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# BALANCING DEREGULATION AND CONSUMER PROTECTION

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## I. INTRODUCTION

I have had the privilege of serving at the Federal Communications Commission (“FCC” or “Commission”) for almost eight years, including four years as the agency’s Chairman. During this period, we have seen a telecommunications industry undergoing rapid and unprecedented change.

In 2000, the Commission was still mired in the fights between local and long distance. Television stations had barely started making plans to broadcast in digital. More people had wireline telephone service than wireless. Broadband connections were not widespread. Cable companies weren’t offering voice service and telephone companies weren’t offering video.

Today, ushered in by the broadband revolution, we have finally found the promised land of convergence. Telephone calls are made using the Internet and over cable systems. Television programs are watched whenever we want, are offered by telephone companies and are increasingly available on the Internet. Cable, wireless and traditional telephone companies all sell packages of minutes that don’t differentiate between local and long distance.

There are over 260 million wireless subscribers, or twice as many as there are wireline subscribers. And cell phones are mini-computers. They take pictures, play songs and games, send e-mail, and hopefully will send and receive emergency messages in times of disaster.

Finally, all of the broadcasters are already broadcasting at least one digital signal and are on the verge of turning off their old analog signal.

Faced with such fast-paced technological change, the Commission has tried to make sure that—as the industry was transforming—average consumers were not left behind. Decisions were based on a fundamental belief that a robust, competitive marketplace, not regulation, is ultimately the greatest protector of the public interest. Competition is the best method of delivering the benefits of

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choice, innovation, and affordability to American consumers. Competition drives prices down and spurs providers to improve service and create new products.

Government, however, still has an important role to play. We need to create a regulatory environment that promotes investment and competition, setting the rules of the road so that players can compete on a level playing field. And we need to be prepared to step in when the transition from monopoly to competition does not seem to be working or fails to meet broader social objectives.

My philosophy throughout my time at the FCC, including the last four years as Chairman, has been to pursue deregulation while paying close attention to its impact on consumers and the particulars of a given market; to balance deregulation with consumer protection.

Indeed, the transformation of a telecommunications sector dominated by monopolies to a truly free market with many players is not yet complete. So we need to continue to monitor closely the impact of our decisions on real people.

In order to have credibility when removing unnecessary or outmoded regulations, those of us who adhere to a market-based philosophy must be willing to acknowledge an important fact: There are times when regulators may need to step in—when the marketplace does not allow for sufficient competition to a former monopoly, when the market needs to be open to new entrants and technologies, or when larger societal goals such as ensuring the needs of public safety, fall outside the market's scope. The key is to look at the facts and not to be lulled by general assumptions or wishful thinking about a market's functioning.

Specifically, I believe that the appropriate regulatory environment is one that achieves the right balance between two competing interests: (1) to encourage investment in communications infrastructure; and (2) to make sure consumers and innovation are not unintentionally or intentionally disadvantaged by the owners of that infrastructure. In other words, to spur further investment in the next generation of communications infrastructure, while at the same time ensuring that these platforms remain open to innovation on the edges of that network. During my chairmanship, the FCC has acted to level the playing field so that all entrants could fairly compete, facilitating increased investment. At the same time, we have been able to push for more open platforms to spur innovation and the consumer benefits of lower prices and improved services.

## II. ENCOURAGING NETWORK INFRASTRUCTURE INVESTMENT

### A. Removing Legacy Rules and Leveling the Playing Field

When I arrived at the Commission in 2001, the communications industry was mired in a period of far-reaching decline. Old-style regulations placed on new investment and broadband were part of the problem.

We have worked hard to create a regulatory—or rather a deregulatory—environment to encourage investment and promote broadband deployment in the United States. For instance, shortly after I became Chairman, we removed legacy regulations like tariffs and price controls, which discouraged providers from investing in broadband networks. Since then, broadband penetration has increased while the prices of Digital Subscriber Lines and cable modem services have decreased.

We have also worked to establish a level playing field by making sure that all of the broadband companies are subject to the same basic rules. Today, all broadband delivery platforms, whether they are cable modem, Digital Subscriber Lines, or wireless, are classified as information services and are subject to the same light regulatory touch.

Importantly, we have seen some success as a result of these policies. Since 2000, the number of broadband subscribers has grown from less than 5 million to more than 100 million. Since 2001, the price of broadband has been cut in half while at the same time speeds have increased, enabling consumers to purchase service that is over ten times faster than what was offered previously.

In particular, we have seen amazing growth in investment in fiber—from about 80,000 lines in 2001 to over 1.4 million lines. For example, Verizon estimates spending \$18 billion in net capital from 2004 to 2010 to deploy its FiOS network. As a result of this ongoing industry investment, fiber now passes over 13 million United States homes, with median download speeds of 7 Mbps.

### B. Ushering in the Era of Wireless Broadband

Increasingly, broadband is moving from a wireline to a wireless world. And wireless broadband uses spectrum. In order to encourage the growth of wireless broadband, the Commission has taken unprecedented steps to make available as much spectrum as possible to put the next generation of wireless broadband devices into the hands and homes of consumers.

In the last three years alone the FCC conducted the two most successful auctions in Commission history. In the AWS-1 auction, 90 MHz was sold for \$13.9 billion. The 700 MHz auction the following year put an additional 62

MHz on the market and raised a record-breaking \$19.6 billion.

In addition, the Commission has dramatically increased spectrum available on an unlicensed basis. We adopted rules to allow unlicensed use in the broadcast television spectrum at locations where that spectrum is not being used by licensed services (this unused TV spectrum is often termed “white spaces”).

Our action opening the white spaces will encourage the creation of a WiFi on steroids. It has the potential to improve wireless broadband connectivity and inspire an ever-widening array of new innovative Internet based products and services for consumers.

### C. Removing Barriers to Entry

We have also worked hard to remove barriers to entry into the video market. For example, several years ago telephone companies began investing billions to upgrade their networks to provide video services along with their traditional voice and data services. Some local authorities, however, were making the process of getting franchises unreasonably difficult. We streamlined the franchise process, requiring action within a reasonable time period, and preventing the imposition of unreasonable build-out requirements or the provision of unrelated services.

Similarly, the Commission recognized that exclusive contracts between owners of apartment buildings and incumbent cable or telephone operators posed a significant barrier to entry to competing companies. Consumers who lived in apartment buildings often were locked into one video or telephone service provider, effectively foreclosing competitive choice for these residents. The FCC encouraged competition from other providers by barring these exclusivity contracts for service in “multiple dwelling units.”

We also made it easier for competitive telecommunications and cable companies to gain access to “inside wiring” in these apartment buildings in a consistent fashion, further ensuring that all consumers—including those in apartment buildings—benefit from competition in the provision of communications services.

## III. FOSTERING INNOVATION AND PROTECTING CONSUMERS

### A. Opening Platforms

While we have pursued policies to encourage investment in networks, or the “pipes”, the Commission has also acted to prevent the owners of those networks from impeding innovation or harming consumers. We achieved this goal of fostering innovation and protecting consumers by pursuing a policy of open

platforms.

I pushed for greater openness on wireless networks after looking closely at the wireless market in this country. Americans did not enjoy as much choice and innovative services when it came to their wireless phones as did those living in Europe and Asia.

In the 700 MHz auction the Commission for the first time required the winner of the biggest piece of this spectrum to open its network so consumers could use the devices of their choice and download whatever applications they choose. Such an open network can help ensure that innovations on the edges of the network swiftly pass into the hands of consumers.

The impact of this targeted regulatory action was far reaching. Shortly after the FCC acted, others in the wireless industry—including Verizon, Sprint, T-Mobile and AT&T—announced plans to adopt a more open approach. AT&T's vaunted iPhone now has its own Apps Store where consumers can purchase and download a multitude of applications to their phones.

We deliberately took a cautious and limited approach to fostering more openness on wireless networks. The Commission deliberately did not apply mandatory unbundling or wholesale requirements that might undermine investment incentives. And we did not apply this openness requirement to all of the spectrum blocks being sold or to existing networks.

The rights of consumers to access the legal Internet content of their choice and run any application on their computers must be protected in the wireline world as well. Three years ago the Commission made clear it would not hesitate to act if faced with evidence that a provider was violating this principle by blocking consumer access to content or applications.

Recently we responded to broadband subscribers' complaints that Comcast was blocking or delaying their Internet traffic when using the file-sharing application, BitTorrent. The Commission told Comcast to end its unreasonable network management practices and disclose to its customers how it was going to manage traffic on a going forward basis.

As with the open access in the 700 MHz auction, we have taken a cautious approach to network management practices. We have dual responsibilities of preserving the vibrant and open character of the Internet while maintaining companies' incentives to invest in providing faster broadband to more people. So while we have not adopted burdensome regulations, we will punish bad actors that interfere with consumers' ability to access the Internet content of their choice.

#### IV. ACKNOWLEDGING MARKET LIMITATIONS AND FAILURE

##### A. Insufficient Competition in the Video Market

In order to have credibility while calling for deregulation, those of us who prefer competition to regulation must be willing to acknowledge when there is insufficient competition and the market is not functioning properly.

An examination of the video market indicates that the current market may not be competitive enough to protect consumers. It is almost universally accepted that cable rates have risen dramatically over the past decade and that consumers' bills for video services are too high. While cable does face some competition from satellite, both the Commission and the Government Accounting Office concluded that satellite and cable do not seem to compete on price.

In recent years, the cost of basic cable services has gone up at a disproportionate rate when compared against other communications sectors. Over the last decade, the average price of the expanded basic cable package—the standard cable package—has doubled, increasing by 93%. The increase in cable prices appears even more dramatic when viewed relative to the prices for a number of other communications services: prices for long distance, international, and wireless telephone service have all decreased dramatically during this same timeframe.

Again, I have tried to urge a narrow solution. Rather than re-regulating cable rates, I have argued that consumers should have more control over the packages and channels they are buying.

##### B. Upholding Important Social Values

Even when we are successful in achieving a competitive market, certain social objectives take precedence over the unencumbered functioning of the marketplace.

Ensuring public safety is the most basic function of government, in part because it is a function that can rarely be achieved by market forces alone. Early in my chairmanship, we set regulations—and deadlines—to make sure consumers using Internet-based telephones had access to 911 emergency services. Everyone expects to be able to pick up the phone, dial 911, and get the local police or fire department, whether that person is dialing 911 from a traditional wireline phone, a wireless phone, or a VoIP phone.

And the public must not only be able to call 911. When they do, help must be able to reach them in a timely manner. E911 is meant to ensure that when someone dials 911 during an emergency, public safety can easily and reliably find them. The location accuracy rules originally established by the Commis-

sion, however, did not keep pace with consumers' increasing reliance on cell phones and improvements in technology. The Commission updated its location accuracy rules to provide information on a more local level permitting first responders to reliably find persons in need when seconds count.

Perhaps the best example of the need for government intervention to uphold certain social values is the Universal Service Program. That program was created to ensure that all Americans regardless of where they live have equal access to communications services.

In many parts of rural America, however, it is cost-prohibitive for one—let alone multiple—phone companies to provide service at a reasonable cost to consumers. It is only through direct grants from the Universal Service Fund (“USF”) that consumers in those high-cost areas can have the same phone service that is enjoyed here in Washington, D.C. In addition, through the USF, we have wired nearly 100% of all public schools and will connect over 6,000 healthcare facilities throughout the country.

## V. LOOKING AHEAD

### A. Priority Issues

Finally, I would like to take a moment to identify the issues that I believe are most urgent for the new Commission to address.

The American consumer will expect the next Commission to take a serious look at the video market and determine whether competition can provide relief from runaway price increases. If the market cannot provide a solution to address this problem, then consumers will look to the Commission for leadership on innovative ways to further promote competition and choice in the video marketplace.

Second, while we have made significant progress in broadband deployment, there is more to be done. Achieving universal broadband requires using all the tools at our disposal, starting with reforming the USF program. I have advocated that monies be distributed in a more targeted manner to restrain the growth of the fund and allow for the inclusion of broadband in the USF program. The comprehensive reform proposal I made last year would have spurred rapid and widespread deployment of broadband.

Another important tool we can use to achieve our national broadband goal is requiring the winner of auctioned spectrum to provide a free basic broadband service to all Americans.

## B. Not Losing Sight of the Bigger Picture

The market-oriented but fact-based approach I have followed during my time at the Commission has produced meaningful results for consumers. We have put in place the appropriate regulatory framework that achieves the twin goals of spurring investment and establishing open platforms to deliver choice and innovation to consumers.

As the new Administration comes in, they should be mindful that there is no need to throw the baby out with the bath water and sacrifice one for the other. Just as those of us who prefer competition to regulation must be willing to acknowledge when there is insufficient competition and the market is not functioning properly, those who instinctively call for more regulation and government intervention need to be mindful of the negative effects that such an approach can have and did have in the past.

We must also be creative and flexible in our approach, making sure government is working for consumers. Most of the time, being creative means getting out of the way. But sometimes we must recognize that there is a unique role only government can play.

In order to have credibility while calling for deregulation, we must be willing to act in a targeted, limited fashion when the market is not working properly. It is important for another reason as well. As the current financial crisis has reminded us, problems don't disappear if they are simply ignored. They can become bigger problems requiring the government to intervene in a larger way later.

As I look back at this period at the FCC, I can say that we tried to make government work for the American consumer.

PRINCIPAL ACHIEVEMENTS OF THE FCC UNDER  
CHAIRMAN KEVIN J. MARTIN  
March 2005 – January 2009<sup>†</sup>

FCC Chairman Kevin J. Martin's accomplishments during his tenure at the FCC were guided by the philosophy of pursuing deregulation while focusing on what is best for the consumer. He has focused on establishing the appropriate regulatory environment that achieves the right balance between two competing interests: (1) to encourage investment in communications infrastructure and (2) to make sure consumers and innovation are not unintentionally or intentionally disadvantaged by the owners of that infrastructure. His efforts took many forms, ranging from the promotion of more competition across technology platforms to making sure consumers have access to broadband services without arbitrary blocking or delays. Fostering broadband deployment was a top policy priority because it affects nearly every aspect of consumers' lives.

PROMOTING BROADBAND DEPLOYMENT

*Eliminating Legacy Regulations and Encouraging Infrastructure Investment*

1. **Broadband Growth** – Under Chairman Martin, the Commission achieved a careful balance of promoting investment in broadband infrastructure and innovation, while expanding affordable access and sustaining an open Internet. Under these policies, broadband prices decreased while speeds increased, and there was a dramatic growth in the number of high-speed lines available in the United States. Since 2001, the price of wireline broadband has decreased 50% while consumers can now purchase service that is over ten times faster than what was offered in 2001. The number of high speed lines has grown from just over five million in 2000 to over 100 million lines.
2. **Broadband Investment Incentives** – During Chairman Martin's tenure, the Commission removed regulatory obstacles that discouraged broadband infrastructure investment and slowed deployment. It classified Digital Subscriber Line ("DSL"), Broadband over Power Lines ("BPL") and Wireless Broadband as "information services" not subject to legacy regulations such as tariffs and price controls. The Commission removed legacy regulations such as tariffs, price controls and wholesale unbundling on new fiber investment to encourage carriers to invest in infrastructure in an environment free of economic regulation. Additionally, the Commission streamlined the state and local cable franchise process to encourage the entry of new broadband com-

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<sup>†</sup> Chairman Martin and his staff compiled this catalogue of principle achievements.

petitors and eased obstacles to competitive entry in apartment buildings so broadband services could be more accessible to consumers.

3. Broadband Data Collection – The FCC in 2008 greatly improved the quality and precision of the broadband subscribership data that it collects. These changes will enable the Commission to better identify and analyze broadband deployment throughout the nation. The Commission now requires broadband providers to give more detailed information about subscribership on a geographic basis and also to share more information on the download and upload speeds they offer consumers. The agency proposed to better direct resources to rural and other “underserved” areas by obtaining and mapping information about broadband availability in those areas.

#### USHERING IN AN ERA OF WIRELESS BROADBAND

##### *Oversaw Two Most Successful Auctions in Commission History, Increasing Availability for Broadband*

1. Putting Spectrum for Wireless Broadband into the Marketplace – All told, the Commission has made over 354 MHz of spectrum available over the last four years for mobile wireless broadband services through auction and flexible use policies, which nearly triples the approximately 200 MHz of spectrum that had previously been available for such services in the Cellular, Specialized Mobile Radio (“SMR”) and Broadband PCS bands.

The 700 MHz spectrum auction, the largest auction in FCC history, raised a record \$19.6 billion in 2008. The auction advanced open platform policies and created what will be a new wireless broadband provider to compete with incumbent telephone and cable companies in nearly every home in the United States. The auction allows spectrum once used for analog television broadcasting to be used by various communications providers—be they incumbents, new entrants, small businesses or rural companies—so they have access to additional spectrum to deploy next generation wireless networks.

Both nationwide incumbents that participated in the 700 MHz auction have announced they will deploy the very latest generation of wireless broadband services using this spectrum, which will operate at speeds competitive with the latest DSL and cable modem services. To encourage infrastructure investment in the 700 MHz spectrum auctioned in 2008, Chairman Martin successfully opposed the application of mandatory unbundling or wholesale requirements to these valuable new wireless networks. Further, Chairman Martin supported some of

the most stringent build-out requirements the Commission has ever imposed on the licensees of this spectrum, ensuring swift rollout of services to all areas of the country.

The 2006 Advanced Wireless Services auction (“AWS-1”) grossed nearly \$13.9 billion for licenses to offer a wide array of innovative broadband services over third generation (“3G”) wireless networks. The auction allowed telecommunications providers to provide new, creative services over spectrum once used for other purposes.

2. Innovative use of Unlicensed Spectrum – The FCC’s 2008 initiative to use television “white spaces” spectrum handed consumers a significant victory. Chairman Martin championed this initiative to make more spectrum available to improve wireless broadband connectivity and inspire an ever-widening array of new Internet-based products and services for consumers.

#### FOSTERING INNOVATION AND OPEN TECHNOLOGY PLATFORMS

##### *Protecting the Vibrant Nature of the Internet*

1. Network Neutrality Principles Ensure Consumer Access to Internet – Ensuring consumers’ unfettered access to lawful content on the Internet was a high priority for Chairman Martin. The Commission protected this access by adopting an *Internet Policy Statement* containing four principles. It said consumers are entitled to access the lawful Internet content of their choice; to run applications and use services of their choice, subject to the needs of law enforcement; to connect their choice of legal devices to networks as long as they do not harm the networks; and have the benefits of competition among network providers, application and service providers and content providers.
2. More Open Wireless Networks – Following new rules that governed the 700 MHz band spectrum auction in 2007, major wireless carriers have made their networks more open to devices and applications provided by their customers. Chairman Martin pushed for adoption of an open platform in the 700 MHz spectrum band to spur innovation and consumer choice. The auction rules required winners of the C-Block portion of the 700 MHz band to ensure their networks are compatible with the applications and devices of the customer’s choice. The popularity of open platforms among consumers has encouraged other wireless carriers to follow suit with a more open and friendly policy toward customers.

3. **Non-Proprietary Set-Top Boxes** – In 2007, the FCC acted to implement a nearly ten-year-old statutory requirement to create a competitive market for set-top boxes. The Commission no longer allowed cable operators to integrate proprietary security elements into their set-top boxes. As a result, consumers may purchase a box of their choice instead of having to lease equipment from their cable providers. Enforcing the Commission’s separable security requirement provided consumers electronics manufacturers the opportunity to develop and market innovative, feature-rich, state-of-the-art products. Chairman Martin’s goal of a competitive set-top box market will give consumers greater choice and the benefits of innovation.

#### PROMOTING COMPETITION IN THE VIDEO MARKETPLACE

1. **Video Franchise Reform** – As telecommunications companies upgraded their networks to provide video services in competition with cable providers, they encountered roadblocks when they applied for franchises from local and county boards. Under Chairman Martin, the FCC reformed the video franchise process by adopting rules that limit unreasonable requirements and delays by franchise boards, thus speeding the delivery of new video services to consumers.
2. **Apartment Building Access** – All consumers, regardless of where they live, should enjoy the benefits of competition. Exclusive contracts between owners of apartment buildings and incumbent cable or telephone operators posed a significant barrier to entry by competing companies. Consumers who lived in apartment buildings often were locked into one video or telephone service provider, effectively foreclosing competitive choice for these residents. The FCC encouraged competition from other providers by barring these exclusivity contracts for service in “multiple dwelling units.” During Chairman Martin’s tenure, the Commission also made it easier for competitive telecommunications and cable companies to gain access to “inside wiring” in these apartment buildings in a consistent fashion, further ensuring that all consumers—including those in apartment buildings—benefit from competition in the provision of communications services.
3. **Greater Consumer Choice** – New rules were adopted to give consumers more choice in the cable market. Leased access reform adopted in late 2007 sought to foster the development of independent programming channels on cable systems. An expedited complaint process and a more rational method of determining leased access rates were designed to make it easier for independent programmers to gain carriage from cable operators. New program access rules, on the other hand,

insure that competitive video operators have access to critical programming on a nondiscriminatory basis. Finally, the FCC voted to cap the number of customers a single cable television company may serve nationwide. The order set a 30% limit on horizontal ownership nationwide, meeting Congress's mandate that no cable operator should be so large that it can impede the flow of video programming to consumers.

#### PROTECTING CONSUMERS FROM HARM

##### *Issued Over \$150 Million in Fines, Most Ever Under any Chairman*

1. Protecting the Open Internet – Responding to complaints from broadband subscribers, the FCC in 2008 ordered Comcast to stop arbitrarily delaying subscribers' downloads and blocking their uploads. The Commission found that Comcast's network management practices were arbitrarily focused on specific applications rather than on the amount of congestion in the network or size of a particular file. It required Comcast to change its network management practices and to start disclosing these practices to the FCC and customers. The action, spearheaded by Chairman Martin, affirmed the Commission's willingness to enforce its 2005 *Internet Policy Statement* that outlined consumers' rights to access any content or application on the Internet. The Commission announced its intention to adjudicate future disputes regarding federal Internet policy on a case-by-case basis, using an established framework. Specifically, if legal content is arbitrarily degraded or blocked, and the defense is "network management," the broadband operator must show that its network management practice is reasonable. The Commission will look at whether it furthers an important interest and is carefully tailored to serve that interest. Finally, the Commission concluded that network management practices should be disclosed to consumers so that they can make informed decisions when purchasing broadband service.
2. Protecting Consumer Privacy – During Chairman Martin's tenure, the FCC strengthened safeguards against unauthorized disclosure of consumers' private calling records. Alarmed by breaches in the privacy of "customer proprietary network information," the Commission prohibited carriers from releasing sensitive personal data over the phone without a customer-provided password and ordered providers to notify customers in the event of a breach of confidentiality. The FCC required consumer consent even when phone records are being shared with a carrier's joint venture partners or independent contractors for marketing purposes, a move that changed an "opt-out" approach to consumer consent to an "opt-in" requirement.

3. Children's Programming – Under Chairman Martin's tenure, the FCC made clear that it takes seriously the public interest obligations of broadcasters. While reviewing a planned transfer of Univision to Broadcasting Media Partners in 2007, it came to the Commission's attention that Univision was not properly meeting a requirement that it air programs to educate and inform children. The programs Univision had aired to meet this requirement on twenty-four of its stations for more than two years were telenovelas similar to teen soap operas and not educational in nature. In the largest consent decree in Commission history, Univision agreed to make a contribution of \$24 million to the U.S. Treasury and follow a compliance plan designed to ensure that the needs of children and families are better served in the future.
4. Violence Report – During Chairman Martin's tenure, the Commission released a Report on the issue of excessively violent television programming and its impact on children. The Report found that evidence indicates exposure to violence in the media can increase aggressive behavior in children, at least in the short term. The Commission offered several recommendations to Congress, including ways in which the industry could address violent programming, such as providing consumers greater choice in how they purchase their programming so that they can avoid violent programming.
5. Enforcement of Indecency Rules – Families have a right to expect that broadcasters will not expose children to harmful programming by carrying indecent, obscene or profane material at times when children are likely to be watching or listening. The law therefore prohibits stations from airing indecent or profane programming at any time between the hours of 6 a.m. and 10 p.m. The Commission has taken significant steps both in its own decisions and in the courts to enforce this law. Responding to hundreds of thousands of viewer complaints about more than fifty television programs, the Commission took action against several broadcast licensees for airing material that was deemed indecent. Specifically, the Commission has issued an Omnibus Television Order (deciding forty-eight separate cases) and orders imposing fines relating to the broadcast of several shows including *Without a Trace*, *Super Bowl XXXVIII*, *NYPD Blue* and *Married by America*.
6. Childhood Obesity Taskforce – During Chairman Martin's tenure, the FCC used its expertise in children's television issues to examine the impact of the media on the rise in childhood obesity. To build consensus on voluntary steps to combat childhood obesity, the Commission, along with Senators Tom Harkin and Sam Brownback, formed the

Joint Task Force on Media and Childhood Obesity. Members of the Commission take part in the task force, which also is composed of representatives from the media, advertising, and food and beverage industries, along with consumer advocacy groups and health experts. The Task Force succeeded in producing some significant voluntary commitments aimed at reducing the negative impact of the media on children's eating habits and increasing its positive influence on their behavior. For example, fifteen of the nation's largest food and beverage manufacturers, including Kraft Foods and Kellogg, agreed to curtail advertising of "unhealthy food" to children under age twelve and others are reformulating current products.

7. Payola Consent Decree – The Commission in 2007 reminded broadcasters that it will not tolerate violations of its sponsorship identification rules because it believes the public should know when someone is seeking to influence them. As a result of an FCC investigation into possible payola violations, four broadcast companies agreed to make significant contributions to the U.S. Treasury totaling \$12.5 million and institute business reforms to insure their stations and employees do not violate the sponsorship identification laws in the future.
8. Greater Choice in Packaging; Sale of Video Programming Services – Since Congress enacted the 1996 Telecom Act, cable rates have increased every year, while the prices for other services the Commission regulates have decreased. The Commission has challenged cable and satellite operators to offer more cost effective alternatives, encouraging them to make family-friendly programming packages available and to offer networks in a more a la carte manner. The Media Bureau's 2006 *Further Report on Packaging and Sale of Video Programming Services to the Public* found that themed tiers and a la carte could provide consumers the opportunity to reduce their cable bills by purchasing fewer channels or smaller packages. Moreover, the Media Bureau found that some type of a la carte option could prove better than today's bundling practices in fostering diverse programming responsive to consumer demand.

#### FOSTERING FACILITIES-BASED COMPETITION

1. Competitive Networks Order – During Chairman Martin's tenure, the Commission saw that long-term exclusive contracts between owners of residential multi-tenant buildings and incumbent cable or telephone operators posed a barrier for new entrants in the provision of video and voice services. The Commission's *Competitive Networks Order* recognized the importance of eliminating barriers to infrastructure in-

vestment while creating regulatory parity among entities seeking to provide communications services in residential multiple tenant environments (“MTEs”), such as apartment buildings, condominiums, and co-operatives.

2. Incumbent LEC Inside Wiring Order – The Commission also made it easier for competitive telecommunications and cable companies to gain access to “inside wiring” owned by incumbent LECs in these apartment buildings in a consistent fashion, further ensuring that all consumers—including those in apartment buildings—benefit from competition in the provision of communications services.
3. Local Number Portability – The Commission also acted to remove a roadblock that had been inhibiting many consumers from switching telephone service providers. Local Number Portability (“LNP”) gives telephone customers the ability to keep their telephone number when changing service providers. The availability of LNP thus eliminates a major disincentive to switch carriers, helping to facilitate the successful entrance of new service providers and competition between such new service providers and existing wireline and wireless carriers. Consumers have ported more than 78 million phone numbers from one carrier to another during Chairman Martin’s term. In 2007, the Commission took steps to facilitate greater competition among telephone providers by extending LNP obligations to interconnected VoIP providers. This measure ensures that interconnected VoIP customers have the same ability as customers of traditional telephone service to keep their telephone numbers when changing telephone service providers. Enabling customers to port their numbers reliably and expeditiously when changing carriers—whether that carrier is a traditional wireline provider, wireless carrier, or interconnected VoIP provider—gives customers flexibility in the quality, price, and variety of services they can choose to purchase, which in turn enhances competition.
4. Interconnection Issues – The pro-competitive framework that Congress established in the 1996 Act provides that the state commissions shall arbitrate any disputes that arise when telecommunications carriers request interconnection agreements with incumbent carriers. In the *Time Warner Order*, the Wireline Competition Bureau addressed a situation in which state commissions had issued conflicting interpretations of federal law in arbitrating interconnection agreements between local phone companies and requesting telecommunications providers seeking to provide services wholesale to other service providers, specifically VoIP providers. Acting on delegated authority, the Bureau affirmed the Commission’s existing policy that “telecommunications

service” can be either a wholesale or retail service. The Bureau went on to make clear that regardless of whether a third-party provider’s retail VoIP service is considered an information service or a telecommunications service, the wholesale common carrier has the right under section 251 of the Act to interconnect with the incumbent local phone company.

5. **Localized Regulatory Relief** – As a result of increased competition for voice services between telephone companies and cable companies, the Commission has been able to scale back some of its regulations in targeted locations where such “intermodal” competition is most pronounced. Most notably, the Commission conditionally forbore from applying certain network unbundling requirements and dominant carrier rules that apply to the incumbent wireline carrier, but not the incumbent cable operator, in portions of the Anchorage study area and the Omaha Metropolitan Statistical Area (“MSA”). The Commission granted even more regulatory relief in Terry, Montana in recognition of the unique factual circumstances there.
6. **Regulatory Relief for Long Distance** – In the *Section 272 Sunset Order*, the Commission established a new framework to govern the provision of in-region, long distance services by the Bell Operating Companies (“BOCs”) and their independent incumbent LEC affiliates. This framework, which is consistent with the relief granted Qwest in the *Qwest Section 272 Sunset Forbearance Order*, replaced unnecessarily burdensome regulation with less intrusive measures that protect important customer interests while allowing AT&T, Qwest, and Verizon to respond to marketplace demands efficiently and effectively. This framework has increased the BOCs’ ability to develop and deploy innovative long distance services that meet their customers’ needs.

#### ADDRESSING PUBLIC SAFETY NEEDS

1. **Consumer Access to Emergency Services** – Early in Chairman Martin’s tenure, the Commission set regulations and deadlines to make sure consumers using Internet-based telephones had adequate access to enhanced 911 emergency service. Concerned about reports that some VoIP providers were not properly connecting subscribers to 911 emergency operations, the Commission said interconnected VoIP providers must deliver all 911 calls to the customer’s local emergency operator as a standard feature of the service, and should provide the same level of service that other phone companies provide. The Commission has also made strides toward enhanced location accuracy for wireless E911 calls, including commitments from the three largest

wireless carriers to deliver greater accuracy to public safety providers by measuring compliance on a county basis. Chairman Martin has also aggressively enforced the Commission's E911 obligations in order to ensure the safety of consumers, proposing significant fines for violations of the Commission's handset penetration rules including fines of \$2.85 million in 2007 against three major carriers. The Commission also adopted rules to ensure that 911 calls made by individuals with hearing or speech disabilities over Internet-based TRS are routed directly to appropriate emergency services authorities, along with location information. This gives Internet-based TRS users access to the same kinds of enhanced 911 protections that voice telephone customers enjoy.

2. The WARN Act – To implement the Warning Alert and Response Network (“WARN”) Act, the Commission cleared the way for development of an emergency alert system that mobile providers will use to transmit messages to cell phones and other mobile devices. The Commercial Mobile Alert System addresses one of the Commission’s strategic goals under Chairman Martin—to ensure that all Americans have the capability to receive timely and accurate alerts and information about emergencies. The FCC set deadlines for deployment, allowed participating carriers to recover costs, and said mobile providers opting not to participate in the system must notify their customers. Eventually consumers will be able to receive emergency alerts wherever they go.
3. Hurricane Katrina – As broadcasters, telecommunications providers, and others struggled to restore communications service in the wake of Hurricane Katrina’s devastation, the FCC under Chairman Martin moved quickly to cut bureaucratic “red tape” so disaster relief officials could communicate and companies could quickly restore services in the Gulf Coast region. The agency waived numerous rules so telephone companies could reroute traffic, disconnect and reconnect lines and switch consumers’ long distance providers so their calls could get through. Rules were waived to enable non-commercial broadcast stations to transmit local commercial programming so critical emergency information could get to the public. The FCC granted more than 100 temporary frequency authorizations for emergency workers, organizations and companies to provide communications service in the affected areas. Less than a month after the August 29, 2005, hurricane, Chairman Martin established an independent panel of experts to recommend ways to improve disaster preparedness, network reliability and communications among first responders such as police, fire fighters and medical personnel. The Commission has continued to respond

swiftly to industry and consumer needs in times of disaster, deploying personnel to the field, waiving certain rules and granting special temporary authority to carriers during subsequent hurricane seasons including the devastation caused by Hurricanes Gustav and Ike in 2008.

4. **New Bureau Created** – Shortly after Hurricane Katrina hit the Gulf Coast, Chairman Martin recommended forming a new Public Safety and Homeland Security Bureau to consolidate public safety, national security, and disaster management policy making and outreach into a single central hub. Since its inception in 2006, the Bureau has coordinated efforts with the public safety community, other government agencies and industry. It has worked to promote reliability, interoperability, redundancy and rapid restoration of the nation’s critical communications infrastructure in emergencies, becoming a clearinghouse for critical planning and response information and an effective point of contact for public safety entities and industry during crisis.

#### OVERSEEING THE DIGITAL TRANSITION

1. **Consumer Education** – Chairman Martin guided the FCC through one of the most massive projects the agency has faced, that of preparing consumers for the nationwide transition from analog to digital broadcasting on February 17, 2009, as mandated by Congress. FCC staff traveled the country for months to spread the word to consumers. Agency staff met with local governments and grassroots organizations, gave speeches, manned booths at community events, set up phone banks and reached out to those with special needs such as senior citizens, non-English speakers and minorities, and people with disabilities. In an unprecedented public-private partnership, the Commission joined the U.S. Department of Commerce and representatives of the nation’s broadcasters, cable operators and the consumer electronics industry to facilitate a smooth transition.
2. **Broadcaster Readiness** – In preparation for the transition, the Commission adopted procedures and rules to guide broadcasters, including new channel assignments, interference standards and build-out schedules. The agency tracked broadcasters’ progress, requiring each station to file and update the status of construction of the new DTV facilities. Today, 98% of broadcasters are on track to make the transition successfully.
3. **Ensuring Stations are Viewable to Consumers** – Chairman Martin led the Commission in taking action to make sure cable operators continued to make signals of all broadcast stations viewable after the transi-

tion, as the statute required. Specifically, under Chairman Martin's leadership, the Commission ensured that all Americans with cable—regardless of whether they are analog or digital subscribers—are able to watch the same broadcast stations the day after the digital transition that they were watching the day before the transition. In this manner, the Commission made sure analog cable subscribers were not short-changed after the digital transition. Under the Commission's *Viewability Order* cable operators must ensure that all "must carry" local broadcast stations carried are "viewable" by all cable subscribers.

4. Established Successful Test Market in Wilmington – On September 8, 2008, Wilmington, North Carolina became the first market in the country to transition from analog to digital television. The early switch to digital in Wilmington was instrumental in helping the Commission identify, understand, and hopefully prevent some future problems when the rest of the nation transitions on February 17, 2009. The majority of Wilmington viewers were aware of and prepared for the transition. Importantly, the consumer education campaign that was conducted appears to have been effective. Prior to the transition on September 8, 2008, the National Association of Broadcasters released a survey indicating that 97% of Wilmington residents were aware of the switch to digital. Consumer calls received by the Commission at its call center also indicated that the vast majority of the 400,000 television viewers in the Wilmington area were aware of the transition and prepared for it. The measure of success in Wilmington is not what happened in the fall of 2008 in Wilmington. Rather, it is how we are going to take what we learned in Wilmington and apply that knowledge to the rest of the country.
5. DTV Consumer Protections – To protect consumers from unwittingly buying out-of-date televisions, FCC personnel inspected thousands of stores and dozens of websites to assess their compliance with rules requiring labels on analog-only television receivers. Based on these visits the agency issued hundreds of citations to retailers who failed to comply with labeling rules and consent decrees were released against about two dozen of them, totaling more than \$4.74 million. Commission field agents also visited hundreds of retailers to assess how well their employees were trained in the DTV transition and the National Telecommunications and Information Administration converter box program and the agency threatened fines if retailers did not measure up.

## ENSURING ACCESS TO COMMUNICATIONS BY ALL CITIZENS

1. Rural Health Care – At Chairman Martin’s initiative, the FCC in 2007 took a critical first step toward bringing more healthcare to rural areas that might lack the breadth of medical expertise available in urban areas. The Commission voted to make funding available for the deployment of broadband healthcare networks across the country. It dedicated more than \$400 million over three funding years to the construction of broadband networks for state-wide and regional healthcare networks reaching over 6,000 healthcare facilities. The creation of this pilot program will help bring specialty care to patients who otherwise would have to travel long distances for such care.
2. E-rate – The E-rate program has been instrumental in bringing telecommunications and Internet access to schools and libraries throughout the country, providing up to \$2.25 billion in universal service funds each year. This funding has enabled schools and libraries to increase their access to broadband services. In a 2007 study, the National Center for Education Statistics (“NCES”) found that access to the Internet is ubiquitous in public schools. NCES found that nearly 100% of public schools in the United States had Internet access, and 97% of these schools used broadband connections to access the Internet.
3. Interim Cap on High-Cost Support – Changes in technology and increases in the number of carriers that receive high-cost universal service support have placed significant pressure on the stability of the Universal Service Fund. Growth in high-cost support was largely attributable to competitive eligible telecommunications carriers (“ETCs”), who receive support based on the costs of the incumbent provider—not their own costs—even if their costs of providing service are lower. Their support grew from approximately \$1.5 million in 2000 to well over \$1 billion in 2007 (out of \$4.3 billion in total high-cost support for 2007) while support for incumbent carriers remained flat. In May 2008, the FCC stemmed this explosive growth by imposing an interim cap on the amount of high-cost support available to competitive ETCs. The cap will contain the growth of universal service in order to protect rural consumers’ access to the network. In addition, the cap will help to prevent excessive contributions from consumers who support the Universal Service Fund.
4. Universal Service Fund – Under Chairman Martin, the FCC in 2007 adopted measures to safeguard the Universal Service Fund from waste, fraud and abuse, as well as measures to improve the management, administration and oversight of the multi-billion-dollar Fund.

The agency strengthened and expanded its debarment rule for parties convicted of criminal violations, expanding its application to cover all four of the universal service programs supported by the Fund. It also strengthened oversight of the contributions and filing process and increased penalties for late payments. It strengthened the audit process and adopted performance measures to improve the management and administration of the programs.

5. **Communications for People with Disabilities** – During Chairman Martin’s tenure, the FCC took several steps to improve communications capabilities for individuals with disabilities, bolstering the agency’s long-time commitment to this goal. The Commission adopted a ten-digit numbering system for Internet-based TRS enabling users to make and receive calls like voice telephone users, and improved emergency call handling procedures for Internet-based TRS calls. The Commission also ruled that Internet Protocol (“IP”) captioned telephone service is eligible for reimbursement from the TRS Fund. IP captioned telephone service allows a broader range of individuals to communicate as it permits users to initiate telephone calls from any Internet-enabled device. The FCC also expanded the reach of the TRS Fund by agreeing to compensate video relay service translations between spoken Spanish and sign language and imposed speed of answer and hours of service requirements on video relay service. In addition, in 2008, the Commission adopted significant revisions to update the hearing aid compatibility requirements applicable to wireless handsets.
6. **Localism and Diversity in Broadcasting** – The Commission took action to maintain the three long-standing core goals of Commission media ownership policy—competition, localism and diversity. Chairman Martin led the Commission in taking steps to increase diversification of ownership in the broadcast services by promoting opportunities for new entrants. In addition, the Commission completed a long-standing initiative to study localism in broadcasting and made proposals to ensure that local stations air programming responsive to the needs of their service communities.
7. **Access to Capital Conference** – The Commission held an en banc hearing and conference on overcoming barriers to communications financing. This conference was designed to enhance the knowledge of the Commission and attendees about: (1) the present state of capital markets as those markets impact ownership diversity in the media and telecom industries and, particularly, the success of minorities and women entrepreneurs; (2) how financing is secured for new, diverse, resource-limited ventures, focusing on actual problems encountered by

women and minorities attempting to secure financing for media and telecom deals; and (3) potential ways the Commission can help facilitate financing opportunities for minorities and women.

#### INTERNATIONAL ACCOMPLISHMENTS

1. Supporting US Policy at the World Radio Conference (“WRC”) – During Chairman Martin’s tenure, the Commission has advocated for international spectrum allocations and provisions that enhance opportunities for U. S. wireless and satellite operators to make the most effective and innovative use of spectrum at home and abroad and to protect them from interference. At the WRC in 2007, major achievements included the identification of additional International Mobile Telecommunications (“IMT”) spectrum for 3G technologies, including WiMAX, and protecting U.S. wireless broadband deployment in the 2.5 GHz band from foreign satellite interference.
2. Additional Satellite Capabilities – In order to bring the benefits of technology to all Americans, including those living in rural and remote communities, the FCC has advanced deployment of satellite-based broadband services. In 2007, the FCC adopted flexible service rules for the 17/24 GHz band, which holds the promise of bringing a new generation of broadband services, including a mix of local and domestic video, audio, data, video-on-demand, and multi-media services to U.S. consumers. In addition, the Commission has issued licenses to Ka-band satellite operators at Contact and ViaSat, and has allowed a non-U.S.-licensed Ka-band satellite operator, Wildblue, to enter the U.S. market. Each is expected to provide advanced broadband connectivity.
3. TV White Space Promotion – To further promote the potential of white spaces and the development of a international ecosystem for white space devices, Chairman Martin created the International TV White Spaces Fellowship and Training Initiative to provide a platform for the FCC to work with international regulators and their spectrum experts on technical issues associated with the use of TV white spaces, building on momentum in this area in the United States.