

TESTIMONY

Of

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Chairman

Federal Communications Commission

Before the

**Subcommittee on Commerce, Justice, State, and the Judiciary
of the Committee on Appropriations
United States House of Representatives**

On the

**Federal Communications Commission's
Fiscal Year 2005 Budget Estimates**

Wednesday, March 31, 2004

TESTIMONY OF FCC CHAIRMAN MICHAEL K. POWELL

Mr. Chairman, Ranking Minority Member, and Members of the House Commerce, Justice, State, Judiciary and Related Agencies Appropriations Subcommittee, thank you for this invitation to appear before you to discuss the Federal Communications Commission's Fiscal Year 2005 Budget Request. I appreciate this opportunity to provide you with an update of the Commission's progress since I last testified two years ago, and to discuss our goals and objectives for the next fiscal year.

Let me first take a moment to thank you for this subcommittee's continued interest in the Commission's operations. The professionalism of you and your staff has enhanced our ability to work together to try and ensure proper funding levels for the FCC. I would also like to note that I appreciate the difficulty of your role as appropriators in making decisions about the needs of agencies competing for scarce resources. I recognize that every agency that appears before this subcommittee has funding objectives that are important to our nation's economy and security. I would note, however, that the Commission's role during this period of rapid technological change and evolution to an information economy is essential both to the financial viability and well-being of America and the protection of its consumers.

The Communications Act mandates that the FCC's basic mission is to ensure that the American people have available – at reasonable cost and without discrimination – rapid, efficient, nation- and world-wide communications services; whether by radio, television, wire, satellite or cable. Right now, almost everything that the Commission does affects all of you here on a daily basis – sometimes even several times a day. Every time your pager vibrates or your cell phone plays a tune; every time you turn on your

computer or talk on a wireline phone; every time you swipe your credit card at the gas pump or turn on your home alarm system; and of course, every time you watch television or listen to the radio – the FCC has played a role in bringing you the benefits of telecommunications services.

Our mission will continue to evolve as long as there is change within the telecommunications sector. In recent years, we have shepherded policies that have transformed the lives of America's consumers – the birth and explosion of WiFi; the launch and growth of Direct Broadcast Satellites, and the continued remarkable growth of cell phone service. We have and will continue to deliver value, innovation, and economic tools to the American people.

Creating an environment for achieving this mission involves a comprehensive understanding of technology and the ability to apply sound engineering principles to complex issues. It requires a clear focus on the legal and economic ramifications of our actions and the recognition that what we do will have an impact on the health of our nation's telecommunications infrastructure. It requires the staffing and resources to accomplish these tasks. And, it requires the infusion of tangible materials such as specialized equipment and laboratory facilities, as well as a reliable and functioning information technology infrastructure.

I appear before you today to ask your approval for spending levels that reflect the importance of the Commission's mission. We need the requested funding to ensure that the FCC is healthy and able to cope with current and future technological changes – not just during the next fiscal year, but during the remainder of the decade. I am asking for your assistance in building and maintaining a Commission with the capability and

flexibility to handle the needs of consumers and the new information economy. And, I am asking that the Commission's operating funds for the spectrum auctions process be provided to allow us to assign spectrum efficiently – because spectrum is the source of continued and renewed life for the telecommunications sector.

Fiscal Year 2005 Request

In the past when I have appeared before this Subcommittee, I emphasized the need for funding to turn around an aging Commission and bring it into the 21st Century as a streamlined, focused organization with the technological expertise to serve consumers and disparate sectors of industry. During the past three years, the Commission has successfully reorganized to promote a business-oriented structure to better serve both industry and the public. Using better management practices in combination with improvements to our information technology, we have streamlined our processes for everything from rulemakings to application processing.

We have turned inward to develop a well-trained work force that is capable of handling the economic and technological challenges facing the industry. As part of our Excellence in Engineering Program, we have hired more engineers and upgraded our laboratory facilities. We hope to continue this trend to ensure that we not only have the know-how but the tools with which to accomplish our tasks and goals.

The Commission has accomplished a great deal with what you have provided during the past three years, but the FCC's continually evolving mission and focus places new demands on our resources. The Commission must maintain the improvements that have been made and continue to update its workforce and facilities to cope with the needs

of its constituency. At a time when all agencies are facing cuts or frozen spending levels, I recognize the difficulty of asking for permission to expend additional funds, but I believe that the modest increase requested by the Commission is consistent with the demands of the rapidly changing telecommunications sector.

The Commission is requesting spending authority of \$292,958,000, with a direct appropriation of \$20,000,000. The remainder will be raised through regulatory fees. We continue to rely on the telecommunications industry's ability to shoulder the bulk of the financial obligation of implementing the Communications Act, in order to lessen the burden on the taxpayer. The Commission's request represents an increased spending level of \$19,000,000 or 6.9 % over the previous fiscal year. During the current fiscal year, the Commission has a \$273,958,000 spending level with all but one million dollars being raised through regulatory fees.

This year's requested increase is necessary both to provide the Commission with the resources to accomplish its mission and to set rational regulatory and productivity goals. Of the total, \$5,893,000 is designated for uncontrollable operating increases to maintain Fiscal Year 2004 service levels, including employee salaries for our projected 2,015 full-time equivalents (FTEs), and inflationary increases for office space rental, supplies, printing, postage and contractual services.

The Commission will use \$13,107,000 of the proposed increase for program performance initiatives. From that amount, the Commission will dedicate \$8,755,000 to its technology initiatives, such as lifecycle replacement and the integration of our electronic licensing systems. It is difficult to place enough emphasis on this particular programmatic need. The internal work of the Commission, from processing applications

to writing rulemakings, is all done electronically. Replacing software and hardware on a timely basis reduces labor costs, decreases processing time and increases customer satisfaction. It is important that the Commission has the electronic means to communicate, both internally and externally.

Another critical use of the program performance funds is the initiation of a multi-year program to replace the aging fleet of vehicles used by the Enforcement Bureau for tracking illegal communications operations, including those used to disrupt legal communications. The Commission will use \$802,000 to replace 14 vehicles, while providing an additional \$1,800,000 for upgrading monitoring equipment utilized primarily in these vehicles. This expenditure will allow the FCC to perform some of its most important tasks: safeguarding spectrum from interference and serving public safety and homeland security communications.

The third component of our program performance funds requests \$1,000,000 to upgrade the testing capabilities of the Columbia, Maryland Laboratory. The Commission's engineers will use these funds to expand testing and measurement capabilities, and to monitor and test innovative technologies. These funds will lead to greater capabilities for encouraging the rollout of new telecommunications services.

Finally, the Commission requests program performance funds to infuse an additional \$750,000 over the previous year's level into internal employee training programs. I initiated a range of additional training programs with your help during my first year as Chairman. We have succeeded in creating an FCC University that provides specialized training on issues related to our work, as well as engineering courses to keep our technological expertise sharp and efficient. We need to continue training staff to

increase employee productivity and retain valuable specialists. This increase will allow the Commission's training spending levels to move closer to Office of Personnel Management-recommended levels.

I should mention here that for Fiscal Year 2005, the FCC requests an increase in its travel budget by \$21,000 over Fiscal Year 2004 levels. This amount reflects inflationary costs as part of our increased uncontrollable operating increases. I currently do not accept Section 1353 travel from regulated entities and I have directed bureau and office chiefs and members of my personal staff to follow the same policy. This directive has led to increased costs for agency travel spending already in Fiscal Year 2004.

Strategic Plan Implementation

The Commission's Strategic Plan's goals and objectives are related to the following areas: *broadband, competition, spectrum, media, homeland security and modernizing the FCC*. This year, the Commission's Fiscal Year 2005 Budget Summary provides a specific delineation of spending by these project goals. The last time that I appeared before you, I enumerated almost identical areas for policy-making emphasis, and I continue to see these areas as the basis for our policy vision. The Strategic Plan's goals provide a useful outline for discussing our budgetary objectives.

Broadband: Deploying New Services at High Speeds

Broadband is a descriptive term for evolving digital technologies that provide consumers integrated access to voice, high-speed data service, video-on-demand services, and interactive delivery services. Last week, President Bush set a national goal of

providing affordable broadband services to all Americans by 2007. I fully support the President's statement and I look forward to working with my colleagues on the Commission and in the Administration to achieve this policy vision for the American people. Our Strategic Report's broadband goal is on target with the President's proposal – establish broadband 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.

Universal and affordable access to broadband is essential to the health and future growth of our country. Over the past two years, we have seen the number of lines providing access to broadband services and devices across multiple platforms increase by millions. The number of high speed connections was 10.7 million in 2001 but by the beginning of this year it had more than doubled to 22.3 million.

Since last year, the Commission has adopted a range of rulemakings designed to encourage multiple broadband platforms and build the foundation for a comprehensive and consistent national broadband policy. In its Triennial Review Order, the Commission lifted regulatory restrictions and restored incentives to encourage the deployment of fiber in telecommunications networks. The Commission continues to move forward in classifying innovative services as information services to prevent the application of the labyrinth monopoly regulations of the analog era. We also continue to progress on several fronts to encourage new technologies.

Indeed, new developments occur faster than we can write rules to govern them. We have increased our broadband-related vocabulary to include words and phrases like 3G or Third Generation Wireless, Wi-Fi, or wireless networking, VoIP or Voice Over

Internet Protocol, and BPL or broadband over powerlines. In 2002, there were fewer than 20,000 Wi-Fi hotspots worldwide – now there are more than 130,000 and the Commission has adopted additional rules to encourage the use of unlicensed spectrum for wireless broadband networks. Likewise, we have initiated a rulemaking to facilitate VoIP, and last month released a Notice of Proposed Rulemaking that will encourage the efficient use of power line communications in the provision of broadband services to homes and offices.

Broadband technology still is not as widespread as we hope it will become. During this next fiscal year, the Commission's staff will continue its work to review economic and regulatory factors that impede broadband deployment, develop testing procedures for broadband equipment, facilitate deployment of satellite broadband services and create and maintain a dialogue with regulators at the state, local and tribal level and around the world on policies to promote broadband.

Competition: Protecting Consumers and Encouraging a Robust Marketplace

Our competition goal calls for the Commission to ensure that there is a comprehensive and sound competitive framework for communications services. Such a framework should foster innovation and offer consumers meaningful choices in services, and be promoted both domestically and overseas. All of the Commission's bureaus contribute to the creation of a seamless process for directing efforts aimed at protecting consumers and enforcement of FCC rules against anti-competitive behavior.

The last four years have seen numerous indicators of a robust and competitive telecommunications marketplace. The percentage of Americans having access to three or

more wireless carriers is up to 94.7% from 87.8% since 2000. From 2000 to 2002, wireless minutes increased by 67.5% per user per month while the price per minute dropped 38.9 %. The average price per minute of an international call has dropped from 67 cents in 1997 to 27 cents in 2002. Meanwhile, the percentage of Americans with access to three or more Competitive Local Exchange Carriers has increased to 83.0% from 60.2% from just two years before.

During this time of growth and change, the Commission's staff has worked hard to assist consumers wading through the difficulties of understanding the marketplace in order to facilitate competition – whether through pamphlets designed to acquaint potential consumers with the complexity of cell phone service or by implementing rules designed to allow consumers to port their cell phone numbers to other carriers. Our staff has been involved in assisting consumers on issues related to deceptive and illegal practices, fraud and junk faxes, and spam. We have joined forces with the Federal Trade Commission to initiate the “do not call list” to protect consumers from unwanted intrusions and scams. Increased consumer awareness and rules that assist them are but one mechanism for encouraging a competitive telecommunications environment – but it is certainly one of the most appreciated.

During the next fiscal year, the Commission's staff will continue its work to increase consumer awareness, create international competition, and conduct reviews of service outputs. We will endeavor to make certain that consumers are protected from illegal behavior in an increasingly competitive telecommunications arena. Most importantly, the Commission will continually review its own rules to determine if they properly balance and reflect changing technologies and industry performance.

Spectrum: Answering Increased Demand for New Providers and Services

Spectrum allotment and assignment policies should make certain that a variety of service providers have access to the airwaves, while putting spectrum to its best and highest use. Our Strategic Report includes in this goal the task of using spectrum policy both domestically and internationally to encourage the growth and rapid deployment of innovative and efficient communications technologies and services. Spectrum is the driving force of the deployment of new services, technological investment and innovation and a building block for the creation of new competitors. The appropriate assignment of spectrum is essential to the health and well being of the telecommunications sector.

Spectrum policy reform and the deployment of spectrum generally is one of the most resource-intensive goals within the Commission's portfolio. The allotment of spectrum requires engineers and laboratory equipment. The assignment of spectrum involves economists, lawyers and engineers to administer this process. All of these functions are impacted by international treaties and agreements on interference protocols. Spectrum monitoring equipment is essential to enforcing sound spectrum use – to keep the pirates at bay and the legitimate licensees within the bounds of the rules. And, spectrum assignment is the genesis for the sophisticated licensing systems that now operate to benefit the public by providing for a streamlined and automated application process.

When I took over as Chairman, I decided to initiate a comprehensive analysis of our spectrum policy to determine what changes could be effectuated within the Commission. In June, 2002, I established the FCC's Spectrum Policy Task Force to

conduct a top to bottom review of spectrum policy. As a result, the Task Force released a staff-level report less than six months later that detailed mechanisms for increasing regulatory flexibility and market oriented policies to deliver greater value for consumers.

Spectrum Task Force principles informed a wide range of Commission proceedings including several related to unlicensed devices, the facilitation of spectrum-based services to rural areas, cognitive radio technologies, broadband services over powerlines, and advanced wireless services. We will continue to employ the lessons of the Spectrum Task Force to promote and facilitate efficient spectrum usage. Our work also will focus on deploying new spectrum-efficient technologies such as spread spectrum systems and ultra-wideband. We will continue to develop rules to permit the licensing of innovative satellite technologies. We will improve our Columbia Engineering Laboratory to provide adequate testing of new technologies that will enhance spectrum policy. Achieving these objectives will lead to an infusion of new spectrum into the economy to make the telecommunications industry healthier and more competitive.

Media: Fostering the Digital Transition and Updating Rules

Our Strategic Plan's media-related goal is twofold: facilitate the digital television transition and implement Congress' directive to review our broadcast ownership regulations to craft a regime that promotes competition, diversity and localism in a way that can survive judicial scrutiny. In addition, we expect to devote increased resources to indecency enforcement in response to the public's complaints about coarse programming over America's airwaves.

Several years ago, Congress mandated a transition for the delivery of broadcast television from analog to digital. Because this transition was moving at a snail's pace by some estimates, two years ago the Commission led a joint government-industry partnership to help spur the nation's transition to digital television. This joint initiative has resulted in more digital transmission of broadcasts, additional high-definition programming, cheaper digital television sets and greater consumer adoption of digital television. The digital transition is not confined to broadcast television, as broadcast radio stations are also, with the Commission's help, looking to transition to a digital format.

During the next year, the Commission will continue to adopt and enforce regulations to advance Congress' dual goals of bringing consumers the benefits of digital television and reclaiming valuable spectrum in the 700 MHz band for vital first-responder public-safety use and the development of new commercial wireless services. These proceedings will include DTV Must-Carry, DTV Periodic Review, DTV LPTV and TV Translators, Plug-and-Play, Broadcast Flag, and Digital Audio Systems and Service Rules. In addition, the Commission will foster the transition by negotiating necessary cross-boarder agreements with Mexico and Canada. The Commission also will use its leadership role to work with industry to stimulate consumer education and, therefore, investment in digital equipment.

This past year, pursuant to a Congressional directive, the Commission completed its most comprehensive and thorough review of its broadcast ownership rules in history. As our ownership rules are sorted out in the courts, we will continue to examine whether current forms of media regulation are achieving statutory policy objectives. We also will

determine how changes in regulations may affect the policy goals of competition, diversity and localism.

To further this goal, I created the Localism Task Force (“LTF”), which is composed of staff from Bureaus and Offices across the Commission. So far, the LTF has conducted field hearings in Charlotte, North Carolina, on October 22, 2003, and San Antonio, Texas, on January 28, 2004. The LTF will hold its next hearing in Rapid City, South Dakota, on May 26, 2004, and plans to conduct additional hearings later in the year. The LTF also will issue a staff level report discussing its research findings and recommending legislative and/or regulatory changes to better achieve our collective localism goals. In addition, we created a Federal Advisory Committee on Diversity for Communications in the Digital Age to advise the Commission on steps it and industry can take to improve minority and small business participation in the communications industry.

Although not highlighted in our Strategic Plan, the Commission also has devoted more resources to enforcing Congress’ indecency statute. Decades ago, Congress placed restrictions on the delivery of indecent programming over broadcast television and radio. Over the last two years, the Commission has seen a dramatic escalation in indecency complaints from the public. In conjunction with the rise in consumer complaints, the Commission has stepped up its indecency enforcement and devoted more resources to the effort in order to respond to these complaints in as timely a manner as possible. Of course, the Commission has proceeded cautiously in this area to balance the rights of the public’s desire to protect our children – as demonstrated by the dramatic increase in complaints – with First Amendment freedoms. We will continue to proceed with caution

to strike this delicate balance and stay faithful to statutory mandates to prevent indecent broadcast programming.

Homeland Security: Empowering First Responders and Securing Our Networks

Ever since the jumbled communications and interference problems associated with the sinking of the *Titanic*, the FCC and its predecessor agencies have been at the forefront of facilitating the reliability of emergency communications. Today, the Commission's primary goal is to promote a reliable, secure, and survivable communications infrastructure for the United States. Effectuating this goal includes facilitating a complex array of interoperability objectives, redundancy provisions and general reliability issues.

The Commission's tasks in the post September 11, 2001 world include providing leadership in evaluating and strengthening the Nation's communications infrastructure, ensuring rapid restoration of that infrastructure in the event of disruption, and providing resources so that essential public health and safety personnel have effective communications services available. This past year, the Commission's Network Reliability and Interoperability Council considered and began implementing best practices for network restoration and disaster recovery/business continuity. Also, the Commission's Media Security and Reliability Council has continued its efforts to adopt best practices to ensure the continued operation and security of broadcast and multi-channel video facilities during emergencies. We also have initiated a rulemaking to address interference to public safety communications in the 800 MHz band to ensure that our first responders would be able to communicate in times of emergencies. We

continued to enhance the Emergency Alert System through consistent, strong enforcement of EAS equipment and testing requirements.

In the E911 context, the Commission's staff has been diligent in alleviating issues that have hindered the deployment of this lifesaving technology. While encouraging carriers to shoulder their share of the load, we also confronted issues related to state funding and local government activities. We have taken an active role in identifying additional obstacles to deployment and developing the necessary solutions to speed deployment. We organized diverse groups associated with E911 wireless rollout and brought them to the Commission for meetings and forums, and will continue to do so to focus attention on this issue and promote safety.

Homeland Security, like the other Strategic Plan Goals, requires a substantial commitment of FTEs and technological resources. Whether coordinating our efforts with other agencies, or enhancing telecommunications and media network reliability, the Commission's personnel must be properly trained and prepared for these responsibilities. The mere enforcement of technical regulations and investigations related to harmful interference to public safety is extremely manpower and equipment-intensive. Interference investigations involve the use of specially designed vehicles and FCC-produced equipment designed to track signals. The Commission develops and maintains much of this equipment in its own facilities, due to its specialized nature. The deployment of this equipment is essential. For example, it might be required to track down interference to air navigation systems, respond to calls for assistance to locate a downed aircraft's emergency locator, or to help prevent jamming of marine safety frequencies.

Modernize the FCC: Putting a New Face on an Old Agency

The modernization of the FCC is the foundation supporting the policy goals of the Commission. Without well developed management practices, a highly trained staff and contemporary engineering equipment, the tasks and goals of the Commission would be impossible to accomplish. The FCC has committed itself to making the fundamental changes necessary to become a more responsive, efficient, and effective agency capable of facing the technological and economic opportunities of the new millennium. While these changes started with an agency-wide reorganization and dedication of resources to recruiting, training, equipping, and deploying an expert workforce, much remains to be done as the Commission seeks to capitalize on its competencies in the policy-related Strategic Goal areas.

The Commission continues to exceed its goals for speed of disposal of agency action – last year topping the 95% target. The percentage of our actions filed electronically also continues to improve and exceeded 85% last year. These accomplishments are not the only indicators of modernization success – the fact that so many well-trained employees choose to stay at the Commission indicates that our environment overall has improved, not just for the consumer but for our employees as well.

There are a range of activities in this area that still need to be addressed. Continued reviews of our processes and procedures and a willingness to overhaul our environment is the key to our success. The Commission must develop and reward effective, results-oriented management. We must hire, train, equip and retain a diverse

and expert staff capable of addressing technological changes and advances. Utilizing staff and contractors in innovative ways, the Commission's management should be prepared to identify ways to leverage technology to further improve or streamline various FCC operations such as licensing, regulatory fee assessment, registration, and financial operations. Each bureau and office maintains statistics concerning their efficiencies in this regard and report yearly to the Commission on progress in this area.

Next year, the Commission will work to improve internal operations such as conducting audits, assessments and evaluations. We will implement a learning management system, and expand the FCC's internal education programs. The Commission's objectives for the next fiscal year also include expanding its Improving Management of Policy Activities through Collaborative Technologies project ("IMPACT"), a 2003 pilot program designed to implement document management, workflow, knowledge management and collaboration tools and new document editing capabilities to increase the timeliness of policy and rulemaking activities. I hope that this Subcommittee will provide the essential funds necessary for us to continue our progress in modernizing the Commission.

Auctions

The requested funds for Fiscal Year 2005 do not include estimated auctions costs of \$91,318,000 authorized from the program's revenues. Auctions are not included in our regular appropriations request, but are provided for as a direct operation of Section 309(j) of the Communications Act to off-set the costs associated with the program. Spectrum Auctions have proven to be a revolutionary, market-based approach to

assigning a scarce resource. This program transformed the spectrum assignment process and led to the collection of more than \$14 billion in revenue for the United States Treasury. I support Spectrum Auctions in part because they have operated effectively to assign spectrum in a way that is far better than previous methods such as lotteries and comparative hearings.

Spectrum Auctions also involve the operation of a complex, man-power intensive program and an automated system requiring constant maintenance and upgrades. Yet, the Spectrum Auctions process – its software, refinements and institutionalization at the Commission all have come at a bargain basement value: we have spent less than three percent of the revenues raised overall to initialize, maintain, improve and legally defend a critical government program. I am proud of the work of the Commission's staff in administering this vital component of sound spectrum management policy. Our program has become a model of efficiency used by numerous governments around the world.

I should note that since 1998, we have provided specific reports to Congress that detail individual expenditures of the program. Each and every dollar spent on the program is checked to ensure that it is related to the operation of the program. We have been audited during past years, and then taken affirmative steps to comply with recommendations for improving our policies.

Last year's decision to cap the program at an amount below the level apportioned by OMB caused difficult cuts to a program that is a winner for the United States Government – both in terms of money raised and the ubiquitous deployment of spectrum that results from the auctions. Already this year, the Commission auctioned the MVDDS spectrum for approximately \$120,000,000. Auctions during the next two years are

projected to raise billions of dollars. And, if we receive authority to continue auctions past the sunset date of September 30, 2007, OMB projects that billions more may be raised through this program. We need resources to ensure that these funds are raised through the most efficient auction program available.

Conclusion

The Federal Communications Commission is an agency on the move. We are in the middle of a transition away from the policies of the last century toward competitive-based policies of the 21st Century. The nature of the industries regulated by the Commission requires it to maintain a flexible management structure to anticipate technological changes as they occur.

During my tenure as Chairman of the Commission, I have worked toward its modernization and focused on a policy vision guided by the core performance goals contained in the Commission's Strategic Plan. These policy areas include broadband, competition, spectrum, media and homeland security. Each of these policy areas places demands on the Commission's resources that are anticipated in our Fiscal Year 2005 Budget Request.

I respectfully request this Subcommittee grant the Commission its full funding request for Fiscal Year 2005. Thank you. I would be pleased to answer any questions that you may have.