feel very strongly about, so you know how I feel about the FCC moving in this area. And I've made all the typical arguments—timing argument, localism. I've made clear my concerns about cross-ownership. I have real questions about the justification for it and the motives of some of those that are trying to merge—not of the Commission; I mean, you're trying to have a process that is fair.

It was noted by Commissioner Tate and others that you've had lots and lots of hearings. But I still don't see why you need to force this thing to a head December 18, not because you're going to change a lot of opinions by waiting a little bit more, but because you take the argument away. I've tried to force-speed things in my life and in this institution. It doesn't work. Just a little patience, a little more time. Why give us an argument to attack you all? Run the string out on localism.

And it's been educational for me. I think some of my concerns, some of my arguments about, you know, localism have been addressed, and we haven't lost as much localism as, maybe, I thought we had, but I still—really concerned about the continued erosion in that area.

So, I would plead with you to take a little more time, take away that argument, and then you're going to probably come to the same conclusion, which I will certainly still disagree with, and will—from a distance, will be supporting Senator Dorgan, still trying to block cross-ownership.

I thought the reason for trying to get this done was the—it was tied to the Tribune waiver. I didn't quite get that. My argument was—and, by the way, you know, I don't have any particular concerns or affection or angst about the Tribune; if it's justified, give them a waiver; if it's not, don't. I don't think they're tied together. Now you've given them the waiver, so what's the hurry?

So, I think that argument has been pulled away a degree. Really simply—oh, and one thing that really confuses me, the FCC is worrying about the financial condition of the newspapers? What? I just don't quite—I've looked at the law—I don't see where this is an area you should be, you know, that engaged. It's communications. I don't—I'm not sure that print is included in that. But here's the other thing. I don't get why Republicans would be crying alligator tears over newspapers having problems.

[Laughter.]

Senator LOTT. What? What are you doing? You know, look, they're losing readership because times have changed. It's technology. It's also because they give so much garbage, people get tired of, you know, putting up with it. In my area, we buy them to wrap our mullet with.

[Laughter.]

Senator LOTT. Do I hope they survive? Sure. But, I mean, goodness gracious, I want to make sure we do have diversity in media, and diversity in choices, and fairness. And, yes, I do think it's important we have the maximum opportunity for all sectors of our economy, men and women, minorities, to be involved in this.

So, I just—you know, you have suggested—or it's been suggested, maybe, well, we'll limit to, I guess, what, 20 biggest markets. But I do think there's a lot of loopholes. The language is very mushy. I think maybe you've indicated that you are willing to make some changes on that, and I hope you would do that.

One final point before I ask a couple of questions—and I don't want to take too much time—is the Universal Service Fund, too. This is a very critical area in my state, and a lot of states. I think we really—Congress needs to decide what we want to do in the future on Universal Service. I'd rather you wouldn't do it. You know, I—there's no question in my mind that, after Katrina—and the Katrina effect—has affected a lot of my emotional feelings about a lot of things, but the towers that we had in rural and coastal areas in Mississippi, thanks to USF and Cellular South—without it, we wouldn't have been able to communicate with anybody. And I just—I hope that you will be careful about, you know, capping one sector of the Fund—section of the Fund, rather than addressing a comprehensive package. You've already done it. Basically, you kept 52 percent. And I hope that you'll ease up on that.

Now, just a couple of questions before I yield my time. Let me—Mr. Chairman, to you, you had indicated that you would be willing to work to close the loopholes in this media cross-ownership proposal that exists for smaller markets. Would you confirm that again, and, maybe, kind of, suggest what some of those solutions might be?

Mr. MARTIN. Sure. Thank you for the opportunity.

I certainly am happy to end up trying to clarify and put more teeth in the concerns that have been raised by some of the Commissioners about the criteria that we would consider in the smaller markets, where there's not a presumption in favor of a waiver, or there's a presumption against that. And one of the criteria, for example, is whether there is going to be new news that's going to be added, is a newspaper buying a broadcast property that doesn't do any local news now? And I've said that I think one of the concerns

that's been raised by some of the other Commissioners is, there's no specific amount of news you're talking about. And I said, I'm happy to end up—and I've had discussions with all the Commissioners about that—I'm happy to put a specific amount of criteria that we would expect on a weekly basis that someone would be adding local news to that broadcast property if they were going to be seeking a waiver of that. So, yes, I am committed to end up trying to work with my colleagues to make those stronger, and am happy to end up doing it. I think that's one of the specific examples that I'd be willing to do.

Senator LOTT. Well, in the future, I'll live more and more of my time in Jackson, Mississippi; I just want to make sure there's no waiver granted in Jackson.

[Laughter.]

Senator LOTT. I want as much diversity in my choice of media as I can get down there.

Commissioner Copps, on this USF issue, and the fact that, basically, the mergers have already—that have been capped, as—are already taking, what, 52 percent of that wireless fund. What—how do you see us proceeding in this USF area?

Commissioner COPPS. Well, what I'd like to do, Senator, is to have Congress and the Commission working together, because I think we are both part of the solution. We need a systematic, holistic approach, not just a little item here, a little item there, a pick-and-choose. I've always thought, if we had broadband as part of the system, contributing and receiving, if we got rid of the identical support rule, or modified it significantly, we really did the audits, that we'd be pretty far down the road, but if we had Congress coming in and saying we could collect on intrastate, as well as interstate, I think we would have the Universal Service Fund fixed for a pretty long time. But that's going to take a cooperative effort between us. But I think that should be done. I think it's urgent.

I'm pleased that the Joint Board, at least, has put out a proposal that looks comprehensive. I hope it will be put out for comment. It's been sitting down at the Commission; it ought to be out for public comment, so you can see it and we can see it, and then, next session, maybe really get the ball moving on it.

Senator LOTT. I'll address this question to Commissioner Adelstein, but it really should go to the Chairman, or all of you. A number of us—Senators Rockefeller, Dorgan, Snowe, Smith, DeMint, Thune—sent a letter, February the—I think it—was it—regarding the letter recently—November 15—regarding this post-February 17, 2009, dual-carriage obligation. We haven't gotten a response. Can you give us some idea of when we're going to get a written response about that? And are you considering—reconsidering its—the position regarding the waiver process?

Commissioner ADELSTEIN. We did an order on dual carriage that decided that there was going to be a requirement that cable companies carry both the digital and analog signals of digital broadcasters. I think that it's important that, as the digital transition goes forward, we make sure that all cable customers can continue to get access to broadcast signals. We don't want anybody to be cut off. And we took care of that. The cable industry worked with us

to come up with a way of ensuring that, for 3 years, that would be accomplished.

Senator LOTT. Commissioner Tate, good luck. Keep these guys under control. I've got faith in you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. Chairman, in a recent GAO report on the digital television transition, it appears that you took umbrage at the GAO's decision to provide a link to a 96-page written response, rather than printing the response in its entirety. And, particularly, I want to quote from your letter, which states, "Over the course of the past year, the Commission has committed extensive resources to working with GAO on this and other matters. We estimate that the Commission has devoted more than 6,100 staff hours responding to the GAO's request, and has provided more than 13,650 documents to the GAO. We estimate that American taxpayers have paid more than $500,000 for the Commission to respond to these requests. In light of the costs incurred to respond to GAO's requests, as well as the GAO standard cited above, the GAO should publish the agency's unedited written comments in its final report."

Mr. Chairman, I find the tone of that paragraph regrettable. GAO, like the FCC, is a creature of Congress, and I'm concerned that your response to the GAO not be read in any way to argue against the right, and indeed the obligation, of the Congress to exercise its oversight responsibilities. As a result, Mr. Chairman, I would like your assurance that the tone in your letter does not reflect an unwillingness to comply with future investigations by GAO or any other Congressionally directed agency.

Mr. MARTIN. Of course it will—of course the Commission will end up complying with any investigation by GAO or any Congressional investigation. What I was concerned about, and what I was upset about, was not their willingness to publish it on the website; at the time, they had not offered that, when I submitted that letter. What I was concerned about was, we had spent an enormous amount of time providing them an excessive amount of information on the details of both our technical and our policy decisions that we're putting in place rules and responsibilities for the broadcasters in the industry to move forward with the DTV transition; and, as a result of that, I met with the auditor myself and said I didn't appreciate his conclusion, after talking most extensively about our work with NTIA on the public awareness campaign, to conclude, in the concluding paragraph, that we had no plan on a technical or policy basis, when we had done hundreds of rulemakings on those issues. And I said that that was not an accurate assessment. And I told him that personally. I said that if that was going to be their conclusion, that they had an obligation to give us an opportunity to respond and tell everyone about the many policy and technical rulemakings that we had completed—he said that he thought that was a fair point, and he would review it. I was then told, afterwards, that they would review—either consider taking it out of their conclusion or publishing our response. And I said that this was important from the staff's perspective who have been planning this DTV transition for many, many years and who felt that their conclusion, without any backup to that conclusion, short-shrifted

the work that they've been doing for the last decade on the transition.

He then informed us that they would not publish our response, because it was too expensive, because there were too many pages to our response, at which point we offered to pay for the GAO's publication of our response, ourselves, out of our budget. And then we were told no, and there was no offer to put it on the website. So, at that point, yes, I was frustrated that the Commission's opportunity to respond to allegations that I didn't think were founded in the report were not included. I think—and, as I discussed with the auditor at the time, the concerns he might have about the public awareness campaign were separate from whether we had, for example, given out the licenses—the digital television licenses for the broadcasters to be able to make the transition, whether we had put all the technical and policy rules in place, which I think the Commission has done. There's a lot of concerns and legitimately so, about whether the public is aware of what is about to transpire, and how we can make sure that they are doing all that they need to do to make the digital transition. But I think that the allegations that the Commission had not done the technical rules were not fair, and were not actually founded by the study, themselves. And the only response that was included in their response to my letter was, "Well, we're doing a separate report on the technical issues, and we'll get into more details of that there." And I thought that, as a result, of course we'll end up cooperating, but I think it's important that the Commission's work that has been done is included.

The CHAIRMAN. Thank you very much.

Senator Stevens?

Senator STEVENS. Thank you, Mr. Chairman.

It's nice to have you back. I don't think we've had a meeting with the Commission for 10 months. I do echo, to a certain extent, what Senator Lott has said. The bill that I introduced in 2003 would have banned newspaper cross-ownership of air media. It's been my opinion that mergers take place because of advertising revenue and decreased service. They, particularly, decrease the capability of these air media to have—and desire these air media to have local reporters to cover local activities once they're merged with the nationwide air media, that they—the newspaper process, I think, reflects—I mean, their situation reflects the decline in news being—to be presented through them of local concern. And I—we see advertising revenues going down, to the newspapers. That's—the main reason is, local people don't pay any attention to them anymore, because they don't contain, really, accurate local news.

But, in any event, I do hope you'll listen to us. It would be my feeling that that December 18 date ought to be postponed until we can get some better understanding of where we're going on this. We can't—I don't think we can get any bill passed here before we leave, and I would hope that you would listen to us, even though I think that you probably have—Mr. Chairman, have the majority to do what you want to do. But I do think we ought to take a little more time on that cross-ownership business.

Let me ask this. One of my major problems, of course, being from where—the state that I represent that's, after all, one-fifth the size

of the United States, we have been left out of the expansion of media in the past, but this digital transition presents some very interesting new opportunities for us, but also some very unique needs. We need to make sure that the—that we do have a smooth transition in rural America, is what I'm saying to you. I think, if you look at the small cable companies, for instance, the DTV transition would mean that they would have to carry both the analog and digital signals, dual-carriage, for their over-the-air broadcasters, but many of them don't have that capacity. And I think we ought to take a good, long look at what's going to happen to the small cable people, as far as the transition is concerned.

I do understand you've provided a waiver procedure. Could you explain that to me? For instance, we have two small cable companies in Alaska—Haines and Skagway. They have a situation where, if they have to have dual-carriage, they—I'm told they'll go out of business. What is going to be the policy with regard to that situation?

Mr. Chairman?

Mr. MARTIN. Sure. Well, I think that it's important to understand, first, that the Commission has not been changing its policy in regards to whether or not there'll be—or the concerns that have been raised about the extra capacity that might be required of any cable operator, small or large. I think it's important to understand that today a broadcaster puts out an analog signal, and the cable operators are required to carry that analog signal to all of their customers, both the analog customers that they have and the digital customers, the one who have set-top boxes. And they do that by carrying the signal either in two forms today or by giving their customers a set-top box that can read the analog signals.

The requirement after the digital transition is no different. They're still required to take a broadcast signal and deliver it so that their customers can watch it, just like they do today.

What we actually said is that the transition of the broadcaster from putting out an analog signal to a digital signal shouldn't be one that is an excuse for the cable operator to no longer carry that signal to some of its homes. They should continue to do what they're doing today with the digital signal.

What we have said is that, if a cable operator comes to us and says that they, for example, weren't doing that to some of their current homes, and that this would cause a burden on them, that's different than what they're doing today; we would take that into account; for example, if they didn't have enough capacity. But the rule we actually put in place—what you're referring to as the dual-carriage rule—actually doesn't impose or take up any more of their capacity after the digital transition as what they have been using to deliver those signals to everyone's home today. And I think that the arguments, that it's going to take up more capacity on their system, are inaccurate. Our viewability requirement that we put in place just says they don't get any capacity back because the broadcaster has moved from analog to digital. They still have to carry it to all of those homes. If someone can come to us and show that it does create a burden for them, and they don't have that capacity, we'll, of course, take that into account, and that's why we put the waiver process in place.

Senator STEVENS. But I wonder whether you have the capability to listen to all these small carriers on a waiver basis, and I would hope you'd take a look at the waiver procedure so that it would not, really, put an extra burden on these small companies to come back here and make an appearance. And it does seem to be an extraordinary burden for these small companies to seek a waiver under the current situation.

Let me go to another subject. That is, we have—we created a Congressionally mandated working group to recommend technical standards for wireless alerts, and I understand that is still before you. We—that was part of our port security bill last year. Senator Inouye and I and Members of the Committee worked hard on that. I do want to know, When will that network become a reality?

Mr. MARTIN. Well, there were very strict timelines that were put in place in that legislation, that the Commission would have a technical working group, they would make recommendations to the Commission, and the Commission would adopt those recommendations. I think that we're on track to make those deadlines. The recommendation came in from the Technical Advisory Committee recently. There's an item in front of the commissioners for us to consider putting that out for further notice and comment so we can adopt those technical standards. I think that we'll end up doing that in the time-frame that was required by the statute.

I can't give you an answer for sure on whether or not, or when, that will become a reality. Part of the legislation was that that was still the option of the wireless industry, to opt in to providing those warnings; I don't know for sure whether any of the industry will actually opt in to providing it or not. I actually am, obviously, hopeful that they do. And I'm sure—I think Congress is, as well, but I can't give you a guarantee of whether that will happen or not.

Senator STEVENS. In terms of the—this transition, the digital transition, we have concerns that—particularly in Alaska, that the rural people, particularly village people, will not have an opportunity to, really, be informed about this transition. And I know we've provided a $40 voucher to help them get it, but that doesn't help them get it when they're not on a road system, they're on a—really, in very isolated places throughout the country. What is going to be done about those people, as far as the transition? Any of you particularly working on the rural situation?

Mr. Copps?

Commissioner COPPS. Yes, if I could answer that, what you have to have there is outreach. I recently had the opportunity to go to the United Kingdom, where they're doing a transition to the digital television system between 2007 and 2012. And they go in to rural areas and all the areas. They contact each household at least twice, personally. They will help the aged and the handicapped to hook up the equipment to get the job done.

The important part is outreach. In a country of 60 million people, they're spending $400 million to contact every household twice, to do consumer surveys, and they do it town by town, region by region, handouts, public opinion—not "public opinion," but surveys to see how people reacted, and all.

Here, we're going to pull the lever one day, February 17, 2009, and hope to gosh that everything goes right. And it's never going

to happen. We can have more likelihood that there'll be less disruption if we really start taking this seriously, but we ought to be doing some demonstration projects. Why can't we do a demonstration project in rural Alaska or West Virginia or any state? Why can't we pick a city, pick a town? Some of these digital broadcasters are ready to broadcast. Because otherwise we're just asking for trouble.

As I said in my statement, I think this will be the granddaddy of all consumer backlash issues, when those TV sets go blank. There's too many questions still out there. You mentioned the small cable operators. We tried to provide them some specific relief, instead of the questions of the waivers. We still haven't really teed up DBS. The people who aren't into local-local on DBS, they're getting their local news on rabbit ears, we can't tell them that everything's fine as long as they have satellite, because they're going to lose their local. So, we have got to get a coordinated program.

I was part of the Y2K program in the previous administration, and I know what a program looks like. It has leadership, it has coordination, and it has outreach. And this—we don't have that right now.

Senator STEVENS. Well, that may have been our mistake in not earmarking some of that money for that transition, beyond just the vouchers. The money is earmarked, although there is a cascading of that money, if it's enough. I think there will be some money available for that to take place. Now, that problem of allocation is something we could address here.

I do believe you all should help us determine what is required to get to rural America and keep rural America informed. The British system is, you know, dealing with a small island. My state's about ten times the size of Great Britain. You know, you can't use Great Britain as an example with me. I'm sorry; you're a great friend, but I—that won't work. There has to be something beyond the Federal Government dealing with this, and I think it ought to be cooperation with the industry and cooperation with the providers of the digital sets. And there should be a plan. I do agree. I hope that you all, really, will reconsider how a—get a plan for rural America. It does not exist now, and it must exist. So, that's where the hell's going to come from when those sets go blank.

Commissioner COPPS. But I think you're right, the point is, someone has to be in charge. And it doesn't have to be a federally dictated program, it has to be a public-sector/private-sector partnership. But that private sector needs to know who in the government is running the government part of it. And that's what we're lacking.

Senator STEVENS. We have to have up-front money, and that's a mistake. Probably, the mistake is right here, in allocating that money the way we did, but we were interested in making sure that everyone had access to a—the black box. But the black box is not going to do you any good unless you know how to use it, and I do believe we ought to have some national system to make sure everybody understands that.

And, by the way, the $40 may not be enough. In some areas, it may cost a lot more to get that box to those people. I—we—I would urge you to give us some advice on what we should do.

Last—I'm taking too much time—we have, I understand, a threat about the discontinuing of some of the national calling cards in our state alone. Now, I thought we worked it out so that we had a concept that the same rates would apply everywhere on everything. Are you going to permit calling cards to be available only in 49 States?

Mr. MARTIN. No. And I think you're absolutely right, that the rate integration requirements in the law say that they've got to be providing that to all 50 states, and——

Senator STEVENS. But that was——

Mr. MARTIN.—with no exceptions.

Senator STEVENS.—well, that's what's really started the whole thing, back when Senator Inouye and I cosponsored that resolution about Universal Service making certain that we had ubiquitous service all over the country available everywhere, no matter where they were, in terms of communications. Now, the calling card is part of that. I hope you will carry—you'll stick to that and tell the companies: if they issue those calling cards, they must issue them in all 50 states. And I would hope you'd take action against anyone that doesn't.

Mr. MARTIN. Yes, sir, we'll follow up on that—because, that's right, they are——

Senator STEVENS. Thank you, Mr. Chairman.

Mr. MARTIN.—they are required to do that everywhere.

The CHAIRMAN. Thank you.

Senator Rockefeller?

STATEMENT OF HON. JOHN D. ROCKEFELLER IV, U.S. SENATOR FROM WEST VIRGINIA

Senator ROCKEFELLER. Thank you, Mr. Chairman.

I want to, actually, just, sort of, make a few comments. Maybe questions, maybe not.

First of all, you're one of the most powerful groups around, and the American people don't particularly know that. And yet, you affect the way this country is going, which is not necessarily in a great direction.

Before I start, I want to thank the Chairman and others for the Rural Healthcare Program that the Chairman mentioned. That was actually part of what Olympia Snowe and I contemplated, back in 1996, when we did the original Snowe-Rockefeller Act, or whatever it was. And that was meant to be part of the Universal Service Fund, and it never emerged, it's been lying fallow all these years. And I give the Commission tremendous credit for now breaking it out and putting it across the country, because it changes the lives of people in extraordinarily rural places, and allows them to get medical decisionmaking and imaging on a long-distance basis. And so, I thank you very much for that.

Now, from the bills that they pay for phone and cable, to their ability to reach public safety in times of need, from the content of what gets broadcast into the living rooms of their homes, to the broadbrand networks that can bring equal opportunity to our largest cities and smallest rural towns, you oversee everything. The decisions you make are absolutely vital to this Nation's future. Because we entrust you with these vast powers, we also expect a lot

from you. And should. Yet I, for one, am growing increasingly concerned that the FCC is not focused enough on making sure that consumers, in fact, as some of the Commissioners testified, have real choices in communications, that the competitive marketplace exists, and that companies' public-interest obligations, which I have always held to be very sacred, has been washed by the way.

Americans deserve public-interest obligations from broadcasters, and they're not getting it. And we used to—we used to talk a lot about it. We used to do it. We don't, anymore.

Over the last 8 years of this Administration, the FCC's general presumption has been to deregulate. I agree with the comments on December 18, the deregulation of the communications industry. We were told that, by setting on a deregulatory path, consumers would have more choices. Well—they would also have lower prices, and they would have greater opportunities. Now, deregulation is not a bad thing, nor is regulation a bad thing. But I believe it's time to chart a new course, Mr. Chairman, because this one-way deregulatory policy has shortchanged too many consumers, and it hurts, in a modern world. I fear that communications policy is following in the footsteps of rail policy in this country, and that's not a good thing to come from me, because that's a 22-year fight, where I've made very little progress, and I don't intend to repeat that experience.

Deregulation and consolidation was great for railroads' bottom lines, it was awful for customers and for consumers, be they companies, people, whatever. The Surface Transportation Board is supposed to protect the interests of consumers and rail customers, but it does not, and never has, and has never worried about it, and has made no pretense of not doing it, and have let all of the excuses about revenue inadequacy that the railroads bring just float right by them, pay no attention to them. The STB protects the interests of the railroads that they're supposed to regulate.

I'm becoming increasingly concerned that the FCC appears to be more concerned about making sure that policies they advocate serves the needs of the companies that they regulate and their bottom lines, rather than the public interest. We cannot allow that to happen.

Now, it's very interesting to listen to all—the five of you, because they're extremely different opinions, and I assume there's a lot of turbulence and argument. And I know that. But there's not, sort of, a clear direction.

Mr. Chairman, I believe that this Committee should spend next year developing an FCC reauthorization bill that addresses the structure of the agency, its mission, the terms of the Commissioners, and how to make the agency a better regulator, advocate for consumers, and a better resource for Congress.

In 2009, we're going to have a new Administration. In all likelihood, we will have a new Chairman. We have two pending FCC nominations. Without passing judgment on any of the nominees or Commissioners, I believe that it's best to postpone action on the nominees until a new Administration is determined. I believe that we can spend 2008—because it's going to be a very difficult year to get anything done at all, so it's a very good time for us to be able to think through exactly what the FCC is, what we want from

it, and then proceed. So, I mean, it's really about the reorganization of the agency and to give the new Administration a chance to put its mark on the communications policy.

I don't know, I just—there are so many places that just don't have service, and, because telecommunications is such an erudite subject, people don't really know a lot about it. Now, they did when some 34,000 screens went blank in West Virginia, and then they knew a great deal about that particular subject. But what we seem to do here is, we pick on particular parts of regulatory policy, or, particular parts of what you do, but we don't look at the whole picture, the whole direction. And that's what I think we should be doing next year.

Now, rather than arguing over process and personality, I think we'd do much better to urge the FCC to get back to work on the issues that matter to consumers. And they're the same basic ones that have always been there and which are sometimes handled, and mostly not. One, access to affordable broadband. Second, high cable bills. Third, inappropriate content being broadcast into their homes. It's very strange and upsetting to me that, when that subject comes up in this Committee, that there's very little sympathy toward that. First Amendment is mentioned, and all the rest of it. And, in the meantime, there's degradation taking place within values and structure of families. And I think a lot of that comes directly from television. And over content, you have the ability to regulate it; you do not over violence, but that can be changed. Fourth, I think strong consumer protection for wireless consumers is essential. And then, finally, I think Universal Service is the bottom line on everything. Ideas of capping it are outrageous. It is the only chance that Americans have to make their voices heard and to get access to telecommunications. This isn't happening in parts of Maine, it's not happening in parts of West Virginia. The talk from telecommunications companies is magnificent, they have huge press conferences, announce huge broadband programs, which, for the most part, just follow business lines and profit-making lines. And, in some cases, they'll go into a rural county and do a rural county, and then you, sort of, feel good about that. But, on the other hand, it's just one rural county out of 55 in West Virginia, and then you look closely, and then you find that the place where you were a VISTA volunteer in that county is not covered because it's too remote.

So, I mean, I just think we have to take a whole new look, Chairman Inouye, at the FCC, and our obligations, their obligations, what we can do about it. I'm not happy with what's happening. Yes, I'm upset about media consolidation. It's causing havoc in our state, none of it helpful. And, actually, I was very interested—and I won't ask this question, I'll just pose the fact—that some of the Commissioners were talking about the enormous amount of communication that went back and forth. I think Commissioner Tate was saying hundreds of thousands of views and this and that. Commissioner Copps was saying, "Well, we really haven't heard much at all." And what that does is, just gives me a sense of discontinuity and lack of common purpose within the FCC. Yes, you're individuals, you're three-two in your political division, but this is just a little bit more important than all of that. And so, I propose that,

next year, we get very serious about reforming and making the FCC what it should be.

Thank you, Mr. Chairman.

The CHAIRMAN. I can assure you it will be done.

Senator Kerry?

STATEMENT OF HON. JOHN F. KERRY,
U.S. SENATOR FROM MASSACHUSETTS

Senator KERRY. Thank you very much, Mr. Chairman.

I think Senator Rockefeller obviously raised a lot of very important points, a couple of which I want to, sort of, pursue in the form of a question, if I can, a little bit.

Commissioner Copps, in response to—I mean, I heard Commissioner Tate talk about the period of time that's been taken, the numbers of witnesses that were heard, the ten studies. I've also heard people call into question the propriety of those studies, and most of the information of the witnesses appears to be loaded against the decision that the Commission appears to be moving on. Can you comment on that? Can you help the Committee to understand why you or Commissioner Adelstein have a problem, perhaps, with the process, to this moment?

Commissioner COPPS. Well, I think you have to start off with the premise that the industry that we are looking at here is probably the most important and influential industry in the United States of America, from the standpoint of influencing our culture and nourishing our democratic dialogue. So, we need to take the time and ask the questions. And I think——

Senator KERRY. Are you suggesting that it hasn't adequately been done?

Commissioner COPPS. Yes, I am—I'm not just suggesting that, I'm stating it outright. I think, when you're looking at an industry that controls half a trillion dollars of public airwaves, and we're looking to see the future ownership pattern of this, and who's going to have access to it, it doesn't impress me to have six hearings around the country and then we ignore a lot of the public comment, it doesn't impress me when you say we spend two- or three- or four-hundred thousand dollars to come to terms with that. When I worked up here, I remember, any industry that came in and wanted us to do something would always be brandishing a million-dollar or a two-million-dollar study, or something like that, for a much more narrowly focused type of exercise. So, this is really big-ticket. And yes, we did some studies, and yes, there was some initial contact about where those studies should go, but that's not where the studies went. They weren't as targeted. And so, I think the process was deficient, and I think we are leaving these huge problems that have been pending even longer than media ownership—minority ownership, public-interest obligations, localism—leaving those for another day and rushing ahead to encourage more consolidation that has caused those other problems in the first place. So, I think the process has not been a good one.

Senator KERRY. Now, Commissioner Tate, you, in your testimony, said very clearly, I think I quote, that "a modern communications system is critical to our country." We have gone from fourth to, depending on the study, 16th to 21st in broadband pene-

tration in our country. That's obviously, on its face, moving in the wrong direction. Other countries have far more efficient, and have put far more efficient systems in place. You can go into a field in some countries, in Europe and elsewhere, and sit there and download into your computer at a rate that is unprecedented, and you can't even do it in major cities in America. Shouldn't that be the primary focus of the Commission right now, reaching all Americans with modern communications, not necessarily intervening in a dispute between owners over consolidation? Consolidation certainly doesn't do what broadband would do for the country.

Commissioner TATE. Certainly, Senator Kerry, I agree that broadband is crucial to all areas of our economy.

Senator KERRY. Well, why isn't there a plan in place, after all these years, to make it reach everybody, as the President said in 2004? He said, we will have it universally accessible by 2007. It's now the end of 2007, and there's still no plan.

Commissioner TATE. Well, it's interesting that, in many parts of the country—for instance, I think that you probably know about the ConnectKentucky example, where, by the end of this year, the Commonwealth of Kentucky, which is fairly rural and poor, will have broadband access across the whole state. My home State of Tennessee is also involved in that same initiative, called Connected Tennessee. So, I think that in many parts of the country, there is a lot of leadership and there are a lot of ideas. Obviously——

Senator KERRY. Regional and local, by and large. Would you say there is a national plan that's emanating from the FCC and from the——

Commissioner TATE. Well, and, I think, through many of our other items that we take up, whether it's opening our video franchising so that we can get more competitors who can then also be broadband providers.

Senator KERRY. Well, let me, kind of, get to the nub of this, if I can. Senator Lott, Senator Stevens, Senator Inouye, others on the Committee, of long experience on this Committee, editorial comment across the country, countless numbers of organizations, countless numbers of witnesses have all objected to the way the FCC is about to proceed, Mr. Chairman. We have actually passed out of this Committee a request to have an extended period of time now to try to complete the localism and diversity issues before you consolidate.

Now, who is it who created the FCC, Mr. Chairman?

Mr. MARTIN. Congress did.

Senator KERRY. And Congress created the FCC for what purpose?

Mr. MARTIN. To regulate the telecommunications and media areas.

Senator KERRY. In the interests of the American people.

Mr. MARTIN. In the public interest, yes.

Senator KERRY. Correct. For their safety, security, and for other purposes, correct?

Mr. MARTIN. That's correct.

Senator KERRY. And the Congress has expressed its will here with respect to this Commission's potential action, has it not?

Mr. MARTIN. This Committee has passed a bill out of the Committee that says that there should be a new process put in place for our media ownership reviews. Congress——

Senator KERRY. And you're hearing from a bipartisan chorus, are you not——

Mr. MARTIN. Congress——

Senator KERRY.—that——

Mr. MARTIN. Congress also expressed its will in 1996, where they required us to undergo a biannual review of our media ownership rules and to make any changes in those rules when we find those rules are no longer necessary.

Senator KERRY. Yes.

Mr. MARTIN. So, there's also that part that we have an obligation to do, as well.

Senator KERRY. But, nowhere in the FCC rules, either in 1934 or in 1996, is there anything that suggests that you have a rationale or a motivation to make a decision that saves newspapers. I mean, you've come into this Committee today, and the first part of your testimony was an articulation of the trouble the newspapers are in. Can you show me—I mean, I went back and looked at it—can you show me, here, where there's any mention of the word "newspapers"——

Mr. MARTIN. The——

Senator KERRY.—in the 1996 or 1934 Acts?

Mr. MARTIN. I think we have an obligation to understand what the impact of some of our rules have on the industries that we regulate, including when we put in place the rules back in the 1970s, they prohibited a newspaper from purchasing a broadcast property, the impact that that may have had inadvertently, on newspapers. And I——

Senator KERRY. But the purpose of that was not with respect to the regulation of the newspaper. The purpose of that was with respect to the consolidation of power in the dissemination of information.

Mr. MARTIN. I think that's right. And that's the reason why I think——

Senator KERRY. Well, what does that have to do with people being fired or with loss of reporters or with the economics of a newspaper?

Mr. MARTIN. I think it's also in making sure that the local news-gathering is occurring, and robust. And I actually think that the Commission has an obligation to understand what the impact of its rules are. And I think, in this instance, we do have an obligation to make sure and balance the importance of independent voices in the local community, which the Commission has under its precedent, traditionally looked at being beyond just the broadcasters, but also the newspapers and other independent voices.

Senator KERRY. Well, let's get to that. If that's true, and that is your obligation—and I believe it is, part of it—but it doesn't go to the question of cross-ownership. The question of cross-ownership is to fulfill the larger obligation of the FCC to protect the sourcing of information to the American people so that you don't have a concentration of power.

Now, data in the official FCC record, particularly gathered from the 2000 Section 257 studies, indicates that the primary factors influencing female and minority broadcast ownership are media market concentration, access to capital and equity, and access to deals. And as the markets become more concentrated, the cost of stations as acquisition targets become artificially inflated, driving away potential new entrants in favor of existing large chains. So, in effect, the concentration has the effect of diminishing the ability of smaller and single-station owners to compete for advertising and programming contracts. So, you're in the middle of an analysis of this—the diversity and the localism. And, notwithstanding that your responsibility is to the public to make sure that diversity and localism are well served, you're about to make a decision, for no—absolutely understandable rationale, and against the will of Congress and most of the witnesses, to actually increase the concentration, which will make worse the localism and diversity issues, without even having completed those studies.

So, my question to you is, why would you not—would you agree, today, in the face of those realities and many more—I can go on about what happens to the concentration and diversity—would you agree with the opinion expressed from Senator Lott, Senator Stevens, the Chairman, Senator Rockefeller, and others, to postpone this decision from several days from now and allow these next studies to take place and complete the diversity and complete the localism analysis? Would you agree to that?

Mr. MARTIN. No. And, if I can respond, I'm not sure I agree with some of the other statements that were made in the beginning, before you got up to the question, as well. But I——

Senator KERRY. Well, what is so——

Mr. MARTIN. But I——

Senator KERRY.—compelling—what is so——

Mr. MARTIN. But I——

Senator KERRY.—compelling that you have to move in several days?

Mr. MARTIN. If I can respond, I think that there are several concerns that I would end up having with some of the statements you've made.

First of all, in characterizing the overall consolidation, that may have occurred since the 1996 Telecommunications Act was put in place, we're not actually lifting any of those other rules as far as allowing any other—further consolidation on radio, on television, at the national or the local level.

Senator KERRY. I know——

Mr. MARTIN. We are concerned about——

Senator KERRY. Yes, I know that.

Mr. MARTIN.—the cross——

Senator KERRY. I know what you're doing. You've got 20 cities that you targeted, but you also have a waiver process in here. That——

Mr. MARTIN. No——

Senator KERRY.—waiver process would allow you to make any kind of political decision you want with respect to the waiver.

Mr. MARTIN. The Commission has always had a waiver process. People can always come in with a waiver. Indeed, I think it's actu-

ally tightening it, and some of the comments that were filed in response to what I have put out actually said that the waiver process with a presumption against granting waivers is a tighter standard than we currently have when a waiver is provided.

Senator KERRY. What do you say to that, Commissioner Copps?

Commissioner COPPS. I don't think we even have something that would qualify for the term of "waiver." This is just overcoming a finding, with some very loose criteria. Is there financial distress? That's undefined. Will there be more local news produced? Is that 2 minutes or 5 minutes or 10 minutes? So, it's just so porous as to be, I think, meaningless.

Senator KERRY. What do you say to that, Commissioner Adelstein?

Commissioner ADELSTEIN. I would agree. I mean, another one of the conditions is financial condition. What does that mean? There's also no definition, in terms of what level of concentration of the market wouldn't be allowed. There are no quantifiable standards anywhere. So, three Commissioners, at will, could do a waiver in any market—no matter how small—including Jackson, Mississippi, or anywhere in West Virginia or western Massachusetts. I think it opens the door everywhere. We need to tighten those standards.

Senator KERRY. Commissioner Martin, what I quoted to you, in terms of what happens to the concentration of the market, is, in fact, the official FCC record, which you're choosing to ignore.

Mr. MARTIN. No, we're not ignoring it. I think that there's no question that the concentration that has occurred makes it more difficult for small businesses, including minorities and women, to be able to be active and involved in the media ownership.

Senator KERRY. So, why would you not want to wait until you understand the impact better of the diversity and localism analysis? What is so compelling——

Mr. MARTIN. I actually——

Senator KERRY.—in the face of all of the other imperatives of communications in America, to move, you know, several days from now rather than 180 days from now, 90 days from now?

Mr. MARTIN. We have not just proposed a change to the newspaper/broadcast cross-ownership rule. I have also put forth proposals that would address both the localism study that this Congress has been encouraging us to complete and on the minority ownership proceeding, including adopting many of the recommendations that were put forth by our own diversity committee.

Senator KERRY. But you realize the fundamental rationale that you gave when you came in here was the dilemma that newspapers have faced, which, incidentally, a lot of people would contest. A lot of people would say that, all across this country, newspapers are making lots of money, doing quite well. They've had to retrench somewhat; yes, they've had to adjust. But, as in any business, they're finding their outlets and means of making money. In fact, one of the most profitable entities in America today are some of these small newspapers in cities and towns across America which are cash cows.

Mr. MARTIN. I think that the newspaper industry is having a significantly difficult time in continuing some of its local news-gathering——

Senator KERRY. But where is it——

Mr. MARTIN.—but I think——

Senator KERRY.—in your jurisdiction under the FCC to put that ahead of the interest of diversity and localism and to deal with the problem of concentration?

Mr. MARTIN. I'm not putting that ahead. I think we have to put it in balance, and we have to take all of those things into——

Senator KERRY. Then why would you not take a few extra days, which is the will of the Congress and the will on a bipartisan basis?

Mr. MARTIN. I think it's important for us to try to move forward on all of these issues, both including what's involved in increasing the opportunities for minority ownership and what's involved for responding to the concerns that have been raised on localism, and responding to the courts and the Commission's previous decision that said that the absolute ban on newspaper cross-ownership is no longer appropriate and that reasonable analysis——

Senator KERRY. Yes, but that court——

Mr. MARTIN.—says that that's——

Senator KERRY. That's the *Prometheus* decision you're referring to?

Mr. MARTIN. Yes.

Senator KERRY. All right. Well, it's my understanding that parties on both sides believe you're in violation of the Administrative Act as a consequence of not doing away entirely with it, as a consequence of that decision.

Mr. MARTIN. It——

Senator KERRY. So, I mean, you just seem to be digging a hole deeper and deeper here——

Mr. MARTIN. No——

Senator KERRY.—rather than trying to work this through in a logical way.

Mr. MARTIN. You're right, the industry is saying that we're in violation of the law for not——

Senator KERRY. The Administrative Procedures Act.

Mr. MARTIN.—for not removing the ban in its entirety and allowing for newspapers to buy any broadcast property in any market around the country——

Senator KERRY. But doesn't——

Mr. MARTIN.—but they're saying that the Third Circuit and the law would require that. I think what we're trying to do is find a balance, as you said, between the concerns about, how we respond to the changing dynamic that's occurred in the marketplace since our rule was put in place—which is what the statute requires us to do that was passed in 1996—and the concerns that have been raised about the impact of this on small businesses and minorities and women. And I think that's the very reason why I've put forth a proposal that I think balances both of those.

Senator KERRY. Well, unfortunately, most of the advocates on behalf of those entities do not share your view that you are, in fact, advancing their cause; on the contrary, they feel that this is going to disadvantage them significantly.

And what's very hard for me to understand is why you would, sort of, chose to swim against the tide, so to speak, in something

as important as what Senator Rockefeller and others have described this as. I mean, this is big stuff. Last time you guys moved, sort of, on your own like this, there was a spontaneous grassroots revolution across the country; and the Republicans, who then ran the Congress, joined together with the Democrats, and they overrode what you did.

It would seem to me you would want to try to find something that's just got a little better consensus, a sense of representing America's interests, not some sort of narrow interest. And it disturbs me greatly that you're just, sort of, so headstrong about this that, with even your own Commission to split—I mean, why not try to get a unanimous Commission? Why not try to get a decision——

Mr. MARTIN. I actually always work to try to get a unanimous Commission, and this issue is no different. And I think that you're absolutely right, it would be great if there would be a consensus. I'm not convinced that, on media ownership, there ever will be a consensus. Indeed, I've gone to my colleagues in the past, even on the process and the policy issues—all of my colleagues—starting as late as last summer and early fall, saying, "Let's discuss—what would be a unanimous process? What would be a unanimous approach?" And, actually, I'm not convinced that there's much prospect of that. Indeed, the concerns that have been raised about what they are characterizing as loopholes in the waiver process, I've said I'm happy to work with them to coordinate what those processes should end up being, in any way they would like, but that would mean they would have to engage in the substance, not merely just demand additional process and additional time for the next 6 to 9 months. And I'm happy to end up doing that; however, I'm not yet convinced that we will ever reach a consensus on the media ownership issue. I think it may be just too politically divisive. And I do think it's important that we have an obligation to respond, as Congress told us to, and the courts are waiting, for more than 3 years now, and I think that's what we should do.

Senator KERRY. Well, I've used more than my fair share of time here, and I apologize for that. But I—I think you are inviting another Congressional response. And I regret, enormously, that—I don't know, Commissioners Adelstein and Copps, do you want to respond to what the possibilities are here?

Commissioner COPPS. This should be about substance. And where I have been on this has been no secret, I think, to the Chairman or any of my other colleagues on the Commission for months and months and months. We are willing to vote on media ownership when we deal with these long pending problems of minority ownership and the lack of localism, because they have been exacerbated by consolidation. So, I think it's not just about process or division or inability to get an agreement there. This goes to the substance of the matter.

Incidentally, I would add, if I could just make a quick comment, because there's been a lot of argument to the contrary about the health of the newspaper industry. We are not the Federal Newspaper Commission, I understand that. But I would just quote from a letter to the editor that the head of the Newspaper Association of America wrote to *The Washington Post,* last July 2. He said, "The reality is that newspaper companies remain solidly profitable

and significant generators of free cash-flow." Operating profit margins seem to be near 20 percent, which is pretty good. I wish I had some investments that were doing 20 percent. So, it's not a one-sided story. Of course there are challenges and necessities for adjustment, but that's just to balance out what was said earlier.

And a final point, on divisiveness, I'll tell you one place where this issue is not divisive, and that is across the United States of America. There's a new poll out, just within the last couple of weeks, that shows that 70 percent of Americans, regardless of political party, regardless of liberal or conservative affiliation, think that media consolidation is a problem; 42 percent, I think, said it is a really serious problem; and 57 percent favored laws to prohibit newspaper/broadcast cross-ownership in specific markets.

Commissioner ADELSTEIN. In terms of the process, I think, to respond, certainly we have laid out a process today that we could get agreement on, bipartisan agreement. The Committee laid out a process, which we endorse, today.

So, there is a deal that we could reach right now. And I'm willing to talk to the Chairman about an alternative process, as well. He's been very good at building consensus. He's my friend, we have a good working relationship. Ninety-five percent of what we do is bipartisan and unanimous. So, he's done a good job of building unanimous decisions. I don't see why we can't do that again here. I really don't think it's outside the scope of possibility to work together to try to put aside our differences. But, in order to do that, we cannot, I think, operate in defiance of this Committee's instruction that we not go forward on December 18. I think we need to have time to do it right, we need to make sure that we get the elements of localism and the elements of diversity in place first. That's going to take a little bit of time, not, maybe, every minute that the Committee asks for. We could work with you, and I'd like to work with the Chairman, on trying to see if we can't come up with an accommodation. We work best when we work together, and it's not too late.

Senator KERRY. Well, Mr. Chairman, I wish you would heed all of these pleas. And I will just say to you, in closing, that it is really clear from the evidence that if the Commission intends to promote ownership diversity, you can't accomplish that goal while simultaneously increasing market concentration. It just doesn't—it's just a complete contradiction. And with these analyses that we've requested outstanding, it just seems extraordinary to me that we're not able to have your agreement to wait a few days. Listen to the American people. Listen to the Congress.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Lautenberg?

STATEMENT OF HON. BARBARA BOXER,
U.S. SENATOR FROM CALIFORNIA

Senator BOXER. Mr. Chairman, can I just ask, what's the order of recognition? Because we were all here for the photograph. I was here for all the opening statements. I was called out——

The CHAIRMAN. This was the——

Senator BOXER.—to do a phone call.

The CHAIRMAN.—list that was given to me.

Senator BOXER. I know, but I asked your staff. I don't quite get it.

The CHAIRMAN. The next person is Senator Lautenberg.

Senator LAUTENBERG. Thank you.

Senator BOXER. And then what happens——

The CHAIRMAN. Following——

Senator BOXER.—after that?

The CHAIRMAN.—that is Senator Snowe, Senator Klobuchar, Senator Boxer, Senator Cantwell.

STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. Thanks very much, Mr. Chairman.

Not to be able to read the indignation and ire of the Committee as we review this pending date strikes me as less than a forthright review of the situation, Mr. Chairman. And we've had many discussions about things. And I've found you in a—typically, in a mode that says, "OK, let's look at this problem or that problem." And I just wonder whether—is there anything pending by way of a merger or an acquisition that would be helped by a decision on the 18th of December?

Mr. MARTIN. There's no particular transaction that is pending before us, but it is having an impact on the industry, the fact that these rules have been unclear for quite some time. And, indeed, we've had several companies, for example, announce that they're going to start to spin off their broadcast properties from their newspaper properties because they see no prospect of the Commission taking any action anytime soon. That was announced by several companies earlier this fall. So, I think it does have a significant impact, whether we are, in fact, going to go forward or not. But, no, I can't say there's a particular transaction that would be impacted.

Senator LAUTENBERG. Mr. Chairman, I thank you for enabling us to have held a hearing in New Jersey, and that Commissioners Copps and Adelstein were able to attend the public forum on the license renewal of WWOR–TV. And it's the only high-powered commercial station licensed in New Jersey. New Jersey, with 9 million people, not identified as a media market, has a very bad review of events that are considered news available to the public there, and 200 people turned out to the forum. And now that the forum's been held, what's the next step for your consideration of WWOR's license renewal application?

Mr. MARTIN. I think that we are going to have to end up considering whether or not they met the conditions that were put on that license. As you and I have discussed in the past, they had a specific requirement that they were supposed to provide extra additional news coverage above and beyond what would normally be required of the State of New Jersey, to make sure it didn't become just a New York station. There's been evidence submitted in the record, along with the comments at the public hearing, that emphasize that they believe that licensee has not done that. We'll have to do a debate here at the Commission, a discussion about whether or not they have met that criteria, and, if they did not, what should be the ramification and result of that.

Senator LAUTENBERG. The information that was developed said that there was more New Jersey news produced by New York-based stations than there was at WWOR. And a condition for their license was very specific. It had to be a New Jersey station, the facility had to be based in New Jersey, the news department. And what's been happening with the present ownership is, they've tried to slip past things, and they were in the process of moving the news department to New York City. They have a logo that said, "New York 9." And, what a coincidence, just the day before we had the hearing, they dropped the New York news identification.

So, what else do we have to have that says to us that this license will not be renewed. It's extended now, as part of the original license, but what assurance do we have that we're going to be able to make certain that, before that license is renewed, that they will meet the standards?

Mr. MARTIN. I think that we do need to end up making sure that there are more specific requirements put in place. I haven't reviewed all of the record, but, from the studies that you have shown me and that I've looked at, it does appear that they did not meet the requirements of providing the news specific to New Jersey. And I think, then, the Commission's going to have to decide what steps they need to end up taking, as you say, to make sure that they're going to meet those in the future, and that may require something more specific to be included. And we'd be anxious to hear from your offices on what you think would be most appropriate.

Senator LAUTENBERG. Is it possible to have yardsticks that are specific, that can be placed in the consideration for renewal?

Mr. MARTIN. Yes. There was a condition that was originally placed, just of a general one. You could put one in place that would actually have something that would be very specific instead this time, and that could be measured in reporting requirements, so that they would have to come back and report, and there wouldn't be an elongated period of time again before they came back and provided what was going on.

Senator LAUTENBERG. Commissioner Copps, you were there, you heard the public response, you saw the material that was produced to make the case on behalf of a more rigid standard for the renewal of the license. Is there anything there that would suggest to you that these conditions have been met, or that there was a willingness by the present ownership to step up to the plate here and do what is required?

Commissioner COPPS. Well, I think—first of all, let me say, I think that was one of the best public hearings that we've had in a long, long time. I found the public commenters really articulate and impassioned. And I hope that all of my colleagues will look very closely at the public record, perhaps more closely than we've looked at the public record on media ownership, just to understand the depth of the feeling that people have up there. Obviously, this is a pending item, so there are some limitations on our ability to discuss this, but I think you know where I come from, from the standpoint of localism and the necessity to encourage local news, community activities, and all that. So, the hearing was very helpful from that standpoint. And I look forward to working with the Chairman and my other colleagues to make sure that, when this

license proceeding is over—and I hope that will be sooner rather than later—that it will lead to an enhancement of localism in New Jersey.

Senator LAUTENBERG. Commissioner Adelstein, you were there. Do you have any observations that you'd like to make here?

Commissioner ADELSTEIN. Why, sure. I appreciate the Chairman's willingness to get that hearing scheduled in New Jersey. It was the first such hearing that we've held. It was quite dramatic. A lot of people from your state felt that their needs weren't being met, in terms of news from that station, and that they were getting more news on New York stations than on the one station that's required by law to serve New Jersey. As you mentioned, that's a very unusual statute, and I think all of us have to recognize the importance of ensuring that it is adhered to. I think there has to be real and substantial requirements placed upon that licensee in order to ensure that the people in New Jersey are served, in terms of their news and information and localism, including what's happening in New Jersey, not across the river in New York.

Senator LAUTENBERG. Yes. Thank you.

And, Commissioner Tate, we haven't had a chance to talk about it. Mr. McDowell, we have. And I hope that we'll get this resolved in a relatively short period of time so we can do it.

And one last question, Mr. Chairman. New Jersey's a net contributor of almost $200 million a year to the Universal Service Fund. And I know it's been discussed here at some length. And as the Fund keeps growing, the burden on New Jersey and other donor states gets bigger and bigger. There are many proposals for reforming the Fund, including temporary caps, longer-term proposals. When can I tell my constituents that they're going to see some action from the FCC to stop this growth of the Fund and the cost to my constituents?

Mr. MARTIN. I do support trying to take some steps immediately to put a stop to some of the growth of the Fund. We have increasing amounts of money flowing to some companies that were not required to provide any of the costs of what they're doing with that money, and I think that is a concern, and I think that we should at least put a cap on that part of the program. I don't know for sure—I've got proposals in front of the Commissioners right now—that they would do that. I've voted that. If others end up voting it, then you could tell your taxpayers that. There are concerns about it by others that are concerned about implications for stopping the flow of some of the Universal Service money. But I do think we need to take some steps to at least make sure that everyone who is getting Universal Service money provides us with their actual costs, so we know what they're spending the money on.

Senator LAUTENBERG. Mr. Chairman, I don't want to take—I would like to take the time, but it's an imposition on colleagues, so we'll review that question in writing with the other Commissioners.

The CHAIRMAN. Thank you.

Senator LAUTENBERG. I thank you for the——

The CHAIRMAN. Senator Klobuchar?

STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM MINNESOTA

Senator KLOBUCHAR. Thank you, Mr. Chairman.

Thank you, Commissioners, for being here. I had three areas of questions. One was rural broadband, and Senator Kerry did a good job of covering that. I continue to be concerned in our state, not only with the availability, but how slow the service is, and how our ranking with the rest of the world has fallen instead of improved. And I support the work that we're doing with the mapping requirements, and also some of the work that's coming out of the House. But I hope we will pursue that later.

I want to, particularly, focus on the cell phone issue. And, as you know, Senator Rockefeller and I introduced a bill that I think has some pretty simple, straightforward, consumer protection rules in it, given that this industry hasn't really been regulated. And one of the requirements is to prorate the early termination fees. I know some of the companies, Verizon and AT&T, have now started to do this. So, I don't understand why there would be a problem to put that into law.

And I know that the wireless industry has asked the FCC to rule that these early termination fees are rates charged, and, therefore, that the state regulation is preempted. And I'm wondering what the status is of this proceeding.

And I will tell you that I continue, because we're doing this bill, to get people coming into my office with complicated bills that they can't figure out and huge early termination fees. We've got the case that was reported in the paper, of the consumer that tried to fake their own death by drawing up their own death certificate, to get out of an early termination fee. Even that didn't work.

And so, I'm wondering what is the status of this proceeding as we push through our legislation? And do you view these ETFs as rates charged, and, therefore, that would be exempt from state regulation?

Chairman Martin?

Mr. MARTIN. I think that the problems related to early termination fees are significant. I am concerned about it. They're actually proliferating, not just in the wireless industry, but we're beginning to see them pop up across other sectors, as well. And I think that they are problems.

I think that the Commission would, potentially, be able to regulate them as a fair business practice under Section 201 of the Communications Act. I've had multiple discussions, both with consumer advocates and with the industry about it, including several sessions with both of them. The consumer advocates, actually, have encouraged the Commission to not rule on what would be reasonable under Section 201, because they're concerned about wanting to make sure they preserve the opportunity for their state litigation to go forward.

I actually think that the Commission, though, if there were enough complaints filed, and we wanted to, we probably would have authority, under Section 201, to talk about what was a reasonable practice. But I don't necessarily agree that it's a part of their rate, as you would say.

Senator KLOBUCHAR. All right. Anyone wanted to add to that? No?

Could I also ask about the area of the handset portability? I remember, I was practicing in this area at the time when number portability came up. Everyone claimed the sky was falling. And now we have this issue of the handset portability. And I just think that most American consumers are—as you know, are unable to take their phones with them if they change service. And I'm wondering how you feel about this handset portability. In our bill, Senator Rockefeller and I have actually simply asked the FCC to look at this. But I think there's just going to be more and more of a clamor, whether it's consumers surgically operating on their own phones or whatever's going on here, to try to move toward this. And it, again, is another consumer issue. And what's happening with this over at the FCC?

Mr. MARTIN. Again, I agree with you that this is an increasing problem, and that consumers are in demand of it. That's the very reason why we put requirements in the upcoming spectrum auction—for almost a third of the spectrum that we're going to be auctioning—that whoever wins that spectrum will be required to have a more open platform and have an open handset requirement. I think that the Commission's goal, and we stated at the time, was, we thought providing a more open handset environment would lead, not only to that individual provider, but also push the industry to do that, as well. And I think we've already seen some of the benefits of that, in terms of both the recent announcement by the technology companies, where they've developed an open handset standard that would be utilized, and, indeed, by Verizon, who's now announced that they're going to follow and incorporate that standard into their existing network. So, I think the Commission has taken steps on that, and I think that's important.

If Congress gives us the authority to—and tells us we need to directly require that—even of the existing licensees, we'll obviously implement it. But I think we're going to see some of the changes that are going to occur as a result of the steps we took in the context of the upcoming auction already.

Senator KLOBUCHAR. Anyone?

Commissioner COPPS. There may be a connection between these two issues you talked about—affordability and early termination fee—because if you take that phone with you, we should make sure that there's no early termination fee that's going to be attached to that; the logic being the fee is to subsidize the telephone. But if you're bringing your own phone, there's no need to do that.

Senator KLOBUCHAR. OK. All right. The last area I wanted to ask about was just the digital TV transition. As I've told this committee before, there are 430,000 households in Minnesota that are going to be affected by this, and I can just tell you, most of them are not in areas where they have a big store right around the corner that they're checking out so they find this out, and they don't have podcasts set up. And I just don't think they know much about—that this is going to happen, their TV's going to go off.

And I know, Commissioner Copps, that you just recently went to study the transition in the United Kingdom. And are there lessons

to be learned from that? What do you think we need to do here? Are you concerned about what's going on?

Commissioner COPPS. We chatted a little bit about that earlier, but there are tremendous lessons to be learned. And I think it's not because there are differences in sizes between countries or anything like that. The point is that, in the United Kingdom there is a DTV transition that takes place over a period of some 5 years, region by region, station by station, with lots of public information so people know what's coming, they know a DTV transition is coming. I think probably over half of Americans have no idea a DTV transition is coming in a little more than a year now. That is going to be, potentially, highly upsetting and highly enraging to many of them.

So, we have to—we have to find a way to get the word out. We have to provide the kind of help that they're providing in the United Kingdom. If you're old or if you're disabled, they will come in and actually connect the new attachments that need to be connected. They do the consumer surveys to see what's working and what's not working, and they correct at every stage. Someone is in charge. Here, nobody is in charge. And that's our biggest problem. This has to be a partnership. It shouldn't be a government program. I don't think it can be entirely private sector. It should be a partnership. And that's what we had with the Y2K program that, back in the previous Administration, I worked on. That was a program that had leadership, it had direction, and it had accountability. Most of those——

Senator KLOBUCHAR. And I also know——

Commissioner COPPS.—things are lacking.

Senator KLOBUCHAR.—Senator McCaskill is very concerned about this. She has a lot of people in Missouri. She's presiding over the Senate right now. I'm going to try to spell her so she can come back. But what is happening with having a single person in charge and accountable here, right here in the United States?

Commissioner COPPS. Well, we don't have that. I think that's exactly what we need to have. Ideally, if I was in charge I would push for a White House Task Force so that everybody could be coordinated and everybody would know that there's a DTV transition coming—we knew there was a Y2K. If we flubbed that, we were going to have a mad President of the United States, and Vice President of the United States, so we'd better get it right. Not that there weren't lots of other motivations to get it right, too. But that helped, because there was accountability and oversight. Every week, we were dragged, as the deadline came closer to 2000, over to John Koskinen's shop in the White House, and we really shared information, and everybody knew there was leadership. That's what we need here. They have that in Great Britain. They have a fellow who's in charge of it—Ford Ennals is his name; he's on television all the time; he's a recognized public figure—so people know this is happening.

Senator KLOBUCHAR. Commissioner Adelstein?

Commissioner ADELSTEIN. You don't have to just take it from us, the Government Accountability Office has said that there is nobody in charge, and that they really believe there needs to be. And the Government Accountability Office, GAO, said the FCC really is the

best positioned agency to take that role. So, I'm hopeful that we can do that, that we can step up to the plate. There needs to be a lot of coordination. It doesn't have to be, necessarily, a czar running it top-down, but there has to be someone in charge, where the buck stops, at least in terms of the broader issues. And we need to coordinate with the private sector, as well. It's not a command-and-control thing, where we tell them what to do, or dictate the message, but to ensure the message is coordinated, because we have so many different interests. As Vice Chairman Stevens said, we don't have much money to do this. There's $5 million. But the private sector has nearly a billion dollars they've committed to do this, which is an enormous amount. We need to make sure that that message is coordinated. And GAO said that there is, right now, not a process in place to ensure that message is consistent and coordinated. The government can't dictate it, but I think we could work with these organizations, who are open to working with us, to try to ensure that there's a coherent message, that there's a coherent plan. And we need to do that immediately, because there's no more time to waste.

Senator KLOBUCHAR. OK. Just one last follow-up. At the beginning, I asked, with the cell phone proceeding, the ETF, what is the status of that, timing-wise? When is that going to be done?

Mr. MARTIN. Well, I'm not sure that I anticipate the Commission ruling saying that they were part of the rates, which I think is what you were asking.

Senator KLOBUCHAR. OK.

Mr. MARTIN. But I can get back to you on it, on a better timeframe.

But, as I said, the consumer groups who are concerned about this actually have encouraged the Commission not to act. But I can follow up with you about that, if you'd like.

Senator KLOBUCHAR. Thank you.

Thank you very much——

The CHAIRMAN. Thank you.

Senator KLOBUCHAR.—Mr. Chairman.

The CHAIRMAN. Senator Boxer?

Senator BOXER. Thank you, Mr. Chairman.

On DTV, I just want to echo the sentiments of my colleagues. You've got a train coming down the track at you, Chairman. And I'll just tell you right now, you're going to be blamed for this if it's not handled right. If it was me, I'd slow down your other thing that you look like you're jamming through, on the cross-ownership, sit down with your colleagues, reach consensus, not on the outcome—I agree with you, you may never be able to—but certainly on the way to proceed. We reached a consensus here on that. Pay attention to that. And I think, if you don't do this, there's going to be a disaster coming our way. It's a nightmare, and I just—that's an opinion.

But I really want to focus my questions on concerns about transparency and openness at the FCC that I've, kind of, tried to do all along.

Chairman Martin, as you're well aware, in September 2006, I made public two media ownership studies, prepared by FCC staff at taxpayer expense, that were shoved in a drawer because their

conclusions ran counter to certain interests. Now, I just want to make sure I understand this. Is it true that you, sir, and the Commission, choose who the Inspector General will be over at the FCC?

Mr. MARTIN. The Inspector General statute requires that when there is someone who resigns as Inspector General, the new agency head appoints the new——

Senator BOXER. Right.

Mr. MARTIN.—Inspector General.

Senator BOXER. So, you have appointed—you and the Commissioners have to agree—is that right?——

Mr. MARTIN. Yes.

Senator BOXER.—on the—OK. Well, I just want to say that, to me, this is the fox guarding the chicken coop, and I'm going to introduce legislation to change that. Over in my Committee, Environment and Public Works, the Inspector General is nominated by the President and has to be confirmed by the Senate, by the Committee.

And this is why it's important, and listen to this: In October of this year, the FCC Inspector General came to brief me on the findings of his investigation into the matter that I talked about, shelving those reports that had a conclusion that you, I know, sir, don't agree with. Unfortunately, that investigation raised more questions than it answered.

For example, the IG uncovered a December 2003 e-mail from then-media bureau chief Ken Feree, in which he stated he did not want to release the 2003 radio report, which raised some questions about this consolidation, in terms of localism, because he didn't like the results. We have the writing of Mr. Feree. He wrote, "I am not inclined to release this report unless the story can be told in a much more positive way. This is not the time to be stirring the pot on radio consolidation. All in all, this is a bad time to release something like this."

Imagine. You get a report, and you don't agree with it, so you deep-six it.

So, the IG now, who's appointed by you all, despite the clear evidence that this was shoved in a drawer, he said that Mr. Feree, who was a political appointee, did nothing wrong. I had a big argument with the IG in my office. I never had a situation like that. I never saw such a coverup from an inspector general. Well, he's not independent. Now I get it.

Now, we don't even know who else knew this happened, because the IG made a bizarre decision not to follow up and interview key FCC staff, including your fellow Commissioners. So, the IG, who you appointed, and your Commissioners agreed to, does an investigation, finds out that a political appointee essentially said, "Don't make this public, because I don't like the outcome," finds nothing wrong with it, and then doesn't interview anybody else.

So, here we are now trying to conduct oversight over an agency that, in my opinion, has shirked its responsibility to protect the public interest.

Now, I'd like to ask Commissioners Adelstein and Copps, what do you think about the IG's report on the shelved studies? And were you troubled that the IG didn't go ahead and question you all or the rest of the Commissioners, or didn't question staff?

Commissioner ADELSTEIN. I was very troubled by the report, Senator Boxer. I felt that the evidence in the report was not reflected in the report's conclusions. I couldn't understand how he could conclude that everything was done properly, when there is that clear evidence, that you read, that the reason it was deep-sixed was because it was inconsistent with what they wanted to do: more media consolidation. It was clearly improper. And I think that the fact that the report was so at odds with its own evidence indicates that there wasn't a fair analysis, that it truly wasn't an independent analysis. It was a very strange and, I think, inappropriate finding by the IG.

Senator BOXER. Commissioner Copps, do you agree with that?

Commissioner COPPS. I would agree with that.

Senator BOXER. Commissioner Martin?

Mr. MARTIN. I think that the Inspector General said that there had been no law violated. I think that, actually, he highlighted the evidence and some of his concerns. I think that it's important for the Inspector General to actually describe what the legal standards are for a violation of any Commission employee, and whether or not that has actually occurred should actually be the Inspector General, not the Commissioner——

Senator BOXER. Well, wait a minute. You're focusing on whether a law was broken. The whole point was to find out whether something was deep-sixed for political reasons. You don't have to—not everything they do has to do with whether a law is broken.

Mr. MARTIN. I thought that he was saying the law wasn't broken, but he actually highlighted the evidence, including making sure—bringing to everyone's attention the e-mail that you read, which certainly implies that Ken Feree had deep-sixed the report. And I actually, again, just to point out—the same as we did when we talked about this a year ago—I don't know what happened in that context. I wasn't——

Senator BOXER. But the bottom line is——

Mr. MARTIN.—Chairman at the time.

Senator BOXER.—yes, the report was deep-sixed, we got the e-mail, we see why. It was very obvious. Nobody was hiding anything. "This isn't going to help us in our debate, so let's bury it." And then, the IG, who is appointed by you all, now decides—he found exactly what happened, and then he walks away from the whole investigation. It's absurd. And so, I'm just saying, I'm going to push hard for an independent Inspector General. This is ridiculous.

And, again, I hope I don't need to reiterate what colleagues said. My God, you—you're rushing in one front, you're slowing on another front. You've got it all mixed up, sir. And I hope you'll heed what we're saying here, because it is bipartisan.

Thank you.

Senator BOXER [presiding]. And I'll turn this over now to Senator Cantwell, then she can turn it over to Senator Nelson.

STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Thank you, Senator Boxer.

Chairman Martin, I want to just pick up on a point that Senator Kerry made, and just ask you a question. Do you see any circumstances in which you'd be willing to delay the vote for this proposed rule change before the hearing? Do you see any circumstances in which you would change that?

Mr. MARTIN. Oh, sure. Listen, what I've said is that my plan is to end up moving forward. I'm going to continue to have my discussions with all the Commissioners about a consensus, not just on the process, but on the substance. So, sure, there's the potential or possibility there could be circumstances. But, at this point, I would say that, no, I anticipate that we would end up moving forward, and that, at this point, that's my plan.

Senator CANTWELL. In your testimony, you talk about listening to your colleagues, and you said that you incorporated input from them. What input did you incorporate?

Mr. MARTIN. When we were beginning the process of the studies during the Notice of Proposed Rulemaking that we released in July 2006, all of the Commissioners voted on what would be the topics. After that, I approached all of the Commissioners and said, "What would you like the topics of the studies to be?" No Commissioners gave us anything in writing. Several had suggested—made suggestions orally about what they wanted, to extend and expand the number of topics. We incorporated that. I put that in a written memo. I circulated it to all my colleagues, again asked for input. No one gave me any written comments. One of the Commissioners said he wanted to make sure—and, again, expand some of the topics, which we then incorporated again. When we then went forward and said we wanted to identify what individuals, if they had any, to perform the studies. I relied upon the chief economist at the time to try to come up with academics around the country to do it. Several of my colleagues had suggestions of people they wanted to do some of the studies. Every suggestion that my colleagues put forward of any individual in the country who they wanted to do a study, we contacted to see if they'd be willing to do a study. Several of them said no, several of them said yes. The ones who said yes, we contracted with, asked them to do studies. One of the ones——

Senator CANTWELL. Can I—since I don't——

Mr. MARTIN.—one of the people that——

Senator CANTWELL.—I don't want to take as much time——

Mr. MARTIN. Oh, I'm sorry.

Senator CANTWELL.—as my colleague Senator Kerry did. Could I ask them to respond to that? Because that was a pretty good elaboration.

Commissioner COPPS. I would take exception to trying to portray this as a completely open and participatory process. There was some initial outreach on subjects of studies. I think we responded—I thought we had—with a list of about 12 or 15 very targeted kinds of studies. And that was kind of the end of that until we saw what the studies that were selected were going to be. Most of them were kind of ill-targeted, I thought, and several of them went to the "robustness" of this or that, and really didn't ask the important questions that needed to be asked in the context of media ownership. So, while I think there was some outreach, to imply that this was a small-d, democratic, fully participatory, we all make the deci-

sions about who's going to do the studies and what gets studied, I think, is not 100 percent accurate.

Senator CANTWELL. Commissioner Adelstein?

Commissioner ADELSTEIN. I didn't find my ability to give meaningful input really afforded. I felt that there was very little time between the time we were asked about it and the time that all of a sudden, just several days later, a whole list of authors appeared. Clearly, all the work had already been done about who they wanted to ask, and, by the time these decisions were made, I had no meaningful input into the authors. And the authors were not, for the most part, except for one that was suggested by Commissioner Copps, experts in the field of media ownership. They were, in fact, broad generalists in economics, and a lot of the best experts that were, I heard, asked about whether they wanted to participate, were given conditions to operate under in which they felt they couldn't possibly do the right level of work. The initial take on the ownership studies was set forth by our chief economist, who wrote a memo, which was found under FOIA, that said that she was offering thoughts and ideas about, "how the FCC can approach relaxing newspaper/broadcast cross-ownership restrictions." So, the person who put together the concept of how these studies would be done did it with an outcome in mind. I think that if you look at the studies, they weren't properly peer-reviewed. Federal law requires, in the Data Quality Act, that all these studies go through a peer review before they're disseminated. And we didn't. That wasn't done until afterwards, and a lot of the peer reviewers were consulting back and forth with the authors, in violation of Federal guidelines.

So, this process, I don't think was conducted with transparency. I don't think it was conducted properly. I know that there are questions being asked over in the other body, in the investigative committees there. I don't think that the studies really accurately reflect the knowledge base that's available in academia about these issues. And, in fact, consumer groups looking at the studies found major flaws in them, even though they were given very little time. They were given a very short period of time to review them, and they weren't given the proper data to review, until later in the process, under very restrictive conditions.

So, I don't think that this process was open and transparent.

Senator CANTWELL. The reason I'm asking that is, it seems like we are taking one piece of data and trying to twist it or use it as a scapegoat to come to a conclusion. And I guess, Chairman Martin, I'm directing this at you. Your statement says "Allowing very limited cross-ownership may help forestall the erosion in local news coverage by enabling companies to share these local news-gatherings across multimedia platforms." And it seems as if you are trying to use the Internet as a scapegoat to say that somehow the competition that the Internet is providing to the newspaper industry, that technology that's provided a new distribution channel for print media now to be online, is somehow blowing up their business model, and that the solution to that is that you ought to allow big media companies to get bigger. And I would say that this change in technology, which is a benefit to the underlying notion of allowing 1,000 flowers to bloom and lots of different opinions, is

going to be a change, and that many newspapers are working through those new business models. Technology change does mean that some existing business models are challenged, but it doesn't mean that you should throw the baby out with the bath water. So, you're basically saying, "Yes, let big media companies own newspapers," because somehow the Internet is making it more of a challenge.

Now, Commissioner Copps came up with those statistics, or one of the—I think it was Commissioner Copps—and I would just like to note that, in 2006, supposedly a very disastrous year for newspapers, they did average profit margins, for publicly traded companies, of 17.8 percent. And if you contrast that for the rest of corporate America, that's about, over the last 25 years, 8.3 percent. So, there's something that's not right here. I can imagine, with those numbers, 17.8 percent, yes, I can imagine a lot of big media companies would like to own newspapers. The truth is, their numbers aren't so bad. And, as a distribution channel, they still represent a very interesting delivery system, and one that I say should still have a shot as they try to broaden into their online distribution business models.

But, to say that the consolidation, which will bring about a concentration of voices, is somehow—that that particular logic is in keeping with the notion of competition, diversity, and localism, I'm having a very tough time understanding. So, I'm happy to hear your response to that.

Mr. MARTIN. Sure. I think that it's Congress, actually, in the 1996 Act, that required the Commission to review its rules and modify, and eliminate them, the ownership rules, to the extent that the competition had changed the marketplace. And I believe that is one of the things that Congress charged the Commission with doing, updating its rules and actually removing them when they were no longer necessary because of competition.

The rule that we put in place in 1975, the media marketplace has—no doubt, has changed dramatically since then. The Internet is one significant part of it, so are the number of opportunities, in terms of broadcast outlets, so are the opportunities, in terms of cable television and satellite television that were not available in 1975, when the rule was put in place.

The Commission has, in the past—and, actually, almost every Chairman at the Commission since 1996, both Republican and Democrat, have all concluded that there needs to be some modification to the newspaper/broadcast cross-ownership rule, in light of the changes in the marketplace that have occurred since 1975, and the fact that this is the only rule that has not been changed since 1996. All of the rest of our ownership rules have been, and this is the only one that hasn't. And, as a result, I think that Congress actually charged us with that. Yes, the Internet competition does demand that we re-evaluate our rules to see if they're still necessary. And I think it is harder to make the case that they're still necessary in the top 20 markets for a newspaper to be prohibited from buying the number five, six, seven broadcast station in those markets.

Senator CANTWELL. I think you're getting it absolutely wrong. And I don't see logic in your answer of why big broadcast corpora-

tions ought to consolidate and own more media because of the Internet. That doesn't make any sense. The Internet is about competition, but, at this point in time, we're talking, still, about nascent business models. And you're saying, let's allow some of the big corporations to gobble up one other distribution channel, just because you're going to use the Internet as a boogeyman in this case. And when the truth is that what you're doing is allowing for more consolidation of existing distribution channels that are a lot more mature than the nascent Internet, even though it's been around, the business models are still developing. So, I have, like my colleagues, a great deal of concern about this proposal, and think that the basis for it—I am troubled by the studies and the analysis, if your fellow colleagues there are saying that there hasn't been enough, particularly, consumer content. The one thing that I think is clear here, that as the Digital Age continues to play out, the one thing that has to be in place, the one thing that absolutely has to be in place, is stronger consumer protections. But this seems to be going in the absolute wrong direction.

And, Mr. Chairman, I think I'll actually stop with that and turn it over to my colleague.

The CHAIRMAN [presiding]. Thank you.

Senator CANTWELL. Or allow you to turn it over to him.

The CHAIRMAN. Senator Nelson?

STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA

Senator NELSON. Mr. Chairman, since I'm the cleanup hitter here, what this whole thing seems to boil down, to me, is, it's a question of the company's interest versus the reader's and/or consumer's interest. And in the information that has been put out here, we see a question of timing, we see a question of, how do you calculate revenue? We see a question of access to data. We see a question of documentation withheld in order to present a certain picture. And, of course, whenever you pick a decision of where you want to go, you can make statistics, or withholding of statistics, prove your particular point. And when you get right down to it, as a country boy would look at it, it seems to be that it is a question of, do you want to be on the side of the companies or do you want to be on the side of the consumers?

Now, Mr. Chairman Martin, your comments were not due until Tuesday. Is that enough time to consider the comments before a December 18 vote?

Mr. MARTIN. When we are doing a proceeding at an open meeting, 1 week before that open meeting, we always end up having Sunshine come to a close, which means that people can't provide comments to us any longer in writing. I think that that is not unusual. I think, in this case, what is unusual is that I took the extra step of actually publishing the rule that I had proposed to my fellow Commissioners. That's not something that we typically do. And, actually, I had done that to make sure that everyone was able to have an appreciation for what I was proposing for the Commission—what action the Commission is to take. And I think that it was important to try to do that, to shed as much light on what we were proposing, in part because there were many concerns that we

were doing things, and going further in consolidation, than I was actually proposing.

But I do think that that's not unusual. Sunshine always come down a week before we end up voting on something at an open meeting. I think that this is obviously an unusually contentious issue. Many people are interested and involved. But I think that the Commission should make sure that we're trying to do it and proceed in as open a manner as possible.

Senator NELSON. So, you think, on an issue that is this big, that a week to consider all those comments is sufficient?

Mr. MARTIN. Yes, I think that we should——

Senator NELSON. OK. You——

Mr. MARTIN.—be able to—I think we should——

Senator NELSON.—said yes.

Mr. MARTIN.—I think we should be able to, yes.

Senator NELSON. You said yes. And I would respectfully suggest that a lot of people would feel very uncomfortable with a week. Well, let me ask you this. In your testimony, you're talking about these newspapers universally losing money. Did you look at the revenue that's being generated by the Internet websites?

Mr. MARTIN. Yes, what I talked about was some of their circulation declines that have occurred on their regular newspapers. They obviously have had increased circulation in advertising as a result of their websites. As I understand it from the industry, that doesn't completely replace the advertising dollars they've lost. But, more importantly, what you also can reference is, if you look at the press accounts of individual newspapers—the *San Francisco Chronicle* has reported that it's losing a million dollars a day. I can only tell you what the public reports are, but I think that is including all of their advertising revenues, for example, including the Internet advertising.

Senator NELSON. OK, that's not the question. The question is, did you use, in the calculation of the newspapers losing money, did you include the revenue that they have from their Internet sites?

Mr. MARTIN. From my testimony, when I said those newspapers were losing money, yes, that was taking into account how much those were losing. But they were based on public press accounts.

Senator NELSON. So, the answer is "yes" or "no"? I don't understand your answer.

Mr. MARTIN. Yes, it takes into account their advertising dollars, as I understand it, but those figures are all taken from public press accounts.

Senator NELSON. So, the answer is "maybe"? Because it was based on published press accounts?

Mr. MARTIN. No, I'm saying that, yes, I understand it is there, but I'm basing that just on what was available publicly.

Senator NELSON. Well, you guys are the deciders. Isn't that something that you should know?

Mr. MARTIN. Yes, I think it does take into account the fact that they are losing more money on their daily circulation, even when you take into account that they're gaining some money from advertising on the Web. Yes, I think that's what the newspapers are saying.

Senator NELSON. Well, I have newspapers in Florida that are telling me that, although they're not making up the difference, they are—and I have one newspaper that's telling me that it is actually getting more advertising dollars from the Internet than it is from their actual printed newspaper. So, wouldn't that be an important decision, to have the facts nailed down absolutely?

Mr. MARTIN. I'm not disagreeing that some newspapers might. I'm saying the newspapers that I cited in my testimony, I think, are, on balance, losing money, which means they're not making as much money on the Internet as they're losing on their daily circulation.

Senator NELSON. OK. Let's take up another issue. To provide access to the underlying data, that's actually required by the Data Quality Act. So, are you going to ensure that these proceedings are complying with the Data Quality Act?

Mr. MARTIN. We are. I think you're talking about the peer-review process for the studies that we did undergo, and we have made sure that that data is available to everyone. There was a concern that some of the data that was used was copyrighted, and we had to work through the legal aspects of making sure that that was made available. But we did make all of that data available, for the peer-review process of the studies that were conducted.

Senator NELSON. Would the Data Quality Act require you to have the information about the revenue that newspapers are getting from the Internet?

Mr. MARTIN. It requires us to provide any data—we have disclosed whatever data that we have on the issues, and I don't think there was a particular study that was done that was saying that—across the industry, that was answering the question that you're asking.

Senator NELSON. So, the answer to the question, "Does the Data Quality Act require that kind of information?" is what?

Mr. MARTIN. I don't think the Data Quality Act required us to collect that kind of information.

Senator NELSON. So, the answer—your answer here to the Committee is "no."

Mr. MARTIN. I think that it requires us to provide that data for peer-review process—whatever data was relied upon, for peer-review process, which I think is what we've done.

Senator NELSON. All right, I'll take that as a "maybe."

Let me ask you about information that has not been provided, that has been withheld. Is it correct that, as of today, 1,400 pages of responsive documents have been withheld? Is that true?

Mr. MARTIN. There was a FOIA that was provided to the Commission more than a year and a half ago about all the underlying documents and data related even to the previous media ownership and localism reviews. The Commission responded to it in a FOIA context, we took the documents and provided them in our normal legal course. There's 800 pages of that 1,400—840 pages—that are copyrighted data that we are not legally allowed to provide to others; another 300 of those pages are the Commission staff's running of numbers of that copyrighted data—again, we're not legally allowed to provide. The remaining few hundred pages are e-mails and copies of e-mails and copies of memoranda that have the inter-

nal deliberative process that we never provide in the context of a FOIA. You're talking about a FOIA that was going on. The person who asked for that in the FOIA process, we've given them—what we're legally required to give them. As for the copyrighted data, we actually went back, and I asked the lawyers, "Was there any way to give them the copyrighted data, even though we're not allowed to?" And the lawyers weren't able to determine a way, under a FOIA, that we would provide data that we are allowed to give to other people under the copyright that we got it from, the source. But—so, that data has not been provided in the FOIA process, no.

Senator NELSON. So, those 1,400 pages will not be provided to the public before December 18, is what you have said, and you've given the reasons for it.

Mr. MARTIN. Those 1,400 pages aren't going to be provided, because, under the FOIA laws, we are not either required or supposed to be providing them when we have data that we've gotten from a source that we're legally not supposed to give to other people, because they sell this data to other people, if we bought data from somebody, and then we just turned around and provided it to the public, that would mean they wouldn't be able to sell that data to others. So, when we buy it from someone, they tell us that it's still copyrighted, we can't just provide it to the public. If we do that, they won't sell it. They're not able to sell it. We would take away their business of selling the data. So, no, we can't provide that underlying data. I know people would like us to give it to them, so they wouldn't have to go buy it, but we can't do that, legally, because we purchased it, and part of the purchase agreement was, we won't just release it to the public. Other people have to go back to that source and buy it, as well.

Senator NELSON. In some of those notes that you said were personal notes, is that—are you claiming, under attorney-client privilege?

Mr. MARTIN. It's not under attorney-client. Under FOIA litigation, anything that's so-called "deliberative process," the internal e-mails back and forth, you're not required to provide to the public as part of a FOIA request. When anybody can write in and say, "I want all your official documents," you don't have to provide e-mails back and forth between staff.

Senator NELSON. Thank you for your time. And I'll conclude with this. There was a GAO report that noted leaks of Commission's information to lobbyists with interests before the Commission. And you indicated that you're going to put out a weekly list of items circulating among the Commissioners for a vote. Does this solve, in your opinion, the underlying problem?

Mr. MARTIN. I think so. The underlying problem was they said that only certain lobbyists knew when there was a decision in front of the Commission for consideration. I've always done my best to make sure that the public interest groups were aware, as well. Many times, I've actually called them, myself. Even in this media ownership proceeding, when I came up with the time-frame for us to be deciding this, back in September, and I alerted my other fellow Commissioners to it, I actually personally called several of the consumer groups to make sure they understood this was what I was thinking. I've always done my best to end up doing that. But

I think it does solve the problem, to make sure everyone is aware of the proceedings that are in front of the Commission.

Senator NELSON. So, you don't think any further reform practices are needed with regard to the GAO report.

Mr. MARTIN. I think this addresses their concern. I think there's always things the Commission can work on to try to find ways to end up making sure that everyone's informed about what we're doing. But I think that this addressed their concern that was included in that GAO study.

Senator NELSON. Does anybody on the Commission feel like that there ought to be reform measures that should be adopted in the wake of this GAO report? Anybody who would like to address that, besides the Chairman?

Commissioner ADELSTEIN. Well, one other recommendation that I think might make sense is that we announce when we, what's called "white-copy" items. In other words, before we consider something at an open meeting, the Commissioners are to be given 3 weeks notice. It would be nice if everybody knew when we were given notice, so that they would have the opportunity, then, to ramp up and have the opportunity to have input during that period. Knowing what's on the circulation list doesn't necessarily indicate to them what is actually going to be on our upcoming open meeting agenda. They might not find that out until what's called the Sunshine Notice is given, which is 1 week out. At that point, they can't contact us, they can't even get to us without us asking them questions. So, ironically, the first time they find out something's coming up on our agenda is the very minute that they can no longer contact us.

So, I think if we were to do that 3 weeks out—and it's something I've discussed with my colleagues—I think that might be even more helpful.

Mr. MARTIN. I think that might end up being a helpful suggestion. Commissioner Adelstein and I have talked about it. I don't think that was the issue that GAO was concerned about. GAO was concerned that they didn't even know there was an issue in front of the Commission. Because we're publishing everything that's in front of us, everyone would know what's in front of us, so if there was an issue that you were following that you wanted to make sure you understood the Commission might be considering, we would alert you to that. Commissioner Adelstein suggested that, and that might be a helpful suggestion, to make sure they know that we might be anticipating "deciding this issue that's on that list on this day" earlier. I think that could be helpful to do. I don't think GAO actually was critical of that aspect of our decisionmaking process, but that might be helpful.

Senator NELSON. Mr. Chairman, with all these questions raised by a Committee of the U.S. Senate, do you intend to continue with this proceeding on December 18?

Mr. MARTIN. As I said, I plan, at this point, to continue on with the proceeding, but I certainly am going to talk to all my colleagues about it, and I think it's important for us to engage both on the process and on the substance to try to determine what's the appropriate way to proceed, see where there's consensus on the Commis-

sion. But, yes, at this point, I think it's important for us to still proceed.

Senator NELSON. In your mind, do you think that, of the concern that has been expressed by this Committee, that it has any veracity, in your opinion?

Mr. MARTIN. Oh, I have no doubt that the Committee is being truthful and it's raising its concerns. I think, though, this process has been, actually, more open and more transparent and more inclusive than any other of the decisionmaking processes that the Commission engages in. And I think that we have, actually, done our very best to make sure that the public has an opportunity, not only to know what we're thinking about doing, but, in a very specific way, actually knowing the exact proposal.

I also think that the Commission has an obligation to, not only look at the concerns that have been raised at the public hearings about being opposed to media consolidation and concentration, in general. Many of the complaints are about things that have already occurred and that Congress itself put in place as limits. Many of the concerns that were raised, for example, at the public hearings about radio concentration are a result of the radio caps that Congress put into the law in 1996. That was one of the overwhelming concerns that we heard over and over again.

I've proposed no further changes to any of those rules, but I think that it is incumbent upon us to recognize that there may be rules we have that the courts have actually said are no longer justified—they've supported the Commission's decision on that—and that are not responding to, or are actually creating some additional problems in the industries. And I think that we need to end up responding to that.

Senator NELSON. Do you think a cloud has been placed over the appropriateness of your actions if you force this to a decision on December 18?

Mr. MARTIN. I think that during my time at the Commission, every time the Commission has ever considered anything related to media ownership, there's been a cloud over the Commission. I don't think that's the first time.

I think it's the most contentious issue we end up dealing with, and I've done my best to do so in a open and transparent fashion. But I think it is important on us, at some point, to proceed.

Senator NELSON. Mr. Chairman——

The CHAIRMAN. Yes.

Senator NELSON.—thank you for the opportunity, as one Member of this Committee, to get some answers.

Thank you.

The CHAIRMAN. Thank you.

Senator McCaskill?

STATEMENT OF HON. CLAIRE MCCASKILL,
U.S. SENATOR FROM MISSOURI

Senator MCCASKILL. Thank you, Mr. Chairman.

You all are so popular, I never dreamt that I could go preside at noon, for an hour and a half almost, and still get back, and you would still be here. I don't know whether to congratulate you or console you.

[Laughter.]

Senator MCCASKILL. You know, and I've got to say, just as a comment, Chairman Martin, to say that this process is more open and transparent than other actions taken by the FCC, I've got to tell you, I think that's a pretty low bar. I think openness is a real problem. I think, you know, there is a sense I have that this whole area—it's almost like smoke signals. And if you know the right code with the smoke signals, if you're the right lobbyist or the right person in the right industry, you have much more of a finger on the pulse of what's going on over there than, maybe, sometimes even your fellow commissioners. And I think that's a huge problem for a public agency that's dealing with something as important as public communications and the access of the public to all kinds of media outlets. It appears to me this is a runaway train.

I want to talk about DTV a little bit. I am really worried that your penchant and obsession with this media ownership thing has moved DTV off the burner, to the detriment of the public. And let me go over a few realities.

I know you're cranky about the GAO report, but I've got to tell you, I've read the report, I've looked at your response, and I get what they're saying.

First, there's no final public education rule. OK? I think you will agree with that, correct?

Mr. MARTIN. I'm sorry, there's no final what?

Senator MCCASKILL. Public education rule on DTV.

Mr. MARTIN. There's no final public education rule. There is an item in front of the Commissioners to vote, that I voted, that would have the requirements of PSA requirements, as I think others, and you, I believe, in a letter to us have written us, encouraging us to do. But, no, it has not been adopted by the Commission.

Senator MCCASKILL. We are 17 days from the beginning of this program. Seventeen days from the beginning of this program, and there is no final public education rule, but yet, we can make sure that we do this media ownership at the next meeting.

Mr. MARTIN. If you're talking about the public education of the converter-box program, that actually is something that the NTIA has not only the responsibility for, but the funds for. If you're talking about public education of the conversion that will occur in 2009, that's the public education campaign I was talking about. The converter-box program is not something we either control or have any funds for.

Senator MCCASKILL. But you—but these are not two unrelated items. Public education requires that the public understand both programs. Why in the world would the coupon program even resonate with them if we aren't even to the point that we're ready to educate the public about why in the world a coupon would even be necessary? I mean, I think, to say that the responsibility for public education is just NTIA, which, by the way, the guy that runs NTIA said, "I'm done, I'm gone," right before the whole thing happens. He's outta here. Talk about feeling like you have a deck chair on the Titanic, you know, I don't think that you have a sense of urgency——

Mr. MARTIN. But this——

Senator MCCASKILL.—about the public——

Mr. MARTIN. I think——

Senator MCCASKILL.—communication about this.

Mr. MARTIN. I think that's not true, that we don't have a sense of urgency, but I do think that we also have to respect that, actually, the Commission had come to Congress and had asked for, in our budget, money to do a public education campaign, and twice we received zero in our budget to do a public education campaign. Instead, through the process that was done in the budget that set the 2009 deadline, the money for public education was explicitly given to the Department of Commerce and not to the Commission. It was considered by the Committees, and it was decided to go to the Department of Commerce.

Senator MCCASKILL. Well, I still——

Mr. MARTIN. We have no funds for it. What we can do is try to require the industry to end up implementing it.

Senator MCCASKILL. The public education rule for a program that is just over a year away from full implementation, the idea that it's not even on the agenda at next week's meeting, I think, is troubling.

Second, you haven't finalized the rules and requirements for channel allotment for broadcasters. Is that correct?

Mr. MARTIN. No, we finalized the DTV Table of Allotments in August. Some broadcasters may have filed individual petitions for reconsideration, which we'll deal with after we get an opportunity for notice and comment. But we finalized that DTV Table of Allotments in August.

Senator MCCASKILL. Well, we have 11 commercial stations in Missouri that need approval before they can build out their DTV facilities. Eleven stations in my state. And we are a year and a few months away from liftoff.

I also want to point out that the construction permits—you haven't even finalized the rules for construction permits yet. Is that correct?

Mr. MARTIN. No. I think that we—I thought that we had, in the final, most of those rules. We've got an annual periodic review, we're doing our third periodic review in anticipation of the DTV transition, that, again, the Commission had indicated to Congress that we would finalize by the end of this year, we would circulate it around by the end of this year and finalize it, which I, again, have circulated to the Commissioners for consideration.

Senator MCCASKILL. You began circulating the third periodic review last week, December 4. You released the NPRM in May, 7 months ago, and it's not even on the agenda next week. Now, this is urgent. This whole thing about making sure newspapers are profitable, I'm not sure that should be on the front burner when you've got this kind of massive program that's going to impact literally hundreds of thousands of my constituents, and it doesn't appear it's getting the prioritization that it deserves, based on how important it is.

Mr. MARTIN. I would respond that I think that the Commission moving from a Notice of Proposed Rulemaking to a final order in 7 months is actually indicating that that's something that's a high priority. When we put out a Notice of Proposed Rulemaking, it takes about 30 days for it to be published in the *Federal Register.*

Then people usually have to comment on it, 30 or 60 days, along with, then, replies, and then us doing an order off of that, is actually moving it very swiftly. I think that's actually an indication of how important that is, when we put that out in May and we're moving to final order already.

And I actually think that we have also significantly begun some of the consumer education efforts. We've had our staff in all of the field offices go around to—for example, into the senior centers and into places all around the individual states where they're located. They've visited thousands of sites and provided information. They've made hundreds of presentations in those communities. I think, without any funds, we are actually doing a very good job of trying to educate consumers, at this point.

Senator MCCASKILL. Well, you know, I hope you're right, but I am worried that we don't have the prioritization of the items, what actions must be completed before January 1, 2008, or before February 1, 2009. I don't think you've done enough on risk mitigation. I thought the GAO report was fair and comprehensive, and I think that you've listed a lot of things that you had done, but there is no strategic plan there, there's no hardline goals, there's no performance measures that you have put. There is not a comprehensive plan that you have come forth with, with those kinds of things that would give us the assurances that we need on DTV. There is not a plan. And, again, the things that are supposed to be done are late.

You know, and let me talk a little bit about transparency. I know Senator Nelson just referred to it. Why—when you just publish the list you're talking about, I mean, it's my understanding—and I've glanced at one of these—it's a very long list, and it includes stuff that's old, that's not really going to be considered. Why—you know, why not do what Commissioner Adelstein said, why don't you actually say, "OK, we're going to vote on these things, this is going to be on the agenda," and give them as much notice as possible, everyone. And, finally, my question is—and I would like every Commissioner to answer this—why aren't the votes public? I don't get that?

Mr. MARTIN. Well, first, I'm happy to make public what the Commissioners have voted on and which ones they haven't. Indeed, I think that's a good idea. I don't have any problem with that. I think you should ask the other Commissioners, to make sure that they're OK with that, as well, but I'm perfectly happy to make sure everyone knows what items have been voted, or not.

You're right, many of the items are very, very old. They're very, very old, because it's very difficult to get the Commissioners to vote on items that are on circulation. I think that that's an increasing challenge for the Commission, but I think it's important for us to continue to try moving forward on the issues. And I think that it's critical for us to try to make sure that we are moving forward on all of them, so I think it's helpful for everyone to know just how many are on circulation. And I don't have any problem with everyone knowing who has voted what. I think that's helpful.

Senator MCCASKILL. Is it—Commissioner Copps, are you OK with votes being public in the Commission meetings, as to what was voted on and how everyone voted on each item?

Commissioner COPPS. Certainly, I have no problem with that. I think we ought to be striving for openness, transparency, and clarity, and that would assist that.

Senator MCCASKILL. Commissioner Adelstein, do you have any problem with votes being public and everyone knowing what was voted on and how everyone voted?

Commissioner ADELSTEIN. I think it's a good idea to let people know as much as possible.

Can I add something on the third periodic review? I think that you're exactly right on priorities. I'm extremely concerned that we have asked broadcasters to take on an enormous responsibility, and we haven't given them the instructions as to how they're to do it. This could have been done a long time ago. This should have been done faster. We spent a lot of time over the fall worried about a lot of different issues, and this wasn't one of them. I talked to the bureau months ago about getting this done. I testified before this Committee in October, and I said that this wasn't done. Now only 41 percent of full-power TV stations are positioned to broadcast in digital, and the remaining stations are at varying levels of preparedness. They've got issues with tower construction, antenna and equipment replacement, channel relocation and coordination with Canada and Mexico. We talked about this with Senator Hutchison, as you might recall, at the last hearing. There are a lot of big issues. And instead of dealing with those, we've been obsessively trying to let newspapers buy broadcast stations. I cannot understand the priorities. Your constituents will suffer if we don't get this done, because, in most of Missouri, they're not going to be able to do construction in the wintertime, and this winter's out. So, they should have already been given this guidance long ago.

I think that it should be what we're voting on December 18, rather than this. We actually should have voted on it even earlier. I've been calling for it, for some time.

Now, the current proposal before us is problematical. I'll tell you, that, after waiting this long, leaving broadcasters in a very difficult position, what we have before us is very regulatory and not very flexible, in terms of giving broadcasters the flexibility they need. Now that we've got them up against the wall and we're asking them, nationwide, to do this all at once, I think we need to afford them a little bit more flexibility. And I hope we can all work together to make this item a little bit more responsive to some of the concerns that broadcasters have raised, and we need to move on it immediately. This is an urgent priority, much more a priority than allowing big media to get bigger.

Senator MCCASKILL. Commissioner Tate, are you willing to have all the votes done publicly, with how everyone voted being made part of the public record?

Commissioner TATE. Well, I want the public to know it already is, and then our statements are also all put online, so the public knows how we vote on every issue.

Senator MCCASKILL. Well, but should the votes be public?

Commissioner TATE. Well, at our meeting, they are public, and then we also vote on a myriad of other things that are on circulation.

Senator MCCASKILL. So, you have no problem with every vote that's being done, everything being given to the public on how you vote, yes.

And you, Commissioner?

Commissioner MCDOWELL. No problem.

Senator MCCASKILL. OK, great.

Well, I think that the openness and the transparency would, maybe, deal with some of the frustration that you've heard from this hearing today. And I will tell you, you are a remarkable public leader, if, in light of public opposition and the bipartisan opposition that you have heard today, from what you are about to do on December 18, if you move ahead and do it, you're a braver man than I am.

[Laughter.]

Senator MCCASKILL. Thank you all very much.

The CHAIRMAN. Thank you very much.

This has been a long session, but it was historic, in the sense that the attendance rate was much better than any other hearing, I believe, in the history of this Committee. It says much about your Commission.

And I want to thank you for your patience and for your responses to our questions.

However, as you've noted, some of the Members were not able to stay for the full hearing and had to leave, and they have asked that their questions be submitted. And, if I may, I will be submitting those questions and would want a response, if at all possible, by the middle of January, just for the record.

Once again, thank you very much.

Hearing is adjourned.

[Whereupon, at 1:35 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. JIM DEMINT, U.S. SENATOR FROM SOUTH CAROLINA

Mr. Chairman, thank you for holding this hearing. I appreciate all the Commissioners being here this morning.

Mr. Chairman, I ask that my full statement be included for the record. Thank you.

The signals being sent lately by the FCC are mixed. Deregulation, albeit very timid, is being pursued on the media consolidation front, while every possible angle to increase regulations on the video market seems to be pursued. I urge the Commission to let the free market grow and allow consumers to enjoy new benefits and innovations in 2008.

Media Ownership

Our media environment is more complex than anyone could have dreamed 30 years ago. Then, the average citizen perhaps had a one newspaper, 3 TV broadcasters, and a handful of radio stations in their local community.

It was a time before:

- widespread cable or satellite TV (both are now available to practically every household, offering hundreds of channels)
- satellite radio (also now available to all)
- the Internet (offering limitless information from limitless sources)

To suggest that American citizens in 2007 have limited, or even decreasing, access to voices is laughable.

The Commission is right to amend the dated cross-ownership ban. By listening to some of my colleagues, you may think that the changes being proposed are earth-shattering. Of course, they are not.

There are currently many examples of cross-owned local newspaper and TV properties already existing in the United States. Over 30 percent of U.S. households live in those communities. I do not believe democracy is suffering because of it.

I would like to point out that the Commission could go further, however. I think we should stop regulating competing media segments differently, based on transmission technologies they use.

For example, the two satellite radio companies in America are close to getting their merger approved. They use different transmission technology than local radio stations, but they compete with each other. I would like to know why regulators allow one segment to essentially have ownership deregulation, but another to face limits that have the effect of hurting consumer choice and market competitiveness.

Regulation in the Video Market

It is unnecessary and harmful for the government, through the FCC, to get involved in private business negotiations. The competitive market rewards those offering the best product and punishes those that do not. These incentives provide the impetus for agreements to be reached between programmers and distributors in nearly all cases.

It is also unnecessary and harmful for regulators to mandate the way companies in a competitive industry offer their product to consumers, whether at the retail or wholesale level. I believe "a la carte" is a great idea and I would like to have someone offer it at my home in South Carolina. But, the government mandating it is a bad idea that needs to be buried.

Again, thank you, Mr. Chairman, for holding this hearing today. I look forward to the testimonies and discussion this morning.

PREPARED STATEMENT OF HON. OLYMPIA J. SNOWE, U.S. SENATOR FROM MAINE

Thank you, Mr. Chairman, for holding this oversight hearing for the Federal Communications Commission. I also want to thank all five FCC Commissioners for taking time to appear before this committee this morning. The hearing today provides a timely opportunity for the Commission to address recent actions that have concerned many members on this committee as well as the general public.

One of the more pressing matters is the FCC's attempt to ease restrictions on certain long-standing media ownership rules. This committee last month held a hearing on this very issue, where many members of this committee voiced concern about any relaxing of current media ownership rules, particularly because of the negative impact on localism, diversity, and competition in broadcasting.

However, less than a week after that hearing, a proposal to lift the newspaper-broadcast cross-ownership ban in the top 20 media markets was announced. Worse yet, the FCC allocated only 28 days for the public to comment on this new proposal. No matter what side of the issue you are on, to provide such an abbreviated timeframe for the public to weigh in on the *specific* proposal Chairman Martin has offered is very disconcerting, especially considering FCC precedent.

For example, last month, the FCC provided *sixty days* for public comment and reply for a Notice of Proposed Rulemaking for amending pole attachments rules. On December 4, the Commission gave forty 5 days for public comment and reply on a rulemaking proposal to indefinitely extend the very popular Do-Not-Call list registration period. And, in November 2006, the FCC granted ninety days for public comment and reply on the effects of communications towers on migratory birds.

It defies logic that the FCC would place this on an accelerated path. Historically, the Commission has provided 60 to 90 day comment periods. By hastily concluding this proceeding, the Commission is inevitably muting the public's voice and in doing so is wilfully negating its principle responsibility to uphold the public interest.

It appears to me that the FCC is having severe difficulty understanding the *communications* from the Congress as well as the American people and even the Courts. I know that at a localism hearing in Portland, Maine this past summer, my constituents communicated significant concerns about any further weakening of the media ownership rules. Aside from shareholders and employees of broadcasting companies, I can think of no sector of society that could possibly be clamoring for further monopolization of America's media markets. When the FCC erroneously considered this issue back in 2003, the Commission received more than 2 million public comments on the issue—the vast majority of which opposed further media consolidation.

While the Third Circuit Court of Appeals, in its *Prometheus* decision, concluded that "reasoned analysis supports the Commission's *determination* that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest," it also stated, in its decision, that it could not uphold the Cross-Media Limits themselves because the Commission did *not provide a reasoned analysis* to support the limits that it chose.

Furthermore, the Court stated that its remand of the FCC's "cross-media limits also gives the Commission an opportunity to cure its questionable notice." Most observers would agree that 28 day's notice for public comment for significant rule changes and 5 day's notice for localism and media ownership hearings in Washington, D.C. and Seattle, WA is unreasonably deficient. Therefore, many of us were compelled to convey our concern through the Media Ownership Act of 2007, which was reported favorably out of this committee last week. This bill requires a 90 day public comment and reply period on the Commission's proposed final rule and a separate proceeding on localism, which must be completed before any changes to media ownership rules. I hope it and this hearing result in the FCC reconsidering this rulemaking.

Another crucial issue is the status of the DTV Transition. While a lot of progress has been made recently, there are still several critical issues that persist. There is a lack of clear leadership or central government authority managing the transition efforts—instead it's more of a partnership between the FCC and Department of Commerce, which could lead to consumer confusion about whom to contact regarding particular issues and problems. We have yet to discern how the government will work with industry and other organizations to provide greater assistance to the more vulnerable groups such as seniors, people with disabilities, minorities, and low-income families that will require that help. Also, over the summer, the FCC found that label compliance of retailers was not impressive. With the holiday season currently underway, hopefully that has improved dramatically.

I appreciate the benefit of your testimony today and I look forward to hearing from the panel on these topics as well as other timely issues. Thank you, Mr. Chairman.

CONSUMERS UNION, CONSUMER FEDERATION OF AMERICA, FREE PRESS
December 12, 2007

Hon. DANIEL INOUYE,
Chairman,

Hon. TED STEVENS,
Vice Chairman,
Senate Committee on Commerce, Science, and Transportation
Washington, DC.

Dear Chairman Inouye and Vice Chairman Stevens:

We offer this letter for the official record of the hearing on "Federal Communications Commission Oversight" to be conducted by the Committee tomorrow. This is the outline of a response to Chairman Kevin Martin's latest proposal to relax media ownership rules by three of the largest groups representing consumers on media policy issues.

Despite Chairman Martin's apparent effort to propose a compromise modification of the newspaper/broadcast cross-ownership ban, fundamental flaws in the Commission's data gathering, administrative procedures and ambiguities in the plan make it impossible for us to see how this proposal could serve the public interest goals of promoting diversity, competition and meaningful local and minority programming opportunities. Unless Chairman Martin remedies procedural flaws, eliminates dangerous and vague exceptions, and thoroughly expands meaningful minority ownership and local programming needs, his plan will not serve the public interest or meet minimum legal fairness requirements for FCC rules.

On November 13, 2007, Chairman Kevin Martin offered the public a proposal to relax the newspaper/broadcast cross-ownership rule. He did so outside the normal channels of agency procedure, publicizing the proposal instead through a press release and an Op-Ed in *The New York Times.*[1] The proposal and the time table for public comment were not conducted using standard Commission process, nor were they published in the *Federal Register* or put out on Public Notice. The Chairman declared that he would permit 30 days for public comment, due December 11th. Immediately thereafter, the "sunshine rules" would apply in advance of a December 18th vote and the public would have no further opportunity to comment or to reply to the comments of other stakeholders.

We believe this process is fundamentally inadequate and runs at cross-purposes with the public interest as a simple matter of proper review and consideration. The process used to put the proposal out can in no way replace a proper opportunity to comment on an actual proposed rule. Indeed, the act of the Chairman putting out a proposed rule in an Op-Ed rather than in a Notice of Proposed Rulemaking smacks of abuse of administrative process, which has typified this proceeding for the past 5 years. The process fouls committed by this agency on everything from data collection to research agendas to peer review are legion. It is our view that a December 18th vote on media ownership rules—as proposed by the Chairman—is not in the public interest.

Beyond our procedural concerns, the Chairman's proposal to allow case-by-case review of newspaper/TV mergers in all media markets suffers from a number of critical infirmities. The benefits he claims for it in his Op-Ed are not demonstrated in the record. The assertions that cross-owned combinations produce more news and that they benefit the financial viability of the newspaper business are simply not borne out by the facts and in no way justify reducing the diversity of viewpoint in our community. Our analysis shows that long-term cross-ownership situations do not increase the amount of news in the market as a whole, or even by the individual station, and the stations tend to slant the news they produce. We note that both broadcast stations and newspapers (to the extent the Commission even has jurisdiction over these entities) continue to be very profitable businesses that do not deserve a bail out at the expense of the public interest. Further, there has never been any explanation for how the checks and balances provided by independent voices in

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[1] Kevin J. Martin, "The Daily Show," *New York Times,* Nov. 13, 2007, Available at *http://www.nytimes.com/2007/11/13/opinion/13martin.html;* Federal Communications Commission, "Chairman Kevin J. Martin Proposes Revision to the Newspaper/Broadcast Cross-Ownership Rule," News Release, Nov. 13, 2007, Available at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278113A1.pdf.*

different local media will be replaced in consolidated markets. The idea that the Internet is a suitable substitute for local news and original reporting doesn't pass even the lowest evidentiary bar. These are the central issues in setting the limits on cross-ownership. Chairman Martin's proposal does not meet any of these public interest tests.

It is notable that the new proposal appears to permit media concentration only in the largest markets. However, this facial difference from the proposal of the previous FCC (which would have swept away ownership limits in all but the smallest markets) does not appear to hold up under scrutiny. Those mergers that are not permitted presumptively would be subject to a four part test. The criteria it proposes to use to ensure that mergers do not harm the public interest are vague and unspecified, and therefore unlikely to afford protection from harm. Of greatest concern, perhaps, is the fact that this new four part test could possibly be met almost entirely with unilateral assertions from merging companies ("Yes, we will do more news after consolidation." "Yes, we are having financial difficulties."). Effectively, this new waiver standard could permit waivers in most markets in the country.

Finally, we look in vain for any mention of minority ownership in this proposed rule, despite the fact that both the Congress and the courts have repeatedly asked the Commission to address the issue. The agency's record on the issue of minority broadcast ownership can best be described as one of willful neglect. People of color own just 3 percent, and women just 5 percent of all TV stations, even though those groups make up 35 percent and 51 percent of the U.S. population, respectively. Sadly, those striking numbers had to be compiled by Free Press because the Commission has never conducted an accurate census of minority owners. The FCC has clear statutory and moral obligations to address the woefully inadequate levels of minority and women-owned broadcast outlets before it moves forward with any further changes in its media ownership rules.

For this proposal to be worthy of consideration by the public and the Congress, the FCC should first correct its process problems and complete the record with regard to localism and minority ownership. From there, if the Chairman is determined to press forward quickly, it is imperative that strong limits on media mergers are preserved with very narrow exceptions based on important public policy goals that would prevent the most dangerous consolidation that could harm our democracy. Among those provisions that would be a starting place for consideration, the Commission should maintain the top four-firm exclusion concept as a hard line and impose a high standard with regard to other mergers, eliminating the loose waiver process. To the extent that a newspaper/TV combination will add news production to a TV station that has not produced local news during the period of its license (as opposed to merely adding news to an outlet that already does news), it should raise the merits for its consideration. The Commission should study the impact of top market mergers on minority owners and the quantity/quality of local news to determine the economic impact at the market level.

To prevent excessive concentration, the FCC should adopt a ten voice test—which is consistent with the DOJ/FTC *Merger Guidelines* for the threshold where a market is defined as unconcentrated (more than 10 voices). The voice count should be based on a measure of market concentration that reflects all types of media outlets, their audiences and their relative contribution to the overall media marketplace. Only by adopting such an approach to counting of voices will the FCC ensure that its market analysis reflects the reality of media markets and achieves the public policy goal of promoting "the widest possible dissemination of information from diverse and antagonistic sources." Within this conceptual frame, the Commission should adhere strictly to the thresholds of impermissible concentration in the *Merger Guidelines.*

The current Martin plan will not serve the public interest or meet minimum legal fairness requirements for FCC rules. We therefore call on Congress to make sure that the FCC addresses all of these concerns before promulgating new media ownership rules.

Sincerely,

GENE KIMMELMAN,
Vice President for Federal and International Policy,
Consumers Union.

MARK COOPER,
Research Director,
Consumer Federation of America.

BEN SCOTT,
Policy Director,
Free Press.

cc: Senate Commerce, Science, and Transportation Committee Members

December 11, 2007

Hon. DANIEL K. INOUYE,
Chairman,
Hon. TED STEVENS,
Vice Chairman,
Committee on Commerce, Science, and Transportation,
Washington, DC.

Dear Chairman Inouye and Vice Chairman Stevens:

We write to express our concerns with the FCC's proposal to impose a "temporary" or "interim" cap on high-cost Universal Service funding for wireless carriers and other competitive entrants and with the Joint Board's recent recommendation that the FCC go further and impose a *permanent* cap on all Universal Service support, with dramatic reductions in support for wireless in rural areas. Some of the signatories to this letter have recently appeared before your committee, and all of the undersigned feel it important to let you know that both proposals are contrary to the clear direction Congress, and your committee in particular, provided to the FCC with the enactment of the Telecommunications Act of 1996.

At the outset, any FCC proposal that purports to be "temporary" or "interim" is suspect. The FCC suggests that the interim cap would only last until long-term reforms are adopted, yet it has neither a deadline nor an incentive to complete long-term Universal Service reform. This is no small matter, given that key portions of the FCC's promise to reform high-cost support contained in numerous orders between 1997 and 2001 remain just that—promises. Since 2001, the FCC has not adopted a single order reforming Universal Service distributions for areas served by rural telephone companies. Worse yet, we have yet to see any recent proposal that comports with the 1996 Act's principle of competitive neutrality and key Universal Service principles that were codified as Section 254 of the Communications Act (47 U.S.C. § 254).

Both of you have previously expressed strong support for competitive neutrality. H.R. 5252, approved last year by the full Committee, and S. 101, introduced earlier this year by Senator Stevens, both require that "Universal Service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another." Proposals to freeze Universal Service support only for a select group of providers, but not for others, would violate this bedrock principle.

A cap on support for wireless competitive eligible telecommunications carriers in high cost, rural, and insular areas would violate the clear principle that Congress set forth in Section 254 that rural consumers are entitled to communications services and prices that are comparable to those available in urban areas. A CETC-only cap will impede the deployment of wireless services needed for personal and public safety, limit consumers' choices, harm constituents who seek to obtain and maintain jobs but lack wireline service, and hinder rural America's ability to compete in the global economy.

We applaud Senator Stevens' statement at the Committee hearing on June 12, 2007, that imposing a funding cap on "new carriers [who] come in with new technology . . . [is like] someone's putting their head in the ground. This is an ostrich approach as far as I'm concerned." In the twenty-first century, consumers increasingly are selecting wireless as their voice service of choice. Yet rural areas are typically 3 years behind more urban areas in wireless deployment. A cap on funding only to competitive carriers would result in the delay or cancellation of wireless network construction in high-cost areas that would otherwise be underway. As you know, wireline carriers have now drawn $25 billion from the Federal Fund since 1999, while wireless carriers have drawn less than $3 billion. Adoption of a CETC-only cap would further this inequity, unfairly skew the marketplace, and improperly favor one technology over another. That is why at least eleven other members of the Committee have also written to urge the FCC not to adopt a wireless-only funding cap.

Perhaps most important, a CETC-only cap would slow momentum toward appropriate reform of the Universal Service system that is needed to more effectively promote both broadband and mobile services across the country. We strongly agree with the concerns Senator Inouye expressed at the same June 12 Committee hearing that "we cannot let short-term proposals free us from the need to address long term reform."

Unfortunately, recently released proposals for long term reform have similar problems. On November 20, the Federal-State Joint Board on Universal Service released its Recommended Decision, proposing long term reform of the Universal Service distribution methodology. Although the Joint Board's recognition of the value of sup-

porting broadband and mobility is laudable, if adopted, the recommendations would eviscerate competitive neutrality and create an incredibly complex system for distributing support that will ultimately lock many areas into government subsidized monopoly telephone service—precisely the problem that the 1996 Act was attempting to cure.

The Board's proposals are particularly harmful to wireless consumers, who contribute almost $3 billion to the Fund each year, but in many areas have yet to see a benefit. The proposals would deprive wireless consumers of the funding needed to improve, expand, and operate wireless networks in most rural areas, and would deny consumers access to quality services in rural areas comparable to those available in urban areas. The Joint Board's recommendations would unfairly eliminate support for the operating costs of wireless service, while preserving or expanding the dollars funneled to the traditional landline voice services that rural consumers use less and less every year. They would limit support for broadband service to a patently inadequate $300 million per year. And they would impose a *permanent* cap on the entire Universal Service Fund, without ever addressing whether that concept is consistent with the Congressional directive in Section 254 that support be "*sufficient*" to ensure that consumers can receive the supported services.

The Board's idea that regulators are going to select a single provider in each area to receive support for wireline, broadband, and mobility, respectively, turns the 1996 Act on its head. Further, their proposal to delegate to State commissions the ability to select a favored recipient of funding for each service in each area, with few if any uniform Federal standards is fraught with opportunities for jurisdictional and regulatory conflict and creates serious risks that deployment of voice, wireless, and broadband services will not be ubiquitous. A properly functioning and modern *national* Universal Service system must enable rural consumers to select the service and service provider that best suit their needs. Universal Service mechanisms are supposed to work *with* competition, not impede it by favoring one technology or provider over another.

In sum, we view the Joint Board's recommendations as evidence of a well-intentioned process that regrettably ill serves your constituents and our customers. The Board provided but 18 pages of sparsely outlined recommendations that will require years of rulemaking and litigation to reach a conclusion. Now that the Joint Board has concluded its work, the process requires responsible stewardship if there is to ever be meaningful reform that benefits consumers. We respectfully call upon you to take a leading role in providing new guidance to the FCC on long term reform and ensuring that the FCC upholds the law that Congress wrote.

We appreciate your continuing support and we pledge to continue working with you, the Joint Board and the FCC to achieve these worthy goals.

Sincerely,

JOHN ALTAMURA,
President,
Airadigm Communications, Inc.

RICHARD N. MASSEY,
Chief Strategic Officer and General Counsel,
Alltel Communications, Inc.

RON SMITH,
President,
Bluegrass Cellular, Inc.

VICTOR (HU) MEENA,
President,
Cellular South Licenses, Inc.

MICHAEL J. SMALL,
President and Chief Executive Officer,
Centennial Communications Corporation.

JONATHAN D. FOXMAN,
President and Chief Executive Officer,
Chinook Wireless.

BRYAN CORR,
President,
Corr Wireless Communications.

DAN RULE,
General Manager,
Golden State Cellular.

LAURA PHIPPS,
Executive Vice President/General Manager,
Leaco Wireless.

LARRY LUECK,
Manager, Government Relations,
New-Cell, Inc., d/b/a Cellcom.

FRANK DIRICO,
President,
N.E. Colorado Cellular d/b/a Viaero Wireless.

JERRY WHISENHUNT,
General Manager,
Pine Cellular Phones, Inc.

RICHARD WATKINS,
Vice President,
Smith Bagley, Inc.

ROBERT G. DAWSON,
Chief Executive Officer,
SouthernLINC Wireless.

JOHN E. ROONEY,
President and Chief Executive Officer,
United States Cellular Corporation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO HON. KEVIN J. MARTIN

Question 1. Last year, a provision to reform the FCC's forbearance authority was included in the Committee's telecom reform bill. Specifically, it would have eliminated the "deemed granted" language in Section 10 in order to ensure a fairer process at the FCC. I recently introduced legislation that will eliminate this provision, so we can avoid a situation where the agency erases its rules simply by failing to vote. Do you believe that it's fair for the FCC to make far-reaching changes without even issuing a decision?

Answer. As you know, section 10 establishes a process by which a forbearance petition "shall be deemed granted if the Commission does not deny the petition" within a maximum of 15 months. The Commission must follow the Communications Act of 1934, as amended, including the forbearance provisions codified in section 10 of the Act. I agree that it is preferable for the Commission to issue a decision. To enable the Commission to do so, it is policy to circulate to all of the Commissioners draft Orders addressing forbearance petitions at least 21 days prior to the statutory deadline, and to remind them of the statutory deadline at that time. In addition, Commissioners are regularly provided with lists of upcoming statutory deadlines for forbearance petitions.

The Commission has routinely adopted Orders granting or denying forbearance petitions within the statutory deadline. Since I have been Chairman, every forbearance petition that has been granted has been preceded by an up-or-down vote. Only one forbearance petition has been deemed granted by operation of law. That petition, *Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services,* WC Docket No. 04–440 (*Verizon Forbearance Petition*), was "deemed granted" after the Commission, by a recorded 2–2 vote, failed to adopt a draft Order that would have granted the petition in part and denied it in part.

The circumstances surrounding the *Verizon Forbearance Petition* were unique, given that only four Commissioners were available to vote. Further, there has never been a grant or denial of a forbearance petition during my tenure as Chairman in the absence of an up-or-down vote. On December 7, the D.C. Circuit upheld the Verizon forbearance relief, specifically finding that "[t]here is no indication that the Commission or individual Commissioners have abused this provision or have acted in bad faith."

The Commission takes very seriously its obligation to faithfully implement the Communications Act of 1934, as amended, including the forbearance provisions codified in section 10 of the Act. I will continue to ensure that forbearance proceedings will be conducted in a fair and open manner and that decisions are made on the basis of a sound record.

Question 2. Earlier this year, the FCC released a Notice of Proposed Rulemaking examining so-called "two-way, plug-and-play standards" for cable navigation devices. Do you support implementation of Section 629 in a way that will create a retail market for "two-way, plug-and-pay" devices and allow for greater competition and consumer choice? Do you believe that FCC oversight is sufficient to ensure that any standards and specifications are created and changed through a fair process that treats all affected parties equitably?

Answer. I support implementation of Section 629 of the Communications Act in a way that will help create a retail market for two-way plug-and-play devices and allow for greater competition and consumer choice. In fact, that is precisely the mandate Congress provided the Commission when it approved Section 629. When adopting the unidirectional solution that the consumer electronics industry and cable industry agreed upon, the Commission anticipated that the parties would negotiate and agree to a similar agreement on bidirectional compatibility of cable television systems and consumer electronics equipment. The path to a bidirectional agreement has presented business and technical hurdles that were not present in the unidirectional discussions.

The Commission needs to continue to work to ensure that any standards and specifications are created and changed through a fair process that treats all parties equitably.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN F. KERRY TO HON. KEVIN J. MARTIN

Question 1. On September 5, 2007, I sent you a letter concerning TracFone's Eligible Telecommunications Petition to provide wireless Lifeline telephone service to low

income consumers in eight states including Massachusetts. I have not yet received a response to this letter. Please provide me with an update regarding this situation.

Answer. I have presented my colleagues at the Commission a proposed Order that addresses some Universal Service issues. That Order would grant the petitions of TracFone Wireless to be designated as an ETC for Lifeline support in New York, Florida, Connecticut, Virginia, Massachusetts, Alabama, North Carolina, and Tennessee.

Question 2. I've been told that telephone companies and cable companies now have or will soon have the ability to engage in "deep packet inspection" of the content of Internet consumers' communications on a regular basis, and am concerned that there are no privacy protections in place to prevent providers from monitoring, capturing and then internally using or disclosing the content of users' communications. Chairman Martin, would you support action, and even more importantly, do you intend to take action, to establish a rule preventing providers from monitoring and/or using the content of consumers' Internet communications unless and until the user voluntarily agrees to waive the privacy of their communications?

Answer. It is important to safeguard the privacy of consumer's communications. As Chairman, I have taken important steps to strengthen the Commission's safeguards that protect the privacy of consumers' communications. Section 222 of the Communication Act of 1934, as amended, establishes a duty of every telecommunications carrier to protect the confidentiality of its customers' customer proprietary network information, or CPNI. The Commission has adopted comprehensive rules implementing section 222. In March 2007, the Commission extended the application of these privacy rules to providers of interconnected VoIP service. As a result, companies that provide telephone service over the Internet generally are prohibited from using or disclosing CPNI without customer approval. We also strengthened these rules by requiring carriers to obtain explicit consent from a customer, rather than less restrictive opt-out consent, before disclosing a customer's CPNI with their partners for the marketing of communications services.

The Commission is exploring what if any consumer privacy protection rules are necessary in the broadband context.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO HON. KEVIN J. MARTIN

Question 1. On December 18 you held a vote on a major change to the nations' media ownership rules, despite substantial concern here in the Senate. The Commerce Committee passed S. 2332, the Media Ownership Act of 2007, on December 4. We have over 20 bipartisan cosponsors. We asked you to delay this vote to consider important issues of localism and minority ownership and allow a proper period of comment on the rules. Why was it so important to move ahead on December 18 despite this opposition? Why could you not delay this vote beyond December 18?

Answer. While I appreciate your and others' concerns about my decision to hold a vote on the media ownership *Report and Order* at the December 18 meeting, I do not believe that further delaying that decision would have been appropriate.

Over the past year and a half the Commission has had to grapple with the most contentious and divisive issue to come before it: the review of the media ownership rules. The Commission's Media Ownership Order adopted on December 18, 2007, strikes a balance between preserving the values that make up the foundation of our media regulations while ensuring those regulations keep apace with the marketplace of today.

Section 202(h) of the 1996 Telecommunications Act, as amended, requires the Commission to periodically review its broadcast ownership rules to determine "whether any of such rules are necessary in the public interest as a result of competition." It goes on to read, "The Commission shall repeal or modify any regulation it determines to be no longer in the public interest."

In 2003, the Commission conducted a comprehensive review of its media ownership rules, significantly reducing the restrictions on owning television stations, radio stations and newspapers in the same market and nationally. Congress and the court overturned almost all of those changes.

There was one exception. The court specifically upheld the Commission's determination that the absolute ban on newspaper/broadcast cross-ownership was no longer necessary. The court agreed that ". . . reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest."

It has been over 4 years since the Third Circuit stayed the Commission's previous rules and over 3 years since the Third Circuit instructed the Commission to respond to the court with amended rules.

It is against this backdrop that the FCC undertook a lengthy, spirited, and careful reconsideration of our media ownership rules.

In 2003, when we last conducted a review of the media ownership rules, many expressed concern about the process. Specifically, people complained that there were not enough hearings, not enough studies, and not enough opportunity for comments and public input. When we began eighteen months ago, the Commission committed to conducting this proceeding in a manner that was more open and allowed for more public participation.

I believe that is what the Commission has done. First, we provided for a long public comment period of 120 days, which we subsequently extended. We held six hearings across the country: one each in Los Angeles, California; Nashville, Tennessee; Harrisburg, Pennsylvania; Tampa Bay, Florida; Chicago, Illinois; and Seattle, Washington. And, we held two additional hearings specifically focused on localism in Portland, Maine and in Washington, D.C. The goal of these hearings was to more fully and directly involve the American people in the process.

We listened to and recorded thousands of oral comments, and allowed for extensions of time to file written comments on several occasions. We've received over 166,000 written comments in this proceeding.

We conducted ten independent studies. I solicited and incorporated input from all of my colleagues on the Commission about the topics and authors of those studies. We put those studies out for peer review and for public comment and made all the underlying data available to the public.

Although not required, I took the unusual step of publishing the actual text of the one rule I thought we should amend. Because of the intensely controversial nature of the media ownership proceeding and my desire for an open and transparent process, I wanted to ensure that Members of Congress and the public had the opportunity to review the actual rule prior to any Commission action.

After engaging in this extensive process and providing the public with unprecedented opportunities for input, the time had come to respond to the Third Circuit's remand, which is now more than three-and-a-half years old, and complete the review of our media ownership rules which Congress has directed us, by statute, to undertake. Moreover, I felt strongly that we must provide certainty for a media industry that has for several years operated in a climate of uncertainty.

Question 2. You say you provided a lengthy public comment period of 120 days, which you extended to 167 days. You also held six hearings and finished the two localism hearings. But how could the public be expected to adequately comment on your proposed rules if you issued the proposed rules at the end of the process?

Answer. On July 24, 2006, the Commission issued its Further Notice of Proposed Rulemaking in the media ownership proceeding. That Further Notice satisfied the Commission's notice-and-comment obligation under the Administrative Procedures Act, which requires notice of the "terms or substance of the proposed rule *or a description of the subjects and issues involved.*" 5 U.S.C. 553(b)(3) (emphasis added). Although not required, I took the unusual step of sharing with the public the actual text of the one rule I thought we should amend. Because of the intensely controversial nature of the media ownership proceeding and my desire for an open and transparent process, I wanted to ensure that Members of Congress and the public had the opportunity to review the actual rule prior to any Commission action. This was above and beyond any applicable legal requirement.

Indeed, the Commission has no obligation to go through that extra step before we adopt an order. The Commission rarely goes through the extra step that we did here of publishing the actual rule so that people could see it before Commission action.

Finally, issuing proposed rules earlier in the process might not have been effective. The Commission commenced a review of its media ownership rules, held public hearings throughout the country, and completed ten ownership studies in order to gain public input into the impact of media ownership on the three core goals which its ownership rules seek to further—competition, localism and diversity. Only after the Commission compiled a substantial record, took hours and hours of testimony, and completed the ownership studies were we able to determine whether to revise any of the media ownership rules and if so how.

Question 3. You say you held six hearings across the country at a cost of more than $200,000. I worry that the $200,000 was totally wasted as you're now ignoring the input of the public. They testified against consolidation. You didn't hear people coming out and saying they wanted the newspaper to own the television station. You heard massive opposition to consolidation. You'll say that you didn't hear people

constantly sounding off against cross-ownership, but why would you hear that—you never told them what you were concentrating on. How could you vote on a rule to relax the cross-ownership ban having heard the massive opposition to consolidation and then brag about spending money on hearings?

Answer. When we began our review of the media ownership rules more than 18 months ago, we committed to conduct the proceeding in a more transparent and publicly accessible manner. The Commission reviewed the record carefully and listened to the concerns of the public. It is partly because of public input that we have, in every context except the newspaper/broadcast cross-ownership rule, kept the ownership limits exactly the same.

Moreover, we made certain that those directly affected by newspaper/broadcast cross-ownership had their voices heard. Three of the six public hearings on media ownership were held in markets where there is currently newspaper/broadcast cross-ownership.

You are correct to note that most people commented on consolidation in general. And, I believe we responded to the majority of people concerned with consolidation generally, by not changing the local TV rule, the local radio rule, the local TV/radio rule, the national TV cap, or the national cable cap. At the same time, we also took into account the Third Circuit's decision affirming the Commission's prior decision to eliminate the ban on newspaper/broadcast cross-ownership. When we examined all of the evidence, we found that a modest relaxation of the outright ban on newspaper/broadcast cross-ownership in the 20 largest markets in the country in narrow circumstances would not harm competition and could further localism and diversity. Notably, for example, in Seattle only a few people even mentioned newspaper cross-ownership, and one in fact supported relaxation.

Question 4. You spent almost $700,000 on ten independent studies, but you had the results already pinned down. In a letter to me and Senator Lott you say that with the 10 economic studies the FCC commissioned, "the Commission exerted no control over the study designs or the authors' conclusions." And yet the Georgetown Institute for Public Representation submitted a FOIA request and found evidence that the FCC's Chief Economist at the time, Leslie Marx, when planning for the studies started from the results the agency wanted and worked backward. According to a July 2006 research plan, Marx began the research process with "thoughts and ideas" about "how the FCC can approach relaxing newspaper/broadcast cross-ownership restriction." She then identified "some studies that might provide valuable inputs to support a relaxation of newspaper/broadcast ownership limits." The studies outlined in the document were then implemented by the FCC, and at least one researcher identified as being on the "A-list" was chosen to carry them out. Now why wouldn't you start from a position of neutrality? The court didn't *order* you to relax the cross-ownership rule.

Answer. In its Report and Order in the 2002 biennial review of media ownership rules, the Commission concluded that, "a blanket prohibition on the common ownership of broadcast stations and daily newspapers in all communities and in all circumstances can no longer be justified as necessary to achieve and protect diversity. Although we continue to believe that diversity of ownership can advance our goal of diversity of viewpoint, the local rules that we are adopting herein will sufficiently protect diversity of viewpoint while permitting efficiencies that can ultimately improve the quality and quantity of news and informational programming." (Report and Order at para. 355).

The *Prometheus* court affirmed the Commission's decision to eliminate the newspaper/broadcast cross-ownership rule, holding that "reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest." Additionally, the court upheld the Commission's determination that the prohibition was not necessary to protect diversity.

Thus, unless it determined that its previous conclusion was incorrect, the Commission needed to determine how to approach relaxing the cross-ownership prohibition and adopting any new limits.

Question 5. You say you held Chairman Powell's final two hearings on localism, but the Washington, D.C. hearing was hardly an actual hearing. It was an FCC meeting with some public participation and a recounting of the docket comments. You had a number of panelists at that hearing who asked for more to be done on localism. You since issued an order on disclosure requirements—requiring the broadcasters to report what they're actually doing. This is good. The results of these reports will be useful, but shouldn't you have the results of these reports before you move to change the media ownership rules?

Answer. When Chairman Powell announced the localism hearings, he committed that the final hearing would be in Washington, D.C. Moreover, as with every other hearing, we opened the hearing to public comment and every person who wanted to speak was given the opportunity to do so.

I agree that the Commission needed to consider the important issue of localism. Last month, the Commission adopted a *Report on Broadcast Localism and Notice of Proposed Rulemaking*. In this item, after analyzing the record compiled in the localism proceeding, including the more than 83,000 written comments received in response to its Notice of Inquiry and the testimony received at the six field hearings conducted throughout the country, the Commission took a number of actions to enhance localism. Specifically, the item directs the Media Bureau to revise "The Public and Broadcasting," a publication made available by the Commission and licensees, to better educate members of the public about the obligations of licensees, including that involving localism, and describing the Commission's processes in enforcing those requirements and in acting on applications for the renewal of station licenses. In addition, the item also establishes a contact person within the Commission to respond to public inquiries, including those regarding renewal proceedings. Finally, the Commission directs the Media Bureau to create a software program, to be made available to the public, to assist potential applicants in locating available frequencies for new commercial FM stations.

In the item, the Commission also seeks comment on its tentative conclusions that: (1) qualified LPTV stations should be granted Class A status, which requires them to provide 3 hours per week of locally-produced programming; (2) licensees should establish permanent advisory boards (including representatives of underserved community segments) in each station community of license with which to consult periodically on community needs and issues; and (3) the Commission should adopt license renewal application processing guidelines that will encourage all broadcasters to provide news, public affairs, political, and other types of locally-oriented programming.

It also seeks comment on other proposals designed to enhance localism, including those that would: (1) expand the requirement that licensees seeking renewal of their licenses make local announcements to better involve the public in renewal proceedings, by requiring the posting of such announcements on the licensee's website, and providing links to the Commission's website; (2) require that a station's main studio be located within its community of license; (3) require that stations affiliated with networks be provided network programming sufficiently in advance of airing to allow each station to review the material and determine its appropriateness; (4) regulate the practice of voice-tracking and, if so, in what manner; and (5) require licensees to provide data regarding their airing of the music and other performances of local artists and how they compile their station playlists and whether the local nature of a station's music programming should be considered in any renewal application processing guidelines.

The Report also refers to recent Commission actions in other proceedings that will enhance broadcast localism, including those in which the Commission: (1) increased the amount of information regarding locally oriented programming that licensees must place in their public files, and requiring that much of such files be placed on the Internet (*Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations,* MM Docket Nos. 00–168 and 00–44, Report and Order adopted November 27, 2007 (for television); *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Broadcast Service,* Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 10344 (2007) (for radio); (2) adopted and proposed various actions designed to enhance media ownership diversity (*Promoting Diversification of Ownership in the Broadcasting Services,* MB Docket No. 07–294, Report and Order and Third Notice of Proposed Rulemaking adopted December 18, 2007); (3) revised the leased access rules to facilitate the ability of independent programmers' material to be carried on cable systems (*Leased Commercial Access: Development of Competition and Diversity in Video Programming Distribution and Carriage,* MB Docket No. 07–42, Report and Order, adopted November 27, 2007); and (4) modified the rules that govern the LPFM service, to foster the development of stations in that service and their offering of locally oriented programming (*Creation of A Low Power Radio Service,* Third Report and Order and Second Further Notice of Proposed Rulemaking, released December 11, 2007)).

Finally, the Report discusses other ongoing proceedings in which rule changes are being considered that would enhance localism efforts including those: (1) looking to require that radio licensees maintain a physical presence at their stations during all hours of operation (*Amendment of Parts 73 and 74 of the Commission's Rules to Permit Unattended Operation of Broadcast Stations and to Update Broadcast Sta-*

tion Transmitter Control and Monitoring Requirements, Report and Order, 10 FCC Rcd 11479 (1995) for radio; the Report seeks comment on whether such a requirement should be extended to television); (2) examining the rules governing which television stations are offered to subscribers by cable and satellite operators (under consideration); (3) considering the use of FM translator facilities by AM stations (*Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations,* Notice of Proposed Rulemaking, 22 FCC Rcd 15890) (2007); (4) reviewing the rules regarding the Emergency Alert System (*Review of the Emergency Alert System,* Second Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 13275 (2007); (5) considering the adequacy of the Commission's sponsorship identification/payola rules (*Commission reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators,* Public Notice, 20 FCC Rcd 8539 (2005); and (6) studying the appropriate interference status between FM translator and LPFM stations (*Creation of A Low Power Radio Service,* Third Report and Order and Second Further Notice of Proposed Rulemaking, released December 11, 2007).

In addition, as you mention, in November 2007, the Commission adopted a Report and Order which requires television broadcasters to provide more information on the local programming they are broadcasting and facilitate the public's access to that information. The Commission is committed to establishing and maintaining a system of local broadcasting that is responsive to the unique interests and needs of individual communities. That action ensures the public is well informed about how well television stations are serving their local communities and will make broadcasters more accountable to their viewers.

Question 6. The Media Ownership Act of 2007 requires the FCC to seek 90 days of comment on proposed changes to its broadcast ownership rules; complete a separate rulemaking on localism, with a study at the market level and 90 days of comment on localism, prior to rule changes being issued for comment; and convene an independent panel to make recommendations on increasing the ownership of broadcast media by women and minorities. Why did you have a problem with doing any of these tasks?

Answer. Section 202(h) of the 1996 Telecommunications Act, as amended, requires the Commission to periodically review its broadcast ownership rules to determine "whether any of such rules are necessary in the public interest as a result of competition." It goes on to read, "The Commission shall repeal or modify any regulation it determines to be no longer in the public interest."

In 2003, the Commission conducted a comprehensive review of its media ownership rules, significantly reducing the restrictions on owning television stations, radio stations and newspapers in the same market and nationally. Congress and the court overturned almost all of those changes.

There was one exception. The court specifically upheld the Commission's determination that the absolute ban on newspaper/broadcast cross-ownership was no longer necessary. The court agreed that ". . . reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest."

It has been over 4 years since the Third Circuit stayed the Commission's previous rules and over 3 years since the Third Circuit instructed the Commission to respond to the court with amended rules.

I agree that the Commission must act to ensure that broadcasters serve both localism and diversity. At our December 18 meeting, the Commission adopted items designed to enhance broadcast localism and foster greater diversity in ownership. I did not believe, however, that it was appropriate to further delay the Commission's decision on its media ownership rules until the Commission completed a separate rulemaking and study on localism. The Commission is required by statute to review its media ownership rules. Moreover, the Third Circuit's remand was more than three-and-a-half years old when we acted.

Finally, the FCC already has an independent panel that makes recommendations on increasing diversity—the Advisory Committee for Diversity in the Digital Age. And, as I noted above, on December 18, we adopted an item that seeks to implement many of that Committee's recommendations on how to increase minority and female ownership of broadcast outlets.

Question 7. You say, "allowing very limited cross-ownership may help to forestall the erosion in local news coverage by enabling companies to share these local news gathering costs across multiple media platforms." But why is it the job of the FCC to even examine the profits of newspaper companies? You regulate the broadcast companies and yet you're obsessed with the strength of the newspaper industry.

Answer. The 32-year-old rule governing newspaper/broadcast cross-ownership affects both broadcast stations and newspapers. The Commission has been regulating what a newspaper is allowed to own for more than three decades. Given that fact, I believe that it is important that the Commission assess and evaluate how the rule has impacted not just broadcasters but also newspapers. The record in our proceeding shows that daily newspapers play a particularly critical role in local newsgathering, and that without them, Americans would be worse off. We would be less informed about our communities and have fewer outlets for the expression of independent thinking and diverse viewpoints. I believe a vibrant print press is one of the institutional pillars upon which our free society is built. To the extent that the newspaper/broadcast cross-ownership rule has hurt the viability of newspapers and eroded the vital service they provide to their communities, we must take this into account.

Question 8. Why did you put out your proposed rules in a *New York Times* oped and then in an FCC press release? Why not in the *Federal Register*?

Answer. Although not required, I took the unusual step of sharing with the public the actual text of the one rule I thought we should amend. Because of the intensely controversial nature of the media ownership proceeding and my desire for an open and transparent process, I wanted to ensure that Members of Congress and the public had the opportunity to review the actual rule prior to any Commission action.

Question 9. You have heard concerns that your proposal opens up cross-ownership to much more than the top 20 markets. At the House hearing you said you would work with your fellow Commissioners to ensure this wasn't the case. I don't agree with any cross-ownership at all. Not in the top 30, not in the top 20. I think I'm saying the same thing as the 1,000 people who came to the hearing in Los Angeles and the 1,100 people who turned out in Seattle. Why are we not being heard?

Answer. We have reviewed the record carefully and have listened to the concerns of the commenters. This is in part why we have, in every context except the newspaper/broadcast cross-ownership rule, kept the ownership limits the same. From the outset of the current phase of the rulemaking, the Commission committed to conduct the proceeding in a more transparent manner that provided considerable opportunity for public participation. We heard a wide range of views on the substantive issues—from individual citizens, industry, and public advocacy groups—and I believe that the rules we adopted reflect an appropriate balancing of the concerns we heard from all sides. The outcome also rests on consideration of the extensive empirical data in the record and attention to the Third Circuit's remand decision.

In particular, I have sought the input of my colleagues at the Commission on the shape of all of the rules, including all of the existing regulations that we kept intact—such as the TV duopoly rule, the local radio rules, the TV/radio cross-ownership restriction, and the dual network ban. I note that in several cases these newly approved rules are a step back from the Order that the Commission adopted in 2003. Moreover, when several Commissioners sought modifications to my proposal for modestly revising the newspaper/broadcast cross-ownership rule, I listened. In an effort to strengthen the rule and address concerns about viewpoint diversity in local markets, I incorporated changes suggested by my colleagues.

The record in the proceeding reveals that newspapers are struggling and that, across the industry, circulation is down and advertising revenue is shrinking. Allowing limited newspaper/broadcast cross-ownership only in the 20 largest markets may help to forestall the erosion in local news coverage by enabling companies to share local newsgathering costs across multiple media platforms. The revised rule balances the need to support the availability and sustainability of local news while not significantly decreasing or harming viewpoint diversity. Finally, we have committed to review and evaluate each transaction on its merits, and determine whether the specific transaction is in the public interest.

Finally, the majority of the people in Los Angeles and Seattle expressed concern about consolidation generally, and I believe we have responded by not changing the local TV rule, the local radio rule, the local TV/radio rule, the national TV cap, or the national cable cap.

Question 10. On August 10, 2006, the Georgetown Institute for Public Representation presented you with a FOIA request. You had 20 days to respond. After 99 days you gave them some documents. You are sitting on 1,400 pages that the FCC still has not released. When will you release these documents?

Answer. I do not plan to release these documents. Of the pages to which you refer, 840 contain copyrighted materials, and the public release of such material would violate our contract. Another 300 pages involve the use of the copyrighted data by Commission staff in various analyses. The remaining materials are internal e-mails and memoranda. Like other government agencies, the Commission does not produce

these materials in response to FOIA requests. FOIA provides a statutory exemption for deliberative process materials (Exemption 5) because to do otherwise would stifle the interactions, deliberations, and debate that produce good public policy. I would also note that this matter is currently in litigation and the Commission of course will comply with any court decision.

Question 11. You addressed Universal Service in your testimony. What do you intend to do with the Joint Board's recommendations?

Answer. The Commission will put the recommendations out for public comment.

Question 12. Regarding the recent decision on the Verizon six-city forbearance petition the agency recently ruled on, I am pleased those petitions were denied. As you know, I have shared with you my concern over these forbearance petitions being used to short-cut a full agency review of local access policies because of the unique features of the forbearance process. I am gratified to know that the FCC recently initiated a rulemaking on establishing rules to govern the FCC's consideration of forbearance petitions and I hope this can be concluded promptly. Can we count on this rulemaking to be completed soon?

Answer. The Commission is moving forward with respect to the rulemaking regarding procedural rules to govern the conduct of forbearance proceedings initiated under section 10 of the Act. The next steps include collecting public comments and reply comments. Comments will be due 30 days after publication of the notice in the *Federal Register* and reply comments will be due 15 days after comments. We continue to take seriously our task of conducting proper and rigorous analyses in evaluating petitions for forbearance under the statute, consistent with the mandate to forbear from applying unnecessary regulations where the statutory criteria are satisfied.

Question 13. Recently concerns about unfair discrimination have been raised in relation to Verizon Wireless blocking the text messaging service of the pro-choice group, NARAL. Verizon Wireless quickly corrected the problem, but the fact that it happened raises major alarms. On October 16, 2007, Senator Snowe and I sent a letter to the FCC asking for your views on this issue. I have not received a response. Will we receive that response letter soon? Can you tell me your views?

Answer. A response to the letter sent by you and Senator Snowe has been transmitted to your office under separate cover. The Commission adopted an Internet Policy Statement with four policy principles aimed at protecting consumers' access to the lawful Internet content of their choice, and ensuring the free flow of information across networks. The activities attributed to Verizon Wireless, however, involved wireless text messages rather than access to Internet content. Although neither Congress nor the Commission has addressed text messaging, I believe that the principle of ensuring consumer access to content on the Internet generally applies to providers of text messaging services as well. For this reason, I have directed the Enforcement Bureau to initiate an investigation into such practices. In addition, the Commission will be seeking public comment on a Petition for Declaratory Ruling filed by several public interest groups to clarify the regulatory status of text messaging services, including short-code based services sent from and received by mobile phones.

Response to Written Questions Submitted by Hon. Bill Nelson to Hon. Kevin J. Martin

Question 1a. In adopting proposals designed to ensure opportunities for minorities and women to own broadcast stations, we understand that the FCC is proposing to provide certain preferences for "small businesses" as defined by the Small Business Administration. The SBA defines small businesses as those with annual revenues of $6.5 million or less in radio and $13 million or less in television. 13 C.F.R. § 124.103. The FCC estimates that as many as 95 percent of radio stations and 66 percent of television stations fall within this definition. See 2006 Quadrennial Regulatory Review, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8834, Supplemental Initial Regulatory Flexibility Analysis, App. B, at para. 51–54. (July 24, 2006). How will the preferences for small businesses, which the majority of existing licensees can take advantage of, increase opportunities for minorities and women to own broadcast stations?

Answer. To determine eligibility, the Commission does not evaluate an individual radio or TV station's revenues but the revenue of the owner and its affiliates.

Question 1b. Has the Commission considered using different or additional criteria to increase the likelihood that its proposal will in fact increase ownership by minorities and women? If so, what criteria? If not, why not?

Answer. The Commission on December 18, 2007, adopted a *Third FNPRM,* along with the *Diversity Order,* seeking comment on whether the Commission can or should expand the definition of eligible entities to specifically identify the groups eligible to benefit from measures designed to enhance diversity. The *Third FNPRM* acknowledged the recommendations of commenters for a race-conscious definition of socially and economically disadvantaged business ("SDB"). The *Third FNPRM* notes however that race-based classifications are subject to strict scrutiny and will be judicially upheld only if they are narrowly tailored measures that further compelling government interests. Thus, the Commission has decided to employ a race- and gender-neutral definition in the rules adopted on December 18 to avoid Constitutional difficulties that might create impediments to the timely implementation of the steps taken to diversify broadcast ownership. Indeed, even the Diversity and Competition Supporters acknowledge that a race-conscious definition "cannot be implemented immediately." The *Third FNPRM* also seeks comments on any alternative definition of eligible entity that may better advance the Commission's goals of promoting ownership diversity and new entry, including the "full-file review" concept.

Question 2a. The Minority Media and Telecommunications Council (MMTC) has argued that minority-owned stations are even less well represented among SBA-defined small businesses than they are in the industry as a whole. According to a Free Press study, although minorities own about 7.78 percent of commercial radio stations, only 5.88 percent of stations that fall within the SBA's small business definition are minority-owned. Thus, MMTC argues that the FCC's proposal is actually regressive. See MMTC Supplemental Comments (filed Nov. 20, 2007). Do you believe that using the SBA small business definition will result in increased station ownership by minorities? How?

Answer. It is not the case that minority-owned radio stations are less well represented among SBA-defined small businesses than they are in the industry as a whole. Free Press made a fundamental error in concluding that minorities own 5.88 percent of the commercial radio stations qualifying as small businesses under SBA's definition. To determine eligibility under the definition, Free Press mistakenly looked at an individual radio station's revenues, rather than the revenues of the station's owner, which include the revenues of the owner's other businesses and affiliations. Based on BIA figures as of December 1, 2007, and using Free Press' data, we calculate that at least 8.5 percent of commercial radio stations owned by SBA-defined small businesses are minority owned. Furthermore, it is impossible to estimate how many minority-owned new entrants may form to take advantage of the Commission's diversity initiatives, thereby increasing the percentage of minority-owned small businesses.

Question 2b. Has the Commission considered using a race-neutral "full file review," as MMTC has proposed, to give preference to persons who have overcome significant social and economic disadvantages? If not, why not?

Answer. In the *Third FNPRM,* the Commission seeks public comment on the advisability of adopting the "full file review" approach, among other options.

Question 3. Right now, who is actually leading the DTV transition effort? Is the FCC leading it? Is NTIA? Private industry? How do we fix this, and actually assign responsibility?

Answer. Congress decided to divide the responsibilities of the DTV transition among several agencies, assigning the Commission some responsibilities and NTIA some responsibilities. For example, in the Deficit Reduction Act of 2005, Congress specifically allotted NTIA one hundred million dollars ($100,000,000) to spend on administrative expenses for the digital transition and the converter box program, including five million dollars ($5,000,000) "for consumer education concerning the digital television transition and the availability of the digital-to-analog converter box program." Deficit Reduction Act of 2005, Public Law 109–171, Sec. 3005(c)(2)(A), Feb. 8, 2006. In addition, Congress anticipated that the administrative expenses might be even greater than $100 million and therefore gave NTIA the ability to spend an extra $60 million on such expenses.

Nevertheless, the Commission has been working both on our own and in coordination with industry, other governmental agencies, and consumer groups to advance the transition and promote consumer awareness.

Question 4. As you are probably aware, Florida is currently the largest "net payer" state into the Universal Service Fund. Florida pays in more than $300 million more to the USF than it receives in disbursements. Getting beyond the idea of a "cap" of some sort—which may raise competitive issues—it seems like one other way of achieving efficiencies is through more effective targeting of support. How do you feel about this approach?

Answer. I support long-term reform, which would include measures to more effectively and efficiently target support to achieve the goals of Universal Service. I continue to believe the right long-term answer for such reform of high-cost Universal Service support is to move to a reverse auction methodology. I believe that reverse auctions could provide a technologically and competitively neutral means of controlling the current unsustainable growth in the Fund and ensuring a move to most efficient technologies over time.

Changes in technology and increases in the number of carriers that receive Universal Service support have placed significant pressure on the stability of the Universal Service. A large and rapidly growing portion of the high-cost support program is now devoted to supporting multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. These additional networks in high-cost areas don't receive support based on their own costs, but rather on the costs of the incumbent provider, even if their costs of providing service are lower. In addition to recommending an interim cap, the Joint Board has recognized the problems of maintaining this identical support rule.

I have circulated among my colleagues at the Commission an Order that adopts the recommendation of the Joint Board to place an interim cap on the amount of high-cost support available to competitive eligible telecommunications carriers (ETCs). Further, the Commission has voted to seek comment on two Notices of Proposed Rulemaking, one that would require that high-cost support be based on each carrier's costs in the same way that rural phone companies' support is based, and one that would explore the use of reverse auctions for distributing support. I'm supportive of measures to control the growth of the Fund 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.

Question 5. Please provide an update on the status of the special access proceeding. Also, if the Commission is waiting on particular sets of data to complete the proceeding, please indicate what data sets are missing and what action the Commission is taking to obtain that data.

Answer. In January 2005, the Commission adopted a Notice of Proposed Rulemaking, which, among other things, sought comment on the special access regulatory regime, including whether the Commission should maintain or modify the Commission's pricing flexibility rules for special access services. A majority of the Commissioners asked to seek further comment in this proceeding, and the Commission released a Public Notice on July 9, 2007, setting an expedited comment cycle for interested parties to refresh the existing record. Comments were filed on August 8, 2007, and reply comments on August 15, 2007. After the Commission received these comments, I provided an options memo to all of the Commissioners by September 2007. To date, there is no option that is supported by a majority of Commissioners.

Question 6. Are you currently considering regulations that would require cable programmers and operators to offer "a la carte" programming? If so, what is the statutory and factual basis for those regulations?

Answer. There is no pending item before the Commission that would require cable television system operators or any other multichannel video programming distributors ("MVPDs") to offer programming on an "a la carte" basis to their subscribers.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO HON. KEVIN J. MARTIN

Question 1. At the December 5 House Energy and Commerce Committee hearing, Representative Inslee asked you a question regarding the timeline in writing and placing your November 13 Op-Ed piece in *The New York Times.* You did not seem to have a ready answer. As you have had some time to reflect, let me try it again. At the time you made your opening remarks at the public hearing in Seattle on the afternoon of November 9, how far along was your staff in the drafting of the proposed rules released on November 13? Had you already approved the proposed rule or were the proposed rules still awaiting your approval? Also, by that time had Commission staff contacted *The New York Times* regarding the placement of the Op-Ed that was published on November 13? When did your office first contact the Times about the placement of the Op-Ed on the change to media ownership rules? And when your office contacted the *Times,* was it shopping around a completed Op-Ed or was it pitching a proposal?

Answer. A draft of the Op-Ed was submitted to *The New York Times* on November 9. I submitted the Op-Ed for publication in the newspaper and released my proposed rules (on November 13) to further public discussion and debate on these contentious

issues. I took the extraordinary step of publishing the Op-Ed and releasing my proposed rules in order to share my views on these issues with the public in an open and transparent manner. This also began the process of engaging my colleagues regarding what action, if any, the Commission would ultimately decide regarding media ownership. After months of hearings and public comment, the Commission had an opportunity to consider my proposed rules and could either accept, reject, or modify the proposal. As with other proposed rules, the Commission moves forward to decide issues only when a majority of Commissioners agree on a course of action.

Question 2. How did the Commission conclude that there is a presumption that it is in the public interest that the current ban on newspaper/broadcast cross-ownership in the same market be lifted in the top twenty media markets? Why not the top ten? Why not the top thirty? And why did the Commission conclude that at having eight independent voices in these media markets should be one of the conditions? Why not ten voices? Did the Commission consider the impacts on small business, the increased consolidation of media outlets may have on local advertising rates?

Answer. The Commission has applied the positive presumption only in the largest markets based on the evidence in the record that the twenty largest markets contain a robust number of diverse media sources and that the diversity of viewpoints would not be jeopardized by certain newspaper/broadcast combinations. The record also shows that newspaper/broadcast combinations can create synergies that result in more news coverage for consumers. In short, the new rule lifts the complete ban but does so in a modest manner in order to ensure both that the Commission's goals of competition, localism, and diversity are not compromised and that the Commission may achieve the economic benefits of allowing certain combinations.

The Commission's determination to draw that line at the top twenty markets is reasonable and well supported by the record, based on an examination of the media marketplace in the largest DMAs in the country. Specifically, the Commission found notable differences between the top 20 markets and all other DMAs, both in terms of voices and in terms of television households. For example, while there are at least 10 independently owned television stations in 18 of the top 20 DMAs, none of the DMAs ranked 21 through 25 have 10 independently owned television stations. Additionally, while 17 of the top 20 DMAs have at least two newspapers with a circulation of at least 5 percent of the households in that DMA, four of the five DMAs ranked 21 through 25 have only one such newspaper. Moreover, the top 20 markets, on average, have 15.5 major voices (independently owned television stations and major newspapers), 87.8 total voices (all independently owned television stations, radio stations, and major newspapers), and approximately 3.3 million television households. Markets 21 through 30, by comparison, have, on average, 9.5 major voices, 65.0 total voices, and fewer than 1.1 million television households, representing drops of 38.5 percent, 25.9 percent, and 56.3 percent from the levels in the top 20 markets, respectively. Markets 31 through 40 and 41 through 50 have average numbers of voices for each category similar to markets 21 through 30, and even fewer television households on average, 837,800 and 679,200, respectively. Markets 50 through 210 show even more dramatic drops with, on average, 6.7 major voices, 31.2 total voices, and approximately 231,000 television households. These figures represent drops of 56.4 percent, 61.7 percent, and 90.7 percent from the levels in the top 20 markets, respectively.

The Commission selected the number eight for the major media voice count because this will assure that the largest television markets continue to enjoy an adequate diversity of local news and information sources. As noted above, there are at least 10 independently owned television stations and two major newspapers in the great majority of the top 20 markets. Further, all of those markets have at least eight television stations and one major newspaper. As we do not want to allow a significant decrease in the number of independently owned major media voices in any of those markets, we will only presume that a transaction is in the public interest if at least eight major media voices will remain post-transaction. In addition, in the context of the local television ownership rule, the Commission retained its eight voice-count test. Specifically, the local TV ownership rule requires a minimum of eight independently owned-and-operated television stations to ensure that robust competition exists in the local television marketplace. By also adopting an eight voice count test for the newspaper/broadcast cross-ownership rule, the Commission generally took a cautious approach, trying to maintain consistency with the rules that it left unchanged.

The Commission did consider the impact of newspaper/broadcast cross-ownership on competition, finding that most advertisers do not view newspapers and television stations as close substitutes. The Commission had previously made this finding in

2003 and the Third Circuit subsequently affirmed it. Because newspapers and broadcasters do not compete for advertising sales, the Commission does not expect its modest relaxation of the ban on newspaper/broadcast cross-ownership to have any impact on local advertising rates.

Question 3. After reading your *New York Times* Op-Ed it sounded like the reason the FCC issued these proposed rules was to save the endangered newspaper industry, an industry the Commission does not regulate. Has the number of morning dailies published increased or decreased between 1990 and 2005? Has the circulation of morning dailies increased or decreased between 1990 and 2005? Do you believe the business case for morning dailies is different than that of evening dailies?

Answer. The number of morning dailies increased from 559 in 1990 to 817 in 2005, while the number of evening dailies decreased from 1,084 in 1990 to 645 in 2005 for an overall net decline of about 180 daily newspapers. The circulation of morning dailies increased from 41.3 million in 1990 to 46.1 million in 2005, while the circulation of evening dailies decreased from 21.0 million in 1990 to 7.2 million in 2005 for an overall decline in daily circulation of about 9 million.

I believe the business case for morning dailies is different than that of evening dailies. There are more morning newspapers now, and fewer evening dailies, than in the past. The trend appears to be part of a long and ongoing shift in demand for more timely news reporting coupled with the rise of alternative delivery modes for news.

Question 4. Do you believe that the newspaper industry is profitable today?

Answer. The industry is recording pre-tax profit margins in the high teens, but the print newspaper business is ailing. Circulation is declining, advertising is flat, and some analysts suggest that newspapers appear to have entered a period of "protracted decline." In 2006, the traditional indicators were all negative: circulation fell even faster than in previous years; industry revenues were flat—a poor showing in a non-recession year; and, on the print side, retail, national and automotive classified ads all showed weakness.

Industry analysts attribute the more recent, steeper declines to many factors, not one or two. Some news consumers, particularly the young, have moved online. Only 35 percent of persons aged 18 through 34 read newspapers on a daily basis. The current generation of young adults also includes more people who have no interest in news. "Free" dailies (*i.e.,* advertising-only papers) are a competitive factor, too, especially in larger cities. The net result is not so much that people are giving up on newspapers altogether as that they read them less often. Seven-day-a-week subscribers have become a smaller group; many have switched to getting the paper a few days a week and skipping others. The most severe losses were in large metropolitan markets like Los Angeles, Boston, San Francisco and Philadelphia. The top 50 newspapers in circulation lost an average of 3.6 percent daily circulation, almost 1 percentage point more than the industry average. In the two previous years, the three national papers had managed to stay even, but not in 2006. Circulation was off 3.2 percent at the New York Times, 1.9 percent at *The Wall Street Journal,* and 1.3 percent at *USA Today*.

Question 5. How many daily newspapers in the top twenty media markets failed in the past decade? What were their names?

Answer.

Top 20 TV DMAs—Daily Newspapers in 1996 That Are Not Dailies in 2007

DMA Rank	DMA	City	County	ST	Newspaper
1	New York	Mamaroneck	Westchester	NY	*Mamaroneck Daily Times*
1	New York	Mt. Vernon	Westchester	NY	Mt. Vernon Argus
1	New York	New Rochelle	Westchester	NY	*New Rochelle Standard Star*
1	New York	Ossining	Westchester	NY	*Citizen Register*
1	New York	Peekskill	Westchester	NY	*The Star*
1	New York	Port Chester	Westchester	NY	*Daily Item*
1	New York	Tarrytown	Westchester	NY	*Tarrytown Daily News*
1	New York	Yonkers	Westchester	NY	*Herald Statesman*
2	Los Angeles	Hemet	Riverside	CA	*Hemet News*
2	Los Angeles	Los Angeles	Los Angeles	CA	*Los Angeles Daily Commerce* *
2	Los Angeles	San Pedro	Los Angeles	CA	*San Pedro News Pilot*
2	Los Angeles	Santa Monica	Los Angeles	CA	*Santa Monica Outlook*
2	Los Angeles	Temecula	Riverside	CA	*Temecula Californian*
5	Dallas	Arlington	Tarrant	TX	*Arlington Morning News*

Top 20 TV DMAs—Daily Newspapers in 1996 That Are Not Dailies in 2007—Continued

DMA Rank	DMA	City	County	ST	Newspaper
5	Dallas	Bonham	Fannin	TX	*Bonham Favorite*
6	San Francisco	Antioch	Contra Costa	CA	*Antioch Ledger Dispatch*
7	Boston	Haverhill	Essex	MA	*Haverhill Gazette*
10	Houston	Bay City	Matagorda	TX	*Bay City Daily Tribune*
10	Houston	Texas City	Galveston	TX	*Texas City Sun*
12	Phoenix	Chandler	Maricopa	AZ	*Arizonan Tribune*
12	Phoenix	Gilbert	Maricopa	AZ	*Gilbert Tribune*
12	Phoenix	Scottsdale	Maricopa	AZ	*Scottsdale Progress Tribune*
12	Phoenix	Tempe	Maricopa	AZ	*Tempe Daily News Tribune*
14	Seattle	Bellevue	King	WA	*Eastside Journal*
14	Seattle	Kent	King	WA	*South County Journal*
18	Denver	Gunnison	Gunnison	CO	*Gunison Country Times*
19	Orlando	Sanford	Seminole	FL	*Sanford Herald*
20	Sacramento	Turlock	Stanislaus	CA	*Turlock Journal*

*This publication appears to be a specialty publication that may not be within the scope of the rule.
Sources: Editor & Publisher 77th Ed. 1997; BIA database 12/07 plus FCC staff research.

Question 6. How many waivers to the newspaper/broadcast cross-ownership rules has the Commission granted prior to 2007?

Answer. When the Commission adopted the newspaper/broadcast cross-ownership prohibition in 1975, the Commission grandfathered approximately 133 existing combinations. Of those grandfathered combinations, 36 are in existence today.

After 1975 and prior to 2007, the Commission granted four permanent waivers of the newspaper/broadcast cross-ownership rule, two of which are still in existence. Those still in existence are the permanent waivers granted to News Corporation for its cross-ownership of WNYW–TV and *The New York Post* in New York, and to Stafford Broadcasting for its cross-ownership of the *Daily News* and WSCG(AM) in Michigan. Two permanent waivers are no longer in existence (one in Chicago, involving WFLD–TV and two daily newspapers in Chicago, and one in Bloomsburg, PA, involving Station WCNR(AM) and the *Press-Enterprise*).

In addition, the Commission has granted a number of temporary waivers and most of these have expired. There are three temporary waivers that were granted prior to 2007 and that are still in effect: a waiver to News Corporation for its cross-ownership of WWOR–TV and *The New York Post,* and waivers to Morris Communications for its cross-ownership of media outlets in two locations, (1) the Amarillo *Daily News & Globe Times* and KGNC(AM) and KGNC(FM), and (2) the *Topeka Capital-Journal* and WIBW(AM) and WIBW(FM).

Finally, the Commission has typically granted temporary waivers to allow companies to divest properties or otherwise come into compliance with our ownership rules.

Question 7. Both policymakers and industry rely heavily on testing performed by the Office of Engineering Technology. It is essential that their work is beyond reproach. And over the years they have maintained a great reputation for the quality of their technical work and not getting mixed up in the politics. Last February, when you testified in front of the Committee, I asked you about the Commission moving forward with the testing of prototype devices for use in the so-called white spaces. There are several members on the Committee, including myself, who support the use of unlicensed fixed and personal portable devices in the vacant spectrum in a way that allows them to co-exist with over-the-air broadcast television stations. You committed to timely testing of the devices and several of us applauded that action. As you know a series of tests were conducted over the summer, with the net result being more testing and more delays. Did your office offer any guidance to OET during the planning, execution, or evaluation of the testing of the white space prototype devices?

Answer. I did not offer any substantive guidance to OET during the planning, execution, or evaluation of the testing of the white space prototype devices. The Chairman's office was kept apprised of the progress of the tests and was made aware in mid-June 2006 that the devices were not consistently detecting TV broadcasts or wireless microphones. The Chairman's office relied on the expertise of OET's engineers to complete the testing and prepare an initial report for public comment.

Question 8. I understand from the press that a number of companies have submitted prototype devices to the Commission for testing in the last few days. Can

you commit to a prompt testing regime and a final order in the first quarter of next year?

Answer. The Commission supports the efficient and innovative use of spectrum including white spaces. The FCC Laboratory recently received prototype white space devices from Microsoft, Philips, Motorola, and Adaptrum, and we anticipate we may receive one or two additional device from other parties. The Office of Engineering and Technology plans to conduct both laboratory tests and field tests on these devices in an open and transparent manner. While we are committed to moving forward as expeditiously as possible, I can not predict a specific time-frame for adoption of final rules. Any rules the Commission establishes to provide for the operation of unlicensed devices in the TV bands must be vetted by all five FCC Commissioners. I can assure you that we will thoroughly consider all of the engineering data, test results (*i.e.,* both laboratory testing and field testing), and responses submitted in the record before adopting final rules.

Question 9. If you recall, a prior prototype delivered to the Commission was broken, but the staff never told anyone outside the Commission and wasted weeks testing a device they knew was broken. Can you commit that, this time, if the staff has a problem in making the device work they will tell the company involved about it—so no time is wasted?

Answer. The Commission is committed to working with all parties to continue the process of investigating the potential performance capabilities of TV white space devices in an open and transparent manner. Both laboratory testing and field testing of prototype white space devices will be open to observation by any interested party. To the extent that the Office of Engineering and Technology has a problem making a prototype device work, it will tell the particular company involved.

Question 10. What steps is OET taking to ensure that the various stakeholders are satisfied with the transparency of the process for the next series of tests that will begin in January?

Answer. The Commission is committed to working with all parties to continue the process of investigating the potential performance capabilities of TV white space devices in an open and transparent manner. On October 5, 2007, the Office of Engineering and Technology issued a Public Notice inviting the submittal of prototype white space devices for laboratory testing and field testing. That same day, Office of Engineering and Technology staff met with parties to the proceeding to discuss the further round of testing.

Both laboratory testing and field testing of prototype white space devices will be open to observation by any interested party and the press. Any updates or changes to the testing schedule for the prototype TV white space devices will be publicly disseminated and available on a dedicated FCC Internet site.

Question 11. A recent GAO report cited that no comprehensive plan exists for the digital television transition. The GAO stated "Among other things, a comprehensive plan can detail milestones and key goals, which provide meaningful guidance for assigning and coordinating responsibilities and deadlines and measuring progress. Such planning also includes assessing, managing, and mitigating risks, which can help organizations identify potential problems before they occur and target limited resources". This week the Commission released a written response to the GAO report. Chairman Martin, at this point in time, what do you consider to be the top five risk factors with respect to American consumers getting through the digital television transition with minimal disruption? Which of these risk factors fall under the jurisdiction of the FCC? How is the FCC managing and mitigating these risks?

Answer. I consider the following to be the top five essential aspects of and risks for the digital transition: (1) Construction and Operation of Broadcasters' Digital Broadcast Facilities; (2) Ability of Consumer Equipment to Receive Digital Signals; (3) Availability of Digital to Analog Converter Boxes; (4) Viewability of Digital Signals for Analog Cable Customers; and (5) Consumer Education and Outreach.

(1) *Construction and Operation of Broadcasters' Digital Broadcast Facilities:*

One of the most important responsibilities of the Commission, with respect to the Nation's transition to digital television, has been to shepherd the transformation of television stations from analog broadcasting to digital broadcasting. Currently, 95 percent of all full power television stations (1,636 stations) are broadcasting in digital, and over 99 percent of stations (1,706 stations) have been assigned a final post-transition channel for operations.

It has taken a series of complicated steps, spanning over two decades, in order to get to this point. First, the Commission worked with industry leaders and with other countries to adopt a standard for digital operations. Second, the Commission planned the process for recovering analog spectrum, with a focus

on jump starting digital transmissions. Accordingly, the Commission established eligibility for and assigned digital channels, with this process ultimately resulting in a final post-transition channel for each broadcast station throughout the country for post-transition operations. Third, the Commission established construction deadlines for stations to build and operate pre-transition digital facilities. The Commission stayed very involved with this process by providing oversight for the buildout of pre-transition facilities. The Commission then turned to work on post-transition operations, and established mechanisms and deadlines for stations to elect and build final, post-transition facilities. This entire process has involved the Commission processing over 10,000 DTV modification applications, license applications and special temporary authority authorizations to expedite digital build out. The process has also involved intricate international negotiations with Mexico and Canada. The Commission adopted the final DTV Table of Allotments, which assigns virtually every full-power television station a final channel for post-transition digital operations.

And, more recently, the Commission released the Third DTV Periodic Report and Order, which mandates strict, final deadlines for stations to complete construction of digital facilities. In this order, Commission made technical adjustments to its rules and policies to enable broadcasters to take the actions necessary to complete the conversion from analog to digital. The Commission is doing everything in its power to ensure that broadcasters successfully transition their stations to full digital operations.

(2) *Ability of Consumer Equipment to Receive Digital Signals:*

The Commission also must ensure that consumers who buy and correctly install the equipment to receive digital signals will be able to receive a good quality signal on February 18, 2009. This is the Commission's responsibility, along with retailers and equipment manufacturers.

First, the Commission adopted rules limiting and ultimately eliminating the importing and shipping of analog-only television receivers and equipment. The Commission's DTV tuner requirement took effect according to a phase-in schedule that applied the requirement first to receivers with the largest screens and then to progressively smaller screen receivers and other television receiving devices that do not include a viewing screen, *i.e.,* VCRs and DVD players, to minimize the impact of the requirement on both manufacturers and consumers. Thus, responsible parties were prohibited from importing or shipping television receivers without DTV tuners pursuant to the following schedule: (1) receivers with screen sizes 36″ or more—effective July 1, 2005; (2) receivers with screen sizes between 25″ and 25″—effective March 1, 2006; and (3) all other television receivers and other video devices capable of receiving television signals—effective March 1, 2007.

In May 2007 we issued NALs against two companies—Syntax Brillian Corp. (approx. $2.9 million) and Regent USA, Inc. ($63,650)—for apparent violation of our rules in this area. One of these companies has already paid the fine and we are working on a forfeiture order with respect to the other company. In addition, we are in the process of investigating potential violations against another two companies.

Second, with respect to retailers, the Commission adopted a *Labeling Order* that requires retailers to fully inform consumers about the DTV transition date at the point of sale of analog televisions. Specifically, the Commission found that, at the point of sale, many consumers were not aware that analog-only televisions would not be able to receive over-the-air-television signals without the use of a digital-to-analog converter box after February 17, 2009. Accordingly, the Commission required sellers of television receiving equipment that does not include a digital tuner to disclose at the point-of-sale that such devices include only an analog tuner and therefore will require a converter box to receive over-the-air broadcast television after the transition date.

With respect to this labeling requirement, the Commission has inspected over 1,000 retail stores and websites and issued several hundred citations notifying retailers of violations for failing to comply with our requirements. Because retailers are not licensees, we must give them a citation prior to issuing a Notice of Apparent Liability (NAL). NALs are pending against seven large retailers for apparently violating the Commission's labeling requirements. These fines, in the aggregate, total over $3 million. We have also circulated NALs to an additional seven retailers, totaling over $500,000. In addition, the Enforcement Bureau has issued another six NALs on delegated authority. It is my hope that

through our vigorous enforcement actions, retailers will take concrete actions to avoid consumer confusion as the digital transition draws near.

Finally, we are ensuring that manufacturers make digital tuners in compliance with the Commission's V-Chip regulations. As you know, the Commission's rules require digital television manufacturers to include the V-Chip in their equipment and to ensure that their devices can adjust to changes in the content advisory system. As a result of these investigations, we have circulated NALs against three manufacturers, totaling over $11 million.

Swift enforcement of all our DTV-related rules is critical to ensuring that consumers have the equipment necessary to view digital signals on February 18, 2009.

(3) *Availability of Digital-to-Analog Converter boxes:*

Congress specifically assigned NTIA with primary responsibility for development of the program for availability of digital-to-analog converter boxes. In the Deficit Reduction Act of 2005, Congress specifically allotted NTIA one hundred million dollars ($100,000,000) to spend on administrative expenses for the digital transition and the converter box program, including five million dollars ($5,000,000) "for consumer education concerning the digital television transition and the availability of the digital-to-analog converter box program." Deficit Reduction Act of 2005, Public Law 109–171, Sec. 3005(c)(2)(A), Feb. 8, 2006. (Congress anticipated that the administrative expenses might be even greater than $100 million and therefore gave NTIA the ability to spend an extra $60 million on such expenses). Thus, Congress explicitly gave NTIA the responsibility for the coupon box program.

(4) *Viewability of Digital Signals for Analog Cable Customers:*

Last fall, the Commission adopted an order ensuring that all local broadcast stations carried pursuant to this Act are "viewable" by all cable subscribers. Specifically, in order to guard against the risk that analog cable consumers may not be able to view their local television stations after the transition, our *Viewability Order* requires cable operators to either: (1) carry the digital signal in analog format, or (2) carry the signal only in digital format, provided that all subscribers have the necessary equipment to view the broadcast content.

According to Commission staff calculations, while there are approximately 15 million households with more than 30 million television sets that rely on over-the-air signals, there are over 40 million homes with 120 million television sets that subscribe to analog cable. Thus, in the absence of *Viewability Order,* some broadcast stations would have become unwatchable on these 120 million television sets. And, millions of consumers would have been disenfranchised.

With the adoption of this order, cable operators will be obligated to ensure that all of their customers will be able to watch all broadcast stations after the digital transition. This item ensures 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. Thus, cable operators may not simply cutoff the signals of must-carry broadcast stations after the digital transition.

(5) *Consumer Education and Outreach:*

Consumer education and outreach is one of the Commission's top priorities, but it is one that we share with NTIA and industry. Although NTIA has taken the lead with respect to consumer education concerning the converter box program, the Commission has been actively promoting general consumer awareness of the upcoming transition through education and outreach efforts. Our overarching goal in these activities is to reach consumers who are likely to be unaware of the upcoming digital transition, including: (1) senior citizens; (2) non-English speaking and minority communities; (3) people with disabilities; (4) low-income individuals; and (5) people living in rural and tribal areas.

We have been employing a variety of methods to reach these communities. Specifically, we have been focusing our resources on three primary activities: attending conferences and hosting events, disseminating information via the news media, and partnering with industry, consumer, and other groups.

Conferences and Other Events. With respect to conferences and events, Commission staff has been attending as many conferences as possible to distribute DTV educational materials. We are also utilizing the agents in the Commission's field offices around the country to expand the scope of our consumer education

efforts. Designated representatives in each our 24 field offices have been targeting communities that risk getting left behind in the DTV transition, such as senior citizens. Our field agents have been distributing information materials to senior centers, libraries and other venues. They then follow up these visits by giving DTV presentations to further inform these communities.

Through the work of our field agents, we are able to reach consumers in a total of 36 states—ranging from Alaska to Florida. We have already distributed information to over 2,670 senior centers, senior organizations, and community groups and given nearly 275 DTV presentations. And, through a series of workshops held at the Commission with stakeholders, we will have focused on how we can best reach and educate these groups of consumers. We have already held three workshops and announced dates for the remaining two workshops.

News Media Activities. We are also working with the news media to highlight the upcoming transition in ongoing news coverage. Specifically, we are coordinating with a variety of media outlets including newspapers, broadcasters, and working with various members of the industry on public service announcements (PSAs).

Our efforts focus primarily on media that target specific at-risk populations. For example, senior citizens and Hispanic consumers, among others, are most likely to be disproportionately impacted by the transition.

Government, Industry, and Consumer Group Partnerships. The partnerships we have formed, and will continue to form, are a critical part of our consumer education and outreach efforts. We rely on these partnerships—which may be with government agencies, industry or consumer groups—to help us disseminate DTV education information and to inform us of events and conferences that are taking place where we can distribute materials and interact with consumers directly.

We are, of course, coordinating closely with NTIA. The FCC and NTIA have communicated extensively on the implementation of the DTV transition and will continue our close coordination as the transition deadline approaches. We have a Memorandum of Understanding relating to our duties and responsibilities in testing the converter boxes under the coupon program. With respect to consumer education, our shared goal is to ensure that consumers are able to receive from both agencies consistent, easy to understand information about what the transition is, why it is happening, how it may affect them, and what they need to do to prepared.

We are also working with the U.S. Administration on Aging, which has a network of over 650 state and area agencies on aging, tribal elder organizations, and thousands of providers around the country who work with seniors and their caregivers on a daily basis. We are not only providing this network with DTV informational materials that can be distributed nationwide, but we have also offered to partner with them to conduct joint presentations on the DTV transition throughout the country. Similarly, we are working with the Bureau of Indian Affairs which has agreed to disseminate DTV information packets to their members through their 50 offices nationwide.

Our government partnerships are not limited to the national level, however. We have contacted nearly 125 local Chambers of Commerce covering all 50 states and the District of Columbia as well as state and local-level consumers affairs and elderly departments. We have asked these organizations to help us distribute DTV information materials and link to *www.dtv.gov* on their webpage. We intend to continue pursuing such relationships to reach as many consumers as possible.

Also, since June 2007, the FCC has reached out to over 1,100 organizations, with over 900 of them governmental agencies and organizations at the Federal, state, tribal and local levels to request their assistance in educating the consumers they serve about the DTV transition. As a result of our efforts, we are forming partnerships with many of these organizations in order to better inform their constituents about the DTV transition. For example, we have formed a partnership with the U.S. Postal Service, and are working with them on displaying DTV information posters at over 37,000 Post Offices throughout the Nation and in Puerto Rico.

Another example of how we are coordinating with other entities is the two advisory committees—the Consumer Advisory Committee (CAC) and the Intergovernmental Advisory Committee (IAC)—that we recently chartered and instructed to focus their current terms on the digital transition. The CAC recently submitted recommendations to the Commission in our DTV Education pro-

ceeding. Though the work of these committees, the Commission will gain valuable insights that will further its goal of ensuring that all consumers are aware of the transition.

Finally, on the Commission has initiated rulemaking proceedings designed to better educate consumers about the transition. For example, discussed above, earlier this year the Commission issued a *Labeling Order,* which requires manufacturers and retailers to affix a consumer alert to televisions with analog-only broadcast tuners. And, we recently initiated a *DTV Education* proceeding. This item sought comment on whether to require the industry to use bill inserts, public service announcements, and other techniques to educate consumers about the transition. I hope and expect that the Commission will be adopt this *DTV Education Order* imminently.

Question 12. Should the common carrier exemption be removed from the Federal Trade Commission? What, if any, would be the disadvantage to consumers if the exemption is removed?

Answer. The common carrier exemption, along with similar exemptions for banking and other targeted industries, recognizes the unique role of the FCC in regulating common carriers. Elimination of the exemption could result in confusion if carriers are required to comply with potentially conflicting rules and regulations. Such confusion would benefit neither the industry nor the consumers they serve. That being said, the FCC and the FTC even now have overlapping areas of interest and jurisdictions, and frequently coordinate on a variety of issues, such as the Do Not Call provisions of the Telemarketing Sales Rule, caller identification or "caller ID" spoofing, and the sale of phone records by data brokers. I agree with Chairman Majoras that "[w]e have worked together effectively in the past and will continue to do so." [1]

Question 13. The Joint Board has published an important recommendation that deals with potential revisions to the Federal Universal Service high-cost fund in a comprehensive way. You attached your opinion to the Joint Board's recommendation and voted to send it to the full Commission for its deliberation over the next 12 months. When do you plan to send it out for comment, and what specific schedule do you foresee at the Commission on this subject? In other words, is the Joint Board recommendation on a fast track for review by the Commission?

Answer. The Commission will put the recommendations out for public comment. As you note, the Commission must act on the recommendation within 1 year. Further, the Commission has voted to seek comment on two Notices of Proposed Rulemaking, one that would require that high-cost support be based on each carriers' costs in the same way that rural phone companies' support is based, and one that would explore the use of reverse auctions for distributing support.

Question 14. On November 1, 2007, the Homeland Security Bureau released a Further Notice of Proposed Rulemaking related to the reconfigured 800 MHz band plan on the U.S.-Canada border region in order to achieve the Commission's goals for band reconfiguration. The terrain in the Puget Sound area combined with the proximity of densely populated areas on both sides of the border, makes frequency coordination and interference more difficult to manage than many other border areas without this combination of geographic features. How will the Commission's border region plan minimize such interference? Will testing be required to validate the plan?

Answer. The Further Notice of Proposed Rulemaking (FNPRM) for the U.S.-Canadian border area proposes a region-by-region approach that takes into account the unique terrain of the Puget Sound area. To prevent cross-border interference between U.S. and Canadian operations, the proposal calls for U.S. licensees in the border area to be rebanded to channel assignments on U.S. primary spectrum, while Canadian licensees will continue to operate on Canadian primary spectrum. In addition, the band plan proposal for Border Region 5, which includes Washington State, is based in large part on a prior band plan submitted by the NPSPAC regional planning committee for Washington (NPSPAC Region 43). Region 43 has also filed comments on the FNPRM proposal, which the Commission will consider along with comments by other area licensees in adopting a final band plan. Once the band plan is finalized, the rebanding process requires the 800 MHz Transition Administrator (TA) to take geography, system proximity, and other relevant factors into account in assigning frequencies to rebanding licensees. System testing is also a typical component of the process where necessary to verify that the licensee's post-rebanding facilities will match the capability of its pre-rebanding facilities.

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[1] *http://www.ftc.gov/speeches/majoras/060821pffaspenfinal.pdf* at page 20.

Question 15. There are municipal 800 MHz radio systems operating in Washington State that serve the entire state (Washington State Department of Transportation) or communities with populations that straddle both sides of line, 140 km line south of the U.S.-Canada border. Will the Commission include an assessment of the impact of any final border region plan will have on systems with operations that extend beyond the border region?

Answer. Yes. In adopting a final band plan for the U.S.-Canadian border area, the Commission will consider the impact of the band plan on statewide and other systems that operate in both border and non-border areas. The 800 MHz Transition Administrator (TA) will also take this issue into account in assigning specific channels to these licensees.

Question 16. The Boeing Company is an integral part of a public safety response in areas surrounding their various facilities within the border region. How do you ensure that any final border region plan provides interference protection to Boeing equivalent to that provided to public safety?

Answer. The Commission's orders provide that all licensees, including Boeing, will receive the same level of interference protection under the post-rebanding rules that they were afforded prior to rebanding. Moreover, the new band plan will reduce actual interference by providing more separation between commercial cellular systems and other 800 MHz band users than existed previously. Finally, once the final border area band plan is adopted, the 800 MHz Transition Administrator (TA) will take Boeing's system configuration and operational needs into account in assigning replacement channels to Boeing.

Question 17. After the rebanding in Wave 4 is completed, do you expect that the affected parties will have access to the same amount of spectrum as before?

Answer. Yes. The Commission's orders provide that rebanding licensees will receive comparable spectrum assignments, *i.e.,* the same number of channels under the new band plan that were assigned to them under the old band plan. This principle applies to border and non-border area systems alike.

Question 18. When the Commission adopted and revised the 700 MHz Service Rules and Band Plan in the *Second Report and Order* on July 31, 2007, among other things, it consolidated the narrowband frequency allocation in the 700 MHz public safety band, requiring existing narrowband public safety licensees to shift their frequencies of operation and reconfigure their systems. Several public safety licensees, including Pierce Transit in Washington State, that were in the midst of deploying their narrowband systems found themselves in an impossible situation with respect to not being able to deploy the remainder of their network and also with respect to ensuring there are adequate fund available to reimburse affected licensees for reconfiguring and rebanding their existing systems. What is the timeline for the Commission to address the petitions for reconsideration submitted by public safety licensees regarding this issue?

Answer. The time period for oppositions and replies to petitions for reconsideration of the *Second Report and Order* expired on October 26, 2007. The Commission is giving careful consideration to Pierce Transit's petition for reconsideration and the associated record, as well as to its request for waiver. The Commission has already granted a partial waiver to the Commonwealth of Virginia on November 14, 2007, to continue deployment of its system until Virginia's petition for reconsideration is resolved. In granting that relief, we emphasized that the prohibition on new narrowband operations after August 30 was not intended to create hardship or delay systems needed to protect the safety of life and property. This sentiment will inform our resolution of the other pending petitions before us, including Pierce Transit's.

Question 19. With regard to Universal Service Fund potential reforms, you have expressed your preference for a numbers-based assessment approach as a new contribution methodology. Are you aware of the potential negative impact that a numbers-based approach could have on the users of low volume and free services? For example, in my state, Community Voice Mail provides free essential telephone voice mail service to the homeless.

Answer. I have urged that the Commission consider assessing contributions based primarily on working telephone numbers rather than interstate revenue. You raise concerns that a numbers-based approach would shift the cost burden to low income people, the elderly, and other low-volume users. The Commission is considering these concerns, as well as other options for maintaining a sufficient and sustainable collection mechanism. The Commission needs to ensure that consumers, including low income consumers and those in rural and high-cost areas, have access to quality services at affordable rates.

Question 20. In the event that the FCC moves forward with a numbers-based contribution approach, will you incorporate limited relief to allow exemptions for low use services?

Answer. I support reforming the current contribution system and moving to a more competitively and technology neutral system based on telephone numbers. Specifically, such an approach would help maintain the stability of the fund by assessing all technologies used to make a phone call on a similar basis. Nevertheless, as the Commission reviews the various proposals to reform the current assessment system, it will examine the potential impact of any course of action on all consumers.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO HON. KEVIN J. MARTIN

Question 1. In October, I wrote to you expressing concerns about a proposed new 10,000 watt commercial radio station on the 1700 AM frequency in Rockland County, New York. If approved, this station would force off the air eight Travelers Information Stations in New Jersey—stations that are critical for public safety and emergency management. Have you had the opportunity to review my letter, and what is the current status of this proposed station?

Answer. Because your correspondence raised *ex parte* issues, the Commission's Office of the General Counsel responded to your letter on December 10, 2007.

Question 2. There has been recent activity—both at the FCC and in the courts—regarding the rebanding of the 800 MHz spectrum. When do you expect the rebanding to be completed?

Answer. The Commission had previously established June 26, 2008, as the deadline for completion of rebanding in non-border regions. Although Sprint Nextel has filed an appeal in the D.C. Circuit, which will be heard later this year, the June 2008 deadline remains in effect, and we expect a substantial number of licensees to complete the process by that date. We also anticipate that some public safety licensees with large and complex systems may require additional time to complete the rebanding process. In such cases, the Commission will consider licensee requests for waiver of the deadline, provided that licensees can show that their requests are reasonable and that they have been diligent in their rebanding efforts.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. THOMAS R. CARPER TO HON. KEVIN J. MARTIN

Question. The Federal Communications Commission should be commended for issuing its recent Notice of Proposed Rulemaking that considers whether to authorize Big LEO Mobile Satellite Services operators to provide ancillary terrestrial services on more of their assigned spectrum. As you are aware, one such operator, Globalstar, and its partner, Open Range Communications, need this authority in order to pursue their plan to bring broadband services to more than 500 rural communities across the country. Given the Commission's stated commitment to promote the rapid deployment of advanced broadband services to unserved and underserved areas, will you assure the Committee that you will do all that it takes to complete this proceeding in the time required for Globalstar and Open Range to move forward with their business plan?

Answer. The Commission is committed to promoting the rapid deployment of advanced broadband services to unserved and underserved areas. In November 2007, the Commission released a NPRM seeking comment on the relevant technical issues raised by Globalstar's request for additional ATC. The NPRM was in response to Globalstar's request that we initiate a rulemaking to expand the authority for Globalstar to operate ATC spectrum from 11 GHz to all of the frequencies where Globalstar is authorized to operate MSS, including those frequencies Globalstar shares with other users and services. The comment cycle for the NPRM closed on January 3, 2008. We received comments from nine parties this past December, and we received reply comments from seven parties. We are actively reviewing the record now, and will make all efforts to resolve Commission action on this rulemaking promptly in order for Globalstar and Open Range to move forward with their business plan.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. TED STEVENS TO HON. KEVIN J. MARTIN

Question. Kawerak, Inc., a non-profit consortium in Alaska has requested me to submit this question to the Commission:

Does the Commission have the statutory authority to provide Universal Service support to non-profit corporation tribal consortiums, serving remote areas of Alaska, that provide education, welfare, wellness, law enforcement, natural resources and economic development services?

Kawerak is one of Alaska's tribal consortiums who provides several services to remote areas of Alaska, and has expressed concern about their ineligibility to receive Universal Service support because they are unable to meet the precise definitions of health care or educational service providers. Please address the requirements which these tribal consortiums must meet in order to receive support.

If these tribal consortiums are unable to meet the Commission's current requirements, please address whether a waiver process is available for these entities.

Please also describe the specific steps which non-profit corporation tribal consortiums must take to apply for, and receive, support from the Universal Service Fund.

Answer. The United States and the Commission have a long history and tradition of ensuring that rural areas of the country, and in particular tribal lands, are connected and have similar opportunities for communications as other areas. Our Universal Service program works to promote investment in rural and tribal infrastructure and ensure access to telecommunications services that are comparable to those available in urban areas today, as well as provide a platform for delivery of advanced services.

The eligibility criteria for any organization, including Kawerak, to receive Federal Universal Service support is set forth in the Telecommunications Act of 1996, as amended (1996 Act).

For the Universal Service Rural Health Care Program, section 254 of the 1996 Act lists seven different types of entities that are eligible to receive support. Specifically, the Act states that "[t]he term 'health care provider' means—

> (i) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;
>
> (ii) community health centers or health centers providing health care to migrants;
>
> (iii) local health departments or agencies;
>
> (iv) community mental health centers;
>
> (v) not-for-profit hospitals;
>
> (vi) rural health clinics; and
>
> (vii) consortia of health care providers consisting of one or more entities described in clauses (i) through (vi)."

47 U.S.C. § 254(h)(7)(B). The Commission's Universal Service Rural Health Care Program rules parallel this statutory definition of health care provider. *See* 47 C.F.R. § 54.601(a)(2).

For the Universal Service schools and libraries (E-Rate) program, section 254 of the 1996 Act states that elementary and secondary schools are eligible for support, but states that "[t]he term 'elementary and secondary schools' means elementary schools and secondary schools, as defined in . . . the Elementary and Secondary Education Act of 1965." 47 U.S.C. § 254(h)(7)(A). That Act in turn provides that the definition of elementary and secondary schools is defined "as determined under State law." 20 U.S.C. § 7801(18), (38).

Commission staff stands ready to assist Kawerak, and any other potential rural health care or E-Rate participant, in working within the confines of the statute and program rules to obtain Universal Service support. For your information, I have attached an overview of the funding processes for the rural health care and E-Rate programs.

I understand that Kawerak has been found eligible to receive Universal Service in the past. Kawerak, as part of a consortium representing a dozen tribal organizations, received commitments for over $200,000 in rural health care support from 1999 through 2006. I expect that Kawerak would continue to be eligible to receive rural health care Universal Service support in the future. Similarly, I understand that, the Bering Strait School District, with whom Kawerak partners, has received over $9 million in E-rate support since the program's inception.

UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

Overview of the Rural Health Care Program Process

Rural health care providers and service providers that participate in the Rural Health Care Program have certain requirements and responsibilities that must be met in order to receive support in a timely manner. Below is an overview of the process.

All health care providers (HCPs) or consortia of HCPs seeking to participate in the Rural Health Care Program must complete the *Description of Services Requested and Certification Form* (Form 465) to request bids from service providers for services to be used for the provision of health care. A separate Form 465 must be completed for *each* physical location within the consortia that is eligible to receive support.

When a Form 465 is received from a new applicant, USAC confirms eligibility. Once USAC reviews a Form 465 and determines it is complete, it is posted on the USAC website and a letter is sent to the health care provider to confirm the posting. The posting invites service providers to bid to provide services. The posting date starts the 28-day competitive bidding process. All health care providers expecting support must complete the 28-day posting requirement before entering into an agreement to purchase services with a service provider.

A health care provider must consider all bids received and select the most cost-effective method to meet its requirements. The most cost-effective method is defined by the FCC as the method of least cost after consideration of the features, quality of transmission, reliability, and other factors relevant to choosing a method of providing the required services.

To be eligible to receive telecommunications support, the selected carrier must be a "Common Carrier". Any telecommunications service and/or Internet access necessary for the provision of health care is eligible for support, but equipment charges are not eligible for support. All Internet service providers are eligible to participate in the program; however, only the monthly charge is eligible for support.

Once the service providers and services are selected, the health care provider completes and submits the *Funding Request & Certification Form* (Form 466) and/or an *Internet Service Funding Request & Certification Form* (Form 466–A). These forms specify the type(s) of service ordered, the cost, the service provider(s), the terms of any service agreements, and certifies that the selections were the most cost-effective offers received.

USAC reviews the Form 466 and/or 466–A packet for accuracy. Upon approval, USAC mails the health care provider a Funding Commitment Letter (FCL) and a copy of the *Receipt of Service Confirmation Form* (Form 467). A copy of the FCL is also sent to the service provider.

After the service begins from the service provider, the health care provider submits Form 467 to USAC. Form 467 must be submitted in order to receive discounted services. USAC cannot process Form 467 unless a Funding Commitment Letter has been issued.

Once Form 467 is received, reviewed, and approved, USAC will send the health care provider and its service provider(s) a health care support schedule. At this point, the service provider can begin crediting the bill with the monthly recurring support amount or issue a check for the discount. As soon as the service provider has issued a credit or check to the health care provider, the service provider invoices USAC.

USAC will then credit or reimburse the carrier's Universal Service Fund (USF) account. Those that do not have such an active USF account and have not been issued a SPIN number by USAC must fill out an FCC Form 498 and then reimbursement will be issued by check or direct deposit.

APPLICANTS—SCHOOLS AND LIBRARIES

Step 1: Determine Eligibility

Federal and state laws determine eligibility of schools, school districts, and libraries.

Schools

In general, a school is eligible for Schools and Libraries support if it meets the following eligibility requirements:

- Schools must provide elementary or secondary education as determined under state law.
- Schools may be public or private institutional day or residential schools, or public charter schools.

- Schools must operate as non-profit businesses.
- Schools cannot have an endowment exceeding $50 million.

In many cases, non-traditional facilities and students may be eligible.

- Eligibility of Head Start, Pre-Kindergarten, Juvenile Justice, and Adult Education student populations and facilities depends on state law definitions of elementary or secondary education.
- An Educational Service Agency, which may operate owned or leased instructional facilities, may be eligible for Schools and Libraries support if it provides elementary or secondary education as defined in state law.

Libraries

Libraries must meet the statutory definition of library or library consortium found in the 1996 Library Services and Technology Act (Pub. L. 104–208) (LSTA) to meet eligibility requirements for Schools and Libraries support.

- Libraries must be eligible for assistance from a state library administrative agency under that Act.
- Libraries must have budgets completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges and universities).
- Libraries cannot operate as for-profit businesses.

Step 2: Develop a Technology Plan

The application process for Schools and Libraries support begins with a technology assessment and a technology plan.

Schools, school districts, and libraries that want to apply for Schools and Libraries support, commonly referred to as "E-Rate," must first prepare a technology plan. An approved technology plan sets out how information technology and telecommunications infrastructure will be used to achieve educational goals, specific curriculum reforms, or library service improvements.

A technology plan designed to improve education or library services should cover the entire funding year (July 1 to June 30) but not more than 3 years. The plan must contain the following five elements:

- Goals and realistic strategy for using telecommunications and information technology.
- A professional development strategy.
- An assessment of telecommunication services, hardware, software, and other services needed.
- Budget resources.
- Ongoing evaluation process.

The technology plan must be approved by an USAC-certified technology plan approver before discounted services can begin. The state is the certified technology plan approver for libraries and public schools. Non-public schools and other entities that do not secure approval of their technology plan from their states may locate an USAC-certified technology plan approver here.

Applicants that seek Schools and Libraries Program support only for basic telephone service do not need a technology plan.

Step 3: Open a Competitive Bidding Process (Form 470)

Applicants must file the *Description of Services Requested and Certification Form* (Form 470) to begin the competitive process and must ensure an open and fair competitive bidding process for specific products.

Applicants must file a new Form 470 each funding year for requests for tariffed or month-to-month services and for new contractual services. When the Form 470 is filed, USAC will make it available to interested service providers by posting it to the USAC website.

Applicants *must:*

- Describe specific services or functions for support.
- Identify the correct category of services: telecommunications, Internet access, internal connections, or basic maintenance of internal connections.
- Identify recipients of services for support.
- Follow all applicable state and local procurement laws.
- Wait 28 days after the Form 470 is posted to the USAC website or after public availability of your Request for Proposals (RFP), whichever is later, before se-

lecting a vendor or executing a contract (see Step 4: Select the Most Cost-Effective Service Provider).

Applicants *may:*

- Use RFPs or other solicitation methods tailored to specific needs and circumstances *in addition* to the required Form 470.

The Form 470 must be completed by the entity that will negotiate for eligible products and services with potential service providers. A service provider that participates in the competitive bidding process as a bidder cannot be involved in the preparation or certification of the entity's Form 470.

A new Form 470 is *not required* if an applicant intends to seek discounts on services provided under a multi-year contract executed under a posted Form 470 in a prior funding year.

Step 4: Select the Most Cost-Effective Service Provider

Applicants must select the most cost-effective provider of the desired products or services eligible for support, with price as the primary factor.

Waiting Period. At the conclusion of the 28-day waiting period after the *Description of Services Requested and Certification Form* (Form 470) is posted on the USAC website, the applicant may select a vendor for tariffed or month-to-month services or execute a contract for new contractual services.

Bid Evaluation. Applicants must construct an evaluation for consideration of bids received in response to the posting of the Form 470 that makes price the primary factor in the selection of a vendor.

Contract Guidance. Applicants may also choose vendors from a State Master Contract, execute multi-year contracts pursuant to a Form 470, and enter into voluntary contract extensions, but certain additional contract requirements apply. In all cases, applicants must comply with state and local procurement laws.

Document Retention. Applicants must save all documentation pertaining to the competitive bidding process and vendor selection for 5 years. Applicants must certify and acknowledge on the Form 470 and the *Services Ordered and Certification Form* (Form 471) that they may be audited and that they must retain all records that can verify the accuracy of information provided.

Step 5: Calculate the Discount Level

An applicant that applies for Schools and Libraries Program support for eligible services must calculate the discount percentage that it and the schools or libraries it represents are eligible to receive.

Applicants use the *Services Ordered and Certification Form* (Form 471) to calculate the discount and begin by listing the recipients of services for support. FCC rules include a discount matrix that takes into consideration poverty level and the urban or rural location of the participating entity. For detailed information about how to calculate the percentage discount and complete the Block 4 Worksheet of Form 471, read Form 471 Instructions for the Block 4 Worksheet.

Schools

- The primary measure for determining Schools and Libraries support discounts is the percentage of students eligible for free and reduced lunches under the National School Lunch Program (NSLP), calculated by individual school.
- A school district applicant calculates its shared discount by calculating a weighted average of the discounts of all individual schools included in the school district.

Libraries

- Library branches or outlets must obtain and use the NSLP data for the public school district in which they are located to calculate the discount.
- A library system applicant calculates its shared discount by calculating an average of the discounts of all library branches or outlets included in the system.

Consortia

- A consortium calculates its shared discount by calculating the average of the discounts of all eligible libraries and schools that are included in its membership.

Urban or Rural

- Every school or library in the United States is located in either a rural or an urban area, based on Metropolitan Statistical Area (MSA) data.

- The applicant must determine if the individual school or library is rural or urban to properly calculate its percentage discount.

Non-instructional Facilities

Non-instructional facilities that serve educational purposes may be eligible to receive discounts on telecommunications and Internet access services (Priority 1 services).

Step 6: Determine the Eligible Services

Applicants may request discounts for eligible products and services delivered to eligible entities for eligible purposes.

Applicants file a *Services Ordered and Certification Form* (Form 471) to request discounts on the cost of eligible services to be delivered to eligible schools, libraries, and consortia of these entities. Eligibility for discounts requires that the product or service is eligible and that it is put to an eligible use at an eligible location by an eligible entity.

Four categories of eligible services have been established by the Federal Communications Commission (FCC):

- Telecommunications Services.
- Internet Access.
- Internal Connections.
- Basic Maintenance of Internal Connections.

Services and products may be eligible, not eligible, or conditionally eligible for support. The schools and libraries Eligible Services List provides details about eligible equipment and services and the conditions under which they are eligible.

Eligibility is based on criteria established by statute and FCC rules.

Step 7: Submit Application for Support (Form 471)

The *Services Ordered and Certification Form* (Form 471) is the key form used to assure that schools and libraries receive appropriate Universal Service Fund support, comply with eligibility requirements, and take steps to use the supported services effectively.

What to File

Form 471—*Services Ordered and Certification Form*

The Form 471:

1. May be filed online or on paper.
2. Must be certified by an authorized person to be considered complete.
3. Must be postmarked or submitted online prior to the close of the application filing window for the funding year to be considered as filed within the window.

Form 471 Item 21 Attachment

Services and products for which discounts are requested must be described on the Item 21 Attachment. Beginning with Funding Year 2006, the Item 21 Attachment may be created and submitted online.

Form 471 Item 25 Certification

Applicants must certify that they have secured access to the resources necessary to pay for:

1. The non-discounted portion of the costs for requested eligible services within the funding year.
2. The ineligible products and services necessary to make effective use of the eligible services requested.

After You File

Receipt Acknowledgement Letter

USAC will issue a Form 471 Receipt Acknowledgment Letter (RAL) to both the applicant and service provider upon successful data entry of the Form 471 and certification. Applicants should review the RAL and submit allowable corrections to USAC.

Step 8: Undergo Application Review

Each application is reviewed to ensure that Universal Service Fund support is committed only for eligible products and services as well as eligible uses by eligible entities.

Review of All Applications

USAC reviews all *Services Ordered and Certification Forms* (Forms 471) to verify the accuracy of discount percentages and ensure that support is committed only for eligible products and services. USAC is committed to issuing timely Funding Commitment Decision Letters but its ability to meet that goal depends on efficient processing of application reviews.

Applicants can help speed up application reviews by:

- Submitting a complete Form 471 including required certifications and Item 21 Attachments for each funding request.
- Responding to requests for additional or clarifying information within 15 days.
- Verifying that USAC has correct contact information.

Selective Reviews

USAC selects some applicants for a Selective Review to ensure that they are following certain FCC program rules. Applicants are asked to provide the following information covering all of the billed entity's Forms 471 for the funding year:

- Documentation regarding their competitive bidding and vendor selection process.
- Documentation of their ability to pay their share of the cost of the products and services eligible for schools and libraries program support.
- Proof that they have obtained the (ineligible) hardware, software, professional development, electrical capacity or other retrofitting, and maintenance necessary to make effective use of the requested discounts.

View a sample Selective Review Information Request. Service providers may *not* provide responses to Selective Review Information Requests.

The result of a Selective Review may be that funding is approved or denied. The applicant may also receive a Resource Deficiency Advisory that explains the areas USAC finds to be deficient. Applicants should consider increasing their level of investment in identified areas since USAC may follow up in subsequent years regarding the necessary resources.

Applicants may not receive direct or indirect help from service providers to pay their non-discounted share.

Step 9: Receive Your Funding Decision

Following application review, USAC issues one or more Funding Commitment Decision Letters (FCDLs) to both the applicant and the service provider(s).

Program funding commitment decisions are issued in "waves," or regular cycles. Generally, funding year commitment waves will run on a regular bi-weekly schedule until such time that the only remaining applications are those held for heightened scrutiny.

For all certified, in-window applications, FCC rules of priority are observed in processing funding requests:

- Priority One—all eligible telecommunications and Internet access services are fully funded first.
- Priority Two—eligible requests for internal connections and basic maintenance of internal connections from applicants with highest discount levels receive next priority.

Applicants should carefully review their Funding Commitment Decision Letter (FCDL) for details of approved or denied requests. Prior to the start of services for which Universal Service Fund support is approved, the applicant should review its technology plan status and its status concerning compliance with the Children's Internet Protection Act (CIPA).

If an applicant believes that its funding request has been incorrectly reduced or denied, the applicant can appeal the decision to USAC or to the FCC.

Step 10: Begin Receipt of Services

Before USAC can pay invoices, the billed entity must confirm: the start date of services, approval of the technology plan, and compliance with the Children's Internet Protection Act (CIPA).

To help USAC ensure that Universal Service Fund support is paid only for services that have actually been delivered, applicants must verify the start date of services and submit a *Receipt of Service Confirmation Form* (Form 486).

Technology plans must be approved before services start and before the applicant submits the Form 486. Applicants must be able to provide a technology plan ap-

proval letter issued by a USAC-certified technology plan approver. If the approval letter is posted on a website, the applicant should print and retain a copy.

CIPA certifications are made on either Form 486 or the *Certification by Administrative Authority to Billed Entity of Compliance with the Children's Internet Protection Act* (Form 479) depending on whether the applicant is the billed entity.

- If the applicant is the billed entity, it must certify on Form 486 that it is in compliance with CIPA or that CIPA does not apply because funding requests are only for telecommunications services.
- If the applicant is not the billed entity, it must submit Form 479 to the billed entity; the billed entity, as the Administrative Authority, then submits Form 486 to USAC with the CIPA certification. Applicants that are not the billed entity do *not* submit Form 479 to USAC.

Applicants should read Form 486 Filing Information, Form 486 Instructions, and Form 479 Instructions for further information including required filing dates.

Step 11: Invoice USAC

After eligible services have been delivered, service providers and school and library applicants may submit invoices for Universal Service Fund (USF) support.

FCC rules require USAC to pay Universal Service support to service providers and not directly to applicants. However, two invoice methods and program forms exist:

Service Provider Invoice (SPI) (Form 474)

Service providers may submit Form 474 to USAC seeking payment for services:

- After the service provider provides the services or equipment to the applicant.
- After the billed entity submits the *Receipt of Service Confirmation Form* (Form 486) verifying the service start date.
- After the service provider has provided a discounted bill to the billed entity.

Billed Entity Applicant Reimbursement (BEAR) Form (Form 472)

The billed entity and the service provider must *jointly* submit the BEAR form:

- Following the receipt of discounted eligible services.
- After the billed entity submits the Form 486.
- After the billed entity has paid the total amount (including the applicant's non-discount share and the amount of USF support to be paid by USAC) to the service provider.

Determining Invoice Method

Applicants should work with service providers to include a provision in contracts or service agreements specifying whether customer bills will be the total cost of services or only the customer's non-discount share. Service providers may provide applicants with discounted bills and submit the SPI to request payment from USAC for the amount of USF support to be paid. Service providers and applicants may jointly submit the BEAR when the applicant has paid the entire cost of services to the service provider. In all cases, USAC pays support to the service provider.

Service Delivery and Invoice Deadlines

The date of the Funding Commitment Decision Letter determines deadlines for service delivery and invoices. Under certain conditions, applicants may request extensions of program deadlines.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO HON. KEVIN J. MARTIN

Question 1. While the issue of media ownership is not new and the most recent proceeding has been open for approximately 18 months, only 28 days were provided for the public to comment on your specific proposal to partially lift the newspaper/broadcast cross-ownership ban, which has been in place for 32 years. This is deeply troubling due to the critical nature of this issue and past FCC precedent.

For example, last month, the FCC provided *60 days* for public comment and reply for a proposal on amending pole attachments rules. Earlier this month, the Commission gave *45 days* for public comment and reply on a rulemaking proposal on indefinitely extend the unanimously popular Do-Not-Call List registration period. And, in November 2006, the FCC granted *90 days* for public comment and reply on the effects of communications towers on migratory birds.

Since the FCC has historically given 60–90 days for public comment and reply on critical proceedings and proposals, isn't it only appropriate to do the same with the specific proposal you announced last month? What is the impetus for providing only 28 days for the public to comment on a specific proposal that was released only last month? If the Commission delayed its vote on the media ownership proposal and provided more time for the public to comment on it, what harm would result?

Answer. While I appreciate your and others' concerns about my decision to hold a vote on the media ownership *Report and Order* at the December 18th meeting, I do not believe that further delaying that decision would have been appropriate.

Over the past year and a half the Commission has had to grapple with the most contentious and divisive issue to come before it: the review of the media ownership rules. The Commission's Media Ownership Order adopted on December 18, 2007, strikes a balance between preserving the values that make up the foundation of our media regulations while ensuring those regulations keep apace with the marketplace of today.

Section 202(h) of the 1996 Telecommunications Act, as amended, requires the Commission to periodically review its broadcast ownership rules to determine "whether any of such rules are necessary in the public interest as a result of competition." It goes on to read, "The Commission shall repeal or modify any regulation it determines to be no longer in the public interest."

In 2003, the Commission conducted a comprehensive review of its media ownership rules, significantly reducing the restrictions on owning television stations, radio stations and newspapers in the same market and nationally. Congress and the court overturned almost all of those changes.

There was one exception. The court specifically upheld the Commission's determination that the absolute ban on newspaper/broadcast cross-ownership was no longer necessary. The court agreed that ". . . reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest."

It has been over 4 years since the Third Circuit stayed the Commission's previous rules and over 3 years since the Third Circuit instructed the Commission to respond to the court with amended rules.

It is against this backdrop that the FCC undertook a lengthy, spirited, and careful reconsideration of our media ownership rules.

First, we provided for a long public comment period of 120 days, which we subsequently extended. We held six hearings across the country: one each in Los Angeles, California; Nashville, Tennessee; Harrisburg, Pennsylvania; Tampa Bay, Florida; Chicago, Illinois; and Seattle, Washington. And, we held two additional hearings specifically focused on localism in Portland, Maine and in Washington, D.C. The goal of these hearings was to more fully and directly involve the American people in the process.

We listened to and recorded thousands of oral comments, and allowed for extensions of time to file written comments on several occasions. We've received over 166,000 written comments in this proceeding.

We conducted ten independent studies. I solicited and incorporated input from all of my colleagues on the Commission about the topics and authors of those studies. We put those studies out for peer review and for public comment and made all the underlying data available to the public.

Although not required, I took the unusual step of publishing the actual text of the one rule I thought we should amend. Because of the intensely controversial nature of the media ownership proceeding and my desire for an open and transparent process, I wanted to ensure that Members of Congress and the public had the opportunity to review the actual rule prior to any Commission action.

After engaging in this extensive process and providing the public with unprecedented opportunities for input, the time had come to respond to the Third Circuit's remand, which is now more than three-and-a-half years old, and complete the review of our media ownership rules which Congress has directed us, by statute, to undertake. Moreover, I felt strongly that we must provide certainty for a media industry that has for several years operated in a climate of uncertainty.

Question 2. Some have suggested that lifting the cross-ownership ban would improve the dreadfully low percentages of woman and minority-owned media since a woman or minority-owned newspaper could now buy a broadcast station or vice versa. However, a June 2006 report by the Free Press found that woman and minority owners are more likely to own fewer stations per owner than their white and corporate counterparts—*they are more likely to own just a single station.* This singular ownership also seems to be the case for minority owned newspapers.

The report seems to suggest that financial reasons are behind the inability of these groups to purchase additional media properties. They just simply can't afford

to expand given certain market and industry conditions. Data also shows that the woman and minority-owned media outlets typically are in more rural areas.

If women and minority owners aren't able to expand their media operations due to financial reasons, and the current proposal only lifts the cross-ownership ban in the top 20 markets, then how is the proposal going to adequately address the disparity that exits with women and minority media ownership?

Answer. I have not suggested that lifting the cross-ownership ban would increase the percentage of women and minority owned media.

I share your concerns about increasing the opportunities for women and minorities to own broadcast outlets. On December 18, 2007, the Commission adopted a range of initiatives intended to enhance opportunities for broadcast ownership for small businesses, including women- and minority-owned entities. Many of the actions taken in this *Report and Order* were recommended to the Commission by the Advisory Committee for Diversity in the Digital Age. Among other things, the item: (1) changes the construction permit deadlines to allow "eligible entities," defined as entities that meet the Small Business Administration's criteria as small businesses that acquire expiring construction permits additional time to build out the facility; (2) revises the Commission's equity/debt plus attribution standard to facilitate investment in "eligible entities"; (3) modifies the Commission's distress sale policy to allow certain licensees—those whose license has been designated for a revocation hearing or whose renewal application has been designated for a hearing on basic qualifications issues—to sell the station to an "eligible entity" prior to the commencement of the hearing; (4) adopts an Equal Transactional Opportunity Rule that bars race or gender discrimination in broadcast transactions; (5) adopts a "zero-tolerance" policy for ownership fraud and "fast-tracks" ownership-fraud claims; (6) requires broadcasters renewing their licenses to certify that their advertising sales contracts do not discriminate on the basis of race or gender; (7) encourages local and regional banks to participate in SBA-guaranteed loan programs in order to facilitate broadcast and telecommunications-related transactions; (8) gives priority to any entity financing or incubating an "eligible entity" in certain duopoly situations; (9) considers requests to extend divestiture deadlines in mergers in which applicants have actively solicited bids for divested properties from "eligible entities"; and (10) revises the exception to the prohibition on the assignment or transfer of grandfathered radio station combinations, permitting assignment or transfer of grandfathered radio station combinations intact to any buyer, not just an eligible entity as currently permitted, provided that such a buyer files an application to assign the excess stations to an eligible entity, or to an irrevocable divestiture trust for purposes of ultimate assignment to an eligible entity, within 12 months after consummation of the purchase of the grandfathered cluster.

Question 3. In its repeal and remand of the FCC's 2003 media ownership rule changes, the Third Circuit Court of Appeals, in its *Prometheus* decision, stated that it "cannot uphold the Cross-Media Limits themselves because the Commission does *not provide a reasoned analysis* to support the limits that it chose." In addition, the court stated "our decision to remand the Cross-Media Limits also gives the Commission an opportunity to cure its *questionable notice*." What do you believe is the reasoned analysis that supports this change to the media ownership rules?

Answer. As the Commission noted in the Media Ownership Order in this proceeding, "we received many comments from a broad range of commenters, including broadcasters, newspapers, public interest groups, unions, and individual citizens. While many commenters believe that relaxation of the media ownership rules is necessary to promote our goals and that the current rules must be revised or eliminated under the statutory standard, many other commenters expressed significant concerns about the general level and potential consequences of media consolidation, including concerns that such consolidation results in a loss of viewpoint diversity and negatively affects competition. In addition, the Commission conducted or commissioned ten studies and received numerous other studies in the record of the proceeding. The Commission also conducted six media ownership hearings around the country and heard widely divergent testimony from a number of commenters and speakers at open microphones as to whether the media ownership rules should be relaxed, retained, or even tightened. We have carefully reviewed these comments, as well as the studies and the testimony. Our approach herein is a cautious approach. By modestly loosening the 32-year prohibition on newspaper/broadcast cross-ownership, our approach balances the concerns of many commenters that we not permit excessive consolidation with concerns of other commenters that we afford some relief to assure continued diversity and investment in local news programming."

Based on all of the foregoing, we concluded that the newspaper/broadcast cross-ownership ban should be modestly relaxed and that our other media ownership

rules should remain unchanged. As the Commission stated, ". . . we cannot ignore the fact that the media marketplace is considerably different than it was when the newspaper/broadcast cross-ownership rule was put in place more than thirty years ago. Back then, cable was a nascent service, satellite television did not exist and there was no Internet. Indeed, the newspaper/broadcast cross-ownership rule is the only rule not to have been updated in 3 decades, despite the fact that FCC Chairmen—both Democrat and Republican—have advocated doing so."

Consumers have benefited from the emergence of new sources of news and information. But according to almost every measure newspapers are struggling. For example, at least 300 daily papers have stopped publishing over the past thirty years and circulation and advertising revenues at approximately half of all U.S. dailies has dropped precipitously in recent years. Permitting cross-ownership can preserve the viability of newspapers by allowing them to share their operational costs across multiple media platforms. In the order, the Commission explained that "the revised newspaper/broadcast cross-ownership rule would allow a newspaper to purchase a radio station in the largest 20 cities in the country or a television station in such cities—but not one of the top four television stations—as long as 8 independent major voices remain in the market. This relatively minor loosening of the ban on newspaper/broadcast cross-ownership in markets where there are many voices and sufficient competition will help strike a balance between ensuring the quality of local news gathering while guarding against too much concentration."

The Commission has applied the positive presumption only in the largest markets based on the evidence in the record that the twenty largest markets contain a robust number of diverse media sources and that the diversity of viewpoints would not be jeopardized by certain newspaper/broadcast combinations. The record also shows that newspaper/broadcast combinations can create synergies that result in more news coverage for consumers. In short, the new rule lifts the complete ban but does so in a modest manner in order to ensure both that the Commission's goals of competition, localism, and diversity are not compromised and that the Commission may achieve the economic benefits of allowing certain combinations.

The Commission's determination to draw that line at the top twenty markets is reasonable and well supported by the record, based on an examination of the media marketplace in the largest DMAs in the country. The Commission stated in the order that it had "evaluated the range of media outlets available in the top 20 DMAs, and concluded that diversity in those largest markets is healthy and vibrant in comparison to all other DMAs. For example, while there are at least 10 independently owned television stations in 18 of the top 20 DMAs, none of the DMAs ranked 21 through 25 have 10 independently owned television stations. Additionally, while seventeen of the top 20 DMAs have at least two newspapers with a circulation of at least 5 percent of the households in that DMA, four of the five DMAs ranked 21 through 25 have only one such newspaper. Moreover, the top 20 markets, on average, have 15.5 major voices (independently owned television stations and major newspapers), 87.8 total voices (all independently owned television stations, radio stations, and major newspapers), and approximately 3.3 million television households. Markets 21 through 30, by comparison, have, on average, 9.5 major voices, 65.0 total voices, and fewer than 1.1 million television households, representing drops of 38.5 percent, 25.9 percent, and 56.3 percent from the top 20 markets, respectively. Markets 31 through 40 and 41 through 50 have average numbers of voices for each category similar to markets 21 through 30, and even fewer television households on average, 837,800 and 679,200, respectively. Markets 50 through 210 show even more dramatic drops, with on average, 6.7 major voices, 31.2 total voices, and approximately 231,000 television households, representing drops of 56.4 percent, 61.7 percent, and 90.7 percent from the top 20 markets, respectively. The diversity in the number and types of traditional media outlets in the largest markets ensures that the public is well served by antagonistic viewpoints. Markets outside of the top 20 DMAs do not feature diversity to such an extent.

We have selected the number eight for the major media voice count because we are comfortable that assuring that minimum number of major media voices in the top 20 markets—along with the other unquantified media outlets that are present in those markets—will assure that these markets continue to enjoy an adequate diversity of local news and information sources. As noted above, there are at least 10 independently owned television stations and two major newspapers in the great majority of the top 20 markets. Further, all of those markets have at least eight television stations and one major newspaper. As we do not want to allow a significant decrease in the number of independently owned major media voices in any of those markets, we will presume that a merger is in the public interest only if at least eight major media voices will remain post-merger."

Question 3a. It doesn't seem that providing only 28 days to have the public comment on the specific changes to the media ownership rule that you propose, or only 5 day's notice for the localism and media ownership hearings in Washington, D.C. and Seattle, WA wouldn't satisfy the requirements of the court—wouldn't you agree?

Answer. While I appreciate your and others' concerns about my decision to hold a vote on the media ownership *Report and Order* at the December 18th meeting, I do not believe that further delaying that decision would have been appropriate.

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Question 4. In July of this year, the Commission released ten research studies on media ownership, which were intended to inform the Commission's comprehensive review of its broadcast ownership policies undertaken in its rulemaking proceeding. The studies, which were conducted by outside researchers and by Commission staff, examined a range of issues that impact diversity, competition, and localism—the three important policy goals of those rules.

The Consumer Federation of America, Consumers Union and Free Press jointly filed comments to the FCC in regards to these 10 studies. The commenters called the studies a "collection of inconsistent, incompetent and incoherent pieces of research cobbled together to prove a foregone conclusion." More so, they stated that the peer reviews of the studies did not follow required procedures and, due to this,

violated Office of Management and Budget guidelines on the implementation of the Data Quality Act. What is your assessment on the integrity of how the studies were conducted?

Answer. The Commission, in its Media Ownership Order, rejected the complaints filed by Free Press, Consumer Federation of America, and Consumers Union claiming that the Commission violated the Data Quality Act ("DQA") and guidelines issued by the Office of Management and Budget ("OMB") implementing the DQA. Free Press alleges that the Commission violated the DQA by failing to give interested parties sufficient time to "reproduce" the results of those studies. The Commission concluded that "neither the DQA nor the OMB guidelines requires a Federal agency to allot time in a rulemaking proceeding for third parties to reproduce the results of studies released by the agency. Moreover, the facts belie the allegation that Free Press had insufficient time to review the studies."

The Commission "made available for inspection the bulk of the non-proprietary data underlying the studies beginning on July 31, 2007, and released the proprietary data under a Protective Order by September 6, 2007. In response to a request from Free Press, the Media Bureau extended the deadline for submitting comments on the studies from October 1 to October 22, 2007, and extended the deadline for reply comments from October 16 to November 1, 2007. Thus, Free Press had 46 days after September 6 to prepare comments and 10 more days to prepare reply comments. Free Press took full advantage of the extended comment period—it filed nearly 2,500 pages of comments on the studies. We find that Free Press had adequate time to review the data underlying the studies and to reproduce their results."

The Commission also "rejected the complaints filed by Free Press and other commenters that the Commission failed to comply with the peer review guidelines promulgated by OMB. The OMB Bulletin provides for the peer review of disseminations of scientific information containing 'findings or conclusions that represent the official position of one or more agencies of the Federal Government.' It requires Federal agencies to ensure that its official disseminations have met rigorous standards of quality control through a peer review mechanism or to put the public on notice that the information has not been through a rigorous quality review. The Bulletin expressly provides that it is intended to improve the internal management of the Executive Branch and that it does not create any enforceable legal rights."

The Commission concluded that "Free Press incorrectly claims that the Commission acted contrary to the OMB Bulletin by releasing the 10 media ownership studies prior to completing peer reviews of the studies. The Commission posted the media ownership studies to its website on July 31, 2007, shortly after they were completed, in order to give the public and the peer reviewers access to their contents expeditiously. The Commission issued a Public Notice that same day requesting public comment on the studies. The Public Notice specifically stated that the studies had not yet been peer reviewed; accordingly, the public was accurately informed that the studies at that point did not necessarily meet rigorous quality review standards. In addition, it was clear from the disclaimers on some of the studies that those particular studies did not represent the agency's official view. In order to forestall any confusion on this point, the Commission posted an explanatory disclaimer with regard to each of the studies on the web page that is the public's primary access point to them, making it clear that they do not represent the Commission's official views, and were not being disseminated as such. Furthermore, the Media Bureau extended the comment period on the studies until November 1, 2007. The extension of time allowed a total of 58 days from the posting of the peer reviews on September 4, 2007, and more than 90 days from the posting of the studies for public review and comment on July 31, 2007."

Moreover, the Commission noted that "it accepts *ex parte* filings from members of the public past the end of the formal comment period, which gives parties an opportunity to supplement the record with additional information. Thus, the public has been afforded ample time to review and comment on the studies after completion of the peer reviews."

Furthermore, the Commission concluded that "the record clearly indicates that the public had ample notice of our peer review plans, although Free Press attempts to make much of the fact that the peer review plans were not filed on a separate web page. Beginning with the initial Public Notice announcing the commissioning of the 10 studies on November 22, 2006, the Commission continuously informed the public of its peer review process through periodic Public Notices and updates to its Media Ownership website. The Commission posted on its website the study topics (November 22, 2006); the completed studies (July 31, 2007); the peer review charge letters (August 28, 2007); and the completed peer review reports (September 4, 2007). The Commission's July 31, 2007 Public Notice established a pleading cycle for public comment on the studies. The peer review charge letters and peer review

reports were made available to the public on the Commission's website well before the end of the comment period. In addition, charge letters were posted to the website in advance of the posting of the actual peer review reports. Accordingly, the public was adequately informed of the peer review process being conducted, and has had adequate opportunity to comment on the elements of the FCC's peer review process in this proceeding."

The Commission also noted that "Free Press's complaint does not raise concerns about the validity of the Commission's peer review process, and there is no basis for any. The OMB Bulletin expressly provides that agencies have "broad discretion" to use particular peer review mechanisms suitable to a particular information product. The Commission has exercised its discretion in a reasonable manner in the course of this proceeding. All of the studies that the Commission requested to be conducted were peer reviewed by unaffiliated experts, and four of them were peer reviewed by multiple reviewers. One study was revised as a result of the peer review, and the authors of another study submitted new calculations with their responses to the peer reviews. Twenty-two quantitative studies submitted by third parties in the docket were peer reviewed, and the results were posted for further public comment. The Commission's peer review process has improved the quality of the studies submitted to the Commission for its information in this proceeding. Although Free Press would have preferred a far more elaborate and time-consuming peer review process, this process was not required under the OMB Bulletin nor would it have improved appreciably upon the Commission's robust, extended process for independent review and public comment."

Question 4a. These groups also performed research, utilizing the FCC's own data, which actually showed relaxing the newspaper/broadcast cross-ownership rules resulted in a *net loss in the amount of local news* that is produced across local markets by broadcast stations. The commenters stated "at the market level, cross-ownership results in the loss of an independent voice as well as a decline in market-wide news production." Have you all reviewed these comments? At the very least, these claims raise serious doubts as to the validity of any relaxation of media ownership rules and begs for closer examination of the data before you enact any changes to the media ownership rules—wouldn't you agree?

Answer. The Commission carefully reviewed the comments of the Consumer Federation of America, Consumers Union, and Free Press ("CU"). The Commission concluded that "[d]ue to numerous difficulties with CU's analysis, we find that we cannot rely on its conclusions."

First, "[i]t is not clear what measure CU used for total quantity of local news, but it appears that the measure is limited to broadcast television news, which measures only a portion of local news, and ignores local news from newspapers, radio, local cable news stations, and other sources. As a result, CU's measurements are incomplete, and we cannot rely upon them."

Second, ". . . the thrust of CU's argument is that if cross-ownership does not increase total local news (as CU measures it), the ban should be maintained. This argument may have been formed because CU statistical results do not show a statistically significant effect of cross-ownership. This lack of statistical significance may arise from CU's choice of specification and measure of local news, and as such may be unreliable."

Finally, "Media General submits a critique of CU's criticisms that agrees with these findings. In his *Econometric Review,* Dr. Harold Furchtgott-Roth states that CU makes several economic and econometric mistakes that undermine the reliability of its results. First, he states that CU's decision to examine the effect of cross-ownership by aggregating to the market level is incorrect. CU's revised regressions fail to measure total news and diversity of news at the market level. In addition, he states that one of the strongest predictors of the quantity of broadcast news in a market would be the number of stations in the market. That variable, however, is omitted in the specifications by CU, resulting in regressions that are much less precise. We agree that it is improper to aggregate to the market level without adjusting for the number of outlets in the market."

Question 5. One of the statements being made about the DTV transition is that *"Television sets connected to cable, satellite or other pay TV service do not require converters."* However, it is my understanding this may not be totally true for certain satellite subscribers, primarily in rural areas like the town of Presque Isle, Maine due to the issue of local-into-local service, which is when a satellite company provides its subscribers with all of the local broadcast TV stations in that market.

While satellite companies do offer local-into-local in most of the media markets, it is not available to all 210 media markets—it seems as if the service is not available to approximately 60 rural markets in about 30 states.

Is this correct? And if so, what impact will the DTV transition have on households that subscribe to satellite in areas that do not have local-into-local service? If they have a TV with an analog tuner will they also need to purchase a converter box? Is the FCC working with the satellite companies to make sure they expand the local-into-local service to cover all 210 media markets before the DTV transition? If not, wouldn't this be an appropriate thing to do to alleviate any consumer confusion that would result from inaction?

Answer. Although neither of the two major satellite television carriers, DIRECTV and DISH Network, offers local-into-local service in all of Nielsen's 210 Designated Market Areas ("DMAs"), 179 markets receive local-into-local service and more than 97 percent of U.S. households are in markets in which satellite-delivered local stations are available.

DIRECTV offers local-into-local service in 144 DMAs today, and is in the process of launching local-into-local service in an additional six markets for a total of 150 DMAs. DISH Network currently provides local-into-local service in 167 markets.

The reason for less than 100 percent local-into-local service is that, unlike the statutory cable "must-carry" requirements that require all cable systems throughout the country to carry local stations, the statutory requirements for satellite carriage give satellite carriers a choice of whether or not to carry local stations in a market. Specifically, Congress enacted the Satellite Home Viewer Improvement Act of 1999 ("SHVIA") to allow, but not require, satellite carriers to offer local stations pursuant to a statutory copyright license. Satellite carriers that choose to use the statutory copyright license to offer one or more stations in a market must carry all the stations in the market that request carriage. This is known as "carry one, carry all." In 2004, Congress amended the statute to require carriage ("must carry") in Alaska and Hawaii.

We have asked the satellite carriers about their plans for eventually serving all of the 210 markets and will continue to work with them as they develop improved technology.

Question 6a. Over the summer it was reported that FCC staff inspected about 1,100 retail stores around the country, as well as retailers' websites, to monitor compliance with FCC DTV label rules. As a result of those inspections, the Commission issued more than 260 citations notifying retailers of violations, which results in about a 76 percent compliance rate.

Obviously, not the best figure, mainly with the holiday season that we are in the middle of. People buying a new TV may not be aware or will be misinformed that their new TV will not accept over-the-air digital signals and therefore need to buy more equipment to accommodate the transition. Has the FCC performed any additional inspections to determine if the label compliance rate has improved any?

Answer. We are continuing to inspect retail stores and websites to assess compliance with our DTV label rules.

As of February 5, 2008, the Commission has conducted 1,688 inspections of retailer stores and websites to assess compliance with the DTV label rules. Based on our inspections, we believe that retailer compliance with the DTV label rules has improved since our inspections began.

We have now issued 309 citations for violations of the DTV label rules. Additionally, some inspections identified violations by retailers against which the Commission had already issued a citation. In those cases, no citation was issued because the violations will be addressed in a Notice of Apparent Liability for forfeiture. We also have fourteen NALs on circulation for such violations and released six more NALs in October.

Most of these violations, however, occurred during the summer months. More recent inspections have found relatively few problems. Indeed, we have re-inspected several stores that previously had violations and found them fully compliant with our rules.

Question 6b. Also has the Commission recorded any consumer complaints and confusion about DTV *versus* HDTV? While most high-definition TVs can receive digital signals not all the can and the concern is that it might lead to confusion at the retailer or at home.

Answer. Although we have not received any specific complaints on this issue, we have heard anecdotally at outreach events about some consumer confusion regarding DTV and HDTV. We let consumers know that if they want to purchase a new TV, a digital television (also known as a "standard definition" TV) is all that is required, and that these TVs are comparably priced to similar sized analog televisions.

Question 7. Over the past several months there have been incidents that have raised serious concern about the phone and cable companies' power to discriminate against content. In September, Verizon Wireless arbitrarily chose to block a series

of text messages on the grounds that the subject matter was too controversial. While the carrier, to its credit, reversed this decision, this illustrates its power as a content gatekeeper. Then came the news that AT&T reserves the right it its Terms of Service to discontinue the service of customers that criticize the company. In October, the Associated Press reported that Comcast was interfering with the popular file-sharing, peer-to-peer service BitTorrent.

Senator Dorgan and I have requested that this committee hold a hearing to consider the issue of content discrimination and investigate these incidents further to determine if they were based on legitimate business and network management policies or part of practices that would be deemed unfair and anti-competitive.

We also wrote you a letter, dated October 14, requesting the Commission's position on the Verizon Wireless-NARAL text messaging incident. To this date we have not heard any response from your office. Do you know the status of that response? Also, do you feel that any of these events could have been appropriately and effectively addressed by the FCC's Four Internet Freedom Principles or any other FCC regulation that is in place?

Answer. A response to the letter sent by you and Senator Dorgan was transmitted to your office under separate cover. The Commission adopted an Internet Policy Statement with four policy principles aimed at protecting consumers' access to the lawful Internet content of their choice, and ensuring the free flow of information across networks. The activities attributed to Verizon Wireless, however, involved wireless text messages rather than access to Internet content. Although neither Congress nor the Commission has addressed text messaging, I believe that the principle of ensuring consumer access to content on the Internet generally applies to providers of text messaging services as well. For this reason, I have directed the Enforcement Bureau to initiate an investigation into such practices. In addition, the Commission has sought public comment on a Petition for Declaratory Ruling filed by several public interest groups to clarify the regulatory status of text messaging services, including short-code based services sent from and received by mobile phones.

Question 8. It was recently disclosed a proposal is circulating that would reinstate cable system ownership limits at 30 percent of the national market. Many, including myself, have been long been concerned about the lack of wireline cable competition and rising price of cable service.

Specifically, the FCC recently stated that "the average cost of cable has almost doubled from 1995 to 2005, increasing 93 percent, while the cost of other communication services fell. The cable industry needs more competition and we will continue to act to bring more competition and its benefits to consumers."

The initial cable ownership cap stemmed from a FCC change in 1992 as a result of the 1992 Cable Act, which directed the FCC to establish limits on the number of subscribers a cable operator may serve and on the number of channels a cable operator may devote to affiliated programming. What are the pros and cons of implementing a cable ownership cap to bringing more competition, and benefits or lower prices to consumers?

Answer. Congress passed the Cable Television Consumer Protection and Competition Act of 1992 to promote increased competition in the cable television and related markets. The 1992 Cable Act added structural rules intended to address the consequences of increased horizontal concentration and vertical integration in the cable industry. A principal goal of this statutory framework was to foster a diverse, robust, and competitive market in the acquisition and delivery of multichannel video programming.

Congress intended the structural ownership limits of Section 613(f) to ensure that cable operators did not use their dominant position in the multichannel video programming distribution ("MVPD") market, to impede unfairly the flow of video programming to consumers.

Specifically, Congress directed that "[i]n prescribing rules and regulations . . . the Commission shall, among other public interest objectives . . . ensure that no cable operator or group of cable operators can unfairly impede, either because of the size of any individual operator or because of joint actions by a group of operators of sufficient size, the flow of video programming from the video programmer to the consumer . . . ensure that cable operators affiliated with video programmers do not favor such programmers in determining carriage on their cable systems or do not unreasonably restrict the flow of the video programming of such programmers to other video distributor . . . take particular account of the market structure, ownership patterns, and other relationships of the cable television industry, including the nature and market power of the local franchise, the joint ownership of cable systems and video programmers, and the various types of non-equity controlling interests . . . account for any efficiencies and other benefits that might be gained through

increased ownership or control . . . make such rules and regulations reflect the dynamic nature of the communications marketplace . . . not impose limitations which would bar cable operators from serving previously unserved rural areas; and . . . not impose limitations which would impair the development of diverse and high quality video programming." Communications Act § 613(f)(2)(A)–(G), 47 U.S.C. § 533(f)(2)(A)–(G).

Question 8a. Back in 1992, there was little, if any, competition in the cable industry. Now, we have seen satellite TV providers reach approximately 30 million subscribers and telephone companies rolling out digital TV services. How might a 1992 cable ownership cap directive affect the cable industry in a 2007 market?

Answer. In today's 2007 marketplace, the average cost of cable is increasing dramatically. The Commission has found, "overall, cable prices increased more than 5 percent last year and by 93 percent since the period immediately prior to Congress's enactment of the Telecommunications Act of 1996. Expanded basic prices rose more than 6 percent or twice the rate of inflation last year. Prices are 17 percent lower where wireline cable competition is present. DBS competition does not appear to constrain cable prices—average prices are the same as or slightly higher in communities where DBS was the basis for a finding of effective competition than in non-competitive communities. Finally, increases in programming expenses were equivalent to more than half of the overall increase in prices for the basic and expanded basic tiers."

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DAVID VITTER TO HON. KEVIN J. MARTIN

Question. Louisiana has the fifth highest rate of households without access to a phone in the nation, so payphones remain a vital communication method in many communities. As I have pointed out before, payphones were the only way many families were able to communicate after the hurricanes in 2005. I am told that payphone service providers in my state will find it difficult to continue to deploy payphones at current levels if they are not fairly compensated as the rules require.

I understand that payphone service providers are compensated for their non-coin calls from a rule developed by the FCC. Those rules require payphone providers to collect from several hundred different carriers and prepaid card providers, but payphone service providers may not legally block the phone numbers of providers who do not compensate them. This policy is good for payphone users, but it requires a concurrent effort by the FCC to ensure that payphone service providers are fairly compensated to be able to maintain service.

I have been told that, even after the revised rules from 2004, payphone service providers are dealing with many carriers and prepaid payphone card providers who continue to avoid paying the required compensation. As I understand the situation, the FCC has initiated very few actions to enforce these payphone compensation rules. Please let me know what specific actions have been taken within the last year to rectify the problem of non-payments and what action you may anticipate will be necessary going forward.

Answer. On September 30, 2003, in the *Tollgate Order,* the Commission adopted the current payphone compensation rules to ensure that payphone service providers (PSPs) are fairly compensated for each and every completed, payphone-originated call, as required under section 276 of the Telecommunications Act of 1996. The *Tollgate Order* and its implementing rules became effective on July 1, 2004.

On September 13, 2006, the Commission's Wireline Competition Bureau released a Public Notice reminding carriers of their obligations under the payphone rules, and also reiterating that it will not hesitate to take enforcement action, including imposing forfeitures, should carriers fail to comply with their compensation and reporting obligations.

The Commission addresses both formal and informal complaints between industry participants, including compensation disputes between payphone service providers and carriers, and investigates possible violations of the Commission's rules and the Communications Act of 1934, as amended, (the Act), including the Commission's payphone compensation rules.

In February 2007, the Commission issued an order in a formal complaint proceeding requiring a carrier to pay payphone service providers and their agents more than $2.7 million in damages plus prejudgment interest for billing and collection.

Additionally, during this period, 38 informal complaints seeking payphone compensation were filed. Informal complaints are geared toward allowing the parties to attempt to resolve disputes among themselves through negotiations and without resort to formal complaint litigation, if possible. In that regard, 14 of the informal

complaints filed in 2007 have already been resolved by the parties, and a number of others are currently under active negotiations. Under the Commission's rules complainants may file formal complaints if the negotiations do not succeed.

The Commission recognizes the importance of payphones and we are committed to enforcing the payphone compensation rules. The Commission must ensure that the mandate of section 276 of the Act, "to promote the widespread deployment of payphone services" by "ensur[ing] that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone" is realized.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO HON. KEVIN J. MARTIN

Question 1. The FCC has commissioned 10 economic studies on media ownership and its effect on news and other programming. According to these studies, how does cross-ownership effect local content and political slant? Does this outcome differ by the size of the media market? In other words, how does the cross-ownership ban impact local content and political slant in the largest 20 markets compared to effects in smaller markets around the country? What has been the experience of markets which had companies grandfathered in under old media ownership rules?

Answer. The Commission concluded that "[t]hree Media Ownership studies analyzed the effects of newspaper/broadcast cross-ownership on television news coverage and local content." Study 6 ("The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News," authored by Jeffrey Milyo) examined the effects of cross-ownership on local news. The study "concluded that 'local television newscasts for cross-owned stations contain on average about 1–2 minutes more news coverage overall, or 4 to 8 percent more than the average for non-cross-owned stations.' The author further concluded that newspaper cross-ownership is also 'significantly and positively associated with both local news coverage and local political news coverage,' finding that cross-owned stations show 7 to 10 percent more local news than do non-cross-owned stations. The study author also found that on average, cross-owned stations broadcast about 25 percent more coverage of state and local politics. The author also generally noted that newspaper/broadcast cross-ownership is associated with more candidate coverage, more candidate speaking time and more coverage of opinion polls.'" Study 6 also focused on the political slant of TV stations and concluded that television stations cross-owned with newspapers exhibit a slight and statistically insignificant Republican-leaning slant in content.

The Commission concluded that Study 3 ("Television Station Ownership Structure and the Quantity and Quality of TV Programming," authored by Gregory Crawford) "analyzed the relationship between the ownership structure of television stations and quantity and quality of television programming between 2003 and 2006, finding that cross-owned television stations broadcast (approximately 3.0 percentage points) more local news programming".

The Commission found that "Study 4.1 ("The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming" authored by Daniel Shiman) collected data on the news and public affairs programming provided by television stations and analyzed the relationship between the quantity of such programming and the ownership structure of each television station. After examining the programming of approximately 1,700 stations between 2002 and 2005, the author concluded that cross-owned stations provided 11 percent (18 minutes) more news programming per day than other stations."

The Commission recognized "that there is disagreement in the studies. On balance, however, we conclude that the weight of evidence indicates that cross-ownership can promote localism by increasing the amount of news and information transmitted by the co-owned outlets."

Question 2. The financial troubles and perceived threats to the viability of newspapers and broadcasts have played a significant role in the proposed changes of media ownership rules. Some sources contend that despite declining ad revenues and readership, newspapers remain profitable. However, others contend that these media outlets have only been able to remain profitable at the expense of quality and quantity of news they produce. What do you perceive the financial position of newspapers to be in today's market? How does this vary based on the size of the media market? To what extent will these proposed changes alleviate these troubles?

Answer. The record in the proceeding reveals that newspapers are struggling and that, across the industry, circulation is down and advertising revenue is shrinking. Some analysts suggest that newspapers appear to have entered a period of "pro-

tracted decline." In 2006, the traditional indicators were all negative: circulation fell even faster than in previous years; industry revenues were flat and, on the print side, retail, national and automotive classified ads all showed weakness.

Industry analysts attribute the more recent, steeper declines to many factors, not one or two. Some news consumers, particularly the young, have moved online. Only 35 percent of persons aged 18 through 34 read newspapers on a daily basis. "Free" dailies (*i.e.,* advertising-only papers) are a competitive factor, too, especially in larger cities. The net result is not so much that people are giving up on newspapers altogether as that they read them less often. Seven-day-a-week subscribers have become a smaller group; many have switched to getting the paper a few days a week and skipping others.

The most severe losses in 2006 were in large metropolitan markets like Los Angeles, Boston, San Francisco and Philadelphia. The top 50 newspapers in circulation lost an average of 3.6 percent daily circulation, almost 1 percentage point more than the industry average. In the two previous years, the three national papers had managed to stay even, but not in 2006. Circulation was off 3.2 percent at *The New York Times,* 1.9 percent at *The Wall Street Journal,* and 1.3 percent at *USA Today*.

In adopting the new waiver standard for newspaper/broadcast cross-ownership, the Commission stated that it continued "to find evidence that cross-ownership in the largest markets can preserve the viability of newspapers without threatening diversity by allowing them to spread their operational costs across multiple platforms. In doing so, they can improve or increase the news offered by the broadcaster and the newspaper. Numerous media owners provide examples of cost savings and shared resources leading to more local coverage and better quality news coverage. . . . [T]he record indicates that the largest markets contain a robust number of diverse media sources and that the diversity of viewpoints would not be jeopardized by certain newspaper/broadcast combinations. The record also shows that newspaper/broadcast combinations can create synergies that result in more news coverage for consumers."

Question 3. Chairman Martin: Mr. Chairman your proposal only deals with the top 20 markets. Was there some clear difference between the top 20 markets and the remaining markets or was this a more arbitrary standard? Why are ownership rules not being revised for smaller markets?

Answer. The Commission has applied the positive presumption only in the largest markets "based on the evidence in the record that the largest markets contain a robust number of diverse media sources and that the diversity of viewpoints would not be jeopardized by certain newspaper/broadcast combinations."

In the Order, the Commission "found notable differences between the top 20 markets and all other DMAs, both in terms of voices and in terms of television households." For example, the Order states that "while there are at least 10 independently owned television stations in 18 of the top 20 DMAs, none of the DMAs ranked 21 through 25 have 10 independently owned television stations." Additionally, the Order states that "while 17 of the top 20 DMAs have at least two newspapers with a circulation of at least 5 percent of the households in that DMA, four of the five DMAs ranked 21 through 25 have only one such newspaper." Moreover, according to the Order, "the top 20 markets, on average, have 15.5 major voices (independently owned television stations and major newspapers), 87.8 total voices (all independently owned television stations, radio stations, and major newspapers), and approximately 3.3 million television households." The Commission states that "[m]arkets 21 through 30, by comparison, have, on average, 9.5 major voices, 65.0 total voices, and fewer than 1.1 million television households, representing drops of 38.5 percent, 25.9 percent, and 56.3 percent from the levels in the top 20 markets, respectively. Markets 31 through 40 and 41 through 50 have average numbers of voices for each category similar to markets 21 through 30, and even fewer television households on average, 837,800 and 679,200, respectively. Markets 50 through 210 show even more dramatic drops with, on average, 6.7 major voices, 31.2 total voices, and approximately 231,000 television households." The Commission notes that "[t]hese figures represent drops of 56.4 percent, 61.7 percent, and 90.7 percent from the levels in the top 20 markets, respectively."

The Commission adopted a presumption that it is inconsistent with the public interest for an entity to own newspaper and broadcast combinations in markets outside the top 20 DMAs "to protect competition and media diversity." Indeed, the Commission stated in the Media Ownership Order that "diversity has been especially important in the context of newspaper/broadcast cross-ownership, given the reliance the public has placed on these media as sources of local news and information." The Order states that "[t]his reliance may be particularly acute in markets below the top 20 DMAs." Specifically, the Order states that "[t]he top 20 DMAs share a robustness in media and outlet diversity that is not matched in smaller

markets." The Commission was not "certain that the degree of media consolidation that the largest, more competitive markets can withstand is yet mirrored in smaller markets, and thus," it found in the Order "that there should be a presumption against newspaper/broadcast cross-ownership in markets below the top 20."

Question 4. The Universal Service Fund is obviously very important for rural states like South Dakota. What general troubles do you see arising with the fund and its solvency? What would you recommend to help alleviate these troubles? What are your thoughts on the recommendations put forth by the Federal-State Joint Board in November?

Answer. The Commission recently adopted several proposals to reform the high-cost Universal Service program. It is essential that we take actions that preserve and advance the benefits of the Universal Service program.

The United States and the Commission have a long history and tradition of ensuring that rural areas of the country are connected and have similar opportunities for communications as other areas. Our Universal Service program must continue to promote investment in rural America's infrastructure and ensure access to telecommunications services that are comparable to those available in urban areas today, as well as provide a platform for delivery of advanced services.

Changes in technology and increases in the number of carriers that receive Universal Service support, however, have placed significant pressure on the stability of the Fund. A large and rapidly growing portion of the high-cost support program is now devoted to supporting multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. These additional networks don't receive support based on their own costs, but rather on the costs of the incumbent provider, even if their costs of providing service are lower. In addition to recommending an interim cap, the Federal-State Joint Board on Universal Service (Joint Board) has recognized the problems of maintaining this identical support rule.

I am supportive of several means of comprehensive reform for the Universal Service program. I have circulated among my colleagues at the Commission an Order that adopts the recommendation of the Joint Board to place an interim cap on the amount of high-cost support available to competitive eligible telecommunications carriers (ETCs). And we recently adopted a Notice of Proposed Rulemaking that would require that high-cost support be based on a carrier's own costs in the same way that rural phone companies' support is based. I'm supportive of both measures as a means to 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.

I continue to believe the long-term answer for reform of high-cost Universal Service support is to move to a reverse auction methodology. I believe that reverse auctions could provide a technologically and competitively neutral means of controlling the current growth in the fund and ensuring a move to most efficient technologies over time. Accordingly, I am pleased that we adopted a Notice of Proposed Rulemaking to use reverse auctions to distribute Universal Service support.

I also support the Joint Board recommendation to revise the current definition of supported services to include broadband Internet access service. Congress did not envision that services supported by Universal Service would remain static. Instead, it views Universal Service as an evolving level of communications services. With each passing day, more Americans interact and participate in the technological advances of our digital information economy. Deployment of these telecommunications and information technologies support and disseminate an ever increasing amount of services essential to education, public health and safety. A modern and high quality communications infrastructure is essential to ensure that all Americans, including those residing in rural communities, have access to the economic, educational, and healthcare opportunities available on the network. Our Universal Service program must continue to promote investment in rural America's infrastructure and ensure access to communications services that are comparable to those available in urban areas, as well as provide a platform for delivery of advanced services.

The broadband program recommended by the Joint Board is tasked primarily with disseminating broadband Internet access services to unserved areas. This is a laudable goal as we work to make broadband services available to all Americans across the Nation. As proposed, the program would have limited resources. Additional support for this broadband program could be made available by requiring competitive ETCs to demonstrate their own costs and meet the support threshold in the same manner as rural providers.

I am also pleased that the Joint Board supports reverse auctions as a mechanism by which the new broadband and mobility funds would be administered. I continue to support the use of reverse auctions to determine high-cost Universal Service funding for eligible telecommunications carriers. I believe that reverse auctions pro-

vide a technologically and competitively neutral means of restraining Fund growth and prioritizing investment in rural and high-cost areas of the country.

Question 5. Many people are concerned that the digital TV transition is not going as smoothly as would be hoped and a number of steps still need to be taken including the issuance of rules regarding the processing of construction permit applications and the assignment of channels to broadcasters. Why have these issues not been resolved yet? When do you expect them to be resolved? Will this allow the industry enough time to transition to digital TV?

Answer. With respect to channel assignments, the Commission adopted the DTV Table of Allotments in August 2007, which provided post-transition channel assignments for all eligible full-power broadcasters.

The Commission also recently released the Third DTV Periodic Report and Order, which mandates strict, final deadlines for stations to complete construction of digital facilities. In this order, the Commission made technical adjustments to its rules and policies to enable broadcasters to take the actions necessary to complete the conversion from analog to digital. The Commission is doing everything in its power to ensure that broadcasters successfully transition their stations to full digital operations.

Question 6. The FCC appears to be reregulating some aspects of broadcasting which were deregulated under President Reagan and have helped the broadcast industry remain competitive over the past 25 years. With the influx of new technologies and mediums, why has the FCC chosen now to begin reregulation? Have there been any specific detrimental effects that have prompted this? Why has the FCC increasingly turned to government mandates instead of market based solutions to help resolve these problems?

Answer. Establishing and maintaining a system of local broadcasting that is responsive to the unique interests and needs of individual communities is an extremely important policy goal of the Commission.

Along with competition and diversity, localism is one of the three goals underlying all of our media ownership rules. In the context of our media ownership review, I was asked by my colleagues and Members of Congress to revive the localism proceeding initiated and stopped under the previous Chairman several years ago.

I completed the remaining two hearings the previous Chairman committed to holding back in 2003. In addition, my colleagues and I completed the localism inquiry begun under the previous Chairman.

In order to promote localism, the Commission took two important steps. First, the Commission adopted an order requiring television broadcasters to better inform their communities about how the programming they air serves them. Specifically, television stations will file a standardized form on a quarterly basis that details the type of programming that they air and the manner in which they do it. This form will describe a host of programming information including the local civic affairs, local electoral affairs, public service announcements (whether sponsored or aired for free) and independently produced programming.

Second, the Commission adopted a Report summarizing the record compiled as a result of its Notice of Inquiry regarding localism and six field hearings on the subject. Although that record shows that many broadcasters provide substantial locally oriented programming, it also contains comments and testimony suggesting that a number of stations may fail to fully meet their localism obligations, particularly in the provision of local news, political and other public affairs programming. In response to these concerns, the Commission also adopted a *Notice of Proposed Rulemaking* that includes specific recommendations as to what broadcasters should be, and most frequently are, doing to serve the interests and needs of their local communities. For example, the Commission proposed that each licensee establish a community advisory group comprised of local leaders with which it will periodically consult.

Question 7. Earlier this year, the FCC's Office of Engineering (OET) released a report which shows that allowing unlicensed devices into the television spectrum may interfere with the television signal in 80–87 percent of a television station's service area. Additionally, a July report from the FCC demonstrated that prototypes that utilize "sensing" technology did not effectively detect TV signals. Do you perceive this to be a threat to the DTV transition? If so, what is the FCC doing to ensure that the DTV transition is not jeopardized by unlicensed consumer digital devices?

Answer. As we approach the digital transition, the Commission should keep in mind that one of the top priorities of Congress and the Commission is ensuring that the DTV transition is successful. Any rules the Commission establishes to provide for the operation of unlicensed devices in the TV bands must protect against harm-

ful interference to the authorized broadcast services that already operate in this spectrum. These services include full-power TV stations, low-power TV stations, and wireless microphones. The Commission is developing an extensive technical record through our pending rulemaking. The Office of Engineering is currently performing both laboratory and field tests of several prototype TV band devices to evaluate the interference potential. Both laboratory testing and field testing of prototype white space devices will be open to observation by any interested party. I can assure you that we will thoroughly consider all of the engineering data, test results (*i.e.*, both laboratory testing and field testing), and responses submitted in the record before adopting final rules.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. GORDON H. SMITH TO HON. KEVIN J. MARTIN

Question. When can we expect to see a decision in the special access docket? Section 254(a)(2) of the Communications Act requires that the Commission "complete any proceeding to implement recommendations from any Joint Board on Universal Service within 1 year of receiving such recommendations." The Joint Board on Universal Service delivered its recommended decision on high-cost reform on November 19, 2007. When will the Commission solicit public comment on this decision?

Answer. In January 2005, the Commission adopted a Notice of Proposed Rulemaking, which, among other things, sought comment on the special access regulatory regime, including whether the Commission should maintain or modify the Commission's pricing flexibility rules for special access services. A majority of the Commissioners asked to seek further comment in this proceeding, and the Commission released a Public Notice on July 9, 2007, setting an expedited comment cycle for interested parties to refresh the existing record. Comments were filed on August 8, 2007, and reply comments on August 15, 2007. After the Commission received these comments, I provided an options memo to all of the Commissioners by September 2007. To date, there is no option that is supported by a majority of Commissioners.

On January 29, 2008, the Commission released a Notice of Proposed Rulemaking seeking comment on the Joint Board's Recommended Decision. Comments are due within 30 days of *Federal Register* publication and reply comments are due 30 days later.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO HON. MICHAEL J. COPPS

Question 1. Last year, a provision to reform the FCC's forbearance authority was included in the Committee's telecom reform bill. Specifically, it would have eliminated the "deemed granted" language in Section 10 in order to ensure a fairer process at the FCC. I recently introduced legislation that will eliminate this provision, so we can avoid a situation where the agency erases its rules simply by failing to vote. Do you believe that it's fair for the FCC to make far-reaching changes without even issuing a decision?

Answer. I certainly do not think it is fair for the FCC to make wholesale changes to communications policy merely by failing to act on a forbearance petition. Permitting a forbearance petition to go into effect pursuant to section 10's "deemed granted" provision is akin to providing industry the pen and giving it the go-ahead to rewrite the law. I believe Congress entrusted the FCC to implement the law, but it did not tell us to delegate far-reaching policy changes to the companies that fall under our jurisdiction. Therefore I believe that S. 2469, "Protecting Consumers through Proper Forbearance Procedures Act" is an essential step to ensuring that far-reaching FCC forbearance decisions are not made through omission or inaction. I am also eager to have the Commission complete the rulemaking it currently has underway to consider changes to the Commission's forbearance procedures.

Question 2. Earlier this year, the FCC released a Notice of Proposed Rulemaking examining so-called "two-way, plug-and-play standards" for cable navigation devices. Do you support implementation of Section 629 in a way that will create a retail market for "two-way, plug-and-pay" devices and allow for greater competition and consumer choice? Do you believe that FCC oversight is sufficient to ensure that any standards and specifications are created and changed through a fair process that treats all affected parties equitably?

Answer. I strongly support implementation of Section 629 in a way that will create a retail market for two-way "plug-and-play" devices and allow for greater com-

petition and consumer choice. It has now been almost 12 years since Congress directed the Commission to *assure* that equipment used to access video programming and other services offered by multi-channel video providers is available to consumers at retail. And yet today consumers cannot walk into their local retailer and purchase a television set that will receive two-way digital cable services without renting a set-top box from their local cable operator. The absence of plug-and-play capability could discourage consumers from investing in new digital equipment at precisely the time we are attempting to minimize the legacy analog equipment in the marketplace. A flourishing market for two-way devices would spur tremendous innovation and other competitive benefits for consumers.

I also believe that the FCC has the responsibility to ensure that any standards or specifications we adopt treat all affected parties equitably, and that we should have mechanisms in place to ensure continued FCC oversight.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. BILL NELSON TO HON. MICHAEL J. COPPS

Question. As you are probably aware, Florida is currently the largest "net payer" state into the Universal Service Fund. Florida pays in more than $300 million more to the USF than it receives in disbursements. Getting beyond the idea of a "cap" of some sort—which may raise competitive issues—it seems like one other way of achieving efficiencies is through more effective targeting of support. How do you feel about this approach?

Answer. I believe that the Universal Service system needs to be fundamentally reformed so that the fund is both sustainable and rational for the future. An important piece of comprehensive reform is certainly finding more efficient ways for distributing high-cost support. I also believe that a critical change must be to include broadband in the Universal Service program. Broadband is essential to the mission of Universal Service for the 21st century, just as plain old telephone service was the mission of USF in the 20th century. I'm pleased that the Joint Board recently agreed with me on a bipartisan basis and now supports broadband as part of the system. In terms of targeting the support, I believe that support should first go where it can do the greatest good. Many of our rural companies are doing a good job of getting broadband out to most of their territory as best as I can tell. But we repeatedly hear from companies that they are bringing broadband out to only 80 percent or 85 percent of their service area and that it's just not economic to go to the most rural areas. Therefore, ensuring that support is targeted well so that broadband goes to these unserved and largely underserved areas is important.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO HON. MICHAEL J. COPPS

Question 1. A recent GAO report cited that no comprehensive plan exists for the digital television transition. The GAO stated "Among other things, a comprehensive plan can detail milestones and key goals, which provide meaningful guidance for assigning and coordinating responsibilities and deadlines and measuring progress. Such planning also includes assessing, managing, and mitigating risks, which can help organizations identify potential problems before they occur and target limited resources". This week the Commission released a written response to the GAO report. At this point in time, what do you consider to be the top five risk factors with respect to American consumers getting through the digital television transition with minimal disruption? Which of these risk factors fall under the jurisdiction of the FCC? How is the FCC managing and mitigating these risks?

Answer. As an initial matter, I would like to clarify that although a document was released entitled 'FCC Response to GAO's Report on the Digital Television Transition,' I did not see that document before it was released and do not necessarily endorse the assertions it contains.

In response to your specific questions regarding the DTV transition, here are five of my major concerns right now:

1. *National commitment/coordination.* An overarching concern is that the DTV transition is not yet being treated as the national priority that it is. I was heavily involved in the Y2K effort, a comprehensive, public sector-private sector partnership with accountability, clear lines of authority, and daily coordination at the highest levels. The DTV transition needs to be that kind of urgent national priority. Ideally, we would have an Inter-Agency Task Force headed out of the White House. Absent that, it seems to me that the FCC is the only entity

in a position to get the job done. Unfortunately, I see no indication that the FCC will be undertaking such an effort.

2. *Consumer education.* Consumer awareness of the transition continues to lag, and we lack a coordinated consumer education plan—particularly for hard-to-reach communities—that will ensure that the American people are prepared for the switch-over. The FCC has certain resources at its disposal and can compel its licensees and other stakeholders to do much more. We have an Order before us that would take several positive steps, which I hope we will act on as soon as possible.

3. *Broadcaster build-out.* Hundreds of stations are not yet ready for the transition and many will need major construction and/or equipment upgrades over the next 13 months. This is an issue squarely within the FCC's jurisdiction. Recently, we issued an Order in the Third DTV Periodic Review to provide broadcasters with the rules of the road for the final build-out. Had the transition been a higher priority, I believe we could have adopted these rules and the Final DTV Table of Allotments much earlier than we did. The additional time would have permitted a smoother transition for consumers.

4. *Test market.* The current plan is to turn off every full-power analog broadcast signal in the country on February 17, 2009, without running a single test market first. A test market would help us learn which consumer outreach messages worked and which did not, which populations had particular difficulties, whether consumers were having converter box installation and/or reception issues, and on and on. Legally, the FCC may be able to compel the creation of a test market, but, at this point, I doubt such a step could be achieved without the cooperation of all relevant stakeholders. We are exploring the idea both internally at the FCC and with outside parties.

5. *LPTV (including Class A)/TV translator stations.* There are potentially thousands of LPTV and TV translator stations that will not be turning off their analog signals on February 17, 2009. I am concerned about the challenge of educating those stations' viewers about what actions they should take and when. Moreover, in markets with both full-power and LPTV/Class A and/or translator stations, I am concerned that many viewers of those stations will install a converter box without an analog tuner or analog pass-through and thus unwittingly lose access to their LPTV/Class A and/or translator stations when the switch-over occurs. The converter box program is within the jurisdiction of the Commerce Department. A petition has been filed at the FCC, however, alleging that converter boxes lacking analog reception capability would violate the All-Channel Receiver Act.

Question 2. Should the common carrier exemption be removed from the Federal Trade Commission? What, if any, would be the disadvantage to consumers if the exemption is removed?

Answer. The decision to have a common carrier exemption applicable to the Federal Trade Commission is one made by Congress and is part of the statute governing the Federal Trade Commission. I certainly understand concerns that as the marketplace changes consumers may be left unprotected when the FCC chooses not to regulate in a particular area. I have been one of the leading proponents of stronger consumer protections. However, I believe that removing the exemption would disadvantage consumers in a number of respects. Were the common carrier exemption removed there could be substantial overlap in the responsibilities of the two Commissions causing significant confusion for consumers. Particularly problematic would be a situation where the FCC and the FTC issued contrary or conflicting rules covering the same subject matter. In addition, were the FTC to have jurisdiction over telecommunications areas that the FCC currently regulates, industry stakeholders would be able to forum shop in order to achieve the most favorable result for them rather than for consumers. The Federal Communications Commission has approximately 2,000 experts in the field of communications, many of whom are focused on the regulation of the telecommunications industry. While a decision on the FTC's common carrier exemption is ultimately Congress's, I believe that the FCC's expertise continues to make it the best suited to develop, implement and promote telecommunications policies that serve consumers and the public interest.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO HON. MICHAEL J. COPPS

Question 1. New Jersey is a net contributor of almost $200 million a year to the Universal Service Fund (USF). There are many proposals for reforming USF, includ-

ing temporary caps and longer-term proposals. When can I tell my constituents that they will see some action from the FCC to stop the exponential growth of this Fund?

Answer. There is no question that the need for Universal Service reform has been contemplated for far too long. That is why, as a member of both the FCC and the Federal-State Joint Board on Universal Service, I have been pushing for comprehensive reform of the Universal Service system. I frankly believe that the Joint Board spent far too much time over the last eighteen months debating reverse auctions and an interim cap on high-cost support. If it had focused initially on comprehensive reform we might be a lot further down the road than we are today. That said, the Joint Board did release a recommendation for comprehensive Universal Service reform to the FCC in November 2007. I am disappointed that the Joint Board recommendation has not yet been put out for comment by the FCC. I believe the Commission should do so immediately. The Commission should then take up long-term, comprehensive Universal Service reform with the Joint Board's recommendation as a starting point. The fact that we have not done so already is very disappointing to me and represents a lost opportunity in my book.

Question 2. There has been recent activity—both at the FCC and in the courts—regarding the rebanding of the 800 MHz spectrum. When do you expect the rebanding to be completed?

Answer. I am firmly committed to completing the 800 MHz rebanding process in a way that will (1) eliminate the risk of harmful interference between public safety and commercial users as quickly as possible and (2) cause no service interruptions to public safety users and no diminution in the quality of their radio systems or their ability to serve and protect the public. In achieving these goals, we also need to be mindful of the needs of existing commercial users and take steps to minimize the impact on them as well.

As we approach the mid-2008 deadline, the FCC has received (and almost certainly will continue to receive) a significant number of waiver requests from public safety and commercial users in this band. I look forward to working with the Bureau and my colleagues to make sure that we resolve these individual requests in a way that is fair to the parties in each case. At the same time, we also need to be mindful of the effect of each decision on the rebanding process as a whole. I believe we will be able to develop a reasonable set of criteria for deciding individual waiver requests that will move the rebanding process to completion in the shortest possible time-frame that is consistent with the principles noted above.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. THOMAS R. CARPER TO HON. MICHAEL J. COPPS

Question. The Federal Communications Commission should be commended for issuing its recent Notice of Proposed Rulemaking that considers whether to authorize Big LEO Mobile Satellite Services operators to provide ancillary terrestrial services on more of their assigned spectrum. As you are aware, one such operator, Globalstar, and its partner, Open Range Communications, need this authority in order to pursue their plan to bring broadband services to more than 500 rural communities across the country. Given the Commission's stated commitment to promote the rapid deployment of advanced broadband services to unserved and underserved areas, will you assure the Committee that you will do all that it takes to complete this proceeding in the time required for Globalstar and Open Range to move forward with their business plan?

Answer. I am a long-time supporter of allowing satellite providers to develop ancillary terrestrial component (ATC) operations. I am also dedicated to making sure that Americans who live in rural areas have access to high-quality, low-cost broadband services. Indeed, for several years I have been calling for a more active government role in expanding broadband penetration in rural areas, including through the use of grant programs such as the Rural Utilities Service (RUS).

Accordingly, I am extremely excited by the possibility that ATC operations in the Big LEO band can bring WiMax-based wireless broadband to rural areas across the Nation. And I am firmly committed to resolving our NPRM in time for these companies to move forward with their plans. Indeed, I was comfortable supporting the item released in November 2007—which modified the Big LEO bandplan as well as sought comment on Globalstar's ATC petition—only after receiving assurances from the Bureau and the Chairman's office that it would be possible to act on this NPRM before the deadlines imposed by the financing process would expire. I look forward to receiving a draft item in early 2008 that will allow the Commission to resolve these issues in a way that allows the broadest possible ATC authorization consistent with protecting other users of the band and adjacent bands.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. TED STEVENS TO HON. MICHAEL J. COPPS

Question. Kawerak, Inc., a non-profit consortium in Alaska has requested me to submit this question to the Commission:

Does the Commission have the statutory authority to provide Universal Service support to non-profit corporation tribal consortiums, serving remote areas of Alaska, that provide education, welfare, wellness, law enforcement, natural resources and economic development services?

Kawerak is one of Alaska's tribal consortiums who provides several services to remote areas of Alaska, and has expressed concern about their ineligibility to receive Universal Service support because they are unable to meet the precise definitions of health care or educational service providers. Please address the requirements which these tribal consortiums must meet in order to receive support.

If these tribal consortiums are unable to meet the Commission's current requirements, please address whether a waiver process is available for these entities.

Please also describe the specific steps which non-profit corporation tribal consortiums must take to apply for, and receive, support from the Universal Service Fund.

Answer. Universal Service is one of the pillars of the Telecommunications Act of 1996. Consistent with the statute, my overriding objective has been to bring the best, most accessible and cost-effective communications system in the world to all Americans, including those who live in rural and urban areas and on tribal lands, those with low incomes and those with disabilities. It is essential that entities that provide these types of services and who are eligible for Universal Service support receive such support.

With regard to the specific questions concerning Kawerak, Inc.'s eligibility under the Universal Service program, the Commission is guided by Section 254(h)(7) of the Communications Act, as amended, which defines the types of entities that are eligible for support under the Schools and Libraries and Rural Health Care Programs. With regard to the Schools and Libraries Program, the Commission relies upon the operative state law in Alaska in determining whether an entity meets the definition of an elementary or secondary school.[1] The FCC's rules specifically allow for eligible schools and libraries to form consortia.[2] Therefore, if a non-profit corporation tribal consortium meets the definition of elementary or secondary schools pursuant to Alaska law it appears that the consortium would be eligible for Federal Universal Service support.

With regard to the Rural Health Care Program, section 254(h)(7)(B) provides that a "'health care provider' means—(i) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools; (ii) community health centers or health centers providing health care to migrants; (iii) local health departments or agencies; (iv) community mental health centers; (v) not-for-profit hospitals; (vi) rural health clinics; and *(vii) consortia of health care providers consisting of one or more entities described in clauses (i) through (vi).*" (emphasis added). Thus, it appears that the Commission has the statutory authority to provide Universal Service support pursuant to the Rural Health Care program to a non-profit corporation tribal consortium that meets the definition of a health care provider in section 254(h)(7)(B).

The Universal Service Administrative Company (USAC) is responsible for administering the Universal Service program. Detailed guidance on the process for applying for and receiving support under the Schools and Libraries Program can be found at *http://www.usac.org/sl/*. Similar information concerning the Rural Health Care Program can also be found at *http://www.usac.org rhc/*. My office would also be pleased to assist your office or Kawerak, Inc. in obtaining any additional information it may need concerning these issues.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO HON. MICHAEL J. COPPS

Question 1. While the issue of media ownership is not new and the most recent proceeding has been open for approximately 18 months, only 28 days were provided for the public to comment on your specific proposal to partially lift the newspaper/

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[1] *See* 47 U.S.C. § 254(h)(7)(A), providing that "elementary and secondary schools" is defined by section 9101 of the Elementary and Secondary Education Act of 1965, as amended. Section 9101 of the ESEA is now codified, as amended, in 20 U.S.C. § 7801, which provides that the definition of elementary and secondary schools is based upon state law. *See also* 47 CFR § 54.501 (concerning eligibility for services under to the Schools and Libraries Program).

[2] 47 CFR § 54.501(d).

broadcast cross-ownership ban, which has been in place for 32 years. This is deeply troubling due to the critical nature of this issue and past FCC precedent.

For example, last month, the FCC provided *60 days* for public comment and reply for a proposal on amending pole attachments rules. Earlier this month, the Commission gave *45 days* for public comment and reply on a rulemaking proposal on indefinitely extending the unanimously popular Do-Not-Call List registration period. And, in November 2006, the FCC granted *90 days* for public comment and reply on the effects of communications towers on migratory birds.

Since the FCC has historically given 60–90 days for public comment and reply on critical proceedings and proposals, isn't it only appropriate to do the same with the specific proposal you announced last month?

Answer. I agree that the public should have been given at least 60–90 days to comment on the Chairman's proposal. I also believe that the Commission should have fully considered those comments *before* reaching any tentative conclusions. Instead, not only was the public comment period truncated, but the Chairman circulated a draft decision 2 weeks before the public comments were even due.

Question 1a. What is the impetus for providing only 28 days to the public to comment on a specific proposal that was released only last month?

Answer. I do not know. This is best answered by the Chairman.

Question 1b. If the Commission delayed its vote on the media ownership proposal and provided more time for the public to comment on it, what harm would result?

Answer. I do not believe that any harm would have resulted from providing the public additional time to comment. To the contrary, I believe that additional time would have permitted a far more measured and rational process than we had and ultimately a better result.

Question 2. Some have suggested that lifting the cross-ownership ban would improve the dreadfully low percentages of woman and minority-owned media since a woman or minority-owned newspaper could now buy a broadcast station or vice versa. However, a June 2006 report by the Free Press found that woman and minority owners are more likely to own fewer stations per owner than their white and corporate counterparts—*they are more likely to own just a single station.* This singular ownership also seems to be the case for minority owned newspapers.

The report seems to suggest that financial reasons are behind the inability of these groups to purchase additional media properties. They just simply can't afford to expand given certain market and industry conditions. Data also shows that the woman and minority-owned media outlets typically are in more rural areas.

If women and minority owners aren't able to expand their media operations due to financial reasons, and the current proposal only lifts the cross-ownership ban in the top 20 markets, then how is the proposal going to adequately address the disparity that exits with women and minority media ownership?

Answer. I do not believe that the new rule will measurably improve the dismal state of women and minority media ownership in this country. To the contrary, the new rule contemplates that big newspaper owners can start targeting the smaller TV and radio stations in a market—the very stations that women and minorities would be more likely to target as an entry point into broadcasting. The new rule will serve to drive up prices for these stations, making entry by women and minorities that much more difficult.

Question 3. In its repeal and remand of the FCC's 2003 media ownership rule changes, the Third Circuit Court of Appeals, in its *Prometheus* decision, stated that it "cannot uphold the Cross-Media Limits themselves because the Commission does *not provide a reasoned analysis* to support the limits that it chose." In addition, the Court stated "our decision to remand the Cross-Media Limits also gives the Commission an opportunity to cure its *questionable notice.*" What do you believe is the reasoned analysis that supports this change to the media ownership rules?

Answer. I do not believe that the FCC majority's new rule was supported by the record or sound policy judgments. We were told that permitting newspapers to merge with a broadcast station in the same city will give them access to a revenue stream that will let them better fulfill their newsgathering mission. At the same time, we are also assured, our rules will require "independent news judgment" (at least among consolidators outside the top 20 markets). I do not believe that we can have our cake and eat it too—the economic benefits of consolidation without the reduction of voices that one would ordinarily expect when two news entities combine.

To the extent that the two merged entities remain truly "independent," then there won't be the cost savings that were supposed to justify the merger in the first place. On the other hand, if independence merely means maintaining two organizational charts for the same newsroom, then we won't have any more reporters on the ground keeping an eye on government. The likely result, in my view, is that the

two entities' newsrooms will be almost completely combined, with round after round of job cuts in order to cut costs. More consolidation will mean more lost jobs. That is the *real* economic justification for media consolidation within a single market.

The news isn't so good for other businesses in the consolidated market, either. At the end of the day, the combined entity is going to have a huge advantage in producing news—and the other stations will make a reasonable calculation to substantially reduce their investment in the business. This is why experts have been able to demonstrate—*in the record before the FCC, using the FCC's own data*—that cross-ownership leads to *less* total newsgathering in a local market. And that has large and devastating effects on the diversity and vitality of our civic dialogue.

Finally, I think reports of the imminent death of traditional newspapers are decidedly premature. The truth remains that the profit margins for the newspaper industry last year averaged around 17.8 percent; the figure is even higher for broadcast stations. As the head of the Newspaper Association of America put it in a Letter to the Editor of *The Washington Post* in 2007: "The reality is that newspaper companies remain solidly profitable and significant generators of free cash-flow."

Were newspapers momentarily discombobulated by the rise of the Internet? Probably so. Are they moving now to turn threat into opportunity? Yes, and with signs of success. Far from newspapers being gobbled up by the Internet, we ought to be far more concerned with the threat of big media joining forces with big broadband providers to take the Internet we know down the same road of consolidation and control by the few that has already inflicted such heavy damage on our traditional media.

Question 3a. It doesn't seem that providing only 28 days to have the public comment on the specific changes to the media ownership rule that you propose, or only 5 day's notice for the localism and media ownership hearings in Washington, D.C. and Seattle, WA wouldn't satisfy the requirements of the court—wouldn't you agree?

Answer. Yes. The proceeding was moving at a measured pace that was marred by an unseemly rush to judgment over the second half of 2007. Not only were there significant procedural problems such as those you identify, but we failed to take meaningful action on localism and minority and female ownership before once again relaxing our structural ownership rules for Big Media.

Question 4. In July of this year, the Commission released ten research studies on media ownership, which were intended to inform the Commission's comprehensive review of its broadcast ownership policies undertaken in its rulemaking proceeding. The studies, which were conducted by outside researchers and by Commission staff, examined a range of issues that impact diversity, competition, and localism—the three important policy goals of those rules.

The Consumer Federation of America, Consumers Union and Free Press jointly filed comments to the FCC in regards to these 10 studies. The commenters called the studies a "collection of inconsistent, incompetent and incoherent pieces of research cobbled together to prove a foregone conclusion." More so, they stated that the peer reviews of the studies did not follow required procedures and, due to this, violated Office of Management and Budget guidelines on the implementation of the Data Quality Act. What is your assessment on the integrity of how the studies were conducted?

Answer. I have serious concerns about the way the studies were formulated, commissioned, and peer reviewed. For instance, I believe that the studies should have been subject to peer review *before* they were released publicly, not afterwards. I also am deeply concerned about some of the evidence uncovered by consumer groups pursuant to a FOIA request that raised questions about whether the studies were formulated with a pre-determined result in mind.

Question 4a. These groups also performed research, utilizing the FCC's own data, which actually showed relaxing the newspaper/broadcast cross-ownership rules resulted in a *net loss in the amount of local news* that is produced across local markets by broadcast stations. The commenters stated "at the market level, cross-ownership results in the loss of an independent voice as well as a decline in market-wide news production."

Have you all reviewed these comments? At the very least, these claims raise serious doubts as to the validity of any relaxation of media ownership rules and begs for closer examination of the data before you enact any changes to the media ownership rules—wouldn't you agree?

Answer. I did indeed review the record and found the comments very illuminating. They demonstrated that the FCC-commissioned studies may have focused on the wrong questions. To me, the more important question is not whether a particular combination produces more local news, but the effect of the combination on the total amount of local news in the market.

Question 5. One of the statements being made about the DTV transition is that "Television sets connected to cable, satellite or other pay TV service do not require converters." However, it is my understanding this may not be totally true for certain satellite subscribers, primarily in rural areas like the town of Presque Isle, Maine due to the issue of local-into-local service, which is when a satellite company provides its subscribers with all of the local broadcast TV stations in that market.

While satellite companies do offer local-into-local in most of the media markets, it is not available to all 210 media markets—it seems as if the service is not available to approximately 60 rural markets in about 30 states.

Is this correct? And if so, what impact will the DTV transition have on households that subscribe to satellite in areas that do not have local-into-local service? If they have a TV with an analog tuner will they also need to purchase a converter box?

Answer. It is correct that not all 210 media markets have satellite-delivered local-into-local service. Because the two providers sometimes provide service to different markets, I believe that approximately 182 of the 210 markets have local-into-local service from one service or the other. Subscribers who do not subscribe to local-into-local service and currently receive broadcast signals with an analog off-air tuner will need a converter box to receive full-power stations after the transition date.

Question 5a. Is the FCC working with the satellite companies to make sure they expand the local-into-local service to cover all 210 media markets before the DTV transition? If not, wouldn't this be an appropriate thing to do to alleviate any consumer confusion that would result from inaction?

Answer. In the recent sale of DIRECTV to Liberty, I supported a condition that would have required DIRECTV to provide local-into-local service to all markets within a reasonable time period. Unfortunately, that condition was not adopted. In our recent Order on DTV Consumer Education, my colleagues did adopt my proposal that DBS operators take specific steps to inform those subscribers without local-into-local service of their options for the coming switch-over to DTV.

Question 6. Over the summer it was reported that FCC staff inspected about 1,100 retail stores around the country, as well as retailers' websites, to monitor compliance with FCC DTV label rules. As a result of those inspections, the Commission issued more than 260 citations notifying retailers of violations, which results in about a 76 percent compliance rate.

Obviously, not the best figure, mainly with the holiday season that we are in the middle of. People buying a new TV may not be aware or will be misinformed that their new TV will not accept over-the-air digital signals and therefore need to buy more equipment to accommodate the transition. Has the FCC performed any additional inspections to determine if the label compliance rate has improved any?

Answer. I must defer to the Chairman's response on the further investigative activities of the Enforcement Bureau.

Question 6a. Also has the Commission recorded any consumer complaints and confusion about DTV *versus* HDTV? While most high-definition TVs can receive digital signals not all the can and the concern is that it might lead to confusion at the retailer or at home.

Answer. I defer to the Chairman's response on consumer complaints received on this issue. I do agree that the distinction between DTV and HDTV is a continuing source of confusion for many consumers. I believe that the lack of a coordinated DTV public-private partnership could lead to a consumer backlash the likes of which our country has seldom seen.

Question 7. Over the past several months there have been incidents that have raised serious concerns about the phone and cable companies' power to discriminate against content. In September, Verizon Wireless arbitrarily chose to block a series of text messages on the grounds that the subject matter was too controversial. While the carrier, to its credit, reversed this decision, this illustrates its power as a content gatekeeper. Then came the news that AT&T reserves the right in its Terms of Service to discontinue the service of customers that criticize the company. In October, the Associated Press reported that Comcast was interfering with the popular file-sharing, peer-to-peer service BitTorrent.

Senator Dorgan and I have requested that this Committee hold a hearing to consider the issue of content discrimination and investigate these incidents further to determine if they were based on legitimate business and network management policies or part of practices that would be deemed unfair and anti-competitive.

We also wrote you a letter, dated October 14, requesting the Commission's position on the Verizon Wireless-NARAL text messaging incident. To this date we have not heard any response from your office. Do you know the status of that response?

Answer. I understand that your October 14th letter was to Chairman Martin and therefore I am unable to address the status of his response. I am deeply concerned,

however, by the regulatory policies that confer such content and conduit control on a few huge network providers.

Question 7a. Also, do you feel that any of these events could have been appropriately and effectively addressed by the FCC's Four Internet Freedom Principles or any other FCC regulation that is in place?

Answer. The FCC's Internet Policy Statement of 2005, better known as the Four Internet Freedom Principles, has been essential toward protecting the openness of the Internet. As you may know, I played an important role in their adoption. In addition, with the Commission's reclassification of wireless Internet services as a Title I service it became clear that wireless services fall squarely under the protections afforded by these principles (though the FCC declined my suggestion to make this implication explicit).

The Commission has initiated an investigation into allegations that Verizon Wireless's and Comcast's operation of their networks with regard to the NARAL text messaging and BitTorrent's file sharing applications, respectively, are violations of the Four Principles. The Commission recently held a hearing at Harvard Law School concerning whether these activities are considered reasonable network management pursuant to these principles. The Commission also plans to hold a similar hearing at Stanford Law School shortly. Whether the Commission is able to effectively address these allegations in accordance with the Four Principles remains to be seen. While I am hopeful that we will be successful in this endeavor, I do believe that it is time to update the Commission's principles to ensure that the FCC can address the many complicated network management issues that are likely to arise.

Specifically, the time has come at the FCC for a specific enforceable principle of nondiscrimination. This principle should allow for reasonable network management, but make crystal clear that broadband network operators cannot shackle the promise of the Internet. After establishing a nondiscrimination principle, the next step is admittedly more difficult. The FCC's job is to figure out when and where the line is drawn between discrimination and reasonable network management. That's why the Commission should also establish a systematic, expeditious, case-by-case approach for adjudicating claims of discrimination. That way, over time, we would develop a body of case law that would provide clear rules of the road for those who operate on the edge of the network, namely consumers and entrepreneurs, and those who operate the networks.

I certainly appreciate your leadership on this issue and welcome any further guidance that you wish to offer to ensure that the FCC protects the openness of the Internet for years to come.

Question 8. It was recently disclosed a proposal is circulating that would reinstate cable system ownership limits at 30 percent of the national market. Many, including myself, have been long been concerned about the lack of wireline cable competition and rising price of cable service.

Specifically, the FCC recently stated that "the average cost of cable has almost doubled from 1995 to 2005, increasing 93 percent, while the cost of other communication services fell. The cable industry needs more competition and we will continue to act to bring more competition and its benefits to consumers."

The initial cable ownership cap stemmed from a FCC change in 1992 as a result of the 1992 Cable Act, which directed the FCC to establish limits on the number of subscribers a cable operator may serve and on the number of channels a cable operator may devote to affiliated programming. What are the pros and cons of implementing a cable ownership cap to bringing more competition, and benefits or lower prices to consumers?

Answer. The structural ownership limits of Section 613(f) were intended to ensure that cable operators did not use their dominant position in the multichannel video programming distribution market to impede unfairly the flow of video programming to consumers. At the same time, Congress recognized that multiple system ownership could provide benefits to consumers by allowing efficiencies in the administration, distribution, and procurement of programming, and by providing capital and a ready subscriber base to promote the introduction of new services.

I believe that the 30 percent limit recently adopted by the Commission represents a careful balance between (1) ensuring that no cable operator, because of its size, is able to unfairly impede the flow of video programming to consumers; and (2) ensuring that cable operators are able to expand and benefit from the economies of size necessary to encourage investment in new video programming and the deployment of other advanced services.

Question 8a. Back in 1992, there was little, if any, competition in the cable industry. Now, we have seen satellite TV providers reach approximately 30 million sub-

scribers and telephone companies rolling out digital TV services. How might a 1992 cable ownership cap directive affect the cable industry in a 2007 market?

Answer. We have revised the cable ownership calculation over the years to reflect marketplace developments. Most significantly, we now count *all* MVPD subscribers—including satellite TV subscribers and telcos—towards the overall number of subscribers in the market for purposes of calculating the horizontal limit. In other words, a cable operator can control subscribers accounting for 30 percent of all MVPD subscribers, not just 30 percent of cable subscribers. In addition, to the extent that new entrants are taking market share from incumbent cable operators, it will make it less likely that the limits will be breached, and, to the extent that these new entrants are competing cable systems (like some telcos) the cable limits would apply to them as well.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GORDON H. SMITH TO HON. MICHAEL J. COPPS

Question 1. The Commission's Regulatory Flexibility Analysis for the November 30 must-carry order says that "Every effort will be made to minimize the impact of any adopted proposals on cable operators." How much will it cost for every 552 megahertz cable system to file and prosecute a waiver through the FCC? Would you support a blanket dual carriage waiver for 552 megahertz cable systems?

Answer. I do not know the precise cost of filing and prosecuting such a waiver request with the Commission. As I stated when the must-carry decision was made last fall, I would have preferred to grant some accommodation to small cable systems as a whole rather than establishing a waiver process and seeking further comment. I hope that the Commission will now act quickly on the record developed in the general rulemaking.

Question 2. Section 254(a)(2) of the Communications Act requires that the Commission "complete any proceeding to implement recommendations from any Joint Board on Universal Service within 1 year of receiving such recommendations." The Joint Board on Universal Service delivered its recommended decision on high-cost reform on November 19, 2007. Do you support putting the Joint Board recommendation out for public comment?

Answer. I believe the Federal-State Joint Board for Universal Service's recommended decisions should always be put out for public comment, including the Joint Board's most recent recommendation on high-cost reform. While I would have preferred for the recommendation to be put out for public comment more quickly, I am pleased that the Commission issued a Notice of Proposed Rulemaking on January 29, 2008 that seeks comment on the recommendation. Comments are due to the Commission on April 3, 2008, and reply comments are due on May 5, 2008.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO HON. MICHAEL J. COPPS

Question 1. The FCC has commissioned 10 economic studies on media ownership and its effect on news and other programming. According to these studies, how does cross-ownership effect local content and political slant? Does this outcome differ by the size of the media market? In other words, how does the cross-ownership ban impact local content and political slant in the largest 20 markets compared to effects in smaller markets around the country? What has been the experience of markets which had companies grandfathered in under old media ownership rules?

Answer. I believe that the Commission's research process in the recent media ownership proceeding was fundamentally flawed, from the framing of the issues, to the commissioning of the studies, to the peer review process, to the truncated period for public comment. These flaws are well documented in the record. Indeed, some public interest groups used the FCC's raw data to run their own analyses and reached very different conclusions than the studies officially commissioned by the FCC. With that background, I believe that several studies—e.g., 3, 4 and 6—purport to address the questions you raise. I believe that these studies must be read in conjunction with the peer reviews and public comment questioning their usefulness.

Question 2. The financial troubles and perceived threats to the viability of newspapers and broadcasts have played a significant role in the proposed changes of media ownership rules. Some sources contend that despite declining ad revenues and readership, newspapers remain profitable. However, others contend that these media outlets have only been able to remain profitable at the expense of quality and quantity of news they produce. What do you perceive the financial position of news-

papers to be in today's market? How does this vary based on the size of the media market? To what extent will these proposed changes alleviate these troubles?

Answer. I believe the reports of the imminent death of traditional newspapers is decidedly premature. Profit margins for the newspaper industry last year averaged around 17.8 percent. As the head of the Newspaper Association of America put it in a Letter to the Editor of *The Washington Post* last July: "The reality is that newspaper companies remain solidly profitable and significant generators of free cash-flow."

I do not believe that the changes adopted will improve either broadcast or newspaper service to the public. To the contrary, in this era of consolidation, cutting jobs is often the first thing a merged entity does in order to increase profit margins. In the final analysis, the real winners of the Commission's misguided decision are businesses that are in many cases quite healthy, and the real losers are going to be all of us who depend on the news media to learn what's happening in our communities and to keep an eye on local government.

Question 3. The Universal Service Fund is obviously very important for rural states like South Dakota. What general troubles do you see arising with the fund and its solvency? What would you recommend to help alleviate these troubles? What are your thoughts on the recommendations put forth by the Federal-State Joint Board in November?

Answer. I believe that the Universal Service system needs to be comprehensively reformed so that the Fund is both sustainable and rational for the future. Unless the mission of the Universal Service Fund (USF) is reformed and its contribution and distribution mechanisms are updated, its sustainability and its ability to achieve its goals are likely to be jeopardized.

There are a variety of ways to promote Universal Service and at the same time ensure the sustainability and integrity of the fund. I believe much would be accomplished if the Commission were to include broadband on both the distribution and contribution side of the ledger; eliminate the Identical Support rule; and increase its oversight and auditing of the high-cost fund. Additionally, Congressional authorization to permit the assessment of Universal Service contributions on intrastate as well as interstate revenue would be a valuable tool for ensuring that contributors are not unfairly burdened.

That being said, the Joint Board made an assortment of recommendations of its own. I agreed with some of them and not with others. In my view, the most important part of the Recommendation is its inclusion of broadband as part of USF for the 21st century. I believe the recommendation merits further action by the Commission, and therefore, I supported the Recommendation and the Commission's Notice of Proposed Rulemaking that put the Recommendation out for public comment.

Question 4. Many people are concerned that the digital TV transition is not going as smoothly as would be hoped and a number of steps still need to be taken including the issuance of rules regarding the processing of construction permit applications and the assignment of channels to broadcasters. Why have these issues not been resolved yet? When do you expect them to be resolved? Will this allow the industry enough time to transition to digital TV?

Answer. Since the December 13, 2007 hearing, the Commission has at least taken further action on the two specific issues you raise. At the end of 2007, the Commission issued an Order in the Third DTV Periodic Review proceeding establishing rules for broadcasters' final build-out of DTV facilities. More recently, the Commission adopted an Order on Reconsideration regarding the final DTV Table of Channel Allotments.

I am troubled by the tardiness of these decisions and whether they will result in a smooth DTV transition on February 17, 2009. Had we acted earlier, we could have established a more measured and orderly switch-over process and avoided many of the difficult trade-offs and compressed schedules we were ultimately compelled to adopt. Concern over a lack of real progress for the DTV transition is, I believe, why Chairman Inouye and Chairman Dingell called for the White House to establish a Federal Inter-Agency DTV Task Force. I continue to believe that a coordinated, private sector-public sector partnership is essential to prepare the American people for the transition, now less than a year away.

Question 5. The FCC appears to be re-regulating some aspects of broadcasting which were deregulated under President Reagan and have helped the broadcast industry remain competitive over the past 25 years. With the influx of new technologies and mediums, why has the FCC chosen now to begin re-regulation? Have there been any specific detrimental effects that have prompted this? Why has the FCC increasingly turned to government mandates instead of market based solutions to help resolve these problems?

Answer. The Communications Act contemplates a *quid pro quo* between the public and the Nation's broadcasters. We allow broadcasters to use as much as half a trillion dollars of spectrum—for free. In return, we require that they serve the public interest: devoting at least some airtime for worthy programs that inform viewers, support local arts and culture, and educate our children—in other words, that aspire to something beyond just minimizing costs and maximizing revenue.

At one time, the FCC actually enforced this bargain by requiring a thorough review of a licensee's performance every 3 years before renewing the license. But since the 1980s, that process has been whittled down to essentially a rubber stamp renewal every 8 years with virtually no substantive review.

At bottom, I believe that the consolidation we have seen and the decision to treat broadcasting as just another business have *not* produced a media system that does a better job serving most Americans. Quite the opposite. Rather than reviving the news business, it has led to *less* localism, *less* diversity of opinion and ownership, *less* serious political coverage, *fewer* jobs for journalists, and the list goes on. These are the concerns I've heard from Americans across the country. I hope we can address them, not with hyper-regulatory solutions, but with solutions that use 21st century tools to better serve the public interest.

Question 6. Earlier this year, the FCC's Office of Engineering (OET) released a report which shows that allowing unlicensed devices into the television spectrum may interfere with the television signal in 80–87 percent of a television station's service area. Additionally, a July report from the FCC demonstrated that prototypes that utilize "sensing" technology did not effectively detect TV signals. Do you perceive this to be a threat to the DTV transition? If so, what is the FCC doing to ensure that the DTV transition is not jeopardized by unlicensed consumer digital devices?

Answer. The DTV transition is one of my top priorities and I would not do anything to jeopardize that effort. FCC testing of "white spaces" devices continues and will guide my decision-making. Again, however, I am committed to protecting existing spectrum users from harmful interference. Moreover, as a practical matter, it is highly unlikely that any "white spaces" devices could be on the market by February 17, 2009. Even if testing were over (which it is not), the design and manufacturing cycle would extend well past next February.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO HON. JONATHAN S. ADELSTEIN

Question 1. Last year, a provision to reform the FCC's forbearance authority was included in the Committee's telecom reform bill. Specifically, it would have eliminated the "deemed granted" language in Section 10 in order to ensure a fairer process at the FCC. I recently introduced legislation that will eliminate this provision, so we can avoid a situation where the agency erases its rules simply by failing to vote. Do you believe that it's fair for the FCC to make far-reaching changes without even issuing a decision?

Answer. I share your concerns about the Commission's use of Section 10 forbearance authority and believe that the public is best served when the Commission adopts orders addressing such petitions rather than letting them become "deemed granted." Congress has given the Commission a powerful tool in our Section 10 forbearance authority, but the Commission must wield it responsibly.

In many forbearance proceedings, I have worked with my colleagues to support regulatory relief where the record reflects the development of competition and includes evidence to satisfy the substantive standard of Section 10. I am concerned, however, about the Commission's approach to forbearance, including allowing a complex and controversial forbearance petition to grant without issuing an order. Allowing petitions to grant by operation of law, and without disclosing a shred of analysis, does not best serve the public interest. Moreover, this approach inappropriately ignores Congress's directive to consider the specific substantive standards set out in Section 10 and raises serious questions about the scope, effect, and validity of its actions.

I supported the recent action by the Commission to issue a Notice of Proposed Rulemaking on the need for procedural rules to guide its consideration of forbearance petitions. I have urged the Commission to adopt procedural rules for forbearance petitions, such as requiring parties to include in their original petitions detailed information about the services subject to the petition and a detailed analysis of how such proposals satisfy the statutory test. Procedural rules can provide transparency and predictability to all interested participants and can restore confidence in Commission processes. While only Congress can address the continued applica-

bility of the "deemed grant" provision of Section 10, I am pleased that the Commission has taken at least an initial step toward improving its processes, and I will continue to encourage my colleagues to complete this proceeding as expeditiously as possible.

The Court of Appeals for the District of Columbia recently rejected a challenge to the "deemed grant" of a far-reaching, industry-filed petition, effectively foreclosing judicial review of such cases.[1] The court concluded that the "deemed grant" is an act of Congress rather than of the FCC and, therefore, is not reviewable agency action. Thus, the current approach to forbearance has effectively permitted petitioners to write the terms of their relief, to amend their request multiple times during the course of the Commission's consideration, to obtain that relief without the Commission issuing an order, and to evade judicial review. Such an approach raises serious Constitutional questions and does not best serve the public interest.

Question 2. Earlier this year, the FCC released a Notice of Proposed Rulemaking examining so-called "two-way, plug-and-play standards" for cable navigation devices. Do you support implementation of Section 629 in a way that will create a retail market for "two-way, plug-and-pay" devices and allow for greater competition and consumer choice? Do you believe that FCC oversight is sufficient to ensure that any standards and specifications are created and changed through a fair process that treats all affected parties equitably?

Answer. I support the implementation of section 629 to create a retail market for "two-way, plug-and-play" devices and allow for greater competition, more consumer choice and higher quality products and services. Congress intended to create a competitive market for navigation devices by ensuring that consumers have the opportunity to buy navigation devices from sources other than their video provider. Thus, the goal is to create a national, competitive market for navigation devices which would give consumers the option of going to their electronics retailer to choose a set-top box with innovative features.

Under section 629, Congress directed the Commission to adopt regulations to assure the commercial availability of navigation devices, such as converter boxes and interactive communications equipments, "in consultation with appropriate industry standard-setting organizations." The Commission has sufficient oversight authority to ensure that standards and specifications are created and changed through a fair process. However, FCC oversight alone may not be sufficient to achieve the goals of section 629. The honest and full support of the affected industries is essential to ensure that MVPD delivery systems support the commercial navigation device and that the commercial device preserves the integrity of the MVPD's suite of offerings. Continued Congressional oversight may be necessary to encourage good faith negotiations among the parties. Also, guidance from Congress is always helpful during our deliberation.

The development of technological standards and specifications is indeed complicated. Accordingly, the two-way, plug-and-play NPRM specifically seeks comment on the Commission's oversight role in the development of standards and specifications for enhanced CableCARD, OCAP, and all-MVPD solutions. I look forward to reviewing the comments carefully, and discussing further action with my colleagues to advance the public interest.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO HON. JONATHAN S. ADELSTEIN

Question 1. At the last FCC open meeting in November, you made some strong statements regarding how the FCC operates. For example, with respect to a certain annual report, you pointed out that the Chairman cherry-picked only the data that justified the outcome desired, while suppressing other data. You made clear your view that decisions should be objective and based on the facts, not outcome-driven for political expediency.

This is not the first time you have raised these concerns. With respect to the media ownership proceeding, you state that studies were suppressed, and others were structured and conducted with the goal of facilitating consolidation.

I am deeply troubled to learn that the Chairman of this Commission operates in this way, and share your view that this undermines the Commission's credibility. Can you elaborate on how the culture of this FCC impacts its policy decisions?

Answer. You raise key concerns about the problems with process and transparency that have affected the Commission recently. While it is true that roughly 95 percent of the items that the Commission addresses are resolved on a unanimous

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[1] *Sprint Nextel Corp.* v. *FCC,* 06–1111 (Dec. 7, 2007).

and bipartisan basis, a smaller number of high profile proceedings have been problematic. The issues can be hard, but as a Commission, we all need to do a better job in working together to improve the FCC decision-making process.

More specifically, we need to encourage a greater deal of transparency at the FCC. The GAO already has commented on the agency's lack of openness with regard to access to information on the timing of Commission votes. As a rule, greater openness by the Commission will inspire greater confidence and better decisionmaking. So we must take specific action to eliminate any unnecessary barriers to information and ensure it flows even-handedly to all parties, including public interest groups. Publication by the Chairman of the circulate list is a good first step. I also have called for the publication of the list of our so-called "white copy" items—those items that are identified by the Chairman's office for consideration 3 weeks prior to a Commission open meeting.

I also believe that the agency's culture will be improved and the Commission will be well served by encouraging greater dialogue between Commissioners and career staff. Many times, the agency staff simply is steeped in an issue, with unparalleled and independent expertise. It would be invaluable to allow the staff to more freely share their independent perspective with the Commissioners to improve the decisionmaking process. I want to see our staff encouraged to provide feedback and critical thought on all FCC decisions and to provide advice to the Commissioners upon request.

Question 2. You say the FCC must not move forward with issuing new media ownership rules until it creates an independent minority ownership task force that is empowered to perform an accurate census on minority and female owners and then analyze the impact of policy decisions on minority ownership. Tell me why this is so important. What has the FCC failed to do in order to promote female and minority ownership?

Answer. As the gatekeeper of the public airwaves, the Commission has a solemn obligation to ensure that all Americans have equal access and opportunity to own, operate and control broadcast outlets. Indeed, the founding charter of the FCC requires us to protect the public interest. We have traditionally relied on the importance of promoting competition, localism and *diversity.* It requires us to take affirmative steps to *prevent* discrimination on the basis of race, gender, religion, and nationality. It also requires us to take affirmative steps to *promote* diversity of ownership because, in America, *ownership is the key to having your voice heard.* And if these statutory mandates are not sufficient, in section 257 of the Communications Act, Congress specifically encourages us to develop and promote policies that favor the diversity of media voices.

Despite this clear and unequivocal mandate to facilitate ownership and participation by new entrants, women and people of color, the Commission has been hesitant to act. And even when we've acted, it has not been in a comprehensive and sustained manner. Piecemeal, short-term measures will not improve the number of women and minority broadcasters, especially when the Commission continues to relax our media ownership rules.

Women make up over half of the U.S. population, and minorities make up over a third. But women and people of color own broadcast stations at roughly one-tenth of their level of representation in the population. In radio, women and people of color own approximately 6 percent and 8 percent of stations, respectively. Media consolidation only takes outlets further out of the reach of women and people of color, and further from the local communities and their values. That's why we needed to first implement improvements to diversity and localism before we considered loosening the media ownership rules.

As you are aware, on December 18, 2007 and over my objection, the Commission relaxed the newspaper/broadcast cross-ownership rule in all markets. This decision will take broadcast TV stations further beyond the reach of women and minority owners. As Free Press has shown, an examination of FCC data reveals that women and people of color, respectively, own about 6 percent and 3 percent of TV stations. Rather than improving the opportunities for women and people of color to purchase local TV stations, the FCC has substantially raised the barrier of entry—decreasing further the likelihood of diversifying the ownership class of TV stations.

Under the revised newspaper/broadcast cross-ownership rule, in the top 20 markets, there is a high presumption in favor of permitting the dominant local newspapers to purchase a local TV station that is not among the top four ranked stations in the market. The main problem is that these are likely the only stations that a women or minority would have an opportunity to purchase. Instead of promoting women and minority ownership, the FCC has taken affirmative steps to impede it.

Rather than limiting opportunities for women and people of color, the FCC—to begin—should attempt to improve the regulatory climate by: (1) staying any relax-

ation of the broadcast media structural rules; (2) adopting a definition of "eligible entity" that will truly provide women and minority owned broadcast businesses with targeted regulatory relief; (3) developing an accurate census of women- and minority-owned stations; (4) conducting a longitudinal study of the effects of our media ownership rules on women and minority ownership; and (5) creating an independent, bipartisan panel to review Commission rules, propose reform measures, and monitor the Commission's progress over time.

These initial steps are critical because over the years, it has been standard operating procedure for the FCC to neglect its statutory obligation to promote diversity of ownership. For instance, as the Commission nears completion of an item addressing women and minority ownership, so much time has gone by that it has had to start all over again. Such was the case when the Commission made a good faith attempt to respond to the Supreme Court's decision in *Adarand* v. *Pena.* In 2000, the Commission developed a series of empirical studies to determine the impact of Commission policy on women and minority businesses. Since that time however, the Commission has done nothing more than to "refresh the record."

Also, as the Commission knows all too well, there is no accurate census of women- and minority-owned stations. A study commissioned by the FCC has found, "the data currently being collected by the FCC is extremely crude and subject to a large enough degree of measurement error to render it essentially useless for any serious analysis." We do not even have enough data to determine which owners or stations will actually benefit or be harmed. For safe measure, we should not act in an area of such sensitivity until we can clearly ascertain the actual impact. An independent panel would provide an effective means of addressing this data shortfall.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. BILL NELSON TO HON. JONATHAN S. ADELSTEIN

Question. As you are probably aware, Florida is currently the largest "net payer" state into the Universal Service Fund. Florida pays in more than $300 million more to the USF than it receives in disbursements. Getting beyond the idea of a "cap" of some sort—which may raise competitive issues—it seems like one other way of achieving efficiencies is through more effective targeting of support. How do you feel about this approach?

Answer. Among the highest priorities for the FCC is implementing and directing Universal Service as intended by Congress in Section 254 of the Act. The FCC is actively engaged in re-examining almost every aspect of our Federal Universal Service policies, from the way that we conduct contributions and distributions, to our administration and oversight of the fund. Each of these proceedings has a potential impact on the contribution burdens of individual consumers. As reflected in your question, one of the central challenges is preserving and advancing Universal Service in the broadband age, while remaining mindful that it is consumers who ultimately fund Universal Service contributions.

Congress and the Commission recognized early on that the economic, social, and public health benefits of the telecommunications network are increased for all subscribers by the addition of each new subscriber. Federal Universal Service continues to play a vital role in meeting our commitment to connectivity, helping to maintain high levels of telephone penetration, and increasing access for our Nation's schools and libraries. Ensuring the vitality of Universal Service will be particularly important as technology continues to evolve, and as our Nation confronts the critical broadband infrastructure challenge.

I note that the Federal-State Joint Board on Universal Service (Joint Board) recently issued a Recommended Decision that seeks to address long-term reform issues facing the high-cost Universal Service support system. The Joint Board addressed the targeting of Universal Service support in a number of contexts, including questions about which services should be supported, whether the fund should support one or multiple providers in a given area, whether funds should be distributed on a more granular level, and whether to direct funds to unserved, underserved, or high cost areas more generally. I note that the Joint Board was not able to reach consensus on all of these issues, or even recommendations on some issues, but I appreciate the Joint Board's analysis and numerous recommendations. Indeed, I hope that the Commission will seek comment quickly on the Joint Board's considered input, and I look forward to carefully reviewing the record developed in response to this set of proposals.

I also believe that it is important that the Commission conduct its stewardship of Universal Service with the highest of standards. We must be active in our oversight and aggressively combat any evidence of waste, fraud and abuse. As we move

forward with these issues, I look forward to any guidance from Congress regarding this important program.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO HON. JONATHAN S. ADELSTEIN

Question 1. A recent GAO report cited that no comprehensive plan exists for the digital television transition. The GAO stated "Among other things, a comprehensive plan can detail milestones and key goals, which provide meaningful guidance for assigning and coordinating responsibilities and deadlines and measuring progress. Such planning also includes assessing, managing, and mitigating risks, which can help organizations identify potential problems before they occur and target limited resources". This week the Commission released a written response to the GAO report. At this point in time, what do you consider to be the top five risk factors with respect to American consumers getting through the digital television transition with minimal disruption? Which of these risk factors fall under the jurisdiction of the FCC? How is the FCC managing and mitigating these risks?

Answer. As I have testified at DTV transition hearings before the Senate Commerce Committee and the Special Committee on Aging, I believe the top five risk factors with respect to American consumers transitioning to digital television with minimal disruption include: (1) the lack of a comprehensive plan; (2) the lack of a coordinated message; (3) the lack of Federal, state, local and tribal government coordination; (4) the lack of an established grassroots campaign; and 5) the lack of Federal resources.

1. As GAO found, no one appears to be in charge of the transition. And because there is no one in charge, there is no strategic plan. This falls under the jurisdiction of the FCC and NTIA, but I believe the FCC has the requisite expertise and staff to lead this national effort.

I continue to be concerned that there is no established structure to coordinate the national DTV transition. No one is ultimately responsible for vetting, prioritizing and implementing ideas from both the public and private sectors into a comprehensive and coherent plan. Poor long-term planning and the continued lack of a national, Federal and internal FCC coordination plan have left the FCC in the unfortunate position of playing catch-up. Rather than being proactive—anticipating problems and concerns, and developing an effective strategy—we've been reactive.

2. Another risk factor is the lack of a coordinated message sent by the government and companies to the public. I am concerned that there is no coordinated message, and that the most vulnerable, over-the-air viewers will not have the proper information and technical assistance necessary. I have advocated that the FCC, NTIA and other relevant Federal agencies develop a Federal DTV Task Force. This multi-agency task force, accountable to Congress, would clarify the message and develop benchmarks and a timeline. Beyond coordinating government efforts at all levels—as well as our own internal efforts—the task force can convene joint meetings with the private sector coalition to ensure a coherent, consistent message across all channels. And it can help to coordinate the many public-private assistance efforts needed for at-risk communities. With a coherent message, the task force could work with other Federal agencies to integrate DTV educational information into many points of contact with consumers.

3. A third risk factor is the lack of coordination between all levels of government—Federal, state, local and tribal. While there is not a comprehensive plan or a coordinated message, the lack of coordination between all levels of government is perhaps the factor that should be easiest to correct because it is within our own control. The opportunity cost of the failure to leverage the resources and experience of state and local governments is enormous, as these entities are in the best position to reach every household and to provide targeted assistance, such as disseminating DTV transition information in the appropriate foreign language, connecting with local service delivery organizations, and offering technical assistance to senior citizens and other vulnerable populations.

4. The lack of an established grassroots campaign is another risk. This campaign should target communities with the highest concentration of the most vulnerable, over-the-air viewers. It needs to establish timelines for training and outreach to ensure people who need help can get it. This can fall under the jurisdiction of the FCC as well as NTIA but, as the GAO reported, the FCC is uniquely qualified to take the reins on this plan. We not only need to get the word out, but we need an implementation plan that helps seniors, those with

disabilities and others who need direct intervention in setting up their boxes, antennae or other issues.

In my own outreach, I have found the broadcasters, cable operators, and consumer electronics manufacturers and retailers eager to develop a meaningful partnership with the Federal Government. For instance, after my criticism of the cable industry's first round of PSAs, the industry sought my guidance in developing future PSAs. The cable industry was receptive to all of my suggestions, including a technical correction. But rather than the ad hoc approach of individual Commissioners reviewing scripts, it would have been preferable for an FCC DTV education specialist to work with each industry as they are developing PSAs based on a clear message vetted by the Commission and other agencies involved. To my knowledge, the Commission has not even asked to look at them. I am not suggesting we dictate the message verbatim, but rather that we offer suggestions to help coordinate it. Our industry partners are very receptive to such a cooperative approach.

5. The final risk factor is the lack of resources appropriated to educate the public about the DTV transition. More resources are needed to expand the scope and depth of our efforts, but it is not solely a matter of funding to raise the awareness of Americans, particularly at-risk groups such as the elderly, low-income families, rural residents, and people with disabilities, minority groups and non-English speakers. First, it is a matter of coordination and prioritization. Then, it is a matter of implementation. The United Kingdom spent much more money for a much smaller population in order to educate their public than we are appropriating currently.

Question 2. Should the common carrier exemption be removed from the Federal Trade Commission? What, if any, would be the disadvantage to consumers if the exemption is removed?

Answer. The Federal Trade Commission Act (FTCA) exempts common carriers subject to the Communications Act from FTCA's prohibitions on unfair or deceptive acts and practices and unfair methods of competition. Whether to end this exemption is ultimately a question for Congress, but I continue to believe that the FCC must do more to prioritize the interests of consumers and that consumers would benefit from additional oversight.

Proponents of lifting the common carrier exemption have argued that changes in the telecommunications marketplace, industry structure, and the dismantling of traditional regulatory protections leave consumers inadequately protected. For example, traditional common carriers are increasingly offering bundles of services, some of which may be subject to the FTC's jurisdiction under the FTCA, others of which may not. On the other hand, opponents of removing the exemption have argued that such an approach could lead to duplicative regulation. This overlap has the potential to create confusion for providers and consumers, and may increase the likelihood of forum shopping. In addition, the FCC has developed a vital understanding of the rapidly evolving telecommunications market that positions it well to address consumer protection issues raised with respect to communications issues. As Congress considers this question, I would encourage it to examine potential areas of overlap and consider whether there are certain areas that would particularly benefit from structured coordination among agencies.

At the FCC, I have been particularly concerned that recent decisions regarding broadband Internet access services have left consumers in legal limbo. Through the Communications Act, Congress codified a broad set of consumer protection obligations for telecommunications services that the FCC has now side-stepped with its current approach to broadband services. It is regrettable that, 2 years after exercising the blunt instrument of reclassification, the Commission has not significantly advanced the discussion of safeguards for broadband consumers, even though we have an open docket concerning Consumer Protection in the Broadband Age. The Commission must do more to assess the experiences and expectations of broadband consumers, who deserve our attention.

This is not to suggest that we regulate reflexively or append legacy approaches where they do not belong. It is imperative, however, that as consumers continue to demand greater access to broadband technology, the FCC must keep apace of consumers' experiences and expectations to ensure they are afforded the appropriate protections.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO HON. JONATHAN S. ADELSTEIN

Question 1. New Jersey is a net contributor of almost $200 million a year to the Universal Service Fund (USF). There are many proposals for reforming USF, including temporary caps and longer-term proposals. When can I tell my constituents that they will see some action from the FCC to stop the exponential growth of this Fund?

Answer. As reflected in your question, one of the central challenges is preserving and advancing Universal Service in the broadband age, while remaining mindful that it is consumers who must pay Universal Service contributions. The FCC is actively engaged in re-examining almost every aspect of our Federal Universal Service policies, from the way that we conduct contributions and distributions, to our administration and oversight of the fund. Each of these proceedings has a potential impact on the contribution burdens of individual consumers. While I cannot predict when the FCC will act on these proceedings, I can assure you that I will work with my colleagues to ensure timely decisions that implement Section 254 as Congress intended.

Congress and the Commission recognized early on that the economic, social, and public health benefits of the telecommunications network are increased for all subscribers by the addition of each new subscriber. Federal Universal Service continues to play a vital role in meeting our commitment to connectivity, helping to maintain high levels of telephone penetration, and increasing access for our Nation's schools and libraries. Ensuring the vitality of Universal Service will be particularly important as technology continues to evolve, and as our Nation confronts the critical broadband infrastructure challenge.

I note that the Federal-State Joint Board on Universal Service (Joint Board) recently issued a Recommended Decision that seeks to address long-term reform issues facing the high-cost Universal Service support system. I hope that the Commission will seek comment quickly on the Joint Board's considered input, and I look forward to carefully reviewing the record developed in response to this set of proposals.

Finally, I also believe that it is important that the Commission conduct its stewardship of Universal Service with the highest of standards. We must be active in our oversight and aggressively combat any evidence of waste, fraud and abuse. As we move forward with these issues, I look forward to any guidance from Congress regarding this important program.

Question 2. The "UHF discount" rule allows UHF stations to count only 50 percent of the households in a local designated market area (DMA) for purposes of the national television ownership cap. With the transition to digital television, is there any justification for maintaining the UHF discount? What effect does this have on media consolidation?

Answer. The original justification of the UHF discount rule was to account for the deficiencies in over-the-air UHF reception in comparison to VHF reception. An analog UHF signal has a shorter range than an analog VHF signal, so the rule discounted the audience reach of UHF stations by half to compensate for the fact that fewer households in the market could receive a quality over-the-air UHF signal. However, after the DTV transition, all TV signals from full-power commercial and non-commercial stations will be the same—digital. Also, since 85 percent of household subscribe to cable or satellite video service, and therefore do not rely on over-the-air transmission for TV service, the underlying justification for the UHF discount no longer exists.

Perpetuating the UHF discount does indeed effect media consolidation because it distorts the audience reach of broadcast stations for purposes of the 39 percent national TV audience cap. Using the UHF discount, one company could control the news and information that 80 percent of U.S. households receive on a daily and hourly basis. As I have stated repeatedly, such concentration of power and control of information could harm our democracy, which relies upon the free exchange of ideas from multiple sources. Central to our American democracy is the "uninhibited marketplace of ideas," where everyone is able to exchange and share music, news, information and entertainment programming over the public airwaves. As the Supreme Court has observed, "it is the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences." That right is enshrined in the First Amendment to the U.S. Constitution.

Broadcast television continues to have a powerful influence over our culture, political system, and the ideas that inform our public discourse. Study after study has shown that broadcasting is still the dominant source of not just local news and information, but also entertainment programming. The broadcast industry still produces, disseminates, and ultimately controls the news, information, and entertain-

ment programs that most inform the discourse, debate, and the free exchange of ideas that is essential to our participatory democracy. Our failure to assess accurately the reach of TV broadcast stations would be a failure to protect the interests of the American people and to execute faithfully the directive of Congress.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. THOMAS R. CARPER TO HON. JONATHAN S. ADELSTEIN

Question. The Federal Communications Commission should be commended for issuing its recent Notice of Proposed Rulemaking that considers whether to authorize Big LEO Mobile Satellite Services operators to provide ancillary terrestrial services on more of their assigned spectrum. As you are aware, one such operator, Globalstar, and its partner, Open Range Communications, need this authority in order to pursue their plan to bring broadband services to more than 500 rural communities across the country. Given the Commission's stated commitment to promote the rapid deployment of advanced broadband services to unserved and underserved areas, will you assure the Committee that you will do all that it takes to complete this proceeding in the time required for Globalstar and Open Range to move forward with their business plan?

Answer. S. 2332I am very pleased that we have initiated a proceeding to consider spectrum authorizations and technical rules for ancillary terrestrial services (ATC) in the Big LEO bands. I will work with my colleagues to complete this proceeding as quickly as possible. As you indicate, this item seeks comment on expanding the L-band and S-band spectrum in which Globalstar may operate ATC. I continue to strongly advocate the need to promote opportunities to expand wireless connectivity, as well as to reach our rural communities with broadband access. I firmly believe that broadband is the key to economic growth for these underserved areas in this digital information age. The opportunities for rural areas that have seized the broadband initiative are enormous. I will continue to advocate and encourage "spectrum facilitation"—whether technical, economic or regulatory—to get spectrum into the hands of operators seeking to provide broadband services to underserved areas as quickly as possible.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO HON. DEBORAH TAYLOR TATE

Question 1. Last year, a provision to reform the FCC's forbearance authority was included in the Committee's telecom reform bill. Specifically, it would have eliminated the "deemed granted" language in Section 10 in order to ensure a fairer process at the FCC. I recently introduced legislation that will eliminate this provision, so we can avoid a situation where the agency erases its rules simply by failing to vote. Do you believe that it's fair for the FCC to make far-reaching changes without even issuing a decision?

Answer. As a Commissioner, my preference is always to vote on an item and issue a decision. During my tenure, only one petition has been deemed granted by operation of law, and that occurred because there were only four Commissioners at the time resulting in a 2–2 vote on the order circulated by the Chairman.

On November 30, 2007, the Commission issued an NPRM to consider procedures governing its review of petitions requesting forbearance from regulation including: format and content of forbearance petitions, notice and comment rules (such as default comment periods and time limits on ex parte filings) and participation of state commissions, as well as other parties, in forbearance proceedings. The Commission also sought public comment on whether forbearance is an effective means for the Commission to make changes to its regulations.

Question 2. Earlier this year, the FCC released a Notice of Proposed Rulemaking examining so-called "two-way, plug-and-play standards" for cable navigation devices. Do you support implementation of Section 629 in a way that will create a retail market for "two-way, plug-and-pay" devices and allow for greater competition and consumer choice? Do you believe that FCC oversight is sufficient to ensure that any standards and specifications are created and changed through a fair process that treats all affected parties equitably?

Answer. I have always believed that competition is in the best interest of consumers. Where competition flourishes, we see faster development of new and improved technologies, as well as lower prices, which benefit consumers. Yes, I believe FCC oversight is sufficient to ensure a fair and equitable resolution, if FCC action is required. Section 629 mandates that the FCC consult with appropriate industry

standard-setting organizations to adopt regulations for converter boxes. As the Commission did when setting the standard for unidirectional devices, we will again consult with the appropriate industry standard-setting organization, the Society of Cable Television Engineers ("SCTE"), if faced with the decision on the standards for two-way devices. I hope the various industry parties will be able to reach consensus on an industry standard.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO HON. DEBORAH TAYLOR TATE

Question 1. On December 18 the FCC held a vote on a major change to the nations' media ownership rules, despite substantial concern here in the Senate. The Commerce Committee passed S. 2332, the Media Ownership Act of 2007, on December 4. We have over 20 bipartisan cosponsors. We asked you to delay this vote to consider important issues of localism and minority ownership and allow a proper period of comment on the rules. Why was it so important to move ahead on December 18 despite this opposition? Why could you not delay this vote beyond December 18?

Answer. To my knowledge, the Commission has always followed APA guidelines, which includes the opportunity for public notice and comment. The course leading up to our decision on the media ownership rules was the most thorough, open, and public I have been part of in my twenty-plus years of government service. It began in 2003 with the release of our 2002 Biennial Review Order, and culminated in a single, limited change to one aspect of our media ownership rules in December 2007. In reaching this decision, we held hearings all across the country over the past 18 months. We sought and received comment from academics, economists, media industry representatives, artists, public interest groups, and individual laypersons. We commissioned ten media studies and put those studies out for multiple peer reviews. This procedure was twice as long as the prior media ownership review. In the end, we kept all of our rules in place, except for the newspaper/broadcast cross-ownership ban, which we relaxed only in the top 20, most media-rich markets in the country. I would suggest this is a minor change—not a major one. Therefore, in light of the remand by the U.S. Court of Appeals for the Third Circuit in 2004, which directed the Commission to act, and the lengthy procedure we undertook, I was prepared to vote on the date the Chairman set our meeting.

Question 2. Chairman Martin says the FCC provided a lengthy public comment period of 120 days, which was extended to 167 days. The FCC also held six hearings and finished the two localism hearings. But how could the public be expected to adequately comment on your proposed rules if the Commission issued the proposed rules at the end of the process?

Answer. To my knowledge, in advance of any rulemaking, it has been the practice of the Commission to issue a broad Notice of Proposed Rulemaking, seeking public comment on how our policies should be crafted, analyze the comments received, and then draft rules. To draft rules first, and seek comment later, would seem to actually remove the public from the process. To seek comment, then draft rules, and then seek comment again, would seem to create a revolving door in which the FCC would be constantly analyzing comments without ever taking action. In its order, the U.S. Court of Appeals for the Third Circuit made clear that "the APA's notice obligations are not supposed to result in a notice-and-comment 'revolving door.'" We began this process with the release of our Biennial Review Order on July 2, 2003, and completed it on December 18, 2007. During those 4 years we held hearings, sought comment, commissioned studies, and conducted peer reviews. Though not required to do so, in the spirit of openness and transparency, the Chairman shared his proposed rule change with the public on November 13, 2007, 5 weeks before the December 18 vote. While I am certainly willing to work with Congress to amend our rulemaking procedures, I believe the Commission followed established protocol, in accordance with APA requirements.

Question 3. The FCC held six hearings across the country at a cost of more than $200,000. I worry that the $200,000 was totally wasted as you ignored the input of the public on December 18. They testified against consolidation. You didn't hear people coming out and saying they wanted the newspaper to own the television station. You heard massive opposition to consolidation. Chairman Martin has said that the FCC didn't hear people constantly sounding off against cross-ownership, but why would you hear that—the Chairman never told them what rules he was concentrating on. How could the FCC vote on a rule to relax the cross-ownership ban having heard the massive opposition to consolidation?

Answer. I found these hearings to be extremely valuable and I appreciate the thousands of citizens who participated. In response to the concerns expressed re-

garding cross-ownership, we did not relax the ban on radio ownership; we did not relax the ban on television ownership; we did not relax the ban on radio/television cross-ownership; and we did not relax the ban on dual network ownership. With regard to the ban on newspaper/broadcast cross-ownership, we only modified the rule in the top 20 designated market areas, places like Los Angeles, New York, and Chicago, which have the largest number of media outlets in the country. Further, it is incorrect to suggest that every comment we heard was in opposition to cross-ownership. The record also includes comments from those who felt that local news would improve in quality and quantity as a result of the resource-sharing opportunities created by a newspaper and broadcaster being under common ownership.

Question 4. The Media Ownership Act of 2007 requires the FCC to seek 90 days of comment on specific proposed changes to its broadcast ownership rules; complete a separate rulemaking on localism, with a study at the market level and 90 days of comment on localism, prior to rule changes being issued for comment; and convene an independent panel to make recommendations on increasing the ownership of broadcast media by women and minorities. Why should the FCC not have postponed the December 18 vote to take care of these tasks?

Answer. The most recent media ownership rulemaking process began in July 2003, with the release of the 2002 Biennial Review Order, and over the last 18 months has included a series of nationwide hearings in which we heard from thousands of laypersons and experts, and commissioned ten media studies. Regarding the localism rulemaking specifically, we held six nationwide hearings and are continually adopting orders like the enhanced disclosure order, which requires broadcast stations to make their public files available online, and the localism order which seeks comment on a variety of measures to help ensure the availability of local news. Regarding the diversity order, we currently have a committee in place, the FCC Advisory Committee for Diversity in the Digital Age, chaired by the first Hispanic FCC Commissioner, Henry Rivera, and comprised of numerous members of diverse communities. They, along with the Minority Media and Telecommunications Council and the National Association of Black-Owned Broadcasters, developed a list of proposals, a dozen of which we have already adopted, to increase involvement by women and minorities in the media industry. Those proposals include: (1) extending construction permit deadlines, (2) modifying our equity/debt plus attribution rule, (3) strengthening our distress sale policy, (4) adopting a policy banning racial or gender-based discrimination in broadcast transactions, (5) adopting a zero tolerance policy for ownership fraud, (6) requiring nondiscrimination provisions in advertising sales contracts, (7) conducting longitudinal studies on minority and women ownership trends, (8) encouraging local and regional bank participation in SBA guaranteed loan programs, (9) offering duopoly priority for companies that finance or incubate an eligible entity, (10) extending divestiture deadlines in certain mergers, (11) holding an "Access to Capital Conference", and (12) creating a guidebook on diversity. All of these proposals will be implemented expeditiously, and as new proposals are presented we will continue to consider those as well. I personally have attended the National Association of Broadcasters' Education Foundation, which offers women and minorities the opportunity to develop professional business skills that will assist them in accessing managerial and ownership positions in the media industry. I have also attended the Hispanic Broadcasters Association Financing and Capitalization Seminar, worked with the National Association of Black-Owned Broadcasters, and attended the Rainbow/Push Coalition's Wall Street Project. Improving the staggeringly low rate of female and minority ownership will continue to be one of my top personal and professional goals. The FCC has and continues to show great dedication to increasing local news and to diversity in media ownership. Of course we can always do more, but I believed it was important to act on the recommendations before us.

Question 5. Should the Chairman have put out his proposed media ownership rules in a *New York Times* op-ed and then in an FCC press release? Do you believe they should have been issued in the *Federal Register*?

Answer. As a former state PUC Chairman, I know the difficulties associated with this type of leadership position. Regarding the issuance of the proposed rule change, see Answer #2 above.

Question 6. You have heard concerns that the Chairman's proposal opens up cross-ownership to much more than the top 20 markets. I don't agree with any cross-ownership at all. Not in the top 30, not in the top 20. I think I'm saying the same thing as the 1,000 people who came to the hearing in Los Angeles and the 1,100 people who turned out in Seattle. Why are we not being heard?

Answer. I appreciate the thousands of citizens who attended our six public hearings and their comments certainly had an impact on me. In response to their con-

cerns, the Commission did not relax the radio ownership limit; did not relax the television ownership limit; did not relax the radio/television cross-ownership limit; and did not relax the dual network ownership ban. We modified the rule regarding newspaper/broadcast cross-ownership only in the top 20, most media-rich markets. This modest change reflects our understanding of, and appreciation for, the public comments we received. In addition, we also considered the media studies and the public comments that demonstrate that local news actually increases where resource-sharing occurs, and this supported our decision to adopt the minor change to our rules.

Question 7. Recently concerns about unfair discrimination have been raised in relation to Verizon Wireless blocking the text messaging service of the pro-choice group, NARAL. Verizon Wireless quickly corrected the problem, but the fact that it happened raises major alarms. On October 16, 2007, Senator Snowe and I sent a letter to the FCC asking for your views on this issue. I have not received a response. Can you tell me your views?

Answer. Before I arrived at the Commission, on August 5, 2005, the Commission adopted a policy statement that outlines four principles to encourage broadband deployment and preserve and promote the open and interconnected nature of public Internet: (1) consumers are entitled to access the lawful Internet content of their choice; (2) consumers are entitled to run applications and 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. All of these principles are subject to reasonable network management. I support the Commission's four principles regarding Internet policy, and believe that consumers should have access to lawful content of choice that does not harm the network. Internet providers have the right to mange their networks in order to serve their customers as long as they do not engage in unlawful discrimination.

On March 22, 2007, the Commission launched an inquiry into broadband market practices, including the relationships between broadband providers, content and application providers, and consumers. Also, several groups filed a petition with the Commission on December 11, 2007, requesting that the Commission prohibit wireless carriers from blocking text messages sent by any company, nonprofit group or political campaign. I will closely evaluate the records in these proceedings.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. BILL NELSON TO HON. DEBORAH TAYLOR TATE

Question. As you are probably aware, Florida is currently the largest "net payer" state into the Universal Service Fund. Florida pays in more than $300 million more to the USF than it receives in disbursements. Getting beyond the idea of a "cap" of some sort—which may raise competitive issues—it seems like one other way of achieving efficiencies is through more effective targeting of support. How do you feel about this approach?

Answer. As part of comprehensive long term reform of the Universal Service Fund I support more effective targeting of support to ensure that the funds are being deployed efficiently and effectively to high cost areas.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO HON. DEBORAH TAYLOR TATE

Question 1. Do you believe that the newspaper industry is profitable today?

Answer. I believe this is a very market-specific analysis. Some newspapers may be profitable, but unfortunately we have seen that many are not, resulting in the bankruptcy of many papers and a resulting loss of voices in some markets. This is why it is so important that any cross-ownership waivers, outside the top 20 largest media markets, are decided on a case-by-case basis. In 2007 alone, *The Boston Globe* fired 24 of its news staffers, including two Pulitzer Prize-winning reporters; the Minneapolis *Star Tribune* fired 145 employees, including 50 from their newsroom; *The Rocky Mountain News* fired 20; the *Detroit Free Press* and *The Detroit News* announced cuts of 110 employees; and the *San Francisco Chronicle* planned to cut 25 percent of its newsroom staff. Given the incredible technological convergence, newspapers are looking for ways in which to compete in the digital age and survive given the impact of the Internet and as our studies indicate, cross-ownership actually results in more local news through efficiencies and resource-sharing.

Question 2. A recent GAO report cited that no comprehensive plan exists for the digital television transition. The GAO stated "Among other things, a comprehensive plan can detail milestones and key goals, which provide meaningful guidance for assigning and coordinating responsibilities and deadlines and measuring progress. Such planning also includes assessing, managing, and mitigating risks, which can help organizations identify potential problems before they occur and target limited resources". This week the Commission released a written response to the GAO report. At this point in time, what do you consider to be the top five risk factors with respect to American consumers getting through the digital television transition with minimal disruption? Which of these risk factors fall under the jurisdiction of the FCC? How is the FCC managing and mitigating these risks?

Answer. First, I would like to refer you to the "FCC Written Response to the GAO Report on DTV" ("Written Response") (*http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278883A2.pdf*), which outlines in minute detail the steps the Commission is taking to prepare for the DTV transition. We have already executed a number of significant initiatives, such as requiring labeling of analog-only television sets, enforcing penalties against retailers who fail to notify consumers about the risk of purchasing analog-only sets, and completing three periodic reviews of the rules for broadcasters as they prepare for the DTV transition. There are numerous other benchmarks in the Written Response that we continue to work toward. I believe this Report is a thorough and comprehensive analysis of the issues remaining before the Commission. Thanks to the appropriation of funds we received 2 weeks ago, the Commission will be able to conduct more targeted education efforts to prepare Americans for the transition. Second, I personally mention the DTV transition and the informational website, *www.dtv.gov,* in every speech I give, whether DTV-related or not. Additionally, I have spoken at numerous meetings convened by the FCC's Consumer and Governmental Affairs Bureau, which focused on specific segments of the population, such as seniors and non-English speakers. I also participated in a panel discussion hosted by the Intergovernmental Advisory Committee, which brought together Governors, state and local officials, and tribal leaders from across the country. Additionally, I participated in the NTIA set-top box kick-off at the Department of Commerce, where vendors were on hand to demonstrate the types of boxes that will be available to consumers through the NTIA coupon program. I have worked with Jonas Hafstrom, the Swedish Ambassador, and Magnus Harviden, Sweden's Counselor for Science and Technology, to learn about the successful DTV transition recently completed in their country. The FCC's International Bureau coordinated a live teleconference to gain further insights on Sweden's transition as well. Despite all of the FCC's current efforts, the process can always improve. In an effort to be responsive to your question, here are five areas which may pose some risk, but which are largely addressed in the aforementioned Written Response.

1. *Targeted outreach.* Educational efforts are within the jurisdiction of the FCC, and as I stated, we are conducting forums. I am pleased that we recently received a $2.5 million appropriation which will help us target those likely to be most affected by the transition, such as the elderly and non-English speakers.

2. *Additional collaboration with non-traditional organizations.* Volunteer groups, like the Boy Scouts and Girl Scouts, and other non-profit organizations, may offer assistance to those most affected by the transition.

3. *Increased intergovernmental and industry interaction.* Regular update and planning meetings between the groups responsible for the transition could be facilitated by the FCC.

4. *Technical issues.* We recently issued the Third Periodic Review of the Rules and Policies Affecting the DTV Conversion. The Commission will continue to work with broadcasters on issues arising in the future, as we approach February 17, 2009.

5. *Consumer issues not within the FCC's jurisdiction.* Congress may want to consider how other associations could improve DTV education efforts. For example, electronics manufacturers could be encouraged to have a clear, conspicuous link on their websites, in which consumers can input the model number of their particular set, and determine whether it is analog or digital. The set-top box coupon program, being administered by the NTIA, is a critical component of the DTV transition.

Question 3. Should the common carrier exemption be removed from the Federal Trade Commission? What, if any, would be the disadvantage to consumers if the exemption is removed?

Answer. Obviously technological advances are blurring telecommunications, content and information space. This platform convergence may call for different types of oversight and regulation especially as economic regulation is reduced. In certain situations where the market pressure and competition do not provide enough consumer protection there may be a need for more regulation—not just from different Federal agencies, but also at the state and local level. Certainly, whether or not to remove the exemption is within the purview of Congress. Currently the Commission's Consumer and Governmental Affairs Bureau (CGB) develops and implements the Commission's consumer policies and is responsible for responding to consumer inquiries and complaints. CGB provides informal mediation and resolution of individual informal consumer inquiries and complaints consistent with controlling laws and Commission regulations, and in accordance with the Bureau's delegated authority. CGB receives, reviews and analyzes complaints and responses to informal consumer complaints; maintains manual and computerized files that provide for the tracking and maintenance of informal consumer inquiries and complaints; mediates and attempts to settle unresolved disputes in informal complaints as appropriate; and coordinates with other Bureaus and Offices to ensure that consumers are provided with accurate, up-to-date information.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO HON. DEBORAH TAYLOR TATE

Question 1. New Jersey is a net contributor of almost $200 million a year to the Universal Service Fund (USF). There are many proposals for reforming USF, including temporary caps and longer-term proposals. When can I tell my constituents that they will see some action from the FCC to stop the exponential growth of this Fund?

Answer. Thank you for underscoring the exponential growth of the USF and for your support of the Commission taking action. As Federal Chair of the Federal-State Joint Board on Universal Service I was pleased that within the last year the Joint Board made both short term and long term recommendations for reform of the Fund. Several decisions are currently circulating at the Commission to address USF reform and I hope that the Commission can act as soon as possible.

Question 2. There has been recent activity—both at the FCC and in the courts—regarding the rebanding of the 800 MHz spectrum. When do you expect the rebanding to be completed?

Answer. While the original 800 MHz rebanding was addressed prior to my arrival at the Commission, I am deeply committed to better, more efficient utilization of the spectrum, especially as it relates to the availability of spectrum for use by public safety. This process did not begin as promptly as envisioned. Nevertheless, the rebanding of the 800 MHz band is progressing. To address some of the previous delays, in September the Commission issued rules requiring any non-border licensee to request a waiver in the event it will not complete rebanding by June 26, 2008. The Commission made clear that it would consider waivers on a case-by-case basis and would not give blanket waivers to licensees that failed to reband on schedule. Currently, the Commission is considering additional guidelines for licensees that intend to file waiver requests, in order to further expedite this process.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. THOMAS R. CARPER TO HON. DEBORAH TAYLOR TATE

Question. The Federal Communications Commission should be commended for issuing its recent Notice of Proposed Rulemaking that considers whether to authorize Big LEO Mobile Satellite Services operators to provide ancillary terrestrial services on more of their assigned spectrum. As you are aware, one such operator, Globalstar, and its partner, Open Range Communications, need this authority in order to pursue their plan to bring broadband services to more than 500 rural communities across the country. Given the Commission's stated commitment to promote the rapid deployment of advanced broadband services to unserved and underserved areas, will you assure the Committee that you will do all that it takes to complete this proceeding in the time required for Globalstar and Open Range to move forward with their business plan?

Answer. In 2006, the Commission authorized Globalstar to provide Ancillary Terestrial Component (ATC) service in 11 megahertz of the Mobile Satellite Services (MSS) band in which it is licensed to operate. In a subsequent petition, Globalstar requested authorization to provide ATC service in all of the MSS spectrum in which it is licensed to operate, either exclusively or on a shared basis. In response to this

petition, the Commission released in November of 2007 a Notice of Proposed Rulemaking (NPRM) seeking comment on whether Globalstar should be authorized to provide ATC service in additional spectrum. This is an important issue. The opportunity for Globalstar to partner with Open Range Communications to provide rural broadband service, which your question addresses, is precisely the type of benefit that may result from such authorization, in the event this may be granted without causing harmful interference to authorized licensees in adjacent bands. The Commission's prompt attention to this matter is consistent with its focus on advancing policies that promote broadband service to all Americans, including those in rural and isolated areas. Further, as a former state official in a state with a large rural population, expanding the availability of broadband service beyond the largest cities is a priority for me. While the comment period for the NPRM has not closed, I am committed to completing this proceeding promptly upon review of the record.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TED STEVENS TO HON. DEBORAH TAYLOR TATE

Question 1. Does the Commission have the statutory authority to provide Universal Service support to non-profit corporation tribal consortiums, serving remote areas of Alaska, that provide education, welfare, wellness, law enforcement, natural resources and economic development services?

Answer. To help promote telecommunications service nationwide, the Commission, as directed by Congress in section 254 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (47 U.S.C. § 254. *See also* Telecommunications Act of 1996, Pub. L. 104–104, 110 Stat. 56 (1996) (the Act)) and with the help of the Universal Service Administrative Company (USAC), administers the Federal Universal Service Fund.

The Federal Universal Service Fund pays for four programs. They are:

- *Lifeline/Link-Up.* This program provides discounts on monthly service and initial telephone installation or activation fees for primary residences to income-eligible consumers. For additional information see our consumer fact sheet at *www.fcc.gov/cgb/consumerfacts/lllu.html.*
- *High-Cost.* This program supports companies that provide telecommunications services in areas where the cost of providing service is high.
- *Schools and Libraries.* This program helps support classrooms and libraries in using the vast array of educational resources available through the telecommunications network, including the Internet. For additional information see our consumer fact sheet at *www.fcc.gov/cgb/consumerfacts/usp__Schools.html.*
- *Rural Health Care.* This program helps link health care providers located in rural areas to urban medical centers so that patients living in rural America will have access to the same advanced diagnostic and other medical services that are enjoyed in urban communities. For additional information see our consumer fact sheets at *www.fcc.gov/cgb/consumerfacts/usp__RuralHealthcare.html* and *www.fcc.gov/cgb/consumerfacts/RuralHealthProgram.html.*

The Commission has statutory authority to provide Universal Service funds to the extent that a non-profit corporation tribal consortium meets the eligibility requirements for a program.

Question 2. Kawerak is one of Alaska's tribal consortiums who provides several services to remote areas of Alaska, and has expressed concern about their ineligibility to receive Universal Service support because they are unable to meet the precise definitions of health care or educational service providers. Please address the requirements which these tribal consortiums must meet in order to receive support.

Answer.

Schools and Libraries Program

Federal and state laws determine eligibility of schools, school districts, and libraries. The following Internet link provides an overview of the Schools and Libraries Program: *http://www.universalservice.org/sl/about/overview-program.aspx.*

The Schools and Libraries Program of the Universal Service Fund, commonly known as "E-Rate," is administered by the Universal Service Administrative Company (USAC) under the direction of the Commission, and provides discounts to assist most schools and libraries in the United States to obtain affordable telecommunications and Internet access.

The Schools and Libraries Program supports connectivity—the conduit or pipeline for communications using telecommunications services and/or the Internet. Funding

is requested under four categories of service: telecommunications services, Internet access, internal connections, and basic maintenance of internal connections. Discounts for support depend on the level of poverty and the urban/rural status of the population served and range from 20 percent to 90 percent of the costs of eligible services. Eligible schools, school districts and libraries may apply individually or as part of a consortium.

Applicants must provide additional resources including end-user equipment (*e.g.,* computers, telephones, etc.), software, professional development, and the other elements that are necessary to utilize the connectivity funded by the Schools and Libraries Program.

In general, a school is eligible for Schools and Libraries support if it meets the following eligibility requirements:

- Schools must provide elementary or secondary education as determined under state law.
- Schools may be public or private institutional day or residential schools, or public charter schools.
- Schools must operate as non-profit businesses.
- Schools cannot have an endowment exceeding $50 million.

In many cases, non-traditional facilities and students may be eligible.

- Eligibility of Pre-Kindergarten, Juvenile Justice, and Adult Education student populations and facilities depends on state law definitions of elementary or secondary education.
- An Educational Service Agency, which may operate owned or leased instructional facilities, may be eligible for Schools and Libraries support if it provides elementary or secondary education as defined in state law.

Libraries must meet the statutory definition of library or library consortium found in the 1996 Library Services and Technology Act (Pub. L. 104–208) (LSTA) to meet eligibility requirements for Schools and Libraries support.

- Libraries must be eligible for assistance from a state library administrative agency under that Act.
- Libraries must have budgets completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges and universities).
- Libraries cannot operate as for-profit businesses.

Rural Health Care Program

Health care providers (HCPs) participating in the Rural Health Care Program must be eligible and must select eligible services and providers in order to receive discounts. The following Internet link provides an overview of the eligibility requirements: *http://www.usac.org/rhc/health-care-providers/step01/*

Before beginning the application process, it is important to confirm eligibility. In general, participants in the program must be rural *and* public or non-profit health care providers of the types listed below.

- Post-secondary educational institutions offering health care instruction, teaching hospitals, or medical schools.
- Community health centers or health centers providing health care to migrants.
- Local health departments or agencies including dedicated emergency departments of rural for-profit hospitals.
- Community mental health centers.
- Not-for-profit hospitals.
- Rural health clinics including mobile clinics.
- Consortia of HCPs consisting of one or more of the above entities.
- Part-time eligible entities located in otherwise ineligible facilities.

If an applicant is not clearly one of these entities, they can contact USAC's Customer Service Support Center at *1–800–229–5476* for assistance in determining eligibility.

In 2004, the Commission expanded the definition of "Rural" for participants in the Rural Health Care Program. To determine if a location is considered rural, a potential applicant can select Rural Health Care Search Tools on the left side of this Internet link: *http://www.usac.org/rhc/health-care-providers/step01/rural-eligibility-search.aspx.*

Health care providers are permitted to apply to receive reduced rates for a variety of telecommunications services under the Rural Health Care Program. Health care providers may seek support for multiple telecommunications services of any bandwidth and for monthly Internet service charges.

Examples of Eligible Telecommunications Services and Charges

Examples of eligible telecommunications services and charges include, but are not limited to:

- Mileage-Related Charges
- T3 or DS3
- T1
- Fractional T1
- ISDN (Integrated Services Digital Network)
- Frame Relay
- ATM (Asynchronous Transfer Mode)
- Off-Premise Extension
- Satellite Service
- Centrex
- Dedicated Private Line
- Foreign Exchange Line
- Network Reconfiguration Service
- Direct Inward Dialing
- One-time (Installation) Charges
- Wireless or microwave services
- DSL (digital subscriber line)

The Rural Health Care Program supports these services up to the maximum allowable distance (MAD). The applicant is responsible for the cost of services beyond the MAD.

Examples of Ineligible Telecommunications Equipment and Charges

Telecommunications equipment does not qualify for support under the Rural Health Care Program. The following examples are not eligible:

- Computers
- Fax machines
- Video cameras
- Telephones, cellular phones, pagers, handheld devices
- Maintenance charges
- Franchises, zone charges, and surcharges

The Rural Health Care Program does not support the cost of construction or infrastructure build-out for the installation of telecommunications services. For example, if a wall must be removed, a street dug up, or a cable laid, these costs would not be eligible for support.

Examples of Eligible Internet Services and Charges

Eligible Internet services are limited to the following:

- Monthly Internet access charges
- E-mail
- Web hosting

Examples of Ineligible Internet Services and Charges

Equipment and certain Internet services do not qualify for support under the Rural Health Care Program. The following items are not eligible:

- Caching
- Filtering content
- Training
- Servers
- Web casting
- Equipment and wiring

• Maintenance

Question 3. If these tribal consortiums are unable to meet the Commission's current requirements, please address whether a waiver process is available for these entities.

Answer. Under 47 C.F.R. § 1.3 the Commission's rules may be waived for good cause shown.

Question 4. Please also describe the specific steps which non-profit corporation tribal consortiums must take to apply for, and receive, support from the Universal Service Fund.

Answer.

Schools and Libraries Program

An overview of the application process can be found at the following Internet links: *http://www.universalservice.org/sl/about/overview-process.aspx; http://www.universalservice.org/__res/documents/about/pdf/brochures/sl-overview-brochure.pdf*.

The Internet page referenced provides links to the application process, from Technology Plan through Invoicing and summarizes the process schools and libraries follow to apply for and receive support. Each of the steps in this process—preparing a technology plan, opening the competitive process, seeking discounts on eligible services, confirming the receipt of services, and invoicing for services—is covered in more detail in the steps below. For additional details applicants should refer to form instructions and the guidance materials posted on the USAC website.

Step 1 Determine Eligibility
Step 2 Develop a Technology Plan
Step 3 Open a Competitive Bidding Process
Step 4 Select a Service Provider
Step 5 Calculate the Discount Level
Step 6 Determine Your Eligible Services
Step 7 Submit Your Application for Program Support
Step 8 Undergo Application Review
Step 9 Receive Your Funding Decision
Step 10 Begin Receipt of Services
Step 11 Invoice USAC

Rural Health Care Program

Rural health care providers and service providers that participate in the Rural Health Care Program have certain requirements and responsibilities that must be met in order to receive support. Below is an overview of the process.

All health care providers (HCPs) or consortia of HCPs seeking to participate in the Rural Health Care Program must complete the *Description of Services Requested and Certification Form* (Form 465) to request bids from service providers for services to be used for the provision of health care. A separate Form 465 must be completed for each physical location within the consortia that is eligible to receive support.

When a Form 465 is received from a new applicant, USAC confirms eligibility. Once USAC reviews a Form 465 and determines it is complete, it is posted on the USAC website and a letter is sent to the health care provider to confirm the posting. The posting invites service providers to bid to provide services. The posting date starts the 28-day competitive bidding process. All health care providers expecting support must complete the 28-day posting requirement before entering into an agreement to purchase services with a service provider.

A health care provider must consider all bids received and select the most cost-effective method to meet its requirements. The most cost-effective method is defined by the Commission as the method of least cost after consideration of the features, quality of transmission, reliability, and other factors relevant to choosing a method of providing the required services.

To be eligible to receive telecommunications support, the selected carrier must be a "Common Carrier." Any telecommunications service and/or Internet access necessary for the provision of health care is eligible for support, but equipment charges are not eligible for support. All Internet service providers are eligible to participate in the program; however, only the monthly charge is eligible for support.

Once the service providers and services are selected, the health care provider completes and submits the *Funding Request & Certification Form* (Form 466) and/or an *Internet Service Funding Request & Certification Form* (Form 466–A). These forms

specify the type(s) of service ordered, the cost, the service provider(s), the terms of any service agreements, and certifies that the selections were the most cost-effective offers received.

USAC reviews the Form 466 and/or 466–A packet for accuracy. Upon approval, USAC mails the health care provider a Funding Commitment Letter (FCL) and a copy of the *Receipt of Service Confirmation Form* (Form 467). A copy of the FCL is also sent to the service provider.

After the service begins from the service provider, the health care provider submits Form 467 to USAC. Form 467 must be submitted in order to receive discounted services. USAC cannot process Form 467 unless a Funding Commitment Letter has been issued.

Once Form 467 is received, reviewed, and approved, USAC will send the health care provider and its service provider(s) a health care support schedule. At this point, the service provider can begin crediting the bill with the monthly recurring support amount or issue a check for the discount. As soon as the service provider has issued a credit or check to the health care provider, the service provider invoices USAC.

USAC will then credit or reimburse the carrier's Universal Service Fund (USF) account. Those that do not have such an active USF account and have not been issued a SPIN number by USAC must fill out an FCC Form 498 and then reimbursement will be issued by check or direct deposit.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GORDON H. SMITH TO HON. DEBORAH TAYLOR TATE

Question 1. The Commission's Regulatory Flexibility Analysis for the November 30 must-carry order says that "Every effort will be made to minimize the impact of any adopted proposals on cable operators." How much will it cost for every 552 megahertz cable systems to file and prosecute a waiver through the FCC? Would you support a blanket dual carriage waiver for 552 megahertz cable systems?

Answer. I am very mindful of the cost of overly burdensome regulation, especially on small cable operators. That is why I urged the Commission to seek comment on the effect of our dual carriage order on small cable operators. In that Order we solicited "further proposals for means to minimize the impact on small cable operators, whether they be alternative rules, ameliorated timetables, or any other approaches that would conform to the requirements of the statute." I will carefully consider the comments submitted.

Question 2. You appeared before the Senate last year and predicted that the Federal high-cost fund would grow by $280 million per year if all of the CETC petitions at the FCC were granted. Can you tell me how you arrived at this number?

Answer. The numbers in my testimony were based on those of Chairman Martin as originally presented at the *en banc* hearing hosted by the Federal-State Joint Board on Universal Service on February 20, 2007 (a copy of the testimony and accompanying charts are located at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-271011A1.pdf* and *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-271011A2.pdf*). Following the en banc, the Joint Board issued a Recommended Decision recommending an emergency interim cap on the CETC portion of the High Cost Fund (a copy of which is located at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07J-1A1.pdf*). To the extent you would like more information on the methodology used, I would be happy to forward your request to the appropriate Commission staff.

Question 3. Section 254(a)(2) of the Communications Act requires that the Commission "complete any proceeding to implement recommendations from any Joint Board on Universal Service within 1 year of receiving such recommendations." The Joint Board on Universal Service delivered its recommended decision on high-cost reform on November 19, 2007. Do you support putting the Joint Board recommendation out for public comment?

Answer. Yes. On January 29, 2008, the Commission issued an NPRM requesting comments from the public. I look forward to receiving input from the public on the Joint Board recommendations and working with my colleagues on comprehensive long-term reform.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO HON. DEBORAH TAYLOR TATE

Question 1. The FCC has commissioned 10 economic studies on media ownership and its effect on news and other programming. According to these studies, how does cross-ownership effect local content and political slant? Does this outcome differ by the size of the media market? In other words, how does the cross-ownership ban impact local content and political slant in the largest 20 markets compared to effects in smaller markets around the country? What has been the experience of markets which had companies grandfathered in under old media ownership rules?

Answer. Study #3 ("Television Station Ownership Structure and the Quantity and Quality of TV Programming," by Gregory S. Crawford) found:

> Our strongest findings are for Local News: television stations owned by a parent that also owns a newspaper in the area offer more local news programming.

This study can be found at: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A4.pdf.*

Study #4 ("The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming," by Daniel Shiman) found:

> Stations cross-owned with a newspaper provided 11 percent (18 minutes) more news programming per day. Each additional co-owned station in the same market is associated with 15 percent (24 minutes) more per day of news programming.

This study can be found at: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A5.pdf.*

Study #6 ("The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News," by Professor Jeffrey Milyo) found:

> This within-market comparison reveals that cross-owned newspaper/television combinations devote more time to news, as well as several categories of local news. Further, these cross-owned stations do not have a political slant that is any different from other major network affiliated stations in the same market, at least when slant is measured by candidate speaking time, candidate coverage or partisan issue coverage.

This study can be found at: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A7.pdf.*

Question 2. The financial troubles and perceived threats to the viability of newspapers and broadcasts have played a significant role in the proposed changes of media ownership rules. Some sources contend that despite declining ad revenues and readership, newspapers remain profitable. However, others contend that these media outlets have only been able to remain profitable at the expense of quality and quantity of news they produce. What do you perceive the financial position of newspapers to be in today's market? How does this vary based on the size of the media market? To what extent will these proposed changes alleviate these troubles?

Answer. I believe this is a very market-specific analysis. Some newspapers may be profitable, but unfortunately we have seen that many are not, resulting in the bankruptcy of many papers and a resulting loss of voices in some markets. In light of this, and in an effort to respond to the heart of the Third Circuit's concerns, the Commission will approach all markets outside the top 20 on a case-by-case basis, analyzing the specifics of each particular market area. As for the impact of market size, one can look to the changes in newspapers in several markets in 2007. For example, *The Boston Globe* fired 24 of its news staffers, including two Pulitzer Prize-winning reporters; the Minneapolis *Star Tribune* fired 145 employees, including 50 from their newsroom; *The Rocky Mountain News* fired 20; the *Detroit Free Press* and *The Detroit News* announced cuts of 110 employees; and the *San Francisco Chronicle* planned to cut 25 percent of its newsroom staff. Given the incredible technological convergence, newspapers are looking for ways in which to compete in the digital age and survive given the impact of the Internet. As studies 3, 4, and 6 indicate, cross-ownership actually results in efficiencies and resource-sharing which allow these businesses to continue and to provide more local news. These studies can be found at *http://www.fcc.gov/ownership/studies.html.*

Question 3. The Universal Service Fund is obviously very important for rural states like South Dakota. What general troubles do you see arising with the fund and its solvency? What would you recommend to help alleviate these troubles? What are your thoughts on the recommendations put forth by the Federal-State Joint Board in November?

Answer. Being from the rural state of Tennessee, I understand firsthand that the Universal Service Program is an important program at the heart of rural America. Its purpose, to connect all Americans, has over the years permitted people to be connected even in rural and remote parts of our Nation at reasonable rates. That is why it is so critical that we adopt policies that will ensure the long-term sustainability of the Fund. As I have stated on many occasions, high-cost support to competitive eligible telecommunications carriers (CETCs) has been rapidly increasing in recent years, jeopardizing the viability of the fund. That is why I support the Federal-State Joint Board on Universal Service's Recommended Decision recommending an emergency interim cap on the CETC portion of the High Cost Fund. As you are aware, on November 20, 2007 the Joint Board also issued a Recommended Decision to address the long-term reform issues facing the high-cost Universal Service support system. A copy of my Statement issued with the release of the Recommended Decision can be found at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07J-4A3.pdf.* I look forward to reviewing the comments and look forward to working with my colleagues on comprehensive long term reform.

Question 4. Many people are concerned that the digital TV transition is not going as smoothly as would be hoped and a number of steps still need to be taken including the issuance of rules regarding the processing of construction permit applications and the assignment of channels to broadcasters. Why have these issues not been resolved yet? When do you expect them to be resolved? Will this allow the industry enough time to transition to digital TV?

Answer. On August 6, 2007, the Commission released the *Seventh Report and Order and Eighth Further Notice of Proposed Rule Making In the Matter of Advanced Television Systems and their Impact Upon Television Broadcast Service,* which specified channel assignments for nearly all of the 1,800 full power stations. (The Further Notice addressed 13 stations that filed too late to be included in the Report.) On December 31, 2007, the Commission released the *Third Periodic Review of the Rules and Policies Affecting DTV Conversion.* That Order resolves many of your concerns, including the procedures, rules, and forms for processing applications. Currently, the Media Bureau is working on the 8th Report and Order and the Order on Reconsideration of the 7th Report and Order. I am also committed to the completion of our DTV Education Order which reinforces the need for industry, government, and broadcasters to work together. In conjunction with these Orders, the FCC has also undertaken its own educational efforts, including: (1) hosting workshops targeting specific segments of the population, such as seniors, minority/non-English speakers, and rural and tribal consumers, (2) participating in over 90 events and conferences across the country disseminating over 50,000 packets of DTV literature, (3) holding national DTV awareness sessions, (4) attending NTIA set-top box kick-off program and DTV Federal Agency Partners events, (5) charging two FCC Committees, the Intergovernmental Advisory Committee and the Consumer Advisory Committee, with focusing on DTV issues and convening meetings of their respective members on this subject, (6) conducting eight meetings with representatives of disability advocacy groups to discuss best outreach practices and educational techniques, (7) establishing a website, *www.dtv.gov,* which offers Americans 24-hour-a-day information on the transition, including educational materials for local governments and community groups, (8) participating in AARP's national convention, (9) participating in the 2007 annual meeting of La Raza, and (10) enforcing FCC rules against retailers who fail to properly label analog-only television sets. Further, with the $2.5 million recently authorized by Congress for DTV education, the Commission will continue to target the most at-risk populations. In addition to our domestic partnerships, the FCC is reaching out to other countries that have already completed their own DTV transitions. I recently met with Swedish Ambassador, Jan Eliasson, to discuss Sweden's DTV transition which is nearly complete. Next week the FCC will participate in a teleconference with representatives from the UK to discuss that country's plans for its DTV transition, set to begin fall 2008. I believe we can learn a great deal from those that have gone before us in this technological revolution. On a personal note, I have spoken to groups at the FCC focusing on educating seniors, minorities/non-English-speakers, and state and local government leaders, and I continue to include information on the DTV transition in every speech I give. I have done interviews with groups like Retirement Living TV whose audiences are most likely to be affected by the transition. There has also been overwhelming support for education and outreach through industry initiatives. The National Association of Broadcasters has pledged $1 billion for outreach materials and advertisements. The National Cable and Telecommunications Association has already begun a $200 million television ad campaign that includes public service announcements in English and Spanish. Electronics retailers are participating by offering in-store, point-of-sale educational materials to their customers, in addition to

labeling all analog-only television sets in accordance with our FCC mandate. It is my firm belief that by working with our industry and government partners we can achieve a successful DTV transition on February 17, 2009.

Question 5. The FCC appears to be reregulating some aspects of broadcasting which were deregulated under President Reagan and have helped the broadcast industry remain competitive over the past 25 years. With the influx of new technologies and mediums, why has the FCC chosen now to begin reregulation? Have there been any specific detrimental effects that have prompted this? Why has the FCC increasingly turned to government mandates instead of market-based solutions to help resolve these problems?

Answer. As a Commissioner, my first responsibility is to enforce the laws that Congress passes. I support market-based solutions; however, I agree that regulation may be necessary where there is a clear market failure. It is important to maintain a balance between adopting policies that serve the public interest and giving broadcasters the flexibility to develop successful business models. For example, in an effort to improve localism, the Commission adopted an order which requires broadcasters to post their public inspection files online. This requires a modest amount of effort by most broadcasters, and results in the public having easier and broader access to the public files, which they are entitled to access under 47 C.F.R. § 73.3526. In an effort to reduce the burdens on broadcasters, the rule does not apply to those that do not maintain a website, and it allows those that do to simply link to the FCC's website for portions of the required information. Given the staggeringly low rate of female and minority involvement in the media industry, the Commission carefully weighed more than forty proposals submitted by the Minority Media and Telecommunications Council, the FCC's Diversity Committee, and the National Association of Black-Owned Broadcasters, and selected twelve that appear not only to hold the most potential for promoting diversity, but also impose a relatively small burden on the broadcast community. Certainly I am committed to the continued dedication of broadcast resources for news, entertainment, and most importantly, emergency alerts. I have always been a proponent of market-based solutions.

Question 6. Earlier this year, the FCC's Office of Engineering (OET) released a report which shows that allowing unlicensed devices into the television spectrum may interfere with the television signal in 80–87 percent of a television station's service area. Additionally, a July report from the FCC demonstrated that prototypes that utilize "sensing" technology did not effectively detect TV signals. Do you perceive this to be a threat to the DTV transition? If so, what is the FCC doing to ensure that the DTV transition is not jeopardized by unlicensed consumer digital devices?

Answer. In October 2006, the Commission issued its *First Report and Order on Unlicensed Operations in the TV Broadcast Bands.* That Order prohibited unlicensed operations in the TV "white spaces" until after the DTV transition on February 17, 2009. Last year, the Commission tested early prototypes of "white spaces" devices, completing Phase I in July 2007. The first prototype devices submitted to the Commission did not effectively detect TV signals; however, the provider of one of the devices stated that the device was not functioning properly. In October 2007, the Commission's Office of Engineering and Technology (OET) announced that Phase II tests would be conducted and invited interested parties to submit prototype devices. In January 2008, OET issued another public notice announcing that it had received four TV white space prototype devices for testing and publishing a test plan. Tests began January 24 and are open to the public. The Commission is developing a complete record in its rulemaking proceeding, and conducting further tests of TV white space prototypes, so that whatever rules may ultimately be adopted will avoid any detrimental impact to the DTV and other radio services operating in this spectrum. For more information and the schedule of testing, see *http://www.fcc.gov/oet/projects/tvbanddevice/Welcome.html.*

No decision will be rendered until after the final testing is completed and a report is issued. Regardless of the outcomes of this testing, I remain committed to a seamless DTV transition on February 17, 2009.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO HON. ROBERT M. MCDOWELL

Question 1. Last year, a provision to reform the FCC's forbearance authority was included in the Committee's telecom reform bill. Specifically, it would have eliminated the "deemed granted" language in Section 10 in order to ensure a fairer process at the FCC. I recently introduced legislation that will eliminate this provision,

so we can avoid a situation where the agency erases its rules simply by failing to vote. Do you believe that it's fair for the FCC to make far-reaching changes without even issuing a decision?

Answer. As Section 10 of the Communications Act is currently written, action on a forbearance petition requires a majority of Commissioners to act to deny the request. The Commission is bound by the statutory provisions governing forbearance petitions. If, in the opinion of Congress, the operation of this statute is causing an undesired result, then it could certainly modify that provision. I believe that requiring an up-or-down vote would fall into this category.

I was recused from each of the forbearance petitions that the Commission has acted on since my swearing in as a Commissioner on June 1, 2006 through May 31, 2007, due to my ethics agreement with the Office of Government Ethics as filed with the Senate Commerce Committee and by virtue of my former employer's participation in those forbearance proceedings. However, since my one-year recusal period has expired, I have acted on all of the forbearance petitions that have been due for a vote. I believe all forbearance petitions should have an up or down vote. It is preferable that they not go into effect as the result of a "deemed granted" situation.

On November 27, 2007, the Commission took an important step to bring clarity to the uncertainty surrounding the forbearance petition process by initiating a rulemaking proceeding. Only Congress can amend Section 10, which is simple and clear in its mandate; but the Commission can take steps to improve its implementation. And that is what we are doing by initiating this rulemaking. It is also appropriate to examine the effect that forbearance petitions have on our broader rulemaking responsibilities. I will review the comments filed in this proceeding, as well as evaluate our forbearance regulations, so that we can implement rules that we find are necessary to improve the forbearance process.

Question 2. Earlier this year, the FCC released a Notice of Proposed Rulemaking examining so-called "two-way, plug-and-play standards" for cable navigation devices. Do you support implementation of Section 629 in a way that will create a retail market for "two-way, plug-and-play" devices and allow for greater competition and consumer choice? Do you believe that FCC oversight is sufficient to ensure that any standards and specifications are created and changed through a fair process that treats all affected parties equitably?

Answer. Yes, I support implementation of Section 629 in a way that will create a retail market for "two-way, plug-and-play" devices and allow for greater competition and consumer choice. Our mandate from Congress in Section 629 directs the Commission to adopt regulations to "assure the commercial availability" to MVPD consumers of navigation devices from manufacturers, retailers, and other vendors not affiliated with any MVPD. The goal of the statute is to promote competition in the market for set-top boxes and televisions so that consumers will have options beyond their MVPDs for innovative products and features. For years the cable and consumer electronics industries also have been negotiating technical solutions for two-way navigation devices. I am examining the industry proposals advocating DCR-Plus and "Tru2Way" or the Open Cable platform while considering whether there is a solution that can apply to all MVPDs.

In the meantime, I am hopeful that the private sector will reach a resolution to this challenge. I am confident that the technology exists to develop a two-way plug-and-play solution and I have urged market rivals to work together to forge agreements. While the Commission can set standards and specifications, the parties would do a better job of choosing the appropriate technology than the government would. In the one-way context, the separated security cable card solution endorsed by the Commission was overtaken by the possibility of downloadable security shortly after the Commission's 1998 order. I hoped that another government-mandated, soon-to-be-obsolete solution would not be the answer to the two-way debate. The marketplace, through consumer choices and privately-negotiated agreements, should be permitted do its job. However, should the market fail, the FCC should be ready to prescribe narrowly-tailored solutions.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO HON. ROBERT M. MCDOWELL

Question 1. On December 18, the FCC held a vote on a major change to the nations' media ownership rules, despite substantial concern here in the Senate. The Commerce Committee passed S. 2332, the Media Ownership Act of 2007, on December 4. We have over 20 bipartisan cosponsors. We asked you to delay this vote to consider important issues of localism and minority ownership and allow a proper pe-

riod of comment on the rules. Why was it so important to move ahead on December 18 despite this opposition? Why could you not delay this vote beyond December 18?

Answer. I respect the Committee's concerns about process, but I also think it is important to note that this media ownership proceeding has been unprecedented in scope and thoroughness. The proceeding began at my very first open meeting as a Commissioner, 18 months ago. We gathered and reviewed over 130,000 initial and reply comments and extended the comment deadline once. We released a Second Further Notice in response to concerns that our initial notice was not specific enough about proposals to increase minority and female ownership of stations. We gathered and reviewed even more comments and replies in response to the Second Notice. We traveled across our great nation to hear directly from the American people during six field hearings on ownership in: Los Angeles and El Segundo, Nashville, Harrisburg, Tampa-St. Pete, Chicago, and Seattle. We held two additional hearings on localism, in Portland, Maine and here in our Nation's capital. In those hearings, we have heard from 115 expert panelists on the state of ownership in those markets and we've stayed late into the night, or early into the next morning, to hear from concerned citizens who signed up to speak.

We also commissioned and released for public comment ten economic studies by respected economists from academia and elsewhere. These studies examine ownership structure and its effect on the quantity and quality of news and other programming on radio, TV and in newspapers; on minority and female ownership in media enterprises; on the effects of cross-ownership on local content and political slant; and on vertical integration and the market for broadcast programming. We received and reviewed scores more comments and replies in response. Some commenters did not like the studies and their critiques are part of the record.

These issues, and public comment on them, were examined thoroughly and carefully prior to our adoption of the order at the December 2007 FCC Open Meeting. All of the concepts adopted in our December 18 order received years of public scrutiny, debate and comment. I cannot remember any proceeding where the Commission has solicited as much comment and given the American people as much opportunity to be heard.

Question 2. Chairman Martin says the FCC provided a lengthy public comment period of 120 days, which was extended to 167 days. The FCC also held six hearings and finished the two localism hearings. But how could the public be expected to adequately comment on your proposed rules if the Commission issued the proposed rules at the end of the process?

Answer. The Commission considered all of the comments submitted during the course of the proceeding. Most of the comments filed toward the end of the process reiterated points already made earlier in the proceeding. The points made were considered once again. Moreover, prior to the start of this extensive proceeding, the Commission had considered these same media ownership issues in our 2001 rulemaking focused on the newspaper/broadcast cross-ownership ban and in the 2002, 1998 and 1996 media ownership reviews required by Congress.

Question 3. The FCC held six hearings across the country at a cost of more than $200,000. I worry that the $200,000 was totally wasted as you ignored the input of the public on December 18. They testified against consolidation. You didn't hear people coming out and saying they wanted the newspaper to own the television station. You heard massive opposition to consolidation. Chairman Martin has said that the FCC didn't hear people constantly sounding off against cross-ownership, but why would you hear that—the Chairman never told them what rules he was concentrating on. How could the FCC vote on a rule to relax the cross-ownership ban having heard the massive opposition to consolidation?

Answer. A point that gets lost in the emotion surrounding the media ownership debate is that Congress enacted a statute that contains a presumption in favor of modifying or repealing the ownership rules as competitive circumstances change. Section 202(h) states that we must review the rules and "determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation that it determines to be no longer in the public interest." This section appears to upend the traditional administrative law principle requiring an affirmative justification for the modification or elimination of a rule, and it is crucial for everyone involved in this debate to recognize this important presumption. It is also important to remember that Section 202(h) is the most recent set of codified instructions we have from Congress and is our legal mandate unless Congress changes the law. We also have a duty to pursue the noble public policy goals of competition, diversity and localism. In adopting our media ownership order, we met these legal and policy requirements.

At our field hearings on media ownership and localism, we heard from citizens from all walks of life, who presented their opinions as viewers, listeners, readers, businesspeople, and consumers regarding whether broadcasters and newspapers are providing their local communities with needed local news and information. We heard from citizens who oppose media consolidation, but we also heard from those who see the benefits of cross-ownership, those who valued the service broadcasters and newspapers provide, as well as those who have jettisoned traditional media and turned to new media and the Internet for content.

The record shows a dramatic change in competitive circumstances for media companies in recent years. Since the newspaper/broadcast cross-ownership ban was established in 1975, at least 300 daily newspapers have shut their doors. Newspaper circulation and advertising revenues continue to decline year after year, while online readership and advertising revenues have surged. As a result of economic losses, newspapers have cut costs and sliced into the heart of the news-gathering operation: the newsroom and its reporters, resulting in a diminished capacity to cover news. We have five national broadcasting networks, hundreds of cable channels cranking out a multitude of video content produced by independent voices, two vibrant satellite TV companies, telephone companies offering video, cable overbuilders, satellite radio, the Internet and its millions of websites and bloggers, a plethora of wireless devices operating in a robustly competitive wireless market place, iPods, Wi-Fi, and much more. And that's not counting the myriad new technologies and services that are coming over the horizon such as those resulting from our Advanced Wireless Services auction of last year, or the upcoming 700 MHz auction, which starts next month. Certainly, more voices and more delivery platforms exist today than when the media ownership rules were established.

The energy, creativity, capital and growth of the private sector have been focused on areas that are *less* regulated than traditional media. Companies such as Disney, Citadel, Clear Channel and Belo actually have been shedding broadcast radio and television properties to raise capital for new ventures. The Hollywood writers' strike is all about the concept of following the eyeballs and ad dollars to new media and getting fairly compensated as a result. Over one-third of Americans go online to get their news. YouTube alone requires more bandwidth than the *entire Internet* did in 2000. Unregulated new media's numbers are growing. Heavily-regulated traditional media's numbers are shrinking.

These developments led a majority of the Commission to determine that a modest and narrowly-tailored deregulation of the newspaper/broadcast cross-ownership ban is necessary in the public interest as the result of competition.

Question 4. The Media Ownership Act of 2007 requires the FCC to seek 90 days of comment on specific proposed changes to its broadcast ownership rules; complete a separate rulemaking on localism, with a study at the market level and 90 days of comment on localism, prior to rule changes being issued for comment; and convene an independent panel to make recommendations on increasing the ownership of broadcast media by women and minorities. Why should the FCC not have postponed the December 18 vote to take care of these tasks?

Answer. I respectfully submit that Section 202(h), with its presumption in favor of modifying or repealing the media ownership rules as competitive circumstances change, is the Commission's legal mandate unless Congress changes the law. We worked hard to follow that mandate. In addition, at the December Open Meeting, we adopted an order containing several proposals aimed at promoting minority and female ownership of broadcast properties, as well as a report and notice of proposed rulemaking regarding a comprehensive set of issues raised in the localism proceeding. I hope that these actions address many of the concerns raised about minority and female ownership and localism.

Question 5. Should the Chairman have put out his proposed media ownership rules in a *New York Times* op-ed and then in an FCC press release? Do you believe they should have been issued in the *Federal Register*?

Answer. After publishing the *New York Times* piece, the Chairman agreed to the requests of some Commissioners to make the proposed changes to the newspaper/broadcast cross-ownership rule available for public comment. Those comments were considered prior to the adoption of the media ownership order in December. It is the Chairman's prerogative and responsibility to conduct the proceeding procedurally as he deems appropriate. Again, overall, this proceeding has been the most comprehensive and thorough proceeding the Commission has conducted in recent memory. I am supportive of the results.

Question 6. You have heard concerns that the Chairman's proposal opens up cross-ownership to much more than the top 20 markets. I don't agree with any cross-ownership at all. Not in the top 30, not in the top 20. I think I'm saying the

same thing as the 1,000 people who came to the hearing in Los Angeles and the 1,100 people who turned out in Seattle. Why are we not being heard?

Answer. We have heard and considered the voices of not only Members of Congress, but also citizens from across the country who came to our hearings to speak to us. We must also consider the voices of everyone who submitted comments either at hearings or in the written record, including those who disagree with the premise of this question. Despite a strong de-regulatory statutory presumption mandated by Congress and an order from the Third Circuit essentially giving a green light to lifting the newspaper/broadcast cross-ownership ban altogether, the order we adopted is quite modest. The order creates a presumption in favor of lifting the ban only in the top twenty media markets where there is tremendous competition in the traditional media sector. Even then we only allow a combination outside of the top four TV stations and only when at least eight independent major media voices remain in that market. Outside of the top twenty markets, our rule establishes a negative presumption against permitting the combination. This test is not pocked with loopholes as some have suggested; quite the contrary. In my opinion, our order balances the competing views and the evidence of market developments appropriately, in favor of modest deregulation.

Question 7. Recently concerns about unfair discrimination have been raised in relation to Verizon Wireless blocking the text messaging service of the pro-choice group, NARAL. Verizon Wireless quickly corrected the problem, but the fact that it happened raises major alarms. On October 16, 2007, Senator Snowe and I sent a letter to the FCC asking for your views on this issue. I have not received a response. Can you tell me your views?

Answer. I have reviewed your letter to Chairman Martin of October 16, 2007. I would expect that he will provide an analysis of existing Constitutional, legal and regulatory issues surrounding this issue pursuant to your request. In the meantime, I join you in giving credit to Verizon Wireless for promptly admitting its mistake with regard to the NARAL text-messaging campaign and fixing the error within hours. I understand that this situation involves a business-to-business transaction for the purchase of short codes, which are short telephone numbers that are purchased through a short code administrator and are used for addressing messages sent to mobile phones. On the one hand, it is important that we ensure that consumers are able to send and receive text messages. On the other hand, we must be equally vigilant in protecting consumers from unwanted SPAM messages, which may be false, misleading, or offensive, and I understand that short codes are a meaningful tool for this purpose. Similarly, we must allow carriers to have the freedom to manage their networks to ensure that they are able to function properly in order to meet ever-increasing consumer expectations. I will continue to monitor developments in this area to ensure the public interest is being served in a fair and balanced manner.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. BILL NELSON TO HON. ROBERT M. MCDOWELL

Question. As you are probably aware, Florida is currently the largest "net payer" state into the Universal Service Fund. Florida pays in more than $300 million more to the USF than it receives in disbursements. Getting beyond the idea of a "cap" of some sort—which may raise competitive issues—it seems like one other way of achieving efficiencies is through more effective targeting of support. How do you feel about this approach?

Answer. I have consistently maintained that the Universal Service system is in dire need of comprehensive reform. As I approach this crisis, I will follow five principles when considering all reforms to Universal Service. We must: (1) slow the growth of the Fund; (2) permanently broaden the base of contributors; (3) reduce the contribution burden for all, if possible; (4) ensure competitive neutrality; and (5) eliminate waste, fraud and abuse. I am in favor of considering all options to reform the Universal Service High Cost Fund, including those disbursement mechanisms that would target support. We have a number of proposals before us. On January 9, 2008, the Commission adopted rulemaking proceedings seeking comment on the elimination of the identical support rule and utilization of reverse auctions. In addition, we have received the Federal-State Joint Board recommendations for permanent reform. I support seeking comment on the Joint Board's reform measures as soon as possible, so that we can consider all the options to reform the system more comprehensively. We have a terrific opportunity before us.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO HON. ROBERT M. MCDOWELL

Question 1. Do you believe that the newspaper industry is profitable today?

Answer. The great weight of the data available to us shows that while some newspapers are profitable, the industry as a whole is in decline. Consumers now have more choices and more control over what they read, watch and listen to than ever. As a result of this multitude of voices competing for consumer's attention, at least 300 daily newspapers have shut their doors since the cross-ownership ban went into effect because people are looking elsewhere for their content. Newspaper circulation has declined year after year. Since this past spring, average daily circulation has declined 2.6 percent. In the six-month period ending September 2007, circulation declined for 700 daily newspapers across the country. Of the top 25 papers in daily circulation, only four showed gains. Also, newspapers' share of advertising revenue has shrunk while advertising for unregulated online entities has surged. Advertising revenues, which currently account for slightly more than 80 percent of the industry's total revenues, are predicted by SNL Kagan to decline through at least 2011.

As gross revenue declines year after year, publishers cut costs to retain margins. After a while, such cost-cutting slices into the heart of the news-gathering operation: the newsroom and its reporters. As a result, the ability to cover more news diminishes. In recent years, we have witnessed a sharp reduction in the number of professional journalists employed in the newspaper industry. In 2006, the industry employed approximately 3,000 fewer full-time newsroom staff people than it had at its peak of 56,400 in 2000. In 2007, job cuts due to economic losses were announced by several major newspapers, including, to name only a few, *The Boston Globe* (24 newsroom staff cut in 2007, including two Pulitzer Prize-winning journalists), The Minneapolis *Star Tribune* (50 newsroom staff cut in 2007), *Los Angeles Times* (70 newsroom staff cut in 2007) and *The San Francisco Chronicle* (25 percent newsroom staff reduction in 2007, equal to about 100 jobs). Other newspapers have substantially reduced or wholly abandoned news bureaus. These developments have substantial consequences for the public interest.

Question 2. A recent GAO report cited that no comprehensive plan exists for the digital television transition. The GAO stated "Among other things, a comprehensive plan can detail milestones and key goals, which provide meaningful guidance for assigning and coordinating responsibilities and deadlines and measuring progress. Such planning also includes assessing, managing, and mitigating risks, which can help organizations identify potential problems before they occur and target limited resources". This week the Commission released a written response to the GAO report. At this point in time, what do you consider to be the top five risk factors with respect to American consumers getting through the digital television transition with minimal disruption? Which of these risk factors fall under the jurisdiction of the FCC? How is the FCC managing and mitigating these risks?

Answer. The Commission currently is considering a proposal circulated by Chairman Martin regarding what types of consumer education efforts the Commission should require of broadcasters, MVPDs, manufacturers and retailers, including public service announcements, notices in billing statements, the content of such announcements and notices, as well as reporting of such efforts to the Commission. The proposal implements rules suggested by Congressmen Dingell and Markey in a letter to Chairman Martin dated May 24, 2007. In considering each of these proposals, I am keeping in mind the comprehensive voluntary consumer education campaigns that the broadcasting, MVPD and consumer electronics industries have commenced. I hope we can strike the proper balance to provide guidance regarding consumer education to these industries without micro-managing their efforts and while giving them the flexibility they need to communicate with their customers effectively. I am also analyzing whether the Commission has the jurisdiction to require certain elements of this proposal and how the First Amendment limits our authority in this regard.

Question 3. Should the common carrier exemption be removed from the Federal Trade Commission? What, if any, would be the disadvantage to consumers if the exemption is removed?

Answer. Congress intended for the FCC to have jurisdiction over common carriers, pursuant to Sections 214 and 310(d) of the Communications Act, as amended, rather than the FTC. Should Congress choose to amend this regulatory and jurisdictional structure, the Commission will implement Congress's directives. However, the FCC has a 74-year history of being the expert agency with purview over common carriers in pursuit of the public interest.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. FRANK R. LAUTENBERG TO HON. ROBERT M. MCDOWELL

Question. New Jersey is a net contributor of almost $200 million a year to the Universal Service Fund (USF). There are many proposals for reforming USF, including temporary caps and longer-term proposals. When can I tell my constituents that they will see some action from the FCC to stop the exponential growth of this Fund?

Answer. I have consistently maintained that the Universal Service High Cost Fund is in dire need of reform and that we must take steps to slow the uncontrolled growth of the Fund. We have a number of specific proposals before us. With regard to interim measures, we have a Federal-State Joint Board proposal to adopt an interim cap on CETCs, capped at 2007 levels. Already, the Commission adopted a condition in both the October 26, 2007, Alltel Transfer of Control Order and the November 15, 2007, AT&T-Dobson Order, which subjects those wireless carriers to an interim cap. As a result of this action, a majority of the CETC portion of the Fund is now capped. With regard to more permanent reform, soon we will release two notices of proposed rulemaking (NPRM) that seek comment on the elimination of the identical support rule and adoption of reverse auctions. Also, the Joint Board has provided a recommendation for long-term reform. I hope that we will seek comment on the Joint Board's permanent reform measures quickly and within the same general time-frame as the other two NPRMs, so that we can consider all the options to reform the system more comprehensively. We have a terrific opportunity before us.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. THOMAS R. CARPER TO HON. ROBERT M. MCDOWELL

Question. The Federal Communications Commission should be commended for issuing its recent Notice of Proposed Rulemaking that considers whether to authorize Big LEO Mobile Satellite Services operators to provide ancillary terrestrial services on more of their assigned spectrum. As you are aware, one such operator, Globalstar, and its partner, Open Range Communications, need this authority in order to pursue their plan to bring broadband services to more than 500 rural communities across the country. Given the Commission's stated commitment to promote the rapid deployment of advanced broadband services to unserved and underserved areas, will you assure the Committee that you will do all that it takes to complete this proceeding in the time required for Globalstar and Open Range to move forward with their business plan?

Answer. Yes. I have a keen interest in this proceeding and will review and consider Chairman Martin's draft order as soon as it is circulated.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. TED STEVENS TO HON. ROBERT M. MCDOWELL

Question. Kawerak, Inc., a non-profit consortium in Alaska has requested me to submit this question to the Commission: Does the Commission have the statutory authority to provide Universal Service support to non-profit corporation tribal consortiums, serving remote areas of Alaska, that provide education, welfare, wellness, law enforcement, natural resources and economic development services?

Kawerak is one of Alaska's tribal consortiums who provides several services to remote areas of Alaska, and has expressed concern about their ineligibility to receive Universal Service support because they are unable to meet the precise definitions of health care or educational service providers. Please address the requirements which these tribal consortiums must meet in order to receive support.

If these tribal consortiums are unable to meet the Commission's current requirements, please address whether a waiver process is available for these entities. Please also describe the specific steps which non-profit corporation tribal consortiums must take to apply for, and receive, support from the Universal Service Fund.

Answer. Eligibility for Universal Service support is prescribed in the Communications Act of 1934, as amended (the Act). Specifically, Section 214(e)(1) of the Act states that "a common carrier designated as an eligible telecommunications carrier" is eligible to receive Universal Service support. Section 214(e)(2) provides that state commissions shall designate eligible telecommunications carriers for service areas in the state.

With regard to health care providers, Section 254(h)(1)(A) of the Act requires telecommunications carriers to provide telecommunications services that are necessary for the provision of health care services to any public or nonprofit "health care pro-

vider" that serves rural areas in a state at rates that are similar to those in urban areas of the state. The term "health care provider" is defined in Section 254(h)(7)(B) of the Act to mean:

> (i) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;
>
> (ii) community health centers or health centers providing health care to migrants;
>
> (iii) local health departments or agencies;
>
> (iv) community mental health centers;
>
> (v) not-for-profit hospitals;
>
> (vi) rural health clinics; or
>
> (vii) consortia of health care providers consisting of one or more entities described in (i) through (vi).

With regard to educational service providers, Section 254(h)(1)(B) of the Act provides that telecommunications carriers are required to provide its Universal Services to "elementary schools, secondary schools, and libraries" for educational purposes at rates that are less than those charged to other parties. The term "elementary and secondary schools" is defined in Section 254(h)(7)(B) as those terms are defined in the Elementary and Secondary Education Act of 1965, 20 U.S.C. 8801.

Eligibility to receive Universal Service support as an "eligible telecommunications provider," a "health care provider," or an "elementary or secondary school" is determined by statute, as set forth above. The Commission cannot waive those statutory definitions. An individual applicant, including a non-profit corporation tribal consortium, would have to apply for funds and demonstrate that it meets the statutory eligibility requirements.

I understand that Commission records indicate that Kawerak, Inc. has received $106,671 in Rural Health Care Fund disbursements for Funding Years 1999 and 2003–2005. In addition, the Bering Straits School District, of which Kawerak is a part, has received $9,277,426 in Schools and Libraries Fund disbursements for Funding Years 1998–2006.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GORDON H. SMITH TO HON. ROBERT M. MCDOWELL

Question 1. You have indicated you would like to see more data before moving on the special access docket. Do you need more data on competition for wireless special access? Or is your concern over lack of data specific to wireline?

Answer. The Commission has not sought and thus does not have a complete record that fully captures the extent of facilities used to provide all special access services in all locations throughout the country. As a result, it is difficult, if not impossible, to determine the appropriate level of regulation or deregulation for special access services in a given specific location. This includes both wireline and wireless services. Obtaining this type of data from all types of providers (both wireline and wireless) would allow the Commission to more fully analyze outstanding issues and render more meaningful policy determinations.

Question 2. The Commission's Regulatory Flexibility Analysis for the November 30 must-carry order says that "Every effort will be made to minimize the impact of any adopted proposals on cable operators." How much will it cost for every 552 megahertz cable system to file and prosecute a waiver through the FCC?

Answer. With respect to this order, my colleagues and I endeavored to ensure that analog cable subscribers do not lose their local must-carry stations from their channel line-ups after the digital transition. The order requires cable systems that are not "all-digital" to provide must-carry signals in analog format to their analog subscribers. This requirement will sunset 3 years after the broadcast digital transition hard date, with review by the Commission of the rule within the final year.

As I expressed at the time of my vote, I am concerned about the effect this order may have on smaller cable operators, particularly those with systems that employ 552 megahertz or less. I will urge the Commission to consider waiver requests expeditiously and grant waivers for such providers, where relief is warranted. You are correct that filing and prosecuting such a waiver request will be expensive and burdensome for smaller companies. I had hoped that our order would have afforded a greater level of relief to smaller cable systems.

Question 3. Would you support a blanket dual carriage waiver for 552 megahertz cable systems?

Answer. Yes, I would support a blanket dual carriage waiver for 552 megahertz cable systems.

Question 4. Section 254(a)(2) of the Communications Act requires that the Commission "complete any proceeding to implement recommendations from any Joint Board on Universal Service within 1 year of receiving such recommendations." The Joint Board on Universal Service delivered its recommended decision on high-cost reform on November 19, 2007. Do you support putting the Joint Board recommendation out for public comment?

Answer. Yes. In fact, the Commission voted on January 16, 2008, to adopt a notice of proposed rulemaking to seek comment on the Joint Board's recommendations for permanent reform of the Universal Service Fund. This notice, along with two others that seek comment on the elimination of the identical support rule and use of reverse auctions, was released on January 29, 2008. Comments on all three notices will be due 30 days after publication in the *Federal Register* and reply comments will be due 60 days after publication in the *Federal Register*. Parties will be able to file collective comments in all three proceedings.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO HON. ROBERT M. MCDOWELL

Question 1. The FCC has commissioned 10 economic studies on media ownership and its effect on news and other programming. According to these studies, how does cross-ownership affect local content and political slant? Does this outcome differ by the size of the media market? In other words, how does the cross-ownership ban impact local content and political slant in the largest 20 markets compared to effects in smaller markets around the country? What has been the experience of markets which had companies grandfathered in under old media ownership rules?

Answer. The record provides both empirical and anecdotal evidence that commonly owned outlets can, and often do, exercise independent editorial control. The FCC-sponsored economic study authored by Jeffrey Milyo, "The Effects of Cross-Ownership on Local Content and Political Slant of Local Television News" focuses on the political slant of TV stations and concludes that "television stations cross-owned with newspapers exhibit a slight and statistically insignificant Republican-leaning slant" in content. The study also concludes that cross-owned TV stations air more local news, including political news, than non-cross-owned TV stations. The Milyo study's results are consistent with those in the Pritchard study conducted in the 2002–2003 round of the rulemaking. That study, "Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign" found that "in five of the 10 newspaper/television combinations analyzed, the overall slant of the coverage broadcast by a company's television station was noticeably different from the overall slant of the coverage provided by the same company's newspaper."

Several comments submitted in the rulemaking provide examples of commonly owned outlets speaking with separate editorial voices. For example, the Newspaper Association of America provided several examples of programming and viewpoint diversity to demonstrate that newspaper/broadcast combinations do not speak with a single, coordinated voice. With respect to grandfathered companies, Belo's WFAA–TV and *The Dallas Morning News* historically have not coordinated their opinions or viewpoints. Similarly, Media General's various news and information platforms, regardless of their method of disseminating content, operate separately in developing their content. The Freedom of Expression Foundation commented that newspaper/broadcast combinations are more likely to produce more public affairs programming, and such firms are unlikely to present a monolithic viewpoint on any or all issues of public importance. This evidence in the record demonstrates that common ownership does not equate to common editorial viewpoints or control, as sometimes alleged.

Question 2. The financial troubles and perceived threats to the viability of newspapers and broadcasts have played a significant role in the proposed changes of media ownership rules. Some sources content that despite declining ad revenues and readership, newspapers remain profitable. However, others contend that these media outlets have only been able to remain profitable at the expense of the quality and quantity of news they produce. What do you perceive the financial position of newspapers to be in today's market. How does this vary based on the size of the media market? To what extent will these proposed changes alleviate these troubles?

Answer. The great weight of the data available to us shows that while some newspapers are profitable, the industry as a whole is in decline. Consumers now have more choices and more control over what they read, watch and listen to than ever.

As a result of this multitude of voices competing for consumer's attention, at least 300 daily newspapers have shut their doors since the cross-ownership ban went into effect because people are looking elsewhere for their content. Newspaper circulation has declined year after year. Since this past spring, average daily circulation has declined 2.6 percent. In the six-month period ending September 2007, circulation declined for 700 daily newspapers across the country. Of the top 25 papers in daily circulation, only four showed gains. Also, newspapers' share of advertising revenue has shrunk while advertising for unregulated online entities has surged. Advertising revenues, which currently account for slightly more than 80 percent of the industry's total revenues, are predicted by SNL Kagan to decline through at least 2011.

As gross revenue declines year after year, publishers cut costs to retain margins. After a while, such cost-cutting slices into the heart of the news-gathering operation: the newsroom and its reporters. As a result, the ability to cover more news diminishes. In recent years, we have witnessed a sharp reduction in the number of professional journalists employed in the newspaper industry. In 2006, the industry employed approximately 3,000 fewer full-time newsroom staff people than it had at its peak of 56,400 in 2000. In 2007, job cuts due to economic losses were announced by several major newspapers, including, to name only a few, *The Boston Globe* (24 newsroom staff cut in 2007, including two Pulitzer Prize-winning journalists), The Minneapolis *Star-Tribune* (50 newsroom staff cut in 2007), *Los Angeles Times* (70 newsroom staff cut in 2007) and *The San Francisco Chronicle* (25 percent newsroom staff reduction in 2007, equal to about 100 jobs). Other newspapers have substantially reduced or wholly abandoned news bureaus. These developments have substantial consequences for the public interest.

The changes to the newspaper/broadcast cross-ownership rule that we adopted at the Commission's December 2007 agenda meeting will alleviate these concerns by creating a presumption in favor of lifting the ban only in the top twenty media markets where there is tremendous competition in the traditional media sector. Even then we only allow a combination outside of the top four TV stations and only when at least eight independent major media voices remain in the market. Outside of the top twenty markets, our rule establishes a negative presumption against permitting the combination. In only two special circumstances will we reverse the negative presumption: first, if a newspaper or broadcast outlet is failed or failing; and second, when a proposed combination results in a new source of a significant amount of local news in a market.

Where neither of these circumstances exists, we establish a four-prong test to determine whether the negative presumption is rebutted. To determine if the presumption is overcome, we will consider: (1) whether cross-ownership will increase the amount of local news disseminated through the media outlets in the combination; (2) whether each affected media outlet in the combination will exercise its own independent news judgment; (3) the level of concentration in the Nielsen DMA; and (4) the financial condition of the newspaper and broadcast station, and if the newspaper or broadcast station is in financial distress, the putative owner's commitment to invest significantly in newsroom operations.

Question 3. The Universal Service Fund is obviously very important for rural states like South Dakota. What general troubles do you see arising with the fund and its solvency? What would you recommend to help alleviate these troubles? What are your thoughts on the recommendations put forth by the Federal-State Joint Board in November?

Answer. I have consistently maintained that the Universal Service system has been instrumental in keeping Americans connected and improving their quality of life, particularly in rural states like South Dakota. I also believe that the Universal Service system is in dire need of comprehensive reform. As I approach this crisis, I will follow five principles when considering all reforms to Universal Service. We must: (1) slow the growth of the Fund; (2) permanently broaden the base of contributors; (3) reduce the contribution burden for all, if possible; (4) ensure competitive neutrality; and (5) eliminate waste, fraud and abuse.

I am in favor of considering all options to reform the Universal Service High Cost Fund, including those disbursement mechanisms that would target support. On January 29, 2008, we released a notice of proposed rulemaking seeking comments on the Joint Board's recommendations for permanent reform of the Universal Service Fund. Concurrently, we released two other notices of proposed rulemaking, which seek comment on the elimination of the identical support rule and the use of reverse auctions. Comments on all three notices will be due 30 days after publication in the *Federal Register* and reply comments will be due 60 days after publication in the *Federal Register.* This combined comment cycle will provide a full record for the Commission to consider all options. I am open to all proposals for comprehensive reform and will evaluate the entire record as soon as it is complete.

Question 4. Many people are concerned that the digital TV transition is not going as smoothly as would be hoped and a number of steps still need to be taken including the issuance of rules regarding the processing of construction permit applications and the assignment of channels to broadcasters. Why have these issues not been resolved yet? When do expect them to be resolved? Will this allow the industry enough time to transition to digital TV?

Answer. On December 31, 2007, the Commission issued an order resolving the digital TV (DTV) transition issues raised in our Third Periodic Review of the Commission's rules and policies affecting the conversion to DTV. The order issues our final rules regarding the processing of applications and the assignment of channels to broadcasters. Specifically, the order provides a progress report on the digital transition, establishes deadlines and procedures to ensure that the February 17, 2009, transition deadline is met, and offers regulatory flexibility to broadcasters to assist their efforts to construct digital facilities by the deadline. I am hopeful that the details set forth in the order regarding when stations may and must cease analog operations, when they may and must begin operating on their post-transition digital channel, and the associated regulatory flexibility they have, will help ensure that the complicated, coordinated switch to DTV unfolds smoothly.

Of course, the broadcasters and the Commission still have a tremendous amount of work to do before February 17, 2009. The transition is an extremely complex undertaking that presents many challenges to the industry and to us as regulators. We have attempted to balance carefully the broadcasters' need for flexibility and certainty with the Commission's obligation to oversee the transition for the benefit of over-the-air viewers.

Question 5. The FCC appears to be re-regulating some aspects of broadcasting which were deregulated under President Reagan and have helped the broadcast industry remain competitive over the past 25 years. With the influx of new technologies and mediums, why has the FCC chosen now to begin re-regulation? Have there been any specific detrimental effects that have prompted this? Why has the FCC increasingly turned to government mandates instead of market-based solutions to help resolve these problems?

Answer. I have significant concerns about two recent Commission actions, both issued on January 24, 2008. In the first, an order regarding enhanced disclosure by broadcasters, the majority adopted a new standardized form that requires TV stations to file with the Commission disclosures regarding efforts to ascertain the programming needs of various segments of the community. I dissented from this aspect of the order. The order requires a list reporting all programming aired in various categories such as local news, local civic and electoral affairs programming, religious programming, independently produced programming and so forth. The Commission eliminated ascertainment requirements for television and radio stations in 1984 after a thorough examination of the broadcast market. While the recent order falls short of reinstating the ascertainment procedures discarded by the 1984 Commission, I am concerned that we are heading in the wrong direction. Today's highly competitive video market motivates broadcasters to respond to the interests of their local communities. I question the need for government to foist upon local stations its preferences regarding categories of programming. While we stop short of requiring certain content, we risk treading on the First Amendment rights of broadcasters. This form is government's not-so-subtle attempt to exert pressure on stations to air certain types of content.

In the second action, the Commission delivered a report on broadcast localism and notice of proposed rulemaking. I have concerns about the notice of proposed rulemaking, in which the Commission tentatively concludes that broadcast licensees should convene permanent advisory boards made up of community officials and leaders to help the licensees ascertain the programming needs of the community. The notice also contains a tentative conclusion that the Commission should adopt processing guidelines, such as minimum percentages, to ensure that stations produce a certain amount of locally-oriented programming. Again, the Commission is heading back in time—in the wrong direction, toward ascertainment policies. Vigorous competition motivates broadcasters to serve their local communities. I do not believe that government needs to, or should, foist upon local stations its preferences regarding categories of programming. Again, we risk such policies being overturned by the courts.

Question 6. Earlier this year, the FCC's Office of Engineering (OET) released a report which shows that allowing unlicensed devices into the television spectrum may interfere with the television signal in 80–87 percent of a television station's service area. Additionally, a July report from the FCC demonstrated that prototypes that utilize "sensing" technology did not effectively detect TV signals. Do you per-

ceive this to be a threat to the DTV transition? If so, what is the FCC doing to ensure that the DTV transition is not jeopardized by unlicensed consumer digital devices?

Answer. As long as the Commission lets science, and science alone, drive our decisions, I do not believe that OET's ongoing testing of prototype devices to operate in the "white spaces" of the TV broadcast spectrum is a threat to the DTV transition. If the Commission refrains from polluting science with politics, powerful new technologies will emerge, and American consumers will benefit as a result. I am pleased that OET is taking the time necessary to analyze and field test numerous additional prototype devices. I have long advocated use of the white spaces, provided such use does not cause harmful interference to others. I am hopeful that a flexible, de-regulatory, unlicensed approach will provide opportunities for American entrepreneurs to construct new delivery platforms that will provide an open home for a broad array of consumer equipment.

At the same time, the Commission has a duty to ensure that new consumer equipment designed for use in this spectrum does not cause harmful interference to the current operators in the white spaces. I have enjoyed learning from various parties who are engaged in the healthy technical debate surrounding the best use of this spectrum. Assuredly, the discussions will become ever more intense as we move forward. But, at the end of the day, we will have a resolution. Inventors will continue to invent, and a workable technical solution will develop. As long as science alone drives our decisions, I foresee great benefits to American consumers in the long run.