

**TESTIMONY OF
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**BEFORE THE
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UNITED STATES SENATE**

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Mr. Chairman, Mr. Vice Chairman, and Members of the Committee, thank you for inviting me to appear before you to discuss the transition from analog to digital broadcast television (DTV). With less than 500 days before February 17, 2009 – the day Congress has required full-power stations to cease analog transmission and to broadcast exclusively in digital – there is plenty of remaining work, coordination, and public education and assistance to ensure a smooth and seamless transition. I will provide a frank assessment of our national level of preparedness from the perspective of a principal federal agency involved in the DTV transition.

As a member of the Federal Communications Commission (FCC), I can attest that the FCC staff possesses and has demonstrated the requisite talent, skills and expertise to help guide this nation through the rough patches of the DTV transition. While the Government Accountability Office (GAO) recently testified that no one appears to be in charge of the transition, and I believe that remains the case, the FCC's Media, Enforcement, and Consumer and Governmental Affairs Bureaus have performed admirably whenever they have been provided the proper guidance. As GAO testified, the FCC remains the best positioned agency to lead the effort.

Last month, I testified before Chairman Kohl and the Senate Special Committee on Aging about the need for the Federal government to establish a coherent, coordinated plan to ensure that millions of elderly Americans are not left out during the DTV transition. I raised concerns about the adequacy of the Commission's DTV outreach and education efforts. Chairman Kohl has introduced legislation responsive to the issues raised at the hearing

Since then, the FCC staff has been hard at work. The Consumer and Governmental Affairs Bureau (CGB), our outreach and consumer education specialist, hosted a well-attended consumer workshop last month, and plans to host additional workshops and special awareness sessions that will focus on high-risk communities, such as seniors, people of color, non-English speakers, people with disabilities, and those living in rural and low-income areas. CGB is also planning media activities, including increased outreach to the Latino community and to tech-savvy school children who can educate their parents and grandparents. Our field staff has engaged in extensive outreach to senior citizens across the country.

In addition to this outreach, the FCC's Enforcement Bureau has been aggressively enforcing our requirement that all TV receivers with an analog-only tuner must be labeled in retail stores. To date, FCC field agents have performed approximately 1,275 inspections, and the

Bureau has issued 278 citations and dozens of Notices of Apparent Liability. The Media Bureau continues to work on the technical aspects of the actual transition. The Commission recently took steps to ensure cable subscribers are not disenfranchised after the transition. The Bureau is currently working on recommending similar steps to protect over-the-air viewers – some of the most vulnerable members of society – during and after the transition.

Congressional interest and public scrutiny in recent months have indeed prompted the FCC to expand its overall outreach, enforcement and technical efforts, but more improvements are needed. Notwithstanding FCC staff's efforts, and despite some recent improvements, the Commission's overall DTV effort is not a model of effectiveness.

The Commission's poor long-term planning and the continued lack of a national, federal and internal FCC coordination plan have left us in the unfortunate position of playing catch-up. Rather than being proactive – anticipating problems and concerns, and developing an effective strategy – Commission action has been noticeably reactive. For instance, while Congress and particularly this Committee worked hard to get the DTV transition deadline date passed and then signed into law by the President on February 8, 2006, the Commission waited 17 months before it even sought comment on the need for rules to educate the public about the transition. The Commission finally proposed consumer education rules for the broadcast, cable and consumer electronics industries only after several members of Congress inquired and strongly encouraged us to do so.¹ Fortunately, the full Commission yesterday received proposed final rules for our consideration that will greatly expand our role. So while 17 months of inaction are behind us, we now need to address the problem by planning adequately for the 16 months left in the transition. I will continue to work diligently with this Committee and all of my colleagues to ensure that we use the remaining 489 days effectively.

An example of the Commission's lack of planning and coordination is illustrated in its failure to inform the public that not *all* analog broadcast transmission actually ceases on February 17th, 2009. For millions of Americans, particularly over-the-air Spanish-speaking viewers and many rural residents, who rely on the over 4,700 low-power, Class A and translator television stations in the U.S., analog broadcasting will continue. In many urban and rural cities, popular Spanish language networks like Telemundo and Azteca, and quality stations that often are a main source for critical local news and information, are not required to convert their facilities to digital by the deadline.

Recently, the Community Broadcasters Association (CBA) brought this fact to the attention of the FCC's outreach and consumer education specialists. CBA expressed concern that "publicity about the digital television transaction will be misleading if it suggests that no over-the-air analog television service will be available" after the deadline for full-power stations.

¹ See Letter from The Honorable John D. Dingell, Chairman, Committee on Energy and Commerce; and The Honorable Edward J. Markey, Chairman, Subcommittee on Telecommunications and the Internet, U.S. House of Representatives, dated May 24, 2007; The Honorable Herb Kohl, Chairman, Special Committee on Aging, U.S. Senate, dated May 25, 2007; and The Honorable Gordon H. Smith and Mark L. Pryor, U.S. Senate, dated July 13, 2007. See also Speech of Jonathan S. Adelstein, Commissioner, FCC, "I Want My DTV: Building a National DTV Consumer Education Campaign," CEA Entertainment Technology Policy Summit Washington DC, dated March 15, 2006.

In response to this concern, the FCC hastily issued a consumer advisory on its website to inform the public about this forgotten, but important, aspect of the DTV transition.

Some of the information about the transition has in fact been inaccurate. Even the FCC's own public materials have declared that "everything you see will be DTV," and "last day of analog broadcasting," or "analog broadcasting ends February 17, 2009." As the expert agency, we must find a way to better convey some of the important nuances of the transition. Of course, with only 16 months left, this task becomes extremely difficult.

Some of the industry's information has been imperfect as well. For example, I shared Senator Claire McCaskill's concerns about the cable industry's first round of DTV ads, which were more akin to commercials for cable service rather than public service announcements (PSAs). Also, an ongoing field study by U.S. Public Interest Research Group is finding that some consumer electronics retailers are misleading consumers.

While some have argued that there is not a need for a coordinated, coherent message and that perhaps an uncoordinated, dissimilar message from each affected industry is a better approach, I strongly disagree. Applying that reasoning to low-power, Class A and translator stations, it would be perfectly appropriate for community broadcasters to embark on a consumer education campaign that informs viewers that the DTV transition will not result in the end of analog broadcasting and they can continue to watch their channels. Such a message would be accurate, but it would conflict with the broader DTV transition message. Similarly, cable operators could simply encourage their subscribers to rent a set-top box for every TV set in the household. Consumer electronics retailers could encourage consumers to purchase HDTV sets. And broadcasters would simply inform their consumers they no longer need subscription services once quality digital broadcasting arrives. Such disparate, uncoordinated messages would be ingredients for a disaster. I am pleased that these industries have not taken that approach and have behaved much more responsibly. But, as industry representatives have told me repeatedly, more guidance, coordination and leadership from the Federal Government, and particularly the FCC, would be helpful.

In my own outreach, I have found the broadcasters, cable operators, and consumer electronics manufacturers and retailers eager to develop a meaningful partnership with the Federal Government. For instance, after my criticism of the cable industry's first round of PSAs, the industry sought my guidance in developing future PSAs. The cable industry was receptive to all of my suggestions, including a technical correction. But rather than the ad hoc approach of individual commissioners reviewing scripts, it would have been preferable for an FCC DTV education specialist to work with each industry as they are developing PSAs based on a clear message vetted by the Commission and other agencies involved. To my knowledge, the Commission has not even asked to look at them. I am not suggesting we dictate the message verbatim, but rather that we offer suggestions to help coordinate it. Our industry partners are very receptive to such a cooperative approach.

Since a hard deadline has been enacted into law, I have not found an unwillingness to coordinate or a lack of informed and thoughtful ideas about how to reach and educate the American people. Rather, there has been a remarkable lack of leadership and coordination.

Specifically, there is no structure established that is responsible for coordinating the national DTV transition effort and for vetting, prioritizing and implementing ideas from both the public and private sectors into a comprehensive, coherent and coordinated plan. Only the government can play the role of referee to ensure that industry representatives with sometimes conflicting priorities are coordinated to send a clear message that serves all consumers and is not skewed by self-interests.

More resources are needed to expand the scope and depth of our efforts, but it is not solely a matter of funding to raise the awareness of Americans, particularly at-risk groups such as the elderly, low-income families, rural residents, people with disabilities, minority groups and non-English speakers. First, it is a matter of coordination and prioritization. Then, it is a matter of implementation.

In terms of actually helping at-risk consumers adapt to the new technology, we have not even begun to plan properly for the scope of the issues we will confront. For example, millions of seniors and Americans with disabilities will need specific help in obtaining and installing converter boxes. While volunteer efforts are now being contemplated, it will require enormous coordination and government involvement by, for example, Area Agencies on Aging who interact on a daily basis with seniors. But without training, resources and coordination, those efforts will be overwhelmed by the demands. The time for planning is now, not right before disaster strikes.

It is my firm belief that we need a national DTV outreach, education and implementation plan that coordinates the efforts and messages of all stakeholders. Here are some next steps that I believe we need to take, immediately, to get on the path of reaching and educating people in the more than 111 million U.S television households.

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

The task force would need staff. The FCC, for example, should detail staff to the task force from CGB, the Media, Enforcement, and Public Safety and Homeland Security Bureaus, and the Offices of General Counsel and Engineering and Technology. With dedicated staff from different agencies, the task force would also serve as the clearinghouse for all things related to the DTV transition national campaign and for coordinating this network of networks. The aging and disabilities communities, for example, would have access to financial and human resources to assist these at-risk groups in making the transition. The task force would be able to coordinate with public and private partners, leverage existing resources and develop a single unified federal message, *i.e.*, develop and use common terminology to describe the digital-to-analog converter box program and other DTV technology. In addition to coordinating government efforts at all levels – including state, regional, local, and tribal governments – the task force can convene joint

meetings with the private sector DTV Transition Coalition to ensure a coherent, consistent message across all channels. And it can help coordinate the many public-private assistance efforts needed for at-risk communities.

Maximize Existing Federal Resources. Once a unified federal message has been developed, the task force could then work with other federal agency components, such as the Administration on Aging (AoA), the Social Security Administration, Departments of Agriculture, Labor, Education, and Health and Human Services, the Bureau of Indian Affairs, the U.S. Postal Service and AmeriCorps, to integrate DTV educational information into many points of contact with consumers. Relevant federal agency websites and correspondence to citizens' homes, such as Social Security mailers and Meals on Wheels deliveries, are golden opportunities to educate and inform consumers about different aspects of the DTV transition, including the converter box program and the analog cut-off date.

Establish a National DTV Call Center and Hotline. We should establish a National DTV Call Center with a multi-lingual staff and a national toll-free number that is easy to remember, accessible to persons with disabilities, and unassociated with the ongoing, non-DTV operations of the FCC. NTIA's toll-free number is a standard recording, and some have complained the wait for the FCC's general customer helpline is much too long, as it covers many other issues, and consequently it is not as useful as it could be. There is no reason for two separate toll-free numbers for DTV information when it is easier to promote and staff one. Consumer outreach specialists should be able to develop a more succinct and consumer-friendly message. The call center could also be the point of contact for households in need of local assistance to obtain or install converter boxes. We can help state, local, and tribal governments connect seniors to community-based service providers. This is especially important to seniors, a disproportionate number of whom do not have access to the Internet or know how to reach our website.

Launch a Targeted Grassroots Information and Technical Assistance Campaign. The task force, working with state, local and tribal governments, the DTV Transition Coalition partners, and community-based service providers, could target communities with the highest concentration of over-the-air viewers, including senior citizens, low-income, non-English speaking, rural populations and tribal communities. It can launch a coordinated grassroots campaign, which would include posting signs in supermarkets, retail stores, churches, social service organizations, all modes of public transportation and other public places. Many at-risk citizens will need help acquiring and hooking up their converter boxes, and it remains entirely unclear who is going to help them. If it is to be done through volunteers, it will take a vast effort to vet and train them. No Federal agency currently has the mandate or resources to help people who can't themselves hook up the boxes to their TV sets. For example, while the FCC, the AoA and its allied aging network -- which includes state and local agencies, as well as community based service providers like Meals on Wheels -- have been in very early discussion about various grassroots efforts, no plan is in place. People with disabilities experience great difficulty accessing closed captions and video descriptions. A technical assistance program must be established soon, with timelines for training and outreach to ensure people who need help can get it.

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

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

Because the law does not provide for any waivers or extension of time, February 17th, 2009 is indeed the last day that full-power broadcast stations will be allowed to transmit in analog. There are a total of 1,812 stations that will be serving the American people after the transition but, to date, only 750 are considered to have fully completed construction of their digital facilities and are capable to broadcast in digital only in the final position from which they will broadcast. The remaining stations vary in levels of transition preparedness. Some stations need to construct their transmission facilities, change their antenna or tower location, or modify their transmission power or antenna height, while others may have to coordinate with other stations or resolve international coordination issues.

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

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

There is little time left, but I believe it is enough time to succeed in establishing a smooth transition if we increase the level of coordination and resources dedicated to this undertaking. The ongoing leadership of this Committee, including this hearing today, is extremely helpful in focusing our efforts. Thank you for holding this critical hearing, and I look forward to working with you to make sure the DTV transition successful for the American people.