



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

February 7, 2007

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

The Honorable Edward J. Markey  
Chairman  
Subcommittee on Telecommunications and the Internet  
Committee on Energy and Commerce  
U.S. House of Representatives  
2108 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Dingell and Chairman Markey:

Please find enclosed my responses to the pre-hearing questions asked in your letter of January 31, 2007.

Please contact me if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink that reads "Kevin J. Martin".

Kevin J. Martin  
Chairman

cc:

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

The Honorable Fred Upton, Ranking Member  
Subcommittee on Telecommunications and the Internet  
Committee on Energy and Commerce

Questions for Chairman Kevin J. Martin

1. **On May 22, 2006, you wrote to then-Subcommittee Ranking Member Markey that the Commission was “unable to investigate” allegations that telecommunications carriers were disclosing personal phone records of consumers to the National Security Agency (NSA) in apparent contravention of Section 222 of the Communications Act and other laws. Your response noted “the classified nature” of NSA activities and the “statutory privilege” of the National Security Act, and referenced a pending motion to dismiss a case before the U.S. District Court for the Northern District of California.**
  - A. **Does the Commission possess personnel with sufficient security clearances to work with classified material? Has the Commission dealt with classified information and classified activities in the past?**

There are Commission personnel with security clearances that allow them to work with classified material. The Commission has also dealt with classified information and activities in the past. The Commission, however, has no power to order the production of classified information. Rather, the Commission may only obtain classified information from other government agencies if those agencies determine that the information may be provided. The Supreme Court has held that “the protection of classified information must be committed to the broad discretion of the agency responsible, and this must include broad discretion to determine who may have access to it. Certainly, it is not possible for an outside nonexpert body to review the substance of such a judgment.” *Department of the Navy v. Egan*, 484 U.S. 518, 529 (1988). Similarly, carriers are forbidden from disclosing classified information to the Commission absent explicit authorization and could face potential criminal liability for doing so. See 18 U.S.C. § 798(a); Section 6 of the National Security Agency Act of 1959, Pub L. No. 86-36, § 6, 73 Stat. 63, 64, codified at 50 U.S.C. § 402 note; Executive Order No. 12958, 60 Fed. Reg. 19825 (April 17, 1995), as amended by Executive Order No. 13292, 68 Fed. Reg. 15315 (March 25, 2003), §§ 4.1(a) & (c), 6.1(z).

- B. **Is it your belief that the National Security Act governs the ability of the FCC to commence an investigation into an alleged violation of the Communications Act by a telecommunications carrier, regardless of whether privileges may later affect the ability of the Commission to complete such investigation?**

In this instance, the National Security Act effectively precludes the Commission from conducting an investigation of allegations that carriers may have illegally disclosed customer records to the NSA. That Act prevents the Commission from compelling the disclosure of any “function” of the NSA or any information regarding the NSA’s

activities. *See* Pub. L. No. 86-36, 6(a), 73 Stat. 63, 64, codified at 50 U.S.C. § 402 note (“[N]othing in this Act or any other law . . . shall be construed to require the disclosure of the organization or any function of the National Security Agency [or] of any information with respect to the activities thereof.”). In this case, the government has consistently refused to permit the disclosure in litigation<sup>1</sup> and administrative proceedings<sup>2</sup> of any information related to carriers’ alleged disclosure of customer records to the NSA. Indeed, in public documents related to this litigation, the government has stated that disclosure of information “implicated by Plaintiffs’ claims . . . could reasonably be expected to cause exceptionally grave damage to the national security of the United States.”<sup>3</sup> And carriers have similarly stated that they “would not be able to mount a factual defense without violating legal prohibitions on disclosure of classified information pertaining to surveillance.”<sup>4</sup> As such, the Commission is effectively precluded from investigating these allegations at this time.

**C. Given that the Commission relied in part on a motion to dismiss the case that subsequently was rejected by the court, does the Commission now plan on opening an investigation into whether telecommunications carriers disclosed phone records to the NSA in violation of the Communications Act?**

The federal district court decision to which you refer confirms that it is not possible at this time for the Commission to investigate allegations that telecommunications carriers may have illegally disclosed customers’ phone records to the NSA. In my May 22, 2006 letter to Congressman Markey, I explained that the government had asserted the military

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<sup>1</sup> *See* *Conner v. AT&T Corp.*, C.A. No. 1:06-632 (E.D. Cal.); *Hepting v. AT&T Corp.*, C.A. No. 3:06-672 (N.D. Cal.); *Souder v. AT&T Corp.*, C.A. No. 3:06-1058 (S.D. Cal.); *Schwarz v. AT&T Corp.*, C.A. No. 1:06-2680 (N.D. Ill.); *Terkel v. AT&T Inc.*, C.A. No. 1:06-2837 (N.D. Ill.); *Herron v. Verizon Global Networks, Inc.*, C.A. No. 2:06-2491 (E.D. La.); *Fuller v. Verizon Communications, Inc.*, C.A. No. 9:06-77 (D. Mont.); *Dolberg v. AT&T Corp.*, C.A. No. 9:06-78 (D. Mont.); *Marck v. Verizon Communications, Inc.*, C.A. No. 2:06-2455 (E.D.N.Y.); *Mayer v. Verizon Communications, Inc.*, C.A. No. 1:06-3650 (S.D.N.Y.); *Hines v. Verizon Northwest, Inc.*, C.A. No. 3:06-694 (D. Ore.); *Bissit v. Verizon Communications, Inc.*, C.A. No. 1:06-220 (D.R.I.); *Mahoney v. AT&T Communications, Inc.*, C.A. No. 1:06-223 (D.R.I.); *Mahoney v. Verizon Communications, Inc.*, C.A. No. 1:06-224 (D.R.I.); *Potter v. BellSouth Corp.*, C.A. No. 3:06-469 (M.D. Tenn.); *Trevino v. AT&T Corp.*, C.A. No. 2:06-209 (S.D. Tex.); *Harrington v. AT&T Inc.*, C.A. No. 1:06-374 (W.D. Tex.). *See generally* *In re National Security Agency Telecommunications Records Litigation*, 444 F. Supp. 1332 (J.P.M.L. 2006) (centralizing in Northern District of California 17 class action lawsuits and 26 “tag-along” actions).

<sup>2</sup> *See, e.g., United States v. Kurt Adams*, C.A. 1:06-cv-0097 (D. Me.) (suit against Maine Public Utilities Commission to prevent it from requiring Verizon to disclose information regarding its alleged involvement with the NSA); *United States v. Palermino*, C.A. No. 3:06-cv-1405 (D. Conn.) (suit against Connecticut commission to enjoin investigation of AT&T’s and Verizon’s alleged disclosure of customer records to the NSA).

<sup>3</sup> *Hepting v. AT&T Corp.*, Motion to Dismiss or, in the Alternative, for Summary Judgment by the United States of America, Declaration of John D. Negroponte, Director of National Intelligence, ¶ 9 (May 12, 2006).

<sup>4</sup> *Hepting v. AT&T Corp.*, Motion of Defendant AT&T Corp. to Dismiss Plaintiffs’ Amended Complaint; Supporting Memorandum (April 28, 2006), at 17.

and state secrets privilege in litigation in the United States District Court for the Northern District of California involving the alleged disclosure of phone records to the NSA. Subsequently, on July 20, 2006, that court issued a decision refusing to permit the plaintiffs “any discovery regarding the alleged communications records program” because of the state secrets privilege. *See Hepting v. AT&T*, 439 F. Supp. 2d 974, 997-98 (N.D. Cal. 2006). In that same decision, the court did rule that the litigation could proceed with respect to separate allegations involving an NSA program regarding the alleged *monitoring* of communications content. The alleged violations of the Communications Act, however, relate to the protection of customer records and the alleged disclosure of phone records. In the portion of the Court’s opinion dealing with customer records, the Court confirmed that the state secrets privilege prevented further discovery. It is the portion of the court’s opinion dealing with customer records, rather than the portion addressing the monitoring of communications, that is of relevance here.

Moreover, a recent decision by the United States Northern District of Illinois provides additional support. In that decision, the court held on July 25, 2006, that the government had properly invoked the state secrets privilege in a second lawsuit involving allegations that carriers had illegally disclosed phone records to the NSA, and thus dismissed the plaintiffs’ lawsuit. *See Terkel v. AT&T Corp.*, 441 F. Supp. 2d 899 (N.D. Ill. 2006). Therefore, in light of these two court decisions upholding the government’s invocation of the state secrets privilege with respect to information related to carriers’ alleged disclosure of customer records to the NSA, it is not possible for the Commission to investigate these allegations at this time.

### Questions for Chairman Martin and Commissioner Tate

1. **In your Joint Statement accompanying the Commission’s News Release announcing approval of the AT&T-BellSouth merger, you stated as follows: “[t]here are certain conditions, however, that are not self-effectuating or cannot be accomplished by AT&T alone. To the extent Commission action is required to effectuate these conditions as a policy going forward, we specifically do not support those aspects of the conditions and will oppose such policies going forward.”**

**A. When you stated that you “do not support” some of the merger conditions, did you mean that you voted against those conditions? If so, which condition or conditions did you not support or vote against.**

I voted to approve the merger transaction, including the accompanying voluntary commitments made by AT&T and BellSouth. I did not mean that I voted against these voluntary commitments. Rather, I believe that some of the conditions are unnecessary and are not good public policy. For example, as Commissioner Tate and I stated at the time, we believe some of the concessions extracted are unnecessary and may actually deter infrastructure investment. Thus, we emphasized that we were not adopting an additional net neutrality principle as a general policy applicable to the industry as a whole.

I expect that the merged entity will comply with all their commitments. To the extent that any of the commitments in the merger requires further action by the Commission, we will have to act consistently with the law, including the Communications Act and existing Commission precedent.

Indeed, in the order approving the merger, which all four Commissioners supported, the Commission explicitly noted: “[REDACTED]” (emphasis added). This is the language that appeared in my statement and merely reiterates the language of the approved order.

**B. If both of you did not support the same subset of merger conditions as implied in your Joint Statement, how is it that the AT&T-BellSouth merger is legally deemed approved?**

As I stated above, I voted to approve the merger transaction, including the accompanying voluntary commitments made by AT&T and BellSouth.

**C. What is your authority to approve an order and then refuse to implement it? Please identify and describe the provisions of the Communications Act, sections of the FCC’s rules and other legal authority, if any, supporting your answer.**

The Commission adopted voluntary commitments that are enforceable by the Commission. I expect that the merged entity will comply with all of their commitments. To the extent that AT&T does not, we will take appropriate enforcement action.

At the same time, to the extent that the Commission is required to take further action, we will have to act consistently with the Communications Act and existing Commission precedent. Thus, in approving any subsequent tariff filed by AT&T, we would have to apply existing Commission precedent. The order adopted by the Commission was explicit that the conditions in no way alter Commission precedent or bind future Commission action. Indeed, the Commissioners who negotiated these conditions voted for an item that explicitly recognized that the conditions could not alter established Commission law or bind future Commission decisions. The order as adopted, and approved by all four Commissioners, explicitly stated: “[REDACTED].” Thus, Commissioner Tate and I made clear that we were not “effectuating a change in Commission policy by a voluntary commitment by one company” – a view that is explicitly supported in the order adopted by all four Commissioners.

In addition, one company cannot agree to a voluntary commitment that binds another company. Even as a voluntary commitment, AT&T cannot agree to lower the rates that Verizon or Qwest charge to other service providers. In effect, the commitments of AT&T are an attempt to impose requirements on other companies who are not even parties to this transaction.

These commitments thus try to impose burdens on carriers that have nothing to do with the transaction before the Commission. While AT&T may have made a voluntary commitment to effectively ask the Commission to force Verizon and Qwest to lower its rates, Verizon and Qwest are not bound to do so. Nor is the Commission bound to grant AT&T’s request and force Verizon and Qwest to implement AT&T’s request.

- D. You further stipulate in your Joint Statement that “a minority of Commissioners cannot alter Commission precedent or bind future Commission decisions, policies, actions, or rules.” What is the “minority of Commissioners” to which you referred? On what basis did you determine that a minority existed for purposes of interpreting precedent or any future agency action?**

The voluntary commitments set forth by AT&T and BellSouth for the purpose of getting their merger approved are not general statements of Commission policy and do not alter Commission precedent or bind future Commission policy or rules. Any rules or policies adopted by the Commission must be agreed to by a majority rather than a minority of Commissioners. Our Joint Statement simply repeated the statement contained in the Order adopted by all four Commissioners that stated: “[REDACTED].”

## Questions for All Federal Communications Commission Members

### *1. Broadband Policy*

- A. What is your assessment of broadband deployment, access, and affordability in the United States? What steps would you support the Commission taking to make broadband services (a) more accessible; (b) more affordable and (c) more robust? Are there other actions you would recommend be taken to promote further broadband deployment?**

Encouraging the deployment of broadband infrastructure is a top priority. Since I arrived at the Commission in July 2001, high speed lines in the U.S. have gone from more than 9 million to nearly 65 million – that’s nearly six times as many high speed lines as when I joined the Commission. According to the Commission’s most recent data, high-speed connections increased by 26% in the first half of 2006 and by 52% for the full year ending June 30, 2006.

The independent Pew confirmed this trend, finding that from March 2005 to March 2006, overall broadband adoption increased by 40% – from 60 to 84 million – twice the growth rate of the year before. The study found that, although overall penetration rates in rural areas still lags behind urban areas, broadband adoption in rural America also grew at approximately the same rate (39%).

Perhaps most importantly, the Pew study found that the significant increase in broadband adoption was widespread and cut across all demographics. According to their independent research:

- broadband adoption grew by almost 70% among middle-income households (those with incomes between \$40,000 and \$50,000 per year);
- broadband adoption grew by more than 120% among African Americans;
- broadband adoption grew by 70% among those with less than a high school education; and
- broadband adoption grew by 60% among senior citizens.

According to the Pew study, the price of broadband service has also dropped in the past two years. Specifically, the Pew Report found that between February 2004 and December 2005, the average price for high-speed service declined from \$39 per month to \$36 per month. Currently, Verizon and Comcast each offer promotional broadband packages for \$19.99 per month, for example, and AT&T and BellSouth have committed to providing new retail broadband customers a \$10 a month broadband Internet access service throughout the combined region.

The Commission has worked hard to create a regulatory environment that promotes investment and competition. We have taken actions to ensure that there is a level-playing field that fosters competition and investment in broadband infrastructure. The Commission has also removed legacy regulations like tariffs and price controls on the incumbent LECs' provision of broadband Internet access services that discouraged providers from investing in broadband networks. More recently, the Commission took action under section 621 of the Act, to ensure that local franchising authorities do not unreasonably refuse to award new video service providers the franchises they need to compete against incumbent cable operators.

In the wireless area, the Commission has made a significant amount of spectrum available on both a licensed and unlicensed basis that can be used to provide broadband service in municipalities, rural areas and across the nation. For example, on the licensed side, we completed an auction of 90 megahertz of spectrum for advanced wireless services that generated the largest-ever receipts totaling nearly 14 billion dollars. We have also taken steps to completely reconfigure nearly 200 megahertz of spectrum in the 2.5 GHz region to create new broadband opportunities.

On the unlicensed side, the Commission completed actions necessary to make available 255 MHz of unlicensed spectrum in the 5 GHz region, nearly an 80 percent increase, that will fuel the deployment of Wi-Fi well into the future. And, last fall, the Commission initiated a proceeding to resolve technical issues associated with "white spaces" so that low power devices designed to operate on unused television frequencies may reach the market with the completion of the DTV transition.

We will continue to encourage deployment of broadband from all providers using a variety of technologies. As wireless technologies become an increasingly important platform for broadband access, it is critical to ensure that there is adequate spectrum available for providing broadband service. Spectrum auctions will continue to be an important part of our strategy for facilitating the build-out of mobile broadband networks. For example, the upcoming auction of spectrum in the 700 MHz region is well suited for the deployment of broadband services.

The Commission is also considering an order that would classify wireless broadband Internet access service as an information service. This action would eliminate unnecessary regulatory barriers for service providers. This classification also would clarify any regulatory uncertainty and establish a consistent regulatory framework across broadband platforms, as we have already declared high speed internet access service provided via cable modem service, DSL and BPL to be information services. This action is particularly timely in light of the recently auctioned AWS-1 spectrum for wireless broadband and our upcoming 700 MHz auction.

The Commission will continue to look for new and innovative ways to facilitate the deployment of broadband technologies. We are committed to furthering the universal availability and adoption of affordable broadband services.

**B. What is your assessment of the definitions and methodology the Commission uses to gauge broadband deployment, access, and affordability in the United States? Are there other actions you would recommend be taken to improve such definitions or methodologies?**

While the Commission has done a good job assessing broadband deployment, access, and affordability, there is more we can do. The Commission is committed to obtaining the best information possible about the deployment, access, and affordability of broadband services nationwide.

Since I became Chairman, we have already taken some steps to improve the information we collect and report. Last year, we began reporting information regarding different speeds of broadband connections (e.g., about services offered at speeds in excess of 200 kbps).

In order to gain an even better picture of the extent of broadband deployment and consumer acceptance of broadband, I have circulated a Notice of Proposed Rulemaking (NPRM) to the Commission that asks questions about how we can obtain more specific information. In particular, the NPRM asks questions about how we can obtain more specific information about broadband deployment and consumer acceptance in specific geographic areas and how we can combine our data with those collected at the state level or by other public sources. By improving our data collection, we will be able to identify more precisely those areas of the country where broadband services are not available.

I have also circulated our fifth inquiry under section 706 of the Telecommunications Act of 1996 into “whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.” 47 U.S.C. §157 nt. In this Notice, we seek comment on all aspects of broadband availability, including price and bandwidth speeds. In particular, we seek comment on whether, given the evolution of technology and the marketplace, we should redefine the term “advanced services” to require a minimum speed higher than 200 kbps in one or both directions. Between these two proceedings, it is my hope that the Commission will solicit the information necessary to better assess the competitive progress in the broadband market.

**2. *Wireless and Spectrum Policy***

**A. Do you believe the commercial mobile service market is more or less competitive than it was five years ago? Do you believe that consumers in the commercial mobile service market would benefit from additional competitors?**

I believe that the CMRS market was extremely competitive five years ago and remains so today. Some, but not all, measures in the Commission’s Annual Report to Congress on competition in the CMRS market indicate that the commercial mobile radio service (CMRS) market is more competitive today than it was five years ago. Compared to five

years ago, more consumers today have access to three or four operators, but fewer have access to five providers.

- In 2006, 98 percent of the U.S. population lived in counties with 3 or more commercial mobile operators competing to offer service, up from 91 percent in 2001. The percentage of the population living in counties with 4 or more operators has risen from 84 percent in 2001 to 94 percent in 2006. However, 51 percent of the population lived in counties with 5 or more providers in 2006, down from 75 percent in 2001.
- Over the past five years, the number of mobile telephone subscribers has increased 86 percent from 118 million in June 2001 to 219 million in June 2006.
- Over the same time period, the mobile phone penetration rate in the U.S. rose from 41 percent to 73 percent.
- Similarly, over the past five years, the average number of minutes that subscribers use their mobile phones each month rose by 57% - from 314 to 723 minutes, or over 12 hours per month.
- The per-minute price of mobile telephone service, as measured by average revenue per minute, has also dropped dramatically from \$0.15 per minute in June 2001 to \$0.07 per minute in June 2006.
- Between 2000 and 2005, the Consumer Price Index for all consumer goods increased by 13.4%, meaning that over this period the inflation-adjusted decrease in revenue per minute was approximately 59%.
- Since 2001, commercial mobile operators have expanded the reach of their networks and rolled out new technologies that improve service quality and enable advanced data and broadband services. In the last five years, the number of cell sites deployed by mobile carriers across the United States grew 74% from 114,000 to 198,000.
- The percentage of mobile telephone subscribers using digital phones has increased from 62 percent in 2001 to 98 percent in 2006.

While wireless competition is vibrant, consumers would benefit from additional competitors.

**B. What actions, if any, do you believe the Commission should take, consistent with the Communications Act, to avoid “excessive concentration of licenses” and to disseminate licenses “among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women?”**

In advance of the AWS-1 auction, the Commission took a number of measures to further participation of small businesses, rural telephone companies, and businesses owned by members of minority groups and women (i.e. designated entities) in the provision of wireless services. Shortly after I became Chairman in 2005, the Commission adopted a proposal to reconsider the AWS-1 band plan to address the needs of designated entities for more manageable spectrum blocks and geographic license areas. The order designated more spectrum for licensing over smaller and rural geographic areas to promote access to AWS-1 spectrum by smaller carriers, new entrants, and rural telephone companies. It also broke portions of the spectrum into smaller bandwidth sizes, or “blocks,” to facilitate access by designated entities.

In addition to modifying the AWS-1 band plan, the Commission initiated a proceeding in early 2006 to consider whether we should modify our general competitive bidding rules governing benefits reserved for designated entities. During our reconsideration of the AWS-1 service rules, some had expressed concern that bidding credits intended for designated entities were instead benefiting companies with billions of dollars in revenues, who were partnering with small businesses to gain access to the bidding credits. We initiated a review of our rules to consider ways to curb these practices and subsequently adopted an order and applied it to the AWS 1 auction that strengthened our unjust enrichment rules, leasing requirements, reporting obligations, and auditing to better deter entities from attempting to circumvent our designated entity eligibility requirements.

Going forward, I believe the Commission should use its experience in the AWS-1 auction as a guide in completing our reexamination of the rules applicable to our upcoming auction of 700 MHz spectrum. I believe we should reconfigure this spectrum to provide for smaller geographic licensing areas similar to the AWS-1 band plan. Providing for smaller license areas would likely make it easier for designated entities and other smaller companies to participate in the upcoming auction.

**C. What actions, if any, do you believe the Commission should take with regard to spectrum management?**

In recent years, the Commission’s spectrum management policy has shifted from a prescriptive and highly regulatory approach to a more flexible approach, which seeks to promote a vibrantly competitive marketplace for spectrum-based services and technologies. To the greatest extent possible, we rely on this competitive marketplace, rather than regulation, to deliver the benefits of choice, innovation and affordability to American consumers.

The Commission uses two basic approaches to spectrum management – the licensed model and the unlicensed model. Under the licensed model, operators obtain prior Commission authorization to operate in a prescribed area with interference protection, subject to certain technical and operational rules. Most licenses for commercial mobile services are obtained through auction, and in general, the auctioning of licensed spectrum efficiently distributes a scarce resource to those who will put it to its highest and best use. In circumstances when spectrum rights cannot be clearly defined, however, the unlicensed model may better optimize spectrum access and utilization. With respect to licensed versus unlicensed, I think both models are very important.

The Commission is using both models to do all that it can to make sure that spectrum is available for broadband services. For example, the FCC just completed an auction of 90 megahertz (MHz) of radio spectrum for Advanced Wireless Services. The spectrum that was sold is the largest amount suitable for deploying wireless broadband ever made available in a single FCC auction, and should increase the availability of next generation mobile services, including mobile broadband.

On the unlicensed side, we recently made available 255 MHz of spectrum available in the 5.47-5.725 GHz band that is suitable for Wi-Fi and other new technologies, an 80 % increase in the spectrum available in this region of the spectrum.

In the coming year, we will auction another 60 MHz of spectrum in the 700 MHz band, spectrum that is also well-suited for the provision of wireless broadband. This spectrum represents a critical opportunity to continue deploying wireless broadband services and mobile video, especially to rural communities. I believe we should reconfigure the 700 MHz band to provide for smaller geographic licensing areas. I also believe we should adopt more stringent build out requirements to facilitate broadband deployment in rural and underserved areas, which is an issue that is also being considered in our ongoing 700 MHz proceeding.

Now that a hard transition date has been established for digital television, we are working to make television “white spaces” available for wireless use. Allowing low power wireless devices to operate in unused portions of the television bands could be an efficient and effective use of this unused spectrum. Although we have already issued an order allowing for wireless use of the “white spaces,” we are working to resolve the remaining technical and policy issues in the proceeding.

We should also continue with our efforts to improve the efficiency with which available spectrum is used. In the 2496-2690 MHz band, we are currently in the midst of transitioning from outmoded bandplans in which incompatible services were “interleaved” with one another. This transition is enabling licensees to deploy wireless broadband technologies, including WiMAX.

We are also working to ensure that public safety has access to wireless broadband capabilities. At the urging of public safety, the Commission has asked whether certain

channels within the current twenty-four megahertz of public safety spectrum in the 700 MHz band should be modified to accommodate broadband communications. In addition, the Commission has sought comment on a proposed plan for more efficient use of public safety spectrum in the 700 MHz band by making 12MHz of the allocated spectrum available to public safety through a national, interoperable, broadband network.

Finally, we should continue to investigate and refine alternative approaches to spectrum use, exploring possible new models for spectrum management. For example, we should continue to work with the National Telecommunications and Information Agency (NTIA) to evaluate innovative methods for spectrum sharing among disparate users to enable more intensive use of the radio spectrum. Specifically, we will formulate recommendations for a spectrum sharing innovation “test-bed” for use in planning how spectrum can best be shared between federal and non-federal users.

### ***3. Digital Television Policy***

**A. What general steps can the Commission take to enhance the level of preparedness of our nation for the upcoming digital television transition (DTV) in February of 2009?**

The Commission has completed several important steps to accomplish the digital television transition, and we are continuing to take the actions necessary to assure that Congress's deadline of February 18, 2009 is achieved. First, we established deadlines by which television stations must build their digital broadcasting facilities. As of January 5, 2007, 93% of full-power stations are on the air with a digital signal. Second, in order to reclaim channels 52 through 69 for future use by public safety officials and by new services, the Commission established channel election procedures by which stations can determine their post-transition channels. Third, the Commission has mandated that, as of March 1, 2007, all television receivers manufactured in the United States or shipped in interstate commerce have a digital tuner. The next step is to adopt the new table of DTV channels, based on the channels that the stations have elected. This rulemaking proceeding is underway now, and reply comments are due on February 26, 2007. We also are initiating the final steps for full power stations to complete construction of their digital facilities in preparation for the termination of analog service on February 17, 2009. In addition, we continue to work with the NTIA to support their work on the digital-to-analog converter box coupon program.

The Commission will continue to monitor the digital transition as it unfolds and is prepared to make any adjustments that are necessary to help ensure a successful transition by the February 2009 deadline.

**B. What specific actions do you support the Commission taking with respect to the broadcasting, cable, programming content, manufacturing, or retail sector to enhance consumer education about the DTV transition?**

The Commission has undertaken consumer education efforts and worked with broadcasters, manufacturers and retailers to encourage their voluntary efforts to inform consumers about the upcoming transition. We have a website dedicated exclusively to the digital transition ([www.dtv.gov](http://www.dtv.gov)) which provides information about the transition, equipment needed, programming available, and also serves as a clearinghouse with links to broadcast, cable, satellite, consumer electronics manufacturing and retail. Our consumer education activities also include publications, participation in public exhibits and community and consumer-oriented events. The Commission's Consumer and Government Affairs Bureau developed an "Outreach Toolkit", available on our website, for consumer and community organizations to use in conducting their own local DTV consumer education programs. Our publications include a booklet with general background information, *DTV: What Every Consumer Should Know*, and tip sheets. Most

of our DTV information also is available in Spanish. The outreach staff also has participated in exhibits and presentations to a number of groups including AARP, the National Council of La Raza, the NAACP, educational institutions, and others.

#### **4. Overall Commission Policies**

##### **A. In each of the major areas of the Commission's authority (e.g., wireline, wireless, universal service, broadcast radio and television, cable services, satellite, public safety, international), what actions, if any, do you believe the Commission should take?**

First, the Commission must continue to increase access to communications services. I will continue to make broadband deployment the Commission's top priority. Specifically, we will continue to encourage deployment of broadband from all providers using a variety of technologies. As wireless technologies become an increasingly important platform for broadband access, it is critical to ensure that there is adequate spectrum available for providing broadband service. Spectrum auctions will continue to be an important part of our strategy for facilitating the build-out of mobile broadband networks. We are working to ensure that our upcoming auction of the 700 MHz spectrum meets the needs of both large and small rural companies and proceeds in an efficient, effective and timely manner.

The Commission is also considering an order that would classify wireless broadband Internet access service as an information service. This classification would clarify any regulatory uncertainty and establish a consistent regulatory framework across broadband platforms, as we have already declared high-speed Internet access service provided via cable modem service, DSL and BPL to be information services. This action is particularly timely in light of the recently auctioned AWS-1 spectrum for wireless broadband and our upcoming 700 MHz auction.

With respect to universal service, it is critical that all Americans stay connected to state-of-the-art communications services. The Universal Service Fund is the lifeblood of this goal. But this system is in need of reform. Changes in technology and increases in the number of carriers who are receiving universal service support have placed significant pressure on the stability of the fund. We should improve the way the Commission administers the fund and reform the collection and disbursement systems. We need to move to a contribution system that is technologically neutral and a distribution system that is more efficient.

The Commission will also do its part to ensure that all Americans, including those who live in the most remote areas of the country, receive first-rate medical care. We recently took action, through our adoption of a Rural Healthcare Pilot Program, to support the construction of state and regional networks dedicated to health care. In the first half of 2007, the Commission will be selecting participants for the pilot program, and in 2007 and 2008, the Commission will oversee the program. The deployment of such a network will create numerous opportunities for delivering telehealth services, including

telemedicine applications that have the potential to revolutionize the current healthcare system throughout the nation.

Second, we must continue to promote real choice for consumers. In December of last year, we took steps to implement Section 621 of the Communications Act, which prohibits local authorities from unreasonably refusing to award a competitive franchise. We will continue to take steps to remove regulatory impediments to the entry of new service providers into the video market by, for instance, ensuring that consumers living in apartment buildings are not denied a choice of cable operators.

We need to continue our efforts to create a regulatory environment that encourages entry into this market and more choice for consumers. This includes making sure that competitive providers have access to “must-have” programming that is vertically integrated with a cable operator.

Promoting competition and choice must be our priority in the voice arena, as well. We need to continue to ensure that new entrants are able to compete with incumbents for telecommunications services. For example, new telephone entrants need access to local telephone numbers and the ability to interconnect with incumbents to deliver local calls to them.

Third, we must continue to protect consumers. Among the issues the Commission must turn its attention to is the ability of unauthorized users to gain access to callers’ phone records, or pretexting. The Commission intends to strengthen its privacy rules by requiring providers to adopt additional safeguards to protect customers’ phone record information from unauthorized access and disclosure.

Recently, concerns about preserving consumers’ access to the content of their choice on the Internet have been voiced at the Commission and Congress. In its Internet Policy Statement, the Commission stated clearly that access to Internet content is critical and the blocking or restricting consumers’ access to the content of their choice would not be tolerated. To better assess how the marketplace is functioning and address any potential harm to consumers, I have proposed the Commission examine this issue more fully in a formal Notice of Inquiry which is presently pending before my colleagues.

Perhaps no other issue before the Commission garners more public interest than our quadrennial review of our media ownership rules. We must make sure that consumers have the benefit of a competitive and diverse media marketplace. At our public hearings, the Commission has heard a consistent concern that there are too few local and diverse voices in the community. Certainly, we need to protect localism and diversity in the media. We must balance concerns about too much consolidation and too little choice, however, with appropriate consideration of the changes and innovation that are taking place in the media marketplace.

Critical to our review of our media ownership rules is the collection of objective facts and an open dialog with the public. We have commissioned multiple economic studies and are engaging in hearings across the country in a range of markets. The goal of these

hearings is to fully and directly involve the American people in this process. We held our first hearing in Los Angeles, where we focused on the ability of independent television producers to gain access to distribution. We also held a hearing in Nashville, in which we focused on the concerns of the music industry. The Commission's efforts to collect a full public record will continue in the months ahead, with six more hearings, including two specifically focused on localism.

Fourth and finally, we must enhance public safety. The events of September 11, 2001 and the 2005 hurricane season underscored America's reliance on an effective national telecommunications infrastructure. Thus, public safety has been and will continue to be one of the Commission's and my top priorities. We must make sure that the public has the tools necessary to know when an emergency is coming and to contact first responders. And we must enable first responders to communicate with each other and to rescue the endangered or injured. And the public and private sectors must work together so that our communications system can be repaired quickly in the wake of a disaster so that affected people can reach out to locate or reassure one another. We recently created a Public Safety and Homeland Security Bureau to focus exclusively on this important need.

The Commission recently asked for comments on creating a nationwide, interoperable broadband network for public safety officials in the 700 MHz band. In the meantime, technology is available now that could provide a temporary solution to the need for more interoperability. By adding IP-based technologies to existing public safety network equipment (a so-called "IP patch") and deploying portable IP-based network equipment where necessary, public safety officials would achieve functional, if not full, interoperability.

## ***5. Commission Process and Functioning***

### **A. What steps, if any, can the Commission take to enhance the depth and accuracy of its collection of data and analysis of affected industries?**

The Commission is constantly striving to improve and refine the way we collect, analyze, and report industry data to make sure we have the most accurate assessment possible. Specifically, in several areas, we are looking to increase the granularity of the data we review, as well as seeking new or different data sources.

For example, as part of preparing for this year's annual CMRS Competition Report to Congress, staff is considering different ways to use geographic information system software to enhance our analysis of service provision, particularly in rural areas. And, as I stated above, in order to gain an even better picture of the extent of broadband deployment and consumer acceptance of broadband, I have circulated a Notice of Proposed Rulemaking (NPRM) to the Commission that asks questions about how we can obtain more specific information. In particular, the NPRM asks questions about how we can obtain more specific information about broadband deployment and consumer acceptance in specific geographic areas and how we can combine our data with those collected at the state level or by other public sources.

I have also circulated our fifth inquiry under section 706 of the Telecommunications Act of 1996 into “whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.” 47 U.S.C. §157 nt. In this Notice, we seek comment on all aspects of broadband availability, including price and bandwidth speeds. In particular, we seek comment on whether, given the evolution of technology and the marketplace, we should redefine the term “advanced services” to require a minimum speed higher than 200 kpbs in one or both directions. Between these two proceedings, it is my hope that the Commission will solicit the information necessary to better assess the competitive progress in the broadband market.

With respect to media issues, the Communications Act requires the Commission to publish annually a statistical report on average rates for the cable basic service tier, cable programming service tier, and equipment. The Commission also is directed to compare prices charged by cable operators serving: (1) communities where operators have not been found to meet the statutory test for effective competition; and (2) communities where the Commission has determined that a cable operator is subject to effective competition.

The information and analysis provided in the annual report are based on the Commission's survey of industry prices obtained from a group of randomly selected cable system operators. Commission staff preparing the report carefully scrutinize survey responses, cross-check responses against other data sources available to the Commission and, if necessary, contact cable operators to clarify responses. Commission staff also routinely considers methods to ensure the accuracy of the survey data, and each annual survey reflects the efforts to improve the data collection procedure. In this regard, and at the suggestion of several of my colleagues, in the near future the Commission staff will commence audit and review work of the responses submitted in response to the 2006 price survey. This work will help verify the accuracy of the information submitted by cable operators so that the Commission may reasonably rely on the price survey results for policymaking purposes.

The Commission also announced recently that it will conduct 10 economic studies as part of its statutorily mandated quadrennial review of its media ownership rules. A summary of each study is available on the Commission's website ([www.fcc.gov/ownership](http://www.fcc.gov/ownership)). When completed, each of the studies will be peer reviewed and available for public review and comment.

In the area of public safety, the Commission currently collects data regarding all major communications network outages. These data enable the Commission to maintain an up-to-date situational awareness of the operation of the essential communications networks and help the Commission and industry determine the nature of communications problems that develop as well as strategies to effectively solve those problems. During major disasters, such as Hurricane Katrina, collecting these data and maintaining situational awareness of the communications networks, are extremely important because operational communications systems are critical to relief and restoration efforts.

This information helps government and industry focus their communications restoration efforts in a manner that most effectively serves the emergency response community and the public. The Commission can enhance the depth and accuracy of this data by continuing to work closely with the various segments of the communications industry (i.e., wireline, wireless, public safety) to identify the data that most accurately reflects the operation of the communications networks and the most essential communications services and is most relevant to the needs of the industry restoration crews, the emergency response community, and the public. In addition, the Commission should continue to work with industry to develop outage, restoration, and requirements templates that can be easily prepared and provided to the Commission via the Internet.

**B. What steps, if any, can the Commission take to better prevent waste, fraud, or abuse in the programs it administers.**

The Commission is committed to preventing waste, fraud, and abuse in the programs it administers. Preventing waste, fraud, and abuse is a continual process and we are constantly working with the Commission's Office of Inspector General (OIG) to identify and address potential risks. Below are some specific action areas:

Comprehensive Universal Service Fund (USF) Oversight Plan

- In 2005, the Commission launched a comprehensive review of the USF. The Commission is considering performance measures, additional audit mechanisms, and tougher debarment rules as well as examining the current USF administrative structure.
- In 2006, the Commission strengthened its oversight of the USF by realigning and redirecting internal resources. In addition, the Commission's Office of Inspector General (OIG) launched hundreds of audits of USF beneficiaries and contributors. The OIG has informed us that it expects these audit oversight efforts to reach conclusions in the summer of 2007.
- The Commission has requested a total of \$21.5 million for FY 2008 to increase the OIG-overseen USF program audits and increase the number of investigative personnel.

Comprehensive Telecommunications Relay Service (TRS) Oversight Plan

- The Commission has initiated an examination into possible anti-fraud measures for a popular form of TRS called Internet Protocol Relay Service, and launched a comprehensive outreach and education campaign aimed at rooting out TRS fraud.
- The Commission has devoted additional internal resources to overseeing the finance, accounting, and auditing activities of the TRS Administrator.

### Strengthened Internal Anti-Fraud Measures

- The Commission has strengthened its internal activities intended to fight waste, fraud, and abuse. In particular, the Commission adopted accounting best practices that are used at the largest Federal agencies, initiated specific anti-fraud measures, and launched a concerted effort to fix problems that the Commission's OIG and other auditors have identified. As a result of these efforts, the Commission received high marks from its outside auditors.

### **C. What steps, if any, can the Commission take to enhance communications with the public in rulemakings and adjudication proceedings before the Commission?**

The Commission has made and will continue to make it a priority to ensure that the public has access to information about rulemakings and other activities undertaken by the agency.

### Public Hearings Outside of Washington, DC

- A key focus of the FCC in 2007 will be providing the public direct access to the FCC through a series of hearings to be held outside of Washington.
- In particular, one area where the Commission will expand its public outreach through open meetings is the area of media ownership. Two media ownership public hearings were held recently, one in Nashville and another in Los Angeles. We plan six more in the months ahead, including two specifically focused on localism. The goal of these hearings is to more fully and directly involve the American people in the Commission's work. The Commission is looking for input on the Commission's rules and how those rules impact the three core goals they are intended to further: competition, diversity and localism. In order to gather input from a broad cross-section of society, the Commission is conducting these hearings in geographically diverse locations around the United States.

### Public Comment and Research Database: Electronic Comment Filing System (ECFS)

- The Commission's electronic comment filing system gives the public access to Commission rulemakings and adjudications via the Internet and allows anyone to submit or search any official communication made to agency. In 2006 alone, almost 250,000 comments, letters and email filings were submitted through ECFS.

### Improving the Public Information Systems

- Based on public input, the Commission is working on new features that will enhance the ability of the public to interact with it. For example, the Commission is working on a new web page that will provide a daily listing of all new documents added to ECFS sorted by docket or proceeding.

- Similarly, when the Commission launched the current round of the media ownership proceeding, it redesigned the section of its website devoted to "Media Ownership." The Media Ownership website now consists of a set of easy-to-navigate web pages that provide considerable detail about the rules currently under review, the legal background of the proceeding, and how any interested party may file comments with us -- whether long and detailed lawyerly submissions or short and simple comments filed electronically.

### Public Outreach

- The Commission is expanding its ability to make materials, including web pages and consumer fact sheets, available to all members of the public. We currently make documents available in Braille upon request, and a large section of the Commission's website is available entirely in Spanish.
- The Commission also recently renewed the Charter of the Consumer Advisory Committee. This Federal Advisory Committee has broad public representation and meets regularly to facilitate public participation at the FCC.
- We are establishing an information clearinghouse to help interested parties determine available spectrum and broadcast licenses in a given market.
- The Consumer Bureau is planning an Indian Telecommunications Initiative workshop focusing on radio and broadcast ownership that should help tribes to identify strategies and resources necessary to enter the media market and help tribes become acquainted with FCC rules and regulations that potentially impact them.
- The Consumer Bureau also will initiate a public education campaign regarding emerging technologies.

### Consumer Information Email Delivery Subscription Service and Consumer Fact Sheets

- The FCC's Consumer and Governmental Affairs Bureau (CGB) has developed and is working to expand a Consumer Information Registry email service that delivers to subscribers customized information about FCC actions.
- The Commission also continually updates over 124 consumer fact sheets, advisories and other documents on topics such as broadband, DTV transition, VoIP 911, and many other issues to ensure that consumers have the most up-to-date information available about the work of the Commission.