OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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C O N T E N T S

WITNESSES

SUBMITTED MATERIAL

OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

TUESDAY, JULY 10, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:20 a.m., in room 2123 of the Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Members present: Representatives Walden, Terry, Stearns, Shimkus, Bono Mack, Rogers, Blackburn, Bass, Gingrey, Scalise, Latta, Guthrie, Kinzinger, Barton, Upton (ex officio), Eshoo, Markey, Doyle, Matsui, Barrow, Christensen, DeGette, Schakowsky, Dingell (ex officio), Sand Waxman (ex officio).

Staff present: Gary Andres, Staff Director; Ray Baum, Senior Policy Advisor/Director of Coalitions; Neil Fried, Chief Counsel, Communications and Technology; Debbee Keller, Press Secretary; Alexa Marrero, Communications Director; Gib Mullan, Chief Counsel, Commerce, Manufacturing, and Trade; David Redl, Counsel, Communications and Technology; Charlotte Savercool, Executive Assistant; Lyn Walker, Coordinator, Admin/Human Resources; Daniel Tyrrell, Counsel, Oversight and Investigations; Shawn Chang, Democratic Senior Counsel; Margaret McCarthy, Democratic Professional Staff Member; Roger Sherman, Democratic Chief Counsel; David Strickland, FCC Detailee, Counsel; and Kara van Stralen, Democratic Special Assistant.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. Good morning. I want to welcome a fully constituted Federal Communications Commission to our subcommittee today, and I extend a special greeting to the newest Commissioners Rosenworcel and Pai. We are delighted to have you both here. You will find that the members of this subcommittee take their work seriously and are fully observant of the activities at the Federal Communications Commission, observant of the changes in the audio, video and data marketplaces, and the need to keep the Internet free from government control, foreign or domestic. We do our research, and we complete our work.

I want to congratulate Commissioner McDowell for his fine remarks in Rome in June. You, more than anyone I know, have consistently and forcefully stood up for a free and open Internet. Our subcommittee has heeded your message and, thanks to the leader-

ship of Representative Mary Bono Mack, provided the House with a bipartisan resolution calling on our negotiators at the World Conference on International Telecommunications, WCIT, to maintain the multi-stakeholder approach to Internet governance.

And while I know Chairman Genachowski sometimes has less than laudatory comments regarding our work to free up spectrum through incentive auctions and fulfill the call of the 9/11 Commission by finally approving legislation to pay for and build out that interoperable public safety network, know that we are keenly interested in making sure that the FCC and the NTIA fulfill the intent of the legislation. Further, if either agency has questions about the intent of the law or identifies problems with it, the subcommittee expects to hear the specific concerns immediately. We also continue to examine how Federal agencies might use spectrum more efficiently so that we can put more in the hands of commercial providers while simultaneously helping the government do its work better. I anticipate that Representatives Guthrie and Matsui, who Ranking Member Eshoo and I have appointed to lead a working group on this issue, may have questions for you in regards to government spectrum.

You need to know that I-and a majority of this subcommittee, and indeed a majority of the House, remain deeply committed to the cause of improving transparency and accountability at the Federal Communications Commission. Too often the public has had to turn to the courts to prove procedural wrongs at the Commission, wasting taxpayer resources and leaving the impression with some that the Commission considers itself above due process. I commend the current chairman, however, for the thoughtful reforms that he has instituted, but these are but a bare minimum with no guarantee that a less thoughtful chairman in the future would follow a similar path.

Finally, our subcommittee is very interested in making sure competitive market forces driven by empowered consumers are allowed to work in a way that spurs new technology, innovation and creation of American jobs. The Federal Communications Commission is an important player in that effort, and should not abuse its power to achieve outcomes it lacks statutory authority to accomplish on its own.

Again, thank you for your service. Thank you for coming before our subcommittee.

[The prepared statement of Mr. Walden follows:]

Opening Statement of the Honorable Greg Walden
Subcommittee on Communications and Technology
Hearing on "Oversight of the Federal Communications Commission"
July 10, 2012
(As Prepared for Delivery)

I welcome a fully constituted FCC to our subcommittee today, and I extend a special greeting to the newest Commissioners Rosenworcel and Pai. You will find that the members of this subcommittee take their work seriously and are fully observant of the activities at the FCC, the changes in the audio, video and data marketplaces, and the need to keep the Internet free from government control—foreign or domestic. We do our research, and we complete our work.

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Again, thank you for your service and for coming before our subcommittee.

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Mr. WALDEN. With that, I would yield to Mr. Terry.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. TERRY. Thank you, Mr. Chairman, and I recognize the need to bring any and all available spectrum online as soon as possible. It is absolutely necessary in order to meet our growing demand.

The Commission should make finalizing near-term opportunities like 4 megahertz of spectrum and the AWS–4 or 2 gigahertz band and the broadcast incentive auctions top priority.

I have concerns about the regression analysis contained in the recent high-cost order with admitted inaccuracies in the data sets used, lawsuits filed and implementation beginning this past Sunday. I worry that what started out as an honest effort to modernize and create an efficient fund has developed into a situation in which rural America could in fact see declining service quality and higher prices.

I understand that the FCC has opened a proceeding seeking comment on contribution reform, and I am eager to hear where our witnesses stand on how contribution should be assessed, what services and service providers should contribute, and most importantly, what they understand their current authority is when making such assessments.

Last, I have a few questions on a process in regard to investigations at the FCC Office of Engineering and Technology. I have been informed that a company in my district that produces remote monitoring equipment for propane tanks has filed a formal complaint alleging that one of their competitors is operating in an unauthorized band, and I would like to know more about how the Commission considers such allegations, and I thank my friend from Oregon, and I yield back.

Mr. WALDEN. And I would yield now to the gentleman from Texas, Mr. Barton, for the remaining 23 seconds.

OPENING STATEMENT OF HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BARTON. Twenty-three seconds?

Well, I want to welcome our two new Commissioners from the FCC to the Energy and Commerce Committee. We look forward to a long and fruitful dialog with you two fine folks, and I hope that in this hearing today, Mr. Chairman, we take a look at your bill, H.R. 3309, the FCC Process Reform Act. I think it is a good piece of legislation and I would like to hear what the members of the FCC have to say about it.

And with that, I will put the balance of my statement in the record and yield back the remaining 12 seconds.

[The prepared statement of Mr. Barton follows:]

Opening Statement of the Honorable Joe Barton
Chairman Emeritus, Committee on Energy and Commerce
Subcommittee on Communications and Technology
"Oversight of the Federal Communications Commission"
July 10, 2012

Since I have been serving on this committee, we have discussed the efficiency of the Federal Communication Commission (FCC) and potential ways to reform the agency. I am not surprised to know that we are having a similar conversation today, and I would like to congratulate both Commissioner Jessica Rosenworcel and Commissioner Ajit Pai on their unanimous confirmation by the U.S. Senate to serve the FCC.

This year alone, this committee has held a total of three hearings related to the issue of FCC reform. I was happy to cosponsor H.R. 3309, the FCC Process Reform Act, introduced by Subcommittee Chairman Walden and see it pass the House floor. This legislation, in many ways, used similar language that was in a bill I introduced with Representatives Bobby Rush and Cliff Stearns in the 111th Session of Congress.

Although we have had legislation pass the House, it is not yet law and until we have a law, we will continue to have this same discussion of inefficiencies and flawed practices at the FCC. Just to name a few, I have had a chance to take a look

at the National Broadband Plan, and I appreciate the FCC admitting the extreme flaws in the Universal Service Fund. This fund is one that I have never truly been a fan of, but now that we have had it since the passage of the Telecommunications Act of 1996, I do believe that it is in need of major reform. Moreso, I cannot express my disappointment enough in the FCC for approving its Net Neutrality rules in December 2010. This was unnecessary in my opinion and still debatable whether or not the FCC truly had authority to do so. In addition, there is a possibility that the FCC will rescind its broadband waivers that were awarded. My home State of Texas has the potential of being harmed by this effort, and I strongly encourage the FCC to stick to its original agreement with the multiple states that received a waiver.

Like I have said multiple times in the past, reforming the operations of the FCC is a must. We owe it to the American people to ensure that all federal agency polices are clear, efficient, and transparent. The FCC is not exempt from this expectation, and I hope to see a positive change in their policies.

Mr. WALDEN. I thank the gentleman from Texas and now recognize the ranking member of the subcommittee, Ms. Eshoo, for 5 minutes.

OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. ESHOO. Thank you, Mr. Chairman, and good morning to the full Commission. We have all five Commissioners before our subcommittee for the first time this year, so welcome to you, and an especially warm welcome to the two new Commissioners. Congratulations to you. We look forward to working with you.

Today the FCC is faced with an enormous set of tasks that will define the communications landscape in the second decade of the 21st century. From implementation to voluntary spectrum auctions to reforming the special-access market, the FCC has an opportunity to create a more competitive marketplace supporting greater consumer choice and a more robust wired and wireless network for consumers and businesses across our country.

I would like to begin by addressing the implementation of incentive auctions, a product of this subcommittee's work over the last year and a half, practically a year and a half it took us to produce that bill. The law was carefully crafted to create new opportunities for unlicensed spectrum and ensure that rules guiding the auction of spectrum, enhanced competition, consumer choice and innovation. So as the Commission proceeds with developing its rules, I look forward to discussions that will ensure that the Congressional intent is closely followed.

Second, the Commission has an opportunity to overhaul the special-access market. As an FCC official noted last month, there is widespread agreement that the existing framework is broken. I am hopeful that the FCC will proceed expeditiously with a mandatory data request and collect the data that is necessary to reform the special-access market on a comprehensive basis. This has been hanging around for a long time. So I think that that needs to be really moved to the front burner.

Third, in less than 30 days, the FCC's rules to place the political file online will go into effect, and I want to thank the Commission for what it has done. We have to sometimes remind ourselves that we are in the 21st century, not the 19th or the 20th. We need to go beyond wooden file cases, even metal file cases. There is an Internet. Everything goes online. So I look forward to this, as a long-time supporter of this action. I want to thank the Commission and I look forward to seeing the Commission proceed with bringing the information online, and as I said, out of these cabinets that probably sit in the basements of stations today.

There are many more issues I hope we will cover in today's hearing including efforts to improve consumer disclosure of wireless data plan terms and conditions, the impact of discriminatory data caps on future innovation, and steps being taken, and I know many have been, to expand broadband adoption.

So thank you, Mr. Chairman, for holding this hearing, and I would like to yield my remaining time to Ms. Matsui.

OPENING STATEMENT OF HON. DORIS O. MATSUI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. MATSUI. Thank you so much, Ranking Member Eshoo, for yielding me time. I want to welcome our new Commissioners, Commissioner Rosenworcel and Pai, along with our Chairman Genachowski and Commissioners Clyburn and McDowell. We love to have the full complement of Commissioners here.

While the FCC has a lot on its plate, one of its major tasks will be undertaking arguably the most complex spectrum auction in history. It is imperative that the process be transparent, and I believe Congress must work closely with the FCC to ensure the auction's success. As co-chair along with Mr. Guthrie of the bipartisan Federal Spectrum Working Group, we have another unique opportunity to work closely with the FCC, NTIA, DOD and other relevant agencies in truly identifying underutilized Federal spectrum.

Our Nation continues to face a spectrum crunch. As a first step, Congressman Stearns and I introduced bipartisan legislation to repurpose the 1755 to 1780 spectrum ban for commercial use.

Lastly, while there are some tough decisions ahead, I want to encourage the FCC to move forward with the USF reform efforts. As part of its reforms, I am pleased that the Commission is moving forward with a broadband adoption pilot program similar to legislation I introduced last year, the Broadband Affordability Act. These pilot projects will help provide greater access to the Internet for seniors, the disabled and lower-income Americans in both urban and rural America. It is my hope that the FCC will use the data gathered from the pilot program to implement a responsible, permanent, broadband adoption program. I look forward to working with the Commission on these and other issues, and yield back the balance of my time.

Mr. WALDEN. The gentlelady yields the balance of her time.

The chairman now recognizes the chairman of the full committee, the distinguished gentleman from Michigan, Mr. Upton.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Thank you, Mr. Chairman. I too join in welcoming our two new Commissioners and all five of you together.

This is an exciting time. We passed landmark spectrum legislation earlier this year that will indeed help kick-start our economy, promote investment and jobs, and provide Americans access to new and innovative services. The legislation does this by putting more frequencies in commercial hands as the Internet goes mobile and demand for wireless broadband continues to grow tremendously.

First, it requires the FCC to auction 65 megahertz of particular spectrum within the next 3 years, and Mr. Chairman, I look forward to hearing your plans for this spectrum, including the frequencies from 2155 to 2180 megahertz, which are ideally suited for pairing with the spectrum from 1755 to 1780.

Second, the legislation authorizes the FCC to conduct incentive auctions in which the government shares some proceeds with licensees, including broadcasters, that voluntarily return spectrum to be auctioned for broadband services. I am eager to learn when

you will start implementing the incentive auctions and when you think the broadcast incentive auction will indeed take place. I also want to reinforce what we required in the legislation: that the FCC not preclude parties from participating in the auction. The FCC should not be picking winners and losers, and the more robust an auction, the more successful that it will be.

I would also like to hear about your plans for special access services. I am glad you chose not to move forward with the draft order that would have suspended the current pricing flexibility regime even though parties had petitions pending. This regime was put in place by a Democrat-led FCC to allow limited deregulation where the parties demonstrate the presence of competition. And as we know, we have made good process a priority in this Congress, and it would have been inappropriate to change the rules in the middle of the game.

I understand you may be redrafting that item. I am interested to know whether you will first move forward with a mandatory data collection, as reported, to determine whether changes are appropriate and, if so, what kind. I also want to make sure that you keep in mind the purpose of the pricing flexibility regime: to gradually stop applying some old rules to old technology in the presence of competition, not to start imposing new rules on new technology, like fiber facilities and Ethernet services designed for the broadband world.

I also look forward to hearing about the impact of the massive storm that swept from the Midwest through the Mid-Atlantic region just over a week ago. There were reports that phone service and 911 call centers were down. How extensive was it? What were the causes? What can we do to stop them again?

I yield the balance of my time to Mr. Stearns.

[The prepared statement of Mr. Upton follows:]

Opening Statement of the Honorable Fred Upton
Subcommittee on Communications and Technology
Hearing on "Oversight of the Federal Communications Commission"
July 10, 2012
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We have a couple of newcomers at the witness table today. Let me begin by offering a warm welcome to recently confirmed Commissioners Jessica Rosenworcel and Ajit Pai.

This is an exciting time. We passed landmark spectrum legislation this year that will help kick-start our economy, promote investment and jobs, and provide Americans access to new and innovative services. The legislation does this by putting more frequencies in commercial hands as the Internet goes mobile and demand for wireless broadband grows exponentially.

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I also look forward to hearing about the impact of the massive storm that swept from the Midwest through the Mid-Atlantic region just over a week ago. There were reports that phone service and 9-1-1 call centers were down. How extensive was it? What were the causes? What can we do to prevent these types of problems?

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OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Thank you, distinguished full Chairman, and let me just also welcome the two Commissioners, and I want to applaud the FCC for taking the steps to reform the Universal Service Fund. Any small step forward is good. I encourage you to conclude your operation and work forward.

I think I am also interested in how the FCC believes Federal spectrum can alleviate today's spectrum crunch, and the Federal Government occupies approximately 60 percent of the best spectrum which the FCC must strongly consider as it seeks to reach its goal set out in the national broadband plan.

Mr. Chairman, I think you and I had called for an inventory during the stimulus package when you had the broadband deployment of $7.5 billion. We wanted to map it before it was given out; it wasn't. I think we should also have a spectrum inventory of the military and elsewhere to see how much they have to possibly see how much of that is available to help the private sector. I have introduced a bill, as Congresswoman Matsui mentioned, H.R. 4817, Efficient Use of Government Spectrum Act. This is a small step forward, which we believe is helpful and we would like to have a hearing on it.

And finally, Mr. Chairman, the FCC must continue to work diligently on clearing its backlog. Part of the problem that we find across government is there is a backlog, whether it is in the Veterans Administration or the FCC. The agency is making headway. I compliment you on that. But many items that could fuel job growth and investment have lingered. Perhaps I will just name a few without taking any positions on the merits of these. That is the Securus petition, Anda's application for review, Sky Angel's program access complaint, and of course, the Illinois Public Telephone Association petition for a declaratory ruling. I hope the FCC will look at that.

I thank you, Mr. Chairman.

Mr. WALDEN. The gentleman's time has expired.

The chair recognizes the distinguished gentleman from California, Mr. Waxman, for 5 minutes.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you, Mr. Chairman, for holding this hearing, and I want to welcome back Chairman Genachowski and Commissioners Clyburn and McDowell. You have been before our committee before. And I am pleased to also welcome the two new members from the Commission, Jessica Rosenworcel and Ajit Pai. I am sure you are both going to prove worthy of the long wait you had to get your confirmation to join the Commission, and we are all looking forward to working with you as well.

The communications and technology industry is a source of incredible innovation and it is an engine for national economic growth. The FCC's charge is to promote robust competition, ensure access to service for all, and safeguard the American consumer, and

all these become even more important as these technologies play an increasing role in our daily lives.

This was certainly brought home to us as recent weather-related incidents made abundantly clear. Americans rely on broadband devices and applications more than ever, and our lives are greatly enhanced by access to these critical services. When we had the massive power outages throughout the mid-Atlantic region, it led millions of Americans to malls and coffee shops, not necessarily to seek an air-conditioned environment, shop or drink coffee, but to recharge their phones, tablets and computers. These devices needed to have power in large part so that they could be connected to the Internet.

In light of our increasing reliance on the Internet, it is imperative that our communications laws and regulatory policies not only continue to promote the innovation that our Nation exports worldwide, but also ensure that Americans have reliable, affordable, access to the Internet at home.

Earlier this year, Congress passed legislation charging the FCC with carrying out two critical tasks: ensuring interoperability for a nationwide broadband network for first responders and making more spectrum available for mobile broadband through incentive auctions, and I am pleased that the Chairman has retained a world-class team to help design and implement these unprecedented auctions.

I also understand the FCC is now considering how to integrate jurisdictions that had previously received waivers to build-out their public safety network into FirstNet. I strongly urge the Commission to limit the potential for early builders to undermine the long-term success of FirstNet.

The FCC has also taken long overdue steps to modernize the high-cost and low-income Universal Service Fund programs. These limited public dollars must be used wisely to connect millions of Americans unserved by broadband or facing barriers to adoption, and I urge you to continue moving forward with reform. Under Chairman Genachowski's leadership, you are collectively making the tough policy calls that need to be made and I support your efforts.

Special access is a concern. It is long overdue for reform. There is widespread agreement that the current deregulatory triggers are broken, even from many incumbent providers of these services, and I hope the Commission will move quickly to gather additional industry data as needed and address the potentially anticompetitive terms and conditions in special-access contracts.

And finally, I urge the Commission to scrutinize carefully the transactions between Verizon and four of the Nation's largest cable companies. Serious questions have been raised about the impact these integrated deals will have on video, broadband and wireless competition. We are hearing from a variety of corporate and public interest stakeholders who are very concerned about what these deals mean for competition. I know the Department of Justice as well as the FCC both have important responsibilities in this process and should coordinate their respective reviews as the agencies examine these proposed arrangements.

I look forward to your testimony and want to thank you again for appearing before our committee.

Mr. Chairman, I want to yield the balance of my time to our colleague, Ms. Christensen.

OPENING STATEMENT OF HON. DONNA M. CHRISTENSEN, A REPRESENTATIVE IN CONGRESS FROM THE VIRGIN ISLANDS

Mrs. CHRISTENSEN. Thank you, Mr. Chairman, and I would also like to add my word of welcome to Commissioners Clyburn and McDowell, who are back with us, and of course, Mr. Chairman and to the two new members, and I really want to thank the Commission for the work that you have done to streamline and make the work of the Commission more efficient and also more transparent.

I am particularly interested in the FCC's USF reform proposed changes to intercarrier compensation and its potential impact on rural service providers in territories. In my district, the U.S. Virgin Islands, we are extremely concerned that the proposed cost model currently being reviewed by the Wireline Competition Bureau would reduce support for our incumbent provider potentially from $16.4 million to only $400,000.

And also, as a member of the Working Group on Spectrum, I look forward to working with you and service providers to address spectrum scarcity. I know that companies like Verizon Wireless and T–Mobile are taking the initiative to find solutions and they are under your review right now, but working with you and the working group, I know that we will find some solutions as well.

Thank you. I yield back the balance of my time.

Mr. WALDEN. The gentlelady yields back the balance of her time. Does the gentleman yield back the balance of his time? He does.

And now we will proceed on to our witnesses, and we are certainly delighted to have all of you here today and respect the work that you do, and Chairman Genachowski, we are going to lead off with you. Thank you for being here and we look forward to your testimony.

STATEMENTS OF JULIUS GENACHOWSKI, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; ROBERT M. MCDOWELL, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; MIGNON L. CLYBURN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; JESSICA ROSENWORCEL, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; AND AJIT PAI, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

STATEMENT OF JULIUS GENACHOWSKI

Mr. GENACHOWSKI. Thank you, Chairman Walden and Ranking Member Eshoo, members of the committee. I am pleased to be joined by a full complement of Commissioners including my newest colleagues, Commissioners Rosenworcel and Pai. I am certain that the members of this committee will find them to be excellent additions to the Commission, as I have.This is my seventh time testifying before this committee and I have been fortunate to meet with many of you individually.

So by now, most of you know that that my primary focus as Chairman has been promoting innovation, investment, competition and consumers in the ICT sector. We focused the agency on maximizing the benefits of broadband communications, and on harnessing wired and wireless broadband to grow our economy, create jobs, enhance U.S. competitiveness, and foster improvements in areas like education, health care and public safety.

Let me provide a brief overview of some recent developments since I last testified before you about 5 months ago. First, we continue to receive good news for the United States from across the broadband sector. The United States has regained global leadership, particularly in mobile. The United States leads the world in 3G subscribers by a wide margin, and we are leading the world in deploying 4G mobile broadband at scale.

The apps economy continues to grow, and U.S. firms and developers continue to lead the way. In the last 3 years, the percentage of smartphones globally with U.S. operating systems has grown from 25 percent to more than 80 percent. And in the last 3 years, we have gone from less than 20 percent of our population living in areas with broadband infrastructure capable of broadband speeds above 100 megabits to approximately 80 percent, more than triple in 3 years, putting us at or near the top of the world.

Of course, in this fast-moving sector, there are many challenges ahead, and our global competitors remain focused on broadband opportunities. So at the FCC, we continue to work to help drive our broadband economy. We continue our efforts to spur broadband buildout, including by removing barriers to deployment. Just last month, the President issued an Executive Order implementing recommendations of the FCC's National Broadband Plan, our Technological Advisory Council, and members of this committee, and I acknowledge Congresswoman Eshoo's leadership on this. The Executive Order took steps to ease access to Federal roads, lands and buildings for broadband infrastructure. It also directed the Department of Transportation to develop "dig once" policies.

As part of our Mobile Action Plan, we have taken several recent actions to spur mobile innovation and investment and free up spectrum. In March, we launched a rulemaking on a proposal to remove barriers to flexible spectrum use in the proposed AWS–4 band. We are close to completing our work to free up 25 megahertz of spectrum in the WCS band. In May, we removed outdated rules on spectrum use in the 800 megahertz band, which will help accelerate LTE. And in August I expect that we will continue our ongoing efforts to remove unnecessary rules hindering the deployment of wireless backhaul.

We are making progress on other pieces of our Mobile Action Plan. The Commission is working with NTIA to facilitate industry tests of LTE sharing in the 1755–1780 megahertz band, and of course, we are hard at work designing the world's first incentive auctions to implement the landmark recently enacted law, a complex task affecting major parts of our economy and involving many challenging questions of economics and engineering. I expect the Commission will put forward proposals by the fall and seek broad public comment.

We are also on track to fulfill our obligations under the recent law that relate to the new national mobile broadband public safety network, and we continue to work on a full range of public safety communications issues. I am concerned about 911 and other communications outages during the recent storm in the DC area. This is something we are investigating and take seriously.

On other matters, we are moving forward with implementation of our unanimously approved comprehensive reform of the Universal Service Fund (USF). These reforms will finally bring broadband to millions of unserved people in rural America while putting the fund on a fiscally responsible budget. We recently announced the availability of the first rounds of funding under the Connect America Fund and Mobility Fund, and just yesterday Frontier announced that it will be deploying broadband to approximately 200,000 unserved Americans as a result of the new Connect America Fund.

The Commission is also helping to tackle threats to our broadband economy. As the result of an FCC-led process on cybersecurity, ISPs serving 90 percent of all U.S. residential broadband subscribers have committed to adopting voluntary, concrete measures to combat three major threats: botnets, IP route hijacking and domain name fraud. Working with the Nation's police chiefs, we reached an agreement with the major mobile carriers to create a database of stolen cell phones, which will help crack down on the growing problem of smartphone theft.

And I continue to speak both publicly and privately with my international counterparts about the vital importance of preserving Internet freedom and the multi-stakeholder model of international Internet governance. I commend this committee for its bipartisan resolution reaffirming the United States' unequivocal support for the successful multi-stakeholder model.

On top of all of these efforts, we continue working to make the agency more open, efficient and effective. I have previously reported on the many concrete steps we have taken to reduce backlogs and speed decisions. I am pleased to report today that over the past 6 months we have made significant reductions in our backlog, including a more than 20 percent reduction in items pending more than 6 months in the Wireline Bureau, and an across-the-board 20 percent reduction in license applications and renewals pending more than 6 months. We have also cut the average number of days required to review routine wireless transactions in 2012 by more than half.

I appreciate the opportunity to be here today. I look forward to continuing to work with this committee to identify opportunities to unleash communications technologies to benefit our economy and all Americans. Thank you.

[The prepared statement of Mr. Genachowski follows:]

STATEMENT OF FCC CHAIRMAN JULIUS GENACHOWSKI

HEARING ON THE OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

JULY 10, 2012

Chairman Walden, Ranking Member Eshoo, members of the Subcommittee, thank you for the opportunity to be here today.

I'm pleased to be joined by a full complement of Commissioners, including my newest colleagues – Commissioners Rosenworcel and Pai. I'm confident that members of this Subcommittee will find them to be excellent additions to the Commission, as I have.

This is my seventh time testifying before this Subcommittee. And I've been fortunate to meet with many of you individually.

So by now, most of you know that that my primary focus as FCC Chairman has been promoting innovation, investment, competition, and consumer empowerment in the ICT sector. We have focused the agency on maximizing the benefits of broadband communications, and on helping harness wired and wireless broadband to grow our economy, create jobs, enhance U.S. competitiveness, and foster improvements in areas like education, health care, and public safety.

I'd like to provide a brief overview of some recent developments since I last testified before you five months ago.

First, we continue to receive good news for the U.S. from across the broadband sector. The U.S. has regained global leadership, particularly in mobile. The U.S. leads the world in 3G subscribers by a wide margin, and we are leading the world in deploying 4G mobile broadband at scale with 64 percent of global LTE subscribers, making the U.S. the world's testbed for 4G services and applications.

The apps economy continues to grow, and U.S. firms and developers continue to lead the way. In the last three years, the percentage of smartphones globally with U.S. operating systems has grown from 25 percent to more than 80 percent. Since 2009, the percentage of Americans owning tablets or eReaders has jumped from 2 percent to 29 percent. And in the last three years we've gone from less than 20 percent of our population living in areas with broadband infrastructure capable of delivering 100+ megabits per second to approximately 80 percent, putting us at or near the top of the world.

Of course, in this fast-moving sector there are many challenges ahead, and our global competitors remain focused on these broadband opportunities.

So at the FCC, we continue to work to help drive our broadband economy.

We continue our efforts to spur broadband buildout, including by removing barriers to deployment.

Just last month, the President issued an Executive Order implementing recommendations of the FCC's National Broadband Plan, the agency's Technological Advisory Council, and some members of this Committee. The Executive Order took steps to ease access to federal roads, lands and buildings for broadband infrastructure. It also directed the Department of Transportation to develop "Dig Once" policies so that carriers can deploy broadband when roads are under construction, which can reduce costs of broadband deployment by up to 90 percent.

As part of our Mobile Action Plan, we've taken several recent actions to spur mobile innovation and investment.

In March, we launched a rulemaking on a proposal to remove barriers to flexible spectrum use in the S-band so that a significant amount of spectrum can be made available for terrestrial mobile broadband use. We are close to completing our work to free up 25 MHz of spectrum in the WCS band

In May, we removed outdated rules on spectrum use in the 800 MHz band, which will help accelerate the rollout of LTE. And in August I expect that we will continue our ongoing efforts to remove unnecessary rules hindering the deployment of wireless backhaul.

We're making progress on other pieces of our Mobile Action Plan. The Commission is working with NTIA to facilitate industry tests of LTE sharing in the 1755-1780 MHz band, which could allow us to make available valuable paired spectrum in the next three years.

We are cognizant that the recent legislation also requires us to auction other spectrum bands, such as the AWS-2 H Block, and we are taking necessary steps to ensure we meet the objectives set forth in the law.

To promote mobile health innovation that will improve care and lower costs, the FCC recently adopted an order dedicating spectrum for medical monitoring networks. It required us to drive solutions to interference issues, and today the U.S. is the first country in the world to enable this technology.

We're also hard at work designing the world's first incentive auctions -- a complex task affecting major parts of our economy and involving many challenging questions of economics and engineering. I expect the Commission will put forward proposals by the fall, and seek broad public comment.

We're also on track to fulfill our obligations under the recent law that relate to the new national mobile broadband public safety network. The Interoperability Board required by the Act has delivered its recommendations, and my colleagues and I have voted to transmit those recommendations to NTIA.

We also continue our work to drive Next-Gen 911 and, in general, to harness communications technology for public safety. We are concerned about 911 and other communications outages during the recent storm in the D.C. area. This is something we are taking seriously.

We're moving forward with implementation of our unanimously approved, once-in-a-generation, fiscally responsible overhaul of the Universal Service Fund (USF). We recently announced the availability of the first rounds of funding under the Connect America Fund (CAF) and Mobility Fund. Just yesterday, Frontier announced that it will be deploying broadband to approximately 200,000 unserved Americans as part of CAF Phase I.

The application window also recently opened for the first phase of the Mobility Fund, where we're pioneering the use of a market-based reverse auction to get the

most impact for every universal service dollar. These efforts are made possible by the increased fiscal responsibility and accountability throughout USF. And in the Lifeline program, which we comprehensively overhauled on a bipartisan basis earlier this year to eliminate waste, fraud, and abuse and to modernize the program for the 21st century, we've saved more than $50 million by scrubbing over 400,000 duplicate subscriptions from the rolls and are on track to meet our $200 million savings target for this year.

The Commission is also helping to tackle threats to our broadband economy.

As the result of an FCC-led process on cybersecurity, ISPs serving 90 percent of all U.S. residential broadband subscribers have committed to adopting voluntary, concrete measures to combat three major threats: botnets, IP route hijacking and domain name fraud.

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And I continue to speak both publicly and privately with my international counterparts about the importance of preserving the multistakeholder model of international Internet governance. I'd like to commend this Committee for its bipartisan resolution re-affirming the United States' unequivocal support for the successful multistakeholder model.

On top of all of these efforts, we continue working to make the agency more open, efficient, and effective. I have previously reported on the many concrete steps we have taken to reduce backlogs and speed decisions. I am pleased to report today that over the past six months we have made significant reductions in our backlog, including a more than 20 percent reduction in items pending more than six months in the Wireline Bureau, and an across the board 20 percent reduction in license applications and renewals pending more than six months. We have also cut the average number of days required to review routine wireless transactions in 2012 by more than half.

I appreciate the opportunity to be here today. I look forward to continuing to work with this Committee to identify other opportunities to unleash communications technologies to benefit our economy and the American people.

Thank you.

Mr. WALDEN. Thank you, Chairman. We appreciate your testimony and your work and now we will turn to Commissioner McDowell. Thank you for being here. We look forward to your comments as well.

STATEMENT OF ROBERT M. MCDOWELL

Mr. MCDOWELL. Thank you, Chairman Walden and Ranking Member Eshoo and all members of the committee. It is great to be back here. I was just here 6 weeks ago, so it is good to be back.

The FCC's to-do list is quite lengthy. Among the many tasks that face the agency are, in no particular order: implementing the new spectrum auction law; completing universal service contribution, or tax reform; modernizing our media ownership rules; determining a path forward in the wake of the Supreme Court's recent ruling regarding our indecency policies; and turning back international efforts to regulate the Internet.

First, as the Commission works to implement the new spectrum auctions law, we should do it with simplicity, humility and restraint. History teaches us time and again that over-engineered or micromanaged auctions and spectrum policies inevitably lead to harmful unintended consequences such as interoperability complications, reduced investment and less revenue generated at auction for the Treasury. Band plans and auction rules should be minimal and future-proof so no innovation is preempted by government action and no market player is excluded from the opportunity to bid.

Second, to help put more spectrum into the hands of American consumers, we need to find new ways to encourage the Executive Branch to relinquish Federal spectrum for auction, as well as help create a policy framework to encourage technological advancements and investments in spectral efficiency, that is, how can we squeeze more capacity out of currently available airwaves.

Third, although the Commission has completed most of its work on the spending side of the universal service ledger, we are overdue for an overhaul of the taxing side. As this automatic tax increase skyrockets into unprecedented stratospheric heights, we have an obligation to finalize fiscally prudent reform as soon as possible.

Fourth, way back in 1996, Congress directed the FCC to clear away unnecessary regulations in the media marketplace as competition takes root. Although complicated by several appellate rulings, the Commission owes it to Congress, the courts and, most importantly, the American people to modernize our rules to reflect the competitive realities of the new media age. In my view, the newspaper broadcast cross-ownership rule is outdated, is contributing to a loss of voices in the media marketplace and should be largely eliminated.

Fifth, as the father of three young children, protecting them from inappropriate content is a high priority for our family. The Commission should act with all deliberate speed to clarify its indecency policy in the wake of the recent Supreme Court decision on this matter and work to process the roughly 1.5 million indecency complaints, some of which have been pending for over 9 years.

Lastly, I would like to thank this subcommittee in particular once again for raising the profile of the international effort to regu-

late the Internet. The May 31st, which hearing was watched literally around the world, as I learned from my trip to Italy recently, it delivered a loud and clear message that not only is it the strong bipartisan policy of the United States to ensure that the expansion of intergovernmental powers over the Net never takes place, but that failure to prevent this effort would harm developing nations the most.

So thank you again for having us here, and I look forward to answering your questions.

[The prepared statement of Mr. McDowell follows:]

STATEMENT
OF
COMMISSIONER ROBERT M. MCDOWELL
FEDERAL COMMUNICATIONS COMMISSION

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON
COMMUNICATIONS AND TECHNOLOGY

OVERSIGHT
OF THE
FEDERAL COMMUNICATIONS COMMISSION

JULY 10, 2012

Thank you Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee for inviting us to appear before you today.

The FCC's "to do" list is lengthy. Among the many tasks that face the agency are, in no particular order: implementing the new spectrum auction law; completing universal service contribution or "tax" reform; modernizing our media ownership rules; determining a path forward in the wake of the Supreme Court's recent ruling regarding our indecency policies; and turning back international efforts to regulate the Internet.

First, as the Commission works to implement the new spectrum auctions law, we should do so with simplicity, humility and restraint. History teaches us time and again that over-engineered or micromanaged auctions and spectrum policies inevitably lead to harmful unintended consequences such as interoperability complications, reduced investment and less revenue generated at auction for the Treasury. Band plans and auction rules should be minimal and "future proof" so no innovation is preempted by government action and no market player is excluded from the opportunity to bid.

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Lastly, I would like to thank this Subcommittee once again for raising the profile of the international effort to regulate the Internet. The May 31 hearing was watched literally around the world and delivered a loud and clear message that not only is it the strong bipartisan policy of the United States to ensure that the expansion of intergovernmental powers over the Net never takes place, but that failure to prevent this effort would harm developing nations the most.

Thank you again for having us before you today, and I look forward to answering your questions.

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FCC Commissioner Robert M. McDowell
Supplemental Statement and Analysis
July 10, 2012

America's future is bright when it comes to putting the power of new communications technologies into the hands of consumers. Our nation has *always* led the world when it comes to wireless innovation, and as I have said for some time, we are in the early days of the Golden Age of mobile broadband. If we adopt the correct policies, we will further strengthen America's global leadership.

The United States has approximately 21 percent of the world's 3G/4G subscribers and approximately 69 percent of the world's LTE subscribers even though the United States is home to less than five percent of the global population.[1] Investment by American wireless providers is higher than that from their international counterparts. For example, in 2011, over $25 billion was invested in United States' wireless infrastructure[2] versus $18.6 billion invested in the 15 largest European economies combined.[3]

The American mobile market also enjoys more competition than most international markets. According to the most recent FCC statistics, nine out of ten American consumers have a choice of at least *five* wireless service providers.[4] In Europe, that number is around three.[5] As a result, American consumers benefit from lower prices and higher mobile usage rates as compared to consumers in the European Union (EU) – 4 cents per minute versus 17 cents generally in the EU.[6] Wireless subscriber usage on average in the United States is often three to seven times as much compared to some countries.[7] At the same time, American consumers pay at least one-third less than consumers in many other parts of the world.[8]

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[1] *See* INFORMA TELECOMS AND MEDIA (WCIS Database) (Dec. 2011).

[2] *See* CTIA-THE WIRELESS ASSOC., CTIA SEMI-ANNUAL WIRELESS INDUSTRY SURVEY (2012), http://www.ctia.org/advocacy/research/index.cfm/AID/10316; *see also* CTIA-THE WIRELESS ASSOC., SEMI-ANNUAL 2011 TOP-LINE SURVEY RESULTS 10 (2012), http://files.ctia.org/pdf/CTIA_Survey_Year_End_2011_Graphics.pdf (providing cumulative capital investment numbers).

[3] *See* BOA/MERRILL LYNCH EUROPEAN TELECOMS MATRIX Q112 (Mar. 30, 2012) (GLOBAL TELECOMS MATRIX Q112) (estimating €14,368 YE 2011. Conversion at $1.2948/1€). The European countries included in the Matrix: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and UK; there are 27 members of the European Union (EU).

[4] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services, WT Docket No. 10-133, *Fifteenth Report*, 26 FCC Rcd 9664, 9669 (2011).

[5] *See* GLOBAL TELECOMS MATRIX Q112.

[6] Roger Entner, *The Wireless Industry: The Essential Engine of U.S. Economic Growth*, RECON ANALYTICS, at 1 (May 2012), http://reconanalytics.com/wp-content/uploads/2012/04/Wireless-The-Ubiquitous-Engine-by-Recon-Analytics-1.pdf).

[7] *See* GLOBAL TELECOMS MATRIX Q112 at 71.

[8] *See id.*

Consumers in all demographic and socioeconomic categories are choosing to access the Internet through mobile devices. Having the freedom to be online while on-the-go is fueling a dramatic spike in global Internet traffic. For instance, Cisco recently released the following projections regarding global Internet trends:[9]

- IP traffic per capita will reach 15 gigabites in 2016, up from four gigabites per capita in 2011;[10]
- Last year, only six percent of consumer Internet traffic originated with non-PC devices; by 2016, this number will grow to 19 percent;[11]
- Between 2011 and 2016, mobile traffic will grow by 62 percent;[12] and
- By 2016, 1.2 million minutes of video content will cross the Internet every second.[13] Or, put another way, by 2016, it would take one person over six million years to watch the amount of video that will cross global IP networks each month.

Combining the power of the Internet with the freedom that comes from wireless mobility has created new opportunities that were unimaginable just six years ago when I was first appointed to the FCC. Throughout my tenure, I have worked hard to maintain America's light touch regulatory policy for mobile communications, which has enabled our wireless sector to flourish. Competition, private sector leadership and regulatory liberalization throughout the globe have wrought a wonderful explosion of entrepreneurial brilliance, investment and economic growth.

Against this backdrop, I will discuss the following initiatives that are before the Commission: (1) implementing the new spectrum law; (2) working on ways to free up spectrum held by the federal government; (3) fostering greater spectral efficiency; (4) continuing reforms of the universal service fund; (5) working on FCC process reform; (6) seeking comprehensive and detailed data of the special access marketplace; (7) modernizing media ownership rules; (8) determining how to implement the Supreme Court's recent indecency decision; and (9) discouraging international efforts to regulate the Internet.

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[9] Cisco Visual Networking Index: Forecast and Methodology, 2011-2016 (rel. May 30, 2012) http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-481360.pdf.

[10] *Id.* at 1.

[11] *Id.* at 2.

[12] *Id.* at 10.

[13] *Id.* at 2.

THE FCC SHOULD IMPLEMENT THE NEW SPECTRUM LAW WITH SIMPLICITY, HUMILITY AND RESTRAINT.

As discussed above, Americans are increasingly relying on sophisticated mobile devices. While the popularity and power of mobility have wrought vast consumer benefits, new and advanced wireless services have increasingly strained our spectrum capacity. As you know, Congress passed historic and bipartisan legislation in February that originated in your Committee, which includes a voluntary incentive auction to yield more spectrum from our nation's television broadcasters.[14]

The Commission has started its work on implementing the new law. The spectrum auctions that will ensue will be the most complicated in world history. Given this complex task, I am hopeful that the Commission will undertake its work with an eye toward simplicity, humility and restraint. In the past, regulatory efforts to over-engineer spectrum auctions have caused harmful, unintended consequences. I hope that we will avoid such missteps by implementing the law with regulatory humility. I will work to ensure that the new auction rules be appropriately minimal and "future proof" to allow for uses that we cannot imagine today as technology and consumer preferences evolve. For instance, the auctions should include band plans that offer opportunities for small, medium and large companies to bid for and secure licenses without excluding *any* interested participant.

THE FEDERAL GOVERNMENT SHOULD RELINQUISH MORE SPECTRUM FOR AUCTION.

In addition to making television broadcast spectrum available for new and innovative service offerings, I look forward to continuing to work with you to identify opportunities to move federal government users into new spectrum bands. As our colleagues at the National Telecommunications and Information Administration (NTIA) reported in March, various federal government operations are employing spectrum located within the 1755 – 1850 MHz range that could be made available for commercial uses.[15] As you know, the NTIA report concluded that while it is possible to repurpose all 95 megahertz of the band, various agencies allege it would cost about $18 billion and take over ten years to move current government users off of that spectrum. I thank my friend, Larry Strickling, and his team at NTIA for their thoughtful and comprehensive report.

That said, the underlying message is disappointing primarily because other Executive Branch agencies did not provide NTIA with the granular data and analyses necessary to support many of the report's assumptions and conclusions. The thrust of the report seems to indicate that the Executive Branch will resist relinquishing more

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[14] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402-6404, 126 Stat. 156, 224-230 (2012).

[15] U.S. DEPT. OF COMMERCE, AN ASSESSMENT OF THE VIABILITY OF ACCOMMODATING WIRELESS BROADBAND IN THE 1755-1850 MHZ BAND (Mar. 2012) ("NTIA Report").

spectrum, even though the federal government occupies about 60 percent of the best spectrum. Clarity in the underlying cost assumptions would go a long way to create greater market certainty as we attempt to attempt to satisfy longer-term commercial spectrum needs.

THE GOVERNMENT SHOULD ADOPT POLICIES THAT WILL ALLOW FOR ACCELERATED IMPROVEMENTS IN SPECTRAL EFFICIENCY.

While we think through the complex issues that will arise as we implement the new spectrum legislation, I will continue to call for an increased focus on technologies and strategies to improve spectral efficiency. In practical terms, even if we could easily identify 500 megahertz of quality spectrum to reallocate today, we should expect the better part of a decade to transpire before consumers could enjoy the benefits. As history illustrates, it takes time to write proposed auction rules, formulate band plans, analyze public comment, adopt rules, hold auctions, collect the proceeds, clear the bands, and watch carriers build out and turn on their networks.

A heightened emphasis on and better education in this area will improve the ability of mobile service providers, engineers, application and content developers as well as consumers to take better advantage of the immediate fixes already available in the marketplace. Service providers have a greater urgency to deploy more robust enhanced antenna systems and improve development, testing and roll-out of creative technologies where appropriate, such as cognitive radios and smaller cells. These types of options would augment capacity and coverage, which are especially important for data and multimedia transmissions. I am pleased that the Commission has undertaken educational efforts in this area.

We are also beginning to discuss the concept of "spectrum sharing." Although the term "sharing" has yet to be defined in the context of current deliberations, I have consistently supported FCC efforts to promote some forms of sharing where technically feasible. For instance, I have strongly encouraged the Commission's work to: promote unlicensed use of the "TV white spaces" within the 700 MHz Band,[16] clear the way for use of medical devices in the 400 MHz Band,[17] and promote growth for our nation's information infrastructure in the 5 GHz Band.[18] Consumers will seamlessly enjoy higher

[16] *See, e.g.*, Unlicensed Operation in the TV Broadcast Bands, ET Docket No. 04-186, Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band, ET Docket No. 02-380, *Second Memorandum Opinion and Order*, 25 FCC Rcd 18661 (2010) (using unused and under-used spectrum held by licensed and unlicensed commercial incumbents for the purpose of developing new low power wireless services).

[17] Amendment of Parts 2 and 95 of the Commission's Rules to Provide Additional Spectrum for the Medical Device Radiocommunication Service in the 413-417 MHz Band, ET Docket No. 09-36, *Report and Order*, 26 FCC Rcd 16605 (2011) (sharing spectrum with federal government users for the purpose of developing and employing implantable medical devices that have a wide range of operations, including restoring movement to paralyzed limbs).

[18] *See, e.g.*, Revision of Parts 2 and 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) devices in the 5 GHz Band, *Memorandum Opinion and Order*, ET Docket No. 03-122, 21 FCC Rcd 7672 (2006) (sharing spectrum with federal government users for the

speeds and expanded coverage once these sharing protocols are introduced into the marketplace. Moreover, the new services stemming from these instances of sharing have the potential to add many billions of dollars to the U.S. economy and to become essential components of the mobile broadband arena. For instance, unlicensed use of white spaces could serve as an "off ramp" for traffic congestion on licensed wireless channels in the same way as Wi-Fi functions today.

Nonetheless, because "spectrum sharing" can have different meanings depending on one's perspective, policymakers should be careful when using the term. Furthermore, spectrum sharing should not be seen as a substitute for auctioning more spectrum, especially federal spectrum. Spectrum sharing is not a panacea. For instance, when referring to the private sector sharing spectrum with federal users, many questions abound, such as: Are federal users given priority of use over private sector users? How would shared use of federal spectrum be determined? Through a unique technological protocol? By time of day? Geographically? On an *ad hoc* basis? Should consumers expect their use of shared federal spectrum to be interrupted with or without notice? What would the value proposition be for various spectrum sharing scenarios?

Before implementing any spectrum sharing initiatives, these questions, and many more, will need to be answered thoroughly.

THE FCC SHOULD PRESS AHEAD WITH UNIVERSAL SERVICE CONTRIBUTION REFORM.

Prior to last fall, the prospects of the Commission reforming the universal service fund (USF) and the intercarrier compensation structure seemed dim. But, after years of fact gathering and analysis, last October, the FCC voted unanimously on a comprehensive reform order which modernized the intercarrier compensation system and the high cost portion of the USF. As a result, we were successful in flattening the spending curve on a federal entitlement by imposing a strict budget on the former high cost fund.

The USF high cost fund has historically supported traditional voice telecommunications services and has not directly subsidized broadband deployment. And, over the years, the program has steadily grown without ensuring efficiency in the system. To put this growth in perspective, the high cost fund grew from $1.69 billion in 1998 to over $4 billion by the end of last year.[19] During that time, multiple providers have received high cost fund support for the same locations. Even worse, the old structure permitted providers to receive subsidies to serve areas that were already served by unsubsidized competitors. In sum, the Commission tackled these issues, among many

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purpose of developing and employing Unlicensed National Information Infrastructure (U-NII), which provides short-range, high-speed wireless connections).

[19] Similarly, the aggregate amount spent on all USF programs grew from $3.66 billion in 1998 to over $8 billion through 2011. Sources: Federal Communications Commission and Universal Service Administrative Company.

others, and transformed the high cost fund into one that will support next-generation communications technologies, while also keeping a lid on spending.[20]

Additionally, this past January, the FCC took initial steps to reform the USF low income program (Lifeline/Linkup) by approving some necessary measures to eliminate waste, fraud and abuse in that program.[21] Pursuant to that Lifeline/Linkup order, the Wireline Competition Bureau has been directed to prepare several progress reports analyzing whether these new reforms are working and whether they are effectively meeting the projected savings. The first bureau report is due soon.

Reforms to the high cost fund and the low income programs are just part of the effort, because only the distribution, or spending, side of the USF equation has been addressed thus far. Just as imperative is the need to fix the contribution methodology, or the "taxing" side of the ledger.

By way of background, the USF contribution factor, a "tax" paid by telephone consumers, has risen each year from approximately 5.5 percent in 1998 to a historic high

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[20] Congress has given the Commission broad authority not only to repurpose subsidies to support advanced services, but it has imposed upon the FCC a *duty* to do so as well by the plain language of section 254. In section 254(b), Congress specified that "[t]he Joint Board and the Commission *shall* base policies for the preservation and advancement of universal service on [certain] principles." 47 U.S.C. § 254(b)(emphasis added). Two of those principles are particularly instructive: First, under section 254(b)(2), Congress sets forth the principle that "[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation." 47 U.S.C. § 254(b)(2). Second, with section 254(b)(3), Congress established the principle that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and *information services* . . ." 47 U.S.C. § 254(b)(3) (emphasis added).

Also, section 254(b)(7) instructs the Commission and Joint Board to adopt "other principles" that we "determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with" the Communications Act. In that regard, in 2010 the Federal-State Board on Universal Service recommended to the Commission that we use our authority under section 254(b)(7) to adopt a principle to "specifically find that universal service support should be directed where possible to networks that provide advanced services."

Some contend that the definition of universal service under section 254(c)(1) muddies the water because it does not include "information service." Instead, that provision states that "[u]niversal service is an evolving level of *telecommunications services* . . . taking into account advances in telecommunications and information technologies and services." But, it is also relevant that the term "telecommunications service" is qualified by the adjective "evolving." Even if section 254 were viewed as ambiguous, pursuant to the well established principle of *Chevron* deference, the courts would likely uphold the FCC's interpretation as a reasonable and permissible one. *See* Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984).

As part of this USF order approved last fall, the Commission agreed with the Joint Board recommendation and adopted "support for advanced services" as an additional principle. Moreover, even if any of the statutory language in section 254 appears to be ambiguous, the Commission's reasonable interpretation would receive deference from the courts under *Chevron.*

[21] Funding for the Lifeline/Linkup program has steadily increased over the years. In, 1998, the total support for the program was $464 million, and in 2010, the total support was over $1.3 billion. *See* UNIVERSAL SERVICE MONITORING REPORT, CC Docket No. 98-202, Table 2.2 (2011), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311775A1.pdf.

of almost 18 percent in the first quarter of this year.[22] This trend is unsustainable and is therefore unacceptable. Simply put, the vague language on consumers' phone bills coupled with the skyrocketing "tax" rate, has produced a new form of "bill shock." We must tame this wild automatic tax increase as soon as possible.

Ideally, the FCC would have reformed both the spending and taxing sides at the same time. Instead, our effort was staged separately. Nevertheless, I was encouraged by Chairman Genachowski's subsequent launch of a further notice of proposed rulemaking on contribution reform which was approved by the Commission several months ago. I am eager to work with my colleagues and all interested parties to develop a practical and equitable solution to lower the tax rate while broadening the base in a manner that is within the authority granted to us by Congress. Hopefully, the Commission can complete this reform effort this fall.

Similarly, I have had a long-standing interest in the FCC completing its reform of the rural health care program. Of the four USF programs, this is the only program that has yet to be reformed even though the Notice of Proposed Rulemaking has been pending since 2010.

Finally, I must underscore that USF reform is an iterative process. I am committed to constantly monitoring its implementation, listening to concerns, and quickly making adjustments, if necessary, especially if there are legitimate points raised regarding the use of flawed or incomplete data in the implementation stages.

WORKING ON FCC REFORM EFFORTS.

Congratulations regarding the recent House passage of the two FCC reform bills which originated in your Committee. Those bills include many positive and constructive reforms.

Modernizing the Sunshine in Government Act to increase the FCC's efficiency and spirit of collaboration while preserving openness and transparency makes good sense. Also, requiring the Commission to include in its rulemaking process cost benefit analyses to justify new rules will produce a more targeted rulemaking process. I look forward to working with all of you on your continued efforts to streamline and improve FCC procedures.

On a related note, I share with you an interest in ensuring that unnecessary, outdated or harmful rules are repealed. While I have supported the Commission's efforts to eliminate outdated or harmful rules, I think more can be done to ensure that future changes are substantive and meaningful.

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[22] *See* Proposed First Quarter 2012 Universal Service Contribution Factor, CC Docket No. 96-45, *Public Notice*, 26 FCC Rcd 16814 (OMD 2011).

SEEKING COMPREHENSIVE DATA IN THE SPECIAL ACCESS MARKETPLACE.

The Commission's special access rules are once again back in the headlines. In particular, the FCC had before it three special access price flexibility petitions which the Commission allowed to be "deemed" granted pursuant to the current FCC rules. In my view, that was the proper outcome. The petitions were filed under existing rules which were adopted during the Clinton Administration. The petitions met the Commission's long-standing criteria for providing regulatory relief and they were granted in accordance with the law and facts.

Also, a special access rulemaking proceeding has been pending before the Commission since 2005. Regarding that proceeding, for several years now, I have repeatedly called upon the FCC to seek detailed and up-to-date special access market data, in part, so any change of the special access rules would withstand appeal. I have maintained that this data must be collected from all players in the special access market, and it needs to be sought on a granular basis to include building-by-building and cell-site-by-cell-site information. The Department of Justice was able to collect and analyze data in such a detailed manner during its reviews of the Verizon-MCI and SBC-AT&T mergers in the last decade.

It is my hope that the Commission will move forward with a mandatory data collection soon so that it will have the adequate information to make responsible and fully-informed decisions as to whether the current special access rules should be changed and, if so, how they should be changed.

OUR MEDIA OWNERSHIP PROCEEDING GIVES US AN OPPORTUNITY TO MODERNIZE OUTDATED RULES.

As is required by Section 202(h) of the Communications Act, I am hopeful that, in the coming months, the FCC will modernize its media ownership rules to reflect the current economic realities of the marketplace and eliminate any and all unnecessary mandates.[23] In particular, there is a growing body of compelling evidence that the 1975

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[23] Section 202(h) of the Telecommunications Act of 1996 states that:

> The Commission shall review its rules adopted pursuant to this section and all of its ownership rules quadrennially . . . and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.

Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 111-12 § 202(h) (1996); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004) (amending Section 202(h) of the 1996 Act). In December, I concurred to the majority of the December 2011 notice of proposed rulemaking, because the Commission appears to be prepared to accept a regulatory *status quo*.

newspaper-broadcast cross-ownership ban should be largely repealed.[24]

Over the past decade, broadcast stations and daily newspapers have grappled with falling audience and circulation numbers, diminishing advertising revenues and resulting staff reductions,[25] as online sources gain in popularity.[26] This trend has led many prominent daily newspapers to declare bankruptcy, while others have faced more dire circumstances. In fact, over the past five years, an average of 15 daily papers, or about one percent of the industry, have shuttered their doors *each year*.[27]

Although newspaper circulation numbers continue to decline, the number of unique visitors to newspaper websites has been increasing.[28] In fact, the 25 most popular U.S. news sites – two-thirds of which are operated by traditional news organizations – experienced a 17 percent increase in visitors in 2011.[29] This development has led many dailies to experiment with new business models, such as moving to online-only formats[30]

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[24] Although the Commission has offered up a relaxation of the ban on newspaper-television ownership for the largest markets and considers eliminating restrictions on newspaper-radio combinations, my preliminary view is that these proposals are anemic and do not reflect marketplace realities.

[25] Although some sectors of the news industry have experienced a slight resurgence, newspapers continue to face decline with both advertising and circulation revenues continuing on a downward path. In 2011, network and local news viewership increased for the first time in years; however, local TV station advertising revenues still experienced a decline. *See* PEW RESEARCH CTR'S PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA 2012, KEY FINDINGS, http://stateofthemedia.org/2012/overview-4/key-findings/ (last visited Mat 14, 2012) ("THE STATE OF THE NEWS MEDIA 2012"); THE STATE OF THE NEWS MEDIA 2012, LOCAL TV, http://stateofthemedia.org/2012/overview-4/key-findings/ (explaining that some of this loss is due to a reduction of political and automotive advertising from 2010 and that these revenues will rebound during a busy election cycle.

[26] In fact, the White House's Council of Economic Advisors has found that newspapers are one of America's fastest-shrinking industries losing approximately 28.4 percent of its workforce between 2007 and 2011. Online publishing job growth, on the other hand, increased by more that 20 percent in the same time period. *See, e.g.*, ECONOMIC REPORT OF THE PRESIDENT TOGETHER WITH THE ANNUAL REPORT OF THE COUNCIL OF ECONOMIC ADVISORS 188 (February 2012) (citing a LinkedIn study), *available at* http://www.whitehouse.gov/sites/default/files/docs/erp_2012_complete.pdf; Matt Rosoff, *Newspapers Are The Fastest Shrinking Industry In The U.S.*, BUSINESS INSIDER (Mar. 8, 2012), http://articles.businessinsider.com/2012-03-08/tech/31135175_1_linkedin-job-growth-newspapers#ixzz1us0z9Urf.

[27] THE STATE OF THE NEWS MEDIA 2012, MAJOR TRENDS, http://stateofthemedia.org/2012/overview-4/major-trends/.

[28] *Newspaper Web Audience*, NEWSPAPER ASSOC. OF AM. (Apr. 25, 2012), http://www.naa.org/Trends-and-Numbers/Newspaper-Websites/Newspaper-Web-Audience.aspx.

[29] THE STATE OF THE NEWS MEDIA 2012, DIGITAL, http://stateofthemedia.org/2012/digital-news-gains-audience-but-loses-more-ground-in-chase-for-revenue/ (based on unique monthly visitors).

[30] Currently, 172 newspapers have launched online subscription plans or placed content behind a paywall. This represents a 15 percent increase since January alone and more papers are expected to follow suit in the coming months. Papers with Digital Subscriber Plans/Paywalls, NEWS & TECH (May 10, 2012), http://www.newsandtech.com/stats/article_22ac1efa-2466-11e1-9c29-0019bb2963f4.html (last visited May 14, 2012); THE STATE OF THE NEWS MEDIA 2012, NEWSPAPERS, http://stateofthemedia.org/2012/newspapers-building-digital-revenues-proves-painfully-slow/ (stating that roughly 150 newspapers have instituted a "metered model").

or partnering with online distributors.[31] The most recent example being the announcement that, in a cost-cutting effort, the 175-year-old daily New Orleans *Times-Picayune* – which won a Pulitzer Prize for its coverage of Hurricane Katrina's aftermath – would print only three times per week starting this fall in order to focus on online news.[32]

Regardless of any rule changes we may implement, it is clear that traditional media owners are choosing to invest in new, *unregulated* digital outlets rather than acquire more heavily-regulated traditional media assets. These business decisions, along with newspaper bankruptcies and closures, is probably a response, in part, to the challenging economic climate, but also may be a consequence of the FCC's failure to modernize our rules to adequately reflect the emergence of competition from new media, such as online and mobile platforms. We must ensure that the heavy hand of government regulation does not distort the marketplace or limit the options of broadcasters and the newspaper community to attract investment, increase efficiencies, and share the costs of news production.

Furthermore, evidence before the Commission demonstrates that in-market combinations do not negatively affect viewpoint diversity[33] and may actually increase the quantity and quality of local news and information provided by commonly-owned outlets to benefit the American consumer.[34] Additionally, an analysis of the success rate of newspaper-television cross-ownership operations demonstrates that many have not survived, disproving the hypothesis that these arrangements confer extraordinary

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[31] THE STATE OF THE NEWS MEDIA 2012, OVERVIEW, http://stateofthemedia.org/2012/overview-4/ (stating that Reuters is producing original news shows for YouTube; Facebook has entered into partnerships with *The Washington Post, The Wall Street Journal* and *The Guardian*; and Yahoo! paired with ABC News to be its sole provider of news video).

[32] *See, e.g.* David Carr, *Times-Picayune Confirms Staff Cuts and 3-Day-A-Week Print Schedule*, N.Y. TIMES (May 24, 2012), http://mediadecoder.blogs.nytimes.com/2012/05/24/new-orleans-times-picayune-to-cut-staff-and-cease-daily-newspape/; Keach Hagey, *Times-Picayune No Longer a Daily*, WALL ST. J. (May 24, 2012), http://online.wsj.com/article/SB10001424052702304840904577424352986964904.html.

[33] *See, e.g.*, Newspaper Association of America, Comments, MB Docket No. 09-182, at 18-20 (Mar. 5, 2012) ("NAA Comments"); Adam D. Renhoff and Kenneth C. Wilbur, Local Media Ownership and Viewpoint Diversity in Local Television News, at 3, 15 (June 12, 2011), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308596A1.pdf ("[T]hese findings show that under the proposed definition of viewpoint diversity, variation in television station co-ownership and cross-ownership is generally found to [have] negligible effects on viewpoint diversity. However, it is important to note that the data are limited to the degree of media co-ownership and cross-ownership currently allowed under FCC rules.").

[34] *See, e.g.*, 2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 09-182, *Notice of Proposed Rulemaking*, 26 FCC Rcd 17489, 17519 ¶ 85, n.185 (2011); NAA Comments at 15-18; Diversity and Competition Supporters, Initial Comments, MB Docket No. 09-182, at 40-43 (Mar. 5, 2012); Adam D. Renhoff and Kenneth C. Wilbur, Local Media Ownership and Media Quality, at 3, 15 (June 12, 2011), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308504A1.pdf; Jack Erb, Local Information Programming and the Structure of Television Markets, at 4, 27-28, 40-41 (May 20, 2011), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308508A1.pdf.

influence, market power and/or profits.[35] These relationships, however, may allow some television stations and newspapers the ability to stay in business. For these reasons, and many others, it appears that the newspaper-broadcast cross-ownership rule is out of date, counter-productive, and not in the public interest.

WE MUST DETERMINE HOW TO IMPLEMENT THE SUPREME COURT'S DECISION REGARDING THE COMMISSION'S INDECENCY RULES IN *FCC V. FOX TELEVISION STATIONS, INC.*

As the father of three young children, protecting them from indecent content is an important priority for our family. As a matter of public policy, Congress has made it clear that keeping the broadcast airwaves free from material that may be inappropriate for children during the hours when they are likely to be watching[36] is a high priority for the directly elected representatives of the American people as well.

The FCC's indecency policy has been the subject of appellate litigation over the decades. Two weeks ago, the Supreme Court held that the Commission failed to provide fair notice regarding the application of its indecency standards to fleeting expletives and momentary nudity.[37] Now that the Court has ruled, the FCC must expeditiously implement the decision. Although the Court's decision did not affect the Commission's authority to regulate indecency and assist parents in shielding their children from inappropriate programming, this decision raises many questions that the Commission will have to answer in the upcoming months.

Generally, how do we ensure that there is sufficient notice of the Commission's indecency policies? Justice Kennedy, in delivering the Opinion for the Court, stated that "regulated parties should know what is required of them so that they may act accordingly [and] precision and guidance are necessary so that those enforcing the law do not act in

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[35] John S. Sanders, *Kill Newspaper-TV Crossownership Rule, Now*, TVNEWSCHECK (June 26, 2012), http://www.tvnewscheck.com/article/60424/kill-newspapertv-crossownership-rule-now.

[36] 18 U.S.C. § 1464 ("Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined under this title or imprisoned not more than two years, or both."). *See, e.g.*, Public Telecommunications Act of 1992, § 16(a), 106 Stat. 949, 954 (prohibiting indecent programming between certain hours); 47 U.S.C. 503(b)(2)(C) (setting forth the forfeiture amounts for obscene, indecent, and profane broadcasts); Broadcast Decency Enforcement Act, Pub. L. No. 109-235, 120 Stat. 491 (2006) (increasing the maximum forfeiture penalties for obscene, indecent, and profane broadcasts). *See also* 47 C.F.R. § 73.3999 (implementing 18 U.S.C. § 1464 and the Public Telecommunications Act of 1992); Section 1.80(b)(1) of the Commission's rules, Increase of Forfeiture Maxima for Obscene, Indecent, and Profane Broadcasts to Implement the Broadcast Decency Enforcement Act of 2005, EB-06-IH-2271, 22 FCC Rcd 10418 (2007) (implementing the Broadcast Decency Enforcement Act).

[37] FCC v. Fox Television Stations, Inc., No. 10-1293, slip op. (U.S. June 21, 2012). The Court also denied certiorari in *FCC v. CBS Corporation*, No. 11-1240, slip op. (U.S. June 29, 2012), bringing an end to the litigation over the momentary exposure of Janet Jackson's breast. In vacating the Commission's order, the Third Circuit held that the Commission's decision was arbitrary and capricious, because the agency departed from its policy of excusing the broadcast of fleeting moments of indecency. CBS Corp. v. FCC, 663 F.3d 122 (3rd Cir. 2011).

an arbitrary or discriminatory way."[38] He stressed that, "[w]hen speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech."[39] Does the Commission need to take action to provide fair notice of our indecency standards? Or, do the decisions in the *Golden Globes* order and others provide sufficient notice going forward?[40] How do we ensure that Commission decisions in this area do not have the unintended consequence of chilling speech?

Further, the Court did not address the constitutionality of our indecency standard and left "the Commission free to modify its current indecency policy in light of its determination of the public interest and applicable legal requirements."[41] It noted that its opinion "leaves the courts free to review the current policy or any modified policy in light of its content and application."[42] We must ask ourselves: Should we generally revisit and update our indecency standard? What should our indecency policy be for fleeting expletives and brief nudity going forward? Would our current standard survive scrutiny under the First Amendment? Additionally, we should ask: What is the most efficient means to resolve pending complaints and renewals – both those that are currently pending and those to be filed in the future? If we fail to review our indecency standards and improve our complaint and renewal procedures, will the Commission face yet another backlog of matters in the future?

These will not be easy questions to answer. In the interest of good government, however, it is time to tackle these complicated issues. We owe it to American families and the broadcast licensees involved to carry out our statutory duties with all deliberate speed by acting on roughly 1.5 million indecency complaints involving about 9,700 broadcasts and approximately 700 station renewals that have been pending in light of this litigation.[43] I look forward to working with my colleagues to ensure that our indecency standards are clear, that broadcasters have the requisite notice and that Americans, especially parents such as myself, are secure in their knowledge of what content is allowed to be broadcast.

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[38] *Id.* at 12 (citing Grayned v. City of Rockford, 408 U.S. 104, 108-109 (1972)).

[39] *Id. See also id.* at 13 ("The Commission's lack of notice to Fox and ABC that its interpretation had changed so the fleeting moments of indecency contained in their broadcasts were a violation of §1464 as interpreted and enforced by the agency 'fail[ed] to provide a person of ordinary intelligence fair notice of what is prohibited.' This would be true with respect to a regulatory change this abrupt on any subject, but it is surely the case when applied to the regulations in question, regulations that touch upon 'sensitive areas of basic First Amendment freedoms.'" (citations omitted)).

[40] Complaints Against Various Broadcast Licensees Regarding Their Airing of the "Golden Globe Awards" Program, File No. EB-03-IH-0110, *Memorandum Opinion and Order*, 19 FCC Rcd. 4975 (2004) (finding that certain fleeting expletives are actionable under the Commission's indecency policy). *See, e.g.*, Young Broadcasting of San Francisco, Inc., File No. EB-02-IH-0786, *Notice of Apparent Liability for Forfeiture*, 19 FCC Rcd. 1751 (2004) (finding that the licensee was apparently liable for a monetary forfeiture for broadcasting momentary nudity).

[41] *Fox Television Stations*, No. 10-1293, slip op., at 18.

[42] *Id.*

[43] These estimates include both television and radio matters. Some of the pending station renewals may also be the subject to other enforcement proceedings before the Commission.

WE MUST REMAIN UNIFIED IN OUR OPPOSITION TO UN/ITU REGULATION OF THE INTERNET.

Finally, all of us must stay engaged with respect to the well-organized international effort to secure intergovernmental control of Internet governance. During my appearance before your subcommittee on May 31, we discussed our mutual concern regarding the action by some countries to arm the International Telecommunication Union (ITU) with regulatory jurisdiction over all or part of the Internet ecosystem. Even if new Internet regulations are not enacted at the upcoming World Conference on International Telecommunications (WCIT) meeting in December, increased intergovernmental Internet regulations will no doubt be on the agenda for international conferences and discussions throughout 2013 and beyond. Given the high profile, energetic and persistent efforts by some countries, this issue will not go away. Similarly, I urge skepticism for the "minor tweak" or "light touch." As we all know, regulation only seems to grow. We must remain vigilant for years to come. Your hearing was timely and I am grateful for Congress's helpful efforts.

CONCLUSION

It is an honor to serve as a commissioner of the FCC, and it has been a privilege to work with the Members of this Committee on our nation's communications issues. I look forward to answering your questions.

Mr. WALDEN. Thank you for your thoughtful testimony.

We now go to Commissioner Clyburn. Thank you for being here and we appreciate the work you are doing on the Commission and look forward to your comments as well.

STATEMENT OF MIGNON L. CLYBURN

Ms. CLYBURN. Thank you. Good morning, Chairman Walden, Ranking Member Eshoo and members of the committee.

I am grateful for the opportunity to testify before you today. Through a collaborative and inclusive decision-making process, the Commission is issuing rulemakings and setting policies that are creating a foundation for innovation and investment, for we all share the goal of promoting robust competition throughout all industry sectors, and by continuing this dialogue between the Commission, Congress and all stakeholders, we are on the path towards fostering a vibrant and dynamic communications marketplace.

The ideal communications environment consists of a host of viable competitors, constantly innovating and challenging one another with a myriad of products and service offerings. Today's reality, however, is far from this utopian ideal. There are still times where the communications ecosystem fails to properly address key consumer interests. When that occurs, the FCC is charged with playing a vital role that necessitates striking the delicate balance between two equally important considerations: the protection of consumers and regulatory certainty for businesses.

Under the leadership of Chairman Genachowski, the FCC has worked collaboratively with stakeholders in crafting policies and solutions in response to industry concerns. And while we encourage voluntary solutions that will give the marketplace greater flexibility to respond to ever-evolving consumer needs, we recognize that this will not always take place. The Commission is justified in some instances in the adoption of smart, targeted regulations when necessary to promote meaningful competition in order to ensure that basic protections are in place. And even in instances where the Commission must codify regulations, we make sure that lines of communication remain open and have implemented waiver procedures so that we can take into consideration the unique circumstances of industry participants.

Last October, the Commission adopted reforms to the Universal Service Fund put it on a sound, more sustainable path. Today, with more Americans using mobile services than ever before, and with broadband now serving as a gateway by which most Americans obtain critical information and services, the fund needed to be updated to reflect modern-day realities.

The reforms that we adopted will promote significant broadband deployment to millions of unserved consumers in our Nation as quickly as possible over the next 6 years. Most importantly, our reform carefully balances the need for certainty and predictability for carriers by avoiding flash cuts and providing transitions so they may adjust to the changes.

Another example of how efficient progress is being made through collaboration is reflected in recent Commission action to spur the creation of new Body Medical Area Networks, or MBANs. These devices, which are about the size and shape of a Band-Aid, are going

to revolutionize health care. They are disposable, low-cost inventions that send signals to a nearby information aggregation device by way of a low-power radio transmitter. They will allow hospitals to monitor patients' vital signs, such as heart rate and blood pressure levels, without all the wires and cables that tether a patient to machines. MBAN devices should also attract capital investigation and spur business development and job creation as the health care profession and the wireless industry again join forces in deploying innovation nationwide.

At the FCC, we are also committed to equal provision of communications services to all. In addition to expanding sustainable broadband service to rural and underserved Americans, we are also tackling addressing those with disabilities. Congress paved the way for the Commission's advocacy of these issues by enacting the 21st Century Communications and Video Accessibility Act. Under the CVAA, two initiatives will come into effect this month. The first is network video descriptions, which will allow blind or sight-impaired viewers to more fully benefit from network programs. The second is the National Deaf-Blind Equipment Distribution Program, which will provide funding for up to $10 million annually for the local distribution of communications equipment to low-income individuals who are deaf-blind. This represents an important moment towards ensuring that individuals who are deaf-blind are better able to utilize our Nation's communications systems.

At this juncture, I will yield out of respect for time and will offer myself for questions that you may have. Thank you.

[The prepared statement of Ms. Clyburn follows:]

Statement of FCC Commissioner Mignon L. Clyburn
House Subcommittee on Communications and Technology
Committee on Energy and Commerce
Oversight of the Federal Communications Commission
Tuesday, July 10th, 2012

Good morning Chairman Walden, Ranking Member Eshoo, and Members of the Committee.

I am grateful for the opportunity to testify before you today, and to discuss the collaborative and inclusive decision-making process the Commission has adopted in issuing rulemakings and setting policies to create a foundation for innovation in the communications marketplace.

I intend to remain fully engaged in transparent and open discussions, for the Commission recognizes that it is important that we work hand-in-hand with Congress on issues vital to fostering a vibrant and dynamic communications marketplace. We all share the common goal of promoting robust competition throughout all communications industry sectors, and by continuing this dialogue between the Commission, Congress, and all stakeholders, we are on the path towards achieving this goal.

The ideal marketplace consists of many viable competitors, constantly innovating and challenging one another in offering products and services to all consumers. However, today's reality is far from this utopian ideal.

There are still times where the communications ecosystem fails to properly address current, key consumer interests. And when that occurs, the Federal Communications Commission is charged with playing a vital role, one that necessitates striking the delicate balance between two equally important considerations: the protection and service of consumers and the provision of necessary tools and guidance for businesses. In keeping with this spirit, the Commission has created regulations and guidelines that allow businesses to thrive and compete in an international marketplace while ensuring that basic consumer protections are in place.

Under the leadership of Chairman Genachowski, the FCC has worked collaboratively with all stakeholders in crafting policies and solutions in response to industry concerns. While we encourage industry to come up with voluntary solutions that will give the marketplace greater flexibility to respond to evolving consumer needs, we must recognize that this will not always be the case. In some instances, the Commission is justified in adopting smart, targeted regulations when necessary to promote meaningful competition in order to ensure that basic protections are in place. And even in instances where the Commission must codify regulations, we make sure that lines of communication remain open, and implement waiver procedures so that we can evaluate the unique circumstances of industry participants on a case-by-case basis. We also work with industry participants to ensure that any regulatory changes will be gradual and provide ample time and opportunity for participants to voice their concerns.

Last October, the Commission adopted reforms to the Universal Service Fund to update the Fund to meet modern day realities and put it on a more sustainable path. More Americans are using mobile services today than ever before, and broadband access is now the gateway by which most Americans obtain critical information and services. The Fund needed to be updated to reflect these realities.

The reforms that we adopted will promote significant broadband deployment, as quickly as possible, to millions of unserved consumers in our nation over the next six years. Importantly, our reform carefully balances the need for certainty and predictability for carriers by avoiding flash cuts and providing transitions so they can adjust to the changes.

I strongly believe that in telecommunications sectors, the most efficient progress is made when industry, public interest advocates, government, and all other stakeholders join hands and work together. As with USF reform, another example of this type of collaboration is reflected in recent Commission action to spur the creation of new Medical Body Area Network, or MBAN, devices. GE, Phillips, and the Aerospace and Flight Test Radio Coordinating Council (AFTRCC), presented a Joint Proposal to the Commission, detailing the potential of MBANs and identifying ways in which the Commission could go about making it a reality.

These devices, which are about the size and shape of a Band-Aid, are going to revolutionize health care. They are disposable, low-cost inventions that send signals to a nearby information aggregation device by way of a low-power radio transmitter, and will allow hospitals to monitor patient vital signs, such as heart rate and blood pressure levels, without all the wires and cables that tether a patient to machines. These devices should also attract capital investment and spur business development and job creation, as the health care profession and the wireless industry again join forces in deploying MBANs nationwide. This is a stellar example of innovation and advancement that can occur when industry and government work collaboratively.

At the FCC, we are also committed to advocating for the equal provision of communications services to all Americans. In addition to expanding sustainable broadband service to rural and underserved Americans, the FCC is also tackling access issues affecting Americans with disabilities. Congress paved the way for the Commission's advocacy of these issues by enacting the 21st Century Communications and Video Accessibility Act. The implementation of this Act is a high priority for the Commission and for my office.

Under the CVAA, there are two initiatives that will come into effect this month that I am especially excited about. The first is video description on television programming, which will allow blind or visually impaired viewers to more fully benefit from TV shows. For now, some channels on broadcast stations in the top 25 markets and cable and satellite systems with 50,000 or more subscribers will offer about four hours a week of the new service. However, this is only the beginning, and the number of stations and hours will gradually increase.

Also set to launch this month is the National Deaf-Blind Equipment Distribution Program (NDBEDP). This Program provides funding for up to $10 million annually for the local distribution of communications equipment to low-income individuals who are deaf-blind. The CVAA set the course for the Commission to adopt rules, such as the NDBEDP, to work towards

providing access to vital communications services for those who were previously denied. This represents an important move towards ensuring that individuals who are deaf-blind are able to fully utilize our nation's communications systems, and I will continue working towards achieving this critical goal.

I am grateful for the opportunity to speak today, and I look forward to answering any questions you may have on how the FCC can continue to promote greater access to communications technologies and services for all Americans. Thank you.

Summary of Statement of
FCC Commissioner Mignon L. Clyburn
House Subcommittee on Communications and Technology
Committee on Energy and Commerce
Oversight of the Federal Communications Commission
Tuesday, July 10th, 2012

SUMMARY

- The Commission works collaboratively and inclusively in issuing rulemakings and setting policies for innovation in the telecommunications marketplace. The Congress and the Commission share a common goal of promoting robust competition throughout all communications industry sectors.
- The work of the Commission provides certainty and stability to businesses and addresses the needs of consumers when the communications marketplace fails.
- The Commission encourages industry to self-regulate before formal rulemaking procedures are initiated. The Commission is committed to involving the communications industry in an open dialogue when we do adopt new rules.
- The Commission adopted reforms to the Universal Service Fund to update the Fund to meet modern day realities and put it on a more sustainable path.
- An example of recent industry and Commission collaboration is the allocation of spectrum for new Medical Body Area Network devices. These devices have already attracted investments from GE and Phillips and should attract additional capital investment and spur business development and job creation.
- We continue to implement Congress's directive to ensure the equal provision of telecommunications services to Americans with disabilities under the 21st Century Communications and Video Accessibility Act. Two initiatives under the

CVAA coming into effect this month relate to video descriptions and the National Deaf-Blind Equipment Distribution Program.

Mr. WALDEN. I thank the Commissioner. We appreciate your work and your testimony.

Ms. Rosenworcel, we are delighted to have you here before the committee. We welcome you and we and look forward to your comments.

STATEMENT OF JESSICA ROSENWORCEL

Ms. ROSENWORCEL. Good morning, Chairman Walden, Ranking Member Eshoo and members of the subcommittee. It is an honor to appear before you today in the company of my new colleagues at the Federal Communications Commission. I also would like to thank Chairman Genachowski, Commissioner McDowell, Commissioner Clyburn and the FCC staff for the warm and generous welcome I received when I was sworn into office with Commissioner Pai just 2 months ago.

Let me begin by noting that there is no sector of the economy more dynamic than communications. By some measures, communications technologies account for one-sixth of the economy in the United States. They support our commerce, they connect our communities, and they enhance our security. They help create good jobs. By unlocking the full potential of broadband, they will change the way we educate, create, entertain and govern ourselves.

But communications technology is changing at a brisk pace. Laws and regulations struggle to keep up. So it is important that the FCC approach its tasks with a healthy dose of humility. At the same time, I believe that there are enduring values in the Communications Act that must always inform our efforts.

First, public safety is paramount. Congress directed the FCC to promote the safety of life and property in the very first sentence of the Communications Act. The Middle Class Tax Relief and Job Creation Act builds on this principle with its framework for a nationwide network for first responders. Just last week in Washington we were reminded how vulnerable we are without access to communications. Weather-related power outages across the region brought life to a halt, as wireless towers and 911 centers failed too many of us. Now the FCC must begin an investigation. It must search out the facts wherever they lead and apply the lessons we learn, so that our networks are more resilient, more secure and more safe.

Second, universal service is essential. No matter who you are or where you live, prosperity in the 21st century will require access to broadband. The FCC's ongoing efforts at broadband deployment and adoption are built on this simple truth. But I believe the principle of universal service goes further. It incorporates the direction from Congress and this committee in the 21st Century Communications and Video Accessibility Act, which has helped the FCC expand digital age opportunity to 54 million Americans with disabilities.

Third, competitive markets are fundamental. Competition inspires private sector investment. It is the far and away the most effective means of facilitating innovation and ensuring that consumers reap its benefits.

Fourth, consumer protection is always in the public interest. Communications and media services are growing more complex and

becoming a more substantial part of household budgets. It is vitally important to get consumers the information they need to make good choices in a marketplace that can be bewildering to navigate. Here the FCC, working with industry, has made strides, including with its new bill shock initiatives. But going forward, the FCC should strive to make the data it produces more useful for consumers and make the complaint process more responsive to their needs.

In the months ahead, the FCC will have no shortage of challenging issues to address. Let me highlight one that you are undoubtedly familiar with: the growing demand for spectrum. The statistics vary, but are undeniably striking. In the next 5 years, mobile data traffic will grow between 16 and 35 times.

But let me start by traveling back. For nearly 2 decades, the FCC's path-breaking spectrum auctions have led the world. The agency has held more than 80 auctions, issued more than 36,000 licenses, and raised more than $50 billion for the United States Treasury. In the Middle Class Tax Relief and Job Creation Act, Congress provided the FCC with authority to hold a new kind of auction—incentive auctions. I am confident that with the right mix of engineering and economics, the agency can once again serve as a pioneer. It should strive to do so in a manner fair to all stakeholders. I also believe that with a concerted effort, the FCC can identify ways that guard bands can support new and innovative unlicensed services, contributing billions to our economy. But I do not believe that incentive auctions alone will meet our spectrum challenge.

The equation here is simple. The demand for airwaves is going up. The supply of unencumbered airwaves is going down. This is the time to innovate. We must put American know-how to work and create incentives to invest in technologies—geographic, temporal and cognitive—that will multiply the capacity of our airwaves. We also must find ways that reward Federal users when they make efficient use of their spectrum and provide real incentives for sharing or return when their allocations are underutilized.

It is an exciting time in communications. The issues before the FCC are not easy. But the rewards of getting them right are tremendous. They will grow the economy, create jobs, raise wages and enhance our civic life.

Thank you for the opportunity to appear before you today. I look forward to any questions you might have.

[The prepared statement of Ms. Rosenworcel follows:]

STATEMENT OF COMMISSIONER JESSICA ROSENWORCEL
FEDERAL COMMUNICATIONS COMMISSION
BEFORE THE
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES
"OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION"
JULY 10, 2012

Good morning, Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee. It is an honor to appear before you today in the company of my new colleagues at the Federal Communications Commission. I also would like to thank Chairman Genachowski, Commissioner McDowell, Commissioner Clyburn, and the FCC staff for the warm and generous welcome I received when I was sworn into office with Commissioner Pai just two months ago.

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In the Middle Class Tax Relief and Job Creation Act, Congress provided the FCC with authority to hold a new kind of auction—incentive auctions—to facilitate the voluntary return of spectrum from commercial licensees and promote its reuse. I am confident that with the right mix of engineering and economics, the agency can once again serve as a pioneer. It should strive to do so in a manner fair to all stakeholders. I

also believe that with a concerted effort, the FCC can identify ways that guard bands can support new and innovative unlicensed services, contributing billions to our economy.

But I do not believe that incentive auctions alone will meet our spectrum challenge. The equation here is simple. The demand for airwaves is going up. The supply of unencumbered airwaves is going down. This is the time to innovate. We must put American know-how to work and create incentives to invest in technologies—geographic, temporal, and cognitive—that multiply the capacity of our airwaves. We also must find ways that reward federal users when they make efficient use of their spectrum and provide real incentives for sharing or return when their allocations are underutilized.

It is an exciting time in communications. The issues before the FCC are not easy. But the rewards of getting them right are tremendous—they will grow the economy, create jobs, and enhance our civic life.

Thank you for the opportunity to appear before you today. I look forward to working with you, and I would be happy to answer any questions you might have.

Mr. WALDEN. Thank you, Commissioner. We appreciate your comments, especially the ones at the end. We have a working group on government spectrum and we would welcome any comments you may have as they continue their work, so we may be calling on you.

We recognize now the—are you the newest Commissioner? I don't know, in the seating order, who came last?

Mr. PAI. Technically, yes, I am the most junior member.

Mr. WALDEN. All right. Well, we will save your testimony for last, then, but now you are on. Thank you for being here, Commissioner Pai. We welcome your comments and your service on the Commission, and please feel free to go ahead.

STATEMENT OF AJIT PAI

Mr. PAI. Thank you, Mr. Chairman. Chairman Walden, Ranking Member Eshoo, and members of the committee, thank you for inviting me to testify at this hearing today. I have been honored to meet recently with many of you, and it is a privilege to make my first appearance before you in my capacity as a Commissioner.

At my confirmation hearing, I testified that a good Commissioner must be a good listener. During my first 7 weeks in office, I have tried to be just that. I have held over 80 meetings with representatives of companies, public interest groups, trade associations, Members of Congress, and others. Everyone, of course, has distinct views on how the FCC is doing, but there is a common refrain: the FCC needs to become more nimble in discharging its responsibilities.

I have been struck by how many parties have suggested that the Commission has delayed taking action in a particular proceeding for months, for a year, or even for the better part of a decade. This has been a longstanding issue. I believe we must act with the same alacrity as the industry we regulate because delays at the Commission have real-world consequences: new technologies remain on the shelves; capital lies fallow; entrepreneurs stop hiring or, even worse, reduce their workforce as they wait for the regulatory uncertainty to work itself out. None of these outcomes benefits the American economy or the American consumer. That is why one of the members of this subcommittee recently advised me that what was most needed from the FCC was speed. To that end, I support initiatives such as shot clocks and sunset clauses. The former measure sets deadlines for Commission action while the latter requires periodic re-evaluation of existing rules. In different ways, each ensures timelier decision-making at the Commission as well as a regulatory framework better calibrated to a dynamic marketplace.

One critical area where we must act with greater dispatch is spectrum. The National Broadband Plan set two targets: 300 megahertz in additional spectrum by 2015 for mobile broadband; and 500 megahertz by 2020. Unfortunately, we are not on track currently to meet these goals. Two years after the plan was adopted, none of the bands identified today can be used for mobile broadband. This situation must change.

One near-term opportunity is the 40 megahertz of spectrum in the AWS–4 band. Earlier this year, the Commission issued a NPRM on establishing service, technical and licensing rules for this band to facilitate its use for terrestrial broadband. The comment

cycle in that proceeding has ended, and I believe we should issue rules by the end of September.

In the intermediate term, incentive auctions hold the greatest promise of increasing the stock of commercial spectrum for wireless broadband thanks to legislation passed by Congress and shaped by the subcommittee. It is an exciting opportunity but also a daunting one. No nation has ever held a more complex set of auctions. My view is that we should roll up our sleeves and commence a rulemaking no later than the fall.

Over the longer term, we need an all-of-the-above approach to spectrum policy. We must allocate and encourage the efficient use of any and all bands that can be utilized for commercial wireless broadband services. We must work with NTIA to facilitate the relinquishment of Federal spectrum. We must expedite a review of secondary market transactions. We must remove barriers that stand in the way of spectral efficiency, and we must encourage unlicensed use of spectrum where appropriate.

Spectrum aside, the Commission must recognize that the country is moving away from copper wire networks toward a competitive world of IP networks but billions of dollars in potential capital investment are sitting on the sidelines because of uncertainty over how the Commission intends to regulate IP networks. I am worried that recent hints about the direction of special-access regulation, not to mention the still-open Title II proceeding, are only going to further chill investment. These proposals signal to the private sector that outdated economic regulations are very much on the table when it comes to IP networks. I do not support imposing these regulations on high-capacity services because that will only depress infrastructure investment and discourage job creation.

Moving to the issue of process reform, I want to thank this subcommittee for its views on improving the Commission's work. The FCC does not have to wait, however, for a law to be enacted. Indeed, we can incorporate some of these proposals now. To give just an example, the adoption of new regulations always should be predicated upon the Commission's determination that their benefits outweigh their costs.

In conclusion, my goal is to work with the Chairman and my fellow Commissioners to bring communications regulations fully into the 21st century. The FCC needs to be a nimble agency that removes barriers to technological innovation and infrastructure investment, for it is innovation and investment that will result in better services, lower prices, economic growth and job creation, and working together, I am very confident that we can do just that.

Thank you once again, Mr. Chairman, for affording me this opportunity and I look forward to the questions from members of the panel.

[The prepared statement of Mr. Pai follows:]

STATEMENT OF AJIT PAI

COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

HEARING BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY OF THE UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY AND COMMERCE

"OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION"

JULY 10, 2012

Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee, thank you for inviting me to testify at this oversight hearing. I have been honored to meet recently with many of you, and it is a privilege to make my first appearance before you in my capacity as a Commissioner at the Federal Communications Commission. It is my hope that our recent exchanges augur the beginning of a fruitful and collaborative relationship working on issues of mutual concern.

At my Senate confirmation hearing, I testified that a good Commissioner must be a good listener. During my first seven weeks in office, I have tried to be just that. I have held over eighty meetings with representatives of communications companies, public interest groups, and trade associations; Members of Congress; and others. Everyone, of course, has distinct views on what the FCC is doing well and where it is falling short. But there is a common refrain: the FCC needs to become more nimble in discharging its responsibilities.

I have been struck by how many parties have complained to me that the Commission has unreasonably delayed taking action in a particular proceeding—for months, for a year, or even for the better part of a decade. We must act with the same alacrity as the industry we regulate. Delays at the Commission have substantial real-world consequences: new technologies remain

on the shelves; capital lies fallow; and entrepreneurs stop hiring or, even worse, reduce their workforce as they wait for regulatory uncertainty to work itself out. If companies do not know the rules of the road, they stop investing, and job creation in the communications industry grinds to a halt. And while the Commission should not rush its processes, inaction may be just as prejudicial as haste given that injured parties often cannot seek judicial review until the Commission acts on their petitions.[1] None of these outcomes benefits the American economy or the American consumer.

That is why one of the Members of this Subcommittee recently advised me that the thing that was most needed from the FCC was speed. Consistent with that thinking, I believe that the FCC should more frequently employ "shot clocks" and sunset clauses. The former measure sets deadlines for Commission action; the latter requires periodic re-evaluation of existing regulations.[2] In different ways, each ensures timelier decision-making and a regulatory framework better calibrated to a dynamic communications marketplace.

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[1] Similarly, delay may moot a party's concerns entirely. For example, the Commission mandated that cable operators be able to receive emergency alerts from the Federal Emergency Management Agency in the Common Alerting Protocol format by June 30, 2012. *See* Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief; Randy Gehman Petition for Rulemaking, EB Docket 04-296, *Fifth Report and Order*, 27 FCC Rcd 642 (2012). Earlier this year, the Commission established a waiver process to accommodate cable operators lacking a physical broadband connection. Concerned that the waiver process would unduly burden small cable operators, the American Cable Association, which represents such operators, timely petitioned for reconsideration on April 20, 2012 seeking a streamlined waiver process. Rather than putting out the request for comment immediately—given the pending compliance deadline—the FCC's Public Safety and Homeland Security Bureau waited more than a month until May 25, 2012 to do so; *Federal Register* publication followed two weeks later on June 8. These cumulative delays meant that the pleading cycle on the petition for reconsideration was not scheduled to close until July 3, 2012—*three days after the EAS alert requirements were scheduled to go into effect*. On June 11, 2012, the ACA decided to withdraw its petition, stating: "the comment cycle for the *Petition for Reconsideration* will extend beyond the June 30, 2012 EAS CAP compliance deadline . . . . [T]he *Petition for Reconsideration* cannot now result in meaningful relief for ACA member companies and, from ACA's perspective, it is therefore moot." Whatever the merits of a petition, a party before the Commission deserves better—it deserves an answer to its request, even if it's "no."

[2] In addition to sunset clauses, I have advocated for a more robust implementation of the Commission's statutory responsibility to conduct a biennial review of its regulations. *See* 47 U.S.C. § 161 (requiring the Commission to review all of its regulations applicable to telecommunications service providers in every even-numbered year); *see*

Speed is important for the small things, and especially so for the big ones. For example, we must act with greater dispatch to get additional spectrum out into the marketplace. In my college chemistry class, I learned the concept of a "rate-limiting step," which is the stage in a chemical reaction that determines the rate at which the entire reaction will come to completion. For the communications industry, putting more spectrum in commercial hands is the rate-limiting step. Whatever products are developed and whatever services are conceived, they will be useless if the wireless pathways are clogged, inefficiently used, or off-limits altogether.

The FCC has done a good job of identifying the looming spectrum crunch and developing a strategy for addressing it. In March 2010, the National Broadband Plan set two targets: 300 MHz in additional spectrum should be made available for mobile broadband by 2015; and 500 MHz should be made available by 2020.

Unfortunately, we are not on track to meet these goals. The National Broadband Plan forecast that the FCC would be able to dedicate to mobile broadband spectrum bands comprising 180 MHz by the end of 2011. It is now the middle of 2012, and still *none* of the identified bands can be utilized effectively for mobile broadband. We must act quickly to turn this situation around.

One near-term opportunity is the 40 MHz of spectrum in the AWS-4 or 2 GHz band. Earlier this year, the Commission issued a Notice of Proposed Rulemaking on establishing service, technical, and licensing rules in this band to facilitate its use for terrestrial broadband. The comment cycle has ended, and we should issue such rules no later than the end of September. Over the next two-and-a-half months, we should roll up our sleeves, hammer out the

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also Statement of Commissioner Ajit Pai on FCC's Final Plan for Retrospective Analysis of Existing Rules (May 18, 2012) (calling for Commission-level review, rather than Bureau-level recommendations, of regulations deemed no longer necessary in the public interest), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0518/DOC-314165A1.pdf.

necessary details, and get this done. In baseball, it is often said that the first run of the game is the most difficult one for a team to score. Similarly, if we are able to complete work for the first time on a band identified in the National Broadband Plan and put 40 MHz of spectrum up on the scoreboard, it could set the stage for future spectrum successes.

Over the longer term, we need an "all-of-the-above" approach to spectrum policy. There is no one solution to our spectrum challenges. We must allocate and encourage the efficient use of any and all bands that can be utilized by commercial wireless broadband services. We must work with the National Telecommunications & Information Administration to facilitate the relinquishment of federal spectrum. We must expedite our consideration of secondary market transactions. We must remove regulatory barriers that stand in the way of spectral efficiency.[3] And we must encourage unlicensed use of spectrum where appropriate.

Incentive auctions hold the greatest promise of increasing the stock of commercial spectrum for wireless broadband in the intermediate term. Earlier this year, Congress passed spectrum legislation that this Subcommittee played a pivotal role in shaping.[4] It's an exciting opportunity, but also a challenging one—no nation has ever held a more complex set of auctions. The Chairman has enlisted an able team to implement a broadcast incentive auction. My office has met with them and others outside the agency to work through some of the issues involved, including the complicated issues of international coordination that come into play with respect to repacking in markets such as San Diego and Detroit. The task at hand is daunting, but we need

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[3] *See, e.g., Improving Spectrum Efficiency Through Flexible Channel Spacing and Bandwidth Utilization for Economic Area-based 800 MHz Specialized Mobile Radio Licensees; Request for Declaratory Ruling that the Commission's Rules Authorize Greater than 25 kHz Bandwidth Operations in the 817–824/862–869 MHz Band*, WT Docket Nos. 12-64, 11-110, Report and Order, FCC 12-55 (rel. May 24, 2012), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0524/FCC-12-55A1.pdf.

[4] *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 *et seq.*

to get going and commence the rulemaking process no later than this fall to make sure we don't fall behind.

Aside from spectrum, the Commission must recognize that the country is moving from copper-wire networks formerly dominated by incumbents to a competitive world of IP networks. We need the right regulatory framework to encourage the deployment of fiber, to strengthen facilities-based competition, and to spur investment in next-generation infrastructure. Billions of dollars in potential capital investment are sitting on the sidelines because of uncertainty over how the Commission intends to regulate IP networks. And I am worried that recent hints about the direction of special access regulation—not to mention the still-open Title II proceeding—are only going to further chill investment. These proposals send a clear signal to the private sector that the legacy economic regulations originally developed for monopoly copper-wire telephone networks are very much on the table when it comes to regulating IP networks. Going down that path will only depress infrastructure investment and discourage job creation.

Moving to the issue of process reform, I want to thank this Subcommittee for offering good ideas to improve the Commission's work. We do not have to wait, however, for many of these proposals to be enacted into law. Rather we could, and I believe we should, incorporate better processes into our rules right now. To give just a couple of examples, the adoption of new regulations always should be predicated upon the Commission's determination that their benefits outweigh their costs. Indeed, if a regulation's cost is greater than its benefit, why would we possibly want to adopt it? Also, in the context of reviewing transactions, the agency, starting today, could and should stop imposing conditions and insisting upon so-called "voluntary commitments" by parties that are extraneous to the transaction and not designed to remedy a transaction-specific harm.

In conclusion, my overarching goal is to work with the Chairman and my fellow Commissioners to take the steps that will bring communications regulation fully into the 21st century. The FCC needs to be a nimble agency that acts quickly to remove barriers to technological innovation and infrastructure investment, for it is innovation and investment that will result in better services at lower prices for consumers, economic growth, and job creation. And should Congress decide that it is necessary to modernize the Communications Act to assist the Commission in this task, I stand ready to do whatever I can to help you.

Thank you once again for affording me the chance to appear before you today. I am eager to work with you and your staff on the challenging issues facing the Commission, and I look forward to your questions.

Mr. WALDEN. Mr. Pai, thank you for your fine words and the compliments of our work, and I appreciate some of the staff hires you have made there with Nick as well. You got him out of our hair. No, he is doing a great job.

We are going to start off with questions now and I am going to start with the Chairman. Chairman Genachowski, under your new order, the FCC's new order, television stations in the top 50 markets by August 2nd, which is 22 days away, are going to have begin posting on a new site information related to television buys. There are questions about what is going to have to be posted. I know you have got a webinar coming up, I think next week, but I wonder, in terms of having been a broadcaster what is required, can you show us on your Web site where we could go to find what they are required to post in specificity? Because the order came out in April, I think, and the Commission said it would make a version of the political database available very soon after adoption of the item. That has been almost a couple months ago now. A lot is happening, and we have got your site up here. Can you tell us—I have never been good at navigating your site, by the way. That is another issue for another day. Can you tell us, if you a TV broadcaster in the top 50 market where on the FCC's Web site you go to find out how to comply and what is required?

Mr. GENACHOWSKI. Sure. They are on the Web site. If you search for public inspection file, I think that one of the things you will see is the announcement for the demonstration and workshop next week, which will be the primary way in addition to the order that came out, which was quite clear that broadcasters can learn exactly what is required. Of course, it is very simple. Broadcasters already keep records in their public files in their stations on all the elements that need to be filed online. They will be able either to email them to the FCC or to upload them. It is a very simple process——

Mr. WALDEN. So will this——

Mr. GENACHOWSKI [continuing]. Next week will help elucidate.

Mr. WALDEN. And so that is spelled out here. It is whatever in the public file goes up online?

Mr. GENACHOWSKI. Well, the order itself says very clearly what is required as well as the press release that summarizes the order.

Mr. WALDEN. So is that order available right there? I can't read it either.

Mr. GENACHOWSKI. Unfortunately, I can't read it from here.

Mr. WALDEN. Well, I guess—so if I have got an order in to my stations starting—well, it doesn't start August 2nd. Let us say it starts in October but I have received it today but I may have a couple of flights. Some may run in September, some may run in October, some may run this month. I mean, there is a war going on out in about 9 States right now at the presidential level. What has to go up online August 2nd?

Mr. GENACHOWSKI. Well, again, the primary requirements are already in place. Broadcasters are already obliged to place in their public files documents relating to——

Mr. WALDEN. So is it the buy that is running now that goes through then? Is it the information on the buy starting August 2nd forward?

Mr. GENACHOWSKI. The general rule of thumb that we adopted in the order was that the implementation would go forward. I am not sure of the answer to your question what that means. I presume that it would mean that any buys that occur after the date of August 2nd, but that is the kind of question that will come up——

Mr. WALDEN. Does this include inquiries for time? Do they have to be posted up there even if a buy hasn't taken place?

Mr. GENACHOWSKI. Beginning August 2nd, anything a broadcaster would otherwise have to put physically in its public file at the station, it will also have to put online. And by the way, we found since we did this that companies like Time Warner made the decision a couple of years ago to just put everything they were doing online because they found it cheaper and more efficient and effective to do it. They moved to online from paper, and we expected that as broadcasters implement——

Mr. WALDEN. And when you talk about Time Warner, you are talking about their broadcast television side, not their cable?

Mr. GENACHOWSKI. No, I am talking about the cable side because they also have to keep certain files under——

Mr. WALDEN. So the cable operator is going to have to put this up as well?

Mr. GENACHOWSKI. The rules that we adopted apply only to broadcasters. I was pointing out that companies like Time Warner have decided on their own that online is actually cheaper and more effective than paper anyway.

Mr. WALDEN. Let me shift gears, because there has been a lot of incoming regarding NTIA's suspension of the BTOP grants in some States. My colleague from California, Mr. Waxman, mentioned a bit about that. I am hearing from some States including my own concerns about the suspension of the grants and that in some cases that may put States out of compliance with the requirement that allows them to have this spectrum which I think in Mississippi's case by September could mean that you would have the authority to take back their public safety spectrum. So I guess the question is, do you think NTIA has this authority on its own to suspend these grants? Question one.

Mr. GENACHOWSKI. Well, I wouldn't comment on NTIA's authority. I think NTIA should speak to its authority.

Mr. WALDEN. All right. But that may fall into your lap at the FCC if NTIA suspends the grants, a State is then out of compliance. You then have the authority to take back some of their spectrum because they are out of compliance. So at some point you are going to have to make a decision whether they have the authority or not, right? So are you telling me you don't know of any authority they have to suspend these grants?

Mr. GENACHOWSKI. Congress in the new law did something that was a landmark step even separate from incentive auctions, and that is finally move forward on creating a national interoperable public safety network.

Mr. WALDEN. Right.

Mr. GENACHOWSKI. And the clear direction of Congress was one network, FirstNet, in addition to asking the NTIA to take the lead on that. As you point out, we do have some pending specific issues

that we have to work through. We are doing it together with NTIA and I look forward to working with the committee——

Mr. WALDEN. But to interrupt you, some of these States have told me they have contracts with their providers that require that whatever gets built out matches whatever FirstNet puts out for interoperability and yet they are being suspended.

Mr. GENACHOWSKI. Well, these are the issues. What we need to do now is together with NTIA look specifically at the waiver grants and determine how to get the balance right between moving forward as Congress intended with a nationwide FirstNet and dealing with particular public interest issues that come up. The fundamental goal that we understand is a nationwide interoperable network giving——

Mr. WALDEN. Right. Nobody disagrees with that. Their concern, and I am sure you are keenly aware of this as we are, we want both. There is no question. We don't want the taxpayer money wasted. We want to build out. We want it to be interoperable. I am being told that is what they are doing. September 2nd may be the drop-dead date where they are out of compliance so you can imagine their panic here is what do we do if our money has been withheld, we have been stopped but we could be out of compliance with your agency by September 2nd.

My time is expired. I flagged that for you. Maybe later we can talk more.

Mr. GENACHOWSKI. Thank you.

Mr. WALDEN. I now recognize the ranking member of the subcommittee, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman, and thank you to all the Commissioners for your wonderful and important testimony.

Chairman Genachowski, bravo. Those were very, very impressive numbers, and as you know, I have said ad nauseum here that the United States of America should be number one—number one in broadband, number one across the board, and I think that these numbers are really very, very important, that we are reclaiming important leadership in what you outlined, so I congratulate you and the members of the Commission.

Tomorrow, there will be hundreds of people from around the bay area that are going to gather at Stanford University for a one-day event on the power and the potential of the unlicensed economy. You know that the auction provisions in the spectrum bill were really carefully crafted to preserve, protect and enhance unlicensed spectrum. So my question to you is, what steps are you taking to ensure through FCC rules that will provide innovators and entrepreneurs with the regulatory certainty they need to develop the next generation of unlicensed technologies? I have a whole list of questions so just be as brief as you can.

Mr. GENACHOWSKI. I will answer briefly.

Ms. ESHOO. I need a good flavor of what you are going to do.

Mr. GENACHOWSKI. I completely agree with your premise and I think it is widely shared at the FCC. Unlicensed has been an extraordinary success story. It gave us WiFi, trillions of dollars of impact on our economy, and so in looking at incentive auctions consistent with the law, taking seriously the opportunities of unlicensed is something that we will do, and also looking at the need

to address WiFi congestion and other unlicensed opportunities in other spectrum bands, but there is no question that the incentive auction bands provides an opportunity, and I was glad that the legislation provides some opportunity for unlicensed there.

Ms. ESHOO. Great. I would encourage the Commissioners to come out to Silicon Valley and meet with the unlicensed community there because it is very exciting about what is going on, and whatever collaboration you can develop with them I think would be highly instructive as you move forward with your rules.

This is for all the witnesses. Last year, I introduced legislation to help consumers understand exactly what they are getting when they sign up for a wireless data plan. There are a lot of people that advertise a lot of things, but there isn't consistency to it. So as much are we are all looking forward to 4G without a standard definition of the technology, consumers really are experiencing or often experience a vastly different experience on speeds depending on the wireless provider and the location. This in turn has led to a great deal of consumer confusion. So my question to the Commissioners is, what can the Commission do under existing statute to help consumers make a more informed decision when choosing a wireless provider?

Mr. GENACHOWSKI. I would just note briefly that we paid close attention to complaints we have gotten from consumers in this area. It led to our efforts on bill shock so that mobile consumers get alerts before they exceed their data plans.

Ms. ESHOO. But that is not really what I am talking about. I am talking about speeds.

Mr. GENACHOWSKI. Yes.

Ms. ESHOO. Because there is a lot of advertisement where we are the only ones and we do this and we don't do that but we don't have a standard, number one, which then leads to, you know, companies putting out very exciting ads, I mean, it sounds just delicious; I want to grab that, that sounds like the best thing since sliced bread. Except there isn't any standard and in many ways it is false advertising.

Mr. GENACHOWSKI. On broadband speeds, we are about to release the second of our broadband speed tests that reports on the exact speeds offered by broadband providers. It compares it to their advertising. We have seen it has had a positive impact in the market and it is something that we will——

Ms. ESHOO. So you are on it? Is that what you are saying?

Mr. GENACHOWSKI. We are on that, and we will follow up with you on the broadband speed test.

Ms. ESHOO. I just have a quick question to the two new Commissioners. How can the Commission better use the information that it puts out and the information that comes to it from consumers in order to make sense out of it? I mean you issue a lot of reports. I don't know who reads them and who understands them. So how can we be relevant? I mean, it is the 21st century. We keep using that term. Do you have ideas about how as the new Commissioners you infuse the new blood in the Commission that we can address this?

Ms. ROSENWORCEL. I think that is a terrific point. I think the data suggests that in the last quarter, complaints at the agency ac-

tually rose 32 percent. That is not because there is some bad dealings on those that provide services but the honest truth is that communications has become a much more important part of all of your household budgets. We rely on all of these devices more than ever before. We need to start studying those complaints as they come in and we should identify what are consistent concerns and then we should see how we can use the existing reports and data that we produced to try to help consumers address those concerns.

Mr. PAI. And Ranking Member, I will build up my colleague's response by saying that to the extent that the wave of complaints suggests that the Commission's rules in a particular area are lacking, we should consider actively whether a new framework is necessary to address those concerns so that complaints in the future are removed and also to——

Ms. ESHOO. Just don't write it the way you said because no one will understand it except us here in the hearing room.

Mr. PAI. Right. And to go the other point you raised, I think the consolidating reporting initiatives that have been discussed in Congress would help present a single unified product the FCC can put out that we will try our best to write in plain English so that both the legal community and the consumers and the Congress can understand.

Ms. ESHOO. Thank you.

Thank you, Mr. Chairman.

Mr. WALDEN. You are welcome.

Let us go now to the chairman of the full committee, Mr. Upton.

Mr. UPTON. Thank you.

Chairman Genachowski, in 2003, the FCC adopted on a bipartisan basis a hands-off approach for fiber and Internet protocol networks to promote investment, encourage deployment. Analysts report that fiber now passes over 22 million homes in the United States up from 180,000 homes in 2003. In January 2010, the FCC reported that 1,442 competitive carriers were providing service. That again is up from 536 that the FCC reported operating in 2003, and analysts report that there are more than 770 providers of fiber to the home networks around the country.

So would you agree based on that evidence that the hands-off approach is working?

Mr. GENACHOWSKI. In general, we have seen, as I mentioned in my opening remarks, tremendous progress in the space and a light touch and relying on competition is our dominant strategy.

Mr. UPTON. And you don't have any plans to reverse that, do you?

Mr. GENACHOWSKI. I don't have any plans to revisit those forbearance but——

Mr. UPTON. That is good.

At the heart of the special-access proceeding is the question of whether there are sufficient competitive alternatives in the market today, inherently a fact-based inquiry. The Commission has twice made a voluntary request for data from the ILECs and CLECs cable companies and fixed wireless companies that compete in the market with little response. How does the Commission intend to collect the data needed to proceed with its determination of whether the market is competitive?

Mr. GENACHOWSKI. Well, this is something I have discussed with my colleagues and we intend to move forward with a comprehensive data collection order. We also have a sufficient amount of information, a great deal of information already to make wise decisions as we move forward.

Mr. UPTON. So again, you don't plan any preemptive strike without getting all the information?

Mr. GENACHOWSKI. Well, we plan to steer through consistent with our obligations under the Communications Act to promote competition and to drive investment in new services.

Mr. UPTON. Lastly, let me say in April, the chief of the FCC's Wireline Competition Bureau said about special-access data, he said, "There is an incredible dearth of data and that we need to be able to show costs either do or don't relate to a market. We cannot do the analysis without the data." Yet a senior official in your office recently told the press that the Clinton administration's deregulatory policies for special access are not working as intended. How did the official reach the conclusion with a dearth of data?

Mr. GENACHOWSKI. There is a great deal of data and indeed wide consensus that the current framework for special access is not working. It is both overinclusive and underinclusive. We know that. We don't have the data to determine what framework should replace it, and that is what we are working on.

Mr. UPTON. I yield back. Thank you.

Mr. WALDEN. The gentleman yields back the balance of his time.

The chair recognizes the ranking member of the full committee, Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman.

With the passage of the Middle Class Tax Relief and Job Creation Act, and the creation thereby of the First Responder Network Authority, or FirstNet, we have an unprecedented opportunity to develop a nationwide interoperable public safety network. At the time of the Act's passage, however, the FCC had already granted waivers to several jurisdictions allowing them to deploy local or regional public safety broadband networks that would utilize public safety broadband spectrum immediately. With the creation of FirstNet, concerns have been raised that moving forward with these waivers may undermine FirstNet by establishing regional networks that are not truly integrated and will require more taxpayers' dollars to eventually incorporate into the national network. As NTIA noted, "The law's vision is plainly at odds with the continuation of the Commission's pre-legislation waiver approach. If the Commission does not take consistent Congress's vision, it could jeopardize nationwide interoperability as well as harm FirstNet's ability to carry out its powers, duties and responsibilities."

Chairman Genachowski, given the dramatic change in circumstances created by the passage of this new law, what do you think of NTIA's concerns about the pre-legislation waiver approach and how do we ensure that we are protecting taxpayer funds and not undermining our core goal of nationwide interoperability?

Mr. GENACHOWSKI. I think NTIA is right to have concerns given the change in circumstances of the statute, and we are working closely with NTIA to chart a course to make sure that a nationwide FirstNet could be stood up without any unnecessary encumbrances

and look as required by law to specific situations and work through them, and we are working very closely with NTIA on that.

Mr. WAXMAN. Thank you.

Commissioner Rosenworcel, you are familiar with this issue because of your previous role with Senator Rockefeller at the Senate Commerce Committee. Do you have any suggestions of how we can ensure that FirstNet is not undermined by the pre-legislation waiver approach NTIA is concerned about?

Ms. ROSENWORCEL. I think this is largely a challenge of timing. The Commission made some choices to provide local jurisdictions with access to spectrum held by the Public Safety Spectrum Trust early on so that they could develop local interoperability. Since that time, Congress passed a very substantial law in the Middle Class Tax Relief and Job Creation Act and contemplated for the first time a nationwide network for interoperability for first responders. It is now the task of the NTIA and the FCC working together with local jurisdictions to figure out how to harmonize all these efforts so we produce that nationwide network that Congress contemplated.

Mr. WAXMAN. Thank you.

As I mentioned in my opening statement, special access is an area of policy that is long overdue for reform. Although some have argued that special access is a legacy technology that is becoming increasingly irrelevant, I am skeptical of this argument.

We have heard repeatedly from a wide variety of wireless and wireline competitors, large and small businesses, educational institution, public-interest organizations and government agencies that significant demand for special access remains. The same stakeholders assert that the high price of special access has impeded innovation and competition for the industry as carriers are forced to purchase these services from their competitors at artificially high rates. We are also told that the four largest ILECs combined for over $12 billion in sales of special-access services in 2010. That doesn't sound like a legacy technology just yet.

Chairman Genachowski, I know that you have been a strong proponent of policies that promote innovation and investment in communications services. Are you concerned about the state of the market for special-access services and its potential to stifle innovation and investment? And what information do you now need to complete this proceeding and make a final policy determination so we can resolve this matter?

Mr. GENACHOWSKI. Yes, I agree with your point. Even as fiber is rolled out, special access remains a very large market. You may have said this number, but it is about a $12 billion market, and even more important perhaps, special access is an essential input into competition in general in broadband and into competition in mobile. So we need to make sure as the statute requires that there is competition in that space. I expect that we will move forward with a comprehensive data collection that is designed to give us efficiently the information we need to adopt a new framework for the space that promotes competition.

Mr. WAXMAN. Thank you.

Commissioner Pai and Commissioner McDowell, based on your statements, you seem to be more skeptical about FCC intervention

into the special-access market. How would you respond to the concerns we have heard from businesses and other purchasers of special-access services that deregulation has translated into higher prices?

Mr. PAI. Ranking Member Waxman, thank you for the question. I guess I first would echo Ranking Member Eshoo's call for mandatory data collection. I think we need to understand what exactly the current state of the marketplace is before adopting any regulatory framework. I think everyone would agree that regulating in the dark is always a dangerous proposition.

Furthermore, to the extent that there are competitive problems, we should address them obviously after we conduct the data collection but we should also remember that the Clinton-era flexibility triggers that were adopted in 1999 also were found to benefit some of the very customers you were mentioning. For example, phase 1 of the triggers allows a carrier to reduce prices, to give them discounts in particular cases so that contracts can be more consumer friendly, so to the extent that we would be suspending those triggers moving forward without having adequate data to know what the replacement regulatory framework would be would, I think, be bad for everybody. It would be bad for the consumer, as you mentioned. It would be bad for the carriers in terms of their incentive to build out fiber.

Mr. WAXMAN. Could we hear from Mr. McDowell briefly, Mr. Chairman?

Mr. WALDEN. Sure.

Mr. MCDOWELL. Thank you, Mr. Chairman. Excellent question, and for 6 years I have been talking about this issue myself. We are past the fifth anniversary of then-Subcommittee Chairman Markey's letter to the FCC of May of 2007 asking us to resolve this by September of 2007. I have been asking for a mandatory data collection of all market players in the space for, I think, almost 6 years so what the chairman says in that regard is music to my ears.

Then once we have that data—and by the way, the Commission is on record with the Federal appeals court here in Washington saying that we don't have enough data to make a substantive decision just yet, and I agree with that pleading before the court. So once we do get that data, then there is going to be an opportunity for an important economic analysis. So for instance, if incumbents in certain markets are indeed charging far above cost, the question from an economic perspective is, doesn't that then give an incentive for a competitor to come in and build if there is a lot of headroom with pricing. Some competitors then come back to say well, when that happens, the incumbent lowers their price. But as policymakers, isn't that exactly what we want? We want falling prices.

So there are a lot of more thorny issues here than at first blush and I welcome the mandatory comprehensive data collection so we can move forward before my gray hair turns white.

Mr. WALDEN. Or in my case, falls out.

Let us go now to the gentleman from Texas, Mr. Barton.

Mr. BARTON. Thank you, Mr. Chairman.

I want to follow up on something that former Chairman Waxman asked. These grants, these BTOP grants that NTIA has suspended, I think it is questionable to suspend them, and so my first question

would be to the Chairman, Mr. Genachowski, is it better to have a system that is actually operable although not perfect rather than a system that is perfect but not operable at all?

Mr. GENACHOWSKI. I think the answer is yes. What I believe the statute——

Mr. BARTON. Yes, it is better to have a system that is operable but not perfect?

Mr. GENACHOWSKI. Yes. I think that what the statute contemplates is something different, which is an operable, effective nationwide——

Mr. BARTON. I think you just made my point. We have got a system in Mississippi that got a BTOP grant that is about to be operational, or could be very quickly if it wasn't suspended, and there are one or two grants in Texas that are also close to being operable. I would postulate that there is a much greater likelihood that the first-responder unit in Houston, Texas, is going to have to communicate with the first responders in Sugar Land, Texas, which is a suburb outside of Houston, as opposed to the first responders in Houston having to communicate with the first responders in Los Angeles, California.

So I think it would be better to go forward with these BTOP grants with the caveat that they have to be able to interconnect when the FirstNet system is up and running, so they have to be interoperable with the national system when it happens but in the meantime it is a lot better to let Biloxi communicate with Jackson, Mississippi, or vice versa than it is to have a theoretical requirement that Biloxi be able to communicate with New York City, and this suspension, you know, when several of these grants, as I understand it, are within months of being operable.

So to go back to the original question, I believe it is better to have an operable system although perhaps imperfect than to have an inoperable system that is theoretically perfect which probably won't exist for another 4 to 5 years. Do you, Mr. Chairman, have a problem with the thesis that I just propounded?

Mr. GENACHOWSKI. I think Commissioner Rosenworcel said it very well, I think, which is that our goal together with NTIA and local public safety authorities is to harmonize the various goals that we would all like to accomplish.

Mr. BARTON. That is a good word, "harmonize." I like that.

My next question is to Mr. McDowell. Is there any place in the country, the lower 48, where there is not wireless service available to anybody who wishes to purchase it?

Mr. MCDOWELL. Oh, there may very well be a lot of coverage issues. Some of that is local zoning or just buildout in more remote areas, so yes, but I think is the heart of your question, you know, nine out of ten American consumers have a choice of at least five wireless providers.

Mr. BARTON. Well, I don't want to beat a dead horse but I am going to. I am more and more at a loss as to why we continue to fund the Universal Service Fund, and I know that the Commission has got some ongoing reviews and I know we have got some reform proposals here in the Congress, but I am told that almost 100 percent of the population has wireless accessibility at very reasonable prices, and in most cases, numerous potential providers and yet we

still are spending I think in the neighborhood of between $5 and $10 billion on universal-service subsidies that basically tax the cities and the suburbs to subsidize systems that may have once actually had a legitimate right to have a Universal Service Fund but in today's America, I don't think that need exists. What is your comment about that?

Mr. MCDOWELL. Well, first of all, Congress has mandated this through Section 254 under the 1996 Act.

Mr. BARTON. So you are going to blame us?

Mr. MCDOWELL. Well, I am not blaming anybody. I am just trying to follow your——

Mr. BARTON. That is a pretty low blow. Would you support repeal of that section? Let us put it that way.

Mr. MCDOWELL. Well, if Congress passes it and the President signs it, obviously we would——

Mr. BARTON. That is not as good an answer.

With that, Mr. Chairman, I yield back.

Mr. WALDEN. The gentleman yields back.

The chair now recognizes the gentleman from Michigan, Mr. Dingell, for 5 minutes.

Mr. DINGELL. Mr. Chairman, I thank you.

I would like to begin by welcoming all the Commissioners. My questions will be largely directed to Chairman Genachowski, so I want to welcome you, Mr. Chairman. The questions I hope you will answer yes or no. Is it true that the Commission expects notice of proposed rulemaking later this year to begin to implement the voluntary incentive auction of broadcast frequencies authorized by the Middle Class Tax Relief and Job Creation Act? Yes or no.

Mr. GENACHOWSKI. Yes.

Mr. DINGELL. Mr. Chairman, I have tried for some time to get the Commission to share with me not only the allotment optimization model, the AOM, that it has used to broadcast an incentive auction but also, and I believe more importantly, the variables and other assumptions that the Commission inputs into the AOM to evaluate such an auction. The Commission has to date refused to share these variables and assumptions which is quite disappointing because I believe they should be a matter of public record. Further, such information will be of invaluable assistance to broadcasters, wireless companies and the citizenry in general when it comes to their participation in or their approval or disapproval of an incentive auction.

Now, Mr. Chairman, will the Commission make public the AOM as well as the assumptions and variables that it has put into the AOM when it publishes its NPRM to implement the voluntary incentive auction of broadcasting frequencies? Yes or no.

Mr. GENACHOWSKI. Yes, the Commission will make public all the information that is relevant to make decisions and move forward with incentive auctions.

Mr. DINGELL. Mr. Chairman, I hope you realize that that is liable to be the subject of a lawsuit, and if you fail to make all that information available, you may find that a lawsuit will not be sustained for want of proper information by the Commission to support its actions.

Now, Mr. Chairman, the Middle Class Tax Relief and Job Creation Act allows the Commission to assign broadcast channels along the northern and southern borders subject to the coordination with Canada and Mexico. Has the Commission updated the AOM using this statutory requirement as an input? Yes or no.

Mr. GENACHOWSKI. I am not sure of the answer to that, so I could get back to you.

Mr. DINGELL. If you please.

Now, Mr. Chairman, on a related note, has the Commission or any other agency begun consultations with Canada and Mexico about abiding by treaty stipulations when reassigning U.S. broadcasting channels? Yes or no.

Mr. GENACHOWSKI. Yes, discussions have begun with both Mexico and Canada.

Mr. DINGELL. Now, would you submit then for the record a summary of the issues discussed at such meeting or meetings as well as their outcome, please? Yes or no.

Mr. GENACHOWSKI. Yes.

Mr. DINGELL. Mr. Chairman, now that the Commission's June 2012 repacking roundtable is over, the Harris Corporation noted that 3 years might not be sufficient time in which to modify all broadcast towers impacted by repacking. Has the Commission gathered empirical evidence to support or refute such claims? Yes or no.

Mr. GENACHOWSKI. I am not sure of the answer to that. The purpose of the proceeding is to gather and make sure that we have all the relevant information to make decisions to implement the Act.

Mr. DINGELL. Of course, we had this little problem that it has to be done and it has to be done in a way that it is done within the time and will sustain a lawsuit.

Now, does the Commission believe that 3 years' time is sufficient? Yes or no.

Mr. GENACHOWSKI. I don't think I can answer that. I think many of these questions have to be answered on the record that we will eventually receive and we will reach out to all stakeholders to participate in that proceeding.

Mr. DINGELL. I would be much more comforted if I thought you knew what the answer to the question was.

Now, Mr. Chairman, my last question on this matter pertains to consultants that the Commission has retained to help it design the voluntary incentive auction. Have any of these consultants previously lobbied the Commission or otherwise advocated on behalf of incentive auctions? Yes or no.

Mr. GENACHOWSKI. I don't know the answer but I am sure that all rules have been complied with.

Mr. DINGELL. Would you please submit to the committee the names of those who have been retained to do this kind of work?

Now, to all witnesses, I would like to ask this. The provisions of the Middle Class Tax Relief and Job Creation Act of 2012, they required that the Commission take certain steps to protect and to assure that broadcasters along the borders of the United States and Canada, Alaska and Canada, receive certain assurances that they will receive protection of their licenses and so forth. Do you all

commit that you will see to it that those provisions are carried forward, Mr. Chairman?

Mr. GENACHOWSKI. Yes.

Mr. DINGELL. And other members of the Commission?

Mr. MCDOWELL. Yes.

Mr. PAI. Yes.

Mr. DINGELL. Thank you.

Now, do you also commit to ensuring that the Commission's intentions implementation the voluntary incentive auction are readily available to the Congress and the stakeholders in full? Yes or no.

Mr. GENACHOWSKI. Yes. Our goal will be—the short answer is yes, we will provide the information that we can that is actually helpful and relevant to making decisions.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. WALDEN. The gentleman's time is expired.

Mr. DINGELL. Mr. Chairman, I thank you for your courtesy.

Mr. WALDEN. Absolutely. And to the chairman, the AOM is going to be obviously critically important to the success of the incentive auctions, so we need to discuss how this can be done as transparently as possible in the process, and recognizing that you have got to do your work, but I think there is obviously a lot of interest, and the committee has a lot of interest, and clearly, the former chairman has a lot of interest, so we look forward to that.

I recognize the gentleman from Nebraska, the vice chair of the subcommittee, Mr. Terry.

Mr. TERRY. Thank you, Mr. Chairman.

Mr. Genachowski, yes or no. If industry was able to compress the data that Mr. Dingell is able to compress the number of questions into 5 minutes, we would have no shortage of spectrum.

Mr. GENACHOWSKI. Yes.

Mr. TERRY. You don't have to answer that. I think it would be yes. I am always in awe of his ability to ask questions.

Now, getting a little bit to USF and particularly the regression order, incredibly complex order, and I can't imagine how much time and brainpower has been invested in the regression order to date, so congratulations on that.

But I hear from some that they feel that the modeling used is incorrect. There are complaints about incorrect data being used within the modeling and around April 25th even your own folks have said there may have been inaccurate data used in the process. So there is at least from my some outside the FCC have been very critical about the viability of that regression order. Do you have concerns about the regression order? Are there plans to perhaps review the modeling back to the very beginning and start over? Is there another potential order looming out there? Where are we?

Mr. GENACHOWSKI. Thanks to my colleagues, and with your help, Congressman Terry, we were able to take a program that lacked accountability, that was inefficiently spending public money and transform it to one that will efficiently get broadband to unserved America, and no one is more familiar with the problems in the old program than you are. Multiple competitors in a single market getting funding, subsidizing some companies who were competing against unsubsidized competitors and a system that gave control of

the funding spigot to recipients of funding. We have ended that, and we have put in place a system of accountability to deal with things like situations where two companies providing services near each other getting funding, correcting for geography and population where one was receiving three or four times as much as another, and the regression analysis and benchmarks are an important part of ensuring accountability in the program and fiscal responsibility. I have great faith in our staff that is doing this. It has been an open process. I have instructed them to continue to be open to issues, concerns that companies raise and we have shown a willingness to say you know what, you are right about this, we will make a change, and I expect that we will continue to do that even as we move forward with implementing these reforms because every day we don't do that, we are wasting time.

Mr. TERRY. Just to maybe summarize, you are going forward based on the current regression modeling or analysis that has already been done?

Mr. GENACHOWSKI. Yes.

Mr. TERRY. So you are confident enough in it now that you are going forward?

Mr. GENACHOWSKI. We are moving forward, and we continue to consider improvements, modifications to the program that we have adopted including the regression analysis.

Mr. TERRY. Is everybody else comfortable on going forward on the current data?

Mr. MCDOWELL. As I said, Congressman, this order, which was historic in nature, is iterative, and as we get data, we will make adjustments if necessary. I think the chairman agrees with that. I want to make sure that whatever we do, we don't delay or change expectations that there will be reform. From my perspective, we had a historic opportunity to flatten the growth curve on a Federal entitlement, and this took full advantage of that.

Mr. TERRY. Now, one other point that I hear criticism is that the cap can change every year from year to year, which is impacting their ability to do multiple-year business plans. Is that a concern to the FCC, Chairman?

Mr. GENACHOWSKI. Well, providing predictability is of course a goal, and changes in year-to-year funding has been a part of the program for a very long time. The transition period of course is the hardest period. As we work through these issues together with the carriers, we will work every day to improve certainty and predictability while meeting our goals of accountability and getting broadband to unserved parts of the country and there still is, you know, millions of Americans who live in areas that don't have broadband.

Mr. TERRY. Mr. McDowell?

Mr. MCDOWELL. Well, I think predictability is absolutely important. I understand there are a lot of rural carriers that have a great deal of anxiety right now. I think we are trying to work with them as best we can and we will try to provide as much certainty as we can going forward without changing the ultimate goals that we laid out last fall.

Mr. TERRY. I appreciate that, and to our two new great additions to the FCC, if you ever want to take the Genachowski tour of rural America, I invite you to Nebraska.

Mr. GENACHOWSKI. Well worth it.

Mr. TERRY. Yield back.

Mr. WALDEN. The gentleman yields back.

I recognize the gentlelady from California, Ms. Matsui. And by the way, thank you for the work you are doing on our special effort on government spectrum.

Ms. MATSUI. Thank you, Mr. Chairman.

As you all know, the 1755–1805 spectrum band continues to be a priority. Mr. Chairman, you said in the past that the 1755–1780 band presents a near-term opportunity to free up spectrum that can help drive U.S. economic growth and our global competitiveness. Do you believe as a first step we should focus on repurposing the lower 25 megahertz that is 1755 to 1780 for commercial us to meet demand and spur innovation?

Mr. GENACHOWSKI. Yes, I do, and I think that there are new opportunities given new technologies and dynamic access and sharing that make that even more of a reality and potentially could lead to freeing up even more of that spectrum.

Ms. MATSUI. So the other Commissioners agree with that too?

Mr. PAI. Yes.

Mr. MCDOWELL. Absolutely. If Congress wanted to take leadership to get the executive branch to relinquish more spectrum for auction, I think that would be terrific.

Ms. MATSUI. Mr. Chairman, some have suggested that we look at developing incentives to help alleviate some of the reluctance some agencies may have in repurposing their underutilized Federal spectrum for commercial use. We will need additional spectrum in the marketplace. Otherwise we will lose our competitive edge in technology and innovation.

As we look for creative ways to help break any potential impasses with Federal agencies, are there any financial incentives or any other incentives we should consider moving forward on?

Mr. GENACHOWSKI. I think that could be a productive area. In the past, Congress has done things that have created and provided incentives. Certainly we need the cooperation of Federal spectrum holders in order to free up the spectrum we need for our commercial marketplace.

Ms. MATSUI. Commissioner McDowell?

Mr. MCDOWELL. I think Congress could unleash a whole host of incentives, especially on the tax side in terms of capital investment, tax incentives there. That is not necessarily the purview of this committee but I think that could be very constructive.

Ms. MATSUI. Any ideas?

Ms. CLYBURN. And also some sharing opportunities. Sharing discussions have been taking place, and I think that is again a worthwhile pathway for us to consider.

Ms. MATSUI. Certainly.

Commissioner Rosenworcel?

Ms. ROSENWORCEL. The Commercial Spectrum Enhancement Act as modified by the Middle Class Tax Relief and Job Creation Act is two important things. First, it compensates Federal authorities

when they relocate off of their existing allocation. Second, it provides some upfront planning money so that they can make plans for when they might have to relocate. Both of those things are good, but in addition to sticks, carrots tend to work too, and I think adding to those two things a set of incentives would be a prudent thing to do and I would certainly support it.

Ms. MATSUI. Commissioner Pai?

Mr. PAI. Congresswoman, I would add to my colleagues' comments that to the extent that the incentives can be tailored to the particular incumbents within the 1755 band where relocation or compression is most feasible in the short term, that would be ideal. So, for example, in the NTIA report earlier this year, precision-guided munitions, fixed point-to-point microwave and other applications were identified as the types of services that could be moved relatively quicker than some of the other applications, for example, telemetry where just because of the nature of the operations it would be very difficult and/or expensive to move. So the incentives, tailoring them to the particular incumbents could get the most bang literally for the buck.

Ms. MATSUI. Thank you.

Mr. Chairman, the Middle Class Tax Relief and Job Creation Act requires the FCC to auction 25 megahertz of spectrum between the 2155–2180 megahertz in 3 years. Many stakeholders have suggested that the spectrum band should be paired with the 25 megahertz of spectrum between the 1755 and 1780. Do you believe that the Federal Government should reallocate and auction the spectrum between 1755 and 1780 megahertz in time to be paired with the 2155–2180 megahertz block?

Mr. GENACHOWSKI. That would be a great outcome, to be able to auction off that spectrum as a pair. It is why we are moving aggressively with—we should move aggressively with the idea of sharing solutions on 1755. We now have an application for an experimental license from T–Mobile supported by CTIA to begin immediate testing of sharing in the 1755 band. Moving forward on that quickly is important for precisely the reason you mentioned, which is that we have a 3-year deadline on auctioning the other, so we need to resolve 1755 quickly. The committee's role here could be very important, and we look forward to working with you on it.

Ms. MATSUI. Do the other Commissioners agree with this too?

Mr. MCDOWELL. From a macro perspective, I think it is important for us to start looking at this from a different perspective. Right now the law says that if it costs more to move a Federal user off of spectrum than it would raise at auction, it is not going to happen. So let us look at maybe the cost of how much it would cost to move a Federal user off of spectrum versus the overall economic effect, and I think that is going to start to tilt the scales in a different direction.

Ms. MATSUI. OK. I see I have used up my time, and unless the others want to make a quick comment? OK. Thank you.

Mr. WALDEN. Thank you.

We now recognize the gentleman from Illinois, Mr. Shimkus, for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman, and I appreciate you all coming. I guess I know how long I have been here when you

finally get a full FCC Commissioner panel that since I started is all new, really. You guys are—unfortunately, that means you have been around a long time, which is not always good in Washington these days.

But thank you for coming and it is always an exciting time when you are talking about communications, and as many of you know, I don't try to do gotchas and stuff like that, but I want to—and I say that hesitantly because, Chairman, I want to talk about your new Web site which I have up, which is kind of snazzy. Some people are saying it is a little more difficult than the old one, so I hope that we can address may be some of those concerns.

But I do that because I did put in—I tried to figure out and do the search to find the title to reclassification proceeding on the site. I just went into the search thing and did Title II reclassification, and I can find nothing. It is very quiet. It moved me to number twos and all sorts of other stuff but maybe I am wrong but maybe you can help me direct that through eventually.

I am not going to go much further, but the question is, is the Title II reclassification still open?

Mr. GENACHOWSKI. It is still open. Generally speaking, with notices of inquiry, the norm is to keep them open as——

Mr. SHIMKUS. And we can pull that down. I don't need that.

Mr. GENACHOWSKI. And in fact, in that proceeding we have received over the last year I think about 19 different comments, and so the norm is to keep notice of inquiries open.

Mr. SHIMKUS. Nineteen?

Mr. GENACHOWSKI. I believe that is the number.

Mr. SHIMKUS. Is that abnormally high or abnormally low?

Mr. GENACHOWSKI. You know, for the 19 people who commented, it is important, and I would say the fundamental test for us is, are our policies having a positive effect on the broadband sector, and the broadband sector is moving very strongly in the right direction, and I think the Commission together has done a good job driving investment in U.S. leadership.

Mr. SHIMKUS. So you don't plan on closing that?

Mr. GENACHOWSKI. It would be unusual to close it. I have no plans to close it.

Mr. SHIMKUS. So then my follow-up question, with our last hearing, I don't know if you had presence here or not, but we did have a hearing on the U.N. ITU regulation. I think Commissioner McDowell made public comments on that. It was pretty much the consensus, I think, from the committee on both sides about the concern of controlling the Internet from places. There is a concern that if we don't close down the hearing process or we don't close down the reclassification, that there is a possible default or a movement to the government having bigger control of the Internet. Do you recognize that that concern is out there?

Mr. GENACHOWSKI. I have heard that concern. I don't share it. I believe very strongly in Internet freedom, clear and consistent position, no gatekeepers to the Internet, public or private.

Mr. SHIMKUS. But you don't think that keeping the reclassification system open sends an opposite signal?

Mr. GENACHOWSKI. I don't think so at all.

Mr. SHIMKUS. Does anyone else want to comment on that real quickly because I have two more points.

Mr. MCDOWELL. I would disagree. Whenever I speak to international audiences, this comes up as issue, isn't the United States being hypocritical opposing IT regulation of the Net but at the same time wanting to go into the space of regulating Internet network management.

Mr. SHIMKUS. Ms. Clyburn?

Ms. CLYBURN. I am not in agreement, with all due respect, with your premise.

Mr. SHIMKUS. That is fine. Great.

Commissioner Rosenworcel?

Mr. ROSENWORCEL. I agree with the chairman as well.

Mr. SHIMKUS. Mr. Pai?

Mr. PAI. And I testified in November at my confirmation hearing. I said as well in my opening statement that I would support closing the Title II proceeding in order to provide certainty to people in the industry and around the world.

Mr. SHIMKUS. And then I only have 35 seconds left, and I plan to use them to really make a statement. We haven't really talked about—I don't know if we have. I have been upstairs for an energy hearing, but Congresswoman Eshoo and I do E–911, telecommunications safety obviously with the storms, especially Fairfax County. I hope we are looking at that and offer some recommendations and the like.

And before I get a response, let me also just make—because we talked about Universal Service Fund, and I do represent rural America, 30 counties out of 102 in southern Illinois, and I just want to put on record that Universal Service today is also broadband access and speed. It is just not cellular communications, and even in cellular communications you may not have—you will need multiple towers. So I hope in your consideration we get equity in the ability of rural America to have access of speed in broadband technologies, and I think that you will some support in movement in that direction.

Thank you, Mr. Chairman. I yield back my time.

Mr. WALDEN. The gentleman yields back the balance of his time.

The chair now recognizes the gentlewoman from the Virgin Islands, Dr. Christensen, for 5 minutes.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

And I am sure it won't surprise you that my questions are going to be related to insular issues. Mr. Chairman, in the USF ICC transformation order, the FCC recognized that unique circumstances exist in insular areas and directed the wireline competition bureau consider those special circumstances as it implements a forward-looking cost model for price cap carriers. You also instructed the bureau that if the adopted phase II cost model doesn't adequately account for costs of the price cap companies outside of the contiguous United States, it could choose to exclude those companies from the phase II mechanism and continue to provide them phase I support instead. So my question is, given that phase I support for the noncontiguous States and territories accounts for less than 5 percent of the total high-cost budget for price cap companies, wouldn't you agree that it might make more sense

for the bureau to get the cost model right for the companies in the contiguous States first since they account for 95 percent of the budget and then make adjustments for the noncontiguous States and insular areas later?

Mr. GENACHOWSKI. Well, first of all, I thank you for recognizing the steps that the order took to recognize the importance of the territories and the relevance of broadband access. We take that very seriously. The answer to the question is really the same in both the territories and the States. Moving forward with reform is the best way to get broadband to people all over the country and the territories who don't have broadband today and we have an obligation to the consumers paying money into the fund to make sure that their money is being used in a defensible way. So we will continue to listen to all concerns including from the territories, make adjustments as appropriate, but we are proud of the forms that we adopted and we think they will finally deliver broadband to unserved Americans all over the country while having the fund on a fiscally responsible budget.

Mrs. CHRISTENSEN. Well, you know, we obviously want to discuss that further with the Commission as we move ahead.

I don't know if our new Commissioner, Commissioner Rosenworcel, having had experience in working with Senator Inouye in Hawaii, if you had any comments.

Ms. ROSENWORCEL. Well, I did not participate in the very big effort that my colleagues here did and undertook last October in reforming Universal Service Fund, and I wholeheartedly support the thrust of that effort. I think it puts the fund on a more sustainable course. It puts it on a budget and it makes it more financially accountable. At the same time, going forward, we are going to be open to continuing to have discussions about its impact on different areas of the country and obviously that includes insular areas. Insular areas is one of the criteria that is set out in section 254 of the statute, so I think on a going-forward basis we should make sure that we listen to the words Congress placed in there.

Mrs. CHRISTENSEN. Thank you.

Mr. Chairman, again, in the order, as I said, you recognized that unlike mainland rural company services, we are a bit different. For example, insular areas face higher costs to ship, deploy and maintain communications infrastructure because of their remoteness, and also our exposure sometimes to severe weather. In addition to that, the Virgin Islands and Northern Marianas and America Samoa are outside of the custom zone of the United States, so our companies pay duties on equipment and materials that come in from the United States as well as foreign areas.

So can you talk about Connect America Fund phase II cost model could take into account these factors in producing and projecting the costs of deploying broadband service in insular areas? Would those factors be able to be taken into consideration?

Mr. GENACHOWSKI. Yes. We recognize that in insular areas and in some States that are unique circumstances that in fairness we need to take into account. We have sought to address that in the order and also through the waiver process that we set up as sort of a safety net in case our mechanisms miss any criteria that are

important to take into account. The door is open for legitimate waiver requests.

Mrs. CHRISTENSEN. Thank you.

And a question on spectrum. How long do you anticipate it will take to complete the incentive auctions, both the reverse and forward auction?

Mr. GENACHOWSKI. We don't know yet. It is important that we move quickly but also move in a way that maximizes the opportunities of the auction. So I think we intend to start the process very soon. We have started in many respects but to move forward with additional notices in the fall and then as we get more participation from stakeholders, I think we will be able to make a judgment on what the right time is to hold the auction to maximize the benefits.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

Mr. TERRY [presiding]. Thank you.

The chair recognizes the gentlelady from California for 5 minutes.

Mrs. BONO MACK. Thank you, Mr. Chairman, and I would like to thank the entire Commission for being here today. Oversight hearings like this can be very helpful for us because they give us an opportunity to reflect on where we have been and talk about where we are going. As lawmakers, our job is to constantly evolve the marketplace to ensure that consumers are protected, that there is sufficient competition and that the rules on the books are not unduly harming investment and innovation.

We all know that the Internet has radically changed how we receive and share information. In 1996, when Congress did its first and only rewrite of the Communications Act, approximately 36 million people used the Internet, less than 1 percent of the world's population. The copper wire was king and people waited patiently, very patiently while an image slowly loaded onto their screen. But today more than 2.2 billion people are on the web and people all across the globe are more connected than ever before. We share and access information on the web constantly and we can do it from the phone in our pocket. It is pretty hard to argue that the landscape isn't drastically different than it was 16 years ago.

We also know that the technology sector is among the most dynamic and innovative parts of our economy. We all care deeply about jobs. But I wonder, do our dated laws actually harm innovation and inhibit investments? Too often, it seems the FCC has overreached in interpreting its authority, perhaps because that authority was granted in a different world than we live in today.

I would like to ask the new Commissioners, Rosenworcel and Pai, do you think the—these are complete opposite of Mr. Dingell's. These are multifaceted questions and you may elaborate. Do you think the FCC has jurisdiction to regulate all IP networks? How about all fiber networks? Do you think the FCC should regulate such networks, and what is the proper regulatory framework for IP-based services to the two new Commissioners, and welcome.

Ms. ROSENWORCEL. I think the FCC has jurisdiction to do so. Congress in laying out the definitions at the front of the Communications Act speaks to telecommunications services regardless of the technology used. That definition informs the definition of tele-

communications and the definition of information services. So I think the jurisdiction is present.

But your question is a good one. Does that mean that the agency should then go take an extensive regulatory role? And I think the question for the agency is, are its rules promoting competition which can inure to the benefit of consumers? Are its rules promoting universal service so that we get these services everywhere? And I think that those are the fundamentals that should really drive the agency in its decision-making at this time.

Mrs. BONO MACK. Commissioner Pai?

Mr. PAI. Representative, I share your concerns about the Commission's occasionally elastic interpretation of its own statutory authority, and even to the extent that, say, for example, Title I would broadly seem to cover IP networks, the question is whether we are being faithful to the actual language of the statute and the intent of Congress. But putting that aside, assuming for the sake of argument that the Commission has authority, the question, as my colleague pointed out, is whether the Commission should exercise that authority with respect to IP networks.

As I said forth in my opening statement, I have very serious concerns about extending the legacy economic regulations of the old copper-wire networks to fiber networks, and the reason is because we want to maximize the incentives for companies and carriers to deploy more fiber, so to the extent that additional regulations of the type that were present in the copper area are applied to fiber, that dampens the incentive for a company to deploy fiber if they know that prices or other terms can be regulated and changed and so they don't have the certainty they need from the Commission in order to make those investments. So I take a slightly different approach to that question.

Mrs. BONO MACK. Commissioner McDowell, would you like to weigh in on that?

Mr. MCDOWELL. First of all, I think it is important to note that if the Act gives us jurisdiction over telecommunications services, that doesn't mean that we can then foist upon information services the same powers. And it is important to also note that information services, broadband Internet access in particular, has never been regulated under Title II—never.

So the other part of your question, which is should it be, I agree with Commissioner Pai in that we should be very careful. We should encourage the buildout of new systems. But I think overall—I have said this on the record many times before—Congress should take a fresh look at the Act. It is stovepipes of regulation based on legacy technologies. It might be wireless. It might be coaxial cable. It might be copper. It might be other types of wireless technologies as well, broadcast versus mobile broadband etc.

So consumers really don't understand the difference. I try to look at the marketplace through the eyes of my children, and they don't see what the regulatory difference should be based on any sort of technology differential. So let us look at concentrations of market power, abuses of that power, and whether or not that leads to harm to consumers. I think that would help inspire a fresh look at a new statutory construct.

Mrs. BONO MACK. Thank you very much. My time is expired. I yield back.

Mr. TERRY. I thank the gentlelady and now we recognize the gentleman from Boston.

Mr. MARKEY. I thank the gentleman very much.

And I would like to extend a particular welcome to our two new Commissioners. Congratulations. It is going to an exciting tour of duty for you. It is just the most exciting area in all of public policy.

Yesterday I released the findings of an investigation into law enforcement requests for consumers' mobile phone records. It is the first-ever accounting of such information. The responses from the carriers are startling in both volume and in scope. In 2011, law enforcement made more than 1.3 million requests for personal information from wireless carriers, and this number has been increasing every single year. With wireless devices now ubiquitous, mobile-phone records, geolocation data and text messages have become indispensable tools in the hands of law enforcement authorities. Law enforcement should have access to this data as long as it is granted according to court warrants and appropriate legal processes.

Since the transfer of mountains of mobile data to law enforcement raises a number of important privacy concerns that we have to deal with. For instance, while police are searching for the guilty needle, innocent people in the rest of the haystack may be swept up in a digital dragnet.

So let me ask you, Mr. Chairman, do you think this process should be more transparent so that innocent consumers whose information is being included in these data dumps can better understand how their personal information is collected, handled and stored?

Mr. GENACHOWSKI. Yes, and I think the information that you released provided a real service. If I can make one brief point on the importance of privacy, important as a fundamental value that we all care about but also important for the success of the Internet and broadband in driving economic growth and all the benefits. If people don't trust the Internet and their information on the Internet, that will drive down adoption and usage so I think you are doing something very valuable.

Mr. MARKEY. Commissioner McDowell, do you agree?

Mr. MCDOWELL. I would also like to thank you for your leadership on this issue. There are obviously some Fourth Amendment concerns here.

Mr. MARKEY. Commissioner Clyburn?

Ms. CLYBURN. Yes, and again, I appreciate you for that, and I woke up with the morning news reaffirming your statement and I would embrace appropriate legislative action.

Mr. MARKEY. Commissioner Rosenworcel?

Ms. ROSENWORCEL. Yes.

Mr. MARKEY. Commissioner Pai?

Mr. PAI. Yes, and I thank you again for your inquiry.

Mr. MARKEY. OK. Now, court warrants are required before carriers turn over data to law enforcement except in emergency situations when lives are at sake. This makes sense, of course. However, I found that there don't seem to be uniform requirements for law enforcement to furnish warrants to carriers after the emergency

has passed but while police still want carriers to provide additional data. Do you think that more certainty with respect to the legal standards in this area would be beneficial for both the carriers and for consumers?

Mr. GENACHOWSKI. Yes.

Mr. MCDOWELL. Yes.

Ms. CLYBURN. Yes.

Ms. ROSENWORCEL. Yes.

Mr. PAI. Yes.

Mr. MARKEY. Thank you.

Now, law enforcement is routinely asking for geolocation information rather than wire taps because they are easier to obtain. How does the FCC plan to address this shift to geolocation information, particularly as nearly every person now carries a GPS tracker, their cell phone? The telephone companies know where we are.

Mr. GENACHOWSKI. This is an important issue. We have open proceedings on this and our goals are to protect consumer choice, make sure there is transparency and information to consumers and preserve consumer trust in the communications networks.

Mr. MARKEY. Do you each agree that this is an important area where we have to give the consumer some confidence that they are not being tracked at all times? Commissioner McDowell?

Mr. MCDOWELL. It is an important area. The FCC's legal authority in this area is unclear regarding privacy. We have a few discreet statutory areas that give us some authority but I am not sure—in fact, I don't think it is very expensive.

Ms. CLYBURN. I have yet to review all of the comments of the providers, but again, if it demonstrates a need for enhanced interaction, I would be supportive.

Mr. MARKEY. Thank you.

Ms. ROSENWORCEL. Here is what we know in the digital age. The technology exists to track where we go and what we do both on the Internet and with our mobile devices. Law enforcement is interested in this information and businesses want to monetize it. I think the more challenging course is to try to understand what consumers understand about this situation and whether or not——

Mr. MARKEY. Nothing. They have no idea that this is a tracker. They know nothing, right?

Ms. ROSENWORCEL. I agree with you.

Mr. MARKEY. OK. Let me just ask one quick question. Kids 15 and under, do they deserve an online privacy bill of rights so that they are not just turned into commodities? Mr. Chairman?

Mr. GENACHOWSKI. Yes.

Mr. MARKEY. Mr. McDowell, 15 and under?

Mr. MCDOWELL. That is all three of my kids right there you just described, so yes, I would agree.

Ms. CLYBURN. Yes, even though I don't have kids. Yes.

Mr. MARKEY. OK. Great.

Ms. ROSENWORCEL. Yes.

Mr. PAI. Yes.

Mr. MARKEY. Yes, 15 and under, we just have to have a privacy bill of rights, and the longer we wait is the more these kids are just

going to get exploited, and this committee has the jurisdiction to move it.

Thank you, Mr. Chairman, very much.

Mr. TERRY. Thank you, Mr. Markey.

I recognize Mr. Stearns for 5 minutes.

Mr. STEARNS. Thank you, Mr. Chairman.

Commissioner McDowell, I have called into question NTIA's March report in which it estimated that it would cost about $18 billion in 10 years to relocate Federal users off the 1755–1850 band. Apparently NTIA based these estimates on agency reporting without conducting an independent analysis. What are your thoughts on this report?

Mr. MCDOWELL. First of all, I think our friends at NTIA did their best to try to produce that report. They are completely dependent upon the information supplied to them from other executive-branch agencies, and that is where it gets very opaque as to who is providing that information, what are the assumptions, what is the data upon which all of those financial numbers rely. So I think there is a lot more work to be done. The good news about the executive branch is that it ultimately culminates with one person and some new Executive Orders I think could be very helpful in trying to focus the executive branch on relinquishing more spectrum and then Congress could come into play by not just looking at how much it costs to relocate Federal users of spectrum but what would the economic effect, the net economic effect be of placing that spectrum into the hands of consumers through an auction.

Mr. STEARNS. OK. Chairman Genachowski, there has been a lot of discussion within NTIA and the FCC on spectrum sharing with government users. The wireless industry was built on clearing and auctioning spectrum with exclusive rights. This spectrum model has created huge economic benefits for our country. Has there been any economic analysis of the likely outcomes of auctioning shared spectrum? I am concerned about assumptions being made about a business model that will work within a sharing regime.

Mr. GENACHOWSKI. In my opinion, we have to do both. We have to completely clear more spectrum and ship it to commercial but we also have to be open to the possibility that as technology is developed, sharing might provide new opportunities to add spectrum on top of that, and the spectrum crunch is so significant, I have come to the view that we need to pursue both avenues, sharing, but not at the expense of clearing.

Mr. STEARNS. OK. You have also noted that during your tenure the Commission has moved to eliminate 200 unnecessary and outdated regulations. Can you tell me which of these was the most significant in terms of moving the needle in a way that improves the climate for investment in the telecom sector?

Mr. GENACHOWSKI. Sure. I will mention a few. Just recently, we removed the dual carriage requirement for cable that will free up cable capacity for broadband. We have removed regulations that limited the ability to provide wireless backhaul in rural areas. We have eliminated regulations in the 800 megahertz band to accelerate deployment of LTE. So those are just some examples of regulations that we have eliminated.

Mr. STEARNS. I guess Commissioner McDowell, do you believe that the Commission has been aggressive enough in burning off this regulatory sort of underbrush?

Mr. MCDOWELL. First of all, I think the Chairman should be commended for some of the steps he has taken. I think as we continue to look through that list of 200 or so regulations, there are a lot there that aren't really substantive eliminations of rules. I think there is a lot more that can be done. I think some day I would love for the Commission, for Congress to examine whether or not all Commissioner rules should be sunsetted and have to be reauthorized because we know the facts change in this marketplace so very quickly. So just as certain bills regarding agency authorization expire and Congress looks at those from time to time, I think the Commission ought to have that sort of presumption when it promulgates new rules.

Mr. STEARNS. OK. Commissioner Pai, one of the first statements you made upon arriving at the Commission was about the need to breathe new life into the biannual review process. I think you mentioned that. Can you tell us more about what you think the Commission should be doing in that regard?

Mr. PAI. Thank you for the question, Representative. Section 11 of the Communications Act, as you know, requires the Commission in every other year to review its regulations with respect to communications services and evaluate whether they continue to be in the public interest as a result of competition. To the extent that Commission determines that those regulations are no longer in the public interest, we are required to repeal those regulations.

When I was at the Commission in the general counsel's office in 2007, 2008 and early in 2009, part of my work involved compiling some of the recommendations from the various bureaus and offices with respect to biannual review. What I found was that a lot of staff work is involved in getting the recommendations together and sending them to the general counsel's office but often the Commission itself didn't take formal action or at least didn't make the Section 11 process as robust and as meaningful as it could be.

So my view, and the same that you referred to, was that instead of or in addition to bureau-level recommendations, it would be a terrific idea and would give the Commission a better sense of—or would allow the Commission to better calibrate its regulations to the current marketplace. If a Commission-level order or set of orders, if necessary, were adopted with respect to biannual review, that would mean commitment of resources on the Commission level, of course, but I think it would also give the staff a sense that a lot of their carefully considered recommendations were in fact getting acted upon.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. TERRY. Thank you, Mr. Stearns.

At this time we recognize the gentleman from western Pennsylvania.

Mr. DOYLE. Thank you, Mr. Chairman.

Chairman Genachowski, Commissioner McDowell, Commissioner Clyburn, welcome back. Commissioner Rosenworcel and Commissioner Pai, I look forward to working with both of you and welcome to your first hearing in front of the committee.

I just want to say very briefly, there has been some concern expressed on this committee about the reclassification proceedings leading to some sort of government censorship. I just want to say for the record, I think that is a misinformed view. Quite the opposite, I think this promotes an open Internet that protects our consumers' access to the content of their choosing. But let me move on.

Chairman Genachowski, we have had a number of conversations, maybe 200, 300 or 400, on special access, and I know that you are aware that the resolution of this issue is important to the industry. You have recently circulated an order that would freeze pricing flexibility pending further reform of the special-access market. I fully support that effort. You mentioned here today that the FCC's pricing flexibility rules are not working properly. Would you agree that it is difficult for the industry to operate under rules that the FCC admits are broken, even in the short term?

Mr. GENACHOWSKI. Yes, and I think the process of——

Mr. DOYLE. That is good, so are you planning to bring this order to a vote in the short term, and if so, when might you do that?

Mr. GENACHOWSKI. There is a draft order currently before my colleagues. It is something that we have been discussing and that we hope to resolve in the near future.

Mr. DOYLE. When might that be? The near future has been since 2007, so——

Mr. GENACHOWSKI. No, no, no, this is under active consideration at the Commission and I think you can expect some action in the very near future.

Mr. DOYLE. And then also we understand that you are going to issue another data request, this one being mandatory, and my understanding is that a mandatory data request is something that most of the stakeholders are in favor of. But as I said before, going back to as far as 2007, this committee has been promised multiple times that the FCC would complete the special-access proceeding expeditiously. This is giving new meaning to the term "expeditiously." So we have heard this all before, but what is the timeline by which the FCC will issue this mandatory data request, analyze the data and complete this proceeding? And please don't say "soon."

Mr. GENACHOWSKI. We expect to issue, or I expect to ask my colleagues to vote on, the data collection order in the coming weeks as quickly as it can be finalized, and then once we get the data, it is hard to predict exactly when we would bring the order to conclusion, but I think your point——

Mr. DOYLE. How long will it take to get all the data?

Mr. GENACHOWSKI. I don't know what comment cycle we will put in that but we will do——

Mr. DOYLE. Weeks, months, years?

Mr. GENACHOWSKI. Not years, months, and I think——

Mr. DOYLE. More than 3 months?

Mr. GENACHOWSKI. The shortest comment cycle that——

Mr. DOYLE. I am looking at Commissioner McDowell's head going like this. Two to three months?

Mr. GENACHOWSKI. Yes, sir, or—the answer is yes. We want to have a comment cycle that gets us the information we need as quickly as possible.

Mr. DOYLE. OK. I am going to get off your back at this point but we are going to be on your back. This needs to get done.

I want to talk about minority and female media ownership too. Federal appeals court last year ruled that the FCC does not have enough accurate data on female and minority ownership to demonstrate that it is serving its statutory mandate to promote diversity. The court has directed the FCC to study minority and female ownership before changing any media ownership rules. In Pittsburgh, where I live, minority and female ownership of broadcast outlets has decreased rather than increased in recent years. We have less than a handful of broadcast stations owned by minorities or women. I remember growing up, WAMO–FM in Pittsburgh was a very important radio station in the African American community for many years, and it is no longer minority owned. What are your plans, Mr. Chairman, for moving forward with this assessment of minority and female ownership? And after you have answered, I would like to throw that out to the rest of the Commissioners too.

Mr. GENACHOWSKI. This is an important issue. I am glad you are raising it. We have taken steps in the wake of that order to gather data that we need, that the court said that we need. That is underway and we will continue to make sure that we have the data we need to meet these objectives, which are clearly stated in the Communications Act.

Mr. DOYLE. Commissioner McDowell?

Mr. MCDOWELL. Thank you for raising this. This has been a very important issue of mine as well. In December of 2007, we had a unanimous 5–0 vote on the diversity order where I supported the 13 proposals, some of which got turned back by the 3rd Circuit here not too long ago, but one that did withstand the appeal was the ban on no urban, no Hispanic dictates, and I am very proud of that. That was the first civil rights rule codified by the Federal Government in about a quarter-century.

But we can do a lot more. I think we need to, you know, finish the diversity studies actually would be the first point of order here at the Commission, and that will give us the factual and legal context under the shadow of the Supreme Court's Adarand decision from many years ago to make sure what we do is legally enforceable, but we need to first of all provide incentives for those who hold broadcast licenses to divest them. Congress could be helpful by reinstating a version of the tax certificate law that was in place for many, many years. It was flawed but it could be improved upon, and I have long advocated that. I think there are a whole host of ideas and I know you want to talk to the other Commissioners, so I will be quiet now.

Mr. DOYLE. Commissioner Clyburn?

Ms. CLYBURN. Well, you have taken an important first step in this direction by in essence releasing or codifying a study, and that is online for anyone's review. Again, this is an important first step and I am hoping that we are in the process of funding and getting more robust information that is needed for us to make decisions, not only in this aspect but in overall media ownership proceeding coming forward.

Ms. ROSENWORCEL. As you note, this is an important issue. The statistics right now are not encouraging, and the 3rd Circuit re-

manded these issues to the FCC. In addition, the FCC has statutory duties under section 257 of the statute to continually look at minority and small-business ownership of communications properties. And then finally, it is the right thing to do. I do agree with Commissioner McDowell, however, that the minority tax certificate program, which was in place from 1978 to 1995, was one of the most effective means of promoting diversity of ownership.

Mr. PAI. I agree that this is an important issue. As you know, the 3rd Circuit decision in this case was paired with a decision with respect to media ownership rules generally, and as the Chairman has pointed out, the quadrennial process is ongoing. We are collecting facts, and I support action ideally by the end of the year if we can get it in order to address these serious issues.

Mr. DOYLE. Mr. Chairman, thank you for your courtesy, and let us get those LPFM licenses going.

Mr. TERRY. Second.

The gentleman from New Hampshire is recognized for 5 minutes.

Mr. BASS. Thank you, Mr. Chairman, and I am going to associate myself with the remarks of all my preceding colleagues in welcoming you all here, especially the new members of the Commission.

This committee recently held a hearing on the future of video, and I believe that there was broad agreement that the video marketplace has changed significantly since the passage of the 1992 Cable Act. Chairman Genachowski, tens of thousands of New Hampshire residents woke up this morning to a blue screen due to a retransmission consent impasse between Time Warner Cable and Hearst. As a result, our State's only full-power network-affiliated broadcast station went dark on Time Warner Cable.

Mr. Chairman, you and I have corresponded over the past year, in fact, one instance in particular just before the Super Bowl, regarding how consumers should not be harmed during these negotiations and why I think it is essential that the Commission complete its review of the retransmission consent rules expeditiously. What is the scope of the agency's authority on this matter and when will you be completing your proceeding so that Congress may act accordingly?

Mr. GENACHOWSKI. I share your concern about the issues, particularly the effects on consumers. As I said before, the Commission's authority under the old laws is limited and I have said that we look forward to working with the committee on whether the retransmission consent provisions should be updated as a result of changes in the marketplace. It is obviously an area that we continue to monitor so it is an area that I look forward to working with you and the committee.

Mr. BASS. When will you be completing your proceedings so that—I will repeat my question. Is there any timeline here?

Mr. GENACHOWSKI. If I could, I would like to get back to you on that but our options are limited, and I wouldn't say that that should hold up any inquiry by the committee into changing the law because we have stated very clearly the limited nature of our ability to intervene under the current statute.

Mr. BASS. So the scope of your authority on this matter you think is very limited?

Mr. GENACHOWSKI. Yes.

Mr. BASS. OK. Ericsson recently estimated that by 2017, worldwide mobile broadband subscriptions will grow to 5 billion, and with the evolving use of devices, mobile data traffic will grow 15 times over. Recognizing the significance of efficient spectrum deployment to consumers, our Nation's economy and our global competitiveness, this committee and Congress passed bipartisan spectrum reform legislation earlier this year which we know, acknowledging that spectrum from incentive auctions is a ways off, I believe that it is vitally important that we firstly bring Federal spectrum to market in a responsible manner, and secondly, ensure that an efficient secondary market occurs.

You have answered the issue about relocating cost estimates that was asked by Mr. Stearns and somebody else preceding him, but regarding the secondary market, and without opining on any particular matter, shouldn't the FCC be treating spectrum swaps and sales with timely, predicable and reasoned evaluation as a clear means of alleviating near-term spectrum shortage?

Mr. GENACHOWSKI. Yes, and we have processed hundreds of secondary market transactions over the last few years. Our pace of reviewing those transactions is increasing and I agree with you on its importance.

Mr. BASS. Any others? Commissioner McDowell?

Mr. MCDOWELL. Absolutely, I agree 100 percent that we need to continue to make our secondary spectrum markets as vibrant as possible. The best way the Commission can help is for speedy review and approval of transactions.

Mr. BASS. Commissioner McDowell, Chairman Genachowski stated in his opening statement that the United States has "regained global leadership, particularly in mobile" under his leadership. When and how did we lose that leadership in mobile?

Mr. MCDOWELL. Well, I would—I appreciate his enthusiasm and his optimism. I don't think we ever lost it. I think we have always been the leader in mobile ever since Marty Cooper invented the cell phone in 1973. We never lost it.

Mr. BASS. Very well.

Thank you very much, Mr. Chairman, and I will yield back.

Mr. TERRY. The gentleman yields back.

Since the gentlelady from Illinois is not part of the subcommittee, we are going to finish with those that are. So I know you are there.

The gentleman from Georgia is recognized.

Mr. GINGREY. Mr. Chairman, I want to thank you for calling today's hearing on the oversight of the FCC, and I would also like to welcome Chairman Genachowski and all the Commissioners. In particular, I would like to welcome the two newest members of the FCC, Commissioners Rosenworcel and Pai. Welcome indeed.

In a May 13, 2011, hearing before this subcommittee on process reform at the FCC, Chairman Genachowski testified that the FCC is "committed to clearing out the backlogs" and that it has reduced the pending number of broadcast applications by 30 percent. Earlier this year, the House passed H.R. 3309, the FCC Process Reform Act. That legislation was the product of stakeholder input that will create more regulatory certainty and will make the Com-

mission work in a more efficient manner. Believe me, I have got a question in all of this.

I appreciate Commissioner Pai's testimony which stated that the FCC "must act with the same alacrity as the industry we regulate." Unfortunately, despite these comments, Chairman Genachowski's testimony and the inaction by the Senate on H.R. 3309, the Commission is still riddled with process laws that cause significant delays for an ever-changing industry. I would like to spend the remainder on this very issue that impacts companies in my home State of Georgia as examples of why statutory process reform is desperately needed at the FCC.

In 1999, 13 years ago, WTHC CD 42, the Atlanta channel, filed an application for class A status along with six other stations across the Southeast. Due to some clerical errors in the application, the Atlanta channel's application was the only one of the seven that was denied. In 2000, the Atlanta channel filed an appeal that is still pending before the FCC. Recently, I along with my Georgia Republican colleagues—we also got letters from the Democrats in Georgia—sent a letter to Chairman Genachowski asking the Commission to approve the class A status for the Atlanta channel which has yet to receive a response. Mr. Chairman, I want to ask unanimous consent to include the letter in the record.

Mr. TERRY. Without objection, so ordered.

[The information follows:]

Congress of the United States
Washington, DC 20515

June 6, 2012

Mr. Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Genachowski:

We are writing to support approval of Class A status for WTHC-CD 42 (The Atlanta Channel), which serves as the Official Visitor Information Television Station of the Atlanta Convention and Visitors Bureau (ACVB). Class A status was originally denied The Atlanta Channel due to a minor clerical omission in the application. The station immediately filed an appeal, and the appeal has been on record since 2000.

We are asking that the appeal be granted and that Class A status be awarded to The Atlanta Channel. There can be no doubt that it embodies the ideal of Class A Low Power Television, broadcasting 100% local programming in High Definition and serving the community without fail for 19 years.

In 1993, The Atlanta Channel came to Atlanta at the behest of local leaders, the Atlanta Convention and Visitors Bureau (ACVB), the Atlanta Committee on the Olympic Games (ACOG), and the Georgia Hospitality and Travel Association, in preparation for the 1996 Centennial Summer Olympic Games. The Honorable Andrew Young was instrumental in bringing the station to life and endorsed the appointment of The Atlanta Channel as the Official Visitor Information Station for the Atlanta Committee for the Olympic Games and the Olympic Village.

In July 2004, the ACVB announced its partnership with The Atlanta Channel as part of the city-wide crisis communication plan, allowing authorities to reach visitors with critical information in the case of an emergency. In the event of a crisis or major situation affecting visitors, the ACVB will send official notices and advisories to The Atlanta Channel for continuous broadcast to visitors. In December 2010, The Atlanta Channel was formally announced as the Official Visitor Information Station of the ACVB.

As you may, know, Atlanta is the 8th largest designated media area (DMA) in America. The city welcomes over thirty four million visitors every year; 18.4 million of whom stay overnight. Last year, Metro Atlanta registered 18 million hotel/motel room nights, the 7th highest in the U.S. The Atlanta Channel reaches over 32,000 hotel rooms in the Metro area.

Travel, trade, and tourism are the lifeblood of Atlanta's economy, and essential elements of Georgia's recovering economy. The Atlanta Channel provides the essential communications link necessary to meet both the economic and public safety goals of the ACVB and the City of Atlanta.

We therefore request FCC approval of Class A status to WTHC-CD 42, The Atlanta Channel. This designation is critical to ensure continued communication with visitors, continued support for emergency communication plans, and continued service to the community through its unique expertise and essential broadcasting capabilities.

Sincerely,

Phil Gingrey, M.D.
Member of Congress

Tom Graves
Member of Congress

Jack Kingston
Member of Congress

Lynn Westmoreland
Member of Congress

Tom Price, M.D.
Member of Congress

Rob Woodall
Member of Congress

Austin Scott
Member of Congress

Paul Broun, M.D.
Member of Congress

Mr. GINGREY. Thank you, Mr. Chairman.

I believe that this example is precisely why we need to ensure that process reform is a priority for the Commission because this industry is at the cutting edge of innovation and companies should not be forced to wait 12 years to receive an answer from the agency that regulates them.

Here is the question. Chairman Genachowski, based on your previous testimony before the subcommittee and the recent Congressional inquiry, yes or no, will you commit to resolve this year the pending appeal from the Atlanta channel that has been before the Commission since Bill Clinton was in the White House?

Mr. GENACHOWSKI. Well, I commit to resolving it as quickly as possible. I am not familiar with the details but I certainly agree that no one should have to wait that long for a decision.

Mr. GINGREY. And the answer is yes?

Mr. GENACHOWSKI. If there is any way to do so, yes.

Mr. GINGREY. Chairman, I thank you and the other members of the Commission.

Chairman McDowell?

Mr. MCDOWELL. I agree to commit the Chairman to working very quickly on that application, yes, sir.

Mr. GINGREY. Chairwoman Clyburn?

Ms. CLYBURN. Thank you for the promotion.

Mr. GINGREY. Commissioner Clyburn.

Ms. CLYBURN. And again, I will work with the Chairman.

Mr. GINGREY. And Commissioner Pai?

Mr. PAI. Yes.

Mr. GINGREY. And Commissioner?

Ms. ROSENWORCEL. Yes. Nobody should have to wait that long.

Mr. GINGREY. Yes. Well, hey, that is great. I don't know whether I used more of my allotted time or less of my allotted time, but with that response, I thank all five of you and I thank you for being with us today and giving testimony on process reform.

Mr. Chairman, I yield back.

Mr. TERRY. Thank you for yielding back.

The gentleman from Kentucky is recognized for 5 minutes.

Mr. GUTHRIE. Thank you, Mr. Chairman. I would like to welcome our two new Commissioners. I enjoy working with you guys.

I have a question. I am the co-chair of the Government Spectrum Working Commission with Ms. Matsui and have worked pretty closely with Deputy Secretary Strickling, and they were trying to work to move forward, but I have a couple of questions, and I know that NTIA oversees that, not you, but Commissioner McDowell, I just wanted to hear maybe some of your experiences, and there is a March 2012 report that on the 95 megahertz between 1755 and 1850, that the estimated cost to restack that is $18 billion. That is what the estimated cost came to was $18 billion to clear it and repackage it. And I know that estimates like this have been wildly exaggerated and they come far under costs what has been estimated, so I just want to get your opinion on that.

The other thing too on your opinion is, it seems that it is coming out of NTIA that they think sharing is probably the best way to reclear and repack the spectrum, so it looks like we have high, high costs to repack, and from what I understand, if it is shared, it is

probably going to be the least valuable if it is shared as opposed to clear spectrum. So we are going through an exercise to try to free up government spectrum but we are looking at estimated high costs offering probably the lower value for our people who want to buy it, and it just seems like that is not a good way to go, and I just wanted to see your experience and the high cost and the sharing in terms of sharing some of your experience. I know we have a vote coming too, so——

Mr. MCDOWELL. Sure, and thank you for coming at that issue from a slightly different angle too. First of all, we have no way of knowing if that $18 billion figure is real, how real that it is. We don't know what the underlying data is.

Mr. GUTHRIE. But your experience, they have been higher?

Mr. MCDOWELL. Well, it is hard to say. These are executive-branch numbers. We are an independent agency. We don't have any reach into the executive branch. So we don't really know. And NTIA has to rely on information given to it from other agencies so I don't want to fault the good people at——

Mr. GUTHRIE. Right, and we have worked well with the Deputy Secretary.

Mr. MCDOWELL. Right, so they are given what they are given and they have to spit out the numbers that they are given, but beyond that, we can't drill down any deeper, and there is a disincentive, a strong disincentive for any user of spectrum or holder of a license, be they private sector or public sector, to relinquish that license, and that is going to be especially true of the Federal Government, so we have to ask a fundamental question, which is, are all agencies of the Federal Government using all of their spectrum efficiently. I think the answer to that question is probably no. That is a hypothesis. But we don't really know because there has never been an exhaustive audit or exhaustive study in that regard, and I think one is needed, but that is going to take leadership directly probably from the West Wing of the White House, from the Oval Office. You have a huge, vast executive-branch bureaucracy here regarding operators and users of spectrum but it does culminate with one person and I think this translates across who has been in the White House over the years. It is not a partisan issue, but the President with Executive Orders that are clear and defined could resolve this issue. So thus far it is sort of muddled.

So here we are in a bit of a cul-de-sac, a bit of a dead end, which is, we need spectrum. The broadband plan calls for 500 megahertz to be auctioned. I am skeptical that the incentive auction legislation will produce 80 megahertz. It is also a matter of 80 megahertz where. Is it going to be in those congested urban areas or where it is less needed in rural areas? And then so if you look at the Federal Government occupying perhaps 60 percent of the best spectrum, that is perhaps some very low-hanging fruit right there, but again, that takes executive-branch leadership to get that moving.

So then Congress has a role here, which is, there is a law that says if it costs more to move a Federal user off the spectrum than it would raise at auction, that is not to be auctioned. So do we need to reformulate that? Do we need to look at the net economic effect of that spectrum? Do we need to look at that whole problem through that different lens? And I think we do, but we are at a

dead end right now. We are not going to get to 500 megahertz that the National Broadband Plan talks about. Consumers are going to be frustrated for years, and even if we could find spectrum today, it does take the better part of a decade before it actually reaches the hands of consumers just because of due process and funding and buildout and all the rest. So we are looking at a real drought for spectrum right now absent some quick action and leadership.

Mr. GUTHRIE. Yes, this has been an interesting thing for me, eye-opening for me, and I think not many people understand and I still don't understand exactly how it all works, but the process by how we need to get spectrum out there because it is our competitiveness as a country, and I always kind of joking since I have been doing this task force, I never ran around Kentucky saying send me to Washington and I will get you more spectrum. That was never in my platform moving forward, but I enjoy doing it because it is an extremely important thing that we need to do and be very serious about because we have uses, everything going forward that we have to have spectrum for.

Thank you very much, Mr. Chairman.

Mr. TERRY. Thank you, Mr. Guthrie.

At this time, since there are no other members from the subcommittee, I am able to recognize the gentlelady from Illinois, Ms. Schakowsky. You are recognized for 5 minutes.

Ms. SCHAKOWSKY. Mr. Chairman, I appreciate your allowing me to just ask one short question.

Chairman Genachowski, let me begin with a compliment. The FCC I believe has done an impressive job under your leadership of improving the responsiveness and increasing efficiency. The Commission's significant reduction in the number of open dockets is particularly impressive.

However, there are several pending petitions which we have been hearing about filed by State pay-phone associations requesting the FCC to order a remedy for violations of previous FCC orders that are still awaiting decisions. I previously asked about one specific petition submitted by pay-phone operators in Illinois. It is now 8 years after that petition was filed. So I am asking what specific efforts have been made in recent months to reach a final decision on the outstanding pay-phone petitions. What will be done in the near future to bring this issue to a conclusion? And can you say when final orders on those petitions will be completed, and from my point of view particularly, the Illinois petition?

Mr. GENACHOWSKI. Thank you for your comments, and I appreciate you drawing attention to that proceeding. There is a draft order in that proceeding that is before the other Commissioners, and I can't speak for them but I would expect that we will see action on that in the near future.

Ms. SCHAKOWSKY. Since it is now dependent on the others, might comment on that.

Mr. MCDOWELL. You know, I graduated from law school in 1990, and one of my first projects was to work on a pay-phone matter before the FCC when I was in private practice, and what tends to happen is that the FCC will act. It goes to an appellate court. It goes back down to the FCC, several years in between actions, and this has been going on literally in my 22 years of practice and work

in this area. But I do think that we should get to work on all matters that are easily decidable and I agree with the Chairman in his answer.

Ms. SCHAKOWSKY. OK. Anyone else?

Ms. CLYBURN. My office will continue to do all that they can to expedite this process.

Ms. SCHAKOWSKY. Thank you.

Ms. ROSENWORCEL. Yes, we should get to work.

Mr. PAI. I have aggressively reviewed the list of orders on circulation and have tried to vote them as quickly as possible, and I will take a particular look at this order and take the appropriate action within a very short period of time.

Ms. SCHAKOWSKY. Pretty soon no one alive will remember pay phones, so I hope that we will be able to resolve this very soon. Thank you so much.

And Mr. Chairman, again, thank you.

Mr. TERRY. Thank you.

Mr. Kinzinger will now take over.

Mr. KINZINGER [presiding]. Thank you. The chair now recognizes himself for questions. This is what you do. You go vote early and then you can pretend like you are the chairman for a few minutes.

From everybody's written testimony, many of you talk about spectrum controlled by the Federal Government. As a military pilot, I understand and agree that certain agencies and departments have critical needs which must be prioritized in the realm of communications availability. I have also realized in my short time here that the Federal Government isn't exactly the model of efficiency. I know that doesn't surprise too many people. I was happy to see the FCC and NTIA initiate some plans to free up spectrum in the 1755 band but I believe there is more we can do to move this conversation along in the meantime.

To take a page from Commissioner Pai's testimony, sometimes you just have to get the first run across the plate to get the ball rolling. That being said, I have been working with Senator Kirk's office to do just that by introducing legislation which would relinquish Federal spectrum through a BRAC-style commission. It is H.R. 4044.

Now, everyone has their own opinion on how Federal spectrum should be reallocated but it is my hope that I will be able to work with each of you here today on a way forward and that we will be willing to talk about those ideas. And if you any of you have anything on the subject that you would like to talk about, hopefully we can do that as we move forward. It is an extremely important issue and I believe we can solve it if we start working together now.

Now, on to my question, and this is just fairly quick here. I guess this was touched on a little bit already, but to the whole panel I would like to ask this question. Through various proceedings, the FCC has stated that the Communication Act is technologically neutral. Do each of you continue to hold that view?

Mr. GENACHOWSKI. Fundamentally, yes.

Mr. KINZINGER. OK. Next?

Mr. MCDOWELL. If you mean does it treat all technologies the same, I think the answer is no. It is very stovepipy in nature, so as I stated earlier, whether you are a copper-based common carrier

or wireless provider or a broadcaster or providing a service over coaxial cable or over some other medium, the law will look at you differently rather than through the eyes of the consumer. So no, I don't think it is technologically neutral.

Ms. CLYBURN. I think in terms of our engagement and recognition of an ever-evolving marketplace in terms of how we evaluate these technologies, we take as neutral a stance as possible.

Ms. ROSENWORCEL. We should try to take as neutral a stance as possible but we should also acknowledge some of the direction that Congress provided in the statute, which does on occasion treat, for instance, local exchange carriers, cable operators and wireless licensees differently.

Mr. KINZINGER. Mr. Pai?

Mr. PAI. Our goal certainly should be technological neutrality. The problem, as Commissioner McDowell identified, is that we are compelled to apply statutory requirements and in some cases predate the very industries we purport to regulate by decades.

Mr. KINZINGER. Chairman Genachowski, the FCC issued a report claiming it had eliminated some 200 rules. How many of those rules were regulations that were still in force that you used your discretion to eliminate?

Mr. GENACHOWSKI. I don't know the number. I would be happy to get that for you.

Mr. KINZINGER. Can you give me an example?

Mr. GENACHOWSKI. I hesitate to do that, but I would also point out that that list underestimates actions we have taken to modify regulations to reduce their impact in a way that wasn't a complete elimination so we didn't include it on the list.

Mr. KINZINGER. Of the 200, maybe you will be able to tell me how many had already been invalidated by a court? Do you know the answer to that?

Mr. GENACHOWSKI. I don't know the answer to that.

Mr. KINZINGER. OK. And you will be able to get that to me, I hope?

Mr. GENACHOWSKI. Sure, absolutely.

Mr. KINZINGER. And I will ask you this too. How many had already expired is another question I have, and I assume you probably can't answer that here. How many of these were simply cross-references to other bills is another question I would like answered on that, or cross-references to other rules. I am sorry. And if you are really going to meet President Obama's challenge to deregulate, don't you need to review all your rules with the presumption that the rule is unnecessary unless the Commission finds compelling evidence to the contrary?

Mr. GENACHOWSKI. Well, we do do regular reviews, biannual reviews, of all of our rules. I think our record on eliminating unnecessary rules is very good. We have also adopted rules that are necessary to promote competition like our broadband data roaming rule. We don't always agree on all of these things but I think we have made a very strong effort to eliminate unnecessary regulations, and at the same time to fulfill our responsibilities under the statute.

Mr. KINZINGER. Mr. McDowell, do you have any input on that at all?

Mr. MCDOWELL. Well, first of all, sections of the statute such as section 10, section 11, which apply only to telecommunications providers, it would be great if we had a mandatory look-see if all rules regardless of what kind of company they apply to, so I think that could be very helpful.

And as I stated before, the FCC could look at sunsetting its rules to revisit them after X number of years because the marketplace does change so quickly. I haven't looked at all of the Chairman's rules that he says have been taken off the books, and I want to give him credit for at least taking those steps, and we have worked together on many eliminations. There are a number that are cross-references or that were struck down by courts such as broadcast flag or haven't been enforced in a long time such as the Fairness Doctrine, things like that. But I think we should look at that, you know, with the best spirit and credit due but also to understand that we could do better and be more aggressive in terms of scrubbing the Code of Federal Regulations and reducing its volume.

Mr. KINZINGER. I agree.

With that, I will yield back.

Members have 10 days to submit material for the record, and we will now adjourn. By the way, thank you, everybody, for coming out and spending time with us. We appreciate it. And we will go ahead and adjourn.

[Whereupon, at 12:53 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Federal Communications Commission
Office of Legislative Affairs
Washington, D.C.20554

Office of the Director

November 16, 2012

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Walden:

Please find attached responses from Federal Communications Commission Chairman Julius Genachowski to the post-hearing questions from the Committee's July 10, 2012 oversight hearing. Please let me know if I can be of further assistance.

Sincerely,

Greg Guice
Director
Office of Legislative Affairs

Enclosure

Subcommittee on Communications and Technology
"Oversight of the Federal Communications Commission
July 10, 2012
Additional Questions for the Record

The Honorable Greg Walden

1. The National Broadband plan recognized the urgency of getting more spectrum in the hands of commercial providers. It recommended making 300 additional megahertz available by 2015 and a total of 500 megahertz available by 2020. We have not seen much more spectrum made available to date, especially with spectrum under 3 gigahertz. What will you be doing in the near term to auction more licensed spectrum?

Response: The Commission is moving forward on new auctions — up to 75 MHz in the next three years, plus the significant amount of spectrum that will be freed up by incentive auctions. This includes an auction of shared rights to the 1755-1780 MHz band, which could be paired with the 2155-2180 MHz band already in inventory to extend the valuable AWS band by 50 MHz. We expect the first of these auctions – of the AWS-2 H-block – will happen in 2013. We anticipate adopting an order in the incentive auction proceeding in 2013 and conducting that auction in 2014.

2. In May you stated in a speech to the wireless industry that "sharing allows us to auction spectrum that otherwise would never get to the commercial market." Prior to making the determination that the FCC would focus on spectrum sharing, what process did you follow to determine there is a market for shared spectrum licenses in this space? And while spectrum sharing is something we should continue to examine, it should be seen as a fallback only once we've exhausted options to auction licenses for cleared spectrum. Do you agree?

Response: The Commission is focused on clearing spectrum for auction whenever possible, while also pursuing other approaches to making spectrum available for broadband, including spectrum sharing. This is not an either/or choice -- we must use an "all of the above" strategy to unlock the full value of our spectrum resources.

3. When do you anticipate releasing an item to implement the incentive auction provisions of the Middle Class Tax Relief and Job Creation Act?

Response: The Commission released a Notice of Proposed Rulemaking (NPRM) on October 2, 2012 seeking comment on detailed proposals to implement our incentive auction authority. Initial comments are due December 21.

4. The recent spectrum legislation contains provisions prohibiting the FCC from barring parties from participating in the auctions. Will you commit to allowing everyone to participate?

Response: The Commission will follow all statutory mandates in its implementation of incentive auctions.

5. One of the bands that the FCC is required to auction under the Middle Class Tax Relief and Job Creation Act is 2155-2180 MHz. It seems that everyone agrees that the ideal way to auction that spectrum is paired with 1755-1780 MHz. What is the FCC doing to ensure that this pairing

can be made? Given your recent comments on "sharing" this spectrum with government users, is the FCC planning to get this done by the statutory deadline?

Response: This summer the Commission approved an STA to enable testing of LTE in the 1755-1780 MHz band, and Commission staff is actively working with carriers and other government agencies to enable spectrum sharing in this band. We intend to meet all statutory deadlines.

6. The Commission currently has a docket open on whether it should mandate specific filter technology in 700 MHz wireless devices. Could you point to the section of the Communications Act that gives the FCC authority to regulate the manufacture of wireless devices?

Response: In March of this year, the Commission initiated a rulemaking to promote interoperability in the Lower 700 MHz band and to encourage the efficient use of spectrum. The Commission requires that spectrum licensees be in compliance with our rules, but does not specify a particular technology that a carrier must use to be in compliance.

7. The FCC has issued a report claiming it eliminated some 200 rules. How many of the rules were regulations that were still in force that you used your discretion to eliminate? By contrast, how many had already been invalidated by a court? How many had already expired? How many were simply cross references to other rules? If you're really going to meet President Obama's challenge to deregulate, don't you need to review all your rules with a presumption that the rule is unnecessary unless the Commission finds compelling evidence to the contrary?

Response: The FCC acts consistent with President Obama's Executive Orders in reviewing our regulations and eliminating or revising rules in order to spur economic development, create jobs, and promote innovation. As outlined in Objective 8.6 of our Strategic Plan: "Each bureau at the FCC will conduct regular reviews of rules within their areas with the goal of eliminating or revising rules that are outdated or place needless burdens on businesses. The Commission will continue on this regulatory reform track, thoughtfully and diligently conducting reviews of existing rules and taking other important steps to meet our statutory obligations and mission in a way that fosters economic growth and benefits all Americans." (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-312420A1.doc)

As a direct result of these efforts, the Commission has eliminated 263 rules (see chart below) during my tenure as Chairman, significantly more than my predecessor. This includes many rules that constituted a substantive burden on regulated entities, such as the removal of rules to simplify and streamline the E-rate program, elimination of the Link Up program and associated rules, removal of viewability requirements for must-carry stations, elimination of reporting requirements for international telecommunications services, and removal of regulatory requirements as part of the agency's effort to reform and modernize the Universal Service Fund high-cost program. It also includes removal of rules that had expired or had been invalidated by a court, including rules related to the digital television transition, the fairness doctrine, and the broadcast flag.

Regulations removed (263 as of 9/13/12)	CFR Section	Effective date in Fed. Reg.
Eliminated rules for International Fixed Public Radio Communication Services.	Part 23	3/25/10
Eliminated restrictions on mobile repeater stations for the business radio frequency users.	90.247(b) 90.247(c) 90.35(c)(61)(v) 90.35(c)(68)(iv) 90.267(e)(3)	5/14/10
Eliminated restrictions on WCS service.	27.53(a)(6) 27.53(a)(9)	9/1/10
Removed rules to simplify and streamline the E-rate program.	54.501(a) 54.506 54.511(c)(3) 54.517 54.522	1/3/11
Revised the Amateur Radio Service rules with respect to vanity call signs, eliminating licensee confusion.	0.191(o) 0.392(g) 97.5(b)(4)	2/14/11
Revised the Amateur Radio Service rules to eliminate the automatic power control provision, which has proven to be virtually impossible to implement, and to encourage amateur stations to experiment with spread spectrum communications technologies.	97.311(d)	4/29/11
Revised ex parte rules to increase transparency.	1.1202(d)(6) 1.1206(a)(13)	6/1/11
Eliminated reporting requirements related to international telecommunications traffic.	43.53 43.61(b) 43.61(c) 63.23(e)	7/19/11
Revised rules to enable all tariff filers to file tariffs electronically over the Internet.	61.21 61.22 61.23 61.32 61.33 61.151 61.152 61.153 61.52(a)	7/20/11
Revised rules to facilitate low power television digital transition.	74.788(c)(4)	8/26/11

Regulations removed (263 as of 9/13/12)	CFR Section	Effective date in Fed. Reg.
Fairness Doctrine, Personal Attack & Political Editorial Rules.	73.1910 76.209 76.1612 76.1613	9/9/11
Broadcast Flag.	73.8000(b)(3) 73.9000-9009	9/9/11
Cable Programming Service Tier Complaints.	76.950-951 76.953-957 76.960-961 76.1402 76.1605-1606	9/9/11
Part 1, Subpart D, Broadcast Applications & Proceedings.	1.502-615	9/9/11
Eliminated rule requiring Commission to review the TRS Fund administrator's performance after two years. Removed note that certain provisions of the rule are not effective until OMB approval.	64.604(c)(5)(iii)(J) [Note to 64.2401]	10/13/11
Eliminated rules describing the Commission's former "protest" process.	1.120	11/16/11
Eliminated rule sections pertaining to comparative hearings for new commercial broadcast facilities and broadcast license renewal applications.	1.227(b)(6) 1.229(b)(2) 1.325(c)	11/16/11
Eliminated rule requiring carriers to file reports regarding pensions and benefits in compliance with a regulation in Part 43 that has been eliminated.	1.788	11/16/11
Eliminated requirement that carriers engaged in public radio service operations file reports in compliance with Part 23, which has been eliminated.	1.805	11/16/11
Eliminated requirement that carriers engaged in domestic public radio services file certain documents in accordance with Part 21, which has been eliminated.	1.811	11/16/11
Eliminated rules regarding random selection procedures for Multichannel Multipoint Distribution Service (MMDS).	1.821 1.822 1.824	11/16/11
Eliminated rule that is duplicative of 1.2002 (Anti Drug Abuse Act Certification).	1.2003	11/16/11
Eliminated rules implementing Public Utility Holding Company Act of 1935, which was repealed in 2005.	1.5000-1.5007	11/16/11

Regulations removed (263 as of 9/13/12)	CFR Section	Effective date in Fed. Reg.
Eliminated rules regarding retransmission complaints filed by television stations against satellite carriers.	1.6000-1.6012	11/16/11
Removed rules to reform and modernize the universal service and intercarrier compensation systems.	36.601(c) 36.602 51.707 51.717 54.303 54.311 54.316	12/29/11
Revised rules for Maritime Radio Services to promote maritime safety, maximize effective & efficient use of the spectrum available for maritime communications, accommodate technological innovation, avoid unnecessary regulatory burdens, and maintain consistency with international maritime standards.	80.103(e) 80.277(b) 80.375(d)(2)(vi) 80.511 80.854(c) 80.905(a)(4)(vii) 80.1055 80.1059 80.1063 80.1091(b)(3)(iii) 80.1101(d)	1/3/12
Eliminated Part 2, Subpart N, FCC procedures for testing Class A, B and S Emergency Position-Indicating Radio Beacons (EPIRBs).	2.1501 2.1503 2.1505 2.1507 2.1509 2.1511 2.1513 2.1515 2.1517	2/1/12
Eliminated rules listing transition deadlines by which intentional radiators, unintentional radiators, radio receivers and equipment operating in the 902-905 MHz band had to comply with revisions to Part 15.	15.37(a) 15.37(b) 15.37(c) 15.37(d) 15.249(f)	2/1/12
Eliminated rule specifying dates by which cordless telephones must comply with certain security requirements.	15.37(e)	2/1/12
Eliminated rule specifying dates by which scanning receivers must comply with certain technical requirements, which have since been superseded.	15.37(f)	2/1/12

Regulations removed (263 as of 9/13/12)	CFR Section	Effective date in Fed. Reg.
Eliminated rule announcing date that equipment authorization became mandatory for CPU computer boards and power supplies.	15.37(g)	2/1/12
Eliminated rule prohibiting marketing TV bands devices before the digital television transition.	15.37(n)	2/1/12
Eliminated rule requiring television receivers and related devices manufactured between April 1, 2009 and June 30, 2009 to include consumer information about the DTV transition.	15.124	2/1/12
Eliminated rule listing dates by which specific types of Industrial, Scientific and Medical (ISM) equipment must comply with limits on radio frequency emissions conducted from a device onto the AC power lines.	18.123	2/1/12
Removed rules to reform and begin to modernize the Universal Service Fund's Lifeline program.	54.209 54.411 54.415	4/2/12
Removed additional rules as part of the USF reform and modernization effort.	54.301(f) 54.315	4/9/12
Removed rules as part of an overhaul of the Emergency Alert System (EAS) to codify the obligation to process alert messages formatted in the Common Alerting Protocol (CAP) and to streamline and clarify these rules generally to enhance their effectiveness.	11.12 11.13 11.14 11.18(f) 11.19 11.33(b) 11.42 11.44 11.53	4/23/12
Eliminated rules establishing backup power requirements for communications providers.	12.2	5/16/12
Eliminated rule providing that UHF television translators on Channels 70 to 83 must operate on a secondary basis to land mobile operations in the 800 MHz band and will not be protected from such operations.	90.621(d)	5/16/12
Eliminated rule allocating specified channels for Basic Exchange Telecommunication Radio Service (BETRS).	90.621(h)	5/16/12
Eliminated rules that provided a framework for the relocation of incumbent site-based licensees in the upper 200 channels of the 800 MHz Band by incoming geographically-based (EA) licensees.	90.699(a) 90.699(b) 90.699(c) 90.699(e) 90.699(f)	5/16/12

Regulations removed (263 as of 9/13/12)	CFR Section	Effective date in Fed. Reg.
Removed rules related to viewability requirements for must-carry stations.	76.56(d)(3) 76.56(d)(4) 76.56(d)(5)	6/18/12
Removed rules governing unlicensed personal communications services (UPCS) devices to promote more efficient use of the UPCS band and facilitate the introduction of a new generation of unlicensed devices capable of supporting broadband connectivity.	15.303(b) 15.303(e) 15.303(i) 15.307(a) 15.307(c) 15.307(d) 15.307(e) 15.307(f) 15.307(g) 15.307(h) 15.311	8/22/12

8. We recently had a hearing on the video marketplace. FCC rules need to reflect the current state of competition as well as the availability of newer video distribution services, such as those using wireless or the Internet. Do you agree that the commission must consider these developments and revisit all its rules, including the current media ownership rules, and that the time has come to relax them in light of all the competition? When will we see the FCC's next media ownership order?

Response: Commission staff have reviewed the record developed during the most recent Quadrennial Ownership review, including updated information on the state of competition and new video distribution services, and I have circulated a proposed Order to the full Commission. A vote on the item is anticipated by the end of the year.

9. Can you update the Subcommittee on the status of the Cellular Licensing proceeding? When do you expect a decision and what approach to you anticipate taking?

Response: Comments were filed on May 15, 2012, and reply comments were filed June 15, 2012. FCC staff currently is evaluating the record and the Commission will act once that review is completed.

10. The Commission has issued an FNPRM asking whether it should extend its anti-cramming rules to wireless. The FCC's complaint data shows that the last time there were any wireless complaints about cramming was in 2002. If that's the case, what basis is there for regulatory intervention?

Response: In 2012, the Commission has already received almost 900 complaints of wireless cramming, more than in the previous two years combined. Wireless complaints now make up over 60 percent of the cramming complaints we receive in an average month. Furthermore, various outside sources – including some state public utility commissions –

have provided additional data showing that wireless cramming complaints are on the rise. Our Further Notice of Proposed Rulemaking sought to obtain information on the scope of wireless complaints. Commission staff is reviewing the record developed in the cramming proceeding.

The Honorable Lee Terry

1. In your testimony you reference the "many steps that you have taken to reduce backlogs and speed up decisions" at the Commission.

-Can you please tell me if this applies to investigations in the Office of Engineering and Technology as well?

-Can you please tell me generally how long O.E.T investigations usually take?

-Can you please explain the enforcement process?

Response: The Enforcement Bureau (EB) is the primary organizational unit within the Federal Communications Commission that is responsible for the enforcement of provisions of the Communications Act, the Commission's rules, Commission orders and terms and conditions of authorizations. The FCC maintains engineers on staff in all of its bureaus, including EB, to ensure that investigations are completed in a timely fashion, especially when technical expertise is essential to the investigation. OET does review equipment compliance, although this activity is essentially a licensing or adjudicatory function, rather than investigatory in nature. The FCC receives 14,000 equipment authorization requests per year and audits the work of outside, certified testing facilities that engage in this process. If OET were to receive a complaint, it may refer the matter to EB. OET can and does offer technical assistance to EB when necessary.

EB conducts all investigations as quickly as possible. As each investigation is handled on a case-by-case basis, the timing of an investigation depends on the nature of the alleged violation, the complexity of the issue, and the applicable statute of limitations, among other considerations. When EB receives a complaint or referral alleging a violation of a Commission rule, it first ascertains the nature of the device at issue, determines whether an investigation is warranted, and if so, identifies the appropriate target for the investigation. EB may also issue one or more written requests for information to gather further details under penalty of perjury about whether the target's activities conform to applicable law. These inquiries are authorized under section 403 of the Communications Act, and the target entity has an obligation to respond. If EB determines that the target has violated the Act or the Commission's rules, it could then initiate an appropriate enforcement action against the violator. Depending on the nature of the FCC's jurisdiction over the alleged violator, the enforcement action could be in the form of either a monetary forfeiture (a Notice of Apparent Liability for Forfeiture (NAL)) or a non-monetary penalty (*e.g.*, admonishment or citation). Alternatively, the alleged violator may negotiate a settlement and make a voluntary

contribution to the U.S. Treasury to resolve the investigation. If EB determines that no violation occurred, the case would be closed. In order to preserve the integrity of EB's investigatory process, EB generally keeps confidential the existence, scope, and findings of an investigation until enforcement action has been taken.

2. Your staff undoubtedly worked hard to implement the regression analysis model adopted by the FCC in its October High Cost order. Yet the April 25th revised order issued by your staff admits that there continue to be data errors in the model, and I have heard that there are other concerns as well with the model even as revised.

-Are you at all concerned about implementing a model and capping cost recovery on the basis of a model that has acknowledged errors?

Response: The Wireline Competition Bureau's April 25 *HCLS Benchmarks Order* ensures fairness to the consumers and small businesses that pay into the Universal Service Fund by ending the practice of carriers' controlling their own funding spigot, and by adopting long-overdue checks on carriers with expenses well above those of their peers. The Commission utilized the best available nationwide data to establish the benchmarks, data that has been used to allocate Universal Service support for many years, but we also provided a streamlined, expedited process to correct any inaccuracies. So far, the Wireline Competition Bureau has received seven petitions to correct data. To date, the Wireline Bureau has issued orders quickly granting requests to update data for four petitioners. The three remaining petitions are under consideration. The FCC also launched a process to collect a full set of updated boundary data from companies before the benchmarks take full effect.

-It is my understanding that the caps developed through this model will change every year. Are you at all concerned about the caps and the underlying data changing dynamically? As someone who has worked in the investment sector, how would you develop a business plan around a model that changes every year? Can you see how the ever-changing nature of this capping mechanism deters investment in rural broadband?

Response: The Wireline Bureau has taken predictability concerns seriously in implementing the benchmarks, while also aiming to ensure that the caps remain reasonable over time. In particular, the Bureau's order earlier this year determined that the initial benchmarks would remain in effect until 2014. In the interim, the Commission is considering whether benchmarks should subsequently be set for multiple years.

3. I recognize the need to limit the USF's burden on consumers and businesses while modernizing it for the 21st century and am very interested in your proceeding on contribution reform.

-What is the FCC's timeline for completion of contribution reform?

Response: The Commission issues a Notice of Proposed Rulemaking earlier this year seeking comment on proposals to reform the contributions system. Commission staff is

currently reviewing the record and engaging with stakeholders in order to come to a final recommendation.

-How should contributions be assessed -- on revenues, the number of connections, by phone numbers, or a hybrid approach? What services and service providers should contribute to the fund?

Response: The Commission's pending Further Notice of Proposed Rulemaking on USF contributions sought comment on these various issues with a goal of developing a contribution system that is efficient, fair, and sustainable.

-Lastly and most importantly does the FCC currently have the statutory authority to make assessments on anything other than the interstate and international revenues of carriers?

-Would legislation in this area be helpful?

Response: The Commission has worked within the existing legal framework to craft significant reform proposals, all of which are within the Commission's existing legal authority. I would be happy to make Commission staff available to your staff to discuss legislation related to assessable revenues.

4. In your lifeline reform order you have eliminated self-certification to eliminate fraud. However I understand that you do not require Eligible Telecommunications Providers (ETCs) to keep customer enrollment forms including their proof of eligibility.

- Based on the practice of some ETCs, doesn't this leave the door wide open for fraudulent sign ups by some ETCs who have not complied with rules in past?

-Can you please explain the verification process and how it will prevent carriers from signing people up who do not qualify?

-Who is responsible for verifying that customers qualify?

Response: Waste, fraud and abuse in the Lifeline program, by consumers or providers, is unacceptable. Earlier this year the Commission fundamentally overhauled the program, including by enacting rules to eliminate waste, fraud and abuse and to ensure greater accountability for carriers receiving support and consumers receiving benefits. As a result of these reforms, the Commission is on track to save $200 million this year alone. Even before adopting the *Lifeline Reform Order* earlier this year, the Commission created procedures to identify and de-enroll subscribers with duplicate Lifeline-supported services. As a result of the Order and steps taken in advance of the Order, over 700,000 duplicate subscriptions have been eliminated in 2011 and 2012, for a total of $80 million in annual savings.

Before enrolling an individual in Lifeline, either the phone company or the state Lifeline administrator must verify the consumer's eligibility by reviewing proof of either income or participation in a qualifying program, or by querying a state eligibility database (where

available). The *Lifeline Reform Order* requires that consumers show proof of program or income eligibility to the eligible telecommunication carrier's representative and that the representative review the proof for compliance with Commission rules. Once the consumer's eligibility has been verified, the consumer then fills out a Lifeline Eligibility Certification Form. If the consumer states that he or she lives in a multi-household residence, he or she must also fill out a multi-household worksheet. Wireless subscribers must personally activate the service once they receive their wireless handset. Finally, all carriers must annually verify the eligibility of all of their subscribers. This process involves receiving a completed certification from the subscriber that they remain eligible for the program and are not receiving more than one Lifeline service for their household.

The Honorable Cliff Stearns

1. The issue of transparency is very important to those who will be participating in incentive auctions.

Please explain the process the FCC is planning for the rulemaking on incentive auctions. Will the FCC release a NPRM with proposed draft rules or will the FCC simply ask questions and solicit comments, and then release proposed draft rules? Will the FCC provide an opportunity for all interested parties to review and comment on the draft regulations before they become final? If so, how much time will the FCC provide?

Response: The Commission released a Notice of Proposed Rulemaking (NPRM) on October 2, 2012 seeking comment on detailed proposals to implement our incentive auction authority, including some draft rules. Initial comments are due December 21. All parties have the opportunity to review and comment on the Commission's proposals, and we encourage them to do so.

2. The Middle Class Tax Relief Act calls for the 2155-2180 MHz band to be licensed by February 2015, following an auction. Given the strong industry interest in pairing that spectrum with 1755-1780 MHz, it would be helpful for the Committee to have a sense of the FCC's preparation for that auction. Typically, how many months in advance of an auction does the Commission issue a request for comments on proposed service rules for the spectrum to be auctioned? Your agency has noted that there will be a spectrum deficit for mobile broadband by 2014. Doesn't this emphasize the need to continue to focus on clearing the sub-band of 1755-1780 MHz, to pair with 2155-2180 MHz in an auction in 2014, to alleviate the spectrum crunch in the short term?

3. You stated at the hearing that "we need to pursue spectrum sharing, but not at the expense of clearing." Can you elaborate on your comments as we look at the 1755-1780 MHz band, recognizing the need to bring additional spectrum into the marketplace and that this band is ideal to pair with the 2155-2180 MHz band that is internationally-harmonized for LTE?

Response (2and 3): The Commission is focused on clearing spectrum for auction whenever possible, while also pursuing other approaches to making spectrum available for broadband,

including spectrum sharing. This is not an either/or choice – we must use an "all of the above" strategy to unlock the full value of our spectrum resources. This summer the Commission approved an STA to enable testing of LTE in the 1755-1780 MHz band, and Commission staff is actively working with carriers and other government agencies to enable spectrum sharing in this band. We intend to meet all statutory deadlines.

The Honorable Mike Rogers

1. Mr. Chairman, one of my colleagues mentioned the Anda Petition for Review earlier and I would like to follow up on that. Like my colleague, I take no position on the outcome of this review but I would encourage the Commissioners to address this matter expeditiously. My understanding is that Anda's petition sat unresolved at the FCC for 18 months. They finally received a decision at the Bureau level, but it is my understanding that because this decision was made at the Bureau level, it is not subject to judicial review. It is only if the Commissioners themselves vote (to uphold the Bureau's decision) will ANDA then be allowed the opportunity to seek judicial review. I find it troubling that an American company could be denied their Constitutional right to judicial review due to bureaucratic rules. Therefore, I would encourage you to address this immediately. Regardless of whether you uphold the Bureau's decision, Anda can seek judicial review. They deserve action from the Commission without further delay and they deserve their day in court if so desired. Please advise on when this will come before the Commission for a vote.

Response: Staff is currently reviewing the Anda petition and preparing a recommendation for the Commission.

The Honorable Marsha Blackburn

1. Please give a yes or no answer to the following question: given the fact that different communications platforms are now offering the same suite of voice, video, and data services, does the existing monopoly era statutory framework still make sense in today's IP marketplace?

Response: Communications markets are complex and dynamic. The Commission continuously reviews our rules and these markets to ensure that our policies are promoting innovation, investment, and competition and protecting consumers, and updates those policies when necessary. To the extent that the Communications Act does not enable the Commission to keep pace with the changing communications ecosystem, we look forward to providing assistance to Congress as necessary.

2. In Commissioner McDowell's written statement, he asserts that "spectrum sharing should not be seen as a substitute for auctioning more spectrum, especially federal spectrum." Do you agree with that statement? Why or why not?

Response: The Commission is focused on clearing spectrum for auction whenever possible, while also pursuing other approaches to making spectrum available for broadband, including spectrum sharing. This is not an either/or choice – we must use an "all of the above" strategy to unlock the full value of our spectrum resources.

3. The FCC has issued two voluntary data requests that sought to obtain data from providers and customers about special access facilities, pricing and competition. This data is necessary to determine whether the special access pricing flexibility granted by the Clinton-era FCC in 1999 is still appropriate and warranted. How many CLECs have responded to your request for data?

Response: Twenty-six CLECs responded to our two voluntary data requests.

Why hasn't the FCC pursued a mandatory data request? Most importantly, before modifying the bipartisan special access pricing flexibility order, shouldn't the FCC have complete information about CLEC services and facilities?

Response: On October 9 I circulated an order to my colleagues at the Commission to conduct a mandatory, comprehensive data collection that will enable us to evaluate the extent of competition in special access markets and adjust our rules as appropriate. Our recent decision to suspend grants of new pricing flexibility petitions was based on a detailed and careful review of extensive evidence in the record and thirteen years of experience with the current pricing flexibility rules.

4. Does the FCC plan to take any action in the next several months on issues related to cable integration of the Emergency Alert System (EAS)? Is the FCC aware of several broadcasters' concerns about current EAS rules that allow forced tuning, and has the FCC responded to those concerns? Do you think the EAS rules that permit broadcasters and cable TV operators to negotiate for selective EAS overrides need to be revisited?

Response: We are aware of the concerns broadcasters have raised concerning forced tuning. We are currently reviewing the issue in light of consumer and industry concerns, including the consideration of new technologies that may affect how cable operators provide EAS alerts to customers. We recognize the need for the public to have access to timely and accurate public safety information across all platforms.

5. Chairman Genachowski, my understanding is that you have circulated an order to dismiss all pending 700 MHz public safety waiver requests. If adopted by the Commission, such an action would ensure that the 700 MHz public safety spectrum lies dormant until FirstNet is deployed, which could take as long as 3 to 5 years. What should I tell my constituents who ask me why they should have to wait 3 to 5 years until the 700 MHz band can be used by public safety to prevent and/or mitigate natural or man-made disasters when their local jurisdiction wants to move forward with a network that utilizes the spectrum?

Response: On July 31, the Commission issued an Order allowing limited deployment of public safety broadband services to first responders in the existing public safety broadband spectrum (763-768/793-798 MHz) pursuant to our existing Special Temporary Authority

(STA) rules. It establishes the Commission's clear expectations for the Public Safety and Homeland Security Bureau and provides a well-defined path for obtaining an STA where it is warranted and consistent with the statute. Given the importance of these requests, if any applicant requests review of a Bureau decision, I will work with my colleagues to ensure that the Commission completes its review in a timely manner.

The Honorable Brian Bilbray

1. As you know, Mr. Dingell and I offered an amendment as part of the incentive auction legislation that requires coordination between the United States, Canada and Mexico as the FCC engages in repacking and realignment of the television band. Can you provide us with an update on the status of these coordination discussions? If so, please describe those discussions, including when they took place and who they were with. Can you provide me with some assurance that the FCC will not come to any final decision on repacking until an understanding is reached between these countries as to how to handle interference along the northern and southern borders of the U.S.?

Response: Since the passage of the incentive auction legislation in February, Commission staff has met with Industry Canada twice to discuss the specifics of the legislation. Now that the Commission has released its Incentive Auction Notice of Proposed Rulemaking, the International Bureau, in conjunction with the State Department, will be in a better position to begin more formal technical coordination discussions with Industry Canada.

In coordination meetings with Mexico through the High Level Consultative Committee (HLCC), we have provided the Mexicans with updates on our progress with incentive auctions and discussed transition issues. The last such discussion with Mexico on this subject was in October. We plan to continue these discussions with Mexico this month.

2. Chairman Genachowski, as you know many of us were concerned through during the debate surrounding the spectrum legislation about its impact on Class A and low power television stations. Many of these stations provide diverse and niche programming. Such as religious and Spanish language programming. After the Spectrum legislation, the FCC sent over 40 letters to Class A television stations threatening their licenses even though the legislation protected Class A stations. The timing of the inquiries raises some serious questions relating to assurances made by the FCC to Congress during consideration of the spectrum legislation. It also appears the FCC is more interested in clearing spectrum without the use of incentive auctions, than it is in ensuring a continued diversity of programming. Are these Class A inquiries, some which proposed relinquishment of Class A status even though the FCC approved all of the station's actions, motivated by a desire to reduce the number of spectrum holders that are protected from involuntary relinquishment of their license and are eligible for to participate in the incentive auction? Can you commit to us that before the auction proceeds, the FCC will resolve all these Class A inquires and provide for ample time for reconsideration?

It is my understanding that it has been nearly a decade since the last filing window, and considering the recent actions by the Commission in the revocation of numerous Class A licenses I am especially interested to hear of your plans for Class A stations going forward. Should we expect that the Commission, upon completion of its repacking, will finally reopen the Class A filing window for a period of time?

Response: The Media Bureau has been reviewing its database, and where appropriate, issuing Letters of Inquiry (LOI) to certain Class A stations to verify that the stations continue to meet the statutory obligations required to maintain Class A license status. Such stations have the opportunity under FCC rules to provide the Commission with information to confirm continued Class A status, and the staff will work to process these inquiries as quickly as possible. However, currently, there are no plans to have additional Class A filing windows.

3. It seems to me that the Commission is supportive of utilizing unique approaches such as channel sharing to both maximize use of the spectrum and to promote an efficient repacking process. I understand the Commission's preference is that the individual stations voluntarily share, but there will be instances where a competitor will not want to share with another competitor. Likewise, an existing channel holder may demand a rent that is above market and too high, in order to keep the entire channel. Will you support mandatory channel sharing for LPTV, as a way of minimizing or eliminating the loss of LPTV station licenses, in cases where voluntary efforts are unsuccessful?

Response: I appreciate the news, information, and other valuable programming that LPTV stations provide to their communities. I have instructed Commission staff to continue to engage with the LPTV community as we work thorough implementation of the Middle Class Tax Relief and Job Creation Act of 2012. The Commission's recently-released Notice of Proposed Rulemaking to implement incentive auction authority asks numerous questions related to LPTV, including about channel sharing.

The Honorable Steve Scalise

1. As a Committee we've talked a lot about FCC process reform and have demonstrated its importance by passing both HR 3309 and HR 3310. Do you support HR 3310, the FCC Consolidated Reporting Act, which recently passed the House chamber with strong, bipartisan support?

Response: We have delivered serious and substantial process reform during my tenure at the FCC, and I will continue to ensure that our processes are fact-driven, streamlined and transparent.

2. For states like Louisiana that are subject to devastating natural disasters, the absence of an interoperable public safety broadband network has undermined public safety. Can you speak to the wisdom of the pending FCC Order dismissing all pending waiver requests, including those

that have local support and are, at a minimum, dedicated to complying with the 91 pages of technical interoperability requirements recently set forth by the FCC for FirstNet? Has the Executive Office of the President or any federal Department asked your office to dismiss pending waivers for deployment of interoperable public safety broadband networks?

Response: On May 17, 2012 the National Telecommunications and Information Administration (NTIA) filed public comments with the Commission indicating that "the new legislation requires the Commission to dismiss any pending waiver applications that seek to operate in the public safety broadband spectrum and to terminate existing leases in this spectrum block upon their expiration or upon grant of the public safety broadband license to FirstNet, whichever is earlier." On July 31 the Commission issued an Order allowing limited deployment of public safety broadband services to first responders in the existing public safety broadband spectrum (763-768/793-798 MHz) pursuant to our existing Special Temporary Authority (STA) rules. It establishes the Commission's clear expectations for the Public Safety and Homeland Security Bureau and provides a well-defined path for obtaining STA where it is warranted and consistent with the statute. Given the importance of these requests, if any applicant requests review of a Bureau decision, I will work with my colleagues to ensure that the Commission completes its review in a timely manner.

3. On September 19, 2011, the FCC issued a public notice seeking information about special access markets in 25 MSAs. The MSA for my district was one of the 25 MSAs the FCC picked to study in the special access proceeding. How many competitive carriers are operating in the New Orleans MSA? How many competitive carriers responded to the FCC data collection with information about the market for special access services in the New Orleans MSA? Did any responses to the FCC special access data collections provide data illustrating the changes in the special access marketplace since 2010? What high-speed services are competing against the incumbent carrier's special access services in the New Orleans MSA?

Response: We have not collected data on the total number of competitive carriers that operate in the New Orleans MSA or the services they are offering to compete with incumbent special access services. In response to our voluntary October 2010 Facilities Data Request, six competitive providers reported that they provide special access service or have some competitive facilities in the New Orleans MSA. Because the voluntary requests did not seek time series data, no provider submitted information illustrating changes in the special access marketplace since 2010.

The Honorable Bob Latta

1. As the author and strong supporter of legislation to authorize voluntary incentive auctions, I would like an update on where the Commission stands with its efforts. With enactment of the incentive auction legislation, we have given the Commission significant new responsibilities as you implement the law. With the understanding that we're at the beginning of the process rather than the end, how would each of you define "success" in the incentive auction process?

Response: The Commission's central goal is to repurpose the maximum amount of spectrum for flexible licensed and unlicensed use in order to unleash investment and innovation, benefit consumers, drive economic growth, and enhance our global competitiveness, while at the same time enabling a healthy, diverse broadcast television industry.

2. What is the timing for the incentive auction NPRM (notice of proposed rulemaking) to be released and when do you anticipate seeing that effort completed? I understand that the process will take time, but until the Commission determines how it will structure and conduct the auction, the entire process is on hold.

Response: The Commission released a Notice of Proposed Rulemaking (NPRM) on October 2, 2012 seeking comment on detailed proposals to implement our incentive auction authority. Initial comments are due December 21, and the Commission expects to adopt an order in 2013.

3. Overall, I am concerned that the spectrum crunch will have a significant impact on our economy if not addressed. The Commission has embraced the goal of clearing 300 MHz before 2015 and I'm interested where that spectrum will come from within the government's holdings. I hear that agencies don't want to give up spectrum or move their services to other bands. I have seen reports that clearing one swath of spectrum may cost nearly $18B. And I worry that between the parochial interests of some agencies, and the fear of the cost of clearing that we may lose track of the most important issue here: that clearing and auctioning spectrum can be the greatest spark for job creation and innovation. How do you intend to meet the consumer's need for more spectrum in the next three years and what if any assistance do you need from Congress to meet that goal?

Response: Over the past four years, the U.S. has regained global leadership in mobile infrastructure and innovation – becoming the first country in the world to deploy the next generation of wireless broadband networks (4G LTE) at scale, and leading the world in the development of smartphone and tablet operating systems and apps. Maintaining U.S. leadership in mobile requires making more licensed and unlicensed spectrum available for broadband, and there is no higher priority at the FCC. The Commission is executing on its Mobile Action Plan, a comprehensive, "all of the above" strategy to make more spectrum available for broadband. Key elements include:

- **Traditional auctions.** We are on track to auction 75 MHz of licensed Advanced Wireless Service spectrum – essential for 4G LTE service – by 2015. This includes an auction of shared rights to the 1755-1780 MHz band, which could be paired with the 2155-2180 MHz band already in inventory to extend the valuable AWS band by 50 MHz. We expect the first of these auctions – of the AWS-2 H-block – will happen in 2013.

- **Removing regulatory barriers to flexible spectrum use.** Later this year, we will finish removing outdated rules and restrictions on a total of 70 MHz of spectrum.

This includes 40 megahertz of mobile satellite spectrum that I expect the Commission will repurpose for land-based mobile use, and 30 megahertz the Commission recently freed up in the long-troubled Wireless Communications Service band.

- **Clearing new bands for flexible broadband use.** On September 28, the Commission launched a proceeding to implement an incentive auction to repurpose for mobile broadband valuable spectrum in the broadcast television band -- the 600 MHz band, just below the 700 MHz band now being used for 4G LTE. We expect to hold the world's first incentive auction in 2014. There are also significant opportunities to clear and reallocate underutilized government spectrum for commercial use.

- **Dynamic sharing.** In 2010 the Commission created a new spectrum sharing paradigm by allowing unlicensed devices to access valuable unused spectrum in between broadcast TV channels – known as "white spaces. This action freed up the most new low-band unlicensed spectrum in 25 years – at least several 6 MHz channels in most major markets and more than 100 megahertz in many parts of the country. The FCC also developed an idea to use database technology to enable sharing between commercial broadband and military radar systems. In a major report this summer, the President's Council of Advisors on Science and Technology, or PCAST, recommended doing this in the 3.5 GHz band, which is virtually unused in the U.S. By year's end, I intend to launch a formal proceeding to enable commercial use of 100 MHz of spectrum in this band.

4. As you may recall, over the past year, we have corresponded about the issue of call completion in rural areas. I began hearing of this issue in April 2011 and the problem only exacerbated in my rural, northern Ohio district into the summer and fall. Local exchange carriers were reporting frequent incidences of customers- individuals and small businesses - not receiving phone calls. Your attention to this serious matter is greatly appreciated, and I was encouraged by the establishment of the FCC's Rural Call Completion Task Force in October 2011 which was tasked with examining the problem of phone calls being terminated in rural areas. While I am pleased to have heard from one company in my district that they have experienced positive developments in regard to call completion, I am concerned with the overall findings of an industry call completion test project, which found that rural consumers continue to encounter significant problems receiving calls. Could you provide me with an update on the issue and the Rural Call Completion Task Force?

Response: The consequences of call completion and service quality problems can be dire, impacting families, businesses, and public safety. I am committed to ensuring reliable telephone service in rural America. We're taking action in this area on multiple fronts, including ongoing investigations by our Enforcement Bureau. The FCC's Rural Call Completion Task Force has established a dedicated process for rural providers to alert the Commission on a real-time basis about call completion problems. In addition, a new website (http://xrl.us/bm8fke) focuses on the rural call completion problem and instructs consumers on how to file complaints with the Commission. Many rural telephone customers and

carriers have taken advantage of these new resources to report problems. The Commission also is working with rural carrier associations to identify the geographic areas and the specific providers most affected by call completion problems. Information provided through these sources is assisting the FCC in its investigations and has aided us in swiftly resolving specific problems. We continue to work to solve the problem on an industry-wide level. The Declaratory Ruling that the Commission's Wireline Competition Bureau issued earlier this year reminds carriers of their responsibilities and potential liability if they engage in, or use underlying providers that engage in, practices prohibited by the Communications Act or Commission rules.

5. There are concerns that some broadcasters may choose to exit the television business out of fear of a possible harm to their signal. This fear may be ill-founded. What steps will you take to ensure that broadcasters can feel confident that these incentive auctions will not diminish the quality of their signals? Will you ensure that broadcast stations have sufficient time to review auction rules and expected impact of the auction before commencing the auction process? On the back end, will the FCC release repacking and channel reassignment proposals for consideration before implementation?

6. While I'm aware that the incentive auction legislation we passed includes some protections for television stations that do not participate in the auctions, these stations may be repacked involuntarily. I'm wondering what kind of notice you'll be giving to those broadcasters, and whether they will have the opportunity to review the repacking plan prior to its implementation?

Response (5 and 6): Congress provided protections to broadcasters by directing the Commission to make all reasonable efforts to preserve the coverage area and population served of each broadcast television licensee. The Commission will follow all statutory mandates, including with respect to repacking. The Commission released a Notice of Proposed Rulemaking (NPRM) on October 2, 2012 seeking comment on detailed proposals to implement our incentive auction authority. Initial comments are due December 21. All parties have the opportunity to review and comment on the Commission's proposals, and we encourage them to do so.

7. How many competitive carriers are operating in Ohio?

8. How many of the competitive carriers certificated in Ohio responded to the FCC's data collection efforts for special access?

9. I understand that the Office of Management and Budget has set up 366 Metropolitan Statistical Areas (referred to as "MSAs") and that the MSA for my district is the Toledo MSA.

10. On September 19, 2011, the FCC issued a public notice seeking information about 25 MSAs. The FCC's public notice sought information for three MSAs located in Ohio. Unfortunately, the FCC did not seek to collect data about the market in the Toledo MSA.

11. Does the FCC have any plans to study the market for special access services in the Toledo MSA?

12. Why did the FCC only pick 25 MSAs out of the 366 MSAs to study in this proceeding?

13. Why did the FCC decide to overlook the market in the Toledo MSA?

14. Does the FCC have any plans to study the market for special access services in the Toledo MSA?

15. Did any responses provide data and information about market conditions in the Toledo MSA for 2011?

16. To what extent are wireless carriers operating in the Toledo MSA using Gigabit Ethernet to provide backhaul for their cell sites?

17. Does the FCC have any maps of the competitive carriers' service area territories for special access services in the Toledo MSA?

18. What is the range of prices, terms, and conditions competitive carriers offer customers for special access services in the Toledo MSA?

19. Can you follow-up with an overview description of these prices, terms, and conditions for the record?

Response (7-19): The Public Utilities Commission of Ohio identifies 154 competitive LECs certificated to provide service in Ohio. Twenty-six competitive LECs certificated in Ohio (or one of their affiliates) provided data in response to our first voluntary data request. The voluntary data requests did not include the Toledo MSA; thus, the Commission does not have detailed data or maps for Toledo. The comprehensive special access data collection order I circulated to my colleagues in early October would collect data across all MSAs, including the Toledo MSA. Those data would allow us to examine the special access market in the Toledo MSA.

20. With the stipulation that I don't think there's anyone either side of this Committee who would defend the practice of "cramming," I understand that the Commission is considering extending its anti" cramming" rules to wireless in spite of the fact that the last time the FCC's own data shows there were any complaints about this was in 2002, a full decade ago. Given the lack of evidence in the Commission's own data, is it really necessary to take this step?

Response: In 2012, the Commission has already received almost 900 complaints of wireless cramming, more than in the previous two years combined. Wireless complaints now make up over 60 percent of the cramming complaints we receive in an average month. Furthermore, various outside sources – including some state public utility commissions – have provided additional data showing that wireless cramming complaints are on the rise. Our Further Notice of Proposed Rulemaking sought to obtain information on the scope of wireless complaints. Commission staff is reviewing the record developed in the cramming proceeding.

The Honorable Adam Kinzinger

1. After the completion of the DTV transition in 2009, WLS, the local Chicago ABC affiliate, found its channel 7 allocation inadequate to reach many of its viewers. To remedy this situation, WLS devoted countless hours and spent millions of dollars to build and transition to a new broadcasting facility on channel 44 in order to maintain its pre-transition coverage area. With the Middle Class Tax Relief and Job Creation Act of 2012 instructing the FCC to conduct voluntary incentive auctions, it is possible that WLS could find itself in a similar situation. What plans does the FCC have in place to ensure WLS will not be adversely impacted by reallocation or repacking as a result of voluntary incentive auctions?

Response: Congress provided protections to broadcasters by directing the Commission to make all reasonable efforts to preserve the coverage area and population served of each broadcast television licensee. The Commission will follow all statutory mandates, including with respect to repacking. The Commission released a Notice of Proposed Rulemaking (NPRM) on October 2, 2012 seeking comment on detailed proposals to implement our incentive auction authority. Initial comments are due December 21. All parties have the opportunity to review and comment on the Commission's proposals, and we encourage them to do so.

The Honorable Anna Eshoo

1. As co-chair of the Medical Technology Caucus, I'm always interested in finding new ways to embrace innovative technologies within our health care system. The National Broadband Plan offered a number of recommendations with respect to health IT. How can we best work together to expand telemedicine, while removing many of the barriers outlined in the FCC's plan?

Response: The National Broadband Plan identified health care as an area of enormous promise for broadband-enabled innovation. The FCC is working to help implement the Plan's broadband and health recommendations, many of which relate to other federal agencies that we are coordinating closely with. We welcome your support for these efforts. The FCC is particularly focused on promoting connectivity, ensuring that wireless spectrum is optimally allocated and managed, and facilitating the development of wireless medical devices. For example:

- The FCC entered into an unprecedented partnership with the Food and Drug Administration to ensure that communications-related medical innovations can swiftly and safely be brought to market.
- Late last year, the Commission adopted an order to provide spectrum for Medical Micropower Networks, which have the potential to enable paraplegics to stand.
- The Commission has taken significant steps to spur broadband connectivity for rural health care providers through reforms to the Universal Service Fund. This includes

transitioning legacy high-cost programs to the broadband-focused Connect America Fund, which includes specific requirements to ensure broadband availability for community anchor institutions, including health care providers.

- The Commission is moving forward soon with reforms to the Rural Health Care program, based on lessons learned from a successful pilot program – including the California Telehealth Network. The reform effort will build on numerous projects that have already successfully deployed state-of-the-art telehealth capabilities, creating new opportunities and cost savings for consumers and health care providers alike.

- The Commission has adopted new rules to allow greater use of spectrum for Medical Body Area Network, or MBAN, devices. This technology has tremendous potential to untether patients from tubes and wires, improving the quality of health care and enabling better outcomes for patients. The U.S. is the first country in the world to allocate spectrum for Medical Body Area Networks.

2. As you know, interoperability in the 700 MHz band has been raised as a competitive roadblock in several open proceedings, including Verizon's proposed transaction with the cable companies. 700 MHz interoperability is also the subject of a proposed rulemaking that the FCC issued in March. When do you expect to complete this proceeding?

Response: Commission staff is currently reviewing the record in this important proceeding and developing recommendations.

3. I'd like to revisit a topic I raised when you testified before the Subcommittee in February regarding the need to hire more engineers for the FCC's Office of Engineering and Technology. At the time you agreed that this was a concern. What is the status of your efforts to address the need for additional engineers?

Response: The FCC's engineers are essential to achieving the Commission's core mission and I have prioritized recruiting and retaining engineers at the FCC. To that end, I established an Engineering Task Force to assess the overall engineering resources of the agency and make recommendations as to how we can strengthen our engineering resources and make the most effective use of the resources that we have. The Engineering Task Force is considering a number of recommendations, including how we can improve our recruitment and hiring and that we reestablish our Engineer in Training program. We continually monitor and balance the number of full time engineers that we require based on the work that is before the Commission. While we are actively working to recruit and retain more engineers, the number of FCC engineers and their share of the Commission's overall workforce has remained constant at approximately 15% for the past several years.

Earlier this year, the Commission asked for and received reprogramming authority from the House and Senate Appropriations Committees to fund two more engineers for incentive auction activities during the current fiscal year. In addition, at the Commission's request, both the House and Senate FY13 Financial Services appropriations bills raised the auctions

spending cap to ensure that engineers and other personnel are available to handle the complex engineering issues related to the incentive auction process.

The Senate appropriations bill for the current fiscal year fully funds the FCC's workforce, which would enable us to add much-needed engineers to our workforce. In contrast, the House number would require the FCC to reduce its current workforce, which could result in a reduction in our engineering staff through attrition, leaving important positions unfilled.

The Honorable Henry Waxman

1. Given the extremely high phone rates the families of prisoners have to pay to communicate with family members behind bars, some have utilized IP-based services that allow for lower phone charges. Despite the promise of these IP-based services, however, these calls have been blocked by some prison phone providers seeking to preserve the revenues they collect from existing long distance rates. This issue has been pending at the Commission for over three years. Does the Commission's policy prohibiting call blocking apply to calls between inmates and their families? When will the Commission address this issue?

Response: Prison phone rates are a serious issue for families, communities, and security. The multiple, competing petitions before the Commission regarding this matter raise complex factual questions and policy issues. Commission staff is currently reviewing the record that has been compiled on these issues, including recent filings by prison payphone operators, advocacy groups, and others, and this week I circulated a Notice of Proposed Rulemaking which is the next step in resolving these issues.

2. Last week, the FCC released a Notice of Proposed Rulemaking regarding an update of the FCC's regulatory fee process. I support your efforts to modernize the regulatory fee structure to reflect the way the Commission allocates its resources. What further steps do you anticipate the FCC will take to ensure transparency in the regulatory fee process that allows companies to plan for changes in their fees?

Response: As you state, the Commission recently issued an NPRM, for the first time in several years, to conduct a comprehensive review and potential overhaul of the fee process. Once the comments and reply comments have been reviewed by staff, we will make any adjustments that are supported by the record.

3. Special access services can be delivered via various technologies, including fiber optic cable and copper wire. Do you believe the Communications Act treats special access services in a technologically-neutral manner? Should the Commission regulate the special access market based on the presence or absence of competition or based on the technology involved?

Response: On October 9, I circulated an order to my colleagues at the Commission to conduct a mandatory, comprehensive data collection order that will provide the Commission with sufficient data to enable us to evaluate the extent of competition in special access

markets and adjust our rules as appropriate, consistent with the requirements of the Communications Act.

The Honorable John Dingell

1. Will the Commission make public the Allotment Optimization Model (AOM) it has used to evaluate the effects of an incentive auction and subsequent repacking of broadcast frequencies, as well as the assumptions and variables it has input into the AOM, when it publishes its NPRM to implement the voluntary incentive auction authorized by the Middle Class Tax Relief and Job Creation Act of 2012?

2. At the Subcommittee's July 10, 2012, hearing, you responded to the question above that the Commission will release "all information relevant to the [auction]." Will such "relevant information" include all the assumptions, variables, and other inputs the Commission has used with the AOM in order to evaluate the effects of an incentive auction and subsequent repacking of broadcast frequencies?

3. The Middle Class Tax Relief and Job Creation Act of 2012 allows the Commission to reassign broadcast channels along the Northern and Southern borders subject to coordination with Canada and Mexico. Has the Commission updated the AOM using this statutory requirement as an input?

Response (1, 2 and 3): The Allotment Optimization Model (AOM) developed during the National Broadband Plan will have limited if any applicability to the incentive auction process. The Commission released a Notice of Proposed Rulemaking (NPRM) on October 2, 2012 seeking comment on detailed proposals to implement our incentive auction authority. Initial comments are due December 21. All parties have the opportunity to review and comment on the Commission's proposals, and we encourage them to do so.

4. On a related note, has the Commission or any other agency begun consultations with Canada and Mexico about abiding by treaty stipulations when reassigning U.S. broadcast channels? If so, please submit for the record a summary of the issues discussed at such meeting or meetings, as well as their outcomes. Please also submit the names of the participants at such meeting or meetings.

Response: Since the passage of the incentive auction legislation in February, Commission staff has met with Industry Canada twice to discuss the specifics of the legislation. Now that the Commission has released its Incentive Auction Notice of Proposed Rulemaking, the International Bureau, in conjunction with the State Department, will be in a better position to begin more formal technical coordination discussions with Industry Canada.

In coordination meetings with Mexico through the High Level Consultative Committee (HLCC), we have provided the Mexicans with updates on our progress with incentive auctions and discussed transition issues. The last such discussion with Mexico on this subject was in October. We plan to continue these discussions with Mexico this month.

5. At the Commission's June 2012 repacking roundtable, Harris Corporation noted that three years might not be sufficient time in which to modify all broadcast towers impacted by repacking. Has the Commission gathered empirical evidence to support or refute such claim? If so, please submit for the record the conclusion such evidence supports.

Response: The Incentive Auction Notice of Proposed Rulemaking released on October 2 seeks comment on the appropriate process to ensure a successful transition from broadcast to wireless broadband use after the incentive auction concludes. We recognize that the incentive auction presents unique and complex issues to resolve – including the issues related to tower construction and modification. Our past experience with the DTV transition will help inform this process, and we are seeking specific input on these issues in the NPRM.

6. Please submit for the record the names and responsibilities of all the consultants the Commission has retained to help it implement the voluntary incentive auction of broadcast frequencies authorized by the Middle Class Tax Relief and Job Creation Act of 2012. Have any of those consultants previously lobbied the Commission or otherwise advocated on behalf of incentive auctions? If so, please indicate which consultants have lobbied the Commission on this matter, as well as for what action they have advocated.

Response: The Commission will follow all rules related to the input of consultants contracted for the incentive auctions process. We have solicited input from three world-renowned groups – Auctionomics, Power Auctions LLC, and MicroTech, none of whom have previously lobbied the Commission on the subject of broadcast incentive auctions.

Auctionomics Chairman Paul Milgrom is the Ely Professor of Humanities and Sciences in the Department Economics at Stanford University, and a member of the National Academy of Sciences and the American Academy of Arts and Sciences. Milgrom is the recipient of the Nemmers Prize in Economics for contributions dramatically expanding the understanding of the role of information and incentives in a variety of settings, including auctions, the theory of the firm, and oligopolistic markets. He is widely regarded as one of the foremost thinkers in auction theory and design, and he helped create the first FCC spectrum auction design, which has served as a blueprint for similar auctions worldwide.

Also with Auctionomics are Professors Jonathan Levin and Ilya Segal of Stanford University. Professor Levin is the Chair of the Department of Economics at Stanford, and a recipient of the John Bates Clark Medal as the economist under the age of forty who has made the most significant contribution to economic thought and knowledge. Ilya Segal is the Anderson Professor in the Humanities and Sciences at Stanford, and is a recipient of the Compass-Lexecon prize for the most significant contribution to the understanding and implementation of competition policy.

Power Auctions LLC is led by Lawrence Ausubel, a Professor of Economics at the University of Maryland. Professor Ausubel is a widely published author on auctions, industrial organization, and financial markets, and is a leading expert on efficient auction design. Power Auctions, based in Washington, DC, has extensive experience in the design

and implementation of high-profile auctions around the globe and currently provides spectrum auction design and software services to the Governments of Canada and Australia. Power Auctions and Auctionomics are both assisting the Commission with auction design and implementation.

MicroTech, a leading technology and systems integrator for critical infrastructure and information technology solutions, will provide state-of-the-art security, systems development, and implementation support directly tied to their cloud computing solutions.

7. The Commission's recent Viewability Order allows cable companies to provide converter boxes to customers, so they can continue viewing certain must-carry stations. Did the Commission review any empirical evidence on the cost or availability of such converter boxes prior to approving the Order?

Response: Yes.

8. For the DTV transition, consumers had 22 months to purchase converter boxes with coupons, and that transition still did not go smoothly. Does the Commission believe the six-month timeline provided in the *Viewability Order* is sufficient to ensure an orderly transition for consumers?

Response: Yes. The situations are not directly comparable. Cable operators may continue to provide programming in analog indefinitely, but should they decide to move some must-carry stations to digital, during the viewability transition period cable operators must continue to carry the must-carry stations in analog format to all analog subscribers. This will allow time for the cable operator to obtain an adequate supply of equipment and notify consumers of the changes in service, and to allow consumers to make necessary arrangements. The Commission has encouraged cable operators to provide broadcasters with additional advance notice of any planned carriage change, so stations can provide notice to their viewers about their options for continued access to the station's programming.

9. At the Subcommittee's February 16, 2012, hearing about the Commission's budget, I expressed concern about the proposed diversion of funds away from the Wireline and Wireless Bureaus to increases in your office and the offices of the other commissioners. The Obama Administration recently issued a Statement of Administration Policy (SAP) in opposition to the fiscal year 2013 Financial Services and General Government Appropriations bill, partly because the bill's five percent reduction in the Commission's budget would threaten progress reforming the Universal Service Fund (USF). Do you now believe that your proposed reductions to the Wireline and Wireless Bureaus' respective budgets are ill advised? If the Commission now needs additional funds for the completion of USF reform, will you make appropriate reductions to the increases you have proposed for your office, the offices of your fellow commissioners, and the Office of Strategic Planning and Policy Analysis?

Response: The Commission is not proposing a reduction in the size of those bureaus.

10. What level of broadband service has the Commission determined a carrier must provide in order to receive Universal Service Fund (USF) support, and what has the Commission determined to be "reasonably comparable rates" for such level of service? In addition, if the Commission's USF Reform Order harms the financial viability of small rural providers, what steps is the Commission taking to ensure that these carriers are given the proper incentives to build the networks needed in the future?

Response: The *USF/ICC Transformation Order* includes broadband public interest obligations that require companies receiving support from the Connect America Fund to provide broadband speeds of 4 Megabits per second (Mbps) downstream and 1 Mbps upstream. The Wireline Bureau is in the process of implementing a rate survey to determine "reasonably comparable rates" for such service.

The *USF/ICC Transformation Order* maintained overall support to rate of return carriers at approximately $2 billion annually, approximately equal to their current overall annual support, while adopting rules to moderate the expenses of those carriers with unreasonably high costs and further encouraging other rate-of-return carriers to advance broadband deployment. The new rules ensure fairness to the consumers and small businesses that pay into the Universal Service Fund.

11. The 1996 Telecommunications Act prohibits the Commission from regulating Internet services. The Commission's 2003 Triennial Review maintains that "next generation" technologies should and would not be regulated. Does the Commission intend to attempt to regulate fiber or any other new broadband technologies?

Response: Ensuring strong incentives to invest in fiber, mobile, and other advanced communications infrastructure has been one of my top priorities. And fiber deployment has been increasing: More than 19 million miles of optical fiber were installed in the United States in the last year, "the most since the boom year of 2000," according to *The Wall Street Journal*. Promoting competition and removing barriers to investment have been vital parts of this success. I remain committed to policies that promote competition, remove barriers to broadband buildout, and protect and empower consumers, all of which are critical to robust network investment.

12. The Securus Petition 09-144 has been pending for more than three years. Similarly, the Wright Petition CC 96-128 has been pending since November 2003. When will the Commission rule on these matters? Has the Commission assigned staff to these two petitions, and if not, when will staff be assigned to them? Finally, may common carriers block calls absent prior express authorization by the Commission?

Response: Prison phone rates are a serious issue for families, communities, and security. The multiple, competing petitions before the Commission regarding this matter raise complex factual questions and policy issues. Commission staff is currently reviewing the record that has been compiled on these issues, including recent filings by prison payphone

operators, advocacy groups, and others, and this week I circulated a Notice of Proposed Rulemaking which is the next step in resolving these issues.

13. When does the Commission intend to give device manufacturers and carriers more detailed guidance about how to comply with new regulations promulgated pursuant to the Twenty-First Century Communication and Video Accessibility Act, particularly with respect to proving compliance during a device's design and development process?

Response: Under Section 508 of the Rehabilitation Act, the U.S. Access Board is authorized to provide technical assistance to individuals and Federal departments and agencies concerning the requirements of this section. The U.S. Access Board is currently working on providing guidance for implementation of Section 508 of the Rehabilitation Act, as well as Section 255 of the Communications Act. Their guidance will have implications as well for advanced communications services covered by the Commission's rules. The Access Board is currently in the midst of a rulemaking and is hoping to issue proposed rules within months. To date, they have issued two advanced NPRMs on this issue. Once the Access Board has taken its final action, the Commission will be in a position to move forward on this matter.

The Honorable Doris Matsui

1. With a mandatory data request on the horizon, how are you going to guarantee that you will get all the necessary data to properly analyze the special access market? What are the next steps, how long will the comment period last, how long will it take to analyze the data, and will this mandatory data collection lead to action?

Response: On October 9 I circulated an order to my colleagues at the Commission to conduct a mandatory, comprehensive data collection order that will enable us to evaluate the extent of competition in special access markets and adjust our rules as appropriate. The data collection will become effective once it has received final approval from the Office of Management and Budget in accordance with the Paperwork Reduction Act. While it is difficult to predict the exact timing on such approval, we can anticipate that the approval process and data collection will take several months. The Commission will then need to analyze the data. We will conclude overall reform of our special access policies as soon as possible following this process.

2. You stated at the hearing that "we need to pursue spectrum sharing, but not at the expense of clearing." Can you elaborate on your comments as we look at the 1755-1780 MHz band, recognizing the need to bring additional spectrum into the marketplace and that this band is ideal to pair with the 2155-2180 MHz band that is internationally-harmonized for LTE?

Response: The Commission is focused on clearing spectrum for auction whenever possible, while also pursuing other approaches to making spectrum available for broadband, including spectrum sharing. This is not an either/or choice – we must use an "all of the above" strategy to unlock the full value of our spectrum resources. This summer the Commission approved

an STA to enable testing of LTE in the 1755-1780 MHz band, and Commission staff is actively working with carriers and other government agencies to enable spectrum sharing in this band. We intend to meet all statutory deadlines.

The Honorable John Barrow

1. As the author and strong supporter of legislation to authorize voluntary incentive auctions, I would like an update on where the Commission stands with its efforts. What is the timing for the incentive auction Notice of Proposed Rulemaking to be released and when do you anticipate seeing that effort completed? I think we all know that this process will take time, but until the Commission determines how it structure and conduct the auction, the entire process is on hold.

Response: The Commission released a Notice of Proposed Rulemaking (NPRM) on October 2, 2012 seeking comment on detailed proposals to implement our incentive auction authority, including some draft rules. Initial comments are due December 21. All parties have the opportunity to review and comment on the Commission's proposals, and we encourage them to do so.

2. The spectrum crunch will have a significant impact on our economy if not addressed. The Commission has embraced the goal of clearing 300 MHz before 2015. I'm interested in finding out where that spectrum will come from within the government's holdings. Many are concerned that agencies don't want to give up spectrum or move their services to other bands. I have seen reports that clearing one swath of spectrum may cost $18B. I worry that between agency interests and cost fears over clearing spectrum, we may lose track of the most important issue here: that clearing and auctioning spectrum can be the greatest spark for job creation and innovation.

3. How do you intend to meet the consumer's need for more spectrum in the next three years, and what assistance if any assistance do you need from Congress to meet that goal?

Response (2 and 3): Over the past four years, the U.S. has regained global leadership in mobile infrastructure and innovation – becoming the first country in the world to deploy the next generation of wireless broadband networks (4G LTE) at scale, and leading the world in the development of smartphone and tablet operating systems and apps. Maintaining U.S. leadership in mobile requires making more licensed and unlicensed spectrum available for broadband, and there is no higher priority at the FCC. The Commission is executing on its Mobile Action Plan, a comprehensive, "all of the above" strategy to make more spectrum available for broadband. Key elements include:

- **Traditional auctions.** We are on track to auction 75 MHz of licensed Advanced Wireless Service spectrum – essential for 4G LTE service – by 2015. This includes an auction of shared rights to the 1755-1780 MHz band, which could be paired with the 2155-2180 MHz band already in inventory to extend the valuable AWS band by

50 MHz. We expect the first of these auctions – of the AWS-2 H-block – will happen in 2013.

- **Removing regulatory barriers to flexible spectrum use.** Later this year, we will finish removing outdated rules and restrictions on a total of 70 MHz of spectrum. This includes 40 megahertz of mobile satellite spectrum that I expect the Commission will repurpose for land-based mobile use, and 30 megahertz the Commission recently freed up in the long-troubled Wireless Communications Service band.

- **Clearing new bands for flexible broadband use.** On September 28, the Commission launched a proceeding to implement an incentive auction to repurpose for mobile broadband valuable spectrum in the broadcast television band -- the 600 MHz band, just below the 700 MHz band now being used for 4G LTE. We expect to hold the world's first incentive auction in 2014. There are also significant opportunities to clear and reallocate underutilized government spectrum for commercial use.

- **Dynamic sharing.** In 2010 the Commission created a new spectrum sharing paradigm by allowing unlicensed devices to access valuable unused spectrum in between broadcast TV channels – known as "white spaces. This action freed up the most new low-band unlicensed spectrum in 25 years – at least several 6 MHz channels in most major markets and more than 100 megahertz in many parts of the country. The FCC also developed an idea to use database technology to enable sharing between commercial broadband and military radar systems. In a major report this summer, the President's Council of Advisors on Science and Technology, or PCAST, recommended doing this in the 3.5 GHz band, which is virtually unused in the U.S. By year's end, I intend to launch a formal proceeding to enable commercial use of 100 MHz of spectrum in this band.

The Honorable Donna Christensen

1. In the USF/ICC Transformation Order, you recognized that insular areas, like the U.S. Virgin Islands, are unlike mainland rural telephone company service areas in many ways. For example, insular areas face higher costs to ship, deploy and maintain telecommunications infrastructure because of their remoteness and exposure to severe weather. They also suffer from high unemployment and poverty levels, which inhibits access to telephone service. Can you please explain how your Connect America Fund (CAF) Phase II cost model will take these factors into consideration in projecting the cost of deploying broadband service in the insular areas?
2. Are you aware that the U.S. Virgin Islands, American Samoa, and Northern Marianas Islands are outside the customs territory of the United States, so that the telephone companies serving these territories have to pay customs duties on all equipment and material they purchase from U.S. as well as foreign vendors? Will your cost model take this additional cost into account?

Response (1, 2, 5 and 7): The *USF/ICC Transformation Order* directed the Wireline Bureau to consider any unique costs to serve insular areas as it implements the Connect America cost model. It is important that any providers serving insular areas, or other entities with insular-specific information, submit data into the record demonstrating any unusual costs in their service areas. The Wireline Bureau recently held a workshop on the cost models that have been submitted into the record to date and announced a virtual workshop (see http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0912/DA-12-1487A1.pdf). This virtual workshop, in addition to the regular ex parte process, will provide an opportunity for all stakeholders to provide cost data on insular areas.

3. Chairman Genachowski, in your recent letter to me, you mentioned that as part of the USF reform, Connect America Fund (CAF) Phase I support of up to $300 million has been offered to price cap carriers, including those in insular areas, to advance broadband development, and the Virgin Islands Telephone Corporation ("Vitelco") has been offered CAF Phase I support. How much support was offered to Vitelco? What are the conditions attached to that support? Was incremental support offered to any other telephone companies serving insular areas?

Response: Vitelco was offered $255,231 in CAF Phase I support. As a condition of receiving support, which Vitelco declined, the carrier would have received $775 per location served and would have been required to deploy to all supported locations within three years. No other carrier serving an insular area qualified for CAF Phase I support.

4. Chairman Genachowski, your letter also mentioned an expedited waiver process for telephone companies serving insular areas. Can you please explain how this waiver process differs from the regular waiver process that applies to non-insular areas?

Response: Waiver petitions of carriers serving insular areas and Tribal lands receive priority review. The Order requires the Wireline or Wireless Bureaus to complete review of waiver petitions in these instances within 45 days of obtaining a complete record. Waiver applicants serving insular areas and Tribal lands are specifically asked to share "any additional information about the operating conditions, economic conditions, or other reasons warranting relief based on the unique characteristics of those communities," which the FCC will consider when reviewing waiver requests.

5. In the USF/ICC Transformation Order, the FCC recognized that unique circumstances exist in insular areas and directed the Wireline Competition Bureau to consider those unique circumstances as it implements a forward-looking cost model for price-cap carriers. I understand that the Bureau is considering using the CQBAT Model proposed by America's Broadband Connectivity Coalition to determine price cap local exchange carriers (LECs) support levels. However, I have been told that some parties affected by the CAF Phase II mechanism have had limited access to the cost inputs and assumptions on which this model is based. Do you think that the CQBA T model satisfies the Commission's requirements for transparency and verifiability of a cost model? Are there any specific steps you plan to take to improve access to the cost model inputs and the ability to analyze and verify its results?

Response: See response to Question 1 above.

6. Also, the Transformation Order instructed the Bureau that if the adopted Phase II cost model does not adequately account for the costs of telephone companies outside the continental United States, it could choose to exclude those companies from the Phase II mechanism and continue to provide them Phase I support instead. I understand that Phase I support for the non-continental states and territories accounts for only about 1/2 of one percent of the total high-cost support budget for price cap companies [approx. $93 million out of$1.8 billion] Would you agree that, given this relatively small percentage, the Bureau should not devote extraordinary resources to developing special adjustments to the cost model to account for the costs of non-continental areas, but instead should continue to provide Phase I support if the model cannot easily be adjusted?

Response: As you note, the *USF/ICC Transformation Order* permits the Wireline Bureau to determine that non-continental states and territories should continue receiving frozen Connect America Phase I support amounts after the cost model is developed, rather than receiving a model-generated amount of support. That is an option under consideration as we develop the model.

7. According to the National Broadband Map, the three lowest ranked areas in the percentage of households with broadband service of download speeds greater than 3 Mbps and upload speeds greater than 768 Kbps are the U.S. Virgin Islands, Puerto Rico, and American Samoa. However, if the ABC cost model were used, the companies serving these three territories would see major reductions in their USF support. What will the FCC do to ensure that its policies do not leave these insular areas even further behind the mainland in broadband deployment than they already are?

Response: See response to question 1 above.

8. In the Lifeline/Link Up Reform Order, the FCC reformed the Lifeline reimbursement system by replacing tiered support with a single support system ($9.25 a month with a $25 additive for Tribal Areas) and eliminated the Link Up program for non-Tribal Areas. Given the unique circumstances that exist in insular areas like the U.S. Virgin Islands, why did the FCC decide to treat insular areas differently than Tribal Areas for Lifeline support? Why did the FCC decide to eliminate the Link Up program for insular areas?

Response: Given the low subscribership levels in Tribal communities and the significant telecommunications deployment and connectivity challenges on Tribal lands, the Commission in 2000 created enhanced Lifeline support and enhanced Link Up on Tribal lands. The Commission recognized that the factors causing low subscribership on Tribal lands may not be identical to the factors causing low subscribership among other populations. Due to the continuing significant communications deployment and adoption challenges on Tribal lands, the Commission decided to maintain enhanced Link Up support for ETCs on Tribal lands also receiving high-cost support. The Commission eliminated Link Up support on non-Tribal lands for all ETCs because it determined that consumers (including those in insular areas) were paying into the Fund for a program that was not providing a significant

consumer benefit. Since the *Lifeline Reform Order* was released, there is no evidence that carriers have increased sign-up costs as a result of the elimination of the Link Up program.

9. The FCC is considering plans to expand the Lifeline program to include support for broadband services and implementing a pilot program. Does the FCC have any plans to include insular areas like the U.S. Virgin Islands in the Lifeline Broadband Pilot Program?

Response: The Commission put out a public call for applications for the Pilot Program. In response, we received more than 20 applications for participation. Four are from providers serving insular areas. The Wireline Bureau has reviewed the applications and will soon announce the winners.

10. I want to ask you about the Lifeline program. Do you believe that the reforms undertaken recently by the Commission are sufficient to ensure that the program is responsibly managed? And, do you believe that the growth in the program is related more to inappropriate marketing, as some critics of the program charge, or to the continued challenges we see in the economy, which can lead more people to take advantage of programs that offer a financial safety net?

Response: Waste, fraud, and abuse in the Lifeline program, by consumers or providers, is unacceptable. Earlier this year the Commission fundamentally overhauled the program, including by enacting rules to eliminate waste, fraud and abuse and to ensure greater accountability for carriers receiving support and consumers receiving benefits. As a result of these reforms, the Commission is on track to save $200 million this year alone. Even before adopting the *Lifeline Reform Order* earlier this year, the Commission created procedures to identify and de-enroll subscribers with duplicate Lifeline-supported services. As a result of the Order and steps taken in advance of the Order, over 700,000 duplicate subscriptions have been eliminated in 2011 and 2012, for a total of $80 million in annual savings. Multiple factors affect the overall size of the Lifeline program. As we implement and rigorously enforce our reforms, we will continue to closely monitor overall expenditures.

11. Once again, cell phone systems failed after the recent storm that swept through the District, Maryland and Virginia. Cell phone towers were inoperable in the immediate aftermath, leaving individuals without the ability to use their mobile devices to place or receive calls. During times of emergency, whether weather related or otherwise, consumers should have instant access to lifesaving information. Do you believe the inclusion of an activated radio chip in cell phones, which would provide access to over-the-air radio broadcasts even when cell towers are down, would improve access to this lifesaving information in times of emergency?

12. I represent the U.S. Virgin Islands and during hurricane season we are always under the threat of a major weather-related disaster. Ensuring the safety of my constituents is of the utmost importance. The wireless industry has not yet developed a fail-safe system to keep their towers up and running during an emergency, and I am concerned that the 90-character text-based system being developed by the wireless industry is not sufficient to provide critical information to the public during times of emergency. Do you believe that the 90-character text-based system being developed by the wireless industry is sufficient to provide robust information during times of

emergency? Could a radio enabled cell phone that would provide access to over-the-air radio broadcasts even when cell towers are down also provide a public service during emergencies?

Response (11 and 12): We note that FM radio capability is already available in multiple mobile devices offered by wireless carriers. Last summer, the FCC staff held a meeting with broadcasters, wireless carriers, and equipment manufacturers to discuss this issue. In addition, the Commission considered the issue of FM chips in cell phones in 2008 when it adopted rules establishing the Commercial Mobile Alert System (CMAS) (otherwise known as Wireless Emergency Alerts (WEA)). At that time, the Commission decided not to require or prohibit the inclusion of FM chips in mobile devices in the context of CMAS/WEA. CMAS/WEA allows consumers to receive geographically-targeted text-like emergency alerts over their mobile devices. Since the system was deployed in April 2012, government alert originators have used the system to send over 1,000 emergency alerts to consumers. For example, the City of New York recently issued CMAS/WEA alerts warning consumers about Sandy.

13. Mr. Chairman, in an Order released last week, the FCC suspended and set for investigation nearly every new tariff filed to implement the FCC's intercarrier compensation reforms as adopted last fall. There apparently is significant confusion and concern about how to implement the new rules, and even the FCC's Order uses the word "complicated" at several times in the first several paragraphs to describe its new regime. Yet even as carriers and consumers -- and apparently you and the state and territorial commissions as regulators -- struggle to understand and implement the reforms you've adopted, the FCC is also considering further changes to the intercarrier compensation and universal service mechanisms that are so important to affordable services in places like the Virgin Islands. Why would you proceed forward with adopting and implementing further changes in the face of what appears to be nearly universal and unprecedented confusion over the new rules you've just adopted?

14. Shouldn't we all get the chance to understand what you've just adopted, implement it, and study the effects of it before considering or making yet more changes?

Response (13 and 14): It is common for the Commission to temporarily suspend many filed tariffs after significant changes in intercarrier compensation rules. The Wireline Bureau has already resolved the vast majority of issues associated with the suspended tariffs, and we expect the remainder to be addressed in the coming weeks. Our comprehensive reform of this byzantine and outdated system will save consumers billions of dollars over the coming years. In order to extend broadband to unserved rural communities while ensuring fiscal responsibility, it is important to keep moving forward with implementation of our unanimous universal service and intercarrier compensation reforms.

15. Today's Communications Act framework, especially Title II, was designed for an era in which one company provided monopoly service over copper. Does that framework make sense when you have multiple providers using different communications platforms to provide voice, video and data over copper, fiber, coaxial cable, and spectrum?

Response: Communications markets are complex and dynamic. The Commission continuously reviews our rules and these markets to ensure that our policies are promoting innovation, investment, and competition and protecting consumers, and updates those policies when necessary. To the extent that the Communications Act does not enable the Commission to keep pace with the changing communications ecosystem, we look forward to providing assistance to Congress as necessary.

16. Mr. Chairman, I think most of us agree that we're facing a spectrum crunch for high speed wireless broadband services. What steps is the FCC taking to alleviate this crunch, and what is your timetable? Is there any way that the FCC can move faster on this?

Response: Over the past four years, the U.S. has regained global leadership in mobile infrastructure and innovation – becoming the first country in the world to deploy the next generation of wireless broadband networks (4G LTE) at scale, and leading the world in the development of smartphone and tablet operating systems and apps. Maintaining U.S. leadership in mobile requires making more licensed and unlicensed spectrum available for broadband, and there is no higher priority at the FCC. The Commission is executing on its Mobile Action Plan, a comprehensive, "all of the above" strategy to make more spectrum available for broadband. Key elements include:

- **Traditional auctions.** We are on track to auction 75 MHz of licensed Advanced Wireless Service spectrum – essential for 4G LTE service – by 2015. This includes an auction of shared rights to the 1755-1780 MHz band, which could be paired with the 2155-2180 MHz band already in inventory to extend the valuable AWS band by 50 MHz. We expect the first of these auctions – of the AWS-2 H-block – will happen in 2013.

- **Removing regulatory barriers to flexible spectrum use.** Later this year, we will finish removing outdated rules and restrictions on a total of 70 MHz of spectrum. This includes 40 megahertz of mobile satellite spectrum that I expect the Commission will repurpose for land-based mobile use, and 30 megahertz the Commission recently freed up in the long-troubled Wireless Communications Service band.

- **Clearing new bands for flexible broadband use**. On September 28, the Commission launched a proceeding to implement an incentive auction to repurpose for mobile broadband valuable spectrum in the broadcast television band -- the 600 MHz band, just below the 700 MHz band now being used for 4G LTE. We expect to hold the world's first incentive auction in 2014. There are also significant opportunities to clear and reallocate underutilized government spectrum for commercial use.

- **Dynamic sharing**. In 2010 the Commission created a new spectrum sharing paradigm by allowing unlicensed devices to access valuable unused spectrum in between broadcast TV channels – known as "white spaces. This action freed up the most new low-band unlicensed spectrum in 25 years – at least several 6 MHz

channels in most major markets and more than 100 megahertz in many parts of the country. The FCC also developed an idea to use database technology to enable sharing between commercial broadband and military radar systems. In a major report this summer, the President's Council of Advisors on Science and Technology, or PCAST, recommended doing this in the 3.5 GHz band, which is virtually unused in the U.S. By year's end, I intend to launch a formal proceeding to enable commercial use of 100 MHz of spectrum in this band.

17. Chairman Genachowski, how long will it take to complete the incentive auctions, both the reverse and the forward auction?

Response: We anticipate conducting the incentive auction in 2014.

18. Chairman Genachowski, what auctions does the Commission plan to conduct over the next two years?

Response: See answer to Question 16 above.

Michael

19. For all of the Commissioners, while it's Congress's job to write the laws, do you think that the Communications Act is outdated? More specifically, do the Communications Act's requirements make sense in an IP world?

Response: Communications markets are complex and dynamic. The Commission continuously reviews our rules and these markets to ensure that our policies are promoting innovation, investment, and competition and protecting consumers, and updates those policies when necessary. To the extent that the Communications Act does not enable the Commission to keep pace with the changing communications ecosystem, we look forward to providing assistance to Congress as necessary.

The Honorable Edolphus Towns

1. How much time will a broadcaster have to decide whether to volunteer to turn in or share its license?

2. When will you give specific information about which markets are likely to need volunteers?

3. What information will you provide ahead of time about the volunteering process?

4. Will you be giving information on the likely effect to stations that do not volunteer? That is, how many will be repacked? Will they preserve the same service area and population they currently serve?

5. Would a broadcaster be able to change or withdraw a bid once it has volunteered?

6. When would a broadcaster know if it is selected?

7. What reimbursement is a broadcaster likely to get?

8. If a broadcaster does not volunteer, will anything happen to its station?

9. If a broadcaster needs new equipment to relocate its channel, when will it get paid for that equipment?

Response (1-9, 11-18): The Commission released a Notice of Proposed Rulemaking (NPRM) on October 2, 2012 seeking comment on detailed proposals to implement our incentive auction authority. Initial comments are due December 21. All parties have the opportunity to review and comment on the Commission's proposals, and we encourage them to do so.

10. Will channels reassigned for repacking be fully coordinated and approved as required by treaty or agreement with our Canadian or Mexican neighbors?

Response: Since the passage of the incentive auction legislation in February, Commission staff has met with Industry Canada twice to discuss the specifics of the legislation. Now that the Commission has released its Incentive Auction Notice of Proposed Rulemaking, the International Bureau, in conjunction with the State Department, will be in a better position to begin more formal technical coordination discussions with Industry Canada.

In coordination meetings with Mexico through the High Level Consultative Committee (HLCC), we have provided the Mexicans with updates on our progress with incentive auctions and discussed transition issues. The last such discussion with Mexico on this subject was in October. We plan to continue these discussions with Mexico this month.

11. Will border stations have the full three years provided in the legislation to construct facilities and be reimbursed?

12. How will the FCC ensure that broadcasters and their viewers are not hurt during any repacking?

13. Will cable systems be required to carry a broadcast signal if that broadcaster goes off the air for some period of time during the rebuilding of the station?

14. Will a broadcaster be reimbursed for costs incurred to get its signal to the cable system or to keep its signal on the air during the rebuild caused by repacking?

15. How will new channels be assigned during the repacking process? Will stations have an opportunity to make changes to these channels as was done in the original DTV Table?

16. Will all repacked stations be assigned a new channel so that they have the full three years to build their new facilities as specified in the legislation?

17. Which rebuilding costs (such as temporary antennas/transmitters needed during the rebuilding) will not be eligible for reimbursement?

18. What if a station is not required to move channels but it shares a facility with a station that volunteers or is repacked? Will the first station's costs be reimbursed?

Response (Questions 11-18): See response to Questions 1-9 above.

19. How will the FCC minimize the impact of changes on consumers?

20. Will stations that elect not to participate keep the same viewers?

21. What about access to specific stations? People care about local stations for news, weather and local information. Are you going to make sure they can get the information they need?

Response to Questions 19-21: Congress directed the Commission to make all reasonable efforts to preserve the coverage area and population served by TV licensees. We are running an open and transparent process to determine the best approach to implementing this Congressional mandate.

22. Are consumers going to need to get new equipment? Will they incur any cost to receive the same station programming on a different channel?

23. Will consumers need to retune their television sets?

24. Will the government do an education campaign to help consumers know what to do?

Response to Questions 22-24: Over-the-air viewers should not need additional equipment due to the repacking of channels. In markets where stations change channels, over-the-air consumers will have to re-scan TVs or digital-to-analog converter boxes for the equipment to properly display the relocated TV channels. In the Incentive Auction NPRM, the Commission seeks comment on what kind of outreach efforts the Commission should undertake in order to ensure an orderly transition and minimize disruptions in service to consumers.

25. For areas served by TV translators, will consumers in those areas still have access to over-the-air television?

Response: I recognize and appreciate the important news and other programming that TV translators provide to their audiences. I have instructed Commission staff to continue to work with the TV translator community as we implement the Middle Class Tax Relief and Job Creation Act of 2012.

26. At the hearing, you indicated your view that the framework for the FCC's special access rules is "not working," and so you circulated a special access order in early June. Can you describe the process by which you consulted with your colleagues and stakeholders before circulating the Special Access order in June?

27. There were reports indicating that the Chief of the Wireline Competition Bureau concluded that the data collection efforts had not provided enough information to do an analysis to prepare for the order. Can you comment on whether you or your colleagues took this into account before the order was circulated?

28. Reports indicate that approximately 10,000 pages of documents were submitted into the record after the order was circulated in June. Should these have been subject to public comment before circulating the order? Why or Why not?

29. Has the FCC provided the public an opportunity to review and comment on the specific language of any proposed rules in this rulemaking? Do you feel that sufficient options for resolving the special access issue were considered before circulating this order?

30. Has the FCC conducted analyses that any proposed rule will not impose addition burdens on consumers?

Response: Our special access proceeding has been, and will continue to be, an open and transparent rulemaking based on the best data available to the Commission. Stakeholders have participated through hundreds of substantive filings and *ex parte* meetings with staff and Commissioners, and the Wireline Bureau has issued multiple Public Notices soliciting data and comments over the last three years. All Commissioners received ample time to review the order circulated in June and engage substantively before voting. The Wireline Bureau public notice released simultaneously with circulation of that order highlighted certain publicly available sources that the Commission might consider during the Commission's deliberations, but all these sources were available for public comment prior to that filing. The Commission's decision to suspend grants of new pricing flexibility petitions was thoroughly supported by a detailed and careful review of extensive evidence in the record and thirteen years of experience with the current pricing flexibility rules. Indeed, it was by far the most thorough and up-to-date evaluation of the special access rules we've ever done. Our Wireline Bureau Chief led this effort, and any reports along the lines you describe would be inaccurate. As with all Commission actions, we considered the benefits and burdens of all proposals before acting. To continue applying our prior rules in the face of the best and most up-to-date data would have been contrary to our responsibilities as an expert agency.

The Honorable Bobby Rush

1. In September 2009, the FCC Advisory Committee on Diversity for Communications in the Digital Age recommended that the Commission renew its 2000 Adarand studies to determine whether the agency could support certain actions, including enacting policies and promulgating

rules that seek to increase diverse viewpoints and minority ownership of media and communications license, that may be subject to heightened judicial scrutiny under the US Constitution. Some of the same Adarand-related studies and reports that the Diversity Committee recommended the FCC complete (almost three years ago) would also produce data that could better inform and support, for example, national media ownership rule changes, which were appealed to the US Court of Appeals for the Third Circuit in the FCC's Prometheus Radio Project line of cases. Will the FCC be funding revised Adarand and media diversity ownership studies in this or in the next fiscal year? Please briefly describe the planned scope and deliverables schedule for this work.

Response: We commissioned several studies during the media ownership review process, including studies that specifically addressed diversity issues. Recently, we released the first ever Ownership Report that analyzed racial and ethnic minority and female broadcast ownership data collected through the revised Form 323 submissions by commercial broadcast stations. The collection and analysis of this data will assist the Commission on a going forward basis as we work to develop legally-sustainable diversity policies.

Our Office of Communications Business Opportunities (OCBO) continues to review the state of communications and media markets as it prepares the Commission's 2012 Section 257 Report to Congress. As part of this process, earlier this year we commissioned a review of existing studies that analyze the critical information needs of the American public, conducted under the direction of The University of Southern California Annenberg School for Communication and Journalism. The Annenberg report was submitted to the Commission in July 2012. Following the release of the literature review, in order to assist implementation of its recommendations, OCBO retained an independent contractor to design a research model to examine how media ecologies function, how critical information is made available in various media ecologies, and how individuals construct their own media ecologies to meet their critical information needs. Work on the research model is currently on-going, with completion of a final report anticipated next year.

Finally, in our FY 2013 budget request, the Commission included a request of $500,000 for a Communications Industry Participation and Impact Study which would enable the FCC to gather new data and perform additional research and analysis to better inform and support the Commission's efforts related to minority and female ownership.

2. To date, the FCC has not acted on a petition for rulemaking that Martha Wright filed with the FCC, on her behalf and the behalf of others, docketed as CC Docket No. 96-128 back in October 2003. Her filing arose out of a class action suit that she and a number of plaintiffs brought back in February 2000, in the U.S. District Court of the District of Columbia. Mrs. Wright protested that the rates she and other telephone subscribers paid to make and to receive calls from prison inmates were not cost-based and excessive, resulted from exclusive dealing arrangements, and that companies providing prison phone services had violated the nation's communications and competition laws. In March 2007, Mrs. Wright submitted an alternative rulemaking petition to

the FCC proposing that the agency adopt benchmark rates of no more than $0.20 per-minute for debit calling and $0.25 per-minute for collect calls, with no separate per-call charges imposed by the inmate telephone service provider. Although these proposed benchmark rates are considerably less than retail rates which are being charged for inmate prison calling services in most states, the proposed rates are still actually higher than the per-minute calling rates found in at least 10 states (FL, LA, MA, MI, MO, MT, NE, MH, ND, SC). With all of the technological progress that has been made in secured, communications networking over the last decade, keeping in touch with loved ones who are incarcerated or behind bars should not be as terribly costly as is the case.

The FCC's indecisiveness regarding a matter such as this which directly impacts over-stretched American household budgets and affects family unit resiliency and prisoner rehabilitation and recidivism rates is troubling. Over 2.2 million adults are incarcerated in US federal and state prisons and county jails. Notwithstanding their guilt or innocence, these individuals are still accorded certain privileges and rights, including the privilege of communicating with their families and loved ones. In addition to helping connect the nation through implementation of its National Broadband Plan, the FCC can also connect families by expeditiously moving this stalled rulemaking forward. What are the next steps the FCC will take with regard to CC-Docket No. 96-128? By when, will these steps be taken?

Response: Prison phone rates are a serious issue for families, communities, and security. The multiple, competing petitions before the Commission regarding this matter raise complex factual questions and policy issues. Commission staff is currently reviewing the record that has been compiled on these issues, including recent filings by prison payphone operators, advocacy groups, and others, and this week I circulated a Notice of Proposed Rulemaking which is the next step in resolving these issues.

3. After the completion of the DTV transition in 2009, WLS, the local Chicago ABC affiliate, found its channel 7- allocation inadequate to reach many of its viewers. To remedy this situation, WLS devoted countless hours and spent millions of dollars to build and transition to a new broadcasting facility on channel 44 to maintain its pre-transition coverage area. With the Middle Class Tax Relief and Job Creation Act of2012 instructing the FCC to conduct incentive auctions, it is possible that WLS could find itself in a similar situation. As these auctions moves forward, I am concerned that WLS will again be forced to spend millions of dollars and countless hours to maintain its current coverage area after the inevitable channel reassignments occur. What will the FCC do to ensure that WLS will not be negatively impacted by any reallocation or repacking conducted as part of the incentive auctions?

Response: Congress provided protections to broadcasters by directing the Commission to make all reasonable efforts to preserve the coverage area and population served of each broadcast television licensee. The Commission will follow all statutory mandates, including with respect to repacking. The Commission released a Notice of Proposed Rulemaking (NPRM) on October 2, 2012 seeking comment on detailed proposals to implement our incentive auction authority. Initial comments are due December 21. All parties have the

opportunity to review and comment on the Commission's proposals, and we encourage them to do so.

4. Something that has always been important to me is to me is maintaining a diversity of voices in the television landscape. I recognize that part of this spectrum incentive auction is to encourage those television stations on the edge of profitability to perhaps give back their spectrum for auction. While I applaud the overall goal of incentive auctions, I'm concerned that at the end of the day, we are encouraging those unique and diverse voices who speak to specific constituencies to exit television broadcasting and I'm concerned about the impact on consumers. How can we ensure a successful auction, and ensure we don't take steps backwards on finding diversity on the television dial? What will you do to make sure that won't happen?

Response: Media diversity is critically important, and promoting and expanding opportunities for minority and female ownership is an important FCC goal. The Commission is seeking detailed information about programming diversity in our incentive auctions Notice of Proposed Rulemaking. It is important to note that there will be additional ways for existing licensees to participate in an incentive auction other than exiting the broadcasting business. The statute provides for channel sharing and for existing licensees to choose to move from UHF to VHF frequencies. Additionally, we specifically seek comment within the incentive auction proceeding on ways to address any impact on diversity as a result of the auction itself – such as encouraging multicasting or other alternative means of program distribution.

The Honorable Diana DeGette

1. With the known reliance upon satellite-based military applications and the quality of Internet service currently available by satellite service providers, persistent questions involving latency appear to overshadow actual satellite broadband capability. In fact, it appears the default position is that satellite is an inferior way to provide access to broadband - in particular - in unserved areas.

2. Does the FCC study the current state of satellite technology or consider data related to the future capabilities of satellites for the delivery of broadband Internet? Does the FCC study or collect data on the future capacity of mobile wireless technology? Would the FCC share with the Committee the data it relies upon to assess the speed, reliability and cost of satellite broadband in today's marketplace?

Response (1 and 2): Satellite providers play a critical role in ensuring that all Americans can access broadband. Commission staff regularly review a variety of public sources and meet with industry and other stakeholders to stay current on satellite broadband advances. The Commission has sought comment on the role of satellite technology in numerous active proceedings, including the Connect America Fund Further Notice of Proposed Rulemaking and the latest Notice of Inquiry for the Commission's annual Broadband Progress Report. In addition, the Commission's next Measuring Broadband America report (providing detailed

information on the actual performance of different broadband services) will for the first time include data on the performance of satellite broadband technology.

3. What is the authority of the FCC regarding retransmission consent negotiations?

Response: Section 325 of the Communications Act contains the statutory provisions regarding retransmission consent.

4. Please explain why the FCC has authority to order interim carriage of channels in the program access and program carriage contexts, but does not have it in the retransmission consent context. Does the FCC have any authority to protect consumers from retransmission consent disputes?

Response: Section 325(b) of the Communications Act specifically prohibits the retransmission of a broadcast station signal without the station's consent; thus, as noted in the 2011 Retransmission Consent Notice of Proposed Rule Making, the Commission believes it does not have the authority to require interim carriage for retransmission consent disputes. The Commission is concerned about the impact of retransmission consent disputes on consumers, and we have been monitoring the marketplace while staff reviews the record developed in the proceeding.

5. Does the FCC have or maintain general or market-specific data on the number of failed retransmission consent negotiations that lead to blackouts? Does the FCC know the number of retransmission consent agreements in force today and when they expire? Does the FCC need new authority to gain access to this data?

Response: The Commission staff informally monitors the marketplace by periodically requesting information from major MVPDs and broadcasters as we become aware of possible disputes or expiring contracts. We do not formally collect data in this area.

6. With respect to the broadcast band repacking and auctions, should the FCC examine the future of public media and the position of public broadcasting in each market as this process moves forward? Before too long, should the FCC hold a roundtable or workshop with broadcasters, educators, public interest advocates, information providers, and other stakeholders to seek input on how to maximize and preserve noncommercial TV service and the value of noncommercial TV spectrum?

Response: Non-commercial broadcast stations have long served the American public by providing high quality and innovative educational, cultural, children's, and news programming to their local communities. The FCC stands ready to work with Congress and other stakeholders to ensure the public broadcasters continue to have the opportunity to flourish.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

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August 14, 2012

The Honorable Robert M. McDowell
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Commissioner McDowell:

Thank you for appearing at the Subcommittee on Communications and Technology hearing entitled "Oversight of the Federal Communications Commission" on July 10, 2012.

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions to witnesses, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please e-mail your responses, in Word or PDF format, to Charlotte.Savercool@mail.house.gov by the close of business on Tuesday, August 28, 2012.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Anna Eshoo, Ranking Member,
Subcommittee on Communications and Technology

Attachment

Attachment

The Honorable Greg Walden

1. The national Broadband plan recognized the urgency of getting more spectrum in the hands of commercial providers. It recommended making 300 additional megahertz available by 2015 and a total of 500 megahertz available by 2020. We have not seen much more spectrum made available to date, especially with spectrum under 3 gigahertz. What should the FCC be doing in the near term to auction more licensed spectrum?

There has been no auction of spectrum during the current administration. The Commission can and should: (1) encourage the Executive Branch to relinquish more federal spectrum, such as the 1755-1780 MHz Band, to be cleared to help put more spectrum into the hands of American consumers; and (2) improve its process for approving secondary market transactions to make it easier for spectrum to flow to its highest and best use.

First, as our colleagues at the National Telecommunications and Information Administration (NTIA) reported in March, various federal government operations are employing spectrum located within the 1755-1850 MHz range that could be made available for commercial uses. As you know, the NTIA report concluded that while it is possible to repurpose all 95 megahertz of the band, various agencies allege it would cost about $18 billion and take over ten years to move current government users off of that spectrum. The underlying message is disappointing primarily because, by all appearances, other Executive Branch agencies did not provide NTIA with the granular data and analyses necessary to support many of the report's assumptions and conclusions. I am hopeful that clarity in the underlying cost assumptions would create greater market certainty as we attempt to attempt to satisfy longer-term commercial spectrum needs.

With respect to secondary market transactions, I have long expressed my strong support for thorough but speedy transaction reviews given that delay and uncertainty surrounding the Commission's current process may have the unintended consequence of chilling investment that could benefit consumers. The lack of a fixed timetable increases the Commission's leverage to extract conditions from the merged entity. Effectively, all too often the parties must pick their poison: either swallow unpalatable conditions or face months of additional review. In the meantime, uncertainty is costly. Being suspended in regulatory limbo strains both the companies and their employees, and provides a government-created, and therefore artificial, competitive advantage for other industry players. Does this construct speed the flow of spectrum to its highest and best use? Or are we at a point where not only is the hope of more federal spectrum coming to market dimming, but the federal government is impeding the flow of already-licensed spectrum to its highest and best use? If these trends continue, today's consumer frustration may quickly turn to outrage while we lose our global lead in wireless. The FCC can and should do better.

2. In May, Chairman Genachowski stated in a speech to the wireless industry that "sharing allows us to auction spectrum that otherwise would never get to the commercial market." While spectrum sharing is something we should continue to examine, it should be seen as a fallback only once we've exhausted options to auction licenses for cleared spectrum. Do you agree?

Yes. Spectrum sharing should only be a fallback once we have fully exhausted options for auctioning exclusive licenses for cleared spectrum.

3. How do you think the FCC should approach implementing the incentive auction provisions of the Middle Class Tax Relief and Job Creation Act? What should the timing be?

The law mandates that the Commission accomplish a number of important goals. I have advocated that success will come more easily if we proceed with an eye toward regulatory humility, simplicity and restraint. In the past, regulatory efforts to over-engineer spectrum auctions have caused harmful, unintended consequences. I remain hopeful that our new rules will be *minimal*, intuitive and "future proof" to pave the way for uses that we cannot imagine today as technology and consumer choices evolve. Additionally, we should fashion together an auction in as timely a fashion as possible without sacrificing quality.

4. The Commission has tried to varying degrees of success to place conditions on spectrum licenses. What impact have license conditions had in past auctions?

As noted earlier, in the past, regulatory efforts to over-engineer spectrum auctions through conditions have caused harmful consequences. We need only look back to the rules for the 700 MHz auction in 2007 for examples. First, the prescriptive conditions placed on the "D Block," which I supported at the time, resulted in no winning bidder for that spectrum. It is still fallow today. Second, the "open access" condition placed on the C Block spectrum, which I vigorously opposed, may be a reason for the complaints regarding a lack of interoperability in the lower portion of the band.

5. The recent spectrum legislation contains provisions prohibiting the FCC from barring parties from participating in the auctions. Will you commit to allowing everyone to participate?

Yes.

6. One of the bands that the FCC is required to auction under the Middle Class Tax Relief and Job Creation Act is 2155-2180 MHz. It seems that everyone agrees that the ideal way to auction that spectrum is paired with 1755-1780 MHz. What should the FCC be doing to ensure that this pairing can be made?

As noted earlier, I hope that we will encourage the Executive Branch to relinquish the 1755-1780 MHz Band to be cleared to help put more spectrum into the hands of American consumers through auctions granting exclusive use licenses. At a minimum, obtaining clarity in the underlying cost assumptions set forth in the March 2012 NTIA report would create greater market certainty as we attempt to attempt to satisfy longer-term commercial spectrum needs.

7. The Commission currently has a docket open on whether it should mandate specific filter technology in 700 MHz wireless devices. Could you point to the section of the Communications Act that gives the FCC authority to regulate the manufacture of wireless devices?

I can find no such authority in the statute.

8. The FCC has issued a report claiming it eliminated some 200 rules. How many of the rules were regulations that were still in force that the FCC used its discretion to eliminate? By contrast, how many had already been invalidated by a court? How many had already expired? How many were simply cross-references to other rules? If the FCC is really going to meet President Obama's challenge to deregulate, doesn't it need to review all its rules with a presumption that the rule is unnecessary unless the Commission finds compelling evidence to the contrary? Would closing the Title II proceeding be a good start?

I agree with your assessment that some of the eliminated rules listed in this report may not have been substantive rule changes because they either had already been invalidated by a court, may have expired or

were merely cross-references to other rules. Nevertheless, the report was generated by Chairman Genachowski and, as such, I will defer to him regarding how his office categorized these rules and how they formulated the report. As for deregulation, I agree that the FCC should generally review all of its rules with a presumption that the rules are unnecessary unless compelling evidence to the contrary is submitted into the FCC's record. And, I certainly agree that closing the potentially harmful Title II proceeding would be a great way to start to a serious deregulatory effort at the Commission.

9. We recently had a hearing on the video marketplace. FCC rules need to reflect the current state of competition as well as the availability of newer video distribution services, such as those using wireless or the Internet. Do you agree that the commission must consider these developments and revisit all its rules, including the current media ownership rules, and that the time has come to relax them in light of all the competition?

I agree that our rules need to reflect the current media marketplace. I am concerned that, overall, the Commission has been slow in integrating online and mobile technologies into our evaluation of the competitive landscape. The Commission should modernize its rules to reflect economic realities and the development of new media platforms – such as the Internet and mobile devices – that have revolutionized the video programming market.

As I am sure you are aware, the Internet has been the must "disruptive" technology in history – it has changed how we watch video, altered the advertising structure relied upon by so much of the media industry, led to cord-cutting and cord-shaving, allowed Americans to select individual programs to watch whenever and wherever they choose, enhanced competition, and so on. Despite this new market landscape, many of the Commission's old rules have remained relatively unchanged.

An example of such regulatory stagnation is the media ownership proceeding. I concurred to the majority of the December 2011 notice of proposed rulemaking seeking comment on these rules, because I am concerned that the Commission appears to be prepared to accept a regulatory *status quo*. For instance, the Commission has proposed an anemic relaxation of the newspaper-broadcast cross-ownership rule for the largest markets and seeks comment on eliminating restrictions on newspaper/radio combinations, but these proposals do not go nearly far enough.

In today's marketplace, broadcast stations and daily newspapers are grappling with falling audience and circulation numbers, diminishing advertising revenues, and staff reductions, as online sources gain in popularity. In fact, updating our regulations may be meaningless because traditional media owners now would prefer to spend their time and resources on new, unregulated online outlets rather than acquire any more of the heavily regulated ones. We should be realistic and pragmatic, instead of pursuing an overly-cautious, wait-and-see approach regarding the further development of new media platforms, even though they have already revolutionized the market. Further, this would be consistent with our statutory obligation under section 202(h) to eliminate unnecessary mandates and bring our rules into line with the modern competitive marketplace.

10. The Commission has issued an FNPRM asking whether it should extend its anti-cramming rules to wireless. The FCC's complaint data shows that the last time there were any wireless complaints about cramming was in 2002. If that's the case, what basis is there for regulatory intervention?

I agree. When the FCC approved the cramming order and further notice, I made it clear that I was pleased that the order took a narrow approach by focusing only on disclosure requirements for wireline carriers, and did not expand the requirements to wireless and VOIP providers which have not experienced as high a consumer complaint rate compared to the wireline industry.

The Honorable Lee Terry

1. I recognize the need to limit the USF's burden on consumers and businesses while modernizing it for the 21st century and am very interested in your proceeding on contribution reform.

- What is the FCC's timeline for completion of contribution reform?

I have been advocating for the Commission to undertake comprehensive contribution reform for years. Therefore, I was pleased that the FCC finally issued a further notice regarding contribution reform this past spring. But, given that the FCC's agenda is controlled by Chairman Genachowski, I respectfully defer to him on when reform efforts will be completed.

- How should contributions be assessed -- on revenues, the number of connections, by phone numbers, or a hybrid approach?

When the Commission approved the further notice this past spring, I underscored that I have previously supported the concept of broadening the assessments pool to include a phone numbers based system and I highlighted that I would pay particular attention to fact-based arguments for and against a phone numbers based contribution methodology.

- What services and service providers should contribute to the fund?

Under Section 254(d), every telecommunications carrier that provides interstate telecommunications services must contribute into the universal service fund. The further notice has sought comment as to whether other services should also be assessed. As I review the record on this critical topic, I am paying particular attention to both statutory authority analyses and public policy arguments.

- Lastly and most importantly does the FCC currently have the statutory authority to make assessments on anything other than the interstate and international revenues of carriers?

When the further notice was approved last spring, I noted that the current pool of contributors must be expanded, but we must do so only within our statutory authority while keeping in mind the international implications of our actions. The comment period closed this summer and I am still reviewing the record. I do not support expansion of the contribution pool to include information services or connections to them.

- Would legislation in this area be helpful?

Yes.

2. In your lifeline reform order you have eliminated self-certification to eliminate fraud. However I understand that you do not require Eligible Telecommunications Providers (ETCs) to keep customer enrollment forms including their proof of eligibility.

- Based on the practice of some ETCs, doesn't this leave the door wide open for fraudulent sign ups by some ETCs who have not complied with rules in past?

All participating eligible telecommunications carriers (ETCs) are required to maintain proper documents recording their compliance with the FCC's Lifeline program, including a record that confirms that the ETC viewed the proper proof of eligibility. The bureau staff has reported to my office that ETCs have indicated that the enrollment process has slowed down due to the new certification requirements. If, despite implementation of these new requirements, the

Commission uncovers evidence that fraudulent enrollments continue, I would support the imposition of additional requirements.

- Can you please explain the verification process and how it will prevent carriers from signing people up who do not qualify?

Pursuant to the January 31, 2012, Lifeline Order, the FCC adopted new verification rules for enrollment into the program. Under this new system, depending on the state, either a state administrator or the ETC must verify that customers are eligible to participate in the program. At sign up, proof of a customer's income must be shown, evidence that the customer already participates in a qualifying program must be produced or, in some states, a state eligibility database must be checked (where such databases are available). Then, the consumer must fill out a Lifeline certification form. Additionally, the ETCs are required to verify, on an annual basis, that their subscribers continue to be eligible for the program. Regarding the eligibility database, I have stressed that it is imperative that a national eligibility database must be established as soon as possible to effectively and efficiently ensure that fraudulent sign-ups do not occur.

- Who is responsible for verifying that customers qualify?

The verification process varies from state to state. In some states, ETCs are required to verify the eligibility of the customers, while other states handle the verification process directly within their state government.

The Honorable Marsha Blackburn

1. Please give a yes or no answer to the following question: given the fact that different communications platforms are now offering the same suite of voice, video, and data services, does the existing monopoly-era statutory framework still make sense in today's IP marketplace?

No.

2. Chairman Genachowski's national broadband plan raises the importance of reallocating hundreds of megahertz of additional spectrum for commercial mobile use. According to the evidence I've seen, we are not on track to reach his 5- and 10-year goal. The White House, the FCC, and NTIA have been talking about freeing up federal bands for as long as I can remember and we've seen nothing but talk. Now they're shifting to Plan B to "share" federal spectrum. Isn't it about time that the federal government stop rationing spectrum and relinquish it for more efficient uses without conditions and complex rules? Do you believe the discussions about "sharing" spectrum between the federal government and commercial users' puts us in a weaker position than if we were to grant exclusive licenses that would move us closer to Chairman Genachowski's goal of deploying 300 MHz by 2015? Please share any other general thoughts you have on spectrum sharing?

Yes, I share your view. Given that "spectrum sharing" can have different meanings depending on one's perspective, policymakers should be careful when using the term. Furthermore, spectrum sharing should not be seen as a substitute for auctioning more spectrum, especially federal spectrum. Spectrum sharing is not a panacea. For instance, when referring to the private sector sharing spectrum with federal users, many questions abound, such as: Are federal users given priority of use over private sector users? How would shared use of federal spectrum be determined? Through a unique technological protocol? By time of day? Geographically? On an *ad hoc* basis? Should consumers expect their use of shared federal spectrum to be interrupted with or without notice? What would the value proposition be for various spectrum sharing scenarios? Before moving forward on any spectrum sharing initiatives, these questions, and many more, will need to be answered thoroughly.

3. This past February Chairman Genachowski and I were speaking about outdated rules and regulations and he said then that "other countries around the world looked at our reforms in the US." Given the fact that some countries want to control how the Internet works through a global regulatory scheme, do you think the FCC's Open Internet Order and the Title II docket send the wrong signal to our adversaries overseas who want to impose this ITU regulatory structure on the Internet?

Yes. When discussing ITU matters with international regulators and diplomats, I am almost always asked about the apparent inconsistency in the American position in light of the "Open Internet" and Title II proceedings.

Will proponents of global Internet control use these US attempts to regulate the Internet as an excuse to push international regulations?

Yes. I am concerned that proponents of Internet regulation are using the Open Internet Order and the open Title II proceeding as excuses to push international regulation of the Internet.

What can we do to fix this perception in the international community before the December WCIT meeting in Dubai?

Overturning the Open Internet Order and closing the Title II docket would be great ways to start fixing this perception in the international community, but I doubt either will happen before the December conference in Dubai.

The Honorable Brian Bilbray

1. It seems to me that the Commission is supportive of utilizing unique approaches such as channel sharing to both maximize use of the spectrum and to promote an efficient repacking process. I understand the Commission's preference is that the individual stations voluntarily share, but there will be instances where a competitor will not want to share with another competitor. Likewise, an existing channel holder may demand a rent that is above market and too high, in order to keep the entire channel.

Will you support mandatory channel sharing for LPTV, as a way of minimizing or eliminating the loss of LPTV station licenses, in cases where voluntary efforts are unsuccessful?

On September 28th, the Commission adopted a notice of proposed rulemaking initiating the implementation of the incentive auction provisions of the Middle Class Tax Relief and Job Creation Act. As you are aware, LPTV is a secondary service and such stations are displaced if they cause unacceptable interference to a full power station or other primary spectrum users. Further, the spectrum legislation does not include or protect LPTV stations.

In the notice, the Commission recognized that LPTV stations will be affected by the incentive auction and repacking process and requested input on various issues relating to the LPTV service. For instance, we seek input on voluntary channel sharing for LPTV stations and also invite comment on any measures to help ensure that this important programming continues to reach viewers. Additionally, as I recognized in my statement to the notice, further notice and comment may be necessary due to the complexity of the task at hand.

I appreciate the benefits that low power TV stations provide to their communities and look forward to engaging with stakeholders as we determine the best means to preserve LPTV opportunities. As we implement the spectrum legislation, I will keep your concerns about LPTV stations in mind and be happy to continue to work with you and your staff.

The Honorable Steve Scalise

1. Has the Commission acted with the sense of expediency required when addressing the looming "spectrum crunch" and do you think secondary markets or spectrum transactions among private companies could help stave off the inevitable shortage that's on the horizon? I'm not sure a single megahertz of spectrum has been brought to market since the issuance of the National Broadband Plan in 2010. Please correct me if I'm mistaken.

You are not mistaken. There has been no auction of spectrum during the current administration. With respect to secondary market transactions, I have long expressed my strong support for thorough but speedy transaction reviews given that delay and uncertainty surrounding the Commission's current process may have the unintended consequence of chilling investment that could benefit consumers. The lack of a fixed timetable increases the Commission's leverage to extract conditions from the merged entity. Effectively, all too often the parties must pick their poison: either swallow unpalatable conditions or face months of additional review. In the meantime, uncertainty is costly. Being suspended in regulatory limbo strains both the companies and their employees, and provides a government-created, and therefore artificial, competitive advantage for other industry players. Does this construct speed the flow of spectrum to its highest and best use? Or are we at a point where not only is the hope of more federal spectrum coming to market dimming, but the federal government is impeding the flow of already-licensed spectrum to its highest and best use? If these trends continue, today's consumer frustration may quickly turn to outrage while we lose our global lead in wireless. The FCC can and should do better.

The Honorable Bob Latta

1. As the author and strong supporter of legislation to authorize voluntary incentive auctions, I would like an update on where the Commission stands with its efforts. With enactment of the incentive auction legislation, we have given the Commission significant new responsibilities as you implement the law. With the understanding that we're at the beginning of the process rather than the end, how would each of you define "success" in the incentive auction process?

As the FCC moves forward to implement the new incentive auction law, I will work with my colleagues to ensure that our auction rules are minimal and "future proof," allowing for flexible uses in the years to come as technology and markets change. I am a veteran of the two largest auctions in FCC history, and, while I know my colleagues and I will do our best, the reality is that this process will be complicated, full of surprises and rife with uncertainty. Many variables will affect the final results.

For instance, how many broadcasters will volunteer to participate in an incentive auction? At what prices? Where will they be located? In the most congested markets or in rural areas where spectrum is more abundant anyway? Will the Commission receive enough volunteers in the larger markets where the need for additional spectrum is most acute? How will the Commission move those broadcasters that do not participate in an incentive auction? How will changed broadcast channels effect our commitments to our neighbors, Canada and Mexico?

In order to create greater certainty and thus a higher participation level, I hope that we will implement the law with humility, simplicity and restraint. Congress clearly expressed its intent that no entities should be excluded from participating in these auctions. Keeping in mind that overly-complex rules governing the C and D Blocks of the 700 MHz auction produced several harmful unintended consequences, as we go forward, we should learn from the past and keep new auction rules minimal. Otherwise, the main goals of the new law, putting more bandwidth into the hands of consumers as quickly as possible and maximizing revenue at auction, may not be attained.

2. Do you think it's necessary to extend these rules, or is this a "solution in search of problem"?

When the Commission issued the cramming order and further notice, I supported the fact that the order took a narrow approach by focusing only on disclosure requirements for wireline carriers, and did not expand the requirements to wireless and VOIP providers. Given that wireless and VOIP providers have had lower consumer complaint rates compared to the wireline industry, extending the cramming rules to wireless and VOIP providers could very well be a solution in search of a problem.

The Honorable Anna Eshoo

1. Last month, by allowing AT&T's petition for regulatory relief in the San Francisco market to take effect, the FCC effectively enabled the company to raise the rates they charge to businesses for high-capacity broadband services known as special access. What can I tell my constituents who are concerned that this decision will lead to them paying higher prices?

As the FCC stated before the to the U.S. Court of Appeals for the District of Columbia Circuit in October of 2011, several remedies currently exist if someone objects to rates or terms in a newly filed special access tariff. For instance, a petitioner may seek a suspension of a tariff and request a hearing. *See* Section 204 of the Act. Additionally, a petitioner can file suit in federal court arguing that the special access terms and conditions are not just and reasonable or file a complaint before the Commission. *See* Sections, 206, 207 and 208.

The Honorable Henry Waxman

1. Special access services can be delivered via various technologies, including fiber optic cable and copper wire. Do you believe the Communications Act treats special access services in a technologically-neutral manner? Yes.

Should the Commission regulate the special access market based on the presence or absence of competition or based on the technology involved?

Before deciding what, if anything, the Commission should change regarding its special access rules, I made it clear that the Commission should first seek detailed and up-to-date special access market data. And to adequately do so, I have argued that the Commission should obtain granular data from *all* players in the special access market, *no matter their technology or market position*, on a building-by-building and cell-site-by-cell-site basis.

The Honorable Donna Christensen

1. For all of the Commissioners, while it's Congress's job to write the laws, do you think that the Communications Act is outdated? More specifically, do the Communications Act's requirements make sense in an IP world?

Generally speaking, I subscribe to the belief that Congress tells the Commission what to do, not the other way around. Nonetheless, I do agree, with the overall assessment that our current statutory framework, has created market distorting legal stovepipes and may not make sense in an IP world. This structure has often forced regulators and industry to make decisions based on whether a business model or particular technology fits into Titles I, II, III, VI or none, even though the services delivered are often indistinguishable to the consumer.

The Honorable Diana DeGette

1. With respect to the broadcast band repacking and auctions, should the FCC examine the future of public media and the position of public broadcasting in each market as this process moves forward? Before too long, should the FCC hold a roundtable or workshop with broadcasters, educators, public interest advocates, information providers, and other stakeholders to seek input on how to maximize and preserve noncommercial TV service and the value of noncommercial TV spectrum?

On September 28th, the Commission took the first step in implementing Congress's incentive auction mandate by releasing a notice of proposed rulemaking. In this notice, the FCC seeks specific comment on matters affecting noncommercial TV stations. Further, the Commission requested input on what kind of Commission outreach is needed to those communities affected by the incentive auction and repacking process. It is my understanding that the Commission plans on holding a series of workshops on various issues that arise in this proceeding. In fact, the Commission has scheduled the first workshop for October 26th. I think that a workshop or other types of outreach specifically tailored to examining the issues and concerns of noncommercial TV stations would be beneficial to both the Commission and noncommercial TV community.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

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August 14, 2012

The Honorable Mignon Clyburn
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Commissioner Clyburn:

Thank you for appearing at the Subcommittee on Communications and Technology hearing entitled "Oversight of the Federal Communications Commission" on July 10, 2012.

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions to witnesses, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please e-mail your responses, in Word or PDF format, to Charlotte.Savercool@mail.house.gov by the close of business on Tuesday, August 28, 2012.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Anna Eshoo, Ranking Member,
Subcommittee on Communications and Technology

Attachment

Subcommittee on Communications and Technology
"Oversight of the Federal Communications Commission"
July 10, 2012 Additional Questions for the Record

The Honorable Greg Walden

1. **The National Broadband Plan recognized the urgency of getting more spectrum in the hands of commercial providers. It recommended making 300 additional megahertz available by 2015 and a total of 500 megahertz available by 2020. We have not seen much more spectrum made available to date, especially with spectrum under 3 gigahertz. What should the FCC be doing in the near term to auction more licensed spectrum?**

   The Commission should move carefully, but expeditiously, to implement the voluntary incentive spectrum authority that the Congress gave the Commission, in February 2012, when it enacted the spectrum provisions of the Middle Class Tax Relief and Job Creation Act. Less than two months after its enactment, Chairman Genachowski circulated an Order that would implement the channel sharing provisions in the Act. We adopted that Order on April 27. The FCC staff is on target to circulate a Notice of Proposed Rulemaking that would seek comment on rules necessary to implement voluntary incentive auctions. The FCC can also continue its work with NTIA to see if mobile wireless spectrum can be repurposed from federal to commercial use.

2. **In May, Chairman Genachowski stated in a speech to the wireless industry that "sharing allows us to auction spectrum that otherwise would never get to the commercial market." While spectrum sharing is something we should continue to examine, it should be seen as a fallback only once we've exhausted options to auction licenses for cleared spectrum. Do you agree?**

   I believe the Nation needs a multi-faceted approach to resolving the spectrum crunch problem. Yes, we should continue to find spectrum that can be repurposed for commercial mobile use and allocated through auctions. But, as we have learned, that process can take a long time. Therefore, we should also be looking for ways to promote more efficient use of both federal and commercial spectrum. Voluntary incentive auctions promote more efficient use of commercial spectrum. But we should also try to take advantage of the benefits that dynamic spectrum use technologies can offer. We should also promote the use of unlicensed spectrum, such as Wi-Fi, to assist commercial wireless carriers deal with demands for data service on their networks. We can also encourage spectrum swaps if it is found to serve the public interest.

3. How do you think the FCC should approach implementing the incentive auction provisions of the Middle Class Tax Relief and Job Creation Act? What should the timing be?

The Commission should move carefully, but expeditiously, to implement the voluntary incentive spectrum authority that the Congress gave it in February 2012, when it enacted the spectrum provisions of the Middle Class Tax Relief and Job Creation Act. Less than two months after its enactment, Chairman Genachowski circulated an Order that would implement the channel sharing provisions in the Act and we adopted that Order on April 27. The FCC staff is on target to circulate a Notice of Proposed Rulemaking that would seek comment on other rules to necessary implement voluntary incentive auctions.

4. The recent spectrum legislation contains provisions prohibiting the FCC from barring parties from participating in the auctions. Will you commit to allowing everyone to participate?

I will continue to promote policies that faithfully implement the language and spirit of the Middle Class Tax Relief and Job Creation Act of 2012.

5. One of the bands that the FCC is required to auction under the Middle Class Tax Relief and Job Creation Act is 2155-2180 MHz. It seems that everyone agrees that the ideal way to auction that spectrum is paired with 1755-1780 MHz. What should the FCC be doing to ensure that this pairing can be made?

I believe the FCC would have to work with NTIA to see if the 1755-1780 MHz band could be repurposed for commercial mobile wireless service. The FCC would then have to initiate a rulemaking proceeding to inform the public that it is proposing such a pairing and seek comment on technical and other service rules that would be necessary to allocate this pairing.

6. The Commission currently has a docket open on whether it should mandate specific filter technology in 700 MHz wireless devices. Could you point to the section of the Communications Act that gives the FCC authority to regulate the manufacture of wireless devices?

In March 2012, the FCC adopted a Notice of Proposed Rulemaking to address the lack of interoperability in the lower 700 MHz band to see what steps, if any, the FCC should take to insure that the deployment of 700 MHz licenses can promote full coverage in all markets and compatibility on a nationwide basis. This is the only commercial mobile wireless spectrum band, which the FCC has allocated, that lacks

interoperability. Several provisions in Title III of the Communications Act give the Commission statutory authority to adopt an interoperability rule should it decide such a rule would serve the public interest. Sections 301 and 307 give the Commission the authority and obligation to condition our licensing actions on compliance with requirements that we deem consistent with the public interest, convenience, and necessity, including operational requirements, if the condition or obligations will further the goals of the Communications Act without contradicting any basic parameters of the agency's authority. Section 302(a) authorizes the Commission to promulgate regulations designed to address radio frequency (RF) interference, including the regulation of devices that are capable of emitting RF energy. Section 303(e) and (f) empowers the Commission to regulate licensees and the equipment and apparatus they use. Section 303(r) states that if the "public convenience, interest, or necessity requires," the Commission shall...prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act." Section 309(j) requires the Commission to design and conduct competitive bidding systems for issuance of licenses to promote the purposes of Section 1 of the Act and specified statutory objectives including the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas.

7. We recently had a hearing on the video marketplace. FCC rules need to reflect the current state of competition as well as the availability of newer video distribution services, such as those using wireless or the Internet. Do you agree that the commission must consider these developments and revisit all its rules, including the current media ownership rules, and that the time has come to relax them in light of all the competition?

I continue to believe that the Commission should promote competition in all communications industries including traditional media services. In Section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012, Congress mandated that in adopting rules to implement voluntary incentive auction authority, the Commission adopt rules that would preserve the integrity of the broadcast industry. The FCC's Report on the Information Needs of Communities made the point that most people still receive their local news from traditional media services such as broadcast television and radio.

The recent hearings on the 1992 Act have been extremely worthwhile. While some industry stakeholders have called for an update, and I think it is important for us to begin the groundwork for possible adjustments of our current framework.

That said, I support the preservation of the Commission's authority to ensure that the communications marketplace is robustly competitive and properly serves consumers. Our public interest mandate is an important facet of that objective.

The Honorable Lee Terry

1. I recognize the need to limit the USF's burden on consumers and businesses while modernizing it for the 21st century and am very interested in your proceeding on contribution reform.

- What is the FCC's timeline for completion of contribution reform?

I defer to the Chairman's answer because he sets the Commission's agenda, including the timeframe in which an Order reforming the USF contribution system would be circulated for the Commission to consider.

- How should contributions be assessed ~ on revenues, the number of connections, by phone numbers, or a hybrid approach?

The comment period recently closed. I am still reviewing the record and considering the issues discussed therein. I have not endorsed any particular reform methodology.

- What services and service providers should contribute to the fund?

Please see the answer to question two.

- Lastly and most importantly does the FCC currently have the statutory authority to make assessments on anything other than the interstate and international revenues of carriers?

Section 254(d) of the Communications Act does not specify the specific contribution methodology that the Commission must use, and it does not mandate that contributions be based on revenues. It states: "Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. The Commission may exempt a carrier or class of carriers from this requirement if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be de minimis. Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires." Whatever reforms we undertake for contributions will need to comply with Section 254(d). The various proposals on the record—revenues,

connections/numbers, a combination of those two, could meet these statutory requirements.

- Would legislation in this area be helpful?

If Congress wants to give us more specific direction on contribution reform, I would faithfully implement that statutory direction.

2. In your Lifeline Reform Order you have eliminated self-certification to eliminate fraud. However I understand that you do not require Eligible Telecommunications Providers (ETCs) to keep customer enrollment forms including their proof of eligibility.

- Based on the practice of some ETCs, doesn't this leave the door wide open for fraudulent sign ups by some ETCs who have not complied with rules in past?

All ETCs must maintain records to document compliance with all Lifeline rules, including that they saw proper proof of eligibility for subscribers.

- Can you please explain the verification process and how it will prevent carriers from signing people up who do not qualify?

In the Lifeline Reform Order, the Commission adopted new rules for verifying the eligibility of subscribers. When enrolling an individual in Lifeline, either the eligible telecommunications carrier or the state Lifeline administrator must verify the consumer's eligibility to participate in the Lifeline program either by reviewing proof of income or participation in a qualifying program or by querying a state eligibility database (where available). The Lifeline Reform Order requires that consumers show proof of program or income eligibility to the eligible telecommunication carrier's representative and the representative reviews the proof for compliance with Commission rules. Once the consumer's eligibility has been verified, the consumer then fills out a Lifeline Eligibility Certification Form. Finally, all carriers must annually verify the continued eligibility of all of their subscribers. This process involves receiving a completed certification from the subscriber that they remain eligible for the program and are not receiving more than one Lifeline service for their household.

- Who is responsible for verifying that customers qualify?

Eligibility determinations vary by state. In some states, the eligible telecommunications carrier (ETC) is responsible for verifying that the customer

qualifies for Lifeline. In other states, the state or state social services agency, or even a state administrator, is responsible for verifying eligibility.

The Honorable Marsha Blackburn

1. Please give a yes or no answer to the following question: given the fact that different communications platforms are now offering the same suite of voice, video, and data services, does the existing monopoly-era statutory framework still make sense in today's IP marketplace?

While I take issue with several premises in this question, my answer is yes. There are many statutory provisions in the Communications Act that still make sense. Nonetheless, I do believe that the Act could use an update given the technological advances made since 1996, including the incredible importance of broadband for the delivery of many services to consumers and the significant impact broadband has had on the U.S. economy.

The Honorable Brian Bilbray

1. It seems to me that the Commission is supportive of utilizing unique approaches such as channel sharing to both maximize use of the spectrum and to promote an efficient repacking process. I understand the Commission's preference is that the individual stations voluntarily share, but there will be instances where a competitor will not want to share with another competitor. Likewise, an existing channel holder may demand a rent that is above market and too high, in order to keep the entire channel.

Will you support mandatory channel sharing for LPTV, as a way of minimizing or eliminating the loss of LPTV station licenses, in cases where voluntary efforts are unsuccessful?

I have heard concerns from LPTV broadcasters, and intend to have further conversations with stakeholders and the FCC's Media Bureau to ensure that LPTV stations are protected to the greatest extent possible as we move toward greater spectrum efficiency.

I am fully aware of the great value that LPTV gives to their communities of viewers, and my office has had had multiple interactions with LPTV broadcasters who have given us windows into the content they produce and how their audiences depend on it. I intend to continue listening to the concerns of LPTV station owners and broadcasters to better shape our repacking plans in order to protect these unique content providers.

Subcommittee on Communications and Technology
"Oversight of the Federal Communications Commission"
July 10, 2012 Additional Questions for the Record

The Honorable Bob Latta

1. As the author and strong supporter of legislation to authorize voluntary incentive auctions, I would like an update on where the Commission stands with its efforts. With enactment of the incentive auction legislation, we have given the Commission significant new responsibilities as you implement the law. With the understanding that we're at the beginning of the process rather than the end, how would each of you define "success" in the incentive auction process?

First, the FCC should comply with the language and spirit of the voluntary incentive spectrum authority. In addition to providing an appropriate process for broadcasters to voluntarily relinquish spectrum, the Act directs us to preserve the integrity of broadcast television, and protect unlicensed services.

The Honorable Henry Waxman

1. Special access services can be delivered via various technologies, including fiber optic cable and copper wire. Do you believe the Communications Act treats special access services in a technologically-neutral manner? Should the Commission regulate the special access market based on the presence or absence of competition or based on the technology involved?

As discussed in the Commission's recent Order suspending the Commission's broken pricing flexibility triggers for special access services offered by ILECs, there is significant evidence that competition for special access services has not materialized throughout the areas granted flexibility. Price cap regulation is designed to ensure that rates are just and reasonable for services offered by ILECs, including special access services. Flexibility from that regulation (i.e., deregulation) should only occur where there are disciplinary forces of effective competition so that rates continue to be just and reasonable.

Given the ongoing demand for special access services and the fact that it's consumers who are ultimately paying those higher prices, I fully support the suspension of our pricing flexibility rules and our ongoing review of the prices, terms and conditions for such services. In that review, we are considering all the technologies that may be substitutes for the ILECs' special access services.

The Honorable Donna Christensen

1. **For all of the Commissioners, while it's Congress's job to write the laws, do you think that the Communications Act is outdated? More specifically, do the Communications Act's requirements make sense in an IP world?**

There are many statutory provisions in the Communications Act that still make sense in many respects. Nonetheless, I do believe that the Act could use an update given the technological advances made since 1996, including the incredible importance of broadband for the delivery of many services to consumers and the significant impact broadband has had on the U.S. economy.

The Honorable Diana DeGette

1. **With respect to the broadcast band repacking and auctions, should the FCC examine the future of public media and the position of public broadcasting in each market as this process moves forward? Before too long, should the FCC hold a roundtable or workshop with broadcasters, educators, public interest advocates, information providers, and other stakeholders to seek input on how to maximize and preserve noncommercial TV service and the value of noncommercial TV spectrum?**

I often include public broadcasting stations in my list of the top networks because of my great affinity for the content that they offer. Their programming for children and adults alike inspires, educates, and enriches viewers all across America.

The FCC's Consumer Advisory Committee has studied issues relating to the funding of the Corporation for Public Broadcasting, and I look forward to more findings. I absolutely agree that preserving noncommercial TV is of vital importance, and any attention and energy that can be directed to that aim would be useful.

The Honorable Jessica Rosenworcel
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Greg Walden

1. The national Broadband plan recognized the urgency of getting more spectrum in the hands of commercial providers. It recommended making 300 additional megahertz available by 2015 and a total of 500 megahertz available by 2020. We have not seen much more spectrum made available to date, especially with spectrum under 3 gigahertz. What should the FCC be doing in the near term to auction more licensed spectrum?

The work done so far to identify and reallocate spectrum has been a good start, but additional effort is required. The evidence is all around us. It is more than just the proliferation of smart phones and tablet computers. Within the next decade, machine to machine devices may number as high as 50 billion.

This is an extraordinary challenge. To meet it will require effort on multiple fronts—all at the same time. With passage of the Middle Class Tax Relief and Job Creation Act, the Commission has incentive auction authority, which will permit it to encourage existing spectrum licensees to return underutilized airwaves in exchange for a portion of the auction proceeds. This will facilitate putting more of our airwaves to use for new mobile broadband services. The agency is expected to begin a rulemaking for incentive auctions next month. In addition, pursuant to the Middle Class Tax Relief and Job Creation Act, the Commission will need to prepare for traditional spectrum auctions involving, among others, the 1915-1920 MHz, 1995-2000 MHz, and the 2155-2180 MHz bands, as well as 15 megahertz in the 1675-1710 MHz band, and 15 contiguous megahertz to be identified by the Commission. I have repeatedly called for the Commission to establish a timeline for its upcoming auctions, in order to provide commercial wireless interests with adequate notice to participate and adequate time for capital formation.

I also believe we will need to consider new ways of sharing federal spectrum with commercial users where doing so provides protection for critical federal services that make use of our airwaves. To this end, I am encouraged by government and industry efforts to develop opportunities for sharing of federal spectrum with commercial licensees in the 1755-1780 MHz band. Furthermore, I am intrigued by the recent report on spectrum sharing from the President's Council of Advisors on Science and Technology. While not all the ideas in this report have been met with enthusiasm from commercial licensees, the concept of expanding sharing across all federal spectrum merits further consideration. In particular, I believe that the recommendation to create expanded geolocation databases to facilitate access to spectrum could speed the development of sharing.

In addition, I believe that the information in these databases could help foster additional investment in cognitive and sensing technologies that over time would increase the viability of sharing, provide greater protection for existing federal users, and promote more efficient use of

our airwaves. The Commission also should explore what steps it can take to facilitate the deployment of small cells. By making more efficient use of existing frequencies, small cells can help cover geographies that larger towers may not adequately serve.

Finally, we must think creatively. While past efforts to reclaim spectrum from federal users have involved the stick, I think going forward we should explore the carrot. Today, the Commercial Spectrum Enhancement Act provides funding to federal users for relocation when their airwaves are reallocated for commercial use. It also provides upfront funding for planning. What is missing is a series of clear incentives. To this end, I believe we should explore ways to financially reward federal authorities for efficient use of their spectrum resource. In time, this may free up new airwaves for commercial license and lead to additional spectrum auctions. As a related matter, I am intrigued by the recommendation of the President's Council of Advisors on Science and Technology regarding development of a synthetic currency for federal spectrum use. This kind of accounting system might provide a clearer picture of existing federal demands on our airwaves. Moreover, it could be used for the basis of developing a system that rewards federal agencies when they return underutilized spectrum, perhaps through an increase in their budget.

2. In May, Chairman Genachowski stated in a speech to the wireless industry that "sharing allows us to auction spectrum that otherwise would never get to the commercial market." While spectrum sharing is something we should continue to examine, it should be seen as a fallback only once we've exhausted options to auction licenses for cleared spectrum. Do you agree?

The demand for our airwaves is going up, while the supply of unencumbered spectrum is going down. As a result, I think we need to simultaneously explore opportunities for fully cleared spectrum and spectrum sharing. While I understand the preference for the former—and efforts such as this Committee's bipartisan Federal Spectrum Working Group are a positive step in this direction—I believe the latter also requires our immediate attention.

Consequently, I support efforts to promote sharing of federal spectrum with commercial users where doing so provides protection for critical federal services that make use of our airwaves. To this end, I am encouraged by government and industry efforts to develop opportunities for sharing of federal spectrum with commercial licensees in the 1755-1780 MHz band. In time, testing in this band may help us better understand sharing and it eventually could become a model for additional sharing opportunities. Furthermore, I am intrigued by the recent report on spectrum sharing from the President's Council of Advisors on Science and Technology. In particular, I believe that the recommendation to create expanded geolocation databases to facilitate access to spectrum could speed the development of sharing. The information in these databases could provide a framework that would foster additional investment in cognitive and sensing technologies that over time would increase the viability of sharing, provide greater protection for existing federal users, and promote more efficient use of our airwaves.

3. How do you think the FCC should approach implementing the incentive auction provisions of the Middle Class Tax Relief and Job Creation Act? What should the timing be?

Section 6401(b) of the Middle Class Tax Relief and Job Creation Act states in part that "not later than 3 years after the date of the enactment of this Act, the Commission shall . . . through a system of competitive bidding . . . grant new initial licenses for the use of such spectrum, subject to flexible-use service rules." I will do my part to faithfully follow this directive in the statute. I also have repeatedly called for the Commission to establish a timeline for upcoming spectrum auctions.

4. The recent spectrum legislation contains provisions prohibiting the FCC from barring parties from participating in the auctions. Will you commit to allowing everyone to participate?

Section 6404 of the Middle Class Tax Relief and Job Creation Act states that "[n]otwithstanding any other provision of law, the Commission may not prevent a person from participating in a system of competitive bidding" if such person "complies with all the auction procedures and other requirements to protect the auction process established by the Commission" and either "meets the technical, financial, character, and citizenship qualifications that the Commission may require" under existing requirements or "would meet such license qualifications by means approved by the Commission prior to the grant of the license" and meets other Commission rules "of general applicability." I commit to faithfully following the law.

5. One of the bands that the FCC is required to auction under the Middle Class Tax Relief and Job Creation Act is 2155-2180 MHz. It seems that everyone agrees that the ideal way to auction that spectrum is paired with 1755-1780 MHz. What should the FCC be doing to ensure that this pairing can be made?

The Commission, along with the National Telecommunications and Information Administration, is working to foster collaboration between federal agencies and industry in order to find ways to overcome challenges to using the 1755-1780 MHz band for mobile broadband. To facilitate these efforts, on August 14, 2012, the Commission's Office of Engineering and Technology granted T-Mobile, on behalf of the wireless industry, special temporary authority to begin testing in the 1755-1780 MHz band. The authority will allow T-Mobile to get consent from federal agencies to conduct tests in this band anywhere in the country. This testing should help encourage a better understanding of how the band is currently used and its suitability for pairing with the 2155-2180 MHz band.

While this testing proceeds in the near term, over the long term a more robust discussion is necessary to identify ways to facilitate the relocation of federal users when their airwaves are

reallocated for commercial use. I believe that a series of clear incentives needs to be put in place to reward federal authorities when they make efficient use of their spectrum. By financially rewarding efficiency through budget increases or access to revenue in the form of a new spectrum efficiency trust fund, we can use market incentives to free up more of our airwaves for commercial use.

6. The Commission currently has a docket open on whether it should mandate specific filter technology in 700 MHz wireless devices. Could you point to the section of the Communications Act that gives the FCC authority to regulate the manufacture of wireless devices?

On March 21, 2012, the Commission adopted a Notice of Proposed Rulemaking to evaluate whether or not interoperability in the lower 700 MHz band will cause interference for licensees and to explore next steps. The record developed in response to this proceeding closed on July 16, 2012. While the Commission did ask whether the public interest would be served by requiring a unified band in the lower 700 MHz spectrum band, it did not suggest a specific technology or filter to achieve interoperability. However, I believe that interoperability is an important component of a diverse communications system. So I am pleased that in conjunction with this rulemaking, Commission staff has been actively monitoring the work of the industry standard-setting bodies to address interference-related concerns.

In the rulemaking itself—which was adopted before I took office—the Commission suggested that it has authority to act pursuant to Title III of the Communications Act, which provides broad authority over the use of spectrum. For instance, Section 303(b) provides the Commission with the ability to "prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class." As the agency proceeds, I will carefully consider the Commission's authority.

7. We recently had a hearing on the video marketplace. FCC rules need to reflect the current state of competition as well as the availability of newer video distribution services, such as those using wireless or the Internet. Do you agree that the commission must consider these developments and revisit all its rules, including the current media ownership rules, and that the time has come to relax them in light of all the competition?

Under Title III of the Communications Act, the Commission has duties to ensure that the services it oversees that make use of our scarce spectrum resources do so in the public interest. Historically, with respect to broadcasting, this assessment has included consideration of how these services support localism, competition, and diversity.

While the Commission must unequivocally honor the law and consider its precedent, it also must mind the evolution of the marketplace. To this end, it is important for the agency to recognize that an emerging class of online and wireless services provide new viewing options for the public. While these emerging services may lack the same obligations as traditional broadcasters, in some cases they also do not enjoy the same protections, including, for instance,

must-carry rights.

In sum, this is a complex marketplace, with a mix of legacy obligations and new technologies that provide emerging business opportunities. In approaching this issue, I believe that the agency must be faithful to the Communications Act and, consistent with the law, promote the public interest. In doing so, however, we must continuously assess how the evolution of media markets is changing the way that we listen and watch, and how this in turn impacts localism, competition, and diversity.

The Honorable Lee Terry

1. I recognize the need to limit the USF's burden on consumers and businesses while modernizing it for the 21st century and am very interested in your proceeding on contribution reform.

- What is the FCC's timeline for completion of contribution reform?

The comment cycle on the Commission's April 30, 2012 Further Notice of Proposed Rulemaking on universal service contribution reform closed on August 6, 2012. My staff and I continue to review the record and meet with parties on these issues. While the Chairman of the agency sets the agenda and determines when issues can be considered by the full Commission, I will strive to vote a decision on contribution reform in a timely way, without unnecessary delay.

- How should contributions be assessed -- on revenues, the number of connections, by phone numbers, or a hybrid approach?

I believe contribution reform must, consistent with the Communications Act, support universal service as described in Section 254. It should also make assessment fairer to the consumers who ultimately pay for it through their bills. To this end, as I have noted before, I believe that the existing system should be replaced with a connections-based system. I believe that this would be more stable over time than the revenue-based system we have today. However, the complexities of contribution reform are significant, and while this is my preference, deeper study of the recently refreshed record in this proceeding may lead to a different result. Going forward, I will strive to support an outcome that is fair to consumers and also honors the essential principles of universal service that inform the law.

- What services and service providers should contribute to the fund?

Under a connections-based approach, providers would be assessed based on the number of connections to a communications network provided to customers. Providers would contribute a set amount per connection, regardless of the revenues derived from the connection or the types of services that ride over the connection. At this time, I believe that such an approach could broaden the contribution base, lessen the contribution burden on consumers, and avoid the

service-by-service distinctions that have made the current contributions system overly complex and difficult to administer.

- Lastly and most importantly does the FCC currently have the statutory authority to make assessments on anything other than the interstate and international revenues of carriers?

Section 254(d) of the Communications Act requires that every "telecommunications carrier" that provides "interstate telecommunications services" contribute to universal service on an "equitable and nondiscriminatory basis." However, this section of the statute also gives the Commission permissive authority to extend its requirements to any provider of "interstate telecommunications . . . if the public interest so requires." As a result, within the framework set out by Section 254(d), the Commission would be well within its authority to establish a connections-based contribution mechanism that would assess connections offered by providers of interstate telecommunications regardless of the specific types of services that are provided over an assessable connection.

- Would legislation in this area be helpful?

While I believe that existing law provides the Commission with adequate authority, I would welcome any additional guidance from Congress.

2. In your lifeline reform order you have eliminated self-certification to eliminate fraud. However I understand that you do not require Eligible Telecommunications Providers (ETCs) to keep customer enrollment forms including their proof of eligibility.

- Based on the practice of some ETCs, doesn't this leave the door wide open for fraudulent sign ups by some ETCs who have not complied with rules in past?

Although the Commission approved its February 6, 2012 Lifeline Reform decision before I arrived at the Commission, my understanding is that it does not require Eligible Telecommunications Carriers (ETCs) to retain copies of consumer enrollment documentation, which contain highly sensitive personal information. However, under the new rules all ETCs must maintain records to document compliance with all Lifeline program rules, including that they have reviewed proper proof of eligibility for subscribers. Specifically, ETCs are required to access state or federal social services eligibility databases and document the data that was relied upon to confirm the consumer's initial eligibility for the Lifeline program. Where state or federal databases are not yet available, the new rules require ETCs to review consumer enrollment documentation and to retain accurate records detailing how the consumer demonstrated his or her eligibility to the ETC.

- Can you please explain the verification process and how it will prevent carriers from signing people up who do not qualify?

Under the new verification process established in the February 6, 2012 Lifeline Reform Order, to enroll an individual in the Lifeline program, either the ETC or the state Lifeline administrator must verify the consumer's eligibility to participate in the Lifeline program either by reviewing proof of income or participation in a qualifying social services program or by querying a state eligibility database, where available. Once the consumer's eligibility has been verified, the consumer must fill out and sign a Lifeline Eligibility Certification Form. Finally, all carriers must annually verify the continued eligibility of all of their subscribers. This process involves obtaining a completed certification from each subscriber that he or she remains eligible for the program and is not receiving more than one Lifeline service for his or her household.

- Who is responsible for verifying that customers qualify?

The party responsible for verifying that customers qualify for the Lifeline program varies on a state-by-state basis. In some states, the state social services agency or state administrator makes eligibility determinations. In other states, ETCs are directly responsible for verifying eligibility.

The Honorable Marsha Blackburn

1. Please give a yes or no answer to the following question: given the fact that different communications platforms are now offering the same suite of voice, video, and data services, does the existing monopoly-era statutory framework still make sense in today's IP marketplace?

No. Technology is changing at a blistering pace. Laws and regulations do not always keep up. This is true for the Communications Act and many other legal regimes governing our commercial and civic life that are impacted by digital technology.

With respect to communications, the Commission's most recent report on Internet Access Service by the Industry Analysis and Technology Division of the Wireline Competition Bureau makes clear that not all markets are fully competitive. For instance, for fixed-location broadband connections capable of supporting voice, video, and data services at 6 Mbps, households in 55 percent of census tracts have only one provider available. While 29 percent of households have two providers available, 13 percent have no provider available.

What this makes clear is that we still have some work to do to make sure that all of our markets are fully competitive for broadband services. I believe that competition yields the best results for consumers and businesses—more innovation and higher quality services at lower cost. While the evolution of IP services is critical, I believe any changes must be based on the facts on the ground. At the same time we need to be open to the power of innovation to invert what we think we know. In some cases this will involve the Commission clearing out old rules that no longer work. In others it will require a rethinking of the incentives that inform our policies in order to spur competition, facilitate infrastructure deployment, and create new opportunities for consumers and businesses.

The Honorable Brian Bilbray

1. It seems to me that the Commission is supportive of utilizing unique approaches such as channel sharing to both maximize use of the spectrum and to promote an efficient repacking process. I understand the Commission's preference is that the individual stations voluntarily share, but there will be instances where a competitor will not want to share with another competitor. Likewise, an existing channel holder may demand a rent that is above market and too high, in order to keep the entire channel.

Will you support mandatory channel sharing for LPTV, as a way of minimizing or eliminating the loss of LPTV station licenses, in cases where voluntary efforts are unsuccessful?

Low-power television broadcasters can provide important services to their communities. They often offer truly local programming options that are not available elsewhere on the proverbial television dial. These stations also historically have provided unique programming for niche audiences.

Channel sharing can offer a number of benefits for broadcasters. For instance, by sharing channels broadcasters can retain separate licenses and call signs, but can save costs by using the same facilities. These advantages can be especially important for low-power stations that can allow them to use their resources to provide better programming for their viewers. I believe that channel sharing should be an option for broadcasters, including low-power television broadcasters. At the same time, the Commission ultimately must abide by Section 6403(b)(5) of the Middle Class Tax Relief and Job Creation Act, which expressly states that the law does not alter the existing spectrum usage rights of low-power television licensees.

The Honorable Bob Latta

1. As the author and strong supporter of legislation to authorize voluntary incentive auctions, I would like an update on where the Commission stands with its efforts. With enactment of the incentive auction legislation, we have given the Commission significant new responsibilities as you implement the law. With the understanding that we're at the beginning of the process rather than the end, how would each of you define "success" in the incentive auction process?

The Commission has led the world in auctioning wireless airwaves to put spectrum in the hands of commercial providers. Over the course of nearly two decades, the agency has held roughly 80 auctions, issued approximately 30,000 licenses, and raised more than $50 billion in revenue for the United States Treasury. It now has the opportunity to lead the world by charting a new course with incentive auctions.

On March 21 2012, the Commission established an Incentive Auction Task Force. This group includes individuals with engineering, economic, and legal skills from the agency's Wireless Telecommunications Bureau, Media Bureau, Office of Engineering and Technology, and Office of General Counsel. It also includes the Commission's Chief Economist and Chief Technology Officer. In addition, the agency has retained outside experts in auction theory from Auctionomics, Power Auctions, and MicroTech.

On May 22, 2012, the Commission held a workshop that focused on helping broadcasters understand the technical, operational, and financial implications of channel sharing.

On June 25, 2012, the Commission held a workshop that focused on the television broadcaster relocation fund. The discussion included the design of a program, pursuant to the Middle Class Tax Relief and Job Creation Act, to reimburse broadcasters for relocation costs they may incur as a result of repacking in the aftermath of an incentive auction.

Next month, the Commission is expected to issue a Notice of Proposed Rulemaking on the incentive auction process itself. The record that develops will provide critical information that will inform the agency as it develops its auction rules. For my part, I believe that the Commission should develop a timeline for action for its upcoming auctions in order to facilitate commercial awareness and capital formation necessary to participate.

As noted above, this is a novel form of wireless auction. The United States is the first in the world to put this kind of auction to use to meet the growing demand for wireless spectrum. Accordingly, I think a successful auction is a fair auction with clear rules that puts more spectrum to use for mobile broadband, creates opportunity for unlicensed uses, and raises revenue necessary to support the public safety elements of the Middle Class Tax Relief and Job Creation Act.

The Honorable Henry Waxman

1. Special access services can be delivered via various technologies, including fiber optic cable and copper wire. Do you believe the Communications Act treats special access services in a technologically-neutral manner? Should the Commission regulate the special access market based on the presence or absence of competition or based on the technology involved?

The Communications Act does not make reference to the underlying technology used to provide special access services. Accordingly, I agree that the Commission should consider the special access market based on the presence or absence of competition. In fact, I voted to support the August 22, 2012 Order suspending the Commission's existing special access pricing flexibility triggers because these triggers—intended to be a proxy for competition in a geographic market—proved to both overestimate and underestimate competition. In the meantime, incumbent carriers offering special access services are free to petition for forbearance

from regulation under Section 10 of the Communications Act by demonstrating that a competitive market for special access services exists in a given geographic market.

The Honorable Donna Christensen

1. For all of the Commissioners, while it's Congress's job to write the laws, do you think that the Communications Act is outdated? More specifically, do the Communications Act's requirements make sense in an IP world?

Communications technology changes at a blistering pace. It is a challenge for both legislators and regulators to keep up with the evolution of our markets and the expanding range of services used by consumers and businesses. Inevitably, laws that are more than a decade old can feel dated—and may not reflect the evolution of technology.

The challenge, however, is to consider what comes next. While consensus may exist for the need to update the Communications Act, consensus on how to do this is more elusive. In this environment, I believe that the proper starting point is identifying the essential values in existing law.

For my part, I believe that four key elements should anchor this conversation. First, public safety is critical. Second, universal service helps ensure that everyone in this country, no matter who they are and where they live, has access to communications services that are an important part of opportunity in the digital age. Third, competition delivers innovative services and promotes investment. Fourth, consumer protection is essential.

Rebuilding the law around these principles is not simple, however. In addition, it is not easy to migrate existing stakeholders from the current system to a wholly new framework. Because dislocation has consequences for both businesses and consumers, I believe that a sweeping new law could be a positive force—but also a destabilizing one. As a result, while a longer-term conversation starts regarding the rewrite of the Communications Act, a shorter-term discussion about smaller fixes would be beneficial. To this end, I believe agency deliberations would benefit from reform of the Government in the Sunshine Act. I also believe that additional resources for engineering to speed the certification of wireless devices would expedite the delivery of new and innovative services in the marketplace. Finally, I believe that expanding the role of Administrative Law Judges at the agency merits consideration. This could result in swifter resolution of disputes, which in time could yield both more certainty and more investment.

The Honorable Diana DeGette

1. With respect to the broadcast band repacking and auctions, should the FCC examine the future of public media and the position of public broadcasting in each market as this process moves forward? Before too long, should the FCC hold a roundtable or workshop with broadcasters, educators, public interest advocates, information providers, and other

stakeholders to seek input on how to maximize and preserve noncommercial TV service and the value of noncommercial TV spectrum?

I believe that public broadcasting is a vital part of our media landscape. I also believe that as the media environment evolves, identifying a range of ways to strengthen these stations and the programming they provide is an activity that merits our attention.

There are currently 396 noncommercial television stations. Of these, approximately 350 stations are affiliated with the Public Broadcasting Service. Both noncommercial and commercial stations are eligible to participate in the Commission's upcoming incentive auctions, pursuant to the Middle Class Tax Relief and Job Creation Act. I recognize that participation in these auctions by some noncommercial licensees could mean resources to further support their mission and develop new programming. In many large media markets, there is more than one public television station. At the same time, in many states, there is only a single entity that operates all public televisions within the state. As a result, there is opportunity in these auctions to rationalize the distribution of stations and use the associated revenue to enhance programming and strengthen delivery systems. While under the Middle Class Tax Relief and Job Creation Act participation in these auctions is voluntary, it would be prudent to consider how this framework might bolster the foundation for public and noncommercial broadcasting. To this end, I believe that the kind of roundtable discussion you suggest would be a good idea.

Subcommittee on Communications and Technology
"Oversight of the Federal Communications Commission"
July 10, 2012
Additional Questions for the Record for Commissioner Ajit Pai

The Honorable Greg Walden

1. The National Broadband Plan recognized the urgency of getting more spectrum in the hands of commercial providers. It recommended making 300 additional megahertz available by 2015 and a total of 500 megahertz available by 2020. We have not seen much more spectrum made available to date, especially with spectrum under 3 gigahertz. What should the FCC be doing in the near term to auction more licensed spectrum?

Response: If we do not act quickly, the National Broadband Plan's goal of reallocating 300 MHz for mobile broadband by 2015 will slip out of reach. There are three things that the Commission should do this September to get on track. *First*, we should adopt service rules for AWS-4 to put an additional 40 MHz of spectrum toward terrestrial mobile broadband. *Second*, we should take action so that 4G LTE technology can be deployed in the Wireless Communications Services (WCS) band. Although I had called for the Commission to resolve the WCS proceeding by the end of August, it is clear at this point that is not going to happen. *Third*, we should initiate the rulemaking process for implementing incentive auctions and set a deadline of June 30, 2014 for conducting those auctions.

2. In May, Chairman Genachowski stated in a speech to the wireless industry that "sharing allows us to auction spectrum that otherwise would never get to the commercial market." While spectrum sharing is something we should continue to examine, it should be seen as a fallback only once we've exhausted options to auction licenses for cleared spectrum. Do you agree?

Response: I do. Both from technological and economic standpoints, exclusive licensing for mobile broadband is superior to public-private spectrum sharing. Therefore, I believe that we should redouble our efforts to clear and auction as much federal spectrum as possible. If we cannot clear spectrum, we should we look to spectrum sharing, particularly geographical spectrum sharing, as a fallback.

3. How do you think that the FCC should approach implementing the incentive auction provisions of the Middle Class Tax Relief and Job Creation Act? What should the timing be?

Response: The upcoming incentive auctions will be the most complex set of spectrum auctions ever conducted by any nation. As a result, it is especially important that the Commission develop auction rules in an open and transparent manner and carefully listen to the input of all stakeholders. I also believe that, given the inherent complexity of the task at hand, we should not make the incentive auctions any more complicated than is necessary. By keeping the rules as simple as possible, we will likely increase the participation rate of broadcasters. And because the incentive auction must be a truly voluntary process for broadcasters, it will be vital for the Commission to engage in vigorous outreach to both commercial and non-commercial broadcasters. We must provide them with the information they will need to decide whether to participate and answer their questions about the incentive auction process in a timely manner.

With respect to timing, I believe that it is important for the Commission to develop a schedule for completing the various steps that must be taken during the proceeding. In particular, we should adopt a Notice of Proposed Rulemaking in September and set a goal of completing the

incentive auctions by the end of June 2014. Given our need to free up spectrum for mobile broadband, we cannot afford to have any unnecessary delays.

4. The Commission has tried to varying degrees of success to place conditions on spectrum licenses. What impact have license conditions had in past auctions?

Response: Conditions on spectrum licenses can have unintended consequences. For example, during the 2008 700 MHz auction, the Commission attached very strict public-private partnership and build-out requirements to the D-Block. As a result, no company purchased the D-Block during the auction, and the spectrum went unused for years. To avoid such results, the Commission generally should refrain from placing conditions on spectrum licenses and allow the marketplace to put spectrum to its highest and best use.

5. The recent spectrum legislation contains provisions prohibiting the FCC from barring parties from participating in the auctions. Will you commit to allowing everyone to participate?

Response: Yes.

6. One of the bands that the FCC is required to auction under the Middle Class Tax Relief and Job Creation Act is 2155–2180 MHz. It seems that everyone agrees that the ideal way to auction that spectrum is paired with 1755–1780 MHz. What should the FCC be doing to ensure that this pairing can be made?

Response: The Commission should work directly with other federal agencies and through the Interdepartmental Radio Advisory Committee (IRAC) process to reallocate the 1755–1780 MHz band as expeditiously as possible.

7. The Commission currently has a docket open on whether it should mandate specific filter technology in 700 MHz wireless devices. Could you point to the section of the Communications Act that gives the FCC authority to regulate the manufacture of wireless devices?

Response: Before I was confirmed by the Senate, the FCC adopted a Notice of Proposed Rulemaking to examine this issue. It is my hope that the parties involved will work collaboratively to develop a private-sector solution. If the Commission wants to move forward at some point with any mandate in this area, it should carefully study its authority for taking such action.

8. The FCC has issued a report claiming it eliminated some 200 rules. How many of the rules were regulations that were still in force that the FCC used its discretion to eliminate? By contrast, how many had already been invalidated by a court? How many had already expired? How many were simply cross-references to other rules? If the FCC is really going to meet President Obama's challenge to deregulate, doesn't it need to review all its rules with a presumption that the rule is unnecessary unless the Commission finds compelling evidence to the contrary? Would closing the Title II proceeding be a good start?

Response: I believe that the Commission should close the Title II proceeding immediately. I also agree that the Commission should conduct a comprehensive review of its rules to determine

if they are still necessary in light of changes in the marketplace. In particular, I have proposed that the Commission reinvigorate its biennial regulatory review, which is mandated by Section 11 of the Communications Act. We must take the biennial review process much more seriously, and our next review should result in Commission-level action rather than Bureau-level recommendations. With respect to your other questions, I have had no involvement in the claim that the FCC has eliminated 200 rules, and I am unable to comment on how that figure was calculated.

9. We recently had a hearing on the video marketplace. FCC rules need to reflect the current state of competition as well as the availability of newer video distribution services, such as those using wireless or the Internet. Do you agree that the Commission must consider these developments and revisit all its rules, including the current media ownership rules, and that the time has come to relax them in light of all the competition?

Response: I agree that the Commission should conduct a comprehensive review of its video regulations, and in particular, I believe that we should complete our review of the current media ownership rules by the end of the year. Enormous changes have occurred in the video marketplace in recent years, and the Commission must take care to ensure that its regulations reflect current technological and competitive realities.

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"Oversight of the Federal Communications Commission"
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Additional Questions for the Record for Commissioner Ajit Pai

The Honorable Lee Terry

1. I recognize the need to limit the USF's burden on consumers and businesses while modernizing it for the 21st century and am very interested in your proceeding on contribution reform.

1a. What is the FCC's timeline for completion of contribution reform?

Response: I believe that the Commission should complete contribution reform by the end of this year. However, as a Commissioner, I do not have control over the Commission's agenda, so I am unable to provide you with a specific timeline.

1b. How should contributions be assessed—on revenues, the number of connections, by phone numbers, or a hybrid approach?

Response: I have not reached a firm conclusion on this question. The comment cycle in this rulemaking proceeding closed earlier this month, and I will need to review the record carefully before making such a determination.

1c. What services and service providers should contribute to the Fund?

Response: I have not reached a firm conclusion on this question. The comment cycle in this rulemaking proceeding closed earlier this month, and I will need to review the record carefully before making such a determination.

1d. Lastly and most importantly does the FCC currently have the statutory authority to make assessments on anything other than the interstate and international revenues of carriers?

Response: I have not reached a firm conclusion on this question. The comment cycle in this rulemaking proceeding closed earlier this month, and I will need to review the record carefully before making such a determination.

2. In your lifeline reform order you have eliminated self-certification to eliminate fraud. However, I understand that you do not require Eligible Telecommunications Providers (ETCs) to keep customer enrollment forms including their proof of eligibility.

2a. Based on the practice of some ETCs, doesn't this leave the door wide open for fraudulent sign ups by some ETCs who have not complied with the rules in the past?

Response: You are correct that the Commission's revised rules do not require—and in fact prohibit—ETCs from retaining the documentation they receive from subscribers to establish eligibility. Instead, the rules require consumers to certify that they presented such documentation to the ETC. To the extent that some ETCs have abused the self-certification requirements in the past, I agree that the *Lifeline Reform Order* may not have closed that potential loophole in our rules.

2b. Can you please explain the verification process and how it will prevent carriers from signing people up who do not qualify?

Response: ETCs that have to verify consumer eligibility must (1) receive a signed certification form from the consumer outlining, among other things, how the consumer qualifies for the Lifeline program, (2) verify that the consumer actually is eligible for Lifeline by (a) using an income database or a program eligibility database or (b) reviewing documentation from the consumer, and (3) retain records detailing the data source the ETC used to verify eligibility. As suggested by the previous answer, this revised verification process may be subject to similar abuses as the previous self-certification process.

2c. Who is responsible for verifying that customers qualify?

Response: In states where ETCs are charged with making initial determinations of customer eligibility, it is an ETC's responsibility to verify that a customer qualifies for the Lifeline program. In states where this is not the case, then it is the responsibility of the state agency or third-party administrator that has been assigned this task.

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Additional Questions for the Record for Commissioner Ajit Pai

The Honorable Marsha Blackburn

1. Please give a yes or no answer to the following question: given the fact that different communications platforms are now offering the same suite of voice, video, and data services, does the existing monopoly-era statutory framework still make sense in today's IP marketplace?

Response: No.

2. Chairman Genachowski's national broadband plan raises the importance of reallocating hundreds of megahertz of additional spectrum for commercial mobile use. According to the evidence I've seen, we are not on track to reach his 5- and 10-year goal. The White House, the FCC and the NTIA have been talking about freeing up federal bands for as long as I can remember and we've seen nothing but talk. Now they're shifting to Plan B to "share" federal spectrum. Isn't it about time that the federal government stop rationing spectrum and relinquish it for more efficient uses without conditions and complex rules? Do you believe the discussions about "sharing" spectrum between the federal government and commercial users' puts us in a weaker position than if we were to grant exclusive licenses that would move us closer to Chairman Genachowski's goal of deploying 300 MHz by 2015? Please share any other general thoughts you have on spectrum sharing.

Response: The National Broadband Plan called for making 300 MHz of additional spectrum available by 2015. You correctly point out that *no* new spectrum has been made available for wireless broadband since the Plan's release in 2010. Without quick action, we will miss this important goal. To make matters worse, recent developments suggest that we may be getting ready to wave the white flag and settle for spectrum sharing rather than reallocate additional federal spectrum for mobile broadband use. I believe that exclusive licensing and auctioning of spectrum will yield greater investment in networks and benefits for consumers than any sharing regime. Therefore, we should only look toward sharing as a fallback, not as our first choice.

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Additional Questions for the Record for Commissioner Ajit Pai

The Honorable Brian Bilbray

1. It seems to me that the Commission is supportive of utilizing approaches such as channel sharing to both maximize use of the spectrum and to promote an efficient repacking process. I understand the Commission's preference is that individual stations voluntarily share, but there will be instances where a competitor will not want to share with another competitor. Likewise, an existing channel holder may demand a rent that is above market and too high, in order to keep the entire channel.

Will you support mandatory channel sharing for LPTV, as a way of minimizing or eliminating the loss of LPTV station licenses, in cases where voluntary efforts are unsuccessful?

Response: In an order adopted earlier this year, the Commission decided that LPTV stations would not be eligible to participate in channel sharing arrangements as a part of the incentive auction process but that the Commission would consider in a future proceeding whether LPTV stations could enter into such arrangements. I had not yet arrived at the Commission when that order was issued, and I have not had the opportunity to review the record that was developed by the Commission. As a result, I do not have a firm view on this issue. I do believe, however, that LPTV stations should continue to be part of the media landscape and look forward to working with you to advance that objective.

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Additional Questions for the Record for Commissioner Ajit Pai

The Honorable Bob Latta

1. As the author and strong supporter of legislation to authorize voluntary incentive auctions, I would like an update on where the Commission stands with its efforts. With enactment of the incentive auction legislation, we have given the Commission significant new responsibilities as you implement the law. With the understanding that we're at the beginning of the process rather than the end, how would each of you define "success" in the incentive auction process?

Response: It is my understanding that Commission staff has been working on a Notice of Proposed Rulemaking pertaining to incentive auctions. I believe that it is important for the Commission to launch this rulemaking proceeding as quickly as possible and hope that the NPRM will be presented to the Commission for a vote in September.

Turning to your other question, I do not believe that "success" in the incentive auction process can be defined by any single metric. Rather, we will need to look to a number of criteria. For example, a successful incentive auction process should result in: (1) a significant amount of spectrum being made available for mobile broadband; (2) spectrum being purchased and put to its highest value use; (3) the continuation of a vibrant broadcasting industry (both commercial and non-commercial); and (4) a repacking process that is consistent with the statute and fair to all stakeholders.

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Additional Questions for the Record for Commissioner Ajit Pai

The Honorable Anna Eshoo

1. Last month, by allowing AT&T's petition for regulatory relief in the San Francisco market to take effect, the FCC effectively enabled the company to raise the rates they charge to businesses for high-capacity broadband services known as special access. What can I tell my constituents who are concerned that this decision will lead them to paying higher prices?

Response: In its recent Report and Order addressing special access, the Commission, after surveying the available data, found that the evidence concerning the impact of our pricing flexibility triggers on special access prices was inconclusive. This, among other reasons, is why I have been a strong advocate of the Commission conducting a comprehensive mandatory data collection pertaining to the special access market. In the meantime, if those in the market, whether in San Francisco or anywhere else throughout the nation, believe that carriers are offering special access at rates, terms, and conditions that are not "just and reasonable," there are several avenues of relief available. First, if they object to the rates or terms contained in a newly filed special access tariff, they can ask the FCC to suspend a tariff for up to five months and to hold a hearing on the tariff's lawfulness pursuant to section 204 of the Act, 47 U.S.C. § 204. Second, if they believe that carriers are providing special access on terms or conditions that are not just and reasonable, they can bring an action in federal district court seeking damages under sections 206 and 207 of the Act, 47 U.S.C. §§ 206–207. Or third, they can file an administrative complaint with the Commission under section 208, 47 U.S.C. § 208.

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Additional Questions for the Record for Commissioner Ajit Pai

The Honorable Henry Waxman

1. We have heard from both incumbent providers and competitors that the Commission's triggers for special access deregulation are broken. At the hearing, you indicated that breaking the triggers could be harmful to consumers of special access services. Do you believe the FCC's special access triggers are working as intended and accurately predicting the presence of competition? How would consumers be harmed if the Commission takes interim action to hold special access rates at today's prices rather than allowing prices to increase?

Response: I believe that consumers will be harmed by the Commission's decision to suspend our pricing flexibility triggers. To begin with, carriers will no longer be able to obtain Phase I pricing flexibility from the Commission, and Phase I flexibility only allows carriers to *reduce* their prices. This kind of regulatory relief only benefits consumers. As former Justice Brennan put it, "Low prices benefit consumers regardless of how those prices are set, and so long as they are above predatory levels, they do not threaten competition." *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 340 (1990). Moreover, the Commission has recognized that traditional price-cap tariffing prevents carriers from tailoring service to their customers' individual needs, limits their ability to respond to competition by matching their competitors' volume and term discounts, and deters infrastructure investment. Each of these effects, which are ameliorated by pricing flexibility, ultimately works to the detriment of consumers. Turning to your other question, I believe that the Commission's pricing flexibility triggers were generally working as intended before they were suspended. When the triggers were adopted in 1999, then-Chairman Kennard and his colleagues recognized that they were not perfect. Nevertheless, they concluded that the triggers were an appropriate way to meet the need for competitive proxies that would be both generally accurate and administratively simple.

2. Special access services can be delivered via various technologies, including fiber optic cable and copper wire. Do you believe that the Communications Act treats special access services in a technologically-neutral manner? Should the Commission regulate the special access market based on the presence or absence of competition or based on the technology involved?

Response: I believe that the Commission should adopt regulatory policies in this area that will maximize incentives for infrastructure investment and robust facilities-based competition. I believe further that the best way to achieve these goals is to move beyond the legacy regulations designed for copper-wire networks run by monopolists and to embrace a new framework better suited to the all-IP world that is fast approaching. I believe that this approach is consistent with the Communications Act.

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Additional Questions for the Record for Commissioner Ajit Pai

The Honorable Donna Christensen

1. For all of the Commissioners, while it's Congress's job to write the laws, do you think that the Communications Act is outdated. More specifically, do the Communications Act's requirements make sense in an IP world?

Response: Ultimately, it is up to Congress to decide whether to update the Communications Act. However, the technological landscape and communications marketplace have changed enormously in the sixteen years since the Act was last subject to significant revisions, and it is therefore often very challenging for the Commission to apply the Act to today's world. In particular, many provisions in the Act that were written to regulate copper-wire networks run by monopoly providers may no longer make sense as we transition to a competitive, all-IP world.

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Additional Questions for the Record for Commissioner Ajit Pai

The Honorable Diana DeGette

1. With respect to the broadcast band repacking and auctions, should the FCC examine the future of public media and the position of public broadcasting in each market as this process moves forward? Before too long, should the FCC hold a roundtable or workshop with broadcasters, educators, public interest advocates, information providers, and other stakeholders to seek input on how to maximize and preserve noncommercial TV service and the value of noncommercial TV spectrum?

Response: Noncommercial broadcasters, including public broadcasters, play a vital role in our media landscape. As we move forward with implementing incentive auctions, the Commission must engage in an active dialogue with noncommercial broadcasters. We must both listen to their input and share our views about the incentive auction and repacking process. In my view, the incentive auctions present a real opportunity for public broadcasters in those major metropolitan areas that currently have multiple public broadcasting stations. Through the use of channel-sharing arrangements, stations will have the ability to maintain their operations and receive badly-needed cash infusions.

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