

IS THE FCC RESPONDING TO THE NEEDS OF SMALL BUSINESS AND RURAL AMERICA?

HEARING BEFORE THE COMMITTEE ON SMALL BUSINESS UNITED STATES HOUSE OF REPRESENTATIVES ONE HUNDRED THIRTEENTH CONGRESS SECOND SESSION

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WEDNESDAY, SEPTEMBER 17, 2014

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 2:00 p.m., in Room 2360, Rayburn House Office Building. Hon. Sam Graves [chairman of the Committee] presiding.

Present: Representatives Graves, Leutkemeyer, Collins, Tipton, Hanna, Rice, Velázquez, Schrader, Clarke, Hahn, Payne, and Barber.

Chairman GRAVES. Good afternoon. We will call the hearing to order.

Today we welcome Chairman of the FCC Board of Commissioners, Thomas Wheeler, to our Committee, and he is going to be discussing how the FCC is responding to the needs of small businesses in rural America. And I want to thank you all for taking the time to be with us, and thank you, Mr. Chairman.

Mr. WHEELER. Thank you, Mr. Chairman.

Chairman GRAVES. Modern communications technologies provide endless opportunities to small businesses and to rural America, and the growth of the telecommunications industry and the advances in the way that we communicate with each other in the past 15 years has been no less than astonishing. We have seen a digital revolution that has fundamentally changed the way America does business. Because of this rapid advancement, small firms can communicate with potential buyers around the world. Family farmers are using wireless technologies to monitor their crop production and entrepreneurs can launch a website or application from their living room or just about anywhere in the United States. Most importantly, these new technologies provide the gateway and opportunity for economic growth and job creation, especially in the rural areas. Continued congressional oversight of the FCC is essential to ensure that the concerns and ideas of small firms and those enterprises located in rural America are given due consideration during the regulatory process. This is a theme that this Committee has tried to hammer home throughout the past two Congresses, including when Chairman Wheeler's predecessor appeared here two years ago. Policymakers need to listen to small businesses.

There are 28.2 million small businesses in America, and they make up 99.7 percent of the U.S. employer firms and create 63 percent of all the net new jobs in this country. We cite these statistics often because it is our job to remind people in Washington how im-

portant the vitality of our small businesses are. By almost every measurable mark, small businesses drive our economy.

What we want to do here today is to ensure that the FCC gets the job done right when developing their regulatory policies. This means ensuring an open and free Internet that will allow for the free flow of information and services, facilitating the build-out of high speed Internet to rural and unserved areas and providing needed spectrum to industry players, both small and large, to ensure that our tech companies continue to innovate and create jobs.

Our Committee can be a valuable resource for the FCC as it moves forward with the numerous actions it is working on, and we would like to be your partner in that process. It is important for small businesses to have a seat at the table early in the regulatory process as they can provide real-world examples of how regulation is going to affect them and provide regulators with potentially less burdensome but similarly effective options.

I want to thank everyone for being here again, particularly the Chairman, and I now yield to Ranking Member Velázquez for her opening statement.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Today's hearing offers an opportunity to examine the benefits and challenges of broadband deployment. More small businesses are embracing broadband than ever before, and it is rapidly changing the way business is conducted. Many new businesses are designed around emerging technology based on the access of broadband. For this reason, it is even more important to enable small firms to utilize broadband and the nearly limitless technologies derived from it. Giving small companies this access helps them become more successful and efficient. Enhancing broadband availability is not only good for small businesses, it is good for America. The number of jobs dependent on technology is suspected to grow, creating opportunities for large and small companies in every sector of the U.S. economy.

We have seen the benefits broadband technology can bring to our daily lives in a variety of ways. However, there are still many people without basic access to reliable Internet connections in both rural and urban areas. Unfortunately, the adoption gap may further widen without adequate support for broadband deployment. While federal programs have helped reduce the digital divide in communities across the country, much work remains to be done.

Today's hearing will focus on improving broadband access in order to strengthen the small business economy. The insights gathered today will enable us to ensure that policies are effectively supporting network deployment. Additionally, we will examine other critical telecommunications and technology issues facing small businesses. Among these are the Connect America Fund, spectrum auctions, and of course, net neutrality. While many of these rules are just starting to take shape, our duty is to protect the interest of small firms, working within the industry and those who rely on these services as customers. Balancing the needs of all parties is significant to guaranteeing competition within this industry and its customers. This committee will ensure that the needs of small firms are taken into account in all FCC rulemaking procedures be-

cause our continued leadership in technological innovation is at stake.

In advance of the testimony, I want to thank Chairman Wheeler for taking the time to be here with us today. We look forward to hearing your insight on these important topics, and with that I yield back, Mr. Chairman. Thank you.

Chairman GRAVES. All right. Our witness today is The Honorable Thomas Wheeler, Chairman of the Federal Communications Commission. He is a graduate of Ohio State University and he was appointed chairman by President Obama in November of 2013. He has a 30-year career spanning several segments of the telecommunications industry, including stops as managing director of Core Capital Partners, a venture capital firm investing in early-stage Internet protocol-based companies and is co-founder of Smart Brief, the Internet's largest electronic information service for vertical markets. From 1979 to 1984, he served as president and CEO of the National Cable Television Association, and from 1992 to 2004, he served the same role for the Cellular Telecommunications and Internet Association.

Chairman Wheeler, thanks for being here.

STATEMENT OF THE HONORABLE THOMAS WHEELER, CHAIRMAN, UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

Mr. WHEELER. Mr. Chairman, thank you. Ranking Member, I appreciate both of your thoughts. It is a privilege to be here, both as chairman of the FCC and, Mr. Chairman, as you just indicated, as a small business man myself. I am one of the 28.2 million that you talked about because for over 30 years, I have helped start or started myself a series of companies. Some worked, some did not, which is the story of small business life. But I know firsthand that being a small business person is a 24/7 activity and means living on the edge. And I bring that experience to this job. As you indicated, for most of the past decade, I was a partner at a venture capital firm where we invested in and helped grow early stage startup companies who were by definition small businesses. And I think that as an entrepreneur I had a special awareness or understanding of the challenges that they faced.

I am also an amateur historian, and from those studies I know that the networks that connect us are the networks that define our economy. And today, those networks have never been more important because the historic change that we are all living through right now is that our networks are our new economy. Previous networks were enablers of economic activity. The railroad would haul raw materials to a central point where it would be fabricated and hauled back out to a mass market, or the telephone company would enable commerce in physical products. But today our economy is all about nonphysical products, and use of information is the key activity of every 21st century business, regardless of its size, even the physical product business.

How information flows across networks and how information creates new information is what the new economy is all about. And based on that reality, our goals at the FCC are rather direct—to see that everyone has access to 21st century connectivity, including

the necessity to subsidize service where it is not otherwise economically feasible; to assure that networks freely interconnect to become a collection of open networks, networks that are open to all; to preserve the historic principles, such as public safety, and to assure that they are maintained despite the evolution in technology, and to protect network users, whether they are small business people or consumers from those who might exploit them. And, of course, to provide for the national security. Those are what I have termed the "network compact." They are the principles that are at the core of the relationship between those who build and operate networks and those who use them.

As a businessman, I would also add to that that I believe fervently in the power of competition. There is a mantra around the Commission that goes like this: competition, competition, competition, or more frequently, competition, competition, competition, as our North Star, because at times of rapid technological change, regulation can never be as efficient as competitive innovation in keeping pace. Thus, we must protect competition where it exists. We must promote it where it cannot exist. And we must make sure that where broadband competition is unrealistic that we shoulder the responsibility to promote its deployment.

But going back to my small business roots, I believe that our telecommunications networks are the onramp to opportunity. That whether it is the local insurance agency that needs to communicate to be able to be able to receive and process claims, or a guy and a gal and a dog in a garage inventing the next thing on the Internet. That the key component determining each party's success is their access to modern, high speed, open communications networks. Our networks have never been more important than they are now, and that is why I look forward to discussing these issues with you. Thank you for inviting me.

Chairman GRAVES. Thank you, Mr. Chairman.

We will start questions with Mr. Tipton.

Mr. TIPTON. Thank you, Mr. Chairman. And Mr. Wheeler, thank you so much for taking your time. I am pretty heartened by some of the comments that you are making in terms of addressing localism, the importance of connectivity, and the economies that we are in.

I would like to speak a little bit on what may at first blush perhaps seem to be just a provincial issue, but we have examples of this literally across the country. I come from the Third District of Colorado.

Mr. WHEELER. Yes, sir.

Mr. TIPTON. We have Montezuma and La Plata Counties in that district that are labeled as orphan counties when it comes to being able to get instate transmissions of television. And as a result of certain policies and the DMA market that we are relegated to, which is currently Albuquerque, we simply do not receive Colorado news, Colorado weather forecasts, Colorado emergency broadcasts. And probably equally important to many people in my district, our folks are forced to watch the Dallas Cowboys lose rather than the Denver Broncos win.

So this is an important issue in all sincerity. We have one example that came out of our district, when we were having the fire in

Colorado Springs. Had folks in the two counties who had relatives. They could not get updates in terms of what was going on, possibly endangered family members.

So given in your testimony that you stated that promoting this localism in a broad spectrum is the Commission's mission, I would like to hear what the FCC is thinking about the retransmission policy for places like southwest Colorado. We have three DMAs in state that they could be part of, rather than being stuck with an out-of-state market.

Mr. WHEELER. Thank you, Mr. Tipton.

And I understand the challenge. It is beyond silly. The difficulty that we face is the authority that we have to deal with it under various statutes. And I know that there is talk right now in the other body about an amendment that might open the door and help on the retransmission side. There are also some copyright questions involved. It is a thorny kind of issue that I think boils down to if I could find a solution I would, and every time we go looking for it we come across limitations as to what our statutory authority may be. But I understand the issue, and I would like to be helpful in it to the extent that it is possible.

Mr. TIPTON. I appreciate that. Your predecessor did indicated he was willing to work with us to resolve these issues. We were not able to get in touch with his office even though we tried. So you are making a commitment to us that you are willing to work with us to be able to address these very credible concerns in our district?

Mr. WHEELER. Mr. Tipton, the day you call, I will be back to you post haste.

Mr. TIPTON. Great. And we will have you help reach out to our Senate side who will work with us as well on this.

I also want to be able to move on on the broadband issue. Back in May we had over 130 representatives and Senators that wrote you in support of broadband mechanism to promote network deployment in areas served by small independent rural carriers. And just given—I heard your comments but I would like you to be able to expand and receive comments on the proposed standalone broadband funding mechanism on whether the FCC has made any progress towards moving towards that goal.

Mr. WHEELER. So we have just closed the comment period on the proceeding I think last week. And we will be moving through that process. I know the standalone broadband is an important issue. I know that it also is an issue that has a couple of sides because some people say, "Well, wait a minute. If you are no longer going to support voice, what is the impact of that going to be on older people and minorities who cannot otherwise afford broadband." And we have to work our way through those. But I am hopeful that, as I say, this proceeding has just recently closed, and we want to move on it with dispatch.

Mr. TIPTON. Great. Do you see some policy changes that need to happen to promote broadband deployment into these rural areas that are underserved and develop an environment literally to attract sorely needed competition into these rural areas?

Mr. WHEELER. Well, the key word that you just said is competition, because the interesting thing is that our telecom policy, our policy to support expansion into rural areas is one that is based on

a “Hello, Grandma” kind of a concept of voice calls. And in that situation, we were talking about twisted pair copper as the only way to get it done. In a broadband environment there are, hopefully, an increasing number of ways to get it done. You can get it on DSL over copper, you can get it on fiber, you can get it from satellite, you can get it in microwave. There are multiple ways of being able to do that.

And so one of the things that we have to be working our way through is saying, okay, how do we make sure that we, (a) maintain service and the investment that the American people have made in the service, while at the same point in time making sure that we are not excluding new potentially improved service providers. And so our solution to that has been that we ought to run some taste tests, and we ought to run some trials. And so we have got \$100 million that we have said we will use to fund atypical rural broadband deployment trials—with the emphasis on trials—to find out whether there, in fact, beyond the hypothetical, can be put in place alternatives to the system that has always existed. And we will be taking the final bids on these—I am sorry, not bids—the final offers to provide service the middle of next month, and I hope that we will have made our decision by the end of the year and that there will be trials operational next year.

Mr. TIPTON. Great.

Mr. Chairman, thank you for your indulgence. Chairman Wheeler, thank you for being here. I yield back.

Chairman GRAVES. Ranking Member Velázquez?

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Mr. Wheeler, what steps is the FCC taking to ensure that there is a smooth transition for the affected businesses so that they do not experience increased costs or a reduction in alternative services?

Mr. WHEELER. Well, I think that that is the biggest challenge that we face. Well, there are two challenges. One is how do we make sure that we are keeping up with technology and that people are getting the kind of service levels that is warranted by new technology? And then if there are going to be transitions, how do we make sure that they mitigate the impact on consumers, as well as those who have been relying on it?

And so one of the things that we are doing, for instance, is this taste test, as I said, is this trial of \$100 million to let us find out, for instance, what is the impact if commercial high speed broadband service is offered by the municipal co-op and how does that affect both those who would use the service as well as competitors that it might be overbuilding on top of. I think it is a “try before you buy” kind of a situation.

Ms. VELAZQUEZ. But more specifically, can you tell us what type of outreach you are doing with the small business community?

Mr. WHEELER. With the small business community? Well, I mean, I think that the small business community, as I said, the key to success of any business, but particularly important for small business, is to make sure that they are the recipients of the bandwidth necessary for them to conduct business. How do we do that? We have outreached to the small business community on multiple issues, ranging from cybersecurity to what is going on in

broadband. We also work with the SBA in our activities and that we make sure that in our proceedings it is open to all and that we have voices of small business people heard.

Ms. VELAZQUEZ. Have you performed any small business impact analyses conforming the Regulatory Flexibility Act?

Mr. WHEELER. Yes, ma'am.

Ms. VELAZQUEZ. Okay, good. Thank you.

The court has stated that the commission could not adopt net neutrality rules that ban discrimination and blocking, if the commission does not reclassify broadband as Title II service. Whether to adopt Title II is a highly debated topic now. What are the repercussions for adopting Title II for the overall market, and what are the challenges finding a balance between your current proposal and the more stringent Title II?

Mr. WHEELER. So what the court said was that the way in which the 2010 rules were implemented was inappropriate, but that the Commission had authority to deal with anything that interfered with what they called the virtuous cycle; that new applications drive better bandwidth which drives new applications and you have this virtual cycle. Activities like you named—blocking, choosing one player over another, degrading service, fast lanes, this sort of thing—I believe all interfere with the virtuous cycle. And the question then becomes do we use the Section 706 authority that the court pointed to or do we use Title II? And in our Notice of Proposed Rulemaking, we have specifically asked for input on the Title II question. And Title II is very much on the table. And that comment period just closed this week. And I look forward to moving forward on that as well. But I will assure you that Title II is very much a topic of conversation and on the table and something that we specifically asked for comment on in the proceeding.

Ms. VELAZQUEZ. Thank you.

While it is important to protect competition within the market, there are really only a handful of dominant carriers that dictate prices due to a lack of true competition. How will the FCC further regulate this industry and strengthen competition, especially for those small carriers competing against the giants of the industry?

Mr. WHEELER. Well, I think there are a multitude of issues there. One is obviously we want to continue to orient our universal service support to broadband. Second of all, competitive carriers and those providing competitive services rely on what is called special access which is the connection between businesses, if you will. Consumers do not get involved in this. And there has for a long time been an inability for the Commission to move on special access. We are now moving on special access. We are collecting data. I set a deadline of the 15th of December for the data that we need, and we are going to address the special access question as well.

Ms. VELAZQUEZ. Will you anticipate any more delays?

Mr. WHEELER. I hope not. In all candor, the thing that has held us back to this point has been getting OMB approval to collect the data, and we went back to OMB and we said, "Look, this is important stuff." And we were able to negotiate with OMB the kind of data that got collected. And it was just the other day that we put out the public notice to begin collecting that data, and that is due

on the 15th of December. I do not want any more delays on this. We have waited on special access long enough.

Ms. VELAZQUEZ. Thank you.

Thank you, Mr. Chairman.

Chairman GRAVES. Mr. Rice?

Mr. RICE. I am concerned about the adoption of Title II with respect to the Internet, and you were saying that your concern is that certain activities interfere with this so-called virtuous cycle.

Mr. WHEELER. Right.

Mr. RICE. Those activities you said were blocking and prioritizing service?

Mr. WHEELER. Blocking, prioritizing, requiring some kind of paper form, degrading a service in order to offer a higher service, favoring—

Mr. RICE. Is that going on now? Are providers doing that?

Mr. WHEELER. So I think that what we have seen thus far is a series of instances. This whole thing started, for instance, when Comcast blocked Bit Torrent and their folks from getting Bit Torrent. We have seen instances where carriers have blocked or degraded the ability to get Skype because it is competitive to their voice service. We saw in the mobile world how AT&T blocked FaceTime early on after it was introduced on the iPhone because it was competitive. So the issue is that yes, there are indications of these kinds of problems having happened in the market.

Mr. RICE. These things that you are talking about, I mean, they could be dealt with through other laws, could they not?

Mr. WHEELER. Well, that is a really great question, Mr. Rice. And they have not been.

Mr. RICE. Here is my point. The Internet has been kind of a "Wild, Wild West" it appears to me, and there has been an incredible explosion of innovation that has come out of the Internet. And when the federal government steps in and starts regulating, you will stifle that. You will stifle it far more than anybody else who is trying to block a competitor that could be attacked under any of these other anti-trust laws. I would caution greatly against further federal regulation of the Internet.

Mr. WHEELER. Well, I think you have just hit on what the challenge is, because it is clear that there must be an open Internet. I mean, that is what is necessary for the small business; that is what is necessary for the entrepreneurs; that is what is necessary for consumers.

At the same point in time, communications carriers are investing \$60 billion a year in infrastructure, and we have got to have that kind of infrastructure build out. And you do not want to put in place rules that would disincentivize companies from making that kind of continued investment.

Mr. RICE. And my point, Mr. Wheeler, is the federal government. And I am not picking on you. You can put in whatever regulations that you want that can be the most well-intentioned things possible, but you will not be able to foresee everything, and you will stifle innovation. And the Internet has been a fountain of innovation that has helped to bring prosperity to this country and the world, and you will stifle that if you mushroom the regulation under Title II.

Mr. WHEELER. So the interesting challenge is that, as you know, most of America's major carriers have said we will adhere to the 2010 open Internet rules even though they have been thrown out by the court. And in adhering to them, have continued to innovate and continued to invest, and that is the process that we want to see continue.

Mr. RICE. These things that you named that you thought were problems that you felt like you needed to add additional regulation for, can you name any instances of those occurring that could not be handled by other areas of the law, like anti-trust?

Mr. WHEELER. Yes, sir. I think that there is a significant difference between what is an anti-competitive behavior defined under the Sherman Act and what are the public interest obligations that the Telecommunications Act mandates that we deal with. And that while many issues may be able to be dealt with on an anti-trust basis, not all issues and the ability to deal with them with a public interest orientation rather than the strict construct of anti-trust law is one that will go more to all of the issues and less to specialized issues.

Mr. RICE. My friend, if it is not broke, do not fix it. It is working great. Let us please do not stamp it out. I am a firm believer in the scariest phrase that you will hear is "I am from the government. I am here to help." So let us do our best to keep the hands off, and I for one will do what I can to keep the FCC from adopting Title II with respect to the Internet. Thank you.

Mr. WHEELER. Thank you, Mr. Rice.

Chairman GRAVES. Ms. Hahn?

Ms. HAHN. Thank you. Thank you, Mr. Chairman, Ranking Member Velázquez, and thank you, Mr. Wheeler, Chairman Wheeler, for coming to our Committee to talk about FCC and how it impacts small businesses. This might be a little different line of questioning, but I did hear the Broncos being brought up, so I am going to bring up the Dodgers.

As you know, Monday was a big day for the FCC. The Dodgers, City of Los Angeles, Time Warner Cable, and KDOC came to an agreement to broadcast the final few games of the regular season. And as you probably know, this entire baseball season, 70 percent of the region's viewers had been unable to watch the Dodgers. They only have six remaining home games to broadcast and the impact it has on small businesses is something I did not realize until it started getting brought up to me. I was always just on the side of the fans and how unfair it was to have this dispute, not allowing the fans to watch the games. But then I got a lot of calls into my office from small businesses, many of whom are restaurants, sports bars, who really depend on those local games being broadcast. A lot of times customers would call and say, "Hey, are you showing the Dodgers game?" And they would have to say no, and it really did hurt their bottom-line when this was happening.

So I am happy about the small breakthrough that happened, and I know you were instrumental in bringing all the parties to the table and I hope you share my call that some of us in Congress had to have all the providers enter into binding arbitration so we can finally put this issue to rest.

So I am just going to ask you, how can we fix this arbitration process so disputes such as this do not go on for an entire season? Really, of course, a crushing blow to the fans, but a lot of our small businesses really were impacted by this silly dispute. So I would like to hear your comments on that.

Mr. WHEELER. I think you used the right descriptor there about when you characterized the dispute. I, as you know, wrote to the CEO of Time Warner Cable which owns the rights, as well as to every one of the cable and satellite providers, saying exactly what you said, "Can we not come together here?" I got a little more specific with the CEO of Time Warner Cable because what has happened here, as you know, is that Time Warner Cable has purchased the exclusive rights to the Dodgers. And they purchased them paying a price that at least the media analysts say negatively affected their performance last year because the analysts claimed they overpaid. And the other providers, the DIRECTVs, the cable systems, et cetera, all said, "Well, wait a minute. I do not want to pay—you are telling me that I am going to pay this kind of a fully-loaded price or I cannot get it at all does not make any sense to me." There has got to be a way to come together.

So I am happy that the decision was made, and for the last six games this is absolutely terrific. And then it is into the playoffs and it is a whole different contractual reality and that is wonderful.

Ms. HAHN. And not the World Series.

Mr. WHEELER. I would not go that far, please. I am a Dodgers fan, but I also want to see the Nationals get in.

Ms. HAHN. This is our year. This is our year. I want to go on record that this is our year.

Mr. WHEELER. But I have then opened up an inquiry, an investigation with Time Warner Cable because I want to know more about what is going on here. Because the reality is that a lot of money was put on the table to support an entity that is doing all right itself economically, and consumers ended up suffering. That is not right and I want to know more. And so I have gone back and opened an investigation with Time Warner to find out exactly what the facts of this are. I have talked to each of the CEOs of each of the distribution channels, and they have all said to me, "I am ready to do it. I want to do it. But just because they paid a lot, why do I have to pay a lot?" And we have got to get over that kind of hurdle.

Ms. HAHN. Well, thank you. I appreciate that a lot. As you know, I think all the congressional members of the L.A. delegation had written to you, asking you to get involved because we thought that would be helpful. And again, while this was a small step, this agreement, we need long term to not put fans and small businesses at the mercy of these kinds of disagreements in the future.

Mr. WHEELER. I agree.

Ms. HAHN. And I look forward to seeing how you are going to solve it.

Mr. WHEELER. Thank you, ma'am.

Ms. HAHN. Dodgers and Nationals series would be awesome.

Mr. WHEELER. That would be okay. That would be all right. Wait a minute. That will not happen. Sorry. Earth to Tom, that will not happen.

Chairman GRAVES. Mr. Luetkemeyer?

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

Thank you, Mr. Chairman for being here today. I normally do not read my questions but I have got two questions I want to be sure and get to today so I am going to cut my own remarks short here so I can make sure I get to the questions.

I heard from many small business owners in rural Missouri which I represent with little or no access to high speed broadband who had recently written to you, Mr. Chairman, on the subject of Connect America Fund II. I am concerned that if we do not set the floor for support at a reasonable speed, such as megabytes per second, that for years to come most of the rural constituents in my district will be left on the wrong side of the digital divide.

As you have not yet responded to my letter which I wrote to you August 15th, I wish you would address to the Committee today with regards to the speed requirement you set in your Connect America Fund II order that it will provide support for adequate facilities based on high speed broadband for the small businesses in rural America looking to compete in the global economy with urban competitors, number one.

Number two, in addition, the Connect America Fund is for deploying broadband in rural areas currently served by large price capped carriers. A long-term Connect America Fund program for those carriers was supposed to be in place almost two years ago. When you consider the hurdles the FCC has faced to implement Connect America Fund for just over a dozen larger carriers, how long do you think it will take to produce a Connect America Fund program for the smaller carriers and is there a way to do this on a faster basis? If you could respond to that, please.

Mr. WHEELER. Thank you. First of all, I apologize. I did not realize that we are a month from a letter that you have written. That is inexcusable, and I am normally a zealot on getting quick responses.

Mr. LUETKEMEYER. Well, we were in recess. You probably thought we would not be here. That is okay.

Mr. WHEELER. I got that.

So first of all, we have proposed increasing the throughput in order to get universal service funds from four megabits per second to 10 megabits per second for precisely the reason that you mention: That you cannot have a digital divide. When 60 percent of the Internet's traffic at prime time is video and it takes four or five meg to deliver video, a four meg connection is not exactly what is necessary in the 21st century. And when you have got a half a dozen different devices, wireless and other connected devices in a home that are all going against that bandwidth, it is not enough.

So what we were saying is we cannot make the mistake of spending the people's money, which is what universal service is, to continue to subsidize something that is subpar. As I said, before the comments on this have just closed. I am hopeful that by the end of the year we will be able to have that issue tidied up.

On your second issue about the rate of return carriers, it gets much more complex, unfortunately. The rate of return carriers serve less than 5 percent of the population but get 50 percent of the high cost allocation because their situation is so unique and costly. And muddling around with that has higher potential opportunity costs. We have a proceeding on that as well that has multiple parts that include some suggestions made by the representatives of the rate of return carriers that we have put out for comment. That also has just closed, and I am hopeful that we will be able to get to that. I do not think we will be able to get to it as quickly as the Connect America Fund, but I think it is an early 2015 kind of an issue.

Mr. LUETKEMEYER. Okay. One more question.

As a result of the predominately rural district I represent, I appreciate the Agency's efforts to address the rural call completion problem that continues to harm rural Americans when calls destined for rural business, hospitals, public service, whatever are dropped before reaching their provider. Can you update the Committee on the status of implementing the recordkeeping or retention rules adopted last year? In particular, why have not those been implemented a year after they were adopted and when can we expect to see the rules finally put in place?

Mr. WHEELER. Great. A couple of things on that.

One, we have been in active enforcement activities. We fined Windstream \$2.5 million. We fined Level 3 almost a million dollars because of their failure to deliver on the call completion expectation. We also had a proceeding in which we said we want to begin to collect data that allows us to get more granular to understand exactly where things are happening. That ran into two problems. Problem number one was that a bunch of carriers filed for reconsideration saying, well, these kind of connections you should not look at and redefine what you are looking at, and we had to go through that process and that is now taken care of. And the other is again back to another OMB issue where OMB had to give us permission under the Paperwork Reduction Act to go out and ask questions. Those have now both been resolved, and we are moving forward on the collection of data, which is going to allow us to get very granular on what the rules need to be.

Mr. LUETKEMEYER. Very good. I appreciate your candid remarks. As a Cardinal fan, maybe if the Dodgers had a better team or a better fan base you would not have those problems.

I yield back.

Chairman GRAVES. Mr. Barber.

Mr. BARBER. Well, thank you, Mr. Chairman, Ranking Member Velázquez, for holding this important hearing. And thank you for being with us, Mr. Chairman.

I will steer clear of the sports analogies and go right to the issue that is significant in my district. I represent southern Arizona, Tucson being the urban area, and all of Cochise County, which is one of the nine districts in the House that is a border community with Mexico. And as I talk to people in my district, particularly in Cochise County and rural Pima County, which is where Tucson is based, I hear stories over and over again about the lack of access to broadband or wireless.

I was in Huachuca city just the other week talking to the mayor who has a system that is archaic. So archaic it hardly works at all. And the situation is even worse in Tombstone. They are famous for Wild West City or the town too tough to die. And so we really have a desperate need for small businesses in my district, and I am sure it is true in rural districts all over the country, to have increased access to broadband and to high speed Internet that they need. The economies of those communities rely on better Internet service and they just do not have it.

So Mr. Chairman, I have just three questions for you. I will take them in order and perhaps I will give them all three to you so you can respond and we will not go back and forth.

With 12 million Americans living without access to broadband, could you share with us what the FCC's goal is for increasing broadband access in the next five years, and how are you engaging the private sector to meet that goal?

And secondly, as you are talking to small businesses across our country, how are broadband speeds and broadband prices influencing their business strategies and decisions?

And finally, Mr. Chairman, in a slightly different vein, cyber threats are growing every day. We have many briefings in the House Armed Services Committee, in the Homeland Security Committee on which I sit about the threat and the hits that we are getting every single day. And our small businesses need to be aware of these threats as much as the big companies. They must have the security tools and the resources they need.

So I would like to ask, Mr. Chairman, if you could explain what kind of outreach the FCC is conducting with our small businesses to make sure that they are prepared. So if you could try to answer those, I appreciate it.

Mr. WHEELER. Thank you, Mr. Barber.

So there is no doubt you have to have high speed if you are going to play in the 21st century economy. The question is, as I said before in response to another question, that our universal service program was based on voice and based on supporting companies that provided the voice. My predecessor wisely moved off of voice to focus on supporting broadband. The next questions that we have to face are, as was previously asked: (1) Is that broadband speed fast enough? And (2) Are there competitive alternatives to get that broadband?

So, for instance, if on LTE Wireless, LTE, you can get 25 to 100 megabits, should that be the solution to serving these kinds of areas? If you can get not quite as fast but significantly faster than four megabits service off of satellite, should that be a solution?

And so we are moving into a period where there are going to be competitive alternatives. We are also moving into a period where the existence of those competitive alternatives has an economic impact on the people who have traditionally provided connectivity to your area. And so it becomes this kind of a balancing act as to how we make this progress happen. But it has to happen.

And then insofar as your cyber question, I could not agree more, which is one reason that we have published several brochures and tips and talking points for small business about how they need to be worried about cyber and how it is a real issue and what they

can do, and those are available on the FCC website and we promote their availability.

But the bigger question is that whether it is the local, as I said, insurance agent or the company that is providing last mile service, they are getting service from big network providers and those network providers have to provide a level of cybersecurity in their networks. And we are working with them to develop both a set of standards that can be measured to so that we can identify what the issues are and hopefully remediate them and to try and do it in a voluntary process so that we get as much participation from everybody as possible.

Mr. BARBER. Thank you, Mr. Chairman. I yield back.

Chairman GRAVES. Mr. Collins?

Mr. COLLINS. Thank you, Mr. Chairman.

Thank you for attending today.

Mr. WHEELER. Mr. Collins.

Mr. COLLINS. I have got a very rural district, western New York, eight counties, a couple of them have definite broadband issues as well as, frankly, even cell phone coverage issues. But let us start with we certainly agree, or I certainly agree, 10 megabytes should be the minimum download. There are no two ways about it.

So the basic question is, under special access rules, it is 1.54 megabytes and so it is a simple question that since we all agree the minimum should be 10, and we all have to look at our priorities, why is the FCC continuing to deal at all with special access at 1.54 and new regulations and the like for what I would call an outdated, obsolete service?

Mr. WHEELER. Well, 1.5 is what is called T1 and it is kind of the table stakes for interconnection amongst and between various carriers and businesses. Special access is not controlled by speeds. Special access is a carrier, normally a dominant carrier like AT&T or Verizon, selling services to others who need it, whether it be the local cable company—I am sorry, the local cellular company or a rural telephone company or others, who are typically competitors. Therein lies the rub. And so what we are now finally getting in a position to be able to do is to have the data—because we were prevented from getting the data that you have got to have to make this decision—having the data that enables us to address just how can we make sure that there is a fairly priced, readily available, sufficient capacity to your point, special access available for these competitors. That is what our rule is all about, and by the end of this year we are going to have the data that is going to allow us to be very granular on that.

Mr. COLLINS. So in my remaining time, let me ask you one other question on the data. My county, Orleans County, one of ours, if you look at the FCC, I think they would say that county has 95 percent access to broadband, but I have determined that data is in many cases driven off the last four digits of the nine digit zip code. And if you look at the way some of them are served, by definition, if a single customer in that last four digit of the nine digit zip code, if a single customer has access, it is deemed every customer has access. And so they are actually paying right now with another county to do a joint study where they believe their access is in the 50 to 60 percent where because of that nuance in the

definition of the data, with good data we make good decisions, with bad data that is not the case, are you aware of that very interesting nuance and what are we doing about it?

Mr. WHEELER. Yes, sir. And one of my mantras is we have to have data-driven decisions.

Mr. COLLINS. I agree.

Mr. WHEELER. And if it is garbage in, it is garbage out.

Mr. COLLINS. Right.

Mr. WHEELER. And so there are a couple of things that are interestingly going on. The National Broadband Map, which we have recently taken responsibility for from NTIA, has these kind of anomalies in it in large part because the information is submitted, not collected. And there is a significant nuance there when we are saying you tell us what is going on rather than us going and finding it.

And the other interesting thing that has happened with the Connect America Fund in the process that we have now established for Phase Two is that people are able to challenge whether or not there is service. A potential competitor is able to challenge and say, "Wait a minute. There is not service. You say there is not, there is. There is or there is not." Either way. And that is helping us enrich the map. But I agree with you, sir, that if you are going to be data driven, you have to have good data.

Mr. COLLINS. Speaking for the counties, they are actually paying their own money to do another study to try to disprove the 95 percent.

Mr. WHEELER. I look forward to—I thank them for doing that and I look forward to their results.

Mr. COLLINS. Okay, very good. Thank you.

Mr. WHEELER. Thank you, Mr. Collins.

Chairman GRAVES. Mr. Payne?

Mr. PAYNE. Thank you, Mr. Chairman and to our ranking member.

Let us see, Mr. Wheeler, during your testimony you mentioned that the FCC is reviewing diversity issues to see how best we can promote a diversity of voices, including women and minorities. Can you elaborate on this process and how the FCC believes they can accomplish this goal?

Mr. WHEELER. Yes, sir. And we are in a situation right now where let us talk about broadcast properties for a second. When you have got less than a couple of percent of the broadcast properties in America owned by minorities, something is wrong. And when I came in here is what I found. There was a game being played by Washington broadcast lawyers that said we will create all kinds of fancy legal structures that will allow companies to combine in an individual market, where we have a rule that says there is one licensee per market because we want to have diversity of voices and diversity of ideas and diversity of ownership. We will allow the creation—we will construct these creations—where the company does not really own the license but they get the use of the license and they can get around the rules. And what that had the impact of doing was chasing out small business opportunity because the big guys were able to outbid and the big guys were able to have economies of scale. And the big guys fixed it. It was done

through a structure called JSA, Joint Sales Agreements. And we came in and we changed that rule. There was a huge human cry. Oh, it is the end of broadcasting efficiencies. Oh, you are going to really hurt small business and minorities because we are so good to them. And we went ahead and did it and we were supported by 20 different minority groups saying this is the right thing to do.

And Congressman, I am happy you asked that question because I am happy that I can sit here today and say that last week I was at the Commission when people were coming through led by the Minority Media and Telecommunications Council, talking about how they were now minority owners of broadcast outlets that came on the market because of our change in this rule. And it is not enough but it is a start. And I also think, by the way, that the whole issue of open Internet is crucial, and the opportunity—I am going up to, as you know, Mr. Rush is on the Telecomm Subcommittee Energy and Commerce, and he has asked me to come up and meet with a group of entrepreneurs in Chicago to talk about how to use broadband to create opportunity for entrepreneurs who are working on workshops at this across the country, doing webcasts across the country at the FCC. But I think there is also great opportunity in an open Internet for small business and minority entrepreneurs.

Mr. PAYNE. Well, I appreciate that effort moving in that direction, and for me, it is not so much about a preference as it is leveling the playing field. As you say, a bunch of Washington lawyers got together and crafted something that would not allow certain individuals to be able to compete, so I applaud those efforts and hope you continue to move in that direction.

And with that I will yield back.

Chairman GRAVES. Ms. Clarke?

Ms. CLARKE. Thank you, Mr. Chairman. And I want to thank the ranking member as well. I would like to thank Chairman Wheeler for appearing before us today, and quite frankly, I want to associate myself with the comments of Mr. Payne and will be looking forward to your continued advocacy in this regard because when you look at the fact that 7 percent of full power commercial stations are owned by women and that there are just 2.2 percent minorities when we comprise 40 percent of the population, someone has got their thumb on the scales clearly.

Mr. WHEELER. I was hoping Mr. Tipton would still be here and tell him when you see him that one of those, an outfit called Cheng Media, which is now the only Asian-owned broadcast outlet in the United States, is now operating in his district and it is operating as a result of this rule change that we just talked about.

Ms. CLARKE. Outstanding. Well, we want to encourage your continued support of those endeavors.

My district has access to broadband. I am from Brooklyn, New York, but it has serious adoption and digital literacy gaps. These are the skills that are essential for participating in the 21st century economy. So I want to hear from you what you think FCC can do or is doing to address this concern, and how will E-rate modernization affect these gaps?

Mr. WHEELER. So I think you just raised a key issue here with E-rate. I am old enough that I took shop class in high school. I do

not even think they offer shop class anymore. Right? But it was deemed important that I learn how to work a metal lathe, right, which has not exactly helped me in my activities to date. But I had that hands-on experience. The thing that was really exciting to me about what the E-rate has done is that it is giving students an exposure to the Internet and the use of computers that is not, well, we are going to go to Computer class now, but it is, "You have got to live with it." And this is how we all learn things. And you get the 21st century skills by doing 21st century things every day in every class.

And so what we have done in the E-rate is we came in and identified that there was a huge problem—that E-rate was doing a very good job of getting broadband connectivity to the school. About two-thirds of schools in America are connected by fiber now. But it was not doing a good job getting connectivity to the student. And how do you have each student have Wi-Fi access?

So we identified what we call the Wi-Fi Gap. And we found a billion dollars this year, and a billion dollars next year that we have targeted specifically for Wi-Fi in schools and libraries and specifically made sure that it does not cannibalize the money that is used for the important connectivity in the first place. But, if as a result students in their everyday classroom activities are becoming digitally literate just by repeated use, by repeated exposure, then I think we have sent them out after graduation with the skillsets that are necessary to exist in a 21st century economy, and it has happened by osmosis. And that is the best way to learn something.

Ms. CLARKE. And in terms of the embrace of sort of the Wi-Fi and making that available, has there been any real pushback? Because I could certainly see those who offer Wi-Fi for a fee being concerned about the competition.

Mr. WHEELER. But unfortunately, they were not offering it for a fee in schools and it was not there. I am actually quite proud, Ms. Clarke, that one of the things that we also did was, utilize a small amount of money—a billion dollars is a small amount of money—a finite amount of money, and we were able to get the schools in America to be able to piggyback on the GSA contracts for Wi-Fi access points, the largest purchaser of equipment in the world, and now schools in Brooklyn or in Missouri can get pricing for their Wi-Fi equipment that is the same price that the U.S. Government pays. Not through a federal purchasing program but just through a structure that we were able to create. And that in itself is going to drive more Wi-Fi into schools and libraries.

Ms. CLARKE. Well, I thank you very much once again, Mr. Chairman, and Mr. Graves, I yield back.

Chairman GRAVES. The Internet has obviously flourished the last 20 years and it has fundamentally changed how small businesses and small firms are doing business nationally and internationally, and preserving that is obviously something that is pretty important to me, and I have concerns about how a more heavily regulated Internet is going to affect small businesses. But my question to you is have you considered what the proposed net neutrality regulations are going to do to small businesses and have you sought out the input from small businesses? I would be curious about what the input is.

Mr. WHEELER. Yes, sir, in multiple ways.

As you may have read, we have had 3.7 million comments on this document. There has never been more public input to something that the FCC has done. And they are wildly in support of open Internet requirements. I have probably received myself tens and tens of thousands of emails addressed to me, and a lot of them, you get things that are like them, too, that are not exactly the ones you want to show your mother. But I look at them, and the ones that I have been most interested in are the ones from teachers and small business people who are saying, "I am a small business person in so-and-so. Let me tell you how this is important to me and why it is important to me." I have met with startup companies and venture capitalists in Silicon Valley as well as in Silicon Alley, in Brooklyn, as a matter of fact is where the meeting was held. And sat down with them and said as small business people, as entrepreneurs, as the lifeblood of growth, let us talk about how this works.

So, yes, sir. And I also, I would add that even if I had not done any of that, I bring 30 years of experience as a small business person, including the scars of my companies being denied access to networks, and I am a fervent believer in open Internet.

Chairman GRAVES. Any other questions?

Ms. Clarke?

Ms. CLARKE. Thank you, Mr. Chairman. I do have one more question for Chairman Wheeler.

While the FCC included initial reg flex analysis, it looked primarily at small entities in the tech and telecomm industry. I recognize these industries will be impacted, but I am concerned about the 28 million small firms that utilize the Internet in one way or another for business purposes. Has a similar analysis been done to look at the effect on small firms as end users?

Mr. WHEELER. This is in the open Internet proceeding? Yes, we have specifically asked questions about that. And we also have proposed an idea which is a unique idea in the history of the Agency, and that is that how does a small business who does not have the cash to hire a Washington lawyer to go represent them before the FCC, get their voice heard at the FCC? And so we have proposed the creation of a small business ombudsman at the FCC to on an email be able to advocate—to find out the facts and advocate on behalf of this small business.

Ms. CLARKE. Good answer.

I yield back, Mr. Chairman.

Ms. VELAZQUEZ. Mr. Chairman?

Chairman GRAVES. Yes, ma'am.

Ms. VELÁZQUEZ. Based on your experience, because I have been on this committee for 22 years and for 20 of them we have been dealing with the issue of the digital divide, especially for small businesses and rural America. And I hear that you are involved in increasing the speed and deployment infrastructure for broadband, but what else can we do to increase or attract competition in rural America to improve public policy, or what else do we need to do? Or do you have all the tools that are needed?

Mr. WHEELER. I believe that we have tools that are adequate. I am not sure we have all the tools that are needed or that would be nice to have. Let me put it that way.

The challenge is how do you recognize that one of the great things about the Internet economy is that there is no longer the telephone monopoly, that there are multiple ways of reaching people? And how do you provide the necessary incentive for for-profit companies to do that, while at the same time recognizing that for the last 80–90 years there have been companies out there that have received some kind of a subsidy to enable them to offer services, and that they have entered into debt agreements, they have hired people and made representations, and this sort of thing?

And so one of the most challenging things in this evolution is how do you embrace competition in a way that is logical and responsible? And that is why we are supporting these trial projects, because I do not know the answer. I could sit down and hypothesize and answer, but I would much rather have a market test, and that is what we are trying to do.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Chairman GRAVES. Again, thank you, Mr. Chairman for testifying before the Committee.

As I mentioned in my opening statement, I would like to see the FCC and this Committee be partners moving forward and make sure that we keep the lines of communication open as we look at broadband and deployment and make sure those obstructions are alleviated. But again, we appreciate you coming in. This is my last hearing as chairman of the Committee. So thank you for being that individual.

Mr. WHEELER. It is a privilege to be your final witness, Mr. Chairman. Ms. Velázquez, thank you very much for inviting me today.

Ms. VELÁZQUEZ. I will be here.

Mr. WHEELER. I have a feeling he will still be here, too; right?

Chairman GRAVES. With that I would ask unanimous consent that all members have five legislative days to submit statements and supporting materials for the record. And without objection that is so ordered. And with that the hearing is adjourned.

[Whereupon, at 3:20 p.m., the Committee was adjourned.]

A P P E N D I X**Statement of****Tom Wheeler, Chairman****Federal Communications Commission****Before the****Committee on Small Business****U.S. House of Representatives****Hearing on****“Is the FCC Responding to the Needs of Small Business and Rural America?”****September 17, 2014****I. Introduction**

Chairman Graves, Ranking Member Velázquez, members of the Committee, thank you for the opportunity to be here today.

Having spent the past decade in the private sector, helping to grow new businesses, I have a unique appreciation for the entrepreneurial spirit of America’s small business owners. Small businesses are a key driver of job creation and economic growth, and they are the foundation of local economies across America—from Missouri’s countryside to the neighborhoods of Manhattan.

Since becoming Chairman less than a year ago, I have traveled to many of those areas—including some of the most rural and remote areas and Indian Reservations—and met with small businesses, as well as schools, libraries, and citizens, to learn more about how we can improve their access to modern communications services, especially high-speed broadband. I’ve also met with small and rural telcos to better understand their unique challenges and the ways the Commission can help overcome them through our various programs.

In the 21st century information economy, starting and operating a small business requires access to 21st century communications. High-speed broadband, wired and wireless, helps small businesses better serve existing customers through improved operations, and reach new ones by making anyone with an Internet connection a potential customer.

At the FCC, we are committed to harnessing the power of broadband communications to grow our economy and improve the lives of the American people. Our work is guided by what I call the Network Compact—a set of values Americans have a right to expect from their network providers—such as universal access, consumer protection, and public safety. Overarching these values is the belief that competition is superior to regulation, and competi-

tion is the Commission's most effective tool for driving innovation, investment, and consumer and economic benefits.

II. Expanding Access of Small Businesses and Rural Areas to High-Speed Broadband

Consistent with these guiding principles, the FCC has taken multiple actions to assist small businesses and expand communications opportunities for rural America. Those actions start with making sure every American small business has access to true high-speed broadband.

Currently, about 12 million Americans live in areas where wired broadband isn't available. These are homes with students at a disadvantage compared to their connected neighbors. These are small businesses, whether a local florist or a hunting lodge, that can't compete in a connected world. And these are communities that can't attract businesses to locate to their towns and offer jobs to those in need. To help connect these unserved areas, the Commission has modernized the Universal Service Fund to focus on broadband, including establishing the Connect America Fund (CAF). Roughly a quarter of all universal service contributions come from small businesses, and by increasing efficiencies these reforms help ensure that consumers and small businesses are getting more bang for their universal service buck.

In Phase I of the Connect America Fund, the Commission has made investments that will make broadband available to 1.6 million unserved Americans in areas served by the nation's largest traditional local providers—known as “price cap” carriers. In addition, Mobility Fund Phase I investments also include \$300 million to expand advanced mobile wireless service and nearly \$50 million for better mobile voice and broadband on Tribal lands.

The Commission took another important step forward last January, when we authorized in our Technology Transitions Order experiments to advance the deployment of voice and broadband-capable networks in rural areas with support from the Connect America Fund. Our challenge is to preserve the values that consumers and businesses, both large and small alike, have come to expect from their networks, while unleashing new waves of investment and innovation, which will deliver untold benefits in the form of modern broadband networks for the American people, including rural America. We cannot be a nation of opportunity without networks of opportunity. That's why we are moving forward with these trials, which will provide an opportunity to consider how better to ensure that all of our universal service programs are working together effectively to ensure that residential consumers, small businesses, and anchor institutions have access to evolving services delivered over scalable networks.

Building on that action in January, we recently adopted an Order establishing a \$100 million budget for the rural broadband experiments, criteria for what we expect from applicants, and an objective, clear-cut methodology for selecting winning applications. These rural broadband experiments will allow us to explore how best to structure our second phase of CAF investments, including

through the use of a competitive bidding process in price-cap areas, and gather valuable information about deploying next generation networks in high-cost areas.

Importantly, this is the first time the Commission will attempt to use the tool of competitive bidding to bring broadband to rural America through the Connect America Fund. Competition holds the promise of better services at lower costs—it is time to use that dynamic for the benefit of rural America.

CAF Phase II will result in another five million Americans getting access to broadband for the first time. We expect to move forward with CAF Phase II with all dispatch, and the lessons learned in our rural broadband experiments will help us achieve our goal of delivering world-class voice and broadband networks to rural America.

We also want to make sure small businesses not only have access to broadband, but also that they have broadband with sufficient bandwidth to meet their evolving needs.

When a single HD video requires 5 Mbps of capacity, it's clear that the FCC's current benchmark for broadband—4 Mbps—isn't adequate. This is why, as part of a Notice of Inquiry issued this August, we have proposed updating the broadband speed required for universal service support to 10 Mbps. We also ask whether to include latency, data usage allowances, or other characteristics in benchmarking broadband; whether to establish separate benchmarks for fixed and mobile services; how to best evaluate mobile and satellite services; and how to take into account differences in broadband deployment, particularly between urban areas versus non-urban and Tribal areas.

We also want to make sure that anchor institutions like schools and libraries have robust broadband connections to meet community needs. This July, we took a major step forward in making sure that every school and library in America has high-capacity broadband to the building and within every classroom and library, particularly for smaller schools and libraries in rural areas. Previously, smaller, rural schools and libraries had difficulty securing E-rate funding for internal connections within a school or library. The Order increases support targeted for Wi-Fi in rural school districts by nearly 75 percent and is expected to expand Wi-Fi connectivity to nearly 20 million students during its first two years, as well as ensure more equitable availability of funds to rural schools and libraries. While an important step, there are still far too many rural and Tribal schools and libraries that do not have sufficient broadband connectivity to the building and we are actively working on tackling this issue through the next steps of E-rate modernization and implementation of the next phase of the Connect America Fund.

III. Promoting Wireless Connectivity and Competition to All Americans

When we talk about access to broadband in 2014, we are increasingly talking about wireless connectivity. The Commission is work-

ing aggressively to make sure small businesses and all Americans can take advantage of the new services and applications enabled by mobile broadband.

We are taking multiple actions to make more spectrum available for wireless broadband. In February, the Commission concluded its first major auction of mobile broadband spectrum since 2008, auctioning the 10 megahertz H-Block, which raised more than \$1.5 billion, much of which will be put to use toward funding FirstNet's nationwide public safety broadband network.

This March, the Commission adopted a Report and Order establishing service rules for our upcoming AWS-3 auction of 65 megahertz of highly desirable spectrum this November. The Commission in March also changed rules to make 100 megahertz of unlicensed spectrum in the 5 GHz band usable for purposes including gigabit Wi-Fi.

In May, the Commission adopted a Report and Order that establishes ground rules for our historic Incentive Auction, as well as Mobile Spectrum Holdings policies to promote competition in our upcoming auctions as well as potential future spectrum transactions. By marrying the economics of demand with the economics of current broadcast spectrum holders, the Incentive Auction will harness market forces to determine the highest and best use of spectrum, while providing a potentially game-changing financial opportunity to America's broadcasters.

Underlying all of our work on auctions is a commitment to competition and ensuring smaller businesses have a shot to compete. For instance, the "market-based reserve" spectrum in the Incentive Auction will provide opportunities for wireless providers to gain access to important low-band spectrum that could enhance their ability to compete and help ensure that two dominant carriers can't run the table in the auction. Our establishment of smaller geographic license areas and 5 by 5 spectrum blocks in both the Incentive Auction and AWS-3 auction will also enhance small businesses' ability to compete for and win spectrum licenses.

In August, I circulated a Notice of Proposed Rulemaking to update the FCC's competitive bidding rules—also known as our Designated Entity or DE rules—to recognize the challenges new entrants face in entering the wireless industry, such as raising funds to compete in an auction, finding a revenue stream to support business expansion or developing a business model based on market needs rather than regulatory mandates. This proposal would provide innovative, smaller companies with the opportunity to build wireless businesses that can spur additional investment and offer more choices to consumers.

The FCC's Office of Communications Business Opportunities (OCBO) continues to conduct workshops to educate and empower small business owners to take advantage of opportunities in the communications sector. Our annual conference on capitalization strategies for small and diverse media and communications businesses will be held again this fall. Through seminars and one-on-one interviews, OCBO connects entrepreneurs with financial experts who make daily decisions about capital infusion.

Early participants in OCBO's Cap Access program have seen real benefits. For example, the National Association of Latino Community Asset Builders made the initial, crucial connections at our conferences that ultimately led to \$3.7 million in federal funds through the Broadband Technology Opportunities Program. With that much-needed capital, they established broadband-enabled small business support centers throughout the country.

IV. Promoting Competition, Localism and Diversity in the Media Marketplace

Related to these on-going efforts to promote and increase participation in communications services, the Commission also has a duty to promote competition, localism, and diversity within the media marketplace. The Commission has taken actions over the past year that could have a positive impact for small business entities.

One of the first votes I took as Chairman of the Commission at my first Open Meeting in November 2013 was to approve a Declaratory Ruling to clarify our policies and procedures for reviewing transactions in the broadcasting industry involving foreign ownership and investment. Such a clarification could unleash new capital to help existing broadcasters and potential new entrants to serve the needs and interests of their communities.

Additionally, we have rules in place that limit broadcast ownership concentration. A major component was the initiation of the quadrennial review of the Commission's media ownership rules in March of this year. We sought comment on the various rules and are exploring how to craft rules that can meet our goals and survive judicial review. As part of this proceeding, we are reviewing diversity issues to see how best we can promote a diversity of voices, including women and minorities.

While our quadrennial review is underway, we have to enforce our existing rules and close loopholes where necessary to ensure there's a level playing field for all—including small business entities. In March, we took a significant step to close a loophole in our attribution rules for TV Joint Sales Agreements (JSAs) that had been exploited by some to circumvent our local TV ownership limits. These new rules will protect viewpoint diversity and competition goals. As an example, just a few weeks ago, Gray Communications announced that it had terminated some sharing agreements with six TV stations in smaller markets and engaged the Minority Media Telecommunications Council (MMTC) to find new buyers for those stations. I applauded the news in late August that MMTC was successful in finding new buyers that will increase diversity of ownership and programming in each of these markets, all of which are in areas that serve smaller communities, including Grand Junction, Colorado; Monroe, Louisiana; and Fargo, North Dakota.

For other instances where there are attributable JSAs, and parties believe those existing or proposed agreements would be in the public interest, we will entertain waiver requests and process them on an expedited basis.

V. Fostering Innovation and Entrepreneurship Through an Open Internet

The Internet's open design has empowered innovators and entrepreneurs across the country to launch small businesses—some of which have grown to become world-leading companies. This May, the Commission adopted a Notice of Proposed Rulemaking that begins the process of crafting rules to protect and promote the open Internet. The focus of the proposals we put forward and the questions we ask in this Notice is on maintaining a broadly available, fast, and robust Internet that serves as a platform for economic growth, investment, innovation, free expression, and competition.

September 15th marked the close of the comment period for this proceeding. We are closely examining the issues and reviewing the public record, which includes more than 3 million comments—the largest body of comments for any FCC rulemaking proceeding. And we're not stopping with that. Just yesterday, we began a series of six public roundtable forums through which we are soliciting the views of Americans, as well as expert advice from a wide array of stakeholders, about how best to craft enforceable rules of the road that will bring certainty to the marketplace.

As this process moves forward, we will continue to enforce our Open Internet Transparency rule, which was upheld in court and is an important tool to help small businesses make informed choices about the Internet access services they buy. It is my goal to get final rules back on the books as quickly as possible to give consumers, businesses and innovators the Open Internet protections they currently lack.

VI. Ensuring Network Safety, Security and Reliability

The Commission is also working to make sure that the broadband networks small businesses rely on are safe, secure, and reliable.

To ensure that all Americans are not harmed and benefit from the transition to next-generation networks, we are obtaining data on the impact of technology transitions in rural areas, including Tribal lands, where residential consumers, small businesses, and anchor institutions may not have access to advanced broadband services.

The Commission is working to stop rural call completion problems, which can damage small and large businesses alike. Last year, the Commission enhanced our ability to investigate this problem with new data retention and reporting requirements. Thus far, our Enforcement Bureau has issued three consent decrees to combat this problem, and we will continue to take action against carriers that fail to provide reliable communications.

To protect against cyber threats, our Public Safety and Homeland Security is working with the private sector and other government agencies to create a new paradigm for cyber readiness. This private sector-led effort must be more dynamic than traditional regulation and more measurably effective than blindly trusting the market or voluntary best practices to defend our country.

We are working with industry to identify public goals, working with the affected stakeholders in the communications industry to achieve those goals, and letting that experience inform whether there is any need for next steps.

We also have practical tools like our Small Business Cyber Planner, which lays out a number of common-sense steps small businesses can take to improve security.

VII. Process Reforms

The Commission is sensitive to the impact of our regulatory processes on the entities we serve, including small businesses. In fact, process reform has been a priority since Day One of my Chairmanship, when I tasked staff to develop, within 60 days, specific recommendations to improve the efficiency and transparency of the FCC's processes. For instance, the Commission has conducted a review of its regulatory fee structure to update the payment scale and provide regulatory fairness for all of the Commission's licensees. Among the changes we have made is raising the *de minimis* payment level to exclude those licensees owing less than \$500 from having to pay a fee, giving small businesses a break, and also enabling the Commission to realize cost savings for processing.

VIII. Conclusion

I want to thank the Committee again for this opportunity to discuss the many things the Commission is doing to benefit America's small businesses. I look forward to working with members of this committee on these and other relevant issues, and I welcome your questions.



Office of the Director

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

October 24, 2014

The Honorable Sam Graves
Chairman
Committee on Small Business
U.S. House of Representatives
2361 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Graves:

Enclosed please find the responses to the Questions for the Record submitted for Chairman Tom Wheeler regarding his appearance before the Committee on Small Business on September 17, 2014, at its hearing entitled, "Is the FCC Responding to the Needs of Small Business and Rural America?"

If I can be of further assistance, please have your staff contact me at (202) 418-0095.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara W. Morris".
Sara W. Morris

Enclosure

Small Business Committee Hearing

“Is the FCC Responding to the Needs of Small Business and Rural America?”

Wednesday, September 17th

Chairman Sam Graves—Questions for the Record

1. This committee is very concerned about the time and other resources that rural carriers spend on sometimes outdated regulatory requirements. Earlier in September, the FCC put out a notice (79 FR 52334) seeking comment on information and data collection by the Commission. Is it your intention to reduce the amount information that small communications carriers are required to gather and submit?

RESPONSE:

Generally, the Commission continually strives to reduce burdens on the entities we regulate—especially small businesses. One of the priorities of my Chairmanship is to improve the way the Commission functions, as well as to modify or eliminate unnecessary regulations. We have made progress, and will continue the effort to reduce burdens, where warranted.

The Federal Register notice cited above is a required Paperwork Reduction Act (PRA) notice that addresses rules adopted by the Commission on February 20, 2014, governing the quality of closed captioning on television programming. In adopting the new closed captioning quality rules, the Commission had to carefully balance Congressional mandate to provide the millions of Americans who are deaf or hard-of-hearing with full access to video programming through the use of closed captioning with the burdens such rules may place on the video programming distributors. While we believe we appropriately struck such a balance, the PRA notice specifically seeks comment on, among other things, whether the proposed collection of information is necessary for the Commission to properly function and whether there are ways to minimize the burdens. In addition, we note that the Commission rules provides that petitioners who submit a request for exemption based on economic burden are automatically exempted from the closed captioning obligations while their petitions are pending, thereby deferring and potentially eliminating any burden on the petitioners. PRA comments are due to the Commission on November 3, 2014 where they will be reviewed by staff.

2. Most independent communications carriers, especially in rural areas, are small businesses that serve small businesses. Do you have a time line for implementing Connect America Fund distribution criteria for rural rate-of-return carriers?

RESPONSE:

The Commission is focused on updating the universal service fund high-cost program to ensure that we are delivering the best possible voice and broadband experiences to residents and busi-

nesses in rural America within the confines of our Connect America budget, while providing increased certainty and predictability for all carriers and a climate for increased broadband investment and expansion. In April, the Commission adopted the *Connect America Fund Further Notice of Proposed Rulemaking* that sought comment on proposals from rural carrier associations and also other possible methods to establish a Connect America Fund for rate-of-return carriers within the current budget for the program, and how to provide rate-of-return carriers with a way to transition to new forms of support. In that same proceeding, the Commission eliminated the Quantile Regression Analysis benchmarks rule for all rate-of-return carriers because it was not serving its intended purpose. We have received a thorough record of these issues, and they are under consideration by Commission staff. Please be assured that we will take into consideration the issues and concerns presented by all stakeholders as the Commission reviews the record in this proceeding as expeditiously as possible.

3. The Commission is in the process of implementing a \$100 million rural broadband experiment program to determine how to conduct Connect America Fund auctions. This has garnered the interest of many new players in this arena—local governments, rural electric cooperatives and other entities. How do you justify subsidizing carriers beyond the companies and cooperatives already getting Universal Service Fund support?

RESPONSE:

The Commission has a responsibility to ensure that the funds we collect to support our universal service programs are used in the most efficient and effective way possible, and these experiments give us the opportunity to, for the first time in the history of universal service, leverage the benefits of competition to determine which provider will receive the support to serve a particular area. In the *USF/ICC Transformation Order*, the Commission concluded that it would use a competitive bidding mechanism for Phase II of the Connect America Fund to award support in those states where price cap carriers decline to make a state-level commitment in exchange for model-based support. In the January 2014 *Tech Transitions Order*, we unanimously adopted targeted experiments to advance the deployment of voice and broadband-capable networks in rural areas with Connect America support and gain data on the impact of technology transitions on rural America where residential consumers, small businesses, schools, libraries, and health care providers may not have access to advanced broadband services. And in July 2014, the Commission unanimously adopted a \$100 million budget and established objective criteria for selecting projects. These experiments will allow us to explore how to structure the Connect America Phase II competitive bidding process in price-cap areas.

The universal service program is one of the most important tools at our disposal to ensure that consumers and businesses in rural America have the same opportunities as their urban and suburban counterparts to be active participants in the United States of the

21st century. Therefore, it is important that we allow all interested parties an opportunity to compete to bring robust broadband to rural areas. It is critical that we have a universal service program that supports providers who are willing to step up and deliver service consistent with the Commission's performance standards.

Importantly, any recipient of rural broadband experiment funding must be designated as an eligible telecommunications carrier by the state(s) where it is seeking to offer service or by the Commission (if the relevant state lacks jurisdiction over that entity). This helps to ensure that these new participants in the universal service program meet the same baseline standards consumers have come to expect from incumbent providers. Designating rural broadband experiment participants as eligible telecommunications carriers also assists state and federal regulators in monitoring and overseeing the use of universal service funds.

Competition holds the promise of better services for rural America at lower costs. Better service at lower cost is the result of broadband competition in other areas of the country, and it is time to use that same dynamic for the benefit of rural America.

4. What protections do FCC policies contain to prevent an ISP from using its position as a broadband provider to target, through its network forensics and management technologies, the customers of a competitor, including those that provide alarm services?

5. How can the FCC help that ISPs do not, using preferential treatment or priority to they or an affiliate provide, create an unfair competitive market advantage over small businesses that also reach customers using the same broadband network owned by the ISP?

RESPONSES TO QUESTIONS 4-5:

Small companies and startups must be able to reach consumers with their innovative products and services, and they must be protected against harmful conduct by broadband providers. As a result of the D.C. Circuit Court of Appeal's January decision in *Verizon*, there are currently no rules in place that prevent a broadband provider from engaging in conduct harmful to Internet openness, such as blocking a consumer from accessing a requested website, degrading the performance of an innovative Internet application, or preventing attachment of a lawful device (such as an alarm monitor) to a broadband network. The Open Internet is too important to leave consumers and innovators unprotected. We must reinstate strong, enforceable Open Internet rules, and we must do so with dispatch.

As you know, in May, the Commission adopted a *Notice of Proposed Rulemaking* ("Notice") to begin that process. We asked a fundamental question: What is the right public policy to ensure that the Internet remains open? And we sought comment on the best way to achieve that fundamental policy goal. The response has been remarkable: Over 3.7 million comments were filed by the close of the comment period on September 15, 2014. This record-setting level of public engagement reflects the vital nature of Internet openness and the importance of our getting the answer right in

this proceeding. The *Notice* proposes clear rules of the road and aggressive enforcement to prevent unfair treatment of consumers, edge providers and innovators. It also proposes a rebuttable presumption that exclusive contracts that prioritize service to broadband affiliates are unlawful, and asks more broadly whether paid prioritization should be banned outright or otherwise presumed to be illegal.

The Commission is considering several options that would form the legal foundation for the rules, including Section 706 and Title II of the Communications Act. The *Notice* specifically asks questions about these approaches, including whether the Commission should revisit its classification of broadband service as an information service or whether we should separately identify and classify under Title II a service that “broadband providers... furnish to edge providers.” For approaches involving a Title II classification, we also ask about how our forbearance authority should be used to tailor Title II obligations to achieve our public policy goals. Since the *Notice*, record filings by some parties—such as AOL, Mozilla, the Center for Democracy and Technology, a coalition of library and higher education associations, Congressman Henry Waxman (D-CA), and others—have suggested additional approaches that would combine aspects of both our Section 706 and Title II authority. We are looking closely at these approaches as well.

This reflects what I said before the House Committee on Small Business: All options remain on the table, including Title II, so that we can properly protect small businesses and startups.

**Questions for the Record from
Rep. Blaine Luetkemeyer (MO-3)
Committee on Small Business
U.S. House of Representatives**

**“Is the FCC Responding to the Needs of Small Businesses and
Rural America?”**

House Small Business Committee

September 17, 2014

Questions to Tom Wheeler, Chairman of the Federal Commu-
nications Commission

1. Earlier this year, it came to my attention that the FCC’s docket regarding the Telephone Consumer Protection Act (TCPA) causes regulatory uncertainty, rather than clarity, for small businesses. In fact, 15 of my colleagues, including members of this Committee, sent a letter last month urging the Commission to enact common-sense reforms to the telemarketing statute by acting on one of the many TCPA-related petitions for declaratory ruling that are awaiting action by your agency. How is the Commission planning to provide regulatory certainty for small businesses seeking to gain customers without violating the statute? When will the Commission take action on the numerous TCPA-related petitions for declaratory ruling?

RESPONSE:

Congress enacted the TCPA in 1991 with a goal of protecting consumers from unwanted calls and facsimiles, while not inhibiting useful and expected communications between parties. The petitions for declaratory ruling that are pending before the Commission raise questions about how the TCPA should be applied to calling practices that, in many cases, businesses and other parties are either currently using or are proposing to use in the future. The petitions also raise questions about how the TCPA applies to certain calling technologies and whether distinctions should be drawn between telemarketing and informational calls in some contexts, among other issues. In evaluating the important and challenging issues raised by these petitions, the Commission will seek to protect consumer privacy from unwanted calls while ensuring that parties who wish to make calls that consumers find desirable can do so without legal uncertainty.

The Commission has received several petitions regarding the applicability of the TCPA and the Commission’s related rules, and routinely seeks comment on them with a view toward building a complete public record on the specific issues that they raise. The comment cycles for a number of these petitions have been completed, and the Commission staff is carefully reviewing the records.

In addition, the staff has held numerous meetings with interested parties on these issues, which have been very informative. Please be assured that we will take into consideration the issues and concerns presented by all stakeholders as the Commission continues to work on these proceedings as expeditiously as possible.

2. As with other telecommunications and technology regulations, the Telephone Consumer Protection Act is outdated and needs common-sense reforms. For example, it is my understanding that if a wireless number is re-assigned to a new customer, a business that seeks to contact the previous owner of the number faces liability for calling the new customer even though there is no way for the business to know the number was re-assigned. That just doesn't make much sense. How does the FCC plan to address and rectify this issue? Isn't there a place for common-sense solution here such as creating a "safe harbor" for entities that respect the request of a new reassigned number holder to not be called a second time by adding the recycled number to a suppression list?

RESPONSE:

Since its enactment in 1991, the TCPA has required prior express consent for non-emergency autodialed or prerecorded calls to a wireless telephone number. Petitions for declaratory ruling currently pending before the Commission raise the issue of how the TCPA should apply when a party unknowingly makes such a call to a wireless number that was originally held by a subscriber who consented to such calls, but has subsequently been re-assigned to another subscriber. The Commission has sought comment on this issue, including proposals by petitioners that the Commission adopt a "safe harbor" from liability for such calls when the caller has complied with the subsequent subscriber's request not to be called. The comment cycles for these petitions have been completed, and interested parties have made informative presentations on this issue to the Commission staff, which is actively reviewing the entire record. In resolving this issue, the Commission will seek to carry out the TCPA's statutory goal of protecting consumers from unwanted autodialed or prerecorded calls while recognizing the practical concerns of parties who seek to comply with the law. Please be assured that we will consider the views and concerns of all stakeholders as we work toward an expeditious resolution of this important issue.

3. I also understand that the TCPA requires businesses to obtain express consent from consumers in order to contact them. However, there seems to be some confusion about whether businesses need to obtain express consent for each type of contact. For example, if a customer gives a business his phone number for account service purposes, doesn't it make sense for the business to be able to call that customer for billing and collections purposes?

RESPONSE:

The TCPA has, since its enactment in 1991, required prior express consent for non-emergency autodialed or prerecorded calls to wireless telephone numbers. Petitions for declaratory ruling now

pending before the Commission raise a variety of issue concerning how consent must be obtained to comply with this statutory requirement. The Commission has sought comment on these petitions, and the staff is now closely reviewing the record of comments that have been filed, as well as information provided by interested parties during ex parte presentations.

In evaluating the consent issues before it, the Commission will consider the consumer's interest in deciding which calls he or she wishes to receive, as the TCPA provides, as well as the practical concerns of parties who wish to make calls to such consumers. As you have noted in your question, the context in which a telephone number is provided may be a significant factor in the Commission's review of consent issues. For example, in its original 1992 Report and Order adopting rules under the TCPA, the Commission found that "persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary." More recently, in 2008, the Commission addressed consent in the debt collection context, clarifying that "autodialed and prerecorded message calls to wireless numbers that are provided by the called party to a creditor in connection with an existing debt are permissible as calls made with the 'prior express consent' of the called party." We will carefully consider the precedential value of such previous Commission decisions, as well as the comments of all interested parties, as we move toward resolution of the pending petitions that raise consent issues important to consumers and callers alike.

Questions for the Record
Small Business Committee

“Is the FCC Responding to the Needs of Small Business and Rural America?”

Wednesday, September 17th

Congresswoman Jaime Herrera Beutler - QFRs

1. “I understand there is an issue pending before the FCC concerning the selection of the next Local Number Portability Administrator. It is very important that the voices of all carriers including the small and medium sized competitive carriers be heard. I understand the LNP Alliance, which represents the Northwest Telecommunications Association, filed comments in this proceeding and that they have expressed their concern about the fact that this proceeding is happening at a critical time during the IP transition. I share that concern and I am also concerned what type of transition costs may be imposed on these telcos, both today and in the future in an all IP world. Does the selection process envision a neutral, shared, allocation of costs in the IP world?”

RESPONSE:

There has been considerable participation by small and medium-sized carriers in the ongoing process to select the next Local Number Portability Administrator (LNPA), including from the LNP Alliance and its members as well as others such as Comptel. We are currently evaluating the record in this proceeding, which includes the bids as well as the comments filed by the LNP Alliance and others. This proceeding to select the LNPA, however, does not change the Commission’s numbering or cost-allocation rules, so any concerns about matters such as how costs are allocated are not part of the LNPA selection process.

2. The Commission has stated that the 600 MHz incentive auction will commence in mid-2015; however, the National Association of Broadcasters has challenged the Order in court, and the FCC must also address numerous rules concerning the auction process before it can conduct the auction.

3. Are you on track to meet your commitment to hold the 600 MHz incentive auction by mid-2015 or will the NAB’s lawsuit delay the process? What developments pose the greatest risk to conducting the 600 MHz incentive auction by mid-2015?

4. If you are not on track for a mid-2015 auction, please explain the problems you are having and why they cannot be overcome on a timely basis. Please also explain in detail your plans for resolving any such problems.

RESPONSES TO QUESTIONS 2-4:

The Commission has worked to meet its goal to commence the world's first spectrum incentive auction in mid-2015. We have known from the start that the incentive auction is a complex undertaking, and we want to make appropriate, and timely, decisions to ensure a successful auction. I am confident that our initial Report and Order released in early June complies with all of the statutory directives. However, as you note, court challenges to the auction rules by the NAB and Sinclair Broadcasting could delay of the incentive auction implementation process.

On October 22, the court announced a revised briefing schedule under which final written briefs will not be due until the end of January 2015, with oral arguments to follow at a later date yet to be determined. We are currently evaluating the impact of this new schedule on the timing of the auction.

Despite the complexity of the auction, and even in the face of uncertainty due to lawsuits, the Incentive Auction task force has been making consistent progress implementing the auction, and we continue to make headway in our efforts.

For example, in the past month, the Commission adopted five Incentive Auction-related items:

- A Notice of Proposed Rulemaking regarding unlicensed operation in the TV band and new 600 MHz band, including operation of fixed and personal/portable white space devices and unlicensed microphones.
- A Notice of Proposed Rulemaking to address the needs of wireless microphone users.
- A Declaratory Ruling regarding protection of coverage areas and population served of broadcast stations during the repacking process.
- A Second Report and Order and Further Notice of Proposed Rulemaking to address (1) the methodology for predicting interference between broadcast and wireless operations in the same or adjacent channels in nearby markets during and following the Incentive Auction, and (2) outstanding proposals for additional measures to prevent interference between TV stations as a result of the repacking process.
- A Third Notice of Proposed Rulemaking and a Suspension Public Notice for Digital LPTV to address measures to facilitate the low power TV digital transition and to mitigate the potential impact of the Incentive Auction and the repacking process on the low power TV services.

For stations eligible to participate in the auction, we have increased our outreach activities to provide additional information on the benefits of this once-in-a-lifetime opportunity. On October 1, we released an informational package, prepared by the investment firm Greenhill and Co., to every eligible broadcast station. The package outlines the options available in the incentive auction, includes FCC staff estimates of high end compensation that could be paid for broadcast spectrum rights in each market, and information from the IRS on tax implications. In the coming weeks, Commission staff will embark on an expanded broadcaster outreach effort

that includes sitting down with broadcasters at town halls and individually to discuss the opportunities presented by the auction. It is my hope and expectation that broadcasters will give participating in the incentive auction careful consideration. That information has been provided to the public on our Learn Everything About Reverse Auctions Now (LEARN) webpage (See www.fcc.gov/LEARN).

We also recently released a Public Notice seeking comment on a draft reimbursement form to be used by broadcasters and other entities that incur expenses due to the post-auction relocation process. The Notice on the form builds on prior action where the Commission worked with and sought comment from the broadcast industry.

The staff also is actively working on a Public Notice to seek public input on the final auction procedures, and reviewing the issues raised in the Petitions for Reconsideration on the Report and Order that were filed with the Commission in late August.

Questions for the Record
Committee on Small Business Full Committee Hearing
September 17, 2014
Congressman Tom Rice (SC-07)

1. My colleagues and I appreciate the agency's apparent willingness to address the rural call completion problem that continues to harm rural America when calls destined for rural businesses, hospitals, public safety officials, and individuals are dropped before reaching the local provider. Because of the critical need to fully resolve this problem, please provide a more detailed update on the status of your agency's actions to do so, including a more detailed explanation of why it has taken so long to implement the record-keeping and retention rules the Commission adopted on this subject nearly a year ago. The FCC has fined three companies in the past couple of years for failing to ensure that rural calls are completed. Have these enforcement actions been effective in discouraging other bad actors from dropping calls? Why do you think the record retention and reporting will help solve the problem? What more can be done?

RESPONSE:

The consequences of call completion and service quality problems can be dire, impacting businesses, families, and public safety, and thus the Commission is committed to ensuring reliable telephone service in rural America. In the *Rural Call Completion Report and Order and Further Notice of Proposed Rule Making*, the Commission adopted new rules governing the delivery of long-distance calls to rural areas, including prohibiting false ring signaling, and requiring data retention and reporting of call completion performance. The rule prohibiting false ring signaling is already in effect. The record retention and call completion performance reporting requirements will need approval from the Office of Management and Budget (OMB) before going into effect. We are currently addressing petitions for reconsideration and waiver filed following the Rural Call Completion Order. Recently, I circulated an Order to my fellow Commissioners to address five petitions that were filed asking the FCC to reconsider our rules.

To be sure, we are not waiting for the new rules to go into effect to take what actions we can under our existing rules. In particular, the Commission has taken a number of enforcement actions in this area. In addition to the Consent Decree entered with Level 3 in 2013 (\$975,000), earlier this year the Enforcement Bureau negotiated consent decrees with two major long distance providers—Windstream Corporation (\$2.5 million) and Matrix Telecom (\$875,000).

Our investigations, in conjunction with other enforcement efforts, which include issuing an advisory on how providers should address consumer complaints about rural call completion problems, have

had positive effects in combatting this complex problem. These efforts have raised awareness among long distance providers as to how an individual intermediate provider (often called a “least cost router”) performs in delivering calls to rural areas and, as a result, long distance providers have removed poor performing intermediate providers from particular routes. These efforts also have improved the process through which long distance providers address and resolve complaints by rural carriers and consumers about call completion problems.

The new rules will further help us ensure that customers in rural areas receive reliable telephone service. For example, the data that providers file with the Commission should show us whether an individual long distance provider is completing calls to a specific rural area at a lower rate than other providers, which should help us take targeted, appropriate action, including enforcement action, if necessary. This information, as well as the additional data that long distance providers will collect and retain, will also assist long distance providers in monitoring the performance of each of their individual intermediate providers to discrete rural areas and highlight whether provider’s call completion rates to a particular rural area is unacceptably low. Once the new rules take effect, we expect that other long distance providers, like Matrix, will remove poor performing intermediate providers to improve all completion performance to rural areas.

We will continue to investigate the call completion practices of other voice communications providers, enforce our rules, and evaluate whether any additional measures are appropriate to ensure reliable telephone service in rural America.

2. You and your staff have made statements that indicate you’re considering security mandates for telecom providers if you decide the industry is not effectively securing its own assets. What security threshold will companies have to meet to ensure their security measures aren’t regulated? When you consider the wide variation of network and service providers, how would your agency develop mandatory standards that are relevant for all entities when the cyber threats are always changing? Wouldn’t it be more efficient for companies to be made aware of threats so they can adopt the security measures that are the best fit for their company? How do you plan to help companies in implementing such measures?

Secure communications networks and the public safety functions that rely on them are crucial to our national security. As these networks transition to IP-based technologies, forward-looking market innovation driven by the business interests and expertise of the private sector is indispensable to their security and central to consumer and investor confidence in the communications market. This is the guiding principle of our cybersecurity efforts at the FCC. The strongest posture our nation can have is a capable private sector leading the development and implementation of effective, defensive cybersecurity measures.

Among communications sector companies, there is a wide range of cyber defense capabilities. Effective employment of cyber capabilities varies depending on a number of factors, including company size and scale, reliance on public facing Internet infrastructure, experience with adversary exploitation attempts, and workforce training, among other factors. However, given the seriousness and sophistication of the threats that these networks face and the accelerating convergence of public safety communications around IP-based networks, I am extremely concerned that the relevant information is simply not yet available for the FCC—or any other entity—to have an informed understanding of the sufficiency of the protections that are in place. Developing a well-informed understanding of cyber risks for our core networks is a threshold issue for our country’s national security interests and for the Commission’s execution of its statutory public safety responsibilities.

Tackling our nation’s cybersecurity challenges will require a collaborative effort. We need a new regulatory paradigm that is both more dynamic than reactive compliance with rules and more effective than blindly trusting the marketplace. The companies that make up the communications sector must recognize their special role and the value proposition, and we look forward to continuing to work with these stakeholders, such as through the Communications Security, Reliability, and Interoperability Council (CSRIC), an industry-led FCC advisory group, which has a working group tasked with developing and recommending implementation details for the NIST Cybersecurity Framework in the communications sector.

Over 100 subject matter experts from industry and other stakeholders are working urgently to establish an approach to cybersecurity in which they generate the sufficiency thresholds for their internal cybersecurity controls consistent with the NIST Cybersecurity Framework. Everyone involved in this effort is working toward the same goal: a business-driven approach to measuring, managing, and communicating cyber risk. I do not wish to prejudge this important industry-led effort, and it would be premature to comment on where the effort may conclude. We all want this effort to succeed, and the FCC will work diligently with communications providers and other stakeholders to make it so.

Regarding threat information sharing, we agree that companies themselves are our country’s eyes and ears in detecting and addressing these threats. At the FCC, we are evaluating the legal concerns that may complicate threat information sharing in the communications sector, and we are working collaboratively with communications stakeholders and companies in other sectors to find information sharing solutions. Again, however, it would be premature to speculate on what other options might be needed beyond the efforts that are presently underway, as neither the FCC nor the communications providers themselves have sufficient data or information on which to base such determinations.



Steve Brown, AR, CIPS, CRS, GREEN
2014 President

Dale A. Stinton
Chief Executive Officer

**GOVERNMENT AFFAIRS
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Scott Reiter, Vice President
Jamie Gregory, Deputy Chief Lobbyist

September 16, 2014

The Honorable Sam Graves
Chairman
House Small Business Committee
1415 Longworth House Office Building
Washington, DC 20515

The Honorable Nydia M. Velázquez
Ranking Member
House Small Business Committee
2302 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Graves and Ranking Member Velázquez:

On behalf of the more than one million members of the NATIONAL ASSOCIATION OF REALTORS® (NAR), I write in advance of your hearing entitled: "Is the FCC Responding to the Needs of Small Business and Rural America?" to express NAR's belief that open Internet rules are necessary to protect our members, who are primarily independent contractors and small businesses, as well as their clients.

As you know, the Federal Communications Commission (FCC) has recently proposed and has sought comment on new Open Internet rules that would permit Internet service providers to discriminate technically against and impose new tolls on American businesses that operate on the Internet. Permitting these actions would be disruptive to our members' businesses that have come to rely on an open Internet. Moreover, these actions would be especially harmful for small businesses and start-ups competing against larger companies that can afford such tolls. In order to continue the economic boom enabled by Internet innovation, NAR supports and has urged the FCC instead to adopt open Internet rules that will protect against blocking, discrimination, access charges, and paid prioritization.

The Internet has been a driving force for innovation for decades, and our members, their Customers, and local communities are benefiting from this innovation every day. The economic growth and job creation fueled by the open Internet is unprecedented in American economic history. This growth has been fostered by the Federal Communications Commission (FCC) under both Republican and Democrat administrations for over a decade.

Our members, who identify themselves as REALTORS®, represent a wide variety of real estate industry professionals. REALTORS® have been early adopters of technology, and are industry innovators who understand that consumers today are seeking real estate information and services that are fast, convenient and comprehensive. Increasingly, technology innovations are driving the delivery of real estate services and the future of REALTORS® businesses.

Streaming video, Voice over Internet Protocol, and mobile applications are commonly used in our businesses today. In the future, new technologies, like virtual reality and telepresence among others, will be available that will no doubt require open internet access unencumbered by technical or financial discrimination.

NAR supports preserving an open Internet that in turn, promotes small business, job creation and personal liberty. We wish to see the FCC implement strong and enforceable rules of the road to protect the free and open Internet that includes no-blocking and non-discrimination. If left as proposed, the current FCC rule would harm Main Street businesses, such as REALTORS®, and their ability to be competitive in the high-speed, 21st century world.



REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.

The benefits of broadband Internet for innovation and economic development are unparalleled. But we'll lose those tremendous benefits if the Internet does not remain an open platform, where Americans can innovate without permission and with low barriers to launching small businesses and creating jobs. Given this reality, it is important that this Committee work with the FCC to enact and preserve open Internet policies that promote competition between Internet application and service providers. NAR is ready to work with you on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Brown", with a long horizontal flourish extending to the right.

Steve Brown
2014 President, National Association of REALTORS®

cc: Members of the House Small Business Committee