

May 20, 2005

The Honorable Edward J. Markey  
U.S. House of Representatives  
2108 Rayburn House Office Building  
Washington, DC 20515

Dear Representative Markey:

We are writing to urge you to ensure that the expected digital transition legislation contains provisions that meaningfully address broadcasters' accountability to the public, and obligations to serve the public interest. We believe that any DTV transition legislation should include:

- quantitative programming guidelines, particularly related to local civic and electoral affairs programming, with appropriate disclosure requirements to provide the Federal Communications Commission and the public with accurate information about the types of programming that appear on the publicly owned airwaves, and
- improved public access to unlicensed spectrum for affordable broadband services.

Any digital television transition legislation acted on by your Committee will be judged not only by how it handles subsidies for set-top boxes and effective revenue generation, but also whether it serves our democracy and the American people who own the airwaves. It appears that there is already a bipartisan consensus that low-income – and possibly all over-the-air reliant households – should receive a converter box subsidy paid from auction revenue. Thus, the failure to include meaningful provisions addressing these other public interest concerns would reflect a devastating failure of leadership and political will. Your leadership, so important in other fights for the public interest, is crucial to this legislative fight as well.

Over the last twenty years there has been a growing abrogation of the compact between the American people and the broadcasters licensed to use the publicly owned airwaves. Study after study has shown that the balance between the pursuit of profits and service in the public interest has been lost. Congress and the Federal Communications Commission (FCC) have left broadcast license holders to define for themselves their “payment” for the use of the valuable spectrum. Not surprisingly, broadcasters have defined fulfillment of public interest obligations in a way that protects their bottom lines. But the role of government in this case is to ensure that the American people don't get left out of the picture. History shows that simply relying on market forces will not ensure that citizens get the information that is critical to a vibrant democracy.

**Processing Guidelines for Local Civic and Electoral Affairs, and Effective Disclosure** – Many broadcast license holders claim that their coverage of local weather and sports, combined with their robust corporate support for community causes is sufficient to fulfill their statutory public interest obligations. That is not the case. Yet because of a lack of measurable standards, this sorry state of affairs has persisted for more than two decades. In this legislation, we urge you to strengthen public interest obligations by first establishing meaningful, transparent, and quantifiable measurements for fulfillment of the public

interest standard. Second, we urge you to put the highest premium on what actually appears on the air. Good corporate citizenship – such as sponsorship of charity fundraising drives – should not be confused with fulfillment of statutory public interest obligations to provide programming addressing local community issues. Third, we urge you to make clear that the current system of broadcast licensing at the local level means that licensees are expected to give a higher priority to locally originated, locally focused programming, including in particular a quantifiable minimum number of hours of local civic and electoral affairs coverage during prime evening and/or morning adult viewing hours. As Thomas Jefferson and many others have noted, a vibrant democracy depends on an informed and engaged citizenry. But these guidelines are meaningless unless there is also effective disclosure. The Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, (sometimes referred to as “the Gore Commission”), which included representatives of the broadcast industry as well as academics and public interest groups, recommended that all television broadcasters place quarterly reports in their public file detailing their programming, with a special emphasis on non-entertainment programming. With the availability of new technologies, such disclosure on the Internet need not be burdensome. Similar requirements were included in the Children’s Television Act. We urge you to include strong disclosure provisions in this digital transition legislation that include clear definitions of what constitutes coverage of community issues.

**Use of Unlicensed Spectrum** – In addition to clearing channels needed for public safety, our groups believe that the most critical economic impact at stake in the DTV transition is *not* the one-time collection of auction revenue, but rather the need to promote the availability of affordable wireless broadband networks, particularly in rural, low-income and other underserved areas. The U.S. has dropped to 16<sup>th</sup> in the world with respect to broadband penetration. America’s wireline cable and DSL broadband duopoly delivers far slower connection speeds – at higher prices – than our South Korean, Japanese and European competitors. One remedy is for Congress to ensure sufficient low-frequency spectrum is available for *both* licensed and unlicensed wireless broadband services.

Considerably more homes and small businesses now rely on wireless Internet services delivered over *unlicensed* spectrum, while very few last-mile broadband connections (and zero municipal wireless hot zones) have been deployed on licensed bands. Already, dozens of municipalities and non-profit community networks, as well as thousands of mostly rural commercial internet service providers (WISPs), are using the very crowded 2.4 GHz *unlicensed* band to deploy wireless connections to hundreds of thousands of businesses and consumers. The 2.4 band is small, uneconomical and shared with 200 million miscellaneous consumer devices, from microwave ovens to cordless phones. Opening returned (and unassigned) TV band spectrum for WISP and community access on an unlicensed basis will greatly stimulate broadband deployment, rural access and growth in America’s high-tech sector more generally. Industry studies show the frequencies corresponding to returned channels 52-to-69 (700 MHz band) propagate through obstacles in a manner that can reduce the deployment costs for wireless networks by a factor of three or more compared to bands above 2 GHz.

We urge you, therefore, to propose a substantial portion of the 10 channels (60 MHz) to be reallocated for wireless services in the 700 band be designated for unlicensed public access; and also that the FCC be directed to complete its pending rulemaking (04-186) that proposes to open *unassigned* channels in the reorganized DTV band (“White space” in markets where Channels 2-to-51 are not used) for unlicensed public access. We would be happy to work with you on any language or technical questions.

We understand clearly the pressures you are up against: the high stakes for every Member of Congress who faces the prospect of constituents' television sets – particularly in low-income and minority households – going dark, and the partisan divides within the Committee. We urge you, however, to take advantage of this opportunity to fight for meaningful public interest standards. As much as television is in a dynamic and unpredictable revolution, it remains an immensely important influence in American society. Having television sets go dark is potentially political volatile. But failing to ensure the public receives adequate and appropriate payment for use of the airwaves we all own through meaningful public interest obligations is certain, over time, to be more insidious and damaging to the strength of our democracy.

Please let us know if you have any further questions about these issues. We look forward to continuing the dialogue.

Sincerely,

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cc: Representative John Dingell