FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 31, 2007

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Edward J. Markey
Chairman
Subcommittee on Telecommunications and the Internet
Committee on Energy and Commerce
U.S. House of Representatives
316 Ford House Office Building
Washington, D.C. 20515

Dear Chairman Dingell and Chairman Markey:

Thank you for your letter regarding the private equity ownership of communications-related entities. Attached please find my answers to your questions. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

Kevin J. Martin

Attachment
cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Fred Upton, Ranking Member
Subcommittee on Telecommunications and the Internet

Questions for Chairman Martin

1. **Does the Commission compile data on private equity ownership and control of entities subject to the Commission's jurisdiction in a manner different from information requested from other licensees?**

No. The Commission uniformly applies the same ownership reporting requirements (described in answer #2 below) to its licensees, including licensees acquired by private equity investors.

2. **Does the Commission compile data on private equity ownership or control for wireless licensees, including broadcast media, in a manner different than that which may be utilized for ownership and control of telecommunications carriers, or other non-wireless entities, subject to the Commission's jurisdiction?**

The Commission requires wireless licensees (including broadcast licensees) and telecommunications carriers to provide information about ownership and control in periodic ownership reports and/or as part of license renewal, assignment, and transfer of control applications. This requirement applies to all licensees including private equity owners. In these contexts, licensees and applicants identify their corporate or organizational structure (*e.g.*, corporations, partnerships), attributable owners, and equity and voting interests. This information allows the Commission to identify the party or parties in interest when evaluating compliance with its ownership rules and as part of its public interest analysis in the context of a proposed transaction. Both wireless licensees and telecommunications carriers also must report a 10 percent or greater interest in any entity regulated by the FCC or any applicant for an FCC license. The requirements for broadcast licensees are slightly more stringent; they generally must report voting interests at the five percent or greater level. In addition, pursuant to section 310(b)(4) of the Communications Act, the Commission also collects detailed information about foreign ownership and control.

3. **Has the Commission considered the impact of private equity ownership on localism? If not, should the Commission specifically do so?**

As you observe in your letter, private equity ownership of major communications-related entities is a fairly recent trend. As you note, some argue that the management techniques and lack of transparency generally associated with such ownership run contrary to the historic role of Commission licensees as trustees of the public's airwaves, many with a special focus on local communities. Others argue that such ownership, insulated from the pressures of quarterly earnings reports, is better able to focus on long-term, comprehensive goals and to promote the economic health of the industry, building a stronger foundation from which to serve the public interest. The Commission is still

monitoring media industry developments and the evolving business models for broadcast and the impact, if any, of private equity ownership.

4. Has the Commission considered the impact of private equity ownership on consumer protection and quality of service for telecommunications carriers?

The Commission and its bureaus review all transactions to ensure that they are in the public interest as required by section 310(d) of the Communications Act of 1934 including the impact that the transaction would have on consumers and quality of service. In this review, the Commission considers, where appropriate, the impact of private equity ownership on consumer protection and quality of service for telecommunications carriers.

For example, in reviewing the transfer of Verizon Hawaii, Inc. to the Carlyle Group in 2004, the Commission considered arguments that the sale to a private equity fund would diminish the efficiency of Hawaiian Telcom's operations support systems. The Commission concluded that the purchaser had a reasonable transition plan and would be able to develop the requisite operations support capabilities without raising rates. *See* DA 04-2541, rel. 8/17/04.

Private equity owners also are covered by industry-wide consumer protection initiatives to the same extent as other owners. For example, the Commission's slamming, truth-in-billing, and customer account record exchange rules apply to all owners including private equity owners. Thus far, we have no evidence that there is a difference in quality of service between carriers owned by private equity firms and other carriers.

5. Has the Commission fully considered the impact of private equity ownership on the media ownership rules, particularly as it relates to attribution?

The Commission's consideration of its media ownership rules is ongoing, and we will monitor the role of private equity and consider whether certain changes to our attribution rules may be warranted. The Notice in the ownership proceeding asks how the underlying goals– competition, diversity, and localism – would be best served.

6. **Do you believe the Commission's "debt-plus-equity" attribution rules need to be revised to more accurately understand actual private equity ownership and control of broadcast properties?**

Our attribution rules attempt to identify those interests and relationships that influence, control, or affect the programming and other decisions of broadcast licensees and other media entities. The Equity/Debt/Plus (EDP) rule applicable to broadcast attribution and the Equity/Debt attribution rule applicable in the cable context are designed to identify such influential interests. Under the EDP Rule, where an investor is either: (1) a major program supplier (providing programming constituting over 15% of a broadcast station's total weekly broadcast programming hours); or (2) a same-market media entity subject to the broadcast multiple ownership rules, its otherwise non-attributable interest in a licensee or other media entity will be attributed if that interest, aggregating both debt and equity holdings, exceeds 33% of the total assets (equity plus debt) of the licensee or media entity. The Equity/Debt attribution rule in the cable context also attributes financial interests that exceed 33% of the total asset value (equity plus debt) of the entity in which the investment is held, but does not require a triggering relationship.

We are not aware of evidence suggesting that the Commission's broadcast and cable attribution rules do not adequately capture private equity ownership and control. Should information come to light indicating that private equity firms hold interests that are not, but should be, captured by our attribution rules, we would need to revise our attribution rules.

7. **Has the Commission encountered any problems concerning the management and financial transparency of licensees and entities that are owned by private equity firms?**

Thus far, we have not encountered any problems concerning the management and financial transparency of licensees and entities that are owned by private equity firms.

We have recognized, however, that transactions involving multiple layers of equity and debt financing can increase the complexity of determining the real party in interest. This challenge is not unique to private equity transactions however, as both private equity firms and public corporations are often owned by other firms and corporate entities. Similarly, investors in publicly-traded corporations sometimes hold their shares through brokerage firms, raising similar challenges to determining the ultimate shareholders.

8. **What issues, in your view, related to private equity ownership, should the Commission be actively aware of and considering? Should the Commission initiate a proceeding to consider these issues?**

As you note, advocates of the benefits of private equity ownership generally point to the flexibility, freedom, and incentives that this form of investment can provide to owners/managers, allowing them to focus on improving the value and performance of

under-performing assets. On the other hand, critics of private equity investment question whether the emphasis of some private equity firms on extracting value in a relatively short term may lead to insufficient capitalization and less attention to the non-economic values of an enterprise. The Commission will continue to monitor the impact of private equity ownership on the ability of Commission licensees to make capital investments in the communications infrastructure that will enable them to serve the public interest now and in the future. Given the recent origins of this trend in the communications sector, it is too early to identify all of the issues that this investment vehicle might raise. It is not clear yet that ownership and control by private equity firms create any different or unique issues from ownership by public corporations or sole proprietors. The Commission can and will play a critical role monitoring issues that may arise. In the interim, we will carefully consider private equity transactions that come before us, including any alleged benefits or harms of private equity ownership and control, to make sure they are in the public interest.