



FEDERAL COMMUNICATIONS COMMISSION

Fiscal Year 2009 Annual Performance Report

(October 1, 2008 – September 30, 2009)

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Message from the Chairman

I am pleased to present the Federal Communications Commission's (Commission) FY 2009 Annual Performance Report. This report details the Commission's performance toward fulfilling its strategic goals and meeting its performance commitments. The results shown in this report conform to the strategic and performance goals identified in the FCC Strategic Plan for FY 2009 through 2014 (<http://www.fcc.gov/omd/strategicplan>).

With each passing day, communications devices and networks become more essential to the fabric of the daily lives of all Americans. They are how we receive news, information, and entertainment; how we stay in touch with our friends and family; how we work at and run our businesses, large and small; how we communicate and coordinate in times of emergency; and how we—and people across the globe—learn about government and express our points of view. Put simply, our communications infrastructure is the foundation upon which our economy and our society rest.

Our nation is at a crossroads. We face a number of tremendous challenges: our economy, education, health care, and energy, to name a few. If we can harness the power of communications to confront these challenges, we will have chosen the right course, and we will make a real positive difference in the lives of our children and future generations.

The performance of the Commission and its greatest asset – its employees – will help unleash the potential of communications to meet the challenges facing our country. How we work as individuals and as an agency will be central to what the Commission can achieve. We are striving to be more open and transparent so that the American people can hold us accountable for our commitments to them. Our decision making will be fact-based and data-driven so that the American people will know the rationale behind the Commission's policies. We are using technology and new media to enhance the everyday work lives of FCC staff, green the agency, and improve the overall performance of the FCC – running efficiently, communicating effectively, and opening the agency to participation from everyone affected by the FCC's actions.

These positive steps are already underway to revitalize and retool the FCC. I am committed to institutionalizing change and making the FCC a 21st century agency for the information age – one that fights for consumers and families, and fosters investment and innovation, through fair, participatory, and data-driven processes.



Julius Genachowski
Chairman
February 2, 2010

BROADBAND

Strategic Goal:

Establish regulatory policies that promote competition, innovation, and investment in broadband services and facilities while monitoring progress toward the deployment of broadband services in the United States and abroad.

Broadband is the major communications infrastructure priority of our time. Earlier generations faced, and rose to, similar challenges with railroads, highways, telephones, and electricity – networks that have connected Americans, served as a platform for commerce, and improved the quality of life for all Americans. The FCC’s efforts will ensure that our country has a broadband infrastructure appropriate to the challenges and opportunities of the 21st century.

Broadband access and deployment remain top priorities of this agency. Broadband technology drives economic growth by facilitating innovation and access to information, commerce, education, and entertainment. Because broadband changes the way people work, play, learn, and communicate, public demand for faster, more robust broadband services and products has increased, which has led to increased deployment of broadband technologies and applications.

FY 2009 PERFORMANCE GOALS

- Broaden the deployment of broadband technologies.
- Define broadband to include any platform capable of transmitting high-bandwidth intensive services, applications, and content.
- Ensure harmonized regulatory treatment of competing broadband services.
- Encourage and facilitate an environment that stimulates investment and innovation in broadband technologies and services.

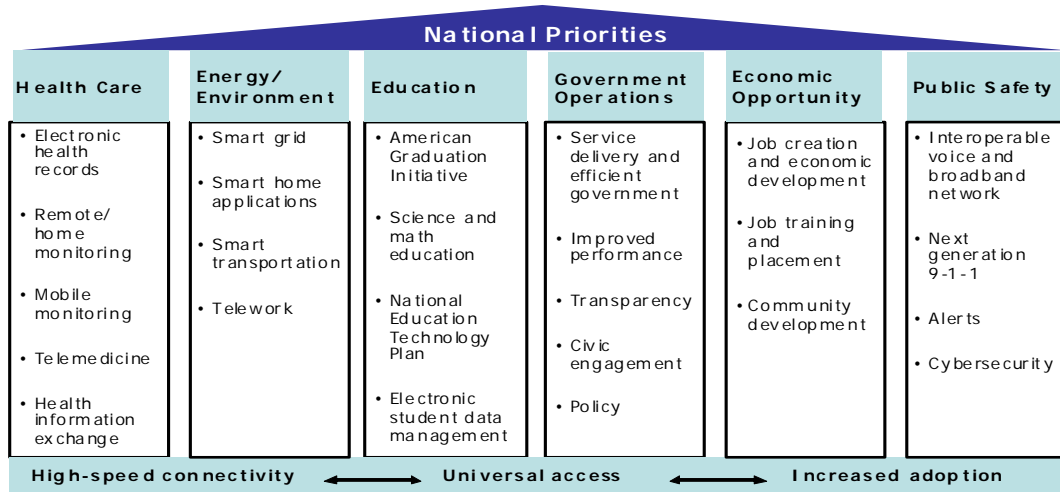
FY 2009 PERFORMANCE HIGHLIGHTS

Broaden the deployment of broadband technologies:

- In February 2009, as part of the American Recovery and Reinvestment Act, Congress directed the FCC to develop a plan that seeks to ensure that people of the United States have access to broadband capability. The FCC sought input on the development of this national broadband plan through a Notice of Inquiry (NOI) that asked questions about all aspects of broadband, including how to: 1) define broadband access and capability; 2) establish benchmarks to measure progress toward achieving deployment to all people living in the United States; 3) make broadband more affordable and useful; and 4)

achieve specific policy goals including health care delivery, energy and the environment, education, civic participation, job creation and economic growth, and public safety. The chart below shows what broadband makes possible in improving our nation and the quality of life for its citizens.

Broadband Facilitates Our Nation's Priorities



- In developing the broadband plan, the FCC is conducting a data-driven process with unparalleled opportunities for public participation. On August 6th the Commission began an ongoing series of public workshops on a broad range of issues relating to broadband, holding 27 workshops in the last two months of FY 2009. The FCC launched a website – Broadband.Gov – that helped open up public dialogue around the broadband plan to more citizens and to new voices from around the country, including rural and inner cities, small businesses, and state and local governments. Broadband.Gov provides schedules and information about the broadband initiative and is a place for all stakeholders to provide input and comments on the Commission’s progress to date.
- The FCC Broadband team also brought other new and innovative methods to fostering a public dialogue. They have helped Americans outside of Washington participate in the workshops using multimedia tools such as interactive webcasting and live panelist testimony via live tele-presence. The Commission also implemented new media applications designed to increase public participation. Blogband is the official blog of the National Broadband Plan and the FCC’s first ever blog. Stakeholders can hear from experts at the FCC and provide comments that will be inserted into the public record. The FCC also launched a National Broadband Plan page on IdeaScale. This crowd-sourcing platform allows users to publicly share and discuss ideas, as well as vote on

their favorite ideas and topics presented. IdeaScale has been especially useful in reaching stakeholders outside of Washington, DC.

- The FCC drafted and negotiated two memoranda of understanding (MOUs) with the National Telecommunications and Information Administration (NTIA) in support of the FCC's Broadband activities. One MOU provides for transfer of over \$20 million to support development of the National Broadband Plan and the other provides for payment of \$21.750 million for preparation of the National Broadband Map.
- The Consumer and Governmental Affairs Bureau (CGB) has ongoing relationships with numerous government entities and consumer and industry groups and worked with them throughout the year in an effort to educate the public concerning the Commission's broadband initiatives:
 - On February 9, 2009, a member of the Bureau's Office of Intergovernmental Affairs (IGA) staff gave a presentation before the New Jersey General Assembly Telecommunications and Utilities Committee.
 - On March 4, 2009, CGB hosted the 6th Annual FCC-National Congress of American Indians (NCAI) Telecom Subcommittee Dialogue on Improving Telecommunications Access in Indian Country, which was held in Washington, D.C.
 - In June 2009, IGA met with tribal leaders and telecom professionals in New Mexico to discuss improving the availability of broadband services in very rural areas of New Mexico and the Navajo Nation. IGA staff also attended the National Council of State Legislatures (NCSL) Annual Meeting held July 20-24, 2009.
 - From July 27-29, 2009, the Bureau conducted the 8th regional Indian Telecommunications Initiative (ITI) workshop and roundtable in Rapid City and Pine Ridge, South Dakota with the focus topic of expanding deployment of broadband in Indian Country.
 - On September 23, 2009, the Bureau Chief and the Government Operations Director, FCC National Broadband Task Force, made a presentation at the National League of Cities (NLC) Information Technology and Communications Fall Steering Committee Meeting.
- FCC staff provided U.S. Government statistical data to the Organization for Economic Development and Cooperation (OECD) and the International Telecommunications Union (ITU) on U.S. broadband deployment. Staff participated in extensive review and editing of OECD documents expressing views and strategies for international broadband issues.
- The Commission's Office of General Counsel successfully defended the Commission's order granting petitions filed by several common carriers for forbearance from dominant carrier regulation for certain broadband services. *Ad Hoc Telecommunications Users Committee v. FCC*, 572 F.3d 903 (D.C. Cir. 2009).

Define broadband to include any platform capable of transmitting high-bandwidth intensive services, applications, and content:

- In October 2008, Congress enacted the Broadband Data Improvement Act (BDIA) to improve the quantity and quality of data the FCC collects on the deployment and adoption of broadband services. The BDIA requires the FCC to compile a list of geographical areas not served by any provider of advanced telecommunications capability, and, if Census Bureau data is available, determine the population, population density, and average per capita income of each unserved area. Additionally, the FCC must undertake a detailed international comparison of US broadband service capability to broadband service capability in 75 communities in at least 25 countries. In March 2009, the FCC sought comment on how it should implement the international comparison requirement, and staff of the FCC's International Bureau is gathering broadband information from various sources.
- The Commission released two High Speed Services for Internet Access reports; one on January 16, 2009 and one on July 23, 2009.
- The FCC completed development of, and placed into operation, a new, web-based Form 477 (Local Telephone Competition and Broadband Reporting) electronic filing system in the second quarter of FY 2009. The first data collection using the new system took place on March 16, 2009.

Ensure harmonized regulatory treatment of competing broadband services:

- The Wireless Telecommunications Bureau drafted a *Memorandum Opinion and Order* during the fiscal year on promoting the deployment of wireless broadband services by reducing delays in the construction and improvement of wireless networks, while also preserving local zoning authority.
- FCC staff participated, in concert with NTIA and the State Department, in the 2008 World Telecommunication Standardization Assembly which included adoption of proposals related to broadband technologies.
- FCC staff has been and continues to be involved in the development and review of ITU Radiocommunication Sector studies evaluating broadband over power lines.

Encourage and facilitate an environment that stimulates investment and innovation in broadband technologies and services:

- The Commission took steps during FY 2009 to promote the delivery of broadband to rural areas to provide opportunities for Americans residing and working in those areas. The 2008 Farm Bill required the FCC Chairman, in coordination with the Secretary of the Department of Agriculture, to submit a report to Congress describing a rural broadband strategy. Entitled "Bringing Broadband to Rural America: Report on a Rural Broadband Strategy," the report identified common problems affecting rural

broadband, including technological challenges, lack of data, and high network costs, and offered recommendations to address those problems.

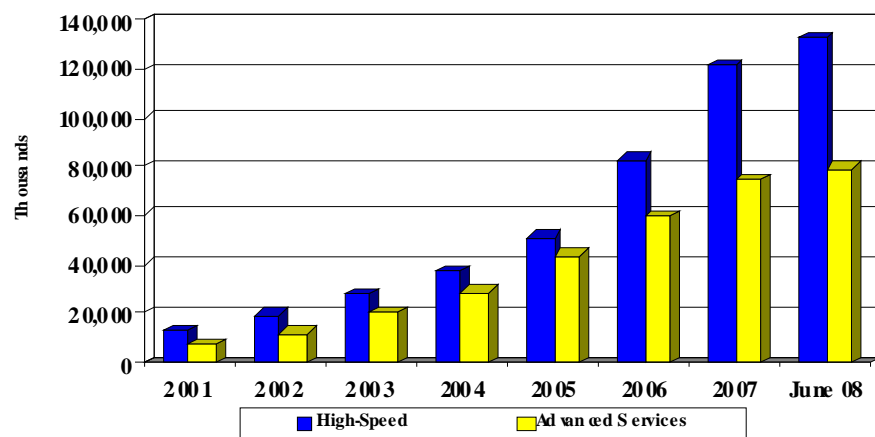
- The Commission undertook efforts with the Rural Utilities Service (RUS) of the U.S. Department of Agriculture (USDA) to facilitate deployment of broadband service in rural areas. In consultation with RUS, the FCC participated in numerous activities aimed at assisting rural communities in deploying wireless broadband networks in their communities. Rural Broadband Workshops were organized to open dialogue and consultation as outreach to rural America regarding broadband deployment. Topics presented at the workshops included presentations depicting technology platforms currently available for broadband services, USDA funding set aside for broadband deployment, the FCC’s Rural Health Care Pilot program, and wireless spectrum access. Workshops were held in four regions of the country – Northeast/Mid-Atlantic, South/Midwest, Central, and West. Also in conjunction with RUS, FCC maintained the online web resource “Broadband Opportunities for Rural America” website. This website makes available the expertise and resources of the FCC and USDA in a single, one-stop easy-to-navigate location. The website was updated to include information regarding the broadband grant programs under the Recovery Act.

FY 2009 PERFORMANCE INDICATORS

Increase access to broadband services and devices across multiple platforms

Number of High Speed and Advanced Connections

As of June 2008,¹ there were 132.8 million high-speed connections in service,² a nearly 10% increase in six months from the end of 2007. More than 79 million of these were assigned to residential subscribers.³ (Year shown is calendar year unless otherwise noted.)



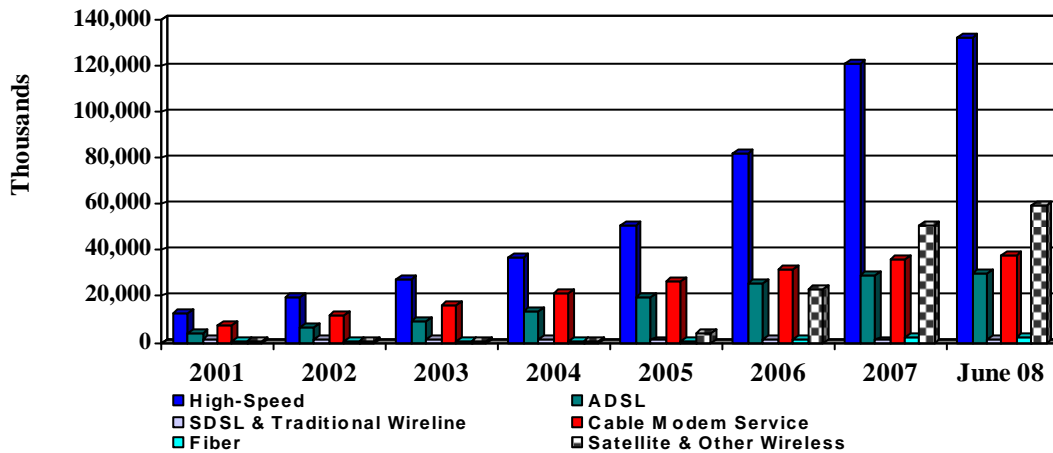
¹ Data on advanced services for Internet access is collected every six months; the latest available data released from the FCC is from June 2008. The report on *High Speed Services for Internet Access: Status as of June 30, 2008*, released July 23, 2009, is available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292191A1.pdf

² Ibid., Table 1, page 6.

³ Ibid., Table 3, page 8.

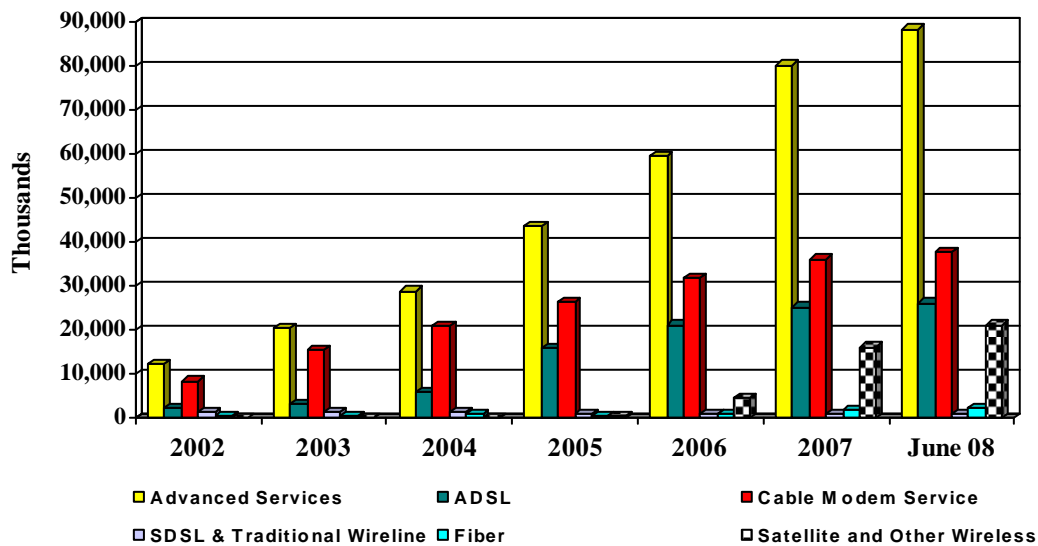
Mobile wireless high-speed connections increased during the first six months of 2008 by 17%, to 59.7 million, while high-speed cable modem service lines increased by 5% to 38.2 million lines.⁴ (Year shown is calendar year unless otherwise noted.)

High Speed Connections Across Various Platforms



ADSL advanced services connections increased during the first six months of 2008 by 4% to 26.1 million, while cable modem advanced services lines increased by 5% to 37.8 million lines.⁵ (Year shown is calendar year unless otherwise noted.)

Advanced Connections Across Multiple Platforms



⁴ Ibid., Table 1, page 6.

⁵ Ibid., Table 2, page 7.

COMPETITION

Strategic Goal:

Competition in the provision of communications services, both domestically and overseas, supports the Nation's economy. The competitive framework for communications services should foster innovation and offer consumers reliable, meaningful choice in affordable services.

The communications industry is critically important to our national and global economy. Encouraging competitive forces in markets for communications services has long been a central Commission goal to improve the quality and variety of services and to reduce prices. Indeed, the stated purpose of the Telecommunications Act of 1996, amending portions of the Communications Act, was “[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”

FY 2009 PERFORMANCE GOALS

- Promote access to telecommunications services for all Americans.
- Ensure that American consumers can choose among multiple reliable and affordable communications services.
- Promote pro-competitive and universal access policies worldwide.
- Work to inform American consumers about their rights and responsibilities in the competitive communications marketplace.
- Enforce the Commission's rules for the benefit of consumers.

FY 2009 PERFORMANCE HIGHLIGHTS

Promote access to telecommunications services for all Americans:

During FY 2009, the FCC addressed the key topics of innovation, investment and competition. These values lie at the core of the FCC's mission; they are essential to ensuring that communications in the 21st century will serve as an enduring engine of economic growth for our nation and improve the lives of all Americans.

- On August 27, 2009, the Commission adopted *Consumer Information and Disclosure; Truth-in-Billing and Billing Format, IP-Enabled Services*, Notice of Inquiry, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36, FCC 09-68

(released August 28, 2009). The Commission sought information as to whether there are additional opportunities to protect and empower American consumers by ensuring sufficient access to relevant information about communications services. The Commission sought comment on how best to ensure consumers have the information they need to make informed decisions in the communications marketplace.

- The Wireless Innovation and Investment Notice of Inquiry adopted by the Commission focuses on the FCC's particular responsibility for managing spectrum, a unique and scarce national resource. It recognizes the vital importance of innovators and entrepreneurs to the work of the Commission. Specifically, it requests inputs and ideas for how the FCC can best maximize investment and innovation in the mobile industry. The inquiry seeks to ascertain what actions the Commission currently undertakes that perhaps it should cease, and what new steps can be taken to fulfill strategic objectives of fostering investment and innovation for our country. The goal of the Wireless Competition Notice of Inquiry is to build a solid, analytic foundation for predictable, fact-based competition policy in the wireless sector. This process will continue with the other competition reports the agency is responsible for preparing. The Competition NOI was adopted during the Commission's August meeting and was released on August 27, 2009.
- Competition serves to increase access to telecommunications services for all Americans, including persons with disabilities. On December 19, 2008, the Commission adopted and released the *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, Second Report and Order and Order on Reconsideration, FCC 08-275. During this fiscal year, the Commission adopted a system to assign ten-digit numbers for users of Internet-based Telecommunications Relay Services (TRS) so that Americans with hearing and speech disabilities can be called in the same manner that voice telephone users are called. The Commission order also ensures that emergency calls placed by these users will be routed directly and automatically to appropriate emergency services authorities by the Internet-based TRS providers.
- The Media Bureau completed a number of high priority projects requiring analysis of industry and market conditions. Staff created comprehensive, market-by-market breakdowns of MVPD penetration for the county. Other efforts regarding competitive analysis include completion of a cable price survey report covering three years of data and review of several transactional matters, including the Time Warner restructuring and News Corp.'s petition to remove merger conditions imposed when it acquired an interest in DIRECTV.
- The Office of General Counsel (OGC) was involved in litigation and other actions focused on access to telecommunications services, including:
 - **High-Cost Support.** OGC attorneys successfully opposed a motion to stay the Commission's decision to impose an interim, emergency cap on the amount of

high-cost support that competitive eligible telecommunications carriers may receive. *Rural Cellular Ass'n et al. v. FCC*, (D.C. Cir. Nos. 08-1084, 1085).

- ***United States v. Southwestern Bell Telephone Company***. This case involved allegations of improperly extended contracts and other competitive bidding violations (e.g., payment of gifts to school district personnel) in connection with E-Rate funding provided by the former SBC (now AT&T) in the Kansas City, Mo. school district. AT&T paid the Government \$1.4 million, of which \$1,163,000 will flow to reimburse the Universal Service Fund (USF). AT&T has also executed an E-Rate Compliance Agreement with the Commission.
- ***AT&T Indiana***. The alleged fraud occurred during 1998-2004 and involved E-Rate services provided to a consortium of schools and libraries in Indiana, the Intelenet Commission. The Commission has received \$8,018,421 from AT&T to reimburse the USF which, when added to the \$6.9 million previously repaid by the State of Indiana, reflects 90% recovery of the fraudulently-disbursed amounts. In addition, AT&T Indiana must comply with a detailed E-Rate Compliance Agreement, including a three-year voluntary debarment of the AT&T subsidiary.
- ***United States ex Rel. John Lyons v. Computer Assets, Inc., Abraham Salazar and Damon Salazar***. This involved alleged conflicts of interest in the provision of E-Rate goods and services to the Kayenta Unified School District in Kayenta, New Mexico. Computer Assets will repay \$350,000 over three years.
- ***Dallas Independent School District***. The alleged fraud in this case involved non-competitive bidding practices that tainted approximately \$93 million in E-Rate funding disbursed for funding years 2003-2005. The settlement included a payment by Dallas ISD of \$750,000, which is intended to partially reimburse the USF. Dallas ISD is also relinquishing all pending funding requests associated with the alleged misconduct. The total value of the settlement to the USF is more than \$150,750,000. To prevent future non-compliance and protect against waste, fraud and abuse, we also negotiated a robust E-Rate Compliance Agreement tailored to the improper conduct.
- ***United States v. Federowicz, United States v. Brown and Madieros, United States v. Kennedy, United States v. Mello***. Employees and subcontractors for SBC/Southern New England Telephone (now AT&T) defrauded the E-Rate program between 2001 and 2004 by submitting invoices for work that was not performed and by inflating invoices for work that was performed for several school districts in Connecticut. AT&T signed an agreement with the Commission to pay the USF all amounts that are still owed.
- ***Harbinger/Skyterra/Inmarsat***. Harbinger, a series of funds controlled by Phil Falcone, has applied to acquire Skyterra Communications, Inc., which itself holds nearly all the stock of Mobile Satellite Ventures, LLC (“MSV”). Additionally, once that transaction has closed, Harbinger intends to use Skyterra as an acquisition vehicle for Inmarsat. MSV is a provider of land mobile satellite services. Inmarsat operates eleven geostationary satellites and is a leading provider of global mobile satellite communications services. In addition, the Transaction Team took the lead in addressing questions

concerning the intersection of the tender offer rules of the United Kingdom and the Commission's filing requirement regulations. This complication led Harbinger to separate the proposed transaction into two stages with separate applications

- **Verizon/Alltel.** In November 2008 the Commission approved Verizon's purchase of Alltel. The Commission's order approving the application required as a condition that Verizon divest its business, spectrum, and customers in 105 markets, and also required certain protections for regional wireless carriers who had formerly roamed on the Alltel network. After the initial transaction closed a dispute arose between Verizon and certain rural carriers concerning the interpretation of the Commission's roaming condition. Members of the Transaction Team have taken the lead reviewing Verizon's compliance with the merger conditions.
- The Office of Managing Director (OMD) continued to develop and execute the USAC oversight program as outlined within the memorandum of agreement between USAC and the FCC. OMD provided focused oversight on USAC's Financial Systems Modernization proposal, as well as its capital planning and investment processes and reporting activities.
- OMD performed monthly reviews and prepared monthly reports of the administrative expenses of the TRS administrator and conducted a Fraud Risk assessment and Internal Control analysis of TRS and identified weaknesses to be strengthened.
- OMD performed monthly reviews and prepared monthly reports of the administrative expenses of the North American Numbering Plan (NANP) administrator and conducted a Fraud Risk assessment and Internal Control analysis of NANP and identified weaknesses to be strengthened.
- On April 2, 2009, the Wireless Competition Bureau (WCB) completed its annual review and approval of USAC's schools and libraries program integrity assurance procedures for the upcoming program funding year.
- WCB released the following reports during FY2009:
 - High Speed Services for Internet Access (released January 16, 2009 and July 23, 2009)
 - Local Telephone Competition (released July 23, 2009)
 - Telecommunications Industry Revenue Report (released September 3, 2009)
 - Telephone Subscribership in the United States (released March 13, 2009, June 4, 2009, August 13, 2009)
 - Telephone Penetration by Income by State (released August 6, 2009)
 - Numbering Resource Utilization in the United States (released March 13, 2009 and September 13, 2009)

Ensure that American consumers can choose among multiple reliable and affordable communications services:

- The Wireless Telecommunications Bureau (WCB) worked to promote a competitive wireless marketplace and provide American consumers with access to a choice of wireless service providers. In this role, the Bureau reviewed proposed mergers and transactions in the wireless industry. For example, the Bureau examined on an extremely expedited basis the proposed transfer of control of wireless licenses, leases, and international and domestic authorizations held by ALLTEL and its subsidiaries to Verizon Wireless. The Commission approved the transfer of control of these licenses, leases, and authorizations by a Memorandum Opinion and Order and Declaratory Ruling issued November 10, 2008.
- The Bureau also reviewed on an extremely expedited basis the transfer of control of licenses, authorizations, and spectrum manager leasing arrangements in the 2500-2690 MHz band held by Sprint Nextel and its subsidiaries to New Clearwire Corporation. The Commission released a Memorandum Opinion and Order approving the transaction on November 7, 2008.
- The Office of General Counsel was involved in litigation focused on competition and consumer choice, including:
 - ***Forbearance Proceedings.*** OGC attorneys successfully defended the Commission's determination that Fones4All could not use the forbearance process under Section 10 of the Communications Act to resurrect rules requiring the unbundling of local switches by incumbent local exchange carriers. *Fones4All Corp. v. FCC*, 550 F.3d 811 (9th Cir. 2008), petition for rehearing denied, 561 F.3d 1031 (9th Cir. 2009). OGC attorneys also successfully defended a Commission order denying a request by Core Communications, Inc. that the agency forbear from enforcing or applying rate regulation preserved by Section 251(g) of the Communications Act and rate averaging and rate integration required by Section 254(g) of the Act. *Core Communications, Inc. v. FCC*, 545 F.3d 1 (D.C. Cir. 2008). OGC attorneys successfully defended in significant part a Commission order denying six petitions for forbearance filed by the Verizon Telephone Companies seeking forbearance from the obligation to unbundle specific elements of its network and to lease those facilities to prospective competitors. The court rejected Verizon's argument that the Commission erred by denying forbearance without making a new impairment determination under Section 251. The court also denied Verizon's request that it order the Commission to issue a new decision within 30 days of the issuance of the mandate. The court remanded (but did not vacate) the Commission's order on the limited grounds that the agency failed to explain its departure from agency precedent. *Verizon Telephone Cos. v. FCC*, 570 F.3d 294 (D.C. Cir. 2009).
 - ***Interconnection.*** OGC attorneys successfully defended against a request by North County Communications Corp. (a competitive local exchange carrier) for a writ of mandamus directing the Commission to rule on an administrative

complaint it filed in 2006 against Metro PCS California, LLC (a commercial mobile radio service carrier) in connection with traffic delivered by MetroPCS to North County. *In re: North County Communications Corp.*, D.C. Circuit No. 09-1019 (July 15, 2009).

- **Local Number Portability.** OGC attorneys successfully defended the Commission's decision to subject rural carriers to the rules governing local number portability. *National Telecomm. Coop. Ass'n v. FCC*, 563 F.3d 536 (D.C. Cir. 2009).
- **Retention Marketing.** OGC attorneys successfully defended the Commission's ruling that Verizon violated Section 222(b) of the Communications Act by using number porting information it received from competing carriers to engage in a retention marketing campaign designed to persuade Verizon customers to abandon their plans to leave Verizon for a competing telecommunications carrier. *Verizon California Inc. v. FCC*, 555 F.3d 270 (D.C. Cir. 2009).
- **XM/Sirius.** Two parties filed suit in the D.C. Circuit challenging a Commission order approving the consolidation of the nation's two satellite radio service providers, as well as two other Commission orders that adopted consent decrees terminating certain enforcement actions against each of these providers. OGC attorneys successfully argued that the parties challenging the Commission's orders lacked standing and that their suits should therefore be dismissed. The court's dismissal of these cases preserves the Commission's competition policy as reflected in its order approving the XM/Sirius transaction. *Hartlieb v. FCC*, No.08-1289, (D.C. Cir. Jan.30, 2009).
- **Cable MDU Exclusivity Agreements.** OGC attorneys successfully defended FCC rules prohibiting cable operators and certain other multiple video programming distributors (MVPDs) from entering into or enforcing exclusive access agreements with owners and operators of apartment buildings and other multiple unit dwellings. *National Cable & Telecomm. Ass'n v. FCC*, 567 F.3d 659 (D.C. Cir. 2009).

Promote pro-competitive and universal access policies worldwide:

- The Commission acted upon 267 international Section 214 applications filed in connection with the provision of international telecommunications services to and from the United States. This includes 189 streamlined Section 214 applications and 78 non-streamlined Section 214 applications. Ninety-six percent of the streamlined applications were processed within our speed of disposal goals. Of the seventy-eight non-streamlined applications, fifty-nine applications (seventy-six percent) were processed within our speed of disposal goals. Another nineteen applications were delayed pending review by the Executive Branch for law enforcement, national security, foreign policy and trade concerns, and were processed within our speed of disposal goals once the Executive Branch completed its review. In addition, 57 Special Temporary Authorization (STA) applications were processed.

- Commission staff acted upon eight submarine cable landing license applications filed in connection with the provision of international telecommunications services to and from the United States. This includes three Submarine Cable Landing License applications for authorization of new providers of international services, two of which were streamlined applications and one non-streamlined application. All of these applications were processed within our speed of disposal goals. The FCC also acted upon five transfers of control and assignments of submarine cable landing authorizations, of which all were processed within our speed of disposal goals. In addition, twelve pro-forma transfer of control and eight Special Temporary Authorization (STA) applications were processed.
- IB staff processed over 90% of non-controversial satellite and earth station transfer of control and/or assignment of applications within 180 days.
- The FCC received one set of applications for transfer of a U.S. licensed satellite to another country, filed February 17, 2009. Action on these applications is not yet complete. However, the FCC has granted temporary authority to permit operations consistent with the proposed transfer.
- In October 2008, the International Bureau (IB) released the second annual Report on the Status of Competition in the markets for domestic and international satellite communications. The report is required by Section 703 of the Communications Satellite Act of 1962.
- International Bureau staff continued to monitor the average international calling rate to U.S. consumers, which fell from 9.3 cents per minute in 2007 to 8.5 cents per minute in 2008. This continues a trend of falling rates since 1999 when the average international calling rate was 51 cents per minute. In order to ensure that this trend continues, the Bureau monitors the effect of foreign mobile termination rates on U.S. consumers based upon the record, established from the Commission's 2004 Notice of Inquiry on this subject. In addition, the Bureau is taking action when necessary to protect competition and prevent rates from rising above costs. In 2009, the Bureau issued an order stopping all U.S. carrier payments to a foreign carrier that had substantially increased termination rates above cost and cut off the circuits of U.S. carriers which refused to pay the increased rates.
- In June 2009, IB released a report discussing 2007 International Telecommunication Data, which reports traffic between the U.S. and other countries for international message telephone, private line, and miscellaneous services on a country-by-country basis.
- IB staff participated in ITU Telecommunication Sector Study Group-3 to discuss international calling issues and tariffs in other countries, and provided economic and other expertise to the U.S. delegation as it addressed foreign contributions on mobile termination rates and other issues, thereby learning about approaches in international calling in other countries.

Work to inform American consumers about their rights and responsibilities in the competitive communications marketplace:

- On May 13, 2009, the FCC released a *Report & Order* changing its rules to shorten the period of time for simple requests to move a person's existing telephone number from one carrier to another. The required time was shortened from four days to one business day. Simple requests generally do not involve more than one line. The new deadline applies not only to requests between wireline carriers or between wireless providers, but also includes requests from wireline to wireless, wireless to wireline, wireline or wireless to VoIP, or other combinations. The new rules will take effect in late summer 2010 for most carriers.
- During FY 2009, the Consumer and Governmental Affairs Bureau (CGB) received 30,052 Junk Fax complaints and 39,153 Do-Not-Call complaints. They responded to 100% of these complaints by either referring the cases to the Enforcement Bureau or notifying consumers that their complaints could not be referred for enforcement. In addition, the Bureau received over 89,300 other Telephone Consumer Protection Act (TCPA) complaints. Throughout the fiscal year, the Bureau consistently responded to all TCPA complaints within 20 days of receipt.
- CGB also received 165,177 non-TCPA consumer complaints. The Bureau eliminated a backlog of older complaints, so that it processed not only the new complaints, but a total of 519,351 complaints during the fiscal year. The Bureau responded to the majority of non-TCPA consumer inquiries within 30 days.
- CGB staff drafted three consumer advisories regarding ten-digit numbering. Bureau staff updated all publications when required and facilitated translation of those publications into Spanish. The Bureau facilitated placement of an American Sign Language video presentation on the FCC website and held a web-accessible workshop.

Enforce the Commission's rules for the benefit of consumers:

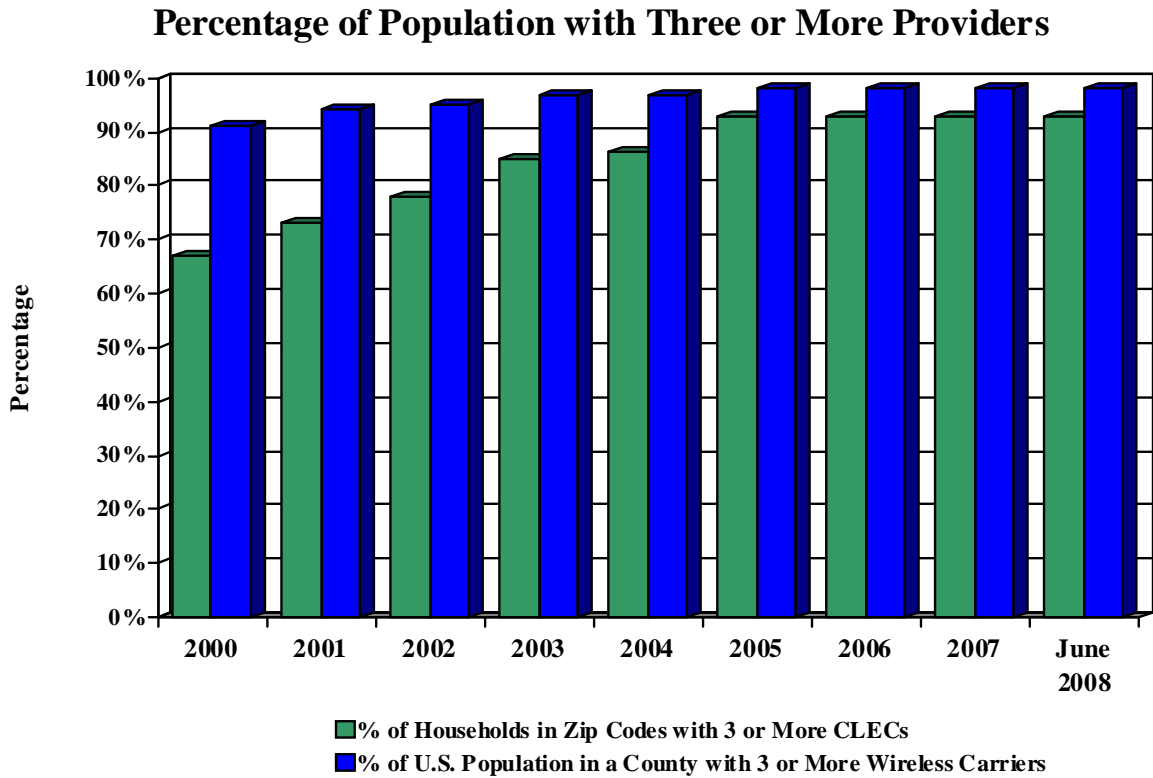
- The Enforcement Bureau has initiated numerous investigations into whether various common carriers have violated the Communications Act and the Commission's rules related to the opening of markets to competition. To support the Commission's goals related to competition, Universal Service, access to communications services for people with disabilities, and other competition and consumer protection issues were high priorities. Actions taken in these areas include:
 - Universal Service: Strong enforcement of the Commission's universal service rules, resulting in:
 - Release of forfeitures, Notices of Apparent Liability, or Consent Decrees totaling more than \$7 million in fines or voluntary contributions to the U.S. treasury. The investigations associated with these enforcement actions resulted in the recovery by or repayment to the Universal Service Fund of over \$20 million.

- Execution of settlement agreement with AT&T, resulting in a \$10.08 million voluntary contribution and compliance plan.
 - Debarment of 17 individuals convicted of federal crimes relating to their defrauding the government through activities related to the schools and libraries E-rate support mechanism.
 - CPNI: Comprehensive review of carriers' annual compliance filings regarding the Commission's customer proprietary network information (CPNI) rules resulted in the release of an omnibus Notice of Apparent Liability (NAL) against 666 companies that did not timely file a CPNI compliance certification and 81 NALs against companies that had non-compliant CPNI certification filings.
 - Formal Complaints and Alternative Dispute Resolution:
 - *North County Communications v. MetroPCS California LLC*. Denied a formal complaint alleging, *inter alia*, that MetroPCS violated section 251(b)(5) of the Act by failing to negotiate in good faith a written reciprocal compensation arrangement.
 - *MAP Mobile Communications, Inc., v. Illinois Bell Telephone Company*. Bureau-level order granting a CMRS carrier's claims that certain of the defendant ILECs had violated section 201(b) of the Act and section 51.703(b) of the Commission's rules by charging for the transport and termination of intraMTA traffic that originated on the ILECs' networks.
 - Released 11 division-level orders dismissing formal complaints due to settlements arising in part from staff's case management and mediation efforts. Provided alternative dispute resolution assistance, including mediation where appropriate, regarding 34 complex disputes covering a wide range of substantive issues.
- Accessibility: Enforcement Bureau enforced the Commission's rules regarding accessible telecommunications products and services through issuance of one Admonishment, one NAL totaling \$6,000 and 4 Consent Decrees totaling \$52,000 for violations of the hearing aid compatibility handset, labeling and reporting requirements.
- The Office of General Counsel was involved in litigation enforcing FCC rules for the benefit of consumers , including:
 - **Consumer Privacy Issues**. OGC successfully defended against a First Amendment challenge to the Commission's CPNI rules, which forbid carriers from sharing customers' private information with joint venture partners and independent contractors unless the customer has affirmatively approved the sharing. *National Cable & Telecomm. Ass'n v. FCC*, 555 F.3d 996 (D.C. Cir. 2009).

FY 2009 PERFORMANCE INDICATORS

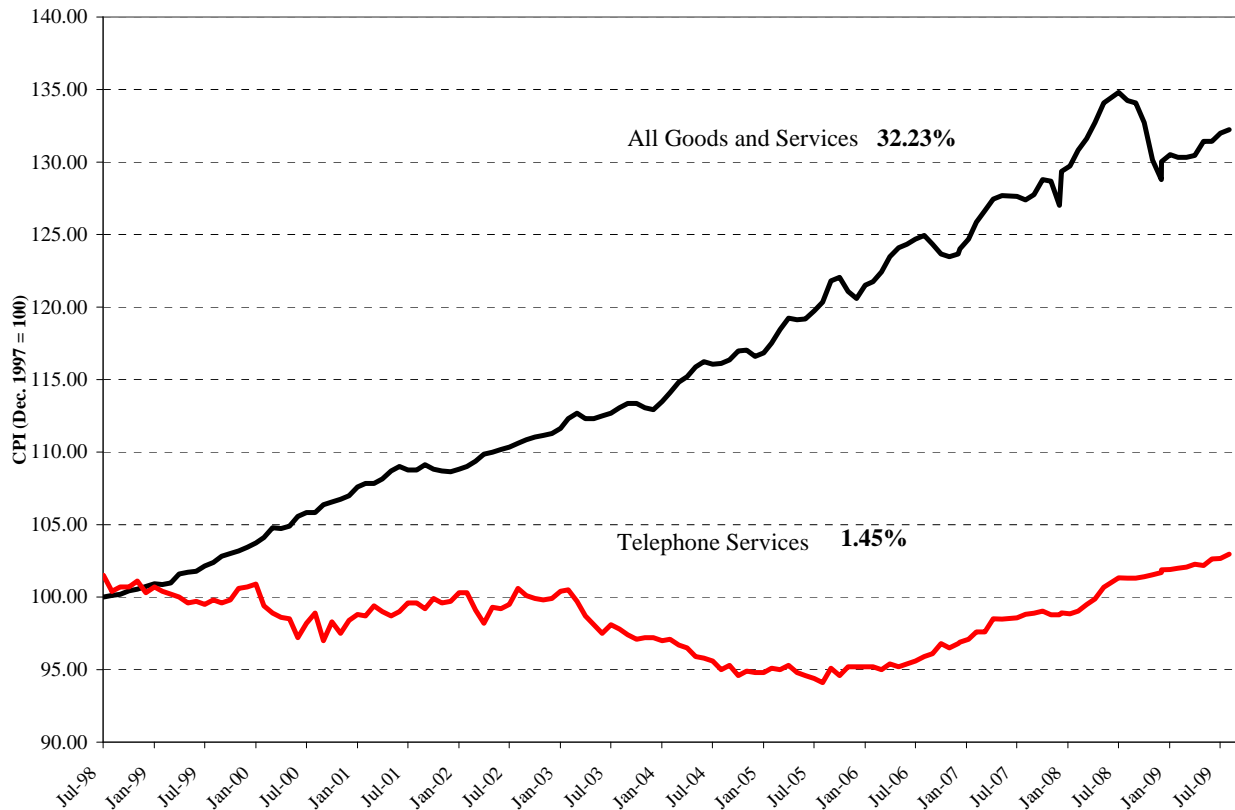
Increase the number of consumers and businesses who have a choice among wireless and wireline service providers

The percentage of U.S. households living in zip codes served by three or more wireline local exchange carriers has climbed from 67% in 2000 to 93% in June 2008. Similarly, the percentage of the U.S. population living in counties served by three or more wireless carriers has climbed from 91% in 2000 to 98% in June 2008. (Year shown is calendar year unless otherwise noted.)



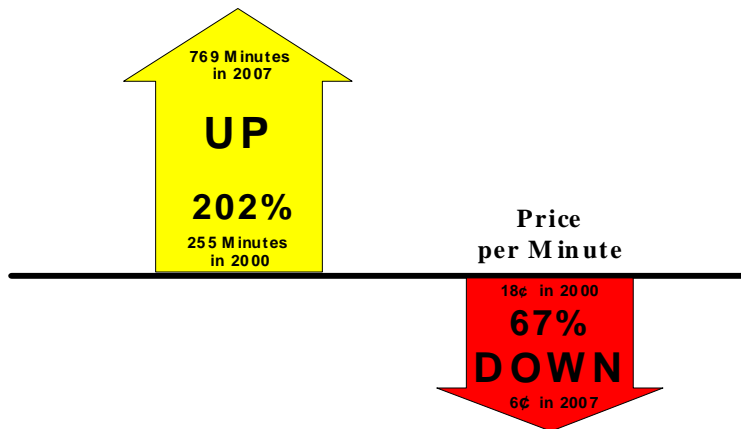
The consumer price for telephone services has remained virtually the same since July 1998 compared to the price of other goods and services. The chart on the following page uses data from the Bureau of Labor Statistics to compare the Consumer Price Index (CPI) for Telephone Services with the CPI for all goods and services, using July 1998 price levels as the base (equal to 100). The Telephone Services included in this index include Local Telephone Service, Long Distance Charges, Interstate Toll Service, Intrastate Toll Service, and Wireless Telephone Services. In contrast to a 32.23% increase in the CPI for all goods and services, measured from July 1998 to September 2009, the Telephone Services price index has increased a mere 1.45%.

Telephone Services and the Consumer Price Index



Consumer prices for telephone services continue to fall

AVERAGE PRICE PER WIRELESS MINUTES OF USE PER MONTH 2000 TO 2007

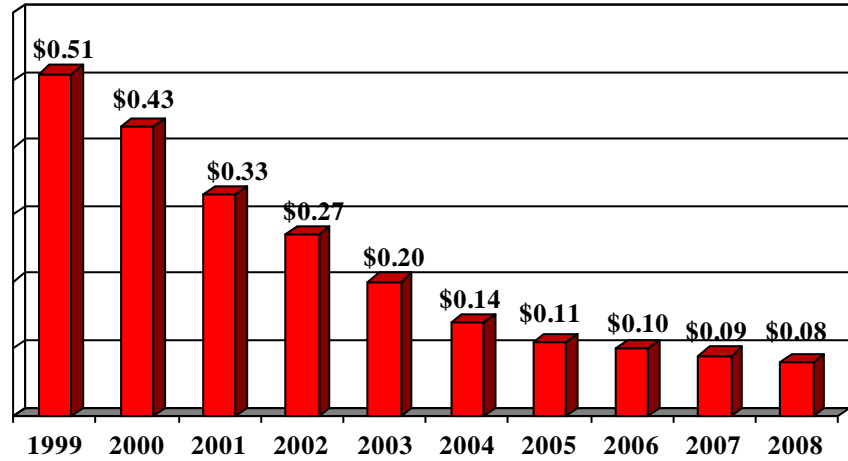


The average price of wireless telephone calls has fallen since the beginning of the decade. As illustrated by the accompanying chart, the average price per wireless minutes of use per month for mobile telephone service, including both individual and business users, has fallen since 2000, down to seven cents per minute in 2007.⁶ (Year shown is calendar year.)

Decrease in the price for international calls

Price Per Minute for An International Call

The average international calling rate for U.S. consumers fell from 51¢ per minute in 1999 to 8¢ per minute in 2008. (Year shown is calendar year.)



SPECTRUM

Strategic Goal:

The Commission must facilitate efficient and effective use of non-federal spectrum domestically and internationally to promote the growth and rapid deployment of innovative and efficient communications technologies and services.

The Commission is committed to fostering the rapid deployment of innovative and efficient radio communications technologies and services. Emerging wireless technologies could be used to provide ubiquitous, mobile broadband connections; encourage intermodal competition; and promote public safety and homeland security. The promise of such services, however, is dependent on the availability of spectrum. Because there is growing demand for rival uses of spectrum, creating a policy environment that effectively distributes and manages available spectrum is a critically important strategic objective for the Commission.

FY 2009 PERFORMANCE GOALS

- Ensure that the Nation's spectrum is used efficiently and effectively.
- Advocate U.S. spectrum interests in the international arena.
- Enforce the Commission's spectrum regulations and policies.

FY 2009 PERFORMANCE HIGHLIGHTS

Ensure that the Nation's spectrum is used efficiently and effectively:

- In its continuing efforts to promote efficient use of spectrum and to extend the benefits of such use to the public, the FCC established rules to allow new, sophisticated wireless devices to operate in broadcast television spectrum on a secondary basis. This unused TV spectrum is now commonly referred to as television "white spaces". These rules will allow for the use of new and innovative types of unlicensed devices in the unused spectrum to provide broadband data and other services for consumers and businesses. The rules represent a careful first step to permit the operation of unlicensed devices in the TV white spaces and include numerous safeguards to protect incumbent services against harmful interference.
- The Commission adopted a Notice of Proposed Rulemaking seeking comment on allocating spectrum and establishing service and technical rules for the operation of Medical Body Area Networks (MBAN). These could be used to create wireless body sensor networks around individual patients to monitor an array of physiological data, such as temperature, pulse, blood glucose level, blood pressure, respiratory function

and a variety of other physiological metrics. MBAN systems would primarily be used in health care facilities, with the potential also of being used in other patient care/monitoring circumstances.

- The FCC approved new rules to provide additional spectrum for wireless medical devices. Significant advances in both implanted and body-worn wireless medical technologies are increasing the demand for spectrum and for greater flexibility in how such devices operate and coexist. These new medical technologies will improve the diagnosis and treatment of a wide variety of medical conditions and, most importantly, improve quality of life for people coping with such conditions.
- The Commission adopted rules for the use of distributed transmission system (DTS) technologies for digital television service. DTS provides broadcasters with an important tool for providing optimum signal coverage for their viewers. For some broadcasters that changed channels or transmitting locations for their digital service, DTS may offer the best option for continuing to provide over-the-air service to current analog viewers, as well as for reaching viewers that have historically been unable to receive a good signal due to terrain or other interference.
- Interoperable communications between government entities for the common good has been a major issue since tragic events of September 11, 2001. It is critical that public safety and homeland security officials at all levels of government have the ability to communicate seamlessly and effectively in times of crisis. FCC management and staff have worked to resolve this issue through workshops and projects involving local, tribal, state, and federal agencies. For example, Commission staff worked with the Department of Homeland Security's Office of Emergency Communications in its implementation of Section 302 of the *Implementing Recommendations of the 9/11 Commission Act*, Public Law 110-53. The legislation authorizes a competitive grant program to establish six pilot projects to improve interoperability among local, tribal, state, federal and international partners along and across borders with Canada and Mexico. The Commission, in consultation with the Department of State, the Department of Homeland Security and the Office of Management and Budget, submitted a report to Congress on the status of cross border interoperability issues between the U.S. and Mexico and the U.S. and Canada on January 13, 2009.
- To support the Commission's strategic goals relating to spectrum, the Enforcement Bureau (EB) focused on protecting our nation's airwaves from unlicensed operation and resolving interference problems, both domestic and international, among other spectrum-related issues. Some of the actions taken by the Bureau include:
 - Interference: Through the work of its Field Offices and the Spectrum Enforcement Division, the Bureau initiated approximately 1150 investigations of non-emergency interference complaints during FY 2009.
 - Broadcast Rules: Through the work of its Field Offices, EB issued sanctions involving:

- Broadcast Public Inspection File – The Bureau issued 7 Notices of Apparent Liability (NALs) for public inspection file violations totaling \$64,000.
 - Broadcast Main Studio – The Bureau issued 2 NALs for main studio violations totaling \$31,000.
 - Antenna Structures – The Bureau opened 590 total cases involving antenna structure marking and lighting, resulting in 23 NALs totaling \$142,000.
 - Pirate Radio: The Bureau opened 213 pirate radio cases, shut down 106 unlicensed broadcast stations, and issued 12 NALs totaling \$109,000.
- Equipment Marketing Rules: The Bureau initiated 45 investigations into possible violations of the Commission’s equipment marketing rules, resulting in the issuance of 11 Citations, 10 NALs totaling \$141,600, 1 Forfeiture Order totaling \$50,000, and 15 Consent Decrees totaling \$212,500.
- Unauthorized Operation: The Bureau initiated 14 investigations into possible violations relating to unauthorized operation or operation at variance from authorizations, resulting in issuance of 8 NALs totaling \$102,800, 1 Forfeiture Order totaling \$5,200, and 3 Consent Decrees totaling \$69,000.
- On October 14, 2008, the Bureau released an order adopting a Consent Decree entered into with GAP Broadcasting, LLC. The Consent Decree terminated an investigation of compliance by GAP, an applicant for FM broadcast construction permits in Auction 70, with Sections 1.2105(c)(1) and (c)(6) of the Commission’s rules relating to collusive conduct. Pursuant to the Consent Decree, GAP agreed, among other things, to make a voluntary contribution to the United States Treasury in the total amount of \$65,000.00 to resolve the investigation.
- On January 15, 2009, The Bureau released an order adopting a Consent Decree entered into with AT&T, Inc. The Consent Decree terminated an investigation into compliance by AT&T Inc. with the terms and conditions contained in *Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 20295 (2007). Pursuant to the Consent Decree, AT&T agreed, among other things, to make a voluntary contribution to the United States Treasury in the total amount of \$2,380,000 to resolve the investigation
- On February, 10, 2009, the Bureau released a Notice of Apparent Liability for Forfeiture against Cascade Access, L.L.C. The NAL determined that Cascade, an applicant to participate in Auction 73, apparently had engaged in a prohibited communication and failed to notify the Commission in apparent violation of Sections 1.2105(c)(1) and (c)(6) of the Commission’s rules. The NAL proposed a forfeiture in the amount of \$75,000.
- On May 14, 2009, the Bureau released an order adopting a Consent Decree entered into between by the Bureau and ARINC, Inc. The Consent Decree terminated an investigation into compliance by ARINC with Section 310(d) of the Communications Act of 1934, as amended, relating to unauthorized transfers of control. Pursuant to the Consent Decree, ARINC agreed, among other things, to make a voluntary contribution to the United States Treasury in the amount of \$15,000.00 to resolve the investigation.

- The Public Safety and Homeland Security Bureau (PSHSB) continued to actively oversee the implementation of 800 MHz rebanding, which commenced in June 2005. The Bureau provided direction to the 800 MHz Transition Administrator (TA) in its mediation of disputes between relocating licensees and Sprint Nextel, and in connection with the TA's advancement of the band reconfiguration process. Disputes that were not settled in mediation between the licensees and Sprint Nextel were referred to and resolved by the Bureau. On October 30, 2008, the Commission adopted an *Order*, FCC 08-253 (WT Docket 02-55) setting the conditions under which Sprint is incrementally relinquishing spectrum in the 809-817/854-862 MHz band for public safety use.
- Under State Department auspices, PSHSB reached agreement with Canada for the use of the 800 MHz band in the border areas, and continues to pursue a similar agreement with Mexico.
- PSHSB's High Frequency Direction Finding Center located the source of 234 cases of radio spectrum interference FY 2009. Over 100 of these cases were interference to public safety spectrum users.
- The Media Bureau's efficient processing of applications reduced regulatory delays experienced by licensees and benefited the public by expediting improved radio and television services. During this fiscal year, the Bureau resolved over 13,000 applications filed by broadcast licensees. The Bureau published over 200 staff decisions disposing of contested licensing matters and disposed of more than 1,000 non-commercial FM applications.
- During this fiscal year, the Media Bureau disposed of 2,314 radio broadcast station applications for assignment and transfer of control; 426 full service broadcast television station applications for assignment and transfer of control; and 637 low power television, TV translators and Class A television broadcast station applications for assignment and transfer.
- The low power television service, consisting of Class A, LPTV and TV translator stations, is an important source of local community information. During this fiscal year, 894 LPTV analog stations filed applications seeking on-channel conversion permits for digital operations, and 656 digital construction permits were granted. Six hundred eighty-six LPTV, TV translator, and Class A television stations were issued licenses covering the construction and initiation of their DTV facilities. Commencing on August 25, 2009, incumbent analog LPTV and TV translator stations were afforded an opportunity to file applications for new digital-only stations in rural areas, subject to first-come, first-served processing. To date, 1,501 digital construction permits have been filed by LPTV and TV translator stations.
- The Media Bureau pursued policies and actions that promoted efficient use of the spectrum and facilitated the deployment of new and existing services. Actions also were taken to fully utilize the FM band nationwide, including making an FM allotment

channel finder available to the public. This computer program, created by the Bureau's Audio Division, assists potential radio applicants in identifying suitable available commercial FM spectrum.

- During this fiscal year, the Media Bureau improved radio licensing policy through these actions:
 - Adopted a *Report and Order* that permitted AM stations to rebroadcast their signals on FM translators. These rule changes will substantially advance the Commission goals of localism and diversity.
 - Drafted a *Notice of Proposed Rulemaking* to promote rural radio service. The NPRM's proposals would substantially modify licensing rules that have been in place for almost thirty years in order to increase the availability of radio service in underserved areas including tribal areas.
 - Drafted a *Report and Order* which could vastly expand and strengthen the low power FM service.
 - Drafted an NPRM to overhaul FM translator licensing policies to eliminate speculation and trafficking.

- The Office of General Counsel was involved in litigation and legal advisory matters concerning spectrum auctions and spectrum management, including:
 - ***Airadigm Communications*** (*Chapter 11, Bankr. W.D. Wisconsin*). In this long-running Chapter 11 bankruptcy proceeding in the Western District of Wisconsin, the Commission has a claim relating to approximately \$100 million of auction installment debt. The case involved multiple decisions on novel issues by the bankruptcy court, the district court, and the Seventh Circuit Court of Appeals. The Bankruptcy Team worked closely with the Department of Justice (DOJ) throughout, including briefing and preparing for the oral argument before the Seventh Circuit in May 2009.
 - ***Alpine PCS***. This Chapter 11 bankruptcy case was initiated in August 2008 by Alpine PCS in an attempt to stop the Commission's auction of the spectrum underlying two licenses Alpine once owned, but that were cancelled in 2002 for nonpayment. The Bankruptcy Team provided timely, essential assistance in preparing briefs and argument on expedited motions in the Bankruptcy Court. The Bankruptcy Court ruled that Alpine's bankruptcy estate has no interest in the licenses, and that the Bankruptcy Court had no power to stay the auction. The Bankruptcy Team also assisted DOJ in opposing Alpine's appeal of the Bankruptcy Court's decision, which was rejected by the United States District Court for the District of Columbia.
 - ***Wireless Telecommunications Inc.*** (*Chapter 11, Bankr. M.D. Pennsylvania*). Under a settlement developed by the Bankruptcy Team, the debtor's licenses were assigned to new parties and the proceeds of the sale were used to first pay the outstanding auction debt owed to the Commission by the debtor, including full payment of all outstanding principal and a substantial payment of outstanding interest.
 - ***2155-2175 MHz***. OGC attorneys successfully defended the Commission's denial of M2Z's application for a nationwide, 15-year exclusive license to

provide wireless broadband internet access in the 2155-2175 MHz band. The D.C. Circuit held that it was reasonable for the Commission to consider competing applications and uses for the spectrum before granting an exclusive license to M2Z. *M2Z Networks, Inc. v. FCC*, 558 F.3d 554 (D.C. Cir. 2009).

- **Designated Entity Rules.** OGC attorneys successfully defended the FCC's 700 MHz Service Rules Second Report and Order. Council Tree Communications, Inc. argued that the FCC had erred in applying to the recently-completed 700 MHz auction the Commission's existing rules governing the eligibility of certain small businesses ("designated entities" or "DEs") for auction bidding credits and sought to have that auction unwound. *Council Tree Communications, Inc. v. FCC*, 2009 WL 1066925 (D.C. Cir. 2009).
- **Private Land Mobile Licensing.** OGC attorneys successfully defended in court a Commission Order affirming a decision that denied Morris Communication Inc.'s request for a waiver of the FCC's installment payment rules and reinstatement of nine 900 MHz Specialized Mobile Radio licenses that Morris had won at auction. Pursuant to the FCC's rules, those licenses automatically cancelled when Morris failed to make its quarterly installment payments after two 90-day grace periods. *Morris Communications, Inc. v. FCC*, 556 F.3d 184 (D.C. Cir.2009).
- **Forfeitures.** OGC attorneys successfully moved for summary judgment in an action to enforce a forfeiture against the licensee of an AM radio station that violated FCC rules by broadcasting above permissible power limits after sunset on several occasions. The case established that the Small Business Regulatory Enforcement and Fairness Act does not require the Commission to develop a policy to reduce or waive monetary forfeitures. The district court entered summary judgment for the government and directed the licensee to pay the forfeiture. *United States v. Neely*, 595 F.Supp. 2d 662 (D.S.C. 2009).
- **Big LEO Proceedings.** OGC attorneys successfully defended the Commission's decision to rebalance spectrum assignments to reflect the spectrum needs of two licensees. The victory will help ensure that all Big LEO licensees have adequate spectrum to support the needs of their customers, which include residents of rural areas and military service members serving in faraway places such as Iraq and Afghanistan. *Globalstar Inc. v. FCC*, 564 F.3d 476 (D.C. Cir 2009). During the past fiscal year, the Commission made significant progress in resolving disputes between providers of Mobile Satellite Service (MSS) in the Big LEO bands by reallocating spectrum and proposing related license modifications. The MSS services involved are important for their potential to serve rural areas of the United States with telecommunications services including broadband.
- **Migratory Birds.** In conjunction with the Justice Department, OGC attorneys successfully defended a district court judgment dismissing a lawsuit brought against the FCC under various environmental statutes. The lawsuit involved a number of antenna towers in Hawaii that were allegedly interfering with wildlife. The decision establishes an important precedent ensuring that

litigants follow the proper procedural requirements before challenging agency action. *American Bird Conservancy v. FCC*, 545 F.3d 1190 (9th Cir. 2008).

- Auctions of Spectrum Licenses – The Commission held two spectrum auctions during FY 2009:

Auc. #	Service	Auction Open-Close Date	# of Licenses/ Construction Permits in Auction	# of License s/ CPs Won in Auction	# of Winning Bidders	Net Winning Bids
85	LPTV and TV Translator Digital Companion Channels	Nov. 5-10 2008	122	85	53	\$6,238,100
79	FM Broadcast	Sept. 1-15 2009	43	30	19	\$173,350

Advocate US spectrum interests in the international arena:

- On October 10, 2008, the Commission released an Eighth Report and Order of the 2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission’s Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations in which the Commission furthered streamlined non-routine earth station processing rules by adopting a new earth station procedure that will enable the Commission to treat more applications routinely than is possible under current earth station procedures.
- On July 31, 2009, the Commission adopted an Order on Reconsideration of rules released by the Commission in early 2005 that allow Earth Stations on Vessels (ESVs) to provide broadband and Internet access to and from commercial ships and cruise vessels on the high seas and within U.S. waters. Resolution of these issues with regard to ESVs protecting the co-frequency fixed service and fixed-satellite service operations will ensure that ESVs can operate compatibly with the many other systems that share the same frequency bands.
- On July 31, 2009, the Commission released a Report and Order that adopts new domestic U.S. allocations and technical and licensing rules for Vehicle-Mounted Earth Station (VMES) terminals operating in the conventional and extended Ku-band frequencies within the United States. VMES will provide broadband mobile service from moving vehicles and make advanced communications available for various emergency preparedness and commercial purposes where high-bandwidth, mobile communications capabilities would be beneficial. VMES will provide broadband capabilities for uses such as U.S. military training, emergency preparedness, and commercial purposes.

- In June 2009, the Commission released the tenth annual Orbit Act Report to Congress. The Orbit Act requires the FCC to report annually to Congress on the progress made to achieve the purposes and objectives of the Orbit Act. The Report describes the many decisions and activities undertaken by the Commission to implement the Orbit Act in the past 12 months.
- During FY 2009, the International Bureau (IB) conducted 65 International Visitors Program meetings for 606 visitors from 55 foreign countries. IB coordinated FCC-sponsored courses provided under the auspices of the United States Telecommunications Training Institute (USTTI): One hundred participants representing forty-three developing countries (Algeria, Belize, Bermuda, Bhutan, Brazil, British Virgin Islands, Cameroon, Colombia, Costa Rica, Democratic Republic of the Congo, Dominica, Egypt, El Salvador, Gambia, Ghana, Honduras, India, Jamaica, Jordan, Kenya, Kiribati, Lebanon, Liberia, Macedonia, Madagascar, Malawi, Moldova, Morocco, Nepal, Niger, Nigeria, Papua New Guinea, Peru, Philippines, St. Lucia, Sierra Leone, South Africa, Sri Lanka, Sudan, Suriname, Tanzania, Uganda, and Vietnam) were trained via FCC-sponsored courses. Additionally, thirty participants, representing another eleven countries (Albania, Bosnia and Herzegovina, Georgia, Guinea, Indonesia, Mongolia, Pakistan, Rwanda, Thailand, Trinidad and Tobago, Zambia) were trained at USTTI courses to which the Commission contributed.
- The International Bureau supported participation of FCC officials in bilateral, regional, and international consultations with officials from a number of countries including China, Singapore, Canada, Korea, India, Mexico, Sweden, and Germany, to discuss U.S. policies on competition, convergence, spectrum management, and media issues, including the digital television transition broadcasting and Internet protocol TV (IPTV).
- IB staff granted 1483 earth station applications for new or existing services in FY 2009. Commission staff processed earth station applications in an average of 44.68 days
- IB staff granted 214 space station applications in FY 2009 for new or existing services. Commission staff processed space station applications within an average of 251 days.
- IB staff coordinated with Mexican and Canadian governments' requests for U.S. broadcast stations and public safety and wireless services to operate in border areas.
- IB staff began the work of the Advisory Committee for the 2012 World Radiocommunication Conference (WRC-12). The objective of the WRC-12 Advisory Committee (WAC) is to identify items to be addressed by WRC-12 and to provide the FCC with advice and recommended proposals for the WRC-12. The WAC held three meetings in FY 2009: January 13, March 31, and September 1, 2009. The WAC created four informal working groups to look at issues on the agenda for the WRC-12. These informal working groups met 28 times in FY 2009 in support of the three WAC meetings. In preparation for WRC-12, the WAC produced over 20 preliminary views and 12 draft proposals for the Commission

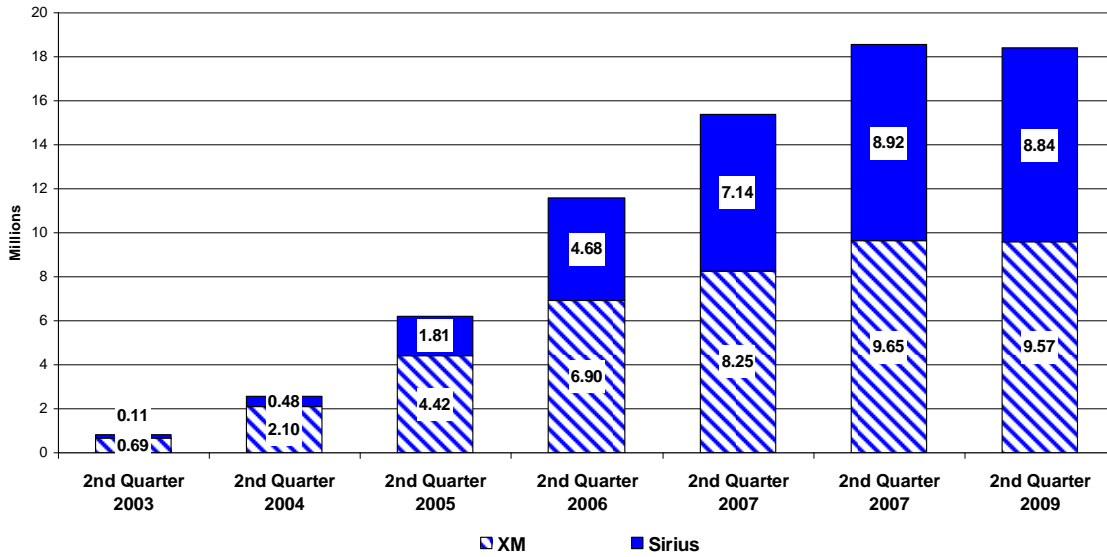
- IB staff represented the U.S. at numerous WRC-12 preparatory meetings including the ITU Working Party of the Special Committee (November 2008), European Conference of Post and Telecommunications Conference Preparatory Group (December 2008 and April 2009), Asia Pacific Telecommunity Conference Preparatory Group (June 2009), CITEL PCCII (June 2009), and the African Telecommunication Union Preparatory Meeting (September 2009).
- International Coordination Activities. Commission staff completed the following coordination agreements/arrangements:
 - In February 2009, completed an Administration-to-Administration coordination agreement regarding 26 Russian satellite networks within the C-band frequency range. Completed an Administration-to-Administration coordination agreement regarding 105 U. S. satellite networks with 35 Russian satellite networks within the Ku-band frequency range.
 - In February 2009, completed an Administration-to-Administration coordination agreement regarding 2 U.S. satellite networks with 4 Indonesian satellite networks within the L-band frequency range.
 - In March 2009, completed operator-to-operator coordination arrangements with 20 U.S. satellite networks and 13 Japanese satellite networks within the C-band frequency range. Completed operator-to-operator arrangements with 22 U.S. satellite networks and 17 Japanese satellite networks within the Ku-band frequency range.
 - In March 2009, completed an Administration-to-Administration coordination agreement regarding 1 U.S. satellite network with 1 Canadian satellite networks within the S-band frequency range.
 - In March 2009, completed an Administration-to-Administration coordination agreement regarding 1 U.S. satellite network with 1 Mexican satellite networks within the S-band frequency range.
 - In August 2009, completed two Administration-to-Administration coordination agreements regarding 22 U.S. satellite networks with 2 Canadian satellite networks within the Ku-band frequency range.
 - In September 2009, completed an Administration-to-Administration coordination agreement regarding 3 U.S. satellite networks with 1 Russian satellite network within the L-band frequency range.
- Throughout FY 2009, the Commission, with the Department of State, engaged in continuing negotiations with Canada and Mexico to create comprehensive agreements that will facilitate rebanding in the 800 MHz band and facilitate deployment of new services in the 700 MHz band as well as other bands.
- IB hosted a 3-day multi-lateral conference with delegations from Europe, Canada and the U.S. in March 2009 to discuss and resolve common spectrum management regulatory matters. Matters discussed included mobile broadband issues, satellite regulatory matters, cognitive radio devices and TV white space issues.

FY 2009 PERFORMANCE INDICATORS

Increase the number of subscribers to new services that make efficient use of spectrum

This chart displays subscriber change in the Satellite Digital Audio Radio Service from the second quarter of 2003 to the second quarter of 2009. After several years of significant increases in subscribership, the number of SDARS subscribers decreased slightly between July 2008 and June 2009 from 18.57 million to 18.41 million.

Satellite Digital Audio Radio Service Subscribers



Media

Strategic Goal:

The Nation's media regulations must promote competition, localism and diversity and facilitate the transition to digital modes of delivery.

The FCC develops and modifies media regulations and policies to address a changing marketplace. It is a challenging task due to: 1) changing ownership patterns; 2) legal challenges to FCC rules and policies; 3) converging markets and industries; and 4) increasingly rapid changes in technologies employed by service providers.

These factors, consistent with statutory directives, have led the FCC to place a high priority on fully understanding the current media marketplace so that it can appropriately reformulate its media ownership regulations and competition policies. The FCC will continue to examine whether current media regulations are achieving statutory policy objectives and will determine how changes in regulations may affect competition, diversity, and localism.

The transition to digital broadcast technologies ensured that the public is served by an efficient and competitive set of media services. In addition, the spectrum recovered by the transition to digital television will be used for other important services, such as public safety and advanced wireless services.

FY 2009 PERFORMANCE GOALS

- Facilitate the transition to digital television and further the transition to digital radio.
- Develop media rules and policies that achieve statutory policy objectives in light of significant changes to traditional media services.
- Enforce compliance with media rules.

FY 2009 PERFORMANCE HIGHLIGHTS

Facilitate the transition to digital television and further the transition to digital radio:

- Since June 13, 2009 -- the day following the DTV Transition deadline mandated by Congress for full-power television stations to cease broadcasting in analog -- all over-the-air TV broadcasts have been transmitting digital signals. In the months leading up to this transition, the FCC undertook an unprecedented agency-wide effort to facilitate this transition for the American public. Among the many activities in the Commission's action plan were:
 - Dispatching hundreds of FCC employees across the nation, especially to communities in 49 markets that were home to the greatest concentrations of

unprepared households. FCC staff members worked with local governments and community-based organizations to get the word out on DTV preparedness and educate consumers on how to get ready. FCC commissioners also spoke and answered questions about the digital transition at events such as town hall meetings and community gatherings. In all, the FCC conducted over 3,900 DTV Awareness Sessions and workshops; visited over 17,000 senior centers, community centers and other locations throughout the 50 states, plus the District of Columbia and Puerto Rico; attended over 5,900 events, conferences and partnership meetings; and had over 3,400 partnerships with consumer advocates, industry and government entities.

- The Commission revamped its DTV website (www.dtv.gov) to make it more useful to consumers and easier to use. The updated site gave consumers help and information specific to their communities on a variety of topics. By entering their zip codes in a search box, consumers located nearby support centers, got contact information for local stations and found DTV events near them. Online reception maps showed consumers what stations they should be able to receive at their home address once the transition was complete, information that proved useful in choosing and installing an antenna. Through the June 12, 2009 transition deadline, the www.dtv.gov website received over 93 million hits.
- The FCC worked with over 3,400 organizations including consumer advocates, grass roots organizations, industry and government entities, and distributed over 29 million pages of publications and over 165,000 DTV posters.
- The FCC issued contracts establishing over 500 walk-in centers and thousands of DTV help clinics across the country to offer consumers hands-on assistance on how to connect and operate converter boxes and help in ordering converter box coupons.
- The Commission awarded 88 contracts related to converter box installations, community walk-in assistance centers, call center support services, and media outreach. This included 34 contracts for free, in-home technical assistance for consumers having trouble installing their converter boxes and adjusting their antennas for digital signals. Joining FCC contractors in this effort were two valuable volunteer partners – members of AmeriCorps National Civilian Community Corps and fire fighters in cooperation with the International Association of Fire Chiefs. Installation vendors performed an estimated 286,000 successful installations nationwide.
- The FCC established a national DTV help line, using more than 4,000 operators at peak calling periods and successfully handling more than one million calls. Operators could troubleshoot common converter box or antenna installation problems and refer consumers to groups providing in-home installation if more assistance is needed. The Commission's Information Technology Center provided analytical and real-time operational support for the DTV transition by forecasting anticipated call volumes throughout the day at the FCC Call Center based on demographics and other transition characteristics.

- The Commission teamed with Consumers Union to distribute a consumer guide, written by CU's Consumer Reports, that provided clear instructions and diagrams to help viewers prepare for the transition. "DTV Made Easy," a 15-page booklet, could be downloaded from www.dtv.gov or obtained by calling the FCC's DTV help line. It was also available at DTV walk-in help centers and mobile clinics throughout much of the country, from in-home installation helpers, and from major retailers.
 - The FCC conducted three rounds of "soft tests" before the transition on June 12, 2009. There was widespread participation by broadcasters in all three tests. The first, held on December 17, 2008, involved broadcasters in 42 states and the District of Columbia. A second nationwide test was held on January 12, 2009. Stations in 31 states participated. The third and final coordinated nationwide soft test, in 130 markets, was held on May 21, 2009. This soft test was supplemented with a publicity campaign that focused on the deployment of on-the-ground assets, such as walk-in centers and clinics offered by grass roots and community organizations; local FCC outreach events; and the availability of in-home installation assistance.
 - The FCC launched a "home stretch" communications campaign including new Public Service Announcements, localized media announcements and interviews, and grassroots educational literature distribution.
 - The FCC created a special task force to address technical reception issues specific to the New York, Philadelphia, and Chicago areas.
- All of this effort served to significantly reduce the number of households unprepared for the Digital TV transition by the time it arrived on June 12th. The Commission continued to provide converter box installation services through the end of August, and still receives thousands of calls each week concerning digital television.
 - The Analog Nightlight Act was enacted on December 23, 2008. This statute required the Commission to develop and implement a program by January 15, 2009 for limited analog service after the transition date to provide public safety and DTV transition information. The Commission adopted a policy that for stations in at-risk markets, those having a large number of unprepared viewers, early termination would not be permitted unless the station certified that individually or collectively with other stations, it would meet eight measures regarding enhanced nightlight analog services and new DTV educational information.
 - On February 11, 2009, legislation was enacted directing the Commission to postpone the DTV transition date from February 17 to June 12, 2009, in order to afford television viewers more time in which to prepare for the digital transition. The DTV Delay Act directed the Commission to provide flexibility for stations wanting to transition prior to the new date in accordance with the Commission's Analog Nightlight early termination process. Commission action included five substantive Public Notices and three rulemaking Orders completed in less than six weeks following the DTV Delay Act's enactment.

- The Media Bureau granted digital television authorizations and monitored the build out of commercial and non-commercial educational full-service DTV stations. Significant accomplishments in this regard were achieved as the full-service television stations relinquished their analog operations and completed the transition to DTV service only. The Commission adopted “phased transition” initiatives that afforded broadcasters regulatory flexibility in meeting their post-transition construction deadlines without disappointing viewer expectations after the DTV deadlines. Six-month, Special Temporary Authority (STAs) were granted to stations to temporarily remain on their pre-transition DTV channels until commencing operations on their final, post-transition digital channels by August 18, 2009, or no later than February 18, 2010, if extensions of the STAs were warranted. The Commission also allowed STAs for stations requesting to build less than their full, authorized facilities by their construction deadline. These stations were required to be constructed and operating with their full post-transition DTV facilities no later than October 18, 2009. The number of commercial and non-commercial educational full-service DTV stations on-air grew to 1,763 by the end of the fiscal year.
- To ensure a smooth transition to digital TV and to reduce confusion on the part of consumers, the FCC established rules to prohibit the importation of televisions without digital tuners and to ensure consumers were properly warned if an older television in a retailer’s inventory did not contain a digital tuner. FCC field agents inspected 177 stores for their compliance with DTV labeling requirements for analog-only television receivers. Commission staff also investigated and took action against electronics manufacturers for violation of the DTV tuner requirements, assessing proposed forfeitures and negotiating consent decrees totaling more than \$242,000.
- In anticipation of the DTV transition, the Commission adopted a Closed Captioning Order (*Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers*, CG Docket No. 05-231, ET Docket No. 99-254, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, 23 FCC Rcd 16674 (2008)) in November 2008. This item addressed the issue of the applicability of closed captioning requirements in the post-DTV transition broadcasting environment and discussed measures aimed at ensuring continued accessibility of programming to people who are deaf or hard of hearing. In September 2009, the Commission released a Public Notice reminding Spanish language programmers of new closed captioning requirements which would become effective on January 1, 2010.
- In an effort to monitor the continued accessibility of programming to all Americans, including people with disabilities, the Working Group on Digital Closed Captioning and Video Description established five subgroups in order to obtain input from individuals with disabilities and disability organizations on the accessibility of DTV. It is envisioned that these subgroups will investigate technical problems and opportunities provided by DTV.
- FCC staff was in close contact with the National Telecommunications and Information Administration (NTIA) regarding DTV consumer outreach and education, particularly

with respect to converter box coupons and the Commission's direct on-the-ground efforts aimed at increasing outreach and consumer education.

- The FCC advertised in 15 nationwide publications, including American Profile (circulation 9.8 million), Better Homes & Gardens (circulation 7.6 million), Ebony (circulation 1.7 million), Essence (circulation 1 million), Family Circle (circulation 3.8 million), Farm Journal (circulation 438,000), Hispanic (circulation 300,000), People en Espanol (circulation 500,000), People Magazine (circulation 3.4 million), Reader's Digest (circulation 8.0 million), Soap Opera Digest (circulation 500,000), TV Y Novelas (circulation 175,000), US Weekly (circulation 1.8 million), USA Weekend (circulation 22.8 million), and Vanidades (circulation 170,000). In addition, the FCC, in partnership with AARP, included DTV information and a tear-out converter box coupon application in three widely distributed AARP publications: the winter issue of *AARP The Magazine* (circulation 24.5 million), the winter issue of *segunda juventud* (*second youth*) (circulation 800,000), and the Nov and Dec issues of the *AARP Bulletin* (circulation 24.5 million).
- Through the Outdoor PSA program, the FCC obtained donated space for one to two months in 72 high-target-population markets throughout the country.
- During the fiscal year, the FCC released a number of new consumer-friendly DTV publications:
 - FCC DTV Contractors – What You Need to Know
 - FCC Basic Install DTV Contractors – Leave Behind Material
 - FCC Expert Install DTV Contractors – Leave Behind Material
 - Remember to Rescan
 - Antennas and Digital Television
 - Troubleshooting Guide for Digital-to-Analog Converter Boxes and Digital Televisions
 - The DTV Transition and Over-the-Air Viewers Along U.S. Borders
 - Digital-to-Analog Converter Boxes – Selected Features
 - Setting Up Your Digital-to-Analog Converter Box
 - Setting Up Your Digital-to-Analog Converter Box With a VCR
 - FCC Fact Sheet on the Placement of Antennas
 - Satellite TV (DBS) Subscribers and the DTV Transition
 - The Digital TV Transition – What You Need to Know About DTV
 - The DTV Transition and LPTV/Class A/Translator Stations
 - Video Descriptions and the Digital Television Transition
 - Closed Captioning for Digital Television
- FCC staff continued to implement existing DTV Memoranda of Understanding with Canada and Mexico to ensure that broadcasters can maximize facilities along the border. Specifically, Commission staff coordinated applications for new DTV facilities that affect cross-border operations.

- Negotiations with Canada and Mexico resulted in agreements on a DTV Table of Allotments for the border area. Concurrently, negotiations have been ongoing to complete comprehensive DTV Agreements with Mexico and Canada.
- The Office of General Counsel represented the FCC in litigation involving DTV. OGC attorneys successfully defended a Commission order that required cable carriage of digital broadcast signals in a format that would be viewable by all of a cable system's subscribers. The successful outcome helped ensure a smoother transition to digital broadcasting while minimizing loss of service to cable customers. *C-Span v. FCC*, 545 F.3d 1051 (D.C. Cir. 2008).
- FCC staff engaged in negotiations to create a new Memorandum of Understanding with the Mexican Secretaria de Comunicaciones y Transportes, which would permit more opportunities for Low Power TV operations in the border area.
- The Public Safety and Homeland Security Bureau (PSHSB) held regular meetings with the Federal Emergency Management Agency (FEMA) to discuss their implementation of an Integrated Public Alert Warning System to support delivery of multiple types of alert messaging over a state-of-the-art delivery architecture. PSHSB also conducted regular outreach to other Emergency Alert System (EAS) stakeholders, particularly broadcasters and state emergency alert authorities.
- PSHSB assisted state emergency alert authorities and broadcasters and other EAS stakeholders in six states by granting rule waivers to enable testing of EAS facilities using "live" Event Codes. Based on information received in connection with these "live" code tests, PSHSB developed concerns regarding the effectiveness of current EAS testing. This paved the way for testing initiatives undertaken by the Commission in consultation with the White House and FEMA.

Reevaluate media ownership rules in light of a changing marketplace and judicial review:

- The Media Bureau took the first steps in the Commission's 2010 quadrennial review of its media ownership rules. The Bureau initiated the planning and coordination of several Media Ownership workshops scheduled for November 2 - 4, 2009 to discuss the scope and methodology of the 2010 proceeding and the analytical framework the Commission should use for conducting its review. The Commission issued an *Order and Further Notice of Proposed Rulemaking* to improve its collection of data on minority and female broadcast ownership to be able to more accurately assess and effectively promote diversity of ownership in the broadcast industry.
- The Commission re-examined policies and practices with a focus on eliminating arcane licensing concepts and practices and establishing less administratively burdensome service rules. One such area involved the restrictive use of FM translator stations. Existing rules precluded an FM translator from broadcasting the signal of any station other than that of an FM radio broadcast station or FM translator. To promote the

bedrock goals of localism, competition, and diversity in the broadcast media, the Commission agreed to allow AM stations to use currently authorized FM translator stations to retransmit their AM service within their AM stations' current coverage areas. This change applied only to those existing FM translator stations with licenses or unexpired construction permits in effect as of May 1, 2009. The ability of AM stations to provide service to their local communities will be improved by allowing FM translators to fill in service voids in an AM station's predicted service areas.

- The Office of General Counsel represented the FCC in litigation involving the Commission's media rules, including:
 - **Media Ownership.** OGC attorneys handled litigation involving challenges to the Commission's most recent media ownership order that were consolidated and transferred to the U.S. Court of Appeals for the Third Circuit.
 - **Public Television Advertising.** OGC attorneys successfully defended 47 U.S.C. § 399b, which bans "advertisements" on public broadcast stations, against a constitutional challenge by a San Francisco public television station. The statute defines advertisement to include not only traditional commercial advertisements, but paid program messages intended "to express the views of any person with respect to any matter of public importance or interest," or "to support or oppose any candidate for political office." The government was represented by DOJ, but OGC attorneys drafted the government's summary judgment papers and an OGC attorney was designated a Special Assistant United States Attorney to argue the case. The Magistrate Judge granted summary judgment to the government in August 2009. *Minority Television Project, Inc. v. FCC*, --- F.Supp.2d ---, 2009 WL 2588874 (N.D. Cal. Aug. 19, 2009).
 - **LPFM Rules.** OGC attorneys successfully defended against a challenge to the Commission's revision of its Low Power FM rules, which addressed the adverse consequences from other rule modifications that had benefited full-power FM broadcasters. The court held that the Radio Broadcasting Preservation Act of 2000 did not preclude the Commission from making the rule changes in question and that the revised rules were reasonable. *National Ass'n of Broadcasters v. FCC*, 569 F.3d 416 (D.C. Cir. 2009).
 - **Section 621.** OGC attorneys worked with the Office of the Solicitor General to prepare an opposition to a petition for a writ of certiorari seeking Supreme Court review of the Sixth Circuit's decision in *Alliance for Community Media v. FCC*, 529 F.3d 763 (6th Cir. 2008). In that case, the Sixth Circuit upheld the Commission's video franchising rules, which had been adopted to implement the ban on "unreasonabl[e] refus[als] to award an additional competitive [cable] franchise" imposed by Section 621(a)(1) of the Communications Act, 47 U.S.C. §541(a)(1). Among other things, the rules required local franchising authorities to rule on competing cable franchises within a certain time frame; and also specified that certain grounds for denying competitive cable franchise applications amounted to "unreasonable refusals" to award competitive franchises in violation of Section 621(a)(1). The Supreme Court denied certiorari. *Alliance for Community Media v. FCC*, 129 S.Ct. 2821 (2009).

- **Inside Wiring.** OGC attorneys successfully defended a challenge to rules in which the Commission found that wiring located behind sheet rock in apartment buildings and other multiple unit dwellings is considered “physically inaccessible” for purposes of determining the “demarcation point” under its cable inside wiring rules. *NCTA v. FCC*, 2008 WL 4808911 (D.C. Cir. 2008).

Enforce compliance with media rules:

- The Enforcement Bureau took action against cable operators in response to consumer complaints alleging that the operators moved, without advanced written notice, certain channels previously accessible using CableCARD-equipped digital cable products, such as digital cable ready television sets and digital video recorders, to a switched digital video platform. The Bureau issued four Forfeiture Orders totaling \$67,500 and a Consent Decree for \$25,000.
- Investigated cable operators for the movement of analog-only programming, which does not require subscribers to lease a set-top box from the cable operator, to a digital-only tier which requires such an arrangement. The Bureau proposed forfeitures related to failure of the cable operators to provide advance written notice of that movement to consumers, as well as the cable operators’ failure to respond to Enforcement Bureau Letters of Inquiry. Those proposed forfeitures are now under review.
- Reviewed numerous sensitive cases involving payola and other violations of statutory and regulatory requirements governing sponsorship identification on broadcast stations and cable systems, and violations of the Commission’s underwriting standards for noncommercial stations. During the relevant period, the Bureau entered two consent decrees on this subject worth a total of \$62,000.
- Under the Commission’s rule implementing the Children’s Television Act of 1990 (CTA), each television broadcast station licensee has an obligation during its license term to air programming that serves the educational and informational needs of children through both its overall programming and programming specifically designed to educate and inform children (core programs). Each commercial television broadcaster must file with the Commission and place in its public inspection file a Children’s Television Programming Report (FCC Form 398) for each calendar quarter reflecting the efforts it has made to serve the educational and informational needs of children. Licensees are also required to publicize the existence and location of the Reports and to provide for publishers of program guides information identifying their core programs and indicating the age group for which such programs are intended. Commercial television stations, cable operators and satellite providers must also limit the amount of commercial matter aired during children’s programming. The restrictions are no more than 10.5 minutes per hour of commercial matter on weekends and no more than 12 minutes per hour on weekdays during children’s programming (i.e., programs directed to children 12 and under). For broadcasters, compliance with these children’s television rules is to be assessed in evaluation of the licensee’s renewal application. During this fiscal year, a number of actions were taken concerning non-compliance

with the Commission's children's programming requirements. The Media Bureau issued ten Notices of Apparent Liability proposing forfeitures in the amount of \$82,000 for violations of the children's programming requirements. An additional two commercial television licensees were admonished for their non-compliance with these requirements.

- The FCC produced two reports related to children and media that were mandated by Congress. The Child Safe Viewing Act required an assessment of the availability and use of blocking technologies for different media platforms. The Omnibus Appropriations Act of 2009 required a report regarding commercial proposals for broadcasting radio or television programs on school buses.
- The Office of General Counsel represented the FCC in litigation involving the Commission's media rules, including:
 - ***FM Auction Procedures.*** OGC attorneys successfully defended a case in which the appellant claimed that the Communications Act does not permit the Commission to allow an applicant to participate in an auction unless that applicant is found to be fully qualified to receive a license grant. The court held that the statute permits the Commission to establish standards for eligibility to participate in an auction that are different from eligibility for a license grant and that the Commission's decision to adopt auction rules that defer full technical review of an application until after an auction winner is determined was reasonable. *Alvin Lou Media v. FCC*, 571 F.3d 1 (D.C. Cir. 2009).
 - ***Court of Claims Auction Proceeding.*** OGC attorneys worked with the Department of Justice (DOJ) to defend an appeal of a Court of Claims action by an unsuccessful broadcast applicant who asserted that it was entitled to damages arising from alleged Commission rule violations in an auction. The Federal Circuit upheld the Court of Claims dismissal of the complaint on the grounds that exclusive statutory judicial review jurisdiction over FCC licensing actions is in the D.C. Circuit. *Biltmore Forest Broadcasting FM, Inc. v. United States*, 555 F.3d 1375 (Fed. Cir. 2009). OGC attorneys subsequently worked with DOJ to oppose a petition for certiorari in this case, which the Supreme Court recently denied. *See* 2009 WL 2189680 (U.S. Nov. 2, 2009).
 - ***Broadcast Indecency.*** OGC attorneys, with the Office of the Solicitor General, won a significant Supreme Court victory in *FCC v. Fox Television Stations, Inc.*, 129 S.Ct. 1800 (2009), which had vacated the Second Circuit's decision under the Administrative Procedure Act (APA), 5 U.S.C. § 706 overturning the Commission's policy regarding use of isolated expletives during radio and television broadcasts. In finding that the Commission satisfied the APA by forthrightly acknowledging that its policy broke new ground and reasonably explaining the reasons for the new policy, the Court held that the APA does not require more searching judicial review of agency policy changes than of initial agency actions, establishing an important administrative law precedent. In addition to a remand to the Second Circuit to address the constitutionality of the isolated utterances policy, the Fox decision resulted in the Supreme Court vacating a Third Circuit decision overturning a forfeiture against the CBS

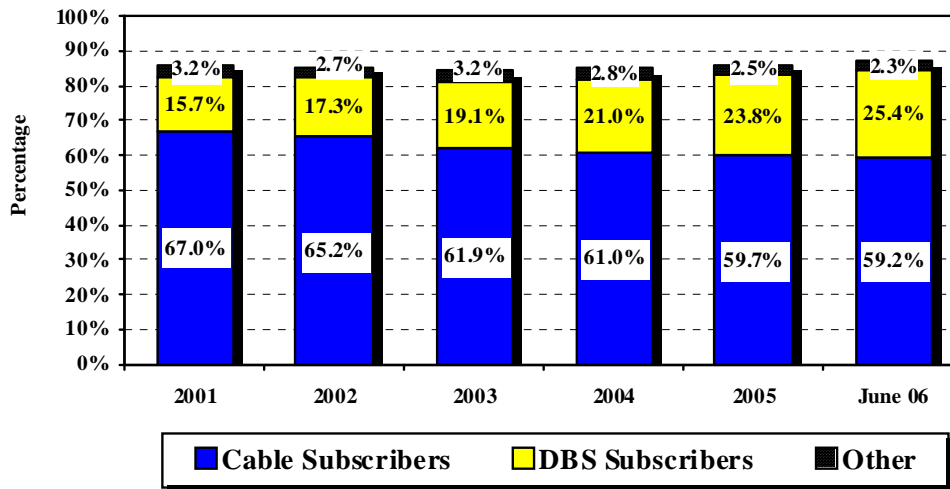
Television Network for its broadcast of the 2004 Super Bowl halftime show. OGC attorneys also drafted and filed the government’s brief and presented argument before the Second Circuit in a suit filed by the ABC Television Network challenging Commission forfeitures for the February 25, 2003 broadcast of an episode of the program NYPD Blue. *ABC, Inc. v. FCC*, No. 08-0841 (2d Cir.). In *United States v. Fox Television Stations, Inc.* (D.D.C. No 08-584-PLF), OGC and DOJ attorneys are also litigating actions against stations owned by the Fox Television Network in federal district court to enforce unpaid monetary forfeitures for the broadcast of *Married by America*, a reality television show that the Commission had found to be indecent.

FY 2009 PERFORMANCE INDICATORS

Increase the percentage of households with competing providers for multichannel video programming and information services

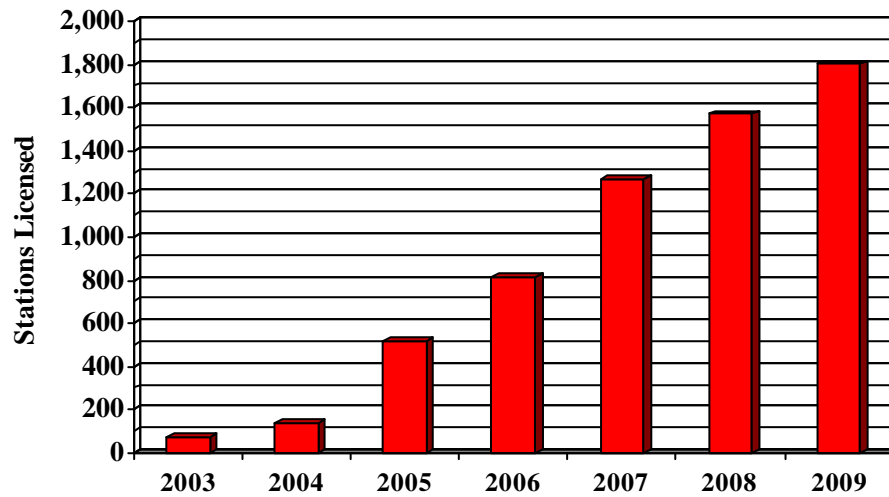
As of June 2006, 87% of the 110.2 million total U.S. television households subscribed to a multichannel video programming distribution service; 59.2% of all TV households were cable subscribers; 25.4% were direct broadcast satellite subscribers; and 2.3% subscribed to other MVPD services. Non-cable MVPD subscribers grew from 28.8 million households in June 2005 to 30.5 million households in June 2006, an increase of 5.9%. There are 14.4 million U.S. TV households that do not subscribe to an MVPD service and thus rely solely on over-the-air broadcast television for their video programming, representing 13 percent of all U.S. TV households. (Year shown is calendar year unless otherwise noted.)

MVPD Subscribers as a Percentage of TV Households



Continue progress in the transition to digital radio

Digital Terrestrial Radio



Implementation of AM and FM in-band, on-channel (IBOC) hybrid radio grew steadily during FY 2009, rising to a total of 1,802 stations operating with digital radio authorizations. (All years end on June 30th.)

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PUBLIC SAFETY AND HOMELAND SECURITY

Strategic Goal:

Communications during emergencies and crises must be available for public safety, health, defense, and emergency personnel, as well as all consumers in need. The Nation's critical communications infrastructure must be reliable, interoperable, redundant, and rapidly restorable.

In the aftermath of Hurricane Katrina, Americans were reminded of the importance of reliable, readily available, and interoperable communications – for emergency personnel responding to the tragedy, for individuals communicating with family and friends, and for the Nation as a whole, anxious to stay informed of ongoing events on a minute-by-minute basis. The telecommunications, broadcast, and cable industries that the Commission regulates are critically important to our national well being in times of crisis. The reliance of numerous other critical industries, including banking, transportation, and energy, on the communications infrastructure further underscores the importance of that infrastructure and the Commission's role in ensuring that it is operational.

Through its regulatory proceedings and important partnerships with other government entities and industry, the Commission works to fulfill its responsibilities in promoting public safety, homeland security, and network protection, interoperability, redundancy, and reliability. The Commission aims to do the following:

- Develop policies that promote access to effective communications services in emergency situations by public safety, health, defense, and other emergency personnel, as well as consumers in need;
- Evaluate and strengthen measures for protecting the Nation's communications infrastructure;
- Facilitate rapid restoration of the U.S. communications infrastructure and facilities after disruption by any cause;
- Coordinate with industry and other federal, state, tribal, and local agencies on matters of public safety and homeland security.

FY 2009 PERFORMANCE GOALS

- Promote the reliability, security, and survivability of the communications infrastructure.
- Facilitate deployment of public safety technology.

FY 2009 PERFORMANCE HIGHLIGHTS

Promote the reliability, security, and survivability of the communications infrastructure:

- One of the FCC's main missions is to ensure continuous operations and reconstitution of critical communications systems and services during and following emergencies. Among the first actions of FCC Chairman Julius Genachowski when he arrived at the agency was to direct the Commission's Public Safety and Homeland Security Bureau to conduct a 30-day, top-to-bottom review of the agency's state of readiness for major public emergencies. On September 8th, the results of the review were released, citing four key areas for improvement:
 - The report emphasizes the importance of the FCC's outreach efforts in maintaining strong partnerships with federal, state, tribal, and local governments, the public safety community, and communications service providers. By working closely with its partners, the FCC can identify, in advance, the communications needs of law enforcement agencies, fire departments, and hospitals so that when an emergency arises, key lines of communication will remain open or be quickly restored through a variety of means.
 - The report recommends measures aimed at ensuring that the FCC can proactively respond to public safety communications needs and communicate accurate and timely information to the public, even if the Commission's internal operations are disrupted. These measures will help make sure the American public and first responders can get the emergency alerts that they need, when they need them.
 - Another key role for the FCC is ensuring the security of the nation's communications networks. To better fulfill that role, the Public Safety and Homeland Security Bureau (PSHSB) recommended improvements in our network analysis capabilities, established a cyber security working group, and is establishing an advisory council to examine potential improvements for emergency communications.
 - The report outlines training programs and drills to equip FCC staff with the skills, tools, and information they need to respond to any emergency. This training will inform staff of their collective and individual roles during crisis situations. Staff will also learn about management software systems that provide accurate and timely information in emergencies.
- The Commission adopted a *Report and Order and Further Notice of Proposed Rulemaking* addressing the 4.9 GHz band. The rules will help expand and enhance first responders' deployment of broadband communication technologies across the nation in the 4.9 GHz band. The new rules will also better enable first responders to more easily share time-sensitive data and streaming video footage in emergencies or life-threatening incidents.
- The FCC developed department and agency-specific Primary Mission Essential Functions (PMEFs) pursuant to the federal government's National Continuity Policy

Implementation Plan (NCPIP), which maps out how the federal government is supposed to function in a catastrophic emergency that affects its continuing ability to operate. PSHSB led this effort at the FCC by coordinating the development of Mission Essential Functions (MEFs) for each Bureau and Office in the agency.

- On December 11, 2008, PSHSB hosted a summit on Lessons Learned: Hurricane Season 2008. The Summit focused on communications and coordination between state, local and federal governments, healthcare and industry in preparation for and response to the 2008 storms. The discussions highlighted ways that communications may be expanded and enhanced in preparing for future storms or other disasters.
- On January 14, 2009, PSHSB hosted a Speaker Series featuring Chris Essid, Director of the Office of Emergency Communications within the Department of Homeland Security. Mr. Essid discussed the National Emergency Communications Plan, a strategic plan to improve interoperability and continuity of communications for federal, state, local and tribal emergency responders.
- In May, 2009, PSHSB staff participated in a U.S./Canada Cross Border Interoperable Communications Workshop held in Niagara Falls, New York. This event brought together a broad base of U.S. and Canadian users and officials from all levels of government with an interest in cross border communications along the northern border.
- PSHSB participated in numerous Public Safety stakeholder events to promote information about Commission activities in such areas as 700 MHz licensing and 800 MHz rebanding. For example, PSHSB attended four meetings of the National Public Safety Telecommunications Council (NPSTC), a federation of organizations whose mission is to improve public safety telecommunications and interoperability.
- The Commission released three orders resolving sixty applications that sought authority to use spectrum allocated outside the land mobile public safety pool of frequencies, pursuant to Section 337 of the Communications Act. The Commission's actions provided state and local entities access to additional spectrum needed to establish critical communications, promote interoperability, and ensure the safety of citizens.
- During the period August 1, 2008 through July 31, 2009, PSHSB reviewed over 500 new or revised System Security and Integrity (SSI) plans submitted by VoIP and other broadband Internet-based service providers subject to the Communications Assistance for Law Enforcement Act (CALEA). PSHSB also audited SSI plans (250 test calls each month) to ascertain their continued accuracy.
- Working directly with local officials, Commission staff gathered technical data, developed models, and performed associated analysis to evaluate the performance of existing communications systems used by emergency responders during the

Minneapolis bridge collapse. The study also examined interoperable communications and the resiliency of the local public safety communications infrastructure.

- In the event of a major disaster, the FCC and the Department of Homeland Security's National Communications System need to have accurate information regarding the status of communications services in the disaster area, particularly during restoration efforts. The Commission's Disaster Information Reporting System (DIRS) is a voluntary, web-based system that communications companies can use to report communications infrastructure status information during times of crisis. The FCC encourages all communications providers to enroll in DIRS to be better prepared to respond and recover in the event of a disaster. During the fiscal year, the Commission activated DIRS in response to Tropical Storm Fay, Hurricane Gustav, Hurricane Ike, and winter storms in the Midwest. Service providers submitted information directly, and DIRS produced reports used to assess communications infrastructure damage.
- Enforcement of public safety statutes and rules is a top priority for the FCC. In FY 2009, the Enforcement Bureau took many actions in this area including:
 - Conducting 789 interference investigations involving public safety and 70 cable leakage inspections.
 - Coordinating with the Federal Aviation Administration to resolve widespread interference to the FAA's Terminal Doppler Radars at numerous airports across the country generally caused by wireless ISP transmitters.
 - Provided interference resolution at high profile events such as political conventions, presidential debates, and the Presidential Inauguration.
 - Supported FEMA and NCS with interference resolution and disaster response through participation in FEMA's Regional Emergency Communications Coordination Working Groups and numerous disaster exercises in support of FEMA and state governments.
 - Issued a \$200,000 Consent Decree resolving network outage reporting violations.

Facilitate deployment of public safety technology:

- PSHSB continued actively updating the Commission's Master Registry list of the Nation's Public Safety Answering Points (PSAPs). The Master Registry lists PSAP Name, State, County, City, and provides information on any type of record change and the reason for updating the record. The Master Registry is available to the public through a link on the PSHSB 911 services web page.
- The New and Emerging Technologies 9-1-1 Improvement Act of 2008 (NET 911 Act), requires the Commission to submit an annual report to Congress on the status in each state of the collection and distribution of a fee for the support of 9-1-1 or enhanced 9-1-1 services. On July 22, 2009, the Commission submitted its first annual report.

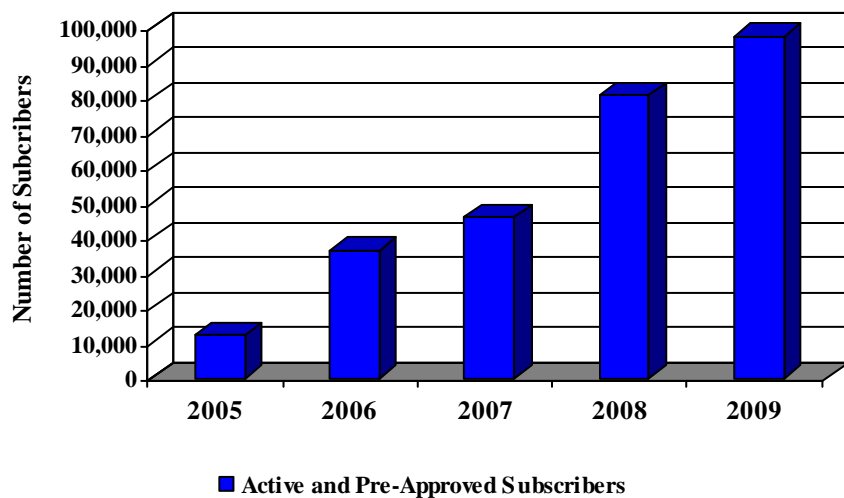
- On February 25, 2009, PSHSB hosted a summit on Deployment and Operational Guidelines for Next Generation 9-1-1/E 9-1-1 Systems.
- In June 2009, PSHSB sent an outreach team to five Gulf Coast cities to meet with state, county and local public safety officials about public safety and emergency response communications issues. The team conducted site visits in Houston, TX; Baton Rouge, LA; Biloxi, MS; Mobile, AL; and Tallahassee, FL. Each of the visits included meetings with public safety officials and tours of state or county emergency operations centers and 9-1-1 Call Centers, as well as area hospitals.
- In September 2009, PSHSB sent an outreach team to the Birmingham, AL area. The outreach team met with state and local 9-1-1 coordinators, emergency managers with the Birmingham Regional Emergency Medical Services System, and emergency department staff from the University of Alabama at Birmingham Hospital.
- International Bureau staff worked with PSHSB and the White House Office of Science of Technology (OSTP) to obtain information about the operation of FCC-licensed submarine cables for the purpose of ensuring the security of U.S. submarine cables. It also briefed OSTP staff on Commission procedures to coordinate applications involving foreign ownership of U.S. telecommunications operators.

FY 2009 PERFORMANCE INDICATORS

Increasing Wireless Service Priority Participation

WPS is a program that authorizes cellular communications service providers to prioritize calls over wireless networks. Participation in the WPS program is voluntary. The FCC sets the rules and policies for the WPS program; the National Communications System, a part of the U.S. Department of Homeland Security, manages the WPS program. From July 31, 2005 to July 31, 2009, WPS subscribership increased from 12,367 to 97,771, nearly an eight-fold increase. The WPS program facilitates the deployment of public safety technology and increases the chances that critical users, such as first responders, will be able to use cell phone services in an emergency. (All years end on July 31st.)

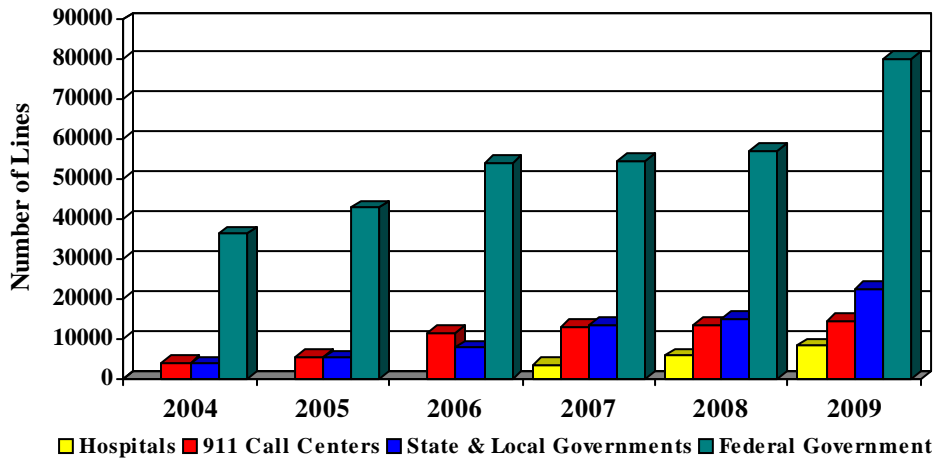
Wireless Priority Service Subscribers



Increasing Telecommunications Service Priority Participation

The Commission established the TSP program to support priority restoration of communications services that support national security and emergency preparedness (NS/EP) missions during disasters, including terrorist attacks. The National Communications System (NCS) oversees day-to-day operation of the TSP program. The TSP program directs telecommunications service providers (e.g., wireline and wireless phone companies) to give preferential treatment to users enrolled in the program when they need to add new lines or have their lines restored following a disruption of service. Any Federal, state, or local government entity that relies on telecommunications services to accomplish its NS/EP mission can qualify for TSP. Although all 911 call centers would qualify for the TSP program, only a small percentage of 911 call centers participate. In FY 2004, the Commission began an outreach program to inform 911 administrators of the TSP program and to expedite their enrollment. At the beginning of August 2008, a total of 13,384 911 call center circuits were enrolled in the TSP program. At the end of July 2009, a total of 14,297 911 call center circuits were covered by the TSP program. This amounted to a 7% increase in 911 call center circuits enrolled in TSP. (All years end on July 31st.)

Telecommunications Service Priority Participation



At the beginning of August 2008, state and local governments had 14,798 circuits enrolled in the TSP program; by the end of July 2009, a total of 22,441 state and local government circuits were covered. This change amounted to a 52% increase in covered state and local circuits. The TSP program increases the reliability of essential NS/EP communications services by minimizing out-of-service times. As a result, these circuits were made more reliable, thus helping to achieve the Commission's TSP objectives.

MODERNIZE THE FCC

Strategic Goal:

The Commission shall strive to be a highly productive, adaptive, and innovative organization that maximizes the benefit to stakeholders, staff, and management from effective systems, processes, resources, and organizational culture.

The Commission has committed to making fundamental changes to become a more responsive, efficient, and effective agency capable of facing the technological and economic opportunities of the new millennium.

FY 2009 PERFORMANCE GOALS

- Become an easier organization to do business with by integrating systems, processes, and interfaces.
- Create and sustain an organizational culture that encourages innovation, accountability, and continual improvement.
- Ensure effective communications with consumers, Congress, the communications industry, and Federal, State, tribal, and local agencies.

FY 2009 PERFORMANCE HIGHLIGHTS

Become an easier organization to do business with by integrating systems, processes and interfaces:

- The FCC is striving to become a model for excellence in government. The American people deserve an FCC that efficiently and effectively achieves the goals that Congress has set out for it; encourages and facilitates participation by all stakeholders; and is data-driven in its decision-making. To help achieve these goals, Chairman Genachowski appointed a Special Counsel for FCC reform. Along with the General Counsel and Managing Director, the Special Counsel will focus on reform and efficiency, perform a thorough review of the FCC's existing processes and make recommendations for improvement. The reform agenda includes a review of the Commission's systems and processes for data collection, analysis and dissemination; improvements in the FCC's licensing, comment and complaint filing systems; Modernizing the information infrastructure to ensure the agency functions effectively and efficiently; moving the Commission's workforce forward by streamlining operations, greening the agency, and providing leadership development and training; improving our institutional processes by better management of workflow as well as

reviewing our rules and policies to reduce backlogs; and reviewing the agency's financial operations.

- To ensure that the FCC is data-driven in its decision-making, the FCC's Office of Strategic Planning and Policy Analysis conducted a top-to-bottom review of the FCC's systems and processes for data collection, processing, analysis, and dissemination. As the nation's expert agency on communications, the FCC must have access to, and base its decisions on, data that are robust, reliable, and relevant. The review addressed whether any new data should be collected, whether any existing data reporting requirements should be streamlined or eliminated, and whether existing technological platforms can be modernized to make our use of data more effective and efficient.
- As an ancillary to the data review, the FCC is also assessing the database and communications infrastructure of the Commission. An initial review strongly suggests that a significant upgrade will be warranted to bring the Commission into the 21st century. We have already updated our Electronic Comment Filing System (ECFS), which allows consumers to submit, research, and print comments filed with the agency. The improved ECFS is easier to navigate, has greater search capabilities, allows the filing of comments into multiple proceedings with a single submission, and allows filers to learn of new comments matching criteria via RSS feeds.
- The FCC is engaged in a long-term initiative to combine the functions of our current licensing and applications systems. The purpose of this initiative is to develop a consolidated licensing system that is transparent, easy to use for the public and Commission staff, consistent with the FCC's data driven and fact-based rulemaking strategies, adaptable to evolving requirements, efficient, cost-effective and green. As currently envisioned, this new consolidated licensing system would provide the public with a single portal to access all of the FCC's licensing systems and display a single user-friendly look and feel. This includes a single consolidated form for filing applications and license requests, a single sign-on, enhanced application filing tools, improved application filing time, reminders and notifications, and a consolidated search function. The FCC has already hosted numerous internal and external brainstorming sessions with specialized industry groups, customers, and internal staff and management.
- The Enforcement Bureau now uses an integrated complaint processing system to process complaints for enforcement action in almost all areas: (1) Junk Fax Violations; (2) Live Telephone Solicitation Violations, (3) Prerecorded Telephone Advertisement Violations, (4) Abandoned and War Dialing Telephone Violations, (5) Deceptive or Unlawful Advertising or Marketing Violations, (6) Billing, Privacy, or Service Quality Violations, (7) Disability Access Violations, (8) Emergency or Public Safety violations, and (9) General Media Violations.
- The Media Bureau initiated new electronic filing opportunities for its electronic database systems. The Bureau implemented modules for the electronic filing of the

DTV Transition Status Report (FCC Form 387) and DTV Quarterly Activity Station Report (FCC Form 388).

Create and sustain an organizational culture that encourages innovation, accountability, and continual improvement:

- For the fourth consecutive fiscal year, the FCC received an unqualified or “clean” financial audit opinion with no material weaknesses reported by the auditors. In order to continue providing reliable financial reporting, the Commission continued its efforts to improve its internal controls and financial management. The Financial Operations Center conducted risk assessments of its operations during the fiscal year and worked to mitigate any risks that were identified during the previous year’s risk assessments.
- The FCC’s Financial Operations and Information Technology Centers made significant progress toward implementation of the new core financial system. The Initiation and Requirements Phases were completed, and the Design Phase is well underway with activities including interface design and development tasks.
- The FCC’s Human Capital Accountability and Performance Measurement System was developed and submitted to the Office of Personnel Management (OPM) for approval prior to the end of FY 2009. In addition, the Commission’s Succession Management Program was updated before the end of the third quarter of FY 2009.
- The FCC has full certification from OPM for its Senior Executive Service performance assessment program. Only those agencies that have a rigorous pay-for-performance system which directly ties performance accomplishments to compensation receive certification.
- The Commission continued implementation of new asset management procedures that vastly improved inventory and control of assets assigned to employees, particularly portable IT and telecommunication devices that are easily lost or stolen. This year’s physical asset inventory located 98.46% of all headquarters assets. Field office personnel performed a similar physical inventory with 100% of all assets located.

Ensure effective communications:

- The FCC is committed to soliciting public feedback and to upgrading its website, one of the main ways in which the agency interacts with the public. The Commission is focused on improving navigation, search capabilities, and the accessibility of information on its site. Our goal is an inclusive process through which the public can be involved in the work of the Commission. The Commission is connecting to other forms of social media. At www.fcc.gov/connect, stakeholders can find dozens of platforms to learn about the FCC and participate in agency processes. The FCC has also launched an internal online forum where employees can submit their ideas for improvement and reform. On the site, employees are involved in hundreds of conversations about how to improve the agency. An external feedback forum, reboot.fcc.gov, was launched in

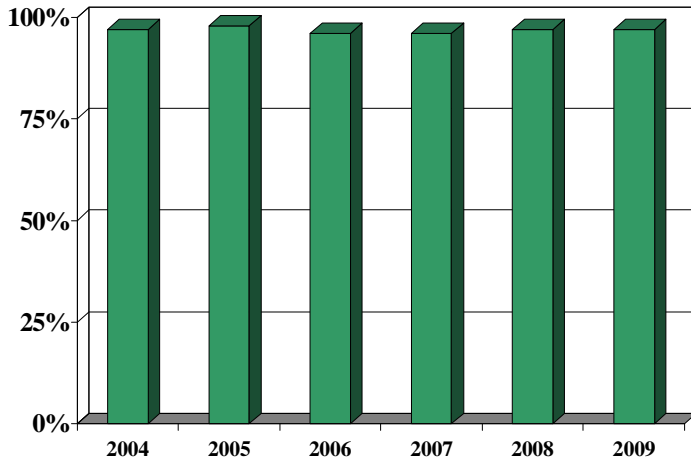
early FY 2010. Through Reboot, citizens will be able to learn about the progress of the FCC reform agenda and help craft its direction.

- Along with Recovery Act efforts for the DTV transition and National Broadband Plan that were mentioned previously, the Office of Managing Director (OMD) undertook numerous initiatives to fulfill other requirements for agencies receiving Recovery Act funding:
 - Reviewed the accountability and general provisions of the Recovery Act to ensure that the FCC's activities would meet the statutory requirements.
 - Facilitated three separate reprogrammings of Recovery Act funds totaling more than \$90 million from the National Telecommunications and Information Administration (NTIA) with the approval of Congress and OMB to fund the FCC's Recovery Act programs.
 - Facilitated the development, approval from OMB, and publication of Recovery Act plans for the FCC and for its Recovery Act programs, Digital Television Transition and the National Broadband Plan.
 - Conducted risk assessments of both the Digital Television Transition and National Broadband Plan programs in accordance with OMB guidance.
 - Implemented a new process by which weekly financial activity reports are compiled using data on obligations and outlays provided from the FCC's financial system. These weekly reports also include information about the activities of the FCC's Recovery Act programs and their progress. The reports are required by OMB and are published each week on www.fcc.gov/recovery and www.recovery.gov.
 - Implemented a new process to report weekly on all new contracts that are awarded with Recovery Act funds through a funding notification report. These reports are required by OMB, and the data is published in aggregate form on www.recovery.gov.
 - Facilitated the FCC's implementation of a first of its kind reporting process for Federal funds. The process consisted of the FCC's Recovery Act vendors reporting their contract information into www.federalreporting.gov. OMD and the Media Bureau worked to ensure that all DTV reporting was accurate and to account for any vendors who did not report. More than 96% of the FCC's Recovery Act dollars obligated through September 30, 2009 were reported during the first reporting cycle. The information entered by the vendors is published on www.recovery.gov.

FY 2009 PERFORMANCE INDICATORS

Increase efficiency in the processing of workload

Actions Disposed of Within Speed of Disposal Goal



In FY 2009, 97% of the agency's actions were disposed within the processing goals. Performance over the last five years exceeded the agency's speed of disposal goal of 95%.

In FY 2009 the Commission received 98% of applications and notifications via electronic filing. The Commission has exceeded its 95% goal for electronic filing.

Actions Filed Electronically

