

## STATEMENT OF ANDREW KREIG

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On behalf of the Wireless Communications Association, I'd first like to thank the FCC's Wireless Broadband Task Force for inviting me to participate in today's forum. Clearly, wireless broadband is rapidly gaining ground on its tethered competitors, and is on the verge of a major breakthrough in the United States. The Commission's efforts have much to do with that. WCA appreciates the opportunity to offer its perspective on where FCC oversight of wireless broadband should go from here.

To start, I'd like to provide some background as to who we are and what we do. WCA is the nation's oldest and largest trade association focused on the wireless broadband industry. We are wireless broadband's primary Washington advocate on legal and policy issues, and have participated in virtually every major FCC initiative affecting wireless broadband service. Also, we are active internationally, at the states and before Congress. Last fall, for example, we helped lead the fight to preserve the primary federal loan program that supports rural wireless broadband service managed by the Rural Utilities Services of the U.S. Department of Agriculture.

WCA's tent is large and getting bigger every day, with approximately 260 member companies on six continents. Our members include most of the wireless broadband sector's leading carriers, vendors and consultants, who utilize all spectrum bands available for fixed and mobile wireless broadband services. It does not matter whether the spectrum is below 700 MHz or above 70 GHz -- if it can be used for wireless broadband service, then WCA has an interest. It is expected that WCA's annual convention in Washington June 1-4 will be the largest convention in the world this year solely focused on last mile wireless broadband, with more than 60 exhibitors, and nearly 2,000 delegates. The 150-plus speakers on the program are of the highest stature, including FCC Chairman Michael Powell, Commissioners Kathleen Abernathy and Jonathan Adelstein, and Acting NTIA Administrator and Assistant U.S. Secretary of Commerce Michael Gallagher, plus virtually a Who's Who of the top business leaders in this sector. They are convened from as far as South Africa, Bangladesh and Lebanon at the CEO level, including my distinguished co-panelist Charles Townsend of the Aloha Group, a WCA member at the forefront of developing broadband in the 700 MHz band.

Although WCA's origins lie in the licensed bands, WCA also anticipated and strongly facilitated the boom in delivery of wireless broadband over license-exempt spectrum. In

mid-1999, well before the marketplace caught on to license-exempt “WISP” service, WCA convened sector leaders (including the founder of the first WISP in India, and now a Member of Parliament) to form the License-Exempt Alliance or “LEA.” LEA is devoted exclusively to representing the growing number of service providers who offer wireless broadband service in the license-exempt frequency bands. Importantly, the LEA’s leadership includes the largest, best-funded and most professional “carrier class” license-exempt broadband systems in the United States and Canada. To further its efforts to foster more efficient, cellular, portable and mobile deployments, WCA last year also formed the Personal Broadband Alliance, a coalition of prominent service providers and vendors who advocate ubiquitous “broadband everywhere” services for personal communications.

If nothing else, today’s presentations confirm that wireless broadband has come a long way in a relatively short time. It is also clear, however, that much remains to be done if every American is to have access to wireless broadband service. At WCA, we believe the Commission has a vital role. As the Commission itself has recognized, however, the best course is to establish as few ground rules as are necessary, provide operators with an environment of regulatory certainty, and then let the marketplace take over.

History has taught us the consequences of doing otherwise. Take, for example, licensed MDS/ITFS spectrum, which the Commission itself has identified as an ideal vehicle for wireless broadband. Since the late 1970s, the spectrum was devoted to providing one-way multichannel video service in competition with cable. Then, as technology evolved and consumer preferences changed, WCA pushed for new rules that permitted high-speed Internet and other data services to be routinely offered over MDS/ITFS spectrum. However, the rules ultimately adopted by the Commission proved to be overly-regulatory and became an obstacle to fast deployment of MDS/ITFS broadband service. Excessive costs and application processing delays became the norm. Moreover, threats of reallocation hung over the spectrum at both 2.1 GHz and 2.5 GHz for years, deterring investment along the way.

Still, many MDS/ITFS operators have persevered. As WCA recently reported in response to the Commission’s Advanced Wireless Services Notice of Inquiry, MDS/ITFS operators are delivering wireless broadband to underserved areas throughout the country, despite the burdens imposed on them by the Commission’s existing rules. These include: WATCH TV in western Ohio, NTELOS in southwestern Virginia, CommSpeed in northern Arizona, Sioux Valley Wireless in South Dakota, WinBeam in smaller markets in Pennsylvania, Plateau Communications in New Mexico, Rioplex in southern Texas, or Gryphon Wireless in Nebraska (to name just a few). Wherever they are, the message is the same: Consumers want wireless broadband, and it is our job to make sure they get it.

Fortunately, a new era of regulatory reform is about to arrive. In response to the wireless broadband industry’s movement towards mobile and portable service, WCA, the National ITFS Association (NIA) and the Catholic Television Network (CTN) submitted a proposal in October 2002 to overhaul the FCC’s MDS/ITFS rules. If adopted, that proposal will eliminate obsolete vestiges of the old MDS/ITFS regulatory regime,

replacing it with a system very similar to that already used successfully for regulating PCS.

As Chairman Powell put it, “The time has come to chip off the regulatory barnacles encumbering ITFS and MDS.” We therefore are gratified that the Commission is preparing to act on the WCA-NIA-CTN proposal shortly. This will pave the way for more rapid deployments of wireless broadband service throughout the nation, and will ultimately create a strong, secure domestic wireless broadband infrastructure. This is absolutely essential if we are to match the progress other countries have achieved in broadband.

Although some aspects of the WCA-NIA-CTN proposal are unique to MDS/ITFS alone, the basic tenets of the proposal are grounded in ideas endorsed by the FCC’s Spectrum Policy Task Force. WCA urges that those principles be carried over to all FCC initiatives relating to wireless broadband service. WCA specifically recommends the following:

- Regardless of the spectrum at issue, the FCC must remain focused on the core principle of flexible use, and let the marketplace, not regulation, determine how, when and where new services and technologies will be introduced to consumers.
- New services and technologies must be sustainable financially – forced deployment in the face of bad economics is a recipe for disaster. For that reason, the Commission’s rush to accelerate wireless broadband deployments must be tempered by economic reality. Wireless service providers must be given the time necessary to evaluate developing technologies (such as WiMAX) so that they can determine how, when and where those technologies can be deployed to the greatest benefit to consumers.
- The FCC can and should continue to encourage robust secondary markets for licensed spectrum. The experience of MDS and ITFS, where secondary markets have been employed for more than 20 years, demonstrates that licensees will make excess spectrum available if given the flexibility to negotiate in accordance with their other needs and objectives. Unlike Commission efforts to explore “command and control” spectrum sharing regimes based on the interference temperature metric or cognitive radios, the secondary markets model allows a licensee to tailor shared use to its particular needs and those of the lessee. Thus, WCA has urged the Commission to expand the scope of its recent secondary markets rules to other spectrum that can be used to provide wireless broadband.
- The Spectrum Policy Task Force has observed that “a level of certainty regarding one’s ability to continue to use spectrum, at least for some foreseeable period, is an essential prerequisite to investment, particularly in services requiring significant infrastructure and lead time.” This is certainly true of wireless broadband. It therefore is imperative that the FCC not subject

licensees to forced spectrum sharing that threatens to cause interference or otherwise undermine business plans. For example, just last week it was suggested that the FCC put an unlicensed underlay on ITFS spectrum to promote broadband. However, a low-power secondary service is the last thing we need to promote wireless broadband. ITFS spectrum is a superior vehicle for wireless broadband deployment, and it simply makes no sense to sacrifice ITFS's potential on the altar of an inferior low-power underlay that does not address the needs of the marketplace. Equally important the Commission must carefully craft licensee performance requirements in a reasonable manner. And, constant threats of spectrum reallocation such as those that have faced MDS and ITFS for the last four years hardly provide the regulatory certainty necessary to spur investment.

- Application processes, where necessary, should be streamlined and adapted as necessary to the specific characteristics of the spectrum bands involved. A good example of this was the recent proposal by WCA's Over 60 GHz Committee for a highly streamlined application process specific to wireless broadband providers that utilize "pencil beam" wireless links in the 70/80/90 GHz bands. That proposal, which the FCC adopted largely intact, permits licensees to obtain a nationwide license for all of the spectrum and then register individual links with third party frequency coordinators, thus giving licensees the benefit of interference protection without excessive application processing delays. The thinking behind this "out of the box" approach was the product of industry consensus, and should be encouraged in future FCC proceedings.
- The FCC must continue to adopt rules that are clear and understandable, so that all wireless broadband providers are advised of the rights they do or do not have before they deploy service. For example, in the license-exempt arena, it appears that the FCC's Part 15 rules are on their way to becoming a patchwork of different technical requirements for different license-exempt bands, even though those bands are often used simultaneously within the same wireless broadband system. Such inconsistencies could make it difficult for license-exempt providers to achieve a uniform quality of service for their customers at a reasonable cost, and thus should be avoided wherever possible.
- The FCC should continue its efforts to identify available spectrum for wireless broadband use. An ideal model for this is the FCC's recently-announced rulemaking that could permit license-exempt use of vacant television broadcast spectrum below 1 GHz. Assuming all relevant interference considerations can be worked out, this sort of proposal provides the best of both worlds – it gives wireless broadband providers spectrum with superior propagation characteristics, but without taking spectrum from anyone else or otherwise infringing upon licensee rights.

- The role of state and local regulators must be carefully constrained to avoid the imposition of regulatory burdens that deter wireless broadband. We know, for example, that local governments have passed zoning and building code restrictions on outdoor antennas designed to favor service providers that pay local franchise fees over wireless service providers. In response to WCA's request, the Commission has expanded its OTARD rules to cover both traditional multichannel video services and wireless broadband services. As wireless broadband expands, WCA anticipates that non-federal entities may use other tactics to impose inappropriate regulatory burdens on wireless broadband. As in the case of OTARD, WCA urges the Commission to remain decisive in assuring that the national policy favoring of broadband deployment is not undermined by more parochial objectives.

In sum, this is a time of great opportunities and challenges for the FCC and the wireless broadband industry. We have much to gain, but much remains on our plate. Plainly, the FCC is making great strides towards achieving full deployment of wireless broadband service for all Americans. As always, WCA and its members will continue to do whatever is necessary to help the FCC complete its agenda and achieve all of the unique benefits of the wireless platform.

Thank you.