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NOMINATION OF THOMAS E. WHEELER TO BE CHAIRMAN OF THE FEDERAL COMMUNICATIONS COMMISSION

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

JUNE 18, 2013

Printed for the use of the Committee on Commerce, Science, and Transportation

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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CONTENTS

	Page
Hearing held on June 18, 2013	1
Statement of Senator Rockefeller	1
Statement of Senator Thune	3
Statement of Senator Blunt	19
Statement of Senator Fischer	21
Statement of Senator Begich	23
Statement of Senator Nelson	26
Statement of Senator Ayotte	27
Statement of Senator Klobuchar	28
Statement of Senator Heller	31
Statement of Senator Cruz	33
Statement of Senator Coats	36
Statement of Senator Blumenthal	37
Statement of Senator Scott	39
Statement of Senator Cantwell	41

WITNESSES

Thomas E. Wheeler, Nominee to be Chairman, Federal Communications Commission (FCC)	5
Prepared statement	7
Biographical information	8

APPENDIX

Response to written questions submitted to Thomas E. Wheeler by:	
Hon. John D. Rockefeller IV	47
Hon. Barbara Boxer	49
Hon. Mark Pryor	52
Hon. Claire McCaskill	53
Hon. Mark Warner	55
Hon. Mark Begich	56
Hon. Brian Schatz	57
Hon. William Cowan	58
Hon. John Thune	59
Hon. Roger F. Wicker	64
Hon. Roy Blunt	65
Hon. Marco Rubio	68
Hon. Kelly Ayotte	70
Hon. Dean Heller	72
Hon. Dan Coats	73
Hon. Ted Cruz	75
Hon. Jeff Chiesa	75

NOMINATION OF THOMAS E. WHEELER TO BE CHAIRMAN OF THE FEDERAL COMMUNICATIONS COMMISSION

TUESDAY, JUNE 18, 2013

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 2:35 p.m., in room SR–253, Russell Senate Office Building, Hon. John D. Rockefeller IV, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, U.S. SENATOR FROM WEST VIRGINIA

The CHAIRMAN. This hearing will come to order.

Mr. Wheeler, if confirmed, you will lead an agency that has the most challenging and complicated issues pending since the Telecommunications Act of 1934. I don't say this lightly. The decisions the Federal Communications—FCC makes under your leadership, should you be confirmed—and then I'll stop saying that—the future of the Nation's telephone network, public safety, the wireless industry, broadcasting, the Internet, and consumer protection are at stake for years to come.

Of all the pending issues before the Commission, the current proceeding, and one future rulemaking, are of utmost importance to me, personally. The incentive auction proceeding will now create the revenues to fund a nationwide interoperable public safety network. I feel strongly about this, and I have ever since September 11, 2001; and before that, really, when we went into Kuwait and none of the branches of the service could talk to each other. It's a mammoth undertaking, and I understand that.

The E-Rate program has connected millions of schoolchildren to the Internet, exposing them to the transformational power of information in extraordinary ways, not all of which are very helpful, from distracted driving to the moral character of our future generations.

As I called for several months, and the President, more importantly, said in his recent remarks in North Carolina, the FCC can help make sure that our schools and libraries can meet the data and connectivity needs necessary for today and for the future. Updating the E-Rate program to meet the needs of the 21st century is necessary for our children and our national competitiveness.

Seeing the combination of these two initiatives as my highest priority, obviously I hope it will be yours as well, too. Too much is at stake in these proceedings not to get them right.

If the sheer magnitude and complexity of these issues were not enough, you face an agency that has become increasingly polarized and politicized. Some even question its relevance in a digital age, but I think the agency is more relevant and important than ever.

At its core, the FCC is a regulatory agency; the 1934 Communications Act so said. I believe that too many have forgotten that the agency's fundamental responsibility is the regulation of communications networks. These regulations serve important policy goals. You cannot have universal service without regulation. You cannot ensure competition without regulation. You cannot have consumer protection without regulation.

Let me be clear. Even as communications networks evolve and technology advances, the FCC's mission does not. The rules and regulations that we have in place now may not be the rules that we need for the future. But, that certainly does not mean that we should not have any, as so many in the industry seem to advocate, and some of our colleagues do also.

I think we can all agree that the rules the agency need to adapt, should conditions change, evolve, so that every American, no matter where, has access to broadband. That's so easily said, and so easily avoided by all forms of those undertaking it. Promises made, promises not kept. That's the pattern that I have found, and I'm sure—no, I can't speak for Senator Thune, but any rural state finds that there's a deficit of attention.

The rules the agency needs to adopt should guarantee that every child in America can harness the power of the Internet, and to do it safely. The rules the agency needs to adopt should empower consumers with the information they need to make informed choices. The rules the agency needs to adopt should continue to create the conditions for job creation, innovation, and investment.

The FCC, under the leadership of Chairman Genachowski, made progress on achieving these goals, but an awful lot of work remains to be done. New challenges will emerge. As I advised Chairman Genachowski, the FCC Chairman must be more than the arbiter of industry interests. And they're very, very effective in making their cases, exclusively for them, not necessarily looking at the broader good.

Bottom line—characteristic truism, long history—you must use the vast statutory authority to advocate for the public interest—1934 Communications Act—all—and the consumer, also the parent and the student, all those without an army of advocates to lobby on their behalf. We are consumed about—here, about people that come to visit us representing wireless this and wireless that, and what about white spaces, and what about, you know, megahertz band, whatever. And that's fine, because they're a big part of the puzzle. But, what is the goal? The goal is to provide access for, and protection to, the people who use this and those who are not using it who should be using it, in my judgment.

You will bring to the job a long history and distinguished career in the communications industry. As a pioneer in the cable and wireless industries, you have been instrumental in the growth of

both of these critical sectors. As an entrepreneur, you have built businesses and created jobs. Most importantly, you understand the power of technology, how it has already transformed our lives and how it will continue to do so each day.

In closing, your career is one of innovation, leadership, and public service. I believe that, as chair of the FCC, you can use your experience and skills to harness the vast, vast power of the FCC—not shy away from it, but harness it. Use it. Use it to spur universal deployment of advanced technologies, foster growth and innovation, and protect consumers.

Thank you.

The distinguished Ranking Member.

STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA

Senator THUNE. Thank you, Chairman Rockefeller.

Mr. Wheeler, I want to thank you for your interest to serve as the next Chairman of the Federal Communications Commission and to bring your considerable experience to the agency.

We're in the midst of a technological revolution that holds great promise to improve the lives of all Americans. Advancements seem to be moving faster than ever before, and they're finding their ways into the hands of consumers more quickly and in larger numbers every day.

Today, grandparents who live thousands of miles away can see their grandkids grow up, due to the Internet and video applications. Small business owners in places like South Dakota use smart devices to run their companies and have access to technology that, previously, only the world's largest corporations could use. And doctors are able to diagnose and help folks in rural America without patients traveling hundreds of miles to see a specialist.

When we met, last week, we talked a little bit about South Dakota. And I, again, want to extend an open invitation to you to visit. There's no substitute for seeing, firsthand, the challenges of rural communications delivery and the value that new technology holds for Americans living in rural states. You can also replace the old sign from Wall Drug that you happened to come by a few years ago.

As my colleagues may be aware, you've written, and I quote, that "The Communications Act and its enforcer, the FCC, are analog legacies in a digital world," end quote. And then you went on to say, and I quote again, "Regulation designed around 20th century technology and monopoly market structure isn't a perfect tool for dealing with distributed digital networks and multiple service providers," end quote.

I think that frames our big picture discussion perfectly. And coming from someone now aspiring to lead that same legacy agency using that same outdated law, it begs several questions:

The first question is, Will you work with Congress and seek to amend the law, where it may be inadequate and outdated? The two previous FCC chairmen both chose to intervene in the broadband market, based on questionable legal theories rather than any clear statutory authority or congressional intent. The first attempt was struck down in court, and the second may yet meet the same fate.

If the Commission loses again, I hope you will take a deep breath and come to Congress for legal clarity or revision instead of wasting even more public resources on regulatory adventuring. I certainly hope that you would also refrain from applying the monopoly era Title II common-carriage regime to our modern broadband economy.

Second, will you conduct agency business transparently? You've been criticized for suggesting that the FCC use merger conditions to create de facto regulation for an entire industry, or, at a minimum, underscoring its ability to do so. I hope that you understand the anxiety among lawmakers when a potential agency chairman, who is tasked with executing the law, discusses using a backdoor to imposing a new regulatory regime and skirting the regulatory authority issue. Congress never intended for the FCC's transaction review authority to be used as a backdoor policymaking tool that lacks both transparency and judicial review. We already have too many Federal agencies carrying out their own agendas and overstepping their congressional mandates. We don't need the FCC to be another one.

Third, will you be a visionary? As an industry leader and having served on the FCC's Technological Advisory Council, you've seen, firsthand, the power and potential of the Internet. There's no debate whether our current telecommunications laws, whether they were written in 1996, 1992, or 1934, anticipated a converged world in which American consumers can choose from multiple wireline and wireless communication substitutes. None of them did. In fact, all of our laws deserve to be reviewed and brought into the digital all-IP era, reflecting not just today's reality, but also allowing for tomorrow's advances.

Your term at the FCC has the potential to be pivotal one for the communications history, and I invite you to share your ideas regarding statutory and agency modernization.

Chairman Rockefeller, I know many members of the Committee have already had an opportunity to meet privately with Mr. Wheeler, and I know others would like to do so. I also suspect there will not be enough time today to address all the questions our members may have. So, the record will provide another opportunity for them to explore issues important to them and their constituents.

Nevertheless, I appreciate your desire to process Mr. Wheeler's nomination in a timely manner in order to get the Commission back to its full membership as soon as possible, especially given the many critical proceedings before the agency. So, I await the President's additional nomination to fill the seat previously held by Commissioner McDowell, and I'm ready to work with you and our colleagues to move forward both nominations in due course.

Thank you. And I look forward to hearing Mr. Wheeler's testimony.

Thank you, Mr. Chairman.

The CHAIRMAN. Please proceed.

The little red button.

STATEMENT OF THOMAS E. WHEELER, NOMINEE TO BE CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION (FCC)

Mr. WHEELER. First, we start with a technological challenge: turn the mic on.

[Laughter.]

Mr. WHEELER. Mr. Chairman, Ranking Member Thune, thank you very much for the privilege of being before you today. It's an honor to be nominated by the President and to be considered by this committee for the position of Chairman of the Federal Communications Commission.

As you have both referenced, it has been a privilege to meet with many members of this committee over the last few weeks. And, if confirmed, I look forward to continuing those dialogues, because together, if confirmed, we are working in "one of the most" exciting, if not "the most" exciting, technological moment in our Nation's history.

I am blessed to be joined by my family here today, and please allow me to introduce them——

The CHAIRMAN. Please.

Mr. WHEELER.—to you.

Carol Wheeler is my best friend and the biggest-hearted, wisest person I've ever met in my life. And this is a—if confirmed, this will be a public service that both of us perform.

The CHAIRMAN. This is a very family-friendly observation.

[Laughter.]

Mr. WHEELER. Nicole McNamara and Melvin McNamara are the parents of Hunter and Schuyler, who appeared on the scene 3 weeks ago and made us proud grandparents, joining their 2-year-old, little Melvin McNamara. And, Senator Thune, Melvin, as you might gather from his name, is from Ireland, and the other set of grandparents communicate with their grandkids, exactly as you just said, via Skype and the Internet.

And Max Wheeler, sitting on the end, is somebody I am incredibly proud of. Last month was a big month because Melvin and Nicole had twins, and it was also a big month because Max graduated from the LIFE program at George Mason University.

So, this is a team effort, Senator, and I appreciate the opportunity to introduce the team to you.

I am excited by the opportunity for public service. For almost 40 years, my professional life has revolved around communications technology and its various iterations during that period. In the process, I have seen the role that policy can play, either as a boon to growth or a break on innovation.

In 1976, I stepped onto this career path, first as Executive Vice President and then CEO of the National Cable Television Association. I fought against the FCC's rules limiting cable's ability to compete as a new video service. I worked for the ability of competitors to bring services into the home. And, at NCTA, helped lead the industry to support what is today the underpinning of the FCC's jurisdiction over cable, the 1984 Cable Act.

Caught up in the excitement of the dawning Digital Age, I became the CEO of NABU, the Home Computer Network, the first delivery of high-speed data over cable television lines. Unfortunately, it's hard to be the Home Computer Network when there are

few home computers. And the market forecast did not come to pass, and that company went by the wayside. But, I was able to continue in the new digital world, including bringing to market the first digital video system and the first satellite delivery of digital video.

And then, in 1992, the cellular industry recruited me to run CTIA. It was an exciting time as we built markets around the new concept of competitive local telecommunication service. During my tenure, that competition was expanded by the auctions of 1994. Wireless was increasingly used in place of wireline. And wireless data turned the phone into a pocket computer. All of these developments brought with them new policy challenges.

What I learned from my business experience will make me a better Chairman, should the Senate confirm my nomination. Those lessons can be summed up in two concepts:

The first is that competition is a power unto itself that must be encouraged. Competitive markets produce better outcomes than regulated or uncompetitive markets. I've seen, firsthand, the results of competition. DBS competition spurred cable's expansion into digital services. Competitive local exchange carriers and cable television provision of Internet access spurred telephone companies to expand their digital offerings. And the introduction of PCS licensees spurred cellular carriers to go digital. I am an unabashed supporter of competition. I believe the role of the FCC has evolved from acting in lieu of competition to dictate the market to promoting and protecting competition, with appropriate oversight, to see that it flourishes.

The second lesson is that, while competition is a basic American value, by itself it is not always sufficient to protect other basic American values. In the telecommunications world, this committee has identified, and the Congress has identified, issues that include improving access to broadband networks. Universal service is a key tenet of the Telecommunication Act. We did it for electricity. We did it for phone service. We can do it for broadband.

This committee has, long and regularly, recognized another value, and that is the use of technology to enhance public safety and public services. It makes no sense that first responders carry their own smartphones because the gear they have been issued cannot do what technology otherwise makes possible. Likewise, it doesn't make sense that 80 percent of E-Rate schools report the available bandwidth is below their instructional needs.

Assisting those who are disabled or disadvantaged is another American value. This committee's work on the 21st Century Communications and Video Accessibility Act is a classic example of making sure our values and our technology are in sync.

And, of course, protecting consumers is the heart of the congressional instructions in the Telecommunications Act, and manifests itself in the half-a-billion—I'm sorry—half-a-million consumer inquiries and complaints that the Commission handles annually.

It is the fact that our society depends so much on our networks that makes the work of the FCC so very important. The Commission is ably led by a well-informed and dedicated group of commissioners supported by an excellent professional staff. Chair Clyburn, Commissioner Rosenworcel, and Commissioner Pai are public service exemplars. Should the Senate determine to confirm my nomina-

tion, my life experience has prepared me to participate with these dedicated professionals to carry out the intent of Congress in this important area.

I'm humbled to be before you today. Should you so decide, I look forward to the opportunity of working with this committee and with each of you to advance the networks and services that are defining our tomorrow.

Thank you, Mr. Chairman.

[The prepared statement and biographical information of Mr. Wheeler follow:]

PREPARED STATEMENT OF THOMAS E. WHEELER

Thank you, Chairman Rockefeller and Ranking Member Thune. It is an honor to be nominated by the President and to be considered by this committee for the position of Chairman of the Federal Communications Commission (FCC). It has been a privilege to meet with many of you over the last few weeks. If confirmed, I look forward to working with the Committee on one of the most dynamic policy environments in our nation's history.

I am excited by the potential for public service. For almost 40 years my professional life has revolved around new communications technology. In the process I have seen the important role that policy can play—as either a boon to growth or a brake on innovation.

In 1976 I stepped on to this career path, first as executive vice president, and then CEO of the National Cable Television Association. I fought against the FCC's rules limiting cable's ability to compete with new video services.

I worked for the ability of competitors to bring services to into the home. And at NCTA, I helped lead the industry to support what is today the underpinning of the FCC's jurisdiction over cable, the 1984 Cable Act.

Caught up in the excitement of the dawning digital age, I became CEO of NABU: The Home Computer Network—the first delivery of high-speed data over cable lines. Unfortunately, it is hard to be The Home Computer Network when there are few home computers. After this experience I continued to pursue the new digital world, including bringing to market the first digital video system, and the first satellite delivery of digital video.

Then, in 1992 the cellular industry recruited me to run CTIA. It was an exciting time as we built markets around the new concept of competitive local telecommunications service. During my tenure that competition was expanded by the auctions of 1994, wireless was increasingly used in place of wireline, and wireless data turned the phone into a pocket computer. All of these developments brought with them new policy challenges.

What I have learned from my business experience will make me a better chairman, should the Senate confirm my nomination. Those lessons can be summed up in two concepts.

The first is that competition is a power unto itself that must be encouraged. Competitive markets produce better outcomes than regulated or uncompetitive markets.

I have seen first-hand the results of competition:

- DBS competition spurred cable's expansion into digital services.
- Competitive Local Exchange carrier (CLECs) and cable provision of Internet access spurred the telephone companies to expand their digital offerings,
- The introduction of PCS licensees spurred cellular carriers to go digital.

I am an unabashed supporter of competition. I believe the role of the FCC has evolved from acting in the absence of competition to dictate the market, to promoting and protecting competition with appropriate oversight to see that it flourishes.

Competition is a basic American Value, yet by itself is not always sufficient to protect other basic American Values. In the telecommunications world the Values Congress has identified include improving access to broadband networks. Universal service is a key tenet of the Telecommunications Act; we did this for electricity and basic telephone service, we can do it for broadband.

This Committee has long and regularly recognized another Value: the use of technology to enhance public safety and public services. It makes no sense that first responders carry their own smartphones because the gear they've been issued cannot do what technology otherwise makes possible. Likewise, it doesn't make sense that

80% of e-Rate schools report the available bandwidth is below their instructional needs.[1]

Assisting those who are disabled or disadvantaged is another American Value. This Committee's work on the 21st Century Communications and Video Accessibility Act (CCVA) is a classic example of making sure our values and our technology stay in synch.

And, of course, protecting consumers is the heart of the Congressional instructions in the Telecommunications Act and manifests itself in the half a million consumer inquiries and complaints the Commission handles annually.

It is the fact that our society depends so much on our networks that makes the work of the FCC so very important. The Commission is ably led by a well-informed and dedicated group of commissioners supported by an excellent professional staff. Chair Clyburn, Commissioner Rosenworcel and Commissioner Pai are public service exemplars. Should the Senate determine to confirm my nomination, my life experience has prepared me to participate with these dedicated professionals to carry out the intent of the Congress in this important area.

I am humbled to be before you today. Should you so decide, I look forward to the opportunity of working with this committee and each of you to advance the networks and services that are defining our future.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Thomas Edgar Wheeler.
2. Position to which nominated: Chairman, Federal Communications Commission.
3. Date of Nomination: May 9, 2013.
4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.

Office: 1401 I St., NW, Suite 1000, Washington, DC 20005.

5. Date and Place of Birth: April 5, 1946; Redlands, CA.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).

Carol M. Wheeler, Housewife and volunteer, President, Shiloh Foundation; children: Nicole McNamara, 35; Max Wheeler, 25.

7. List all college and graduate degrees. Provide year and school attended:

The Ohio State University, BSc Business Administration, 1968 (9/64–6/68)

8. List all post-undergraduate employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

The Ohio State University Association, Assistant Director, 6/68–6/69 (est).

Grocery Manufacturers of America: Manager, State Public Affairs; Director, Public Affairs; Vice President, Public Affairs 6/69–6/76 (est).

National Cable Television Association: Executive Vice President; President/CEO 6/76–9/84 (est).

NABU: The Home Computer Network: President/CEO 9/84–6/85 (est).

NuMedia Corporation: President/CEO 6/85–8/87 (est).

NuCable Resources Corporation: President/CEO 8/87–8/90 (est).

Washington Communications Consultants (later changed to Media Enterprises Corporation): Sole proprietor 1/81–4/92 (est).

Cellular Telecommunications & Internet Association: President/CEO 6/92–11/04.

Shiloh Group, LLC: Sole proprietor 11/04 to present.

Core Capital Partners: Managing Director 1/05 to present.

9. Attach a copy of your resumé.
See Attachment A.
10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years.

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[1] *http://www.leadcommission.org/challenge/how-do-we-ensure-every-student-and-educator-has-high-speed-connectivity-school-and-home*

Board of Trustees, John F. Kennedy Center for the Performing Arts, 1/95–9/06.

John Glenn School of Public Affairs, The Ohio State University, Advisory Board Member, 1/04 to present.

2008 Obama-Biden Transition Team, Working Group Head for Science, Technology, Space and the Arts, 8/09–11/09.

FCC Technological Advisory Council, Chairman, 1/11 to present.

State Department Advisory Committee on International Communications and Information Policy, Chairman, 1/11 to present.

President's Intelligence Advisory Board 4/11 to present.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last five years.

John F. Kennedy Center for the Performing Arts, Trustee, 1/95–9/06.

SmartBrief, Inc., Co-founder and Chairman, 3/00 to present

Foundation for the National Archives, Chairman and Board Member, 1/02 to present.

EarthLink Corp., Board of Directors, 7/03 to present.

Impatica, Inc., Board Member, 2/04–11/08.

Shiloh Group, LLC, Owner, 11/04 to present.

Shiloh Foundation, Vice President, 11/04 to present.
Core Capital Partners, Partner, 1/05 to present.

VSArts, Chairman and Board Member, 9/06–4/10.

GSMA, Ltd., Board of Directors, 10/06 to present.

Roundbox, Inc., Board Member, 1/06 to present.

UpdateLogic, Board Member, 2/06–1/12.

Twisted Pair Solutions, Board Member, 9/06 to present.

LimeLife, Inc., Board Member, 3/07–6/10.

Samsung Corp., Advisory Board Member, 3/07–3/10.

Jacked, Inc., Board Member, 4/07–5/10.

Capitol Acquisition Corp., Advisor, 10/07–10/09.

MoBo Systems, Board Member, 4/08 to present.

Gettysburg National Battlefield Foundation, Board Member, 6/09 6/10.

Transaction Network Services, Board of Directors, 12/09–2/13.

United Nations Foundation mHealth Alliance, Chairman and Board Member, 5/10 to present.

FCC Technological Advisory Council, Chairman, 1/11 to present.

NTT DoCoMo, U.S. Advisory Board, Chairman, 1/11 to present.

State Department Advisory Committee on International Communications & Information, Chairman, 1/11 to present.

President's Intelligence Advisory Board Member, 4/11 to present.

GSMA Mobile for Development Foundation, Board of Directors, 1/13 to present.

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

John F. Kennedy Center for the Performing Arts, Trustee, 1/95–9/06.

SmartBrief, Inc., Co-founder and Chairman, 3/00 to present.

Foundation for the National Archives, Chairman and Board Member, 1/02 to present.

EarthLink Corp., Board of Directors, 7/03 to present.

Impatica, Inc., Board Member, 2/04–11/08.

Shiloh Group, LLC, Owner, 11/04 to present.

Shiloh Foundation, Vice President, 11/04 to present.

Core Capital Partners, Partner, 1/05 to present.

VSArts, Chairman and Board Member, 9/06–4/10.

GSMA, Ltd., Board of Directors 10/06 to present.

Roundbox, Inc., Board Member, 1/06 to present.

UpdateLogic, Board Member, 2/06–1/12.

Twisted Pair Solutions, Board Member, 9/06 to present.

LimeLife, Inc., Board Member, 3/07–6/10.

Samsung Corp., Advisory Board Member, 3/07–3/10.

Jacked, Inc., Board Member, 4/07–5/10.

Capitol Acquisition Corp., Advisor, 10/07–10/09.

MoBo Systems, Board Member 4/08 to present.

Gettysburg National Battlefield Foundation, Board Member, 6/09–6/10.

Transaction Network Services, Board of Directors, 12/09–2/13.

United Nations Foundation mHealth Alliance, Chairman and Board Member, 5/10 to present.

FCC Technological Advisory Council, Chairman, 1/11 to present.

NTT DoCoMo, U.S. Advisory Board, Chairman, 1/11 to present.

State Department Advisory Committee on International Communications & Information, Chairman, 1/11 to present.

President's Intelligence Advisory Board Member, 4/11 to present.

GSMA Mobile for Development Foundation, Board of Directors, 1/13 to present.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt: No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

See Attachment B.

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

Alumni Medal for National and International Achievement, The Ohio State University, 2009.

Wireless Industry Hall of Fame, 2003.

Cable Television Hall of Fame, 2009.

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

I have done my best to identify books, articles, columns, publications or relevant speeches, including a thorough review of personal files and searches of publically available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

Books

Leadership Lessons from the Civil War: Winning Strategies for Today's Managers, Doubleday, 2000.

Mr. Lincoln's T-Mails: The Untold Story of How Abraham Lincoln Used the Telegraph to Win the Civil War, Harper Collins, 2006.

Contributions to Books

Abraham Lincoln: Great American Historians on Our Sixteenth President, ed. Brian Lamb, Susan Swain, Public Affairs, 2008 (chapter).

A Bulldog Grip on New Technology, in *Discovering the Civil War,* National Archives, 2010.

Magazine Articles

Commanding by T-Mail, Civil War Times, March/April 2007.

Lincoln's Fleeting Hope for an Early End to the War, co-author with Trevor Plante, America's Civil War, January, 2008.

America's First Telecommunications President, American Heritage's Invention & Technology, Winter 2011, Volume 25, Number 4.

Newspaper Op-Eds

A 24-Hour News Format Has Debased TV News, Newsday, March 17, 1993.

How to Respond When Death Flies on Silent Wings, USA Today, October 22, 2001.

Terror Watch, 1944, The Washington Post, January 1, 2002.

In Terror, As in the Civil War, Persistence Wins the Fight, USA Today, May 23, 2002.

You Can Look It Up America: Documents Matter in a Democracy, Los Angeles Times, January 20, 2003.

The Telegraph as a Window into the Mind of the l6th President, The Washington Post, February 12, 2007.

The First Wired President, The New York Times, May 24, 2012.

Blog

www.mobilemusings.net

Speeches

Cable Hall of Fame Acceptance Speech *http://www.cablecenter.org/past-honorees/item/wheeler-tom.html*

January 2000 Tech Law Journal Speech: *http://www.techlawjournal.com/telecom/20000127tw.htm*

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

Based on my search of the Congressional database maintained by the Government Printing Office (GPO) as well as the Congressional Record database maintained by Westlaw, I have found the following records of testifying before Congress. The GPO database provides information on hearings held in the House and Senate from since the 105th Congress (1997–98) forward. The Westlaw database returned no additional results. I am certain, however, that I testified at other hearings in the late 1970s, 1980s, and early 1990s that are not in either database. Such testimony would have been principally before the Commerce Committees of the House and Senate, on matters related to cable television policy in my capacity as the President of the National Cable Television Association and wireless policy in my capacity as President and CEO of CTIA. I do not have independent records of those events to verify dates.

February 3, 1999: House Committee on Commerce, Subcommittee on Telecommunications, Trade, and Consumer Protection-The Wireless Privacy Enhancement Act of 1999 and the Wireless Communications and Public Safety Enhancement Act of 1999. I testified in my capacity as President/CEO of CTIA *http://www.gpo.gov/fdsys/pkg/CHRG-l06hhrg55150/pdf/CHRG-l06hhrg55150.pdf*

March 7, 2000: Senate Committee on Commerce, Science, and Transportation—The Mobile Telecommunications Sourcing Act. I testified in my capacity as President/CEO of CTIA *http://www.gpo.gov/fdsys/pkg/CHRG-106shrg78320/pdf/CHRG-106shrg78320.pdf*

April 6, 2000: House Committee on Commerce, Subcommittee on Telecommunications, Trade, and Consumer Protection—Wireless Telecommunications Sourcing and Privacy Act. I testified in my capacity as President/CEO of CTIA *http://www.gpo.gov/fdsys/pkg:/CHRG-106hhrg64022/pdf/CHRG-106hhrg64022.pdf*

October 16, 2001: Senate Committee on Commerce, Science, and Transportation, Subcommittee on Communications—Wireless E–911 Compliance. I testified in my capacity as President/CEO of CTIA. *http://www.gpo.gov/fdsys/pkg/CHRG-l07shrg89680/pdf/CHRG-107shrg89680.pdf*

July 24, 2001: House Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet—U.S. Deployment of Third Generation Wireless Services: When Will it Happen and Where Will it Happen. I testified in my capacity as President/CEO of CTIA *http://www.gpo.gov/fdsys/pkg/CHRG-107hhrg74845/pdf/CHRG-107hhrg74845.pdf*

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I have spent the almost four decades of my professional life involved in new communications technology, including the policy matters related thereto. I led the cable and wireless industry associations at definitive points in their histories when they were upstarts reshaping telecommunications. As an entrepreneur, I have started and built companies in the technology and telecommunications space. As a venture capitalist, I have funded and helped grow new technology-based companies.

If confirmed, I believe I can bring to the position an appreciation of the role of public policy in innovation and investment and a breadth of experience with evolving technologies, evolving marketplaces, and the role of evolving policy to further promote America's leadership in developing the networks and technologies that drive the information economy.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

If confirmed as Chairman of the FCC, by Congressional directive, I will be CEO of an agency with a staff that includes engineers, technologists, attorneys, economists and others who are charged with helping inform decisions that impact the communications marketplace. My career has been one of managing organizations in that space. At the root of such management is the flow of accurate, honest, and meaningful information. I have long been a believer in the old expression, "If you can measure it, you can manage it." I intend to use my experience to build a collegial decision-making environment with my colleagues where our decisions are based on data and input from all stakeholders including representatives of the consumer public, industry representatives, innovators, and others.

20. What do you believe to be the top three challenges facing the department/agency, and why?

A. Public Safety Spectrum Act:

The successful implementation of the Public Safety Spectrum Act, including implementation of the first-in-the-world incentive auction, will be a top priority. To continue our Nation's leadership in the mobile economy, we must address the widely acknowledged spectrum shortage. As technological advances have increased consumer demand, it is critical that we repurpose spectrum to address that demand and we must fund the nationwide broadband public safety network. This particular auction, in which broadcasters voluntarily contribute some or all of their spectrum for wireless carriers to bid on, is fraught with complexities and challenges in both the operation of the auction as well as the rules that will govern the auction process itself. The Commission has a team of some of the brightest minds in auction design working on this endeavor, and if confirmed, I will work to bring this critical auction to a successful completion.

B. Technology Transitions:

The evolution from an analog switched circuit to an all-Internet Protocol (IP) network creates a situation where digital technologies must operate under rules developed for analog networks. There is a need to look at the rules that have been established over the years for the analog environment and determine their applicability and/or their adjustment to the IP environment. In reviewing these policies, the agency should focus on reforms that empower and protect consumers, promote competition, and ensure network resiliency and reliability. Such change is difficult, especially because economic and cultural patterns have been built up around the old technology. If confirmed, I would seek to evolve with the minimal disruption while encouraging the innovation and investment that stimulate economic growth.

C. Advancing Civil Society Through Communications and Media:

The opportunities presented for advancing civil society through evolving network technologies are astounding. Basic bottom line activities begin with connectivity (including broadband access), public safety (including national security), and the ability of the institutions of the commonwealth, such as education and health care, to be able to participate in the new capabilities. The encouragement of innovation and investment across the entire economy, in rural and urban areas, as well as the availability of essential capabilities for citizens, is derivative of the capabilities of new networks. This is why continuing the implementation of the Connect America Fund is critical, and if confirmed, I look forward to working with my colleagues, if confirmed, to ensure that the promise of broadband is delivered to all Americans. The ongoing challenge of the FCC will be to encourage growth and development while at the same time assuring the delivery of the basic underpinning capabilities of the network that are essential to the people and key institutions.

In addition, a robust and diverse media landscape is critical to the functioning of our society. Congress directed the FCC to promote diversity. I intend, if confirmed, to take seriously the Commission's responsibility in enabling a vibrant media landscape.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

If confirmed, I will sever my relationship with Core Capital Partners. I will exercise the portability feature in the John Hancock-administered 401(k) Plan (currently valued at $160,000) and transfer it elsewhere.

If confirmed, I will cease the operations of Shiloh Group, LLC. I will continue to participate in the Shiloh Group Defined Benefit Plan, but will make no contributions or withdrawals during the period in which I hold office.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain: No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the FCC's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the FCC's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

4. Describe any business relationship, dealing; or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the FCC's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the FCC's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

I was President of the Cellular Telecommunications & Internet Association from 1992 to 2004. My lobbying registration ended in 2003.

I was a consultant to Cingular on their acquisition of AT&T Wireless in 2005. I did not lobby.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the FCC's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the FCC's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain: No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain: No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain.

The question appears to be directed towards administrative procedures that are disciplinary where I have been a "party." The answer to that question is NO. However, I have been a "participant" (as differentiated from a "party" in the Administra-

tive Procedure Act) in "an administrative agency proceeding" on behalf of the members of CTIA and NCTA.

Insofar as civil litigation, as head of the cellular industry association, I was involved in the commissioning of research (much of it in conjunction with the FDA) that some alleged was a "cover up" to the allegation that cellphones caused brain cancer. These allegations were published in *Cell Phones, Invisible Hazards in the Wireless Age* by George Carlo and Martin Schram (Basic Books, 2002). The FDA website states, "The weight of scientific evidence has not linked cell phones with any health problems." (*http://www.fda.gov/Radiation- EmittingProducts/RadiationEmittingProductsandProcedures/HomeBusinessandEntertainment/Cel1Phones/ucm116282.htm*) The FDA has also published a Consumer Update "No Evidence Linking Cell Phone Use to Risk of Brain Tumors," (*http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm212273.htm*) The emission levels from wireless devices are regulated to established safety standards by the FCC (*http://fcc.gov/oet/rsafetv/rf-faqs.html*). I was named, in my official capacity as President and CEO of CTIA as a defendant in some of these suits, as was CTIA itself. In all cases the court removed both CTIA and me from the suits. None of the cellphone cancer suits has ever been successful.

I was a party to my divorce, which was finalized in April 1981.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere)* of any criminal violation other than a minor traffic offense? If so, please explain: No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain: No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

None to my knowledge.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RESUMÉ OF TOM WHEELER

Managing Director, Core Capital Partners

For almost four decades Torn Wheeler has worked at the forefront of telecommunications policy and business development, experiencing the revolution in telecommunications as both a policy expert and businessman. As an entrepreneur he started or helped start multiple companies offering new cable, wireless and video communications services. He is the co founder of SmartBrief, the first targeted, filtered electronic news service which today serves over six million readers daily. As a policy expert he has been intimately engaged in the development of the government's telecommunications policy at both the legislative and regulatory level.

On the 20th anniversary of the cable television industry (1995) Wheeler was selected one of the 20 most influential individuals in the industry's history. He has been elected to the Cable Hall of Fame. On the 25th anniversary of the cellular telecommunications industry (2008) he was named one of the top 10 innovators in the wireless industry and is a member of the Wireless Hall of Fame. Following the election of 2008 he led the Obama-Biden Transition on science, technology, space and the arts.

From 1976 to 1984, Mr. Wheeler was associated with the National Cable Television Association (NCTA), where he was president from 1979 to 1984. After several years as CEO of new technology start-ups, including the first company to offer high sped delivery of data to home computers and the first digital video delivery service, Mr. Wheeler was asked to take over the Cellular Telecommunications & Internet Association (CTIA). He served as CEO of CTIA from 1992–2004.

Mr. Wheeler wrote *Take Command: Leadership Lessons of the Civil War* (Doubleday, 2000) and *Mr. Lincoln's T-Mails: The Untold Story of How Abraham Lincoln*

Used the Telegraph to Win the Civil War (HarperCollins, 2006). His commentaries on current events have been published in the *Washington Post, USA Today, Los Angeles Times, Newsday,* and other leading publications.

President Obama appointed Mr. Wheeler to the President's Intelligence Advisory Board. Presidents Clinton and Bush each appointed him a Trustee of the John F. Kennedy Center for the Performing Arts where he served for 12 years. He chairs the Technological Advisory Council of the Federal Communications Commission. Mr. Wheeler is the former Chairman of the Foundation for the National Archives, and a former member of the board of the Public Broadcasting Service (PBS). He is on the advisory board of the John Glenn School of Public Affairs at the Ohio State University. Mr. Wheeler sits on the boards of Core portfolio companies Roundbox, Twisted Pair Solutions, and GoMoBo. He is also on the board of EarthLink (NASDQ: ELNK).

Mr. Wheeler is a graduate of The Ohio State University and the recipient of its Alumni Medal for national and international career achievement. He resides in Washington, D.C.

ATTACHMENT B—POLITICAL CONTRIBUTIONS

In preparing this information, I relied on information found on the Federal Election Commission's website and personal checking account records.

2003

New Leadership for America PAC—$2,000; Leadership '02—$1,000; CTIA PAC—$4,576; John Kerry for President—$2,000; DLA Piper PAC—$1,000; The Markey Committee—$1,000; Susan Leal for Mayor—$500; Wyden for Senate—$4,000; Shannon for Delegate—$500

2004

America Coming Together—$2,000; Lots of People for Daschle—$3,000; New Leadership for America PAC—$2,000; Dedicated Americans for the Senate and House PAC—$2,000; Friends of Jon Jennings—$750; CTIA PAC—$1,664; Sam Brooks for City Council—$500; The Markey Committee—$2,000; DashPac—$2,000; Kerry-Edwards—$10,000; ACT—$2,000; Friends of Mark Warner—$1,000

2005

EarthLink PAC—$2,000; Friends of Hillary—$4,200; Sidebottom for School Board—$250; Forward Together—$5,000; Friends of O'Malley—$2,000

2006

EarthLink PAC—$2,000; Sam Brooks for City Council—$500; Obama for President—$1,000; 2010 INC—$1,000; The Markey Committee—$1,000; Fenty for Mayor—$500; Friends of O'Malley—$250; Ritter for Governor—$500

2007

EarthLink PAC—$5,000; Markey for Congress—$1,000; EarthLink PAC—$5,000; Obama for America—$4,600; Kerry for Senate—$1,000; Udall for Colorado—$1,000; Obama for America—$6,900

2008

Reuven Carlyle for State Rep—$500; Friends of Jay Rockefeller—$1,000; Obama Victory Fund—$28,500; Patrick Murphy for Congress—$2,300; Clinton for President—$2,300; Friends of Mark Warner—$4,600

2009

Brian Moran for Governor—$1,500; Leahy for Senate—$1,000; Women's Campaign Fund—$500; Russ Carnahan for Congress—$1,000; DCCC—$1,000; Hodes for Senate—$2,400; Bennett for Senate—$500

2010

Krystal Ball for Congress—$500; Hodes for Senate—$1,000; DNC—$30,400; Meek for Florida—$500; Jeff Barnett—$500; Sowers for Congress—$1,000; Patrick Murphy for Congress—$2,400; Reid for Senate—$1,000

2011

Cardin for Senate—$1,000; Obama Victory Fund 2012—$30,800; Moran for Congress—$2,000; OVF—$2,000; Tester for Senate—$1,500; Kaine for Senate—$2,000; Patrick Murphy for Congress—$2,500; Swing State Victory Fund—$9,200

2012

Diane Smith for Congress—$1,000; DNC—$30,800; Patrick Murphy for AG—$1,000; Kaine for Senate—$2,000; Chris Lewis for School Board—$250; Lon Johnson for State Rep—$500; Jim Moran for Congress—$2,500

2013

Colin Harris for Delegate—$250

Offices held with state or national political party or election committee:

I was on the Kerry for President (2004) and Obama for President (2008 and 2012) National Finance Committees. In 2012, I was co-chair of the Obama campaign's Mid Atlantic Finance Committee.

The CHAIRMAN. Thank you very much, Mr. Wheeler.

Senator Thune is, in most respects, a superior person to me——

[Laughter.]

The CHAIRMAN.—and, for that reason and because he has to do an amendment on the floor, where we're about to go to have to vote, I want to call on him to ask the first question, while warning our colleagues that this is an amazingly important meeting and hearing, and that it's very easy to go down and vote and then slip into the many things that one has to do. So, I'm eagerly looking around the room, wondering how many eyes I'm going to be staring into after our votes.

So, we come back right after the votes, and continue. And I ask your forbearance on that.

Mr. WHEELER. Yes, sir.

Senator THUNE. Thank you, Mr. Chairman, and I appreciate your kindness in letting me go, although I don't think my presence on the floor will affect, in a positive way, the outcome of the vote on my amendment.

[Laughter.]

Senator THUNE. Mr. Wheeler, on your blog, Mobile Musings, you indicated, in 2011, that the FCC should have, or, at a minimum, that it could have, imposed conditions on the AT&T/T-Mobile merger that could have later been expanded to the entire wireless industry. Your posts could be read to say that the FCC should seek to do via merger conditions what it cannot do via its antiquated regulatory authority, and that is to, "backdoor to imposing a new regulatory regime on wireless," is how you characterized it. And I mentioned that in my opening statement.

This concerns me, because I believe that the FCC's transaction review authority should be used only to address competitive or public interest issues that are specific to the individual transaction.

Rather than using strong-arm merger conditions to impose de facto regulations, shouldn't the FCC instead use its public and transparency rulemaking authority to implement industrywide regulatory policy?

Mr. WHEELER. Thank you, Senator Thune. I appreciate you raising that issue, and I understand your concern.

What you've cited was hypothetical speculation. What a regulator must deal with are the realities of a specific case and the law and precedent that deals with merger review. There is scarcely anything more important that comes before the Commission than merger review. And that review must be conducted precisely, based upon the facts in that specific instance, based upon the mandate that the Congress has established in the Act, and based upon

precedent. And if I am fortunate enough to be confirmed as Chairman, those will be the guidelines that I will use in merger reviews.

Senator THUNE. OK. Let me—and I want to quote from your blog post again. This is why my staff doesn't allow me to blog, and limits my Twitter.

[Laughter.]

Senator THUNE. But, you assert that merger conditions—and I want to quote again—"established with the largest carrier could have been lifted into subsequent consent decrees for other carriers, and even into the terms for subsequent spectrum auctions," end quote, under the logic that—and I quote again—"If AT&T can live with them, so can anyone else," end quote.

But, the question I have—to me, that would appear to be sort of exactly backward. Isn't it large players, like AT&T, that can more easily handle merger conditions? Whereas, small and medium-sized operations without huge teams of regulatory lawyers will be handicapped by regulations intended for a much larger company?

Mr. WHEELER. I think this is one of the reasons that the kind of observation I made that you talk about specifics of that merger agreement that is being reviewed is important, because these are issues that have to be dealt with, with caution and with care, and have broad impact, as you just suggested, sir. And the specific review of the specific issues in the case, guided by the statute and by precedent, is the role that the agency should play.

Senator THUNE. I represent a rural state, as do a number of my colleagues here, on both sides, and I'm firmly committed, as you know from our earlier conversation, to expanding telecommunications opportunities for people in my state. I'm wondering, if confirmed as Chairman, how you will approach the challenges that rural America faces with respect to telecommunications issues.

Mr. WHEELER. So, Senator, it seems to me that we have made the jump from voice to broadband. Chairman Genachowski and the Commission, with the help of this committee, have made that jump. There is expansion of broadband going on, but there are three goals that I think are particularly important. One is the extension of broadband, as we—I just referenced. Second is the expansion of broadband as technology allows faster and faster speeds. And the third is the exploitation of broadband. And any one without the other is an incomplete solution.

And so, in rural America as in urban America, it's expansion—I'm sorry—it's extension, expansion, and exploitation that are going to be the key to our broadband digital future.

Senator THUNE. Let me, if I might, just touch on the spectrum issue a little bit, here. It's been over 5 years since the FCC held an auction to put new spectrum for mobile broadband into the marketplace. The question is, Do you think that's an acceptable track record? And what do you do—intend to do to improve upon it?

Mr. WHEELER. Thank you, Senator. The—there are a couple of auctions teed up, not the least of which is the incentive auction, which will be the first time in the history of the world—I guess that's a little grandiose statement, but it will be the first time that an auction like this has been tried. This committee and the Congress have directed the FCC to do that in an expedited manner. Chairman Genachowski has set a schedule for that. And, if I am

fortunate enough to be confirmed, it is my intention to move expeditiously to make spectrum available by auction, in multiple bands.

Senator THUNE. Do you agree that the goal of the incentive auction ought to be to maximize net revenues in order to cover the costs of FirstNet, Next Generation 9–1–1, and to reduce the deficit?

Mr. WHEELER. Senator, they—the incentive auction, as I said, is something that's never been tried before. And I liken it to a Rubik's Cube, that, over on this side of the cube, you've got to provide an incentive for broadcasters to want to auction their spectrum; on this side of the cube, you have got to provide a product that is structured in such a way that incentivizes the wireless carriers, or whoever the bidders may be, to want to bid for that spectrum; and then, in the middle of this, on an almost realtime basis, you have to have a band plan that is constantly changing to reflect the variables that are going on here. That's why this has never been tried before. This is a monumental undertaking. And all of the pieces, to create value for the broadcasters and value for the wireless industry and to pay for FirstNet and to provide something for the American taxpayer, all have to go into this incredibly complex Rubik's Cube.

Senator THUNE. I'll take that as a yes.

[Laughter.]

Senator THUNE. Mr. Chairman, my time's expired, and you've been more than generous in letting me go first. So, thank you.

Thank you, Mr. Wheeler.

The CHAIRMAN. Thank you, Senator Thune.

I'll just ask two quick questions, and then I really think we'd better skedaddle and come back. Is that all right with you, Senator Blunt? I have your permission to go ahead with a question?

Senator BLUNT. Yes, you go right ahead.

The CHAIRMAN. Thank you.

As I mentioned in my remarks, the E-Rate program is just seminal, in my life and with me, in terms of public policy, the idea being to bring affordable access to telecommunications and Internet to schools and libraries throughout the entire country. The President wants to make it to 99 percent. I'm all for that. He reaffirmed the sentiment when he called on the FCC to take the steps necessary to make sure that all American students, from Next Generation digital technologies, can benefit from them. It was a bold statement, and a good one.

Earlier this year, I received public comments from all the current sitting commissioners to work with me to update and strengthen the E-Rate program. That's not a frivolous thing. I mean, I don't make them stand and take an oath. But, it's just one by one—yes, no, yes, no. And they were all yeses. That does not always guarantee the result, because of internal problems that arise, but, to me, it involves a commitment.

So, I ask if, if confirmed, which I'm certain you will be, would you also commit to working with me—I know this is a basic question, but I need to ask it—to protect E-Rate's accomplishments, as well as to secure additional support and update the program to meet the standards and future needs of our schools and libraries?

Mr. WHEELER. I'm taking your hint, sir. The answer is yes.

The CHAIRMAN. Good.

Mr. WHEELER. I mean the hint of one-word answers.

The CHAIRMAN. Can you just give me one sentence of why you said yes?

Mr. WHEELER. Yes, sir. I've been a supporter of the E-Rate since it first happened, in 1996, and I think it's for very basic reasons. I—as I mentioned in my testimony, when 80 percent of the E-Rate schools say they're not getting the proper bandwidth for their instructional needs, something needs to be done about that. This is a program that started in 1996. A lot of things have changed since 1996. It is not good enough for us to have 1996 textbooks in the classroom. I don't think it's good enough for—have 1996 connectivity in the classroom.

The CHAIRMAN. Good. One more.

When Congress authorized voluntary incentive auctions last year, it was part of a larger goal of providing funding for the FirstNet.

Let me just interject this. When we passed E-Rate, Olympia Snowe being one of the coauthors, I wrote each of the telecommunications companies at that time—there being more, then—and asked them to write a letter to me, promising they would not challenge this public policy in court. I got letters from every one of the CEOs, promising not to challenge in court, after which they all challenged it in court.

[Laughter.]

The CHAIRMAN. And they all lost in court. But, that—that's a part of my—what I bring to all of this. Promises made, promises kept. It's important.

So, the auction, as Senator Thune said, is incredibly complicated, and getting it right is really hard. For me, the successes of these auctions will be judged by their ultimate ability to provide sufficient funding to fund the critical activities of FirstNet.

So, question. I know you have watched this policy debate closely, so you'll appreciate my question. If confirmed, do you understand the need for incentive auction rules to provide sufficient funding for FirstNet?

Mr. WHEELER. Yes, sir.

The CHAIRMAN. Can you please commit to act expeditiously to commence these auctions, complicated though they are, and to avoid unnecessary delay?

Mr. WHEELER. I think it's absolutely crucial that the incentive auction move on an expedited schedule, Senator.

The CHAIRMAN. Thank you, sir. The hearing stands in recess.

STATEMENT OF HON. ROY BLUNT, U.S. SENATOR FROM MISSOURI

Senator BLUNT. Mr. Chairman, with your permission, can I go ahead and ask my two or three questions and then——

The CHAIRMAN. Of course.

Senator BLUNT.—I'll get out of everybody's way? Is that okay——

The CHAIRMAN. Yes.

Senator BLUNT.—if I'm next? I'm going to ask a couple of questions. And then I may have more for the record, Mr. Wheeler.

But, actually, the first thing I want to ask is more of a statement than a question. We're getting ready, tomorrow, for a hearing in

this same committee, different subcommittee, on railroads. And one of the things that came up, when we—getting ready for that hearing—on positive train control, which, currently, the law says should be implemented by 2015. The Commission will have to commit—will have to complete the permitting process, including environmental impact studies and historical impact studies, for 22,000 new wireless poles and towers. I'm told that the historic impact studies may even have more resonance here, because of tribal lands and other things, than the other studies. It's also my understanding that, now, the normal number of permits is somewhere between—for towers and—somewhere between 2,000 and 3,000. If the Commission goes through the regular permitting process for these poles, most of which would be located on current right-of-way, it would take 10 years to complete.

So, I just want to be sure that's on your agenda as you're thinking about that. This is a case where one set of procedures would make it impossible to comply with the other law. And I don't know if you've had a reason to discuss this with anyone yet, or not, but, if you had, and want to comment, that's fine.

Mr. WHEELER. Thank you, Senator. I have not, and it is now on the list.

Senator BLUNT. OK. 22,000 permits, unless there's some expedited permitting process that goes on so that positive train control could happen.

On retransmission, Mr. Wheeler, everyone knows that retransmission consent is a controversial topic. This committee, over the years, has spent countless hours debating that. Chairman Genachowski and his predecessors have always taken the view that the FCC's current authority to alter retransmission consent rules in any way is very limited, and that changes to the policy would have to come from Congress. Is that a position you share?

Mr. WHEELER. I look forward to looking into that issue, Senator, and trying to get my arms around it, particularly in light of some recent court decisions and a pending 2nd Circuit action that has been brought on a related kind of issue. I'm not trying to dodge your question, but I think that this is something that is a situation that is in flux at this moment, that I need to get my arms around.

Senator BLUNT. Do you think there's a possibility, in that court decision, that the Commission has more authority than they have previously thought they had on this topic?

Mr. WHEELER. I would hate to second-guess a court in advance, sir.

Senator BLUNT. OK. So, you're waiting for that court decision to——

Mr. WHEELER. Yes, sir.

Senator BLUNT.—see where you need to come down on that.

And the third question I want to ask—and I would have some in—just—I'll submit questions later—but, in merger situations, there's a 180-day—you know, the so-called "shot clock"——

Mr. WHEELER. Yes.

Senator BLUNT.—rule. Do you plan to continue the Commission's trend of attaching conditions to the merger which don't directly deal with competitive issues? Got a couple of examples, if you want to hear them, but——

Mr. WHEELER. I understand your——
Senator BLUNT. Yes.
Mr. WHEELER.—your question, sir. And it is not dissimilar to the kinds of things that Senator Thune and I exchanged ideas on.
I believe that the merger review process is a specific process that deals with that specific case, the facts in that situation, and is guided by the law and precedent, and that—you know, that ought to be the defining four corners of any consideration.
Senator BLUNT. And competition is the merger-review——
Mr. WHEELER. I think——
Senator BLUNT.—element——
Mr. WHEELER.—public interest and convenience and necessity is the broad term, but it includes competition, it includes consumer protection, it includes the viability of markets, et cetera.
Senator BLUNT. Thank you. I'll have some more questions later.
And, Senator Nelson, thank you for——
Senator NELSON [presiding]. The Committee——
Mr. WHEELER. Thank you, Senator.
Senator NELSON.—will stand in recess, subject to——
Senator BLUNT.—thank you for——
Senator NELSON.—the call of the Chair.
Senator BLUNT.—holding the gavel so I could ask those questions.
[Recess.]
Senator NELSON. OK, we'll resume. The Chairman is on his way.
Senator Fischer.

STATEMENT OF HON. DEB FISCHER,
U.S. SENATOR FROM NEBRASKA

Senator FISCHER. Thank you, Senator.
Thank you, Mr. Wheeler. Thank you for your patience today, as you had to wait an extra hour for us, but——
Mr. WHEELER. Not a problem, thank you, Senator.
Senator FISCHER.—we had some votes to take.
I also want to thank you for coming in and visiting with me, and I appreciate that you took the time to have a conversation. And I look forward, now, to continuing that.
As you know, when we met the other day in my office, I explained to you that I do have an interest in looking at alternative funding and looking at a different mechanism for the Universal Service Fund. Do you think that that would be one of your priorities, if you would be confirmed? And what options do you see for that alternative funding?
Mr. WHEELER. Thank you, Senator. And I also, as we discussed, recognize your expertise on the matter, having served as Chairman of the Committee in the Nebraska legislature.
I was fortunate enough to be able to serve on the first board of USAC, the Universal Service Administrative Corporation, and I've seen a lot happen to universal service since then, as it evolved. Chairman Genachowski had some significant iterations. But, it seems to me that of pressing importance is to continue the evolution of universal service and to look at that evolution holistically, if you will, that we have tended to look at universal service, like the old story about the different fellows feeling the elephant; one

thinks it's a snake and one thinks it's a tree, and this sort of thing. And I think we need to look at the whole elephant and ask ourselves what has happened since the onset of the program, in terms of technology, in terms of marketplace, in terms of business models, that suggest that we ought to be looking at new approaches.

Senator FISCHER. Specifically for funding, though, what options are out there? What would be a source of revenue?

Mr. WHEELER. I think it's—but, I think it's a whole—the "guzintas and guzoutas," you know, can't quite be separated, here. And—but, clearly, one of the challenges that is facing universal service, going forward, is the IP transition. And if you have fees assessed on telecommunication services, and fewer and fewer things are telecommunication services, that's an issue that has to be addressed. But, it's an issue that has to be addressed holistically, with both sides of the equation.

Senator FISCHER. Thank you.

The Chairman felt that we could have this incentive auction done by 2014. Do you think that that's a realistic goal, moving forward?

Mr. WHEELER. Senator, I will make every effort to meet that schedule. One of the big frustrations in my current situation is that I know what's on the public record, but I have no idea what other things are going on in other decisions and other structural and other facts that have—that are being used by the Commission. And I look forward to getting those pieces of information and then making that decision. But, I think that this is something—as I said to the Chairman and I reiterate again, I think this is something that needs to move, on an expedited basis.

Senator FISCHER. That's good to hear, thank you.

As you know, some groups are pushing the FCC to use its rulemaking authority to enforce the provisions in the failed DISCLOSE Act, which would require the disclosure of donors or private groups that purchase television time for campaign purposes. Are you concerned that inserting the FCC into this politically charged debate, where Congress has expressly decided not to act, would undermine the bipartisan support for the FCC?

Mr. WHEELER. Well, one of the things that I have learned about that—you know, I said it in my statement, I've spent 40 years in telecom. I can assure you that this issue is not one that I have ever seen come on my radar before, and I know that it is a strongly held position throughout this committee, with differing positions. And so, what I know I'm going to do is, I'm going to learn more about it. I'm going to delve into the issue. But, I am not unaware of the tensions that this issue creates.

Senator FISCHER. Do you think it would be a proper role for the FCC to bypass Congress, where Congress decided not to act? Do you think it is within your charge that you would then act as an agency in a rulemaking process, where Congress decided not to act?

Mr. WHEELER. I think it is the job of the agency to act within the structures that the Congress has created. And, as I understand this issue and this debate, there is debate on whether or not that authority exists and resides in the Commission today. And that's what I want to learn more about.

Senator FISCHER. What do you see as the biggest challenge before you, if you would be confirmed?

Mr. WHEELER. Only one?

Senator FISCHER. Yes. The biggest. Number one.

Mr. WHEELER. Well, clearly, you talked about the auction, and there is a—there are so many components of the effect of the auction that you have to say that that auction is a top priority.

But, on a more megascale, I've spent a lot of time dealing with the FCC in my life, and it is important that the agency make decisions, and make decisions in a timely fashion. There's nothing worse for investment, innovation, job creation, all the things that flow from investment, than businesses not knowing what the rules are. And so, I would hope that, in an overarching scope of things, that we would be able, with my colleagues—because I am very aware that this is a commission, not a sole proprietorship, and—but, with my colleagues, that we will be able to identify issues and move with dispatch.

Senator FISCHER. Well, thank you. It has been a pleasure to meet you, to visit with you. I wish you well. And I hope you'll come to Nebraska. As I mentioned during our previous conversation, we are, I believe, leaders, when it comes to telecommunications and broadband, and yet we're a very, very sparsely populated state in many areas, the populations focused in the eastern part of the state. So, I hope you'll come and see the diversity of our state and how we've addressed the needs of the people.

Thank you.

Mr. WHEELER. I look forward to that, Senator. Thank you.

Senator FISCHER. Thank you.

The CHAIRMAN [presiding]. Senator Begich.

Thank you, Senator Fischer.

Senator FISCHER. Thank you.

STATEMENT OF HON. MARK BEGICH,
U.S. SENATOR FROM ALASKA

Senator BEGICH. Thank you very much. Thank you, Mr. Chairman. Appreciate it.

Again, thank you very much for spending the time with me a few days ago. And I appreciate your willingness to do public service, and also to your supporters and families for their willingness to allow you to do it, because I know what that's like and the pressure that will add to your family. So, thank you very much.

Let me, if I can, pick up on two ends. First, I want to talk a little bit—I want to follow up what Senator Fischer said about, kind of, rural states. And she definitely is from a rural state. Ours is considered more extreme rural, to say the least. And the high cost to do business up there, maybe the middle mile or the last mile, is very expensive. We—to be very frank with you, we have found not a lot of understanding, in total, by the FCC in this area. Actually, there have been documents and reports indicating that it's actually cheaper to build in Alaska than the Lower 48, which is absolutely false and incorrect.

And I guess I want to get your sense of your understanding, on the record here, of how we can work with the FCC, or how you see the FCC working with these very extreme areas that have high cost to develop and get a predictable stream. Because what happens now—as you know, in the private sector, you can't make these

kind of investments with one-year, you know, horizons. You've got to have multiple years. And we find it very difficult, especially with our small co-ops, as an example, working rural Alaska, or our large companies laying lots of new fiber, or utilization of satellite, because that's all that can work in some of our areas. Can you give me a little sense of your feeling and your thoughts in regards to—able to make sure there's equal access for very extreme rural areas, and understanding that the cost is going to be higher than anywhere in the country, more than likely?

Mr. WHEELER. Thank you, Senator. I do understand that that decision was made about costs, and I, too, scratch my head, and I am going to learn more about that, because it does seem, if not illogical, at least counterintuitive.

Senator BEGICH. We would say it's out of whack.

[Laughter.]

Senator BEGICH. OK? There's a—more direct. But, I hear you. Go ahead.

Mr. WHEELER. And I also think that Alaska holds great promise for new technologies. And, you know, as you know, I'm proud of the fact that I, many years ago, turned on the northernmost cell site in North America, at Point Barrow.

Senator BEGICH. Right.

Mr. WHEELER. And I'm—and I watched—and it was an amazing experience—I watched how that could change a community—the excitement that it brought to a community, the polar bear patrol, which I never knew anything about, that was enabled because of——

Senator BEGICH. This new technology.

Mr. WHEELER.—this new technology.

Senator BEGICH. Very good.

Mr. WHEELER. And the promise that that new technology, new communications technology, enables is wide in many areas, but, particularly in states like Alaska, it seems to have great opportunity.

Senator BEGICH. Very good.

Let me also—FCC has eliminated the budget for consultation with tribal nations, which—Alaska has half the tribes of the Nation, 230-some tribes, but, across the country obviously, a sizable amount. There is a—in Alaska, a sizable amount, 44 million acres, of Alaskan-native-owned land; then, of course, with the Lower 48, lots of tribal land.

What will you do to—I don't want to—I want to ask you a budget question, but I know the answer, so I don't want to waste my time on that. I'd rather just say, Are you willing to help step this effort back into what should be a part of the process, and that is tribal consultation with regards to wireless? Because if you look at the areas that are the least connected, predominantly it's tribal lands, throughout the country and Alaska. And yet, then the FCC wipes out the funding to actually consult to how to improve that. So, give me your thoughts, there. That's a very easy setup question. It's a really easy answer.

Mr. WHEELER. It's hard—no, it's—well, but it's the—truthful, sir. It is hard to serve people if you can't consult with them. Period.

Senator BEGICH. I'll take that. We'll work with you. If you——

Mr. WHEELER. I look forward to that.

Senator BEGICH. Today, my colleague from Alaska, Congressman Young, had a—chaired an oversight hearing, in the House Natural Resources Committee, on the FCC and the Universal Service Fund. And you should watch it. He's very animated, because no one from the FCC decided to show up to the hearing, which, from our perspective, an Alaska perspective, we had people fly 5,000 miles to come to the hearing, when the D.C. folks are just down the street and couldn't find it in their time, in their somewhat busy schedule—and I get that—but, for Alaskans to fly that far—is amazing to me. As Chairman of the Commission, will you do everything possible, under every circumstance—I've experienced this, too, to be very frank with you, where they don't show up, because they don't want to have the discussion. Well, too bad. They've got to have the discussion, may they be uncomfortable. I have a lot of discussions every day that are uncomfortable, but we have to do that. Would you, as—if you're selected as Chair, will you ensure, wherever possible, that members of the FCC will show up at these hearings? I mean, I—I'll tell you, the—you have to watch the—not a happy camper, over there, so I can only imagine. Luckily, he's not doing the confirmation hearings.

[Laughter.]

Senator BEGICH. But, will you do everything you can—I mean, it's critical—to have the people at the table?

Mr. WHEELER. It is—it's the same as the consultation issue. It's all about dialogue. And the answer to your question is yes.

Senator BEGICH. Very good. Let me—I have just a few seconds left—let me just say, another area—obviously, we'd love to invite you to Alaska so you can—and you've been there, I know that, but now, assuming your new role, I'd be very interested in seeing you participate in coming up to Alaska and kind of seeing what we're trying to do with the new technology since your time there. And if you would at least consider that, we'd work with you on——

Mr. WHEELER. I would look forward to that.

Senator BEGICH. Last—and I know you saw it—there were some—the last—one of the last questions, over on the other side, was about the FCC's role in regards to DISCLOSE Act. You know, it's interesting, the FEC, another, you know, one—a few letters off, but the FEC—requires us to put our voice on the ads. So, it would seem logical, if corporations want to do these ads, they should put their voice, because they're supposed to be people, so I'm sure—I mean, they must have a voice somewhere. Isn't that a question? It's a rhetorical question. And I'm just putting that out there, because I think your point was good, that there are very strong feelings on both sides, here. If we're required to put the voice on, then a corporate—"corporation," that's now defined as a person by the Supreme Court, I hope that I'd see their voice—that they'd find their voice and put it on an ad. But, I'll leave it at that.

Mr. WHEELER. Thank you, Senator.

Senator BEGICH. Thank you very much.

The CHAIRMAN. Thank you, Senator.

Senator Nelson.

STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA

Senator NELSON. Thank you, Mr. Chairman.

I want to just point out that I know that there is some interest on this political advertising. And the fact is that there is a petition in front of the FCC that is ongoing, and it's not going to be appropriate for you to respond. There's a live petition for rulemaking, filed by Media Access Project, filed a year ago, asking the Commission to examine the Commission's authority under the Communications Act, to require more disclosure in political advertising. You were asked that by Senator Fischer, and, in essence, you deferred. And, I think, given the fact that there is an ongoing rulemaking, that is an appropriate thing to do.

And, furthermore, I just want to mention that, when we talked earlier, we talked about the need of the Federal and the commercial users of the spectrum. I was pleased to see, just this past week, the Administration announced an initiative that seeks to promote a sharing in order to get more efficient use of the scarce spectrum resource. And so, I'm assuming, if you're confirmed, that this is something that you would go about contributing to this spectrum initiative through engineering—your engineering expertise and your authority as a Commissioner under the Communications Act.

Mr. WHEELER. Yes, sir. If anything, what I have learned is that technology is constantly evolving, and the challenge is how policy keeps up with what technology makes possible. And I think that is a classic example, right there, sir.

Senator NELSON. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Nelson.

And now we'll have Senator Cruz, to be followed by Senator Blumenthal.

Senator CRUZ. Thank you, Mr. Chairman.

Mr. Wheeler, welcome.

Mr. WHEELER. Senator.

The CHAIRMAN. Wait a second. Excuse me for a second, Senator. Did I bypass you, Senator Ayotte?

Senator AYOTTE. You did.

The CHAIRMAN. Who did I bypass? Just tell me.

Senator AYOTTE. Are you going by the gaveling rule?

Senator CRUZ. I will happily defer to my friend from New Hampshire.

Senator THUNE. Mr. Chairman, while we've got all these deferrals going on, I just wanted to mention one thing. I understand it's your birthday today. Is that right?

The CHAIRMAN. No.

[Laughter.]

Senator THUNE. We won't ask our witness to sing you "Happy Birthday."

Mr. WHEELER. Thank you.

Senator THUNE. But, we certainly do want to recognize your experience.

The CHAIRMAN. Thank you, sir, very much.

Senator CRUZ. Given the position for which he's nominated, perhaps you could text him "Happy Birthday."

[Laughter.]
The CHAIRMAN. Senator Ayotte.

STATEMENT OF HON. KELLY AYOTTE,
U.S. SENATOR FROM NEW HAMPSHIRE

Senator AYOTTE. Thank you, Mr. Chairman.

And I want to thank you, Mr. Wheeler, for taking on this important role.

When you and I met privately, I talked to you about my concerns with the Universal Service Fund and, frankly, how little return on the investment that my constituents get in New Hampshire. We're a country of 50 different states, so I know that there are always going to be some inequities. But, frankly, New Hampshire gets 37 cents on the dollar of what we contribute to the Universal Service Fund. And there are only four other states that get a lower return on their investment. And, frankly, they don't have some of the rural areas that we have, nor do they have many unserved areas, when you look at the census blocks to determine that.

So, I would like to ask you, as you are in the position of the nomination to this important role—do you believe that the FCC has the ability, under the law today, to work with net donor states, like mine, to address what we feel is a very inequitable program? And also, can you share with me your thoughts on what needs to be done to fix this inequity and to make sure that we are further considering developments in technology as we look at the Universal Service Fund and how it's allocated? I'm happy to have you come visit some of the rural areas of New Hampshire, but, despite the fact that we're only getting 37 cents return on every dollar that a person in New Hampshire contributes, there are many rural areas of my state that don't have broadband access.

Mr. WHEELER. Thank you, Senator. I am, unfortunately, not familiar with the specifics of New Hampshire. However, it is essential that universal service be looked at as a totality and the distribution, as well as the contribution formulas, looked at in light of the realities of today.

As you and I had discussed, I was on the first USAC board. I lived through a lot of the early difficulties. And the great thing is that the world has moved on since some of those struggles, in terms of what's happening in the market and what's happening with technology. We need to make sure that the rules have, as well.

Senator AYOTTE. And can I ask for your commitment to work with people, like me, whose states don't get the return on their investment? It's hard for me to look people in New Hampshire in the eye and say that this makes any sense for my state and to address the problem of the inequities that are within the current Universal Service Fund.

Mr. WHEELER. I look forward to working with you on that, Senator.

Senator AYOTTE. Thank you very much.

I also wanted to ask you about the broadband deployment issue in the rural areas of my state—and I know that Ranking Member Thune touched on this issue. But, currently, the Commerce Spectrum and Management Advisory Committee is working on clearing

Federal spectrum for commercial broadband use, but its work has been slowgoing. And I wanted to ask you: this morning, the former head of NTIA under President Clinton criticized this administration for moving too slowly when it comes to freeing government spectrum—one of the issues you and I have talked about—on some very valuable bands, particularly on the issue of the 1755-to-1780 band. And the FCC has less than 3 years to auction and license the 2155-to-2180 band. And the reality is, as you know, those bands are best paired together, so we're behind.

So, what do you think, in your new role that we expect and hope you'll be confirmed for as the Chairman, that you would be able to do to move this forward, to really light a fire under this issue that there's a scarcity of spectrum and to see more private sector growth by having more spectrum available? And also, making sure that DOD has what it needs to protect our national security. So, if you can help me with that, I'd appreciate it.

Mr. WHEELER. Thank you, Senator. And that's a huge question. Let me see if I can parse it out.

First of all, I was there when the last Federal Government spectrum was reallocated to the private sector. I was representing the wireless industry in that situation. I understand the challenges involved. I understand the good faith, on both sides. And I understand how incentives have to be created and concerns have to be addressed.

It's not my first rodeo. I look forward to participating in this issue and working with NTIA, who is responsible for the allocation. The FCC is then responsible for the assignment. But, sometimes a reallocation requires a reassignment, so there has to be a pairing of the exercise.

And I also just want to comment, and all of your colleagues here, that—thinking back to 15 years ago and talking about spectrum with the Members of Congress—the understanding in the group of both sides of the spectrum debate that exists today in the Congress is far different than it was. And I think that's terrific, because you're the key to keeping both NTIA, the administration, and the FCC moving on this.

On your specific question, insofar as 2155-to-2180 and 1755-to-1780, yes, they need to be paired. And, as you know, the upper band of that, the Congress has said, "You are going to have this done by February 2015." The lower part is actually part of a 95-meg reach from 1755 on up to 1810—no, it's not, I'm sorry—up to 1850. Get my math right. But, I think that parsing that to deal with the first part of that, 1755-to-1780, and then trying to pair it, is an important thing that has to happen, and we shouldn't have to wait for everything to be cleared before we move on that.

Senator AYOTTE. Thank you. I appreciate your being here.

And I want to thank your family for supporting your service.

Mr. WHEELER. Thank you, Senator.

The CHAIRMAN. Thank you, Senator.

And now, Senator Klobuchar.

STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM MINNESOTA

Senator KLOBUCHAR. Thank you very much, Mr. Chairman.

I was going to sing you "Happy Birthday," but Senator Thune stole my thunder, so there we go.

[Laughter.]

Senator KLOBUCHAR. I want to welcome our nominee. We enjoyed the meeting that we had. And I know we covered a lot of things, but one of the things that I think you know is a concern to me is that consumers should be able to keep the cell phone that they purchase, and use the cell phone that they purchase, even if they move somewhere or their service area changes. And that's why Senator Lee and Senator Blumenthal and I introduced the Wireless Consumer Choice Act, which directs the FCC to take action to ensure that consumers can unlock and keep their phones when they switch carriers. Senator Leahy also is working on a bill that I'm a cosponsor of that takes on the specific decision of the Library of Congress.

And so, I wondered if you could comment on whether you agree that unlocking is an impediment for consumers choosing to switch carriers, and therefore, a barrier to competition. And, should you become the Chairman of the FCC, will you commit to working with consumers, carriers, and the Library of Congress to address unlocking? Two questions.

Mr. WHEELER. Thank you, Senator. Who knew the Librarian of Congress had this far of a reach?

But, I am a strong supporter of intellectual property rights. At the same point in time, I believe, when I as a consumer, or you as a consumer, or anybody else, have fulfilled our commitment, that—and we've paid off our contract—that we ought to have the right to use that device and to move it across carriers, or whatever, as we see fit. And, yes, I look forward to working on this issue and to resolving this issue to give consumers flexibility.

Senator KLOBUCHAR. Thank you.

Another topic. Some of my colleagues had talk about the spectrum issue. And with the increased discussion about relocating government spectrum users in order to increase spectrum available, for good intention, Commissioner Rosenworcel has suggested providing financial incentives to government agencies to participate in relocation. This is just one idea. The President, last week, also called for agencies to look—take a look at their spectrum holdings and identify spectrum for commercialization.

What do you see as the future for government and commercial spectrum management and cooperation?

Mr. WHEELER. Well, as I mentioned earlier, I was involved in this very issue, the first time it ever happened, and it only worked if we created incentives—in that case, it was the Defense Department—if we created appropriate incentives for the Defense Department to be able to free up spectrum and still do its job. And those incentives ended up coming down to, How can you provide the wherewithal so that, if they're leaving this piece of spectrum to go to this piece of spectrum, that they can do it over here, with the best technology, with digital technology, rather than analog technology? That comes down to a cash issue. That came down to an appropriation issue. And the Congress, in that situation, created the incentive by creating the Spectrum Trust Fund and saying that

the money raised from the sale of DOD spectrum would, in fact, go to DOD to help upgrade.

So, I—Commissioner Rosenworcel made a terrific observation when she said that we ought to be thinking more about carrots and less about sticks.

Senator KLOBUCHAR. Very good.

Mr. WHEELER. And I agree with her.

Senator KLOBUCHAR. Another question related to the Spectrum Act. When Congress passed it, authorizing the world's first-ever incentive auction, the Act specifically mentioned that the FCC should coordinate with Canada and Mexico, prior to the auction, to protect broadcasters from interference in any repacking. It's important to lay the groundwork and have clarity with our international neighbors. That was the focus.

Being a state that is on the Canadian border, will you commit to work with the—we've been talking a lot about borders, the last few days on the floor, but not really the Canadian border—but, I wondered if you could commit to working with the Canadian government, as well as spectrum users such as broadcasters on both sides of the border, to make sure that the auctions are a success?

Mr. WHEELER. Yes, Senator. And I was involved in the digital transition, which involved rebanding, in much the same way—had to live through those kinds of issues. And I know that it is possible to do. And yes, we will do that.

Senator KLOBUCHAR. And I thank you for that work on that digital transition. That was when I—my—about my third year in office, and I remember how concerned we were that that was not going to go well. And the delay, I think, was helpful, and we got it done without a lot of problems.

Everyone knows that retransmission consent—now we're going to have 10 questions on that; I'm kidding—is a hugely controversial topic. We've spent countless hours in this committee debating it and the authority of the FCC. Could you discuss your views on retransmission policies?

Mr. WHEELER. Yes. It's interesting. You know, when I was in the cable industry, retransmission was an entirely different concept, because today broadcasters are using retransmission consent as a way of developing a new revenue stream, where they can get revenue from subscribers through the intermediary of the cable operator. I believe in that kind of evolutionary market.

What does bother me, though, Senator, and I think the Commission needs to be attuned to, is when consumers are held hostage over corporate disputes. And if I am fortunate enough to be confirmed, that'll be something that I'll be looking at.

Senator KLOBUCHAR. Very good. Thank you.

One last question. Senator Ayotte touched on, in some length, the rural broadband issue. And I know you and I talked about that. It's incredibly important in our state. I think that kids grow up in rural Minnesota, should be able to live there and work there, and that means they're going to have to have high-speed Internet.

One of the things I think has been helpful—Secretary Vilsack has a good sense of that, and I hope you'll commit to working with him, going forward—to make sure investments are made to build out our broadband networks.

Mr. WHEELER. Yes, ma'am.

Senator KLOBUCHAR. OK. And will you continue to review the FCC's USF reforms and measure the impacts on broadband investment?

Mr. WHEELER. I think that USF reform is a priority of the Commission in the totality of the process. So, the answer to that is yes.

Senator KLOBUCHAR. Very good. Thank you very much.

Mr. WHEELER. Thank you, Senator.

The CHAIRMAN. Thank you, Senator Klobuchar. You ended precisely on time.

Now, I want to say, to my colleagues, that I'm a little embarrassed, here. Senator Heller is next.

And, first, I should say to you, Mr. Wheeler, I've never been to a hearing where we had sort of a—basically, an hour's worth of votes, and everybody came back.

[Laughter.]

The CHAIRMAN. The problem is, in which order did they come back.

[Laughter.]

The CHAIRMAN. That's not your problem, that's my problem. And if you call on a Senator behind another Senator or ahead of another Senator, they only remember it for 2 years.

[Laughter.]

Senator KLOBUCHAR. But, not on your birthday. You get an exception.

[Laughter.]

Senator HELLER. We'll give you a break.

The CHAIRMAN. Senator Heller.

STATEMENT OF HON. DEAN HELLER,
U.S. SENATOR FROM NEVADA

Senator HELLER. Thank you. Mr. Chairman, I promise I won't be precisely on time, but thank you very much.

And, Tom, thank you. I appreciate the meeting that we had in my office. I want to, again, congratulate you on the nomination, and I want to——

Mr. WHEELER. Thank you.

Senator HELLER.—welcome your family here, also. Good to see you. Their smiling faces behind you, it does help.

Mr. WHEELER. Thank you, Senator. Yes, sir.

Senator HELLER. A question that I have—and I guess what I'm looking for is a better understanding of the "Wheeler FCC." I can't think of an industry today that has more potential for growth than any other industry in America today: technology. I think we're going to create more jobs in this sector, probably, than any other industry in this country in the next 5 to 10 years, if we do our jobs right, here on our side and your side.

So, the question that I have that comes to mind, Are you familiar with some of the reforms that came out of the House during the last cycle, for the FCC?

Mr. WHEELER. Yes, sir.

Senator HELLER. Congressman Walden was the author of that particular——

Mr. WHEELER. Right.

Senator HELLER.—FCC bill, and I'd like to highlight just a couple of pieces on there, and see how you feel about them, because I think it's important, and I think it'll come back, something that you'll have to be discussing in the future. And I only say that because I've authored the Senate side——

Mr. WHEELER. I know you have.

Senator HELLER.—of this particular piece of legislation.

One of the things that he was trying to achieve, I believe, in his legislation, was to get the industry and the Commission to work better together, that, at times—and you may know this, having your background and experience—that, at times, the FCC would not go to the industry and ask them if a new regulation actually made sense. And I think that's where Walden was trying to get to, amongst other things, was to make sure that the FCC and the industry have an opportunity to talk.

Do you have any thoughts on that?

Mr. WHEELER. Yes, that——

Senator HELLER. Yes.

Mr. WHEELER. I mean, first of all, I'm still reeling——

Senator HELLER. Do you agree—do you agree that was—has been an issue in the past?

Mr. WHEELER. I think—I must say, in all candor, sir, I don't believe that, when my job was advocating before the Commission, that there was a challenge getting my ideas heard. I do believe that it is essential that the Commission have an open process for the collection of ideas and inputs.

And I also just want to respond to one thing you said, a moment ago, which still has me a little startled, when you used the term the "Wheeler Commission," which is the first time I've really ever heard that, particularly from somebody like you. It's an honor to have that kind of moniker, but I would also want to emphasize that it is a "commission," and that I don't believe that I'm the Czar. I look forward—I know that it is a strong Chairman role. I understand the responsibilities of the Chairman, but I also think that this is a—an institution that needs to work collegially and together on resolving the challenges.

Senator HELLER. One of the issues that Walden had in his legislation, which I agree with him on, that the previous Chairman disagreed with, and that was whether or not to do an analysis every time a new regulation was proposed: Did it create jobs or did it kill jobs? What's your feelings on that topic?

Mr. WHEELER. Well, I know that one of the things that you have proposed is to address the question of whether there are too many diverse reports coming out of the FCC and there is too much time being spent on too many reports.

Senator HELLER. I agree.

Mr. WHEELER. I think you raise an incredibly valuable point, when you asked that question, and I think that, inside the construct of whatever the mandate of reports that the Congress decides they want the Commission to have, that kind of an issue falls.

Senator HELLER. OK. And I appreciate your response to that, because, obviously, we share that.

Merger conditions, also something that has been brought up several times with both Senator Thune and with Senator Blunt regarding their questions on merger reviews. Now, you've indicated, three times, that merger reviews should be based on facts. And you and I would agree with that. But, again, your blog post, dated September 2, 2011, said, "My theory was that conditions ultimately imposed on AT&T by the Government should not only establish rules on AT&T, but would expand from larger carriers to all others."

Now, I see two different theories, here.

Mr. WHEELER. But only one set of laws. There—that in a—in a hypothetical musing, it is possible to do those. If I am fortunate enough to be confirmed, I am guided by statute, precedent, and the facts in the case before me. Period.

Senator HELLER. OK. Let me ask you one more question. And this is one of the complaints that I've received in the past. Can you assure us that you'll have no votes between midnight and 6 o'clock in the morning——

[Laughter.]

Senator HELLER.—on the Commission?

Mr. WHEELER. I—Carol is sitting here. She will tell you that it's rare that I'm awake past 10 o'clock at night. And I don't know the reference you're making, but it certainly would not be my goal to be holding votes at that time of night.

Senator HELLER. Thank you very much.

Mr. Chairman, thank you.

The CHAIRMAN. Thank you, Senator Heller.

Now Senator Cruz.

STATEMENT OF HON. TED CRUZ,
U.S. SENATOR FROM TEXAS

Senator CRUZ. Thank you, Mr. Chairman.

Mr. Wheeler, dé jà vu all over again.

Mr. WHEELER. Sir.

Senator CRUZ. Thank you for being here. I enjoyed the time you and I had to visit in my office.

Mr. WHEELER. Yes, sir.

Senator CRUZ. I want to cover a number of issues. I want to start with spectrum.

It is my view that the Federal Government should own or control as little spectrum as possible, consistent with national security and law enforcement needs. Do you agree with that principle?

Mr. WHEELER. The—I—let me—if I could tweak it a bit. The Federal Government should be efficiently using spectrum to a point where it uses the minimal amount of spectrum necessary to do its job.

Senator CRUZ. What do you see—I mean, as you know, there has been a long history of reluctance by those Federal agencies that have control over portions of spectrum—there has been a long history of reluctance to relinquish that control—what do you see as the most effective tools Congress can implement to shift more and more of that spectrum into private hands, where it can generate jobs and economic growth?

Mr. WHEELER. That's a—excellent question. Thank you, sir. And I think there are many.

One, as I indicated before, the bright light that you are focusing on spectrum now is so different than the days when I was negotiating with the Federal Government over spectrum. And that can only help.

Second, I think that—I would hope that part of that bright light would be an encouragement to think about how new technology has changed the use of spectrum. Doing things the way we've always done them isn't the answer for tomorrow. And most spectrum has been allocated with analog concepts in mind. And living in a digital world, we can think differently.

And third is the issue of creating the necessary incentives for the Federal Government users to become efficient and to want to put spectrum to other uses.

And I think all of those reside here. I think—if I am fortunate enough to be confirmed, sir, I will be forthright in calling for these kinds of changes, but I think that you all, frankly, are the ones who actually are in control of that.

Senator CRUZ. Well, I look forward to, hopefully, working with you to accomplish that.

Mr. WHEELER. Thank you, Senator.

Senator CRUZ. Let me shift to a different topic, which is—as you know, in recent months, two of the President's Cabinet nominees have sat where you are sitting, and I asked both of them if they would commit—my top priority is economic growth. And critical to economic growth is regulatory reform, reducing the burdens of Federal regulation on small businesses, on job creation. So, I asked each of those two nominees if they would commit, within the first 100 days, to identifying at least three existing Federal regulations that should be modified or repealed because they're impeding job creation. One of them agreed to do so, and a second one actually upped the ante and said that he thought three was insufficient; he agreed to find ten, instead. So, I want to ask you the same question.

Mr. WHEELER. Well, I don't want to get into the game, here, although I'll see his ten and raise him ten. But, I will——

Senator CRUZ. I would welcome 20.

[Laughter.]

Mr. WHEELER.—I will take a slightly different tack on that. As I have been preparing for this hearing, I've been asking myself that question. I wrote a book on Lincoln's use of the telegraph. I'm kind of fascinated with the first electronic communications network that we ever had. I discovered that the telegraph rules are still in place at the FCC. I'd like to take a look at whether that makes any sense.

But—and that is my philosophy, sir, of looking at all of the rules with that kind of an eye.

Senator CRUZ. Well, I appreciate that very much, and I hope we can work together; in particular, look—I think getting rid of the telegraph rules makes a lot of sense—but, I think, in particular, obviously, targeting those rules that are really impacting productivity and job creation. It is, I know, a priority of ours, and——

Mr. WHEELER. Yes, sir.

Senator CRUZ.—and I hope we can work together on that.

I want to briefly touch on the question of unlocking phones. And you mentioned contract law, and that's obviously a matter between private parties. In your opinion, should Federal law prohibit or criminalize consumers unlocking their phones?

Mr. WHEELER. Well, I think that a consumer has the—if the consumer fulfills their side of the bargain, they ought to have the right to unlock their phone.

Senator CRUZ. Would you support a permanent exception to the DMCA for cell phones and other wireless devices?

Mr. WHEELER. I think that we—that—first, I think it's an extension, now, that has caused all kinds of problems that we need to deal with. I don't, right now, sir, know whether it is a permanent exemption, whether it is a rewrite of the Copyright Act, or what the appropriate solution is. But, I do believe that there needs to be a solution and consumers should have the right to unlock their phones after they've lived up to their side of the deal.

Senator CRUZ. Well, terrific. I look forward to working with you on that.

The final issue I want to address is one that's come up already, the DISCLOSE Act. As you know, there are few, if any, issues that inspire more passionate partisan divisions in this body. This body has repeatedly failed to pass the DISCLOSE Act, because a substantial number of members of this body believe it is unconstitutional and bad policy. In your judgment, does the FCC have the authority to implement the DISCLOSE Act or to otherwise regulate political speech?

Mr. WHEELER. As I have said before, that's an issue that I look forward to learning more about. There is a pending proceeding on that exact question, and I need to look at that proceeding and to become informed. But, I do not miss the expression, on both sides of this dais, as to the strong feelings, and I know that this is a—this is an issue of tension.

Senator CRUZ. Well, Mr. Wheeler, as you know, every Republican on this committee, along with Minority Leader Mitch McConnell, sent a letter to your predecessor on this issue.

Mr. WHEELER. Uh-huh.

Senator CRUZ. And you and I visited in my office. You said you need to study the issue more. I would ask you to submit, in writing, an answer to this question.

[Mr. Wheeler's reply can be found in the Appendix on page 75.]

Senator CRUZ. And I would note, as you and I visited privately, this is the one issue that, in my opinion, has the potential to derail your nomination. And I don't want to see that happen. I think the Commission has a very important role. But, should the Commission leave that role and get into the business of regulating political speech—we've seen, with the IRS, what can happen when Members of Congress urge the Executive Branch to begin playing politics.

And so, I look forward to reading your written response, in terms of whether you believe the Commission has the authority to implement the DISCLOSE Act or to regulate political speech.

Mr. WHEELER. Thank you, Senator.

The CHAIRMAN. Thank you.

Senator Coats, bad news. Senator Blumenthal walked back in, preempts you by one.

So, Senator Blumenthal, followed by Senator Coats, followed by Senator Scott, followed by the eminent Senator Cantwell.

STATEMENT OF HON. DAN COATS,
U.S. SENATOR FROM INDIANA

Senator COATS. Mr. Chairman, thank you. And I——

Senator BLUMENTHAL. If——

Senator COATS.—I appreciate that.

Senator BLUMENTHAL. If the distinguished Senator from Indiana has a time constraint, I'm happy to yield to him.

Senator COATS. I do have a radio show at 5 o'clock, but—which means I will take less than my 7 minutes.

Senator BLUMENTHAL. I would—with your permission, Mr. Chairman, I'll yield to my colleague and friend from Indiana.

Senator COATS. I appreciate that, and I owe you one.

Tom, you said this is not your first rodeo. And it's not my first rodeo, either. You bring a lot of experience to the table, here, a lot of knowledge about the relevant issues. You've had a good career in this.

I was out of the Senate for 12 years; and during that time, part of that time, I did advocate on behalf of some clients. And then, when I came back here, I think those clients thought, "Oh, boy, we've got somebody there that—he already knows our issues, and we know where he's going to come down." I was able to inform every one of them that I'm starting with a clean sheet. People are going to have to come—you're going to have to come and make your case to me as if it's a brand-new issue. My representation of you doesn't have a bearing, in terms of how I'm going to decide, going forward.

My constituents came to me and, basically, said, "You know, you voted for our position, or against our position, and we're wondering if you're still with us or you're still against us." I said the same thing: clean sheet.

So, I'm hoping that—I think that's the way to approach it. I'm hoping that's the way you'll approach your job, that you will not base future decisions on the fact that you took a different position in your private life, or that you came to a conclusion that may not match up with the current situation, as it exists today, the current facts, and that you will have that open door, clean sheet, when clients come forward, regardless of what your past positions might have been.

So, I'm—you don't have to affirm that, but I'm just suggesting that it worked very well for me, and I hope it works well for you.

Mr. WHEELER. Senator, thank you for bringing that up, number one, and second, for your advice and counsel on it.

I was an advocate for specific points of view. I hope I was a pretty good advocate.

Senator COATS. You were.

Mr. WHEELER. I remember our times working together, sir.

If I am fortunate enough to be confirmed, my client will be the American public. And I hope that I can be as effective an advocate for them as humanly possible.

Senator COATS. Good. I thank you for that statement. And I'll let it go at that.

And I thank my colleague for allowing me the time.
Thank you, Mr. Chairman.
The CHAIRMAN. Thank you, Senator Coats.
Senator Blumenthal.

STATEMENT OF HON. RICHARD BLUMENTHAL,
U.S. SENATOR FROM CONNECTICUT

Senator BLUMENTHAL. Thank you, Mr. Chairman, and——
The CHAIRMAN. Good question.
Senator BLUMENTHAL. Thank you, Mr. Wheeler, for your willingness to serve——
Mr. WHEELER. Senator.
Senator BLUMENTHAL.—the American public as your client——
Mr. WHEELER. Thank you, Senator.
Senator BLUMENTHAL.—which I believe is supremely important as an approach to this job. And let me just say, from my part, with all due respect to my colleague from Texas, I don't have an issue that would derail your confirmation, and I hope you will adopt the approach of considering, carefully and cautiously and deliberately, all of these issues, once you reach the position, if you are confirmed, that will best serve the American public, and that you will be willing to listen to what's presented to you. And I think that listening is very, very important in this job.

So, in that spirit, let me just ask you, first, about limits on spectrum consolidation, which is very important to the public, and the FCC is currently revisiting its antiquated and inadequate spectrum screen—updating the screen is important, not just for this upcoming auction, but, also, it's integral to ensure that the wireless market remains competitive for years to come. As you know, the Department of Justice recently wrote the FCC to weigh in on how the Commission can structure its spectrum policy to best encourage competition and promote consumer welfare, and it encourages the FCC to create a spectrum policy that ensures smaller carriers have access in order to promote more competitive discipline, more competition, more choices. And I'd like you to agree, with me and the Department of Justice advice, that the FCC should create a spectrum policy that specifically seeks to encourage competition in the wireless marketplace.

Mr. WHEELER. Senator, the Act on the—dealing with the incentive auction was very explicit. It said that you could not preclude a company from participating, and it also said that the Commission had authority to establish the rules for various band plans.

The—I remember the first spectrum auction, when I was one of the guilty parties of saying, "You have to do it this way or the sky will fall." And I know that that always happens in this kind of a situation.

But, I believe that there is a responsibility that the Congress has given the Commission to have an effective auction and to preserve and protect competition, which includes smaller players, which are so often the innovation engine.

Senator BLUMENTHAL. So, that would mean that they should have access to the spectrum.

Mr. WHEELER. I think that that's one of—that is a key issue that the Commission has to consider when it looks at this band-plan authority that the Congress has given——

Senator BLUMENTHAL. And a key goal.

Mr. WHEELER. Yes, sir.

Senator BLUMENTHAL. Thank you. Do you think that the FCC ought to account for differences in quality between different spectrum, particularly low- and high-frequency spectrum?

Mr. WHEELER. I am very aware of the different propagation techniques. I would be disingenuous if I told you I had an answer to that question, sir. I am——

Senator BLUMENTHAL. But, there are differences——

Mr. WHEELER. There are difference in propagation characteristics that—one piece of spectrum is not the same as another. I have not reached a policy decision on how you balance that out.

Senator BLUMENTHAL. But, it certainly is a relevant consideration.

Mr. WHEELER. It certainly is, sir.

Senator BLUMENTHAL. Let me switch to another consumer issue, which my colleagues are—have not raised; and that is blackout policy, which you and I talked a little bit about, or we alluded to it when we spoke. And, as you know, few issues concerning the FCC drive sports-fan consumers as—I was going to say "drive them as crazy," but "upset them," to use a more temperate way of putting it—as the current blackout policies and practices.

So, my question to you is, What can the FCC do to decrease the frequency of blackouts and make sure that consumers, essentially, aren't stuck with blank screens when they want to watch sports contests that they should be seeing, they have a right to see?

Mr. WHEELER. Well, as you know, there is a proceeding before the Commission, right now, to eliminate the so-called "sports blackout rule," which derives from the days when decisions were made on the basis of what broadcasters in a market had contracted to. The market has moved since that time, point one. Point two, the market has a plethora of new players since that time, the latest example of which is Verizon Wireless paying a billion dollars—with a "B"—a billion dollars to the NFL to be able to stream NFL games onto mobile devices, without the blackout rule ever being considered. So, clearly, this is an issue that is ripe for Commission decision. Because there is a proceeding at the Commission, I don't think it's appropriate for me to opine, at this point in time, but there is an evolutionary process, here.

Senator BLUMENTHAL. But, you would agree that the Commission should move forward with the Notice of Proposed Rulemaking concerning the blackout?

Mr. WHEELER. There is a process in place to deal with this evolution, sir.

Senator BLUMENTHAL. Let me ask you, finally, just generally, if you consider the array of consumer protection issues now before the FCC, have you settled, in your mind, on several, or a single one, or more than a few, that really should be priorities for the FCC?

Mr. WHEELER. That is a legitimate question, and one that I can't say that I have gone A, B, C, D. However, I have thought about,

What are the kind of priorities I want to—if I'm fortunate enough to be confirmed—that I want to consider? And it seems to me there are three:

The first is consumer protection. As I said in my statement, the Telecommunications Act makes it abundantly clear that the first task of the FCC is consumer protection.

The second issue is competition. And, as I said in my statement, I am an unabashed believer in competition, and competition sometime also needs some help to make sure that it's there.

And the third issue that I would have as a priority is predictability, decisiveness, dispatch, ability to know what the rules are, because, frankly, whether a rule is right or wrong, knowing what it is, is more of an economic incentive than existing in the, "Oh, my goodness, what are the rules right now?"

And so, it's those three things that I would be guided in as I go through and parse through what are the kinds of issues that ought to be addressed.

Senator BLUMENTHAL. Thank you.

Thank you, Mr. Wheeler. Thank you for your answers to my questions and your willingness to serve.

Thank you, Mr. Chairman.

Mr. WHEELER. Thank you, Senator.

The CHAIRMAN. And thank you, Senator Blumenthal.

Senator Scott.

STATEMENT OF HON. TIM SCOTT,
U.S. SENATOR FROM SOUTH CAROLINA

Senator SCOTT. Thank you, Mr. Chairman.

Mr. Wheeler, good chatting with you recently.

Mr. WHEELER. Senator.

Senator SCOTT. Looks like the broadcast incentive auction will consume a lot of your time during your term——

Mr. WHEELER. Yes.

Senator SCOTT.—without much of a question.

Mr. WHEELER. Yes, sir.

Senator SCOTT. Part of that process—not only does it support innovation, creativity, not only is it going to be a part of the future engine of our country, economically—there seems to be some concerns, back at home in South Carolina, as it relates to the repacking process. And so, two questions. One would be, Could you discuss with me how you would anticipate allocating the repacking funds provided by the legislation? I think it's about $1.75 billion or so. And how would you anticipate handling the low-power TV stations in the repacking process?

Mr. WHEELER. Thank you, Senator.

And I cannot give you a specific example—a specific response to that. And I hope you can sense my frustration as to why I can't, because I really have not been able to look beyond the public record on this issue.

However, I mentioned to Senator Thune, earlier on, that this hearing—or, this proceeding, in the auction, is like a Rubik's Cube, where you've got to provide—on this side of the cube, you've got to provide incentive sufficient for broadcasters to want to put—to bring their spectrum to market. And then, you've got to organize

it in a way that makes it valuable, so that whoever is bidding wants to bid on it. And the glue that is in the middle—the grease and the glue, if you will, that's in the middle—is how you do the band plan and how you decide how this works. And so, it is—I agree with you, sir, it is crucial.

I also know, from my experience on the digital television transition, the incredible importance, and the responsibility that exists to somebody who is—who perhaps may be a regulator—on how service areas and band plans are allocated or decided as you work through this band plan. And one of the big challenges that existed in digital television transition was, "How do you make sure that you have similar coverage areas?" and all of these kinds of things.

I believe it is possible to find the right solution. It is not easy. I wish I could give you the specific answer. I don't know what it is. But, I do have the experience to say that I know it's possible to reach that.

Senator SCOTT. Thank you.

One of the things the current Commission is wrestling with is whether or not to weaken its broadcast decency standards. And this is going to be an ongoing debate, it seems. The public is engaged pretty intensely in the debate, as well, with over 100,000 responses from the public. I know that the last time the decency enforcement standard was considered, back in 2004, it took about 8 years for them to come to a decision by the Supreme Court.

My question to you is, as Chairman, where would you take the broadcast decency policy?

Mr. WHEELER. Thank you, Senator. That's a very relevant question. As you heard me say, early on, when I was introducing my family, I've got three brand-new grandkids. I'm old enough to, when I see some things, to kind of grit my teeth and say, "Does this—is this what I want my grandkids to be seeing?"—whether it be violence or obscenity or indecency, or whatever. At the same point in time, as you point out, the courts have been pretty specific and restrictive.

I do believe, however, that it is possible to call upon our better angels, with some leadership. I remember Newton Minow talking about television as "the vast wasteland." He did that without regulatory authority. It caught the public's attention. Maybe it's possible to do the same kind of thing today and say, "Can't we do better?"

Senator SCOTT. I like your optimism, at least. I'm not sure I share it, but I like it.

Let me ask you a question about IP transition, since it's obviously coming.

Mr. WHEELER. Right.

Senator SCOTT. And I think, in 2011, you chaired, or you were part of, the advisory committee.

Mr. WHEELER. Right.

Senator SCOTT. And certainly, the industry has gone a long way towards making the necessary capital investments to help us shape the future. How do you envision the transition taking shape? And do you believe a sunset of the legacy copper network is still possible by 2018?

Mr. WHEELER. So, I was the Chairman of the——

Senator SCOTT. Yes.

Mr. WHEELER.—of the Committee that started the ball rolling.

Senator SCOTT. Exactly. God bless your soul.

Mr. WHEELER. And I think that there are—there are a couple of things. One is, it's going to happen, with or without us. The question is, how do we mitigate the impact of it? Because——

Senator SCOTT. Yes.

Mr. WHEELER.—we've all lived through other transitions. We lived through the broadcast-to-cable transition, we lived through the wireline-to-wireless transition. And there were bumps along the road in all of it. I think that what the Commission can do—and if I am fortunate enough to be confirmed, I hope that we will be able to lay out—is some kind of stratagem that says that we have to progress through this with some kind of planned structure rather than it growing like topsy and just happening here and happening there, and one person tries this and—because that's what causes the dislocations, that's what causes the harm to consumers, that's what causes the disincentive to invest. And so, I'm hopeful that we will be able to address the broad spectrum of issues associated with the IP transition in a collective and logical way.

Senator SCOTT. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Scott.

Senator Cantwell.

STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Thank you, Mr. Chairman. I stayed around just to wish you a "Happy Birthday."

[Laughter.]

Senator CANTWELL. And to ask Mr. Wheeler some questions.

And I'm very glad that he brought up Newton Minow. I remember that story about Newton Minow, I think, taking President Kennedy around, or maybe it was Senator Kennedy at the time, and he said, "Why are we launching satellites instead of people, you know, into space?" And Minow said, "Because ideas last longer than people do." And I think that's a very important question, when it comes to media and media consolidation. I want lots of ideas. I don't want ideas packaged up and shoved down local throats of individual broadcasters, saying, "This is the news, and that's the way it's going to be."

So, one question I have for you is this issue of media consolidation and your role on the FCC. You know about previous chairmen and their attempts to advocate for rule. Then-Senators Obama and Biden joined us in disapproval resolutions. Last week, Gannett newspaper announced it was going to purchase Belo's 23 television stations. And so, that includes KING in Seattle, KREM in Spokane, and KRW in Portland. And the—while the purchase is subject to the approval of the—of both the FCC and DOJ, I think Gannett is trying to, basically, use these ownership rules—use the whole shared service agreement as a way to get around those rules.

So, I'm very, very concerned about that whole issue. And so, do you believe in that making it easier for owners of daily newspapers to own television stations and radio stations, the same market rule

is what's wrong with the newspaper industry? Is that the way we need to be going?

Mr. WHEELER. Senator, I understand the seriousness of this issue, and I have long been an advocate of diversity of voices.

On the specific issue that you just raised, I also note that the Chairman has asked the GAO to opine on this issue. And I think that's appropriate, called for, and I look forward to their opining, their opinion.

But, I think you said the key thing, that, when the Commission looks at these issues, competition, localism, and diversity are the issues that should be the touchstones, not business plans.

Senator CANTWELL. And so, do you believe that some broadcasters could abuse those shared services or joint sales agreements to get around those ownership rules?

Mr. WHEELER. I am not informed enough to be explicit on that, and I—but I am going to be, and I look forward to pursuing that issue with you.

Senator CANTWELL. And so, you basically believe that this is an issue that the Commission needs to give more attention to, to assure Members of Congress. Otherwise, we'll have another disapproval resolution that there are going—there's—there is going to be adherence to, not a continued move on consolidation. And I guess I was asking—my first question is, Do you—a lot of people try to put forth the notion that newspaper industries, in and of itself, are having problems, and this is why you should allow the consolidation of media to save the day. And so, I—trying to get your thoughts on that.

Mr. WHEELER. I'm a businessperson, and it has been my experience that the way to grow businesses, when they are challenged by new technologies, is to embrace those new technologies, and that that's the way of working yourself out of this kind of a situation. That's the best way of working yourself out of this kind of situation.

Senator CANTWELL. So, you don't run to the explanation of, "Well, let's just allow for, you know, all sort of integration to solve this problem"——

Mr. WHEELER. I——

Senator CANTWELL.—and thereby throw out these very legitimate concerns about over-consolidation in the market.

Mr. WHEELER. I am specifically trying not to be specific——

Senator CANTWELL. I——

Mr. WHEELER.—on that, Senator, because I want to become more informed. I do understand the seriousness of this, and I understand the priority of—competition, localism, and diversity trumps everything.

Senator CANTWELL. OK. OK. On the Progeny Petition, are you familiar with that?

Mr. WHEELER. Yes, ma'am.

Senator CANTWELL. There was a lot of discussion about whether interference was actually going to happen, or not. Will you pursue an aggressive approach to make sure that you're monitoring complaints and things of—so that we actually see what's happening and——

Mr. WHEELER. The answer is yes, because if one of the solutions to the spectrum crunch is to use more—use spectrum more efficiently, that inherently means sharing, whether it's geographic sharing, time sharing, or literally sharing-sharing. And that means you have to be monitoring interference to make sure that this efficiency is, in fact, happening.

Senator CANTWELL. OK. So—appreciate that. And then, on this unlicensed spectrum—we heard a lot about the spectrum crunch today—but, do you believe there's a crunch in unlicensed spectrum?

Mr. WHEELER. You know, I think—I am a supporter of unlicensed spectrum. I find it noteworthy that unlicensed has been the rescuer of licensed in so many ways, that a third to three-quarters of the wireless data, the mobile data out of a smartphone, ends up going through unlicensed spectrum rather than licensed spectrum, that unlicensed is the home to innovation, and therefore, that we need to have unlicensed spectrum.

Senator CANTWELL. So, you support broadcast white spaces for unlicensed——

Mr. WHEELER. And, at the—yes—and, at the same point in time, I recognize that the job of the Commission is to balance out the demands between, "OK, here's licensed, that you can sell, that will fund FirstNet and other kinds of activities; and here's unlicensed, that you can't sell." And how do you reach the balance on those? But, I do not take lightly the significance of unlicensed spectrum.

Senator CANTWELL. Thank you.

I see my time is expired, even at 7 minutes. Thank you, Mr. Chairman.

The CHAIRMAN. You don't have to stop.

Senator CANTWELL. That's OK, thank you.

The CHAIRMAN. OK. Thank you, Senator Cantwell, very much.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Mr. Chairman, for giving us a second round. And it will be a brief second round, on my part, but I want to cover some issues relating to broadband that I think have not been touched on.

You know that half of all broadband subscribers in the United States are subject to some kind of cap—bandwidth cap or usage-based billing policy, caps that——

Mr. WHEELER. Right.

Senator BLUMENTHAL.—a lot of people regard as anticonsumer and, in the end, inhibiting more Internet use, which is key to a lot of people communicating with each other and learning about the world, and also more expensive because of the effect on competition. And, as you know, Congress recognized the need for more information about what the situation is, locally, what the state of competition is, how these caps impact competition. And it recognized that—when it passed the Broadband Data Improvement Act, in 2008, the FCC recognized this fact in the broad—National Broadband Plan, and the Department of Justice recognized it when it submitted comments to the FCC on how best to promote more competition in the broadband marketplace.

So, I guess my question is, Do you agree with the recommendations of the National Broadband Plan and the DOJ, that the FCC should be collecting more broadband pricing information to facili-

tate an understanding of what's happening there, how these caps, how the potential lack of competition, other factors, are impacting consumer use and competition?

Mr. WHEELER. Thank you, Senator. I'm a data-centric guy. I come from a management background, and the thing that they used to beat into you in business school, "If you can measure it, you can manage it"—I believe that, sir. I believe that you need to have the kind of data that you're talking about.

Senator BLUMENTHAL. Thank you. That answers my questions——

Mr. WHEELER. OK.

Senator BLUMENTHAL.—and thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. I was just finishing a note to Senator Cantwell, here.

Senator CANTWELL. Mr. Chairman, I do have more questions.

Senator BLUMENTHAL. And——

Senator CANTWELL.—if we're allowed a second round.

The CHAIRMAN. Yes, you can go ahead, and I'll finish my note to you.

[Laughter.]

Senator CANTWELL. OK, thank you.

Senator BLUMENTHAL. And "Happy Birthday," Mr. Chairman.

The CHAIRMAN. Thank you.

All right.

Senator CANTWELL. Mr. Wheeler, one of the issues that we have in the Northwest is this issue of rural call completion.

Mr. WHEELER. Yes, ma'am.

Senator CANTWELL. And we still have a number of constituents who feel that too many of their calls just don't connect, dropped. Do you believe this is a concern? Do you believe it remains an issue that needs to be addressed, something that the FCC can do on enforcement action?

Mr. WHEELER. Yes. And, as you know, the situation is that some carriers—long-distance providers—have been subcontracting out and not doing the appropriate kind of oversight on the quality of service delivered by those subcontractors. They should be held responsible for that. This is an enforcement action. I know that the FCC has taken one enforcement action already on this. And if I am confirmed, I look forward to investigating the need for there to be others.

But, to be clear, you cannot have a network if you do not interconnect like this.

Senator CANTWELL. Great, thank you. Thank you for that specificity.

Another issue of concern is the FCC Office on Native Affairs and Policy, which was established in 2010 because of the interest in more broadband and adoption of technology throughout Indian country. If you're confirmed, will you support this office and its activities? And what role do you envision for further encouraging broadband in this area?

Mr. WHEELER. Yes, Senator, I will. I have met with the office already. I understand some of the challenges that they are facing, not the least of which is some of the impact of sequester and their

ability to travel and be with Native groups to work with and address the issues. And the answer is yes, I am sensitive to, and will be aware of, that situation.

Senator CANTWELL. And will support the continuation of the policy?

Mr. WHEELER. I—that is a very clear answer to that—yes, I think that the activities of that office are an essential component of the FCC.

Senator CANTWELL. OK, thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Cantwell.

Mr. Wheeler, it—then, actually, the note that I was—have written to Maria, which I will give her anyway, simply raised the—stated the point that what you've heard this afternoon—there has been some theology, some ideology, but, for the most part, there has been really succinct questions about policy questions coming from the experience of a lot of the folks on this committee who have been here for a very long time and have learned a great deal and who are very, very smart. People want on this committee. There's a long waiting list. And there's a reason for that: because we have a broad jurisdiction, and it's a very powerful jurisdiction. Yours is a very large part of it. But, it's—it is—things don't happen like this. I can't see what time it is, but my so-called "birthday" is going to be spent with my wife having the Board of Directors of the WETA over for dinner.

[Laughter.]

Mr. WHEELER. I hope they sing well.

The CHAIRMAN. Yes. I was hoping to catch the second Braves game, but that's another matter.

[Laughter.]

The CHAIRMAN. But, it's an impressive lot, this committee. And the staff is central to that. And it's something I very much appreciate. It's wonderful being Chairman of this committee. It's an absolutely wonderful job.

I think you've acquitted yourself extremely well, and under a lot of pressure, and with intensity and with firmness and with—you know, giving your total concentration to whatever question was asked. I'm not going to bring up "cramming," which I would, otherwise.

But, I want to thank you. It's clear that this time of technical transition, that your—that the FCC's role is important. I want you to be a strong chairman. We need a strong chairman. You're going to have strong commissioners. They're, for the most part, there. But, we need a strong chairman. We need to feel the energy of that strong chairman. Delay, beyond what is necessary, is something we don't have to—shouldn't have to put up with.

We do a lot of oversight, and it's good that we do, because we're interested in the subject. We don't do it just for the sake of doing it, but we're interested in the subject—broad subject.

I think you're going to be confirmed, and I think you're up to the job.

For those staff members still remaining, the record for this hearing will remain open for one week.

And, with that, this hearing is adjourned, with thanks to you and your family and all who attended.

[Whereupon, at 5:30 p.m. the hearing was adjourned.]

A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV TO THOMAS E. WHEELER

Universal Service Mobility Fund

Question 1. Prior to the FCC's adoption of recent reforms to the universal service high-cost fund, I held a hearing in which I pressed the FCC to make sure that those reforms help bring wireless service to rural areas that do not have it now. We also discussed how mountainous terrain and other topographical features can pose additional challenges and costs to wireless deployment in those areas.

The Commission has now completed its Mobility Fund Phase One auction to provide support for wireless build-out in rural America. It is my understanding that some prospective bidders faced significant challenges in winning support under the Mobility Fund's Phase One rules.

I know that the FCC is still considering reforms to the method by which it distributes wireless support in the future. If confirmed, will you commit to a thorough review of this method to be sure that its works effectively for all rural areas, including those areas, like West Virginia, that face topographical challenges?

Answer. Yes. I am committed to maximizing opportunities for all Americans to have access to robust wireless voice and broadband service, regardless of location.

Cramming

Question 2. On June 12, I introduced legislation with Senators Klobuchar and Blumenthal aimed at preventing bogus companies from cramming charges onto consumers' phone bills. Consumers have already lost billions of dollars because of wireline cramming. They cannot afford to lose any more.

Likewise, that means protecting consumers from wireless cramming. As we continue to move to a more wireless world, we cannot let crammers run from one kind of bill to another. That is why last week I also wrote letters to the four national wireless providers asking about their policies for protecting consumers against cramming.

As I have expressed in the past, it is important for both Congress and the FCC to be proactive on this issue.

If confirmed, would you commit to working with me to protect consumers from cramming?

Answer. Yes. I look forward to working with you on this issue.

Question 2a. If so, what should the agency do to make sure cramming doesn't move to other services, such as wireless?

Answer. I know significant steps have been taken in the last few years to address this in the wireline context. If confirmed, I look forward to learning from the FCC staff what the record shows on this issue as it relates to wireless, and also to IP-based services. I look forward to seeing what you learn from your inquiry to wireless providers and I can assure you I am committed to taking action if there is a need.

Online Video/Cable Rates

Question 3. Last year, I held a hearing that explored the future of the video marketplace, including the emergence of online video. We heard that online video has the potential to be truly transformative, and to lead to greater choice, better programming, and lower prices for consumers. This potential is particularly important given that consumers face rate increases for pay television that exceed the rate of inflation—every year. And consumers are forced to pay for so many channels, when they watch only a few.

That is why I am concerned by recent reports indicating that pay television providers are seeking to foreclose opportunities for consumers. It is troubling that some cable operators are entering into agreements that seek to encourage media companies to withhold their programming from online video services.

To the extent legislation is needed to prevent this possible anticompetitive behavior, I am willing to lead that effort. But I also believe the FCC has some existing authority to combat these practices.

If confirmed, would you commit to fostering the development of these innovative services and to make sure that they continue to benefit consumers?

Answer. You raise an important issue. I will make certain the Commission's policies foster opportunities for competition, consumer protection, innovation, and investment.

Interoperability

Question 4. Two years ago, I weighed in with the FCC asking it to address the interoperability issues in the 700 MHz band. This is a complex matter, which ultimately comes down to what is technically possible. Nonetheless, I hope that the agency can bring that rulemaking to a close soon.

In the near future, the FCC will be auctioning spectrum in the 600 MHz band that is voluntarily relinquished by television broadcasters. A number of parties, including potential bidders, have asked the FCC not to allow the same interoperability mess in the 700 MHz band to be repeated in the 600 MHz band.

If confirmed, would you commit to looking closely at this issue and making sure that the FCC fully considers the lessons learned in the 700 MHz band when adopting rules for 600 MHz licensees?

Answer. Yes.

Payphones

Question 5. Payphones are a vanishing feature of the American communications landscape. Fifteen years ago, we had more than 2 million payphones across the country, but now we have less than a quarter as many. Despite this decline, they remain a primary link to the communications network for American households without any form of household phone. They are a vital part of keeping Americans connected and can be a lifeline in times of emergency.

As part of former FCC Chairman Genachowski's nomination hearing, he committed to addressing this issue. He subsequently worked toward resolving several payphone compensation petitions, but there is still more work to be done.

If confirmed, will you commit to reviewing existing payphone policies at the FCC in order to ensure that the Congressional mandate to compensate each and every completed call is met?

Answer. Yes.

Question 5a. Will you commit to work to ensure that disputes over payphone compensation are resolved in an expeditious manner?

Answer. Yes.

IP Transition

Question 6. Today, our communications network infrastructure is in a period of transition. As head of the FCC's Technological Advisory Committee, you have publicly discussed the need to transition the public switched telephone network to an all-IP network. The FCC has a technology transition task force in place currently reviewing what such a transition may mean for the Nation's communications network.

Such an upgrade in network technology raises a host of important questions. We need to fully understand such a transition's impact on public safety and network resiliency, on competition and interconnection, and on consumer protection. It also is critically important that any such transition of our communications network infrastructure not forget rural consumers or ultimately leave them with fewer choices and higher rates.

If confirmed, will you commit to making sure that the FCC fully and thoughtfully addresses the regulatory implications of this ongoing transition—and that our rural and remote consumers are not left behind?

Answer. Yes. As technologies transition, the FCC must remain committed to certain core values, including the promotion of competition, consumer protection, universal service, and public safety. While the Commission must analyze legacy rules and regulations and adapt to reflect changes in the communications landscape, new communications networks and services do not change the Commission's statutory obligations. It is very important to maintain a competitive marketplace with sufficient consumer protections and access to emergency services during the transition in all areas, including the most remote parts of the country. Rural and remote areas, as you know from the experience in striving to achieve universal service reform in a broadband era, present unique challenges that must be considered when developing policies in a changing communications landscape.

Violent Content

Question 7. As you know, I have long been concerned about the harm caused to kids by violent programming. That is why I have introduced legislation to have the National Academy of Sciences study the impact of violent programming on children's well-being.

I also have long believed that parents must have effective tools to protect their children from questionable content, no matter how it is accessed. I know the FCC previously studied this issue in 2007 and 2009, discovering significant flaws in TV ratings systems and parental controls.

Technology has changed dramatically since the FCC's original studies. Today's mobile devices and online video platforms offer children access to untold amounts of content and create additional challenges to parental oversight.

If confirmed, would you commit to updating the FCC's 2007 and 2009 reports on media violence and parental control tools, particularly examining the impact of changes in technology on parents' ability to protect their children from questionable content?

Answer. I assure you that, if confirmed, I will look very closely at this issue. It is vital that the FCC and Congress understand the potential impact of changes in technology on parents' ability to protect their children from questionable content.

Media Ownership

Question 8. I have long stressed the importance of maintaining a diversity of voices in our Nation's media. To further this goal, the FCC places limits on the number of broadcast outlets that a single company can own or control.

The FCC is currently in the process of reviewing these limits. During this process, parties have raised concerns that television broadcasters are increasingly using business arrangements—including so-called joint sales and shared services agreements—to coordinate their activities and skirt the FCC's ownership limits.

Last month, I asked the Government Accountability Office to take a closer look at how these coordination agreements are being used by the broadcast industry.

If confirmed, would you commit to also taking a hard look at how these coordination agreements are being used, and if needed, take action to make sure their use is consistent with the FCC's stated goals of promoting competition, localism, and diversity?

Answer. Yes. As I mentioned to Senator Cantwell at the hearing, I am committed to ensuring diversity of voices as well and look forward to looking into this particular issue more fully if I am confirmed.

Cybersecurity

Question 9. Cybersecurity is one of the most critical national security challenges facing our Nation. Both the government and the private sector are under almost constant attack. These attacks cost us billions of dollars every year.

The majority of our telecommunications network is owned by private companies. But it is in our national interest to defend our country against our adversaries who use this network to steal our business and government secrets.

If confirmed, how would you promote public-private sector cooperation to improve our ability to stop cyber attacks?

Answer. Cybersecurity is a real and pressing threat. I know the Commission has had success with its Communications Security, Reliability, and Interoperability Council (CSRIC) in encouraging network operators to take certain steps to protect their networks and consumers from attacks. I would continue to pursue those efforts. In addition, I intend to coordinate with Federal partners that are engaged in implementing the President's Executive Order and the Presidential Policy Directive on Cybersecurity. I also look forward to working with you and this Committee to assist in your efforts to develop legislation in this area.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BARBARA BOXER TO THOMAS E. WHEELER

Universal Service Fund Contributions

Question 1. Mr. Wheeler, as you know, there is an ongoing debate regarding whether the contribution base for the Universal Service Fund should be expanded. USAC recently issued a decision that would effectively reclassify certain applications riding over the top of the broadband network and require them to contribute to USF. In light of this decision, I am concerned that USAC may soon begin assessing many types of over-the-top applications.

As Chairman, would you work with Congress on USF contribution reform to ensure that the Commission acts cautiously and deliberately on this issue?

Answer. Ensuring a stable funding mechanism for universal service is critical. I think it is important to make efforts to ensure a level-playing field for similar services with regard to contributions obligations, but I am also mindful of the fact that we need to think carefully before including new innovative technologies among those that contribute to USF. The Commission initiated a rulemaking proceeding in 2012 looking to modernize the USF contributions system—both in terms of who should contribute and how. As Chairman I will carefully review this issue before moving forward.

Media Ownership

Question 2. As you know, Congress requires the FCC to review its media ownership rules every four years to determine whether they uphold the core ideals of competition, localism, and diversity of media. These principles are fundamental to our democracy. Increased consolidation of our Nation's broadcast radio and television stations can lead to less local news coverage and fewer voices participating in the media.

I am particularly concerned that women and ethnic and racial minorities are underrepresented in ownership of broadcast radio and television stations. A study conducted by the FCC last year found that women own just 7 percent of broadcast radio and television stations, and ethnic and racial minorities own only 5 percent of television stations and 8 percent of radio stations.

Although the FCC announced that it would delay its vote on the new cross-ownership rules as it awaits the results of a new study regarding the effects of cross-ownership rules on minority ownership and newsgathering, it is not clear that this single, narrow study will address my concerns.

What steps would you take as Chairman to ensure the Commission completes a timely review of its media ownership rules? How would you ensure that the media ownership rulemaking is based on a comprehensive and unbiased examination of the effect the rules have on ownership diversity?

Answer. As I mentioned to Senator Cantwell, I intend to be guided in this area by the three longstanding policy goals of the Commission—promotion of localism, competition, and diversity. I will ensure that any review of those rules during my tenure is conducted in an open, transparent way with clear opportunities for public input. Any decisions I and my fellow commissioners would make will be based on such record.

Data Caps and the Open Internet

Question 3. Some Internet service providers that have traditionally offered unlimited plans are now implementing pricing schemes that limit the amount of data a customer can use, or charge customers for using data beyond a predetermined amount. Today, more than half of broadband Internet subscribers in the United States are subject to some form of bandwidth cap or usage-based pricing.

Data caps and usage-based pricing have the potential to significantly impact how networks are designed and used. Furthermore, when bandwidth caps are paired with exemptions for certain content providers, the barrier to entry for new services increases, leading to fewer new products and competitors entering the market. Such exemptions to bandwidth caps may also violate the FCC's Open Internet Order, which established that fixed broadband providers may not unreasonably discriminate against lawful network traffic.

As Chairman, would you examine the effect that bandwidth caps have on online video providers and consumer choice? Is there an approach the FCC could adopt in order to minimize the negative effects of usage-based pricing? What other actions would you consider as Chairman to promote the open Internet?

Answer. I am a supporter of an open Internet. I understand the potential effects of data caps, both on network operations and on over-the-top providers. I intend to keep a watchful eye on the evolution of data pricing and any impact it may have on competition and innovation, including the effect on consumers and content providers.

IP Transition and Rural Call Completion

Question 4. Increasingly, our Nation's telephone companies are transitioning from traditional copper networks to wireless and Internet-based services. Last year, AT&T asked the FCC for permission to transition to an all IP-based fiber network on a trial basis in certain areas. In addition, Verizon recently filed a request with the FCC to discontinue traditional copper telephone service and offer wireless connectivity instead to certain communities affected by Hurricane Sandy.

At the same time, the Commission has acknowledged that rural consumers are experiencing significant problems receiving long distance or wireless calls on their landline telephones. These problems appear to be attributable to the increased use of IP-based least-cost routing providers.

What can the Commission do to ensure that such interconnection and reliability problems do not become more prevent as our Nation's telephone networks transition to wireless and IP-based services? Should the reliability, interconnection, and universal service principles that currently apply to traditional phone service also be applied to IP-based voice services?

Answer. The reliability, interconnection, and universal service principles that currently apply to traditional phone should be applied to IP-based voice services. I would add consumer protection and public safety to those principles as well. While technologies transition, the core values that guide the Commission under the Communications Act do not. That does not mean that the same rules and regulations should apply to IP-based voice services, but certain core capabilities, like interconnection and access to 9–1–1 service, must be maintained regardless of the technological platform. The call completion issues many rural carriers are experiencing today should be, and will be dealt with by enforcement of the relevant rules when they are being violated.

E-Rate Funding

Question 5. The E-Rate program, which has furthered the goal of bringing broadband Internet access to schools and libraries all over the country, is underfunded. Last year alone, the program had to turn away more than $2 billion in applications from schools and libraries nationwide, including many institutions in California. Experts project that demand for E-Rate support will continue to grow as wireless devices are increasingly introduced in the classroom.

Moreover, the President recently announced the ConnectED initiative, which sets the goal of connecting 99 percent of public schools in the United States with next-generation broadband Internet access—at speeds no less than 100 Mbps and with a target of 1 Gbps. The President's proposal tasks the FCC with modernizing and leveraging the E-Rate program to achieve this goal.

What would you do as Chairman to ensure that the E-Rate program continues to expand and bring affordable, high-speed broadband to schools and libraries? How would you propose funding and implementing the President's ConnectED proposal?

Answer. As I mentioned to Chairman Rockefeller, updating the E-Rate program to ensure that our teachers and students have robust broadband access is essential. According to participants in the current program, 80 percent say they have inadequate bandwidth to meet their instructional needs. I look forward to working with my fellow commissioners on addressing ways to meet this challenge.

Public Safety Networks

Question 6. Some experts have expressed concern that the incentive auctions may fail to provide the funding necessary for FirstNet to build a nationwide, interoperable public safety broadband network. As you know, this funding is essential to addressing the serious gap in our Nation's public safety communications identified in the 9/11 Commission Report.

What steps would you take to ensure that the incentive auctions generate sufficient funding so that FirstNet can fulfill its mandate and guarantee our Nation has a reliable public safety network?

Answer. If confirmed, I intend to move expeditiously to bring the incentive auctions to completion. Implementing incentive auctions requires the balancing of several important objectives, including the need to raise substantial revenues while simultaneously meeting the other policy objectives laid out by Congress.

Low Power Stations and Translators

Question 7. Unleashing spectrum for wireless broadband is critical to our economy. However, the incentive auctions exclude many low-power television stations and translator licensees from participating. It is not clear what will happen to translator and low-power broadcast television stations at the conclusion of the repacking process which will follow the reverse auction. Over four hundred of these stations exist in California and serve a large and diverse portion of the state. How should the rules for the upcoming incentive auctions address the operation of translator and low-power television stations?

Answer. Low power television services have always enjoyed only secondary interference protection, and must make way for full power and Class A TV stations assigned to new channels. That said, the Commission's 2012 Incentive Auction Notice of Proposed Rulemaking asked for comment on assuring that important programming continues to reach viewers and offered possible solutions, such as promoting

use of available digital capacity on full power and Class A stations, MVPD systems, and/or the Internet to distribute their programming.

Positive Train Control

Question 8. The Rail Safety Improvement Act of 2008 requires the installation of Positive Train Control (PTC)—a collision avoidance technology that relies on radio transmission—on many passenger, commuter, and freight rail lines by 2015. Ensuring the successful deployment of this life-saving technology is a high priority for me. Unfortunately, some rail operators have experienced delays in the FCC's review of their spectrum applications, and many passenger rail operators are struggling to access sufficient spectrum at an affordable cost.

In your role as Chairman, how would you work with rail operators to overcome these challenges so that PTC can be implemented nationwide?

As you may know, the FCC recently proposed new requirements for tower and antenna applications relating to PTC deployment.

Would you work to provide rail operators with guidance on the new procedures quickly, so that they may proceed with their applications as expeditiously as possible?

Answer. I understand that PTC systems are important to promoting safety on commuter rail systems across the Nation and I look forward to better understanding the intricacies of these issues if I am confirmed and can get the benefit of learning more from the staff. I can assure you that on this and other matters I will act expeditiously to get to resolution.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO THOMAS E. WHEELER

Question 1. I appreciate that you included the 21st Century Communications and Video Accessibility Act in your testimony. This law, which passed both the Senate and House with bipartisan, unanimous support, is intended to ensure that services offered through the Internet and mobile technology are accessible to deaf, blind, and vision and hearing impaired individuals. While the FCC has implemented many components of the law, there are concerns that some programming still is not fully accessible, including programming such as news and other video clips. How will you work to ensure that this law is fully implemented and all Americans are able to access all forms of communication? Can you make a commitment to ensure that not only do providers meet the letter of this law, but also the spirit by ensuring that closed captions and video descriptions are of sufficient quality?

Answer. Much credit is due to the former Chairman, the commissioners, and the FCC staff whose efforts to date have resulted in the successful implementation of this important legislation. It is my understanding that no congressionally-required implementation dates have been missed. I can assure you that ensuring access to all forms of communications for individuals with disabilities, including quality closed captions and video descriptions, is very important to me and continued implementation of the CVAA will be a top priority.

Question 2. I am hopeful that the incentive auctions will be designed to ensure that broadcasters have the sufficient incentives to part with any spectrum they feel they can, and that their concerns are properly addressed. My understanding is that public broadcasters are already multicasting multiple channels to provide excellent educational programming. Considering your experience as a member of the board of PBS, can you discuss how you believe public television fits into the incentive auctions?

Answer. Public broadcasters have embraced multicasting on their spectrum and diversified the educational programming they offer, which is a great service to consumers. The construct of the incentive auctions law allows broadcasters, both public and commercial, to voluntarily decide whether to participate and how much spectrum to contribute should they decide that participation is in their interest. For some public broadcasters, the incentive auction will offer access to new capital to further enhance their programming. For others, it may not be an opportunity they choose to pursue. If confirmed, I look forward to working with these broadcasters to ensure they have the information they need to decide whether participation makes sense for their stations.

Question 2a. Have you considered how public educational television will continue to be successful after the incentive auctions?

Answer. For those public broadcasters that choose to participate and remain on the air, the incentive auctions offer an opportunity for an infusion of capital that can enhance their operations and programming.

Question 3. By recent estimates, Arkansas has the highest percentage of cell-only households at 35 percent. Nation-wide, more than one-in-four homes is cell-only. I have heard from a number of law enforcement officials in my state about their difficulty locating individuals who call 9–1–1 from mobile phones. It is vital that these Americans realize the full benefits of our Nation's 9–1–1 system.

As the Federal Government makes the transition to Next Generation 9–1–1 services, how would you, as FCC chairman, ensure these mobile as well as VoIP users are not left behind?

Answer. It is well documented that consumers are increasingly dropping their landline telephones in favor of wireless and VoIP alternatives. Communications providers are logically investing in these technologies and gradually allowing elements of their legacy networks to sunset. For example, one major national carrier recently announced that it is targeting 2020 as the year in which its entire network will be transitioned to an all-IP platform. Included in that announcement is a plan to move a quarter of the company's rural customers to wireless service with potentially no wireline alternative, presumably including rural Arkansans. They are, of course, not alone. Thus it is more important than ever that we provide the leadership necessary to ensure 9–1–1 call takers are able to accurately locate callers using mobile and VoIP services. Not only do we have to make sure that mobile and VoIP users are not left behind, we also have to ensure that the 9–1–1 system itself takes advantage of the IP revolution by facilitating the transition to a nationwide next generation 9–1–1 system capable of receiving and sharing all forms of voice, data and video. The Commission has several open proceedings looking at these issues and I commit to accelerating these efforts if given the opportunity.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL TO THOMAS E. WHEELER

Question 1. Although the FCC's reforms to the Universal Service Fund's (USF) Lifeline program through its February 2012 order were much needed, and attempted to address duplicative Lifeline support, ineligibility, deceptive marketing and other concerns raised in my December 2011 letter to the FCC on this topic, the reforms appear to have had little effect in limiting the rapid growth of the program. Even with the reform order in place the Lifeline program grew by 26 percent ($445 million) last year from 2011.

- If confirmed, what additional action will you pursue to address waste, fraud and abuse in the Lifeline program?
- We are quick in Washington to create new programs but what we don't do often enough is reevaluate those programs to make sure they're still needed. The FCC created the Lifeline program nearly 30 years ago to make sure local phone service was still affordable for low-income Americans following the breakup of AT&T. Because technology has changed and competition has grown, basic telecommunications services are as affordable as ever. If confirmed, will you order a comprehensive review of the continued need for the Lifeline program?
- President Obama recently announced a new initiative called "ConnectED," which aims to bring broadband access to 99 percent of American students by wiring schools and libraries through the Universal Service Fund's E-Rate program over the next five years. I wrote to Acting Chairwoman Clyburn and the other Commissioners urging that they eliminate Lifeline and redirect the savings to fund the President's new initiative. Eliminating Lifeline would provide about $10 billion for this effort over five years. What are your thoughts on this approach, and is it something you would commit to looking at if confirmed?

Answer. Ensuring that all Americans, including low income Americans, have access to telecommunications and information services is statutorily mandated by Section 254(b) of the Communications Act. The Commission has implemented this directive though its Lifeline program, which for many years has enabled our poorest citizens to have access to emergency services and other essential services. The program has served an important function. At the same time, the introduction of wireless service into the program has resulted in an unacceptable level of waste, fraud and abuse. The Commission has taken important steps to address the problem, but there is still much work to be done, including the establishment of critical databases to prevent duplicate service and ensure program eligibility. Going after waste, fraud and abuse, including getting these new databases in place, will be a top priority for me. While I am fully supportive of the goal of the Lifeline program, I am certainly willing to examine the effectiveness of the program in its current form and to make significant changes if warranted. At this time, I do not think it is appropriate to

completely eliminate the program, but it may be possible to use some of the savings that the Commission has already enabled through Lifeline reform to help pay for the ConnectED initiative.

Question 2. The FCC uses a 180-day "shot clock" as a guideline for the approval of mergers and other transactions. However, that time frame has not been met on the Sprint-SoftBank application, which as of June 25 has been pending at the Commission for 207 days. Is the "shot clock" guideline effective, should it be continued, and what would you do as chairman to ensure transactions receive timely consideration?

Answer. As you point out, the Commission has a self-imposed 180-day shot clock for reviewing applications to assign or transfer control of licenses or authorizations to determine whether the transfer serves the public interest. I understand that better than 95 percent of all license transfer applications since 2009 have been acted on within the 180-day period. I believe it is an effective guideline that provides parties to transactions an understanding of the Commission's timing for review. I commit to you that I will make every effort to complete transfer reviews as quickly as circumstances permit.

Question 3. Last year Congress passed a Rubio-McCaskill resolution, S.Con.Res. 50, advocating for the multistakeholder model of Internet governance. Members of the U.S. delegation to the International Telecommunications Union (ITU) conference in Dubai have indicated that Congress sending a clear message on the issue was helpful in their negotiations and that our efforts on this issue should continue, especially since those nations that want greater regulation of Internet infrastructure and content will certainly continue in their efforts.

What more can Congress be doing to help promote the multistakeholder model of Internet governance? Although the FCC's focus is domestic in nature, American consumers and companies have an interest in a free and open Internet around the world, which is facilitated by the multistakeholder model. What can and will you do, if confirmed, to champion this cause?

Answer. I agree that the bipartisan Sense of the Congress passed last year sent a clear message of support for the multistakeholder model of Internet governance. The FCC is the U.S. Government agency with primary responsibility for implementing the 1988 International Telecommunications Regulations and as such it plays a key role in domestic and international work on these issues. If confirmed, I will continue the bipartisan Commission effort to promote the multistakeholder model.

Question 4. The FCC has identified diversity as one of its core goals of media policy. But the number of independent channels is shrinking, and those remaining are confronting an array of hurdles in having their voices heard. Independent channels complain that they are being discriminated against in numerous ways, from conditions of their carriage that completely prohibit distribution on new platforms competitive to MVPDs, to most favored nations clauses that reduce their ability to get a fair rate comparable to non-independent services, to their placement on less penetrated tiers that reach fewer households and restrict their ability to compete for viewers. Furthermore, the wholesale "bundling" of channels by large, multi-network programmers causes MVPD's to purchase unwanted channels, using up resources and channel capacity that could otherwise go to independent channels.

If confirmed, what do you envision the FCC doing to ensure independent programmers have a fair and equal opportunity to compete? What are your thoughts on the ability of a la carte pricing to address this problem?

Answer. As I explained to Senator Cantwell at the hearing, I have long been an advocate for diversity of voices in media. I know over the past few years the Commission has worked to provide greater access for independent programmers to cable systems. Recently, however, the D.C. Circuit decided a case against the FCC concerning one such independent programmer that may have implications for future FCC action. If confirmed, I will discuss this case with the agency's experts to better understand the ramifications of that decision.

Question 5. Former Federal Communications Commission (FCC) Chairman Genachowski and I have both written to the Federal Aviation Administration (FAA) encouraging the agency to revise its rules to allow for the expanded use of electronic devices during flight. The FAA has established an Aviation Rulemaking Committee (ARC) to look at possible changes to the rules, and the FCC has a representative on that committee, which will make recommendations to the FAA Administrator this summer. What are your views on the FAA's current electronic device rules?

Answer. You can put me in the camp with those that would like to see expanded use of personal electronic devices on flights. I understand that the FCC is providing the necessary technical support to the FAA which has the ultimate responsibility

in this matter. I can assure you that I will make certain that coordination continues and hopefully it will bring about changes that allow for expanded access.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK WARNER TO THOMAS E. WHEELER

Federal Spectrum

Question 1. On June 14, 2013, the President released a plan, "Expanding America's Leadership in Wireless Innovation," to create an intra-agency spectrum policy team to better assess Federal spectrum demand and usage. I am encouraged by the proposal, which also studies possible Federal incentives for Federal agencies, receiver performance standards, and other key issues I support. What are your views on the Presidential memo? What can the Federal Communications Commission (FCC) do to support the President's goal of clearing and sharing more bands of spectrum, especially below 3 GHZ?

Answer. I support the President's decision to create this spectrum policy team because it is imperative that we find more spectrum to meet the ever-growing demand for wireless broadband. In the late 1990s I worked with the government to find a win-win solution on a block of government spectrum and I look forward to doing so again as the Chairman of the FCC. As we look at these opportunities, I agree that clearing, as well as sharing, are tools we must utilize.

USF Reform

Question 2. As you know, the Commission adopted a Universal Service Fund (USF) reform order in October 2011 to transform the USF from a mechanism to support voice telephone service to one that supports the deployment, adoption, and utilization of both fixed and mobile broadband (known as the Connect America Fund). During transition points, sometimes priorities change. I think the FCC has largely been on the right track, but that even more could be done to help rural America obtain universal broadband access. If you are confirmed as chairman of the FCC, will you commit to moving forward on broadband reform? If you see additional opportunities to reform USF to bring more broadband service to rural America, will you pursue such opportunities?

Answer. I am committed to moving forward with the broadband reforms unanimously adopted by the Commission. It is critical that this more than eight-decade-old commitment we made to Americans is fulfilled in the broadband era. I look forward to continuing the work of modernization with my fellow commissioners through the implementation of the next stages of the Connect America Fund and the Mobility Fund to ensure all Americans have access to robust voice and broadband services.

Incentive Auctions

Question 3. Congress gave the FCC one chance to get incentive auctions right. It is important that as much spectrum is cleared as possible, while also maximizing auction revenues. Robust wireless networks require a range of spectrum frequencies, both for in-building coverage and because some spectrum bands require more towers—which are expensive to build—to build a nationwide network. I don't think that anyone should be barred from participating in the incentive auction. However, I am concerned that smaller companies may have trouble acquiring spectrum depending on how the rules are set up.

Do you believe that spectrum below 1 GHz should be treated differently than non-beachfront spectrum? What about spectrum below 3 GHz? Do you believe that there is a breakpoint? Do you think that this matters in terms of giving different types of companies access to beachfront spectrum?

Do you have ideas that can maximize auction participation without creating high concentrations of spectrum holdings by a single company, regardless of its size? Do you support structuring the incentive auctions by focusing on cellular market areas?

Answer. The laws of physics are hard to repeal, but sometimes they can be harnessed. Lower frequency spectrum is, as you say, "beachfront" for broad propagation, while higher frequencies can be helpful in other more focused applications such as in-buildings or campuses. Because I have not been permitted to see anything beyond public information, I have avoided drawing a conclusion as to the specific issues you have raised until I am better informed. I have a clear understanding as to the intent of Congress not to exclude any potential participant from the auction, while at the same time implementing a plan that promotes competition and innovation. The questions you ask are all important questions and ones that are actively

being reviewed by the Commission. I look forward to engaging with my fellow commissioners and FCC staff on these issues.

IP to IP Network Transition

Question 4. In May 2013, the FCC issued a public notice proposing and soliciting comments on IP transition trials. Some in the industry have expressed concerns about the trials, while others believe the Commission to proceed as soon as possible in terms of setting up a framework for carriers. How can the FCC best ensure that the commitment to providing telecommunications service to all Americans is maintained during and after the transition? How important is it to maintain a competitive marketplace during and after the transition?

Answer. Internet Protocol (IP) is a technological step, not a change in the responsibility of networks. The FCC must remain committed to certain core values established by statute, including the promotion of competition, consumer protection, universal service, and public safety. While the Commission must analyze legacy rules and regulations and adapt to reflect changes in the communications landscape, new communications networks and services do not change the Commission's mission. It is very important to maintain a competitive marketplace during and after the transition.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK BEGICH TO THOMAS E. WHEELER

Question 1. Mr. Wheeler, I know that you must appreciate that because of Alaska's immeasurable size and geographic challenges, lowest population density in the US, and limited infrastructure, that Universal Service Fund (USF) reforms designed for the lower 48 may well not work effectively in our state.

As of July 1, 2013, USF reform will result in a reduction of $18 million in annual support for wireless deployment in Alaska. This dramatic reduction, and even more so the uncertainty of what's to come, has deferred planned wireless deployment in rural Alaska, thus increasing the already large communications gap with the lower 48. The FCC should do no more harm and freeze overall state support at current funding levels.

Will you commit to work with me to explore alternative approaches to high cost reform that will provide sufficient and predictable support for Alaskans who simply seek equal access to the communications tools available to the lower 48?

Answer. Yes.

Question 2. How can the Commission best ensure that rates for essential voice and broadband services in the highest cost rural areas remain affordable to consumers?

Answer. The Commission can meet the statutory requirement that rates in rural areas be reasonably comparable to rates in urban areas by continuing to maintain a universal service system that subsidizes legitimate costs in high cost areas where service would not otherwise be offered absent support. I am committed to moving forward with the broadband reforms unanimously adopted by the Commission, but I also recognize that some alternative approaches may be necessary to ensure voice and broadband services remain affordable for Alaskan consumers.

Question 3. Mr. Wheeler, I see in your background several years of service as a member of the board of PBS. For my constituents, public television stations like Alaska Public Media and KUAC are essential sources for innovative and educational programming and services that would be otherwise unavailable, particularly for people living in rural communities.

Do you recognize that as the only source of educational, non-commercial programming available for free to all Americans, public television is still an essential national priority in today's media universe?

Answer. Yes.

Question 4. As FCC Chairman, what steps would you take to ensure that the spectrum incentive auction and subsequent repacking rules enable public television to continue to be successful in the future?

Answer. I can assure you that should I be confirmed the decisions I recommend to my fellow commissioners will be consistent with the directives of Congress contained in the Middle Class Tax Relief and Job Creation Act of 2012.

Question 5. What are you views on data caps or data tiers on wired and wireless broadband and their impact on the growth of online video?

Answer. I understand the potential effects of data caps on network operations, video and other service providers, and consumers. I intend to keep a watchful eye

on the evolution of data pricing and any impact it may have on competition, innovation and consumer well-being.

Question 6. What should the FCC do if the DC Circuit Court overturns the net neutrality rules?

Answer. This is a matter pending before the courts and I cannot speculate on it or future decisions by the FCC.

Question 7. Tribes have provided numerous comments in the FCC docket stating that their lack of access to spectrum licenses precludes them from being able to participate in these auctions, and, additionally, carriers holding spectrum over tribal lands have failed to provide broadband services on tribal lands. As Chairman of the FCC what will you do to increase access to spectrum licenses for tribes to utilize in the Mobility and Tribal Mobility Fund auctions?

Answer. I will take seriously Congress' directive in section 309(j) of the Communications Act to ensure auctioning of spectrum licenses disseminates licenses to a wide variety of applicants. In 2011, the Commission initiated a Spectrum Over Tribal Lands proceeding in which these concerns were raised. I look forward to consulting with the FCC staff on what that record shows and to take any steps necessary to ensure sufficient access to spectrum for Tribes.

Question 8. Mr. Wheeler, as you know the Commission is working on regulations governing the auction of television spectrum. Any TV channels located above channel 32 will be move to lower channels below channel 32 so the higher level channel spectrum can be auctioned off to raise money for a new public safety network. Whether television stations decide to give up their spectrum is up to them, but whether they have to move is not voluntary.

It has been guaranteed that full power TV stations will be provided a new channel assignment below 32. Unfortunately, translator stations that boost the signal of full power stations in urban areas out to rural and remote areas are not guaranteed a new channel assignment. In Alaska and many other western states, most of our communities only get television through translators which boost the signals from urban stations. There are only full power stations in a handful of Alaska's largest communities, but hundreds of translators. If translators are not guaranteed a new spectrum slot, many towns in Alaska would not have access to free, over the air television at all. And to compound the problem, most communities don't have access to cable either. For example there are over 320 translators in Alaska.

Are you willing to work with me and other Senators who have large number of translators to address this problem, so Americans who depend on translators for their free TV are not cut off unnecessarily by FCC rules?

Answer. I am. As you are aware, translators and low power television services have only secondary interference protection, and must make way for full power and Class A TV stations assigned to new channels. That said, I look forward to working with you to ensure over the air TV remains available in Alaska. The Commission's 2012 Incentive Auction Notice of Proposed Rulemaking asked for comment on this issue and I look forward to looking into this issue further if confirmed.

Response to Written Questions Submitted by Hon. Brian Schatz to Thomas E. Wheeler

Question 1. Hawaii has unique communications challenges that are due to the geographic isolation, difficult terrain, wide range of disasters, and limited commercial infrastructure. Will you commit that the Federal Communications Commission (FCC) will continue to recognize and help address Hawaii's unique communications needs?

Answer. Yes.

Question 2. Increasing broadband availability is an important goal of this Congress, the Administration, as well as the FCC. As part of this national effort, the FCC implemented reforms to the Universal Service Fund, which replaced the older fund with a new broadband-centric fund known as the Connect America Fund (CAF) and a companion for wireless support. The FCC is evaluating a cost model for CAF Phase II support for price cap carriers that will be used to determine the level of support CAF will provide. The cost model is not yet adopted.

a. What is your view regarding the need for sufficient Universal Service support for broadband in insular areas of the country served by price cap carriers?

b. Will you prioritize finalizing the cost model that includes consideration for the higher costs of providing broadband service in insular areas of the country?

c. Will you consider any interim solutions that could be adopted until such a cost model is finalized?

Answer. Section 254(b) of the Communications Act requires that consumers in all regions of the Nation, including those in insular areas, should have access to telecommunications and information services. I am committed to meeting this statutory directive through policies that affect all providers and will prioritize finalizing the cost model that will be used to award Connect America Fund Phase II support to price cap carriers. I will consider interim solutions while the model is being finalized, starting with the implementation of a second round of Connect America Fund Phase I funding.

Question 3. There is a significant divide between the communications available on Native and Tribal lands and those available in the rest of the country. According to the FCC, communities on Native and Tribal lands have historically had less access to telecommunications services than any other parts of the population. In 2010, the FCC's Office of Native Affairs and Policy (ONAP) was established to promote the deployment and adoption of communications services and technology throughout Tribal lands and Native communities. However, ONAP lacks a dedicated budget, which could impact ONAP's ability to engage with Tribal Nations and Native communities on important communications matters. Given the importance of access to broadband, what steps will you take to ensure that Tribal programs will reflect the need that exists in Tribal Nations and Native communities?

Answer. As I mentioned at the hearing, I am committed to the mission of ONAP and will ensure that its work continues as a critical part of the Consumer and Governmental Affairs Bureau. I understand the challenges faced in bringing communications services to Native and Tribal lands and I am committed to working to bring about greater access on these lands.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. WILLIAM COWAN TO THOMAS E. WHEELER

Question 1. The upcoming incentive auction promises to free up some key spectrum to address the explosion of demand for mobile broadband services. The outcome of this auction will help to shape this industry for a generation to come. In order to ensure a competitive wireless market, I understand that the FCC is considering whether or not to adopt limits on the amount of mobile spectrum a single entity can hold or on the amount of spectrum they can bid for in this auction.

What is your take on the current competitive environment within the wireless industry? Do you have any thoughts about the debate unfolding at the FCC and within the industry on how the coming incentive auctions could impact the competitive environment of this industry?

Answer. As I said in my testimony, the wireless industry introduced competition into local, facilities-based telecommunications. I am committed to the maintenance of a competitive wireless market before and after the incentive auction.

Question 2. For over a year, the FCC has blocked a Boston ordinance regarding the placement of satellites on homes and buildings, as well as rules regarding their removal when no longer in use. Boston has been blocked from enforcing its ordinance pending FCC consideration of whether or not it adheres to the Over-the-Air Reception Devices (OTARD) rule. I also understand that Philadelphia has now been waiting for an FCC ruling on a similar ordinance for more than 19 months. I'm not going to ask you about the ins and outs of this particular case, but I do believe this is an instance where the FCC has simply acted too slowly to decide an issue that the City of Boston and other stakeholders would like resolved. The Intergovernmental Advisory Committee agrees with me and has expressed concerns about the lengthy delay by the FCC in ruling on this open question. Should you be confirmed, will you commit to resolving outstanding issues that have seen unjustified delays, such as this one, in an expedient manner?

Answer. Yes. As a businessman, I understand just how important it is that parties receive timely responses to their requests. I will work to act expeditiously on the matters you have identified.

Question 3. The FCC has long supported job growth, lower consumer prices and innovation within the telecommunications market place by actively and consistently supporting policies favoring competition. These policies have implemented Congress' directive in The Telecommunications Act of 1996 to encourage competition and eliminate exclusive franchises enjoyed by the inheritors of AT&T's and other state-sanctioned local monopoly franchises and to eliminate the ability of those incumbent local exchange carriers ("ILECs") to use their control of bottleneck facilities to impede free market competition. Do you think the FCC should consider taking any

steps to ensure that competitors will have access to the ILECs' bottleneck last mile connections, notwithstanding the evolution of underlying technologies?

Answer. I am committed to promoting competition and as you point out the 1996 Act provides the FCC with certain tools to do that. If bottlenecks exist, they must be dealt with using these tools and others found in the Communications Act. One important matter currently being implemented is an important data collection in the Commission's special access proceeding, which I look forward to expeditiously implementing.

Question 4. The transition from copper last mile connections to fiber and fixed wireless last mile connections could disproportionately affect small businesses and retail or branch locations of large businesses, whose competitive carriers rely more heavily on the ILECs copper/TDM networks than competitive carriers serving residential customers or businesses with large telecommunications needs at a given location. Businesses need highly reliable and low cost products to serve their needs. Businesses with numerous sites and limited need for large bandwidth products at each particular site have for the most part not shifted away from copper and TDM products and certainly have not replaced their landline service with mobile phones. What steps would you favor to ensure that business locations with relatively modest requirements will have a competitive choice among telecommunications suppliers when those suppliers are dependent on the ILECs' last mile connections to provide service?

Answer. What is most important for business customers is that they are able to purchase the services that meet their needs in a cost-effective manner. The best way to make sure this happens is to ensure a competitive market with as many options as possible. And this means that competitive providers must have access to ILEC last mile connections in whatever form those connections are offered. Whether legacy rules concerning last-mile connections need to be applied to IP-based networks or whether a deregulatory approach is appropriate is an open issue before the Commission that I look forward to addressing.

Question 5. In light of the FCC's own research that reflects cable rates continue to outpace inflation, do you believe that cable consumers are protected by our current laws? If you do not, can you share, whether now or after your confirmation, how the Commission and or Congress might work to address this challenge?

Answer. I, too, hear complaints about cable prices. Dealing with this issue encompasses a broad set of practices at both the wholesale and retail levels. It is appropriate that both the Congress and the Commission continue to represent the consumer's interests in these matters.

Question 6. The FCC now has enough information about indoor location technologies to establish a reasonable, measurable level of location accuracy for emergency calls made indoors, as it already has done for call originating outdoors. Doing so would enable first responders to locate emergency calls from wireless phones from all locations rapidly and efficiently. Do you support the FCC taking a leadership role in enabling first responders to reach wireless 911 callers more quickly and efficiently?

Answer. Yes.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO THOMAS E. WHEELER

Question 1. During your testimony at the hearing, you stated that your blog posts about merger conditions were just "hypothetical musing[s]." Please answer yes or no—do you reject the type of non-transparent, "backdoor" policymaking via merger conditions discussed in your blog posts dated April 1, 2011 and September 2, 2011? If no, under what circumstances would you seek, if confirmed, to use merger conditions as a means to "backdoor" regulation of an entire industry?

Answer. As I stated at the hearing, I am committed to following statutory directives in reviewing mergers, which require that the transaction must be in the public interest, convenience, and necessity. The Commission's merger review process is an open, transparent process in which the public is afforded an opportunity to comment on the merger. In the past, under Democratic and Republican chairs, the Commission has relied on the factual record developed in such transactions and imposed conditions so that a transaction that may otherwise not be in the public interest can be cured of that defect and allowed to move forward.

Question 2. During your testimony, you said to me that a transaction review must be "based upon the facts in that specific instance, based upon the mandate that the Congress has established in the Act, and based upon precedent." If confirmed, can

you assure the Committee that you will first look to Congressional mandates established in statute as your primary source of guidance and constraint, both with regards to transaction reviews and in general, before resorting to a reliance on Commission precedent?

Answer. Yes.

Question 3. The communications landscape has changed dramatically since Congress last significantly updated the Communications Act in 1996. Your experience gives you a unique perspective on the impact of these changes. If you could advise Congress on how to update the Act to better reflect technological and competitive changes since 1996, what would you suggest? In particular, are there any provisions of law that you believe to be inadequate or outdated?

Answer. If confirmed, I look forward to working with the Committee as it explores these issues. As I have mentioned, the technological transition that is occurring in the communications space should be the impetus for a review of the Commission's rules to determine which ones should be retained, modified or eliminated to ensure that the Commission's core mission of promoting competition, protecting consumers, providing universal service, and promoting public safety is continued. As a practical matter, policymakers should tackle this debate with a proper sense of humility, recognizing that technology will continuously evolve in a direction that we cannot possibly predict today. Thus, as we consider any potential reforms to the Act, a goal should be to provide an appropriate framework and tools for policy makers that best takes this reality into consideration.

Question 4. The previous FCC Chairman inexplicably left the Title II reclassification docket open, despite telling a Congressional committee in 2012 that he was unaware of any FCC employees working on the order and that he would consider closing it. Congress has never intended for the Internet to be treated like wireline telephone service. In 2010, a bipartisan majority of over 300 Members of Congress expressed concern about the FCC's plan to reclassify the Internet as a Title II telecommunications service. Please answer yes or no—if confirmed, will you close the Title II reclassification docket? If no, please explain why you believe the Internet should be regulated like the public switched telephone network.

Answer. I am not in a position now to predict an outcome. If confirmed, I will meet with the General Counsel and others at the Commission to understand what, if any, internal activity is being devoted to this docket, and why.

Question 5. During your confirmation hearing, you stated that, "[t]here is nothing worse for investment, innovation, job creation . . . than businesses not knowing what the rules are." Do you believe the fact that the Title II reclassification docket remains open and actionable provides more or less certainty for communications providers?

Answer. As a venture capitalist that has funded Internet-based business opportunities, I can tell you from my personal experience, the status of this docket has been irrelevant to my decision making on those ventures.

Question 6. Please answer yes or no—if you are confirmed and if the FCC's Open Internet order is struck down in the courts, will you come to Congress for more direction before attempting another iteration of network neutrality rules?

Answer. Yes.

Question 7. Should you be confirmed, will you commit to visit South Dakota or a similarly situated rural state within the first year of your tenure as Chairman to see firsthand some of the communications challenges facing rural communities?

Answer. Yes.

Question 8. During your testimony at the hearing, you mentioned your service on the first board of the Universal Services Administrative Company (USAC). Please fully describe your experience on the first board of USAC, and include your views on USAC's role in administering the USF, as well as how USAC can be improved or reformed.

Answer. As a member of the Board of USAC in the late 90s, I was able to help establish that company as it was going through implementation of the 1996 Telecommunications Act's new, explicit mechanism to fund universal service. While I am no longer privy to the inner workings of USAC, I know based on its public reports that it has maintained very low administrative expenses. If confirmed, I am certain I will have more information to help inform any reforms that may be needed, but I commit to you that I will look into these issues.

Question 9. USF reforms have had a significant impact on rural states like South Dakota. Should you be confirmed, how do you intend to provide greater regulatory certainty in the USF program for rural broadband providers, particularly rate of return carriers? Please be specific.

Answer. A goal of the Commission's unanimously adopted high cost universal service program reforms was to ensure that the Fund could deliver broadband in a fiscally responsible way to the more than 18 million Americans who lack access to this service. I know this program is critical to assisting rate of return companies, as well as price cap carriers, in bringing service to rural America. While I do not have any specific reforms in mind right now, I can commit to moving forward with the reforms that the Commission recently directed the Wireline Bureau to implement in the Sixth Order on Reconsideration of the USF Reform Order. The actions taken by the Commission in that order and other recent Wireline Bureau efforts, largely made at the request and with the support of rural carrier associations, were intended to provide greater certainty for rural carriers. I will ensure the Commission's direction to the Bureau is expeditiously implemented while also reviewing the record for other possible actions as appropriate.

Question 10. The statutory principles for universal service include affordability, particularly for those consumers in rural areas. Given the ongoing implementation of comprehensive USF distribution reform, how can the Commission best ensure that rates for advanced telecommunications and information services in the highest cost rural areas remain affordable for consumers?

Answer. The Commission can meet the statutory requirement that rates in rural areas be reasonably comparable to rates in urban areas by continuing to maintain a universal service system that subsidizes legitimate costs in high cost areas where service would not otherwise be offered absent support. I am committed to moving forward with the broadband reforms unanimously adopted by the Commission, but am also open to modifications to the reforms if justified by sound data.

Question 11. During your testimony at the hearing, you indicated that USF should be addressed in its "totality," looking at both the contribution and disbursement sides of the program. Do you intend to address contribution reform in a substantive way prior to, or in concert with, any possible expansion of the USF program? What steps, if any, will you take to reform the contribution side of USF, if confirmed? Have you ever taken a public position on reforming the contribution side of USF? If so, please provide any writings on the subject or other citations.

Answer. Ensuring a stable funding mechanism for universal service is critical. I think it is important to make efforts to ensure a level playing field for similar services with regard to contributions obligations and to eliminate opportunities for regulatory arbitrage resulting from a lack of clarity as to the applicability of contributions obligations for new services. The Commission initiated a rulemaking proceeding in 2012 looking to modernize the USF contributions system—both in terms of who should contribute and how. I look forward to working with my fellow commissioners to find a path forward.

Question 12. The President has recently rolled out a plan to expand the E-rate program, known as the ConnectED initiative, to connect 99 percent of America's students to high-speed broadband within five years. The USF contribution factor has doubled over the last decade, and the overall size of USF has ballooned to nearly $9 billion annually. The current E-Rate program is already heavily oversubscribed, with USAC receiving applications in 2012 requesting over $5 billion in support from the $2.2 billion program. Given your expertise as a member of the first USAC board, what is your assessment of how much the President's ConnectED initiative will increase the size of the current Schools and Libraries program? Do you believe it is feasible to meet the President's goal of 99 percent within five years while keeping the overall size of the USF program at its current level? If so, what other part or parts of USF would you cut to accomplish that goal?

Answer. Real per student funding under the E-Rate program is down by one-third since its enactment (adjusted for inflation). This was a program that I helped implement when I was on the Board of USAC and it has been a success in its current formulation, providing basic Internet access to virtually every school in the country. I know the Commission has circulated an item on modernizing the program and I expect that the item seeks comment on this very issue. That will help determine whether and how much the fund might need to increase. I look forward to reviewing that record and working with my fellow Commissioners on this important issue if I am confirmed.

Question 13. In 2009, Senators Grassley, Harkin, and I wrote to then-Acting FCC Chairman Copps about a pending petition for reconsideration of its decision involving access charges some rural telephone companies charge to larger carriers for completing certain long distance calls. Our letter did not take a position on the merits of the dispute, but encouraged the FCC to make a decision in the near future in order to provide certainty to the telecommunications industry. Will you commit to taking action on this still pending petition in the near future, if confirmed?

Answer. If confirmed, I will look into this petition.

Question 14. Rural Americans are facing significant call completion problems. One study indicates that, during one period between 2011 and 2012, the incompletion rate was 13 times higher in rural areas than in non-rural areas. Calls that fail to be completed result in rural businesses losing customers and family members in rural areas being cut off from each other. How familiar are you with the call completion problems being experienced in many rural areas of the country, and would you commit to using your authority as chairman to put an end to such problems, should you be confirmed?

Answer. As I mentioned at the hearing, rural call completion problems represent a serious problem both for public safety and business reasons. Call completion is a bedrock principle of our communications network. In the last couple of years the Commission has taken steps to both clarify its rules in this area and for the first time to make clear that the originating carrier is responsible for ensuring calls are completed even when it hands it off to an intermediary. The Commission has also taken enforcement action against one company. I will ensure that the rules in this area are enforced.

Question 15. You have noted that the IP transition issue is one of the top challenges facing the FCC. If confirmed, how will you approach this important issue, and what impact do you think the IP transition will have on rural areas like South Dakota?

Answer. As technologies transition, the FCC must remain committed to certain core values, including the promotion of competition, consumer protection, universal service, and public safety—regardless of location. While the Commission must analyze legacy rules and regulations and adapt to reflect changes in the communications landscape, new communications networks and services do not change the Commission's mission, including for rural areas. It is very important to maintain sufficient consumer protections and access to emergency services during the transition in all areas, including the most remote parts of the country. Rural and remote areas present unique challenges that must be considered when developing policies in a changing communications landscape.

Question 16. I represent a rural state and am committed to expanding telecommunications opportunities for people in rural communities. At a 2001 House Energy & Commerce subcommittee hearing, you stated: "Wireless carriers, as a result of government policy, for the most part, have a very difficult time going into rural areas and providing the kind of high speed service. They've got to compete against companies that are subsidized, et cetera. There is great opportunity for wireless carriers to do in the United States what they've done in South Africa and other countries around the world if we can be allowed to get there." Are there government policies that are presently holding wireless carriers back from offering service to rural Americans? If so, what measures would you take as FCC Chairman to eliminate these obstacles, if confirmed?

Answer. Fortunately, in the dozen years since I made that statement wireless service has significantly expanded in rural America. Funding remains an obstacle to investment for wireless carriers in rural America. The Commission's Mobility Fund should help address some of those needs, but I know more will need to be done and look forward to exploring with the Committee ways to remove barriers and how to promote opportunities to deliver wireless service to rural America.

Question 17. Please answer yes or no—all other things being equal, does the presence of more qualified bidders in a spectrum auction lead to higher proceeds than one with fewer qualified bidders?

Answer. Auction design is far too complicated for a simple "yes" or "no" answer to your question, and there are certainly varying perspectives among the experts on this subject. The Commission staff and auction design experts are looking into this issue. The statute passed by Congress provided the Commission with two important directives: (1) the Commission must ensure that all are eligible to participate, but (2) the Commission may limit participation through rules of general applicability. The Commission is currently conducting a public proceeding to explore these issues and I will be guided by the statutory requirements adopted by Congress.

Question 18. Please answer yes or no—during the spectrum auctions, do you support allowing every qualified bidder (defined as an entity that complies with all auction procedures and requirements and meets the technical, financial, character, and citizenship qualification that the FCC may require under sections 303(l)(1), 308(b), or 310 of the Communications Act) to bid on any license up for auction? If no, please explain under which circumstances you would exclude qualified bidders from participating in the auction.

Answer. See previous answer.

Question 19. Given your deep experience with spectrum policy, particularly as a wireless industry association leader, please share your views on previous FCC auctions. Specifically, what policies do you feel attract the most bidders, revenue, and service build out, and what policies should be avoided in future auction planning?

Answer. A diverse offering of service area sizes and spectrum blocks promotes successful auctions. Also, certainty of the rules before the auction helps all that participate properly evaluate their bidding opportunities based on their individual business models. Finally, allowing sufficient time to arrange for capital to bid helps promote participation.

Question 20. During the hearing, you said that the 1755–1780 MHz band needs to be paired with the 2155–2180 MHz band and auctioned by 2015. I wholeheartedly agree. Chairman Genachowski directed FCC staff to draft a rulemaking to do just that. If confirmed, will you follow in your predecessor's footsteps and issue that proposed rulemaking?

Answer. Yes. The Commission recently circulated an item seeking comment on this and other proposals. I will follow through on that rulemaking and will work with NTIA and other Federal users of spectrum to explore opportunities such as this one.

Question 21. In testimony before Congress in 2001 you described the potential "win-win" situation of the Defense Department having access to the spectrum it needs to have a 21st century military while making sure there is adequate spectrum available for commercial use. As we examine opening up the 1755–1780 band and other spectrum bands for commercial use, how will you show leadership in working across the government to ensure a "win-win" situation for this country?

Answer. This is a situation that will take all of us—Congress, the Commission, NTIA, and Federal spectrum users—working together to resolve. If confirmed, I intend to fully engage on this issue to find those "win-win" opportunities.

Question 22. During our meeting in my office and in your previous testimony before Congress you have discussed your role working with the Department of Defense in getting government spectrum into the hands of the private sector. You have noted that we must give the proper incentives to DOD and other government agencies before these agencies will relinquish access to this spectrum. In your opinion, what sort of incentives should be offered? Also, should government agencies be incentivized to act in the public interest?

Answer. In my previous work on getting spectrum converted to commercial use, I found that providing a funding source to cover the costs of relocation and equipment was an important component. In a budgetary environment like the one we are in now, it is important that government users of spectrum have an ability to cover the costs of moving and to modernize the equipment they need in doing so. Budgetary realities are a real issue for these agencies and Congressional recognition of those needs may help incentivize these users. If confirmed, I look forward to working with all stakeholders to figure out a path forward because the spectrum shortage cannot be fully addressed unless we find ways to clear and share more Federal spectrum.

Question 23. In 2001, you told this Committee that "there needs to be a spectrum policy in this country" but that "We don't have a plan." It is now 2013—in your opinion, do we have a spectrum policy in this country? If not, what would you do as Chairman of the FCC to ensure that we have such a policy?

Answer. The National Broadband Plan established a clear spectrum target to address growing demand. That plan and target have been reinforced by two presidential memoranda as well as Congress' passage of incentive auctions legislation. More can certainly be done and I look forward to working with the Committee to explore other opportunities.

Question 24. There are indications that some people within the FCC may be interested in limiting payments to broadcasters during the incentive auctions. Other stakeholders believe that the key to a successful auction, and to raising the money for FirstNet, is to offer sufficient financial incentives to attract lots of TV stations and secure a lot of spectrum that can then be sold to the wireless carriers. What is your view?

Answer. I am committed to holding an auction that encourages robust broadcaster participation and frees up significant amounts of spectrum for wireless providers to bid on. That is my goal.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROGER F. WICKER TO THOMAS E. WHEELER

USF/CAF

Question 1. An important question the FCC will need to consider is how to administer the Connect America Fund moving forward. Looking beyond CAF II, I believe the FCC should broaden the industry base eligible for support. Anyone who is willing to invest in rural and high cost areas should have an opportunity to compete for funds.

a. What are your views on the future of the Connect America Fund? Do you believe that the FCC should move forward in a technologically-neutral way to ensure that the dollars are getting into the hands of providers regardless of platform?

Answer. I commend the Commission for the landmark USF reforms adopted in 2011 and believe it is important that the Commission move forward with all phases of the Connect America Fund to get broadband to the millions of unserved Americans. It is my understanding that the reforms create opportunities for all types of providers, consistent with statutory eligibility requirements and minimum service capabilities that must be met to ensure that consumers in rural areas are provided reasonably comparable service at reasonably comparable rates to consumers in urban areas.

b. If the goal of the USF is to bring broadband to the roughly 15 million unserved Americans, shouldn't we also support those technologies, such as satellite and wireless, that can quickly reach these markets with a quality broadband solution?

Answer. See answer to previous question.

c. Putting aside any concerns about USF, where do you stand on the satellite broadband deployment capabilities?

Answer. Substantial developments have been made in satellite technology. Recent launches of next generation satellites have provided consumers with high-speed broadband capabilities that may not have been previously available in many areas of the country. This is an important development and it is important that the Commission support efforts to ensure that satellite broadband service continues to expand.

Forbearance Expansion

Question 2. At an FCC oversight hearing earlier this year, I raised the prospect of extending the FCC's forbearance authority to include cable services and multichannel video programming distributors or MVPDs as a way to provide relief from smaller, yet still burdensome regulations in lieu of a full Cable Act rewrite. What is your view on expanding forbearance authority not only for Title VI other communications platforms as well?

Answer. While I have not thought about forbearance as a tool for relief in this context, I will look into this proposal if confirmed. As a general matter, I am committed to ensuring that the Commission's rules achieve their objective in the least burdensome way possible.

Broadband Usage-based billing

Question 3. As data usage has skyrocketed, many broadband providers started to offer tiers of broadband service. Such tiers allow for consumer to purchase the tier of service that best matches their usage. Do you support metered billing by ISPs for broadband usage?

Answer. I understand the reason data caps were imposed, as well as their potential effect on both network operations and on content providers. I intend to keep a watchful eye on the evolution of data pricing and any impact it may have on competition and innovation, including its impact on consumers and content providers.

LPFM

Question 4. Mr. Wheeler, even after the spectrum auctions, there will be a substantial amount of spectrum still allocated to broadcasters. I want to ensure that we are maximizing its use and allowing for innovative and non-traditional uses. There are many license holders, Channel 6 television being a good example, where the license holders have found a new and innovative way to serve the public's desire for a service, in that case radio, but the current rules and bureaucracy are not moving as quickly as the market and innovation. Will you work to ensure that the FCC allows for the best use of spectrum, even if it entails a little work on the Commission's part in modernizing its approach?

Answer. I am open to exploring opportunities to promote a vibrant broadcast community and exploring alternative approaches to facilitate it.

IP Transition

Question 5. We have heard a lot of talk recently about the Internet Protocol, or "IP", transition, which would increase America's global competitiveness, create jobs and spur our economy by enhancing America's communications infrastructure. As part of this technology transition, in the past decade, tens of millions of Americans have canceled their plain old telephone service and have rapidly embraced mobile and Internet-based voice services.

As consumers rapidly adopt these IP technologies and demand access to advanced services, reaping the substantial benefits brought by next generation networks, do you agree that upgrading America's communications networks to IP-based technology should be a top priority for the FCC?

Answer. I do agree that the IP transition offers substantial benefits for consumers and businesses and facilitating the modernization of carrier networks and services is an important objective. At the same time, I recognize that technology transitions do not alter the core statutory mission of the FCC which is to promote competition, protect consumers, provide universal service, and promote public safety. I am committed to ensuring the achievement of these core goals regardless of technology platform.

Question 5a. The world is rapidly expanding its broadband networks, services and offerings; consumers have witnessed the amazing benefits of broadband that empower them in their daily lives and are quickly migrating to all-IP, whether in mobile or in other next generation broadband networks. This consumer-led transition to broadband networks is inevitable, and is on the cusp of already displacing the antiquated voice-centric networks of yesteryear.

What steps will you take as FCC Chair to ensure that ALL Americans can reap the rewards of broadband networks and services and that all of America quickly and efficiently transitions to broadband networks with minimal consumer disruption?

Answer. Rural and remote areas, as you know from the experience in striving to achieve universal service in the wireline context, present unique challenges that must be considered when developing policies related to the current transition. As stated above, as technologies transition, universal service remains a core mission of the FCC and I will take that obligation seriously.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROY BLUNT TO THOMAS E. WHEELER

Question 1. Recently this committee had a hearing on the state of the wireless marketplace. This panelists at that hearing disagreed completely on how the upcoming broadcast spectrum auction should be structured.

How do you personally believe that the spectrum auction should be structured, and specifically, do you think that any bidders should be excluded from bidding at all or on specific spectrum bands?

Answer. The auction should be structured in a way that brings as many broadcasters voluntarily to the table as possible to free up a substantial amount of airwaves for mobile carriers to bid on, while meeting clear statutory policy objectives established by Congress. While a very complex matter, I am certain that FCC staff is working hard to structure a successful auction consistent with these objectives and I will strongly support such efforts. Regarding bidder eligibility, my goal will be to implement congressional requirements. The Commission is currently conducting a public proceeding to explore these issues and I will be guided by the statutory requirements adopted by Congress.

Question 2. When you were with CTIA, I think you generally advocated that commercial wireless spectrum should be put to its highest and best use. Will that be the standard by which spectrum is allocated under your leadership at the FCC?

Answer. Yes.

Question 3. During your confirmation hearing, you stated that merger review proceedings and potential conditions placed upon a merger should be evaluated case by case. However, you have written before that some merger conditions, specifically those which might have been required had the AT&T and T-Mobile USA merger had been completed two years ago, should then be extrapolated onto the entire industry. How do you reconcile those two viewpoints?

Answer. As I stated at the hearing, I am committed to following statutory directives in reviewing mergers, which require that the transaction must be in the public interest, convenience, and necessity. The Commission's merger review process is an open, transparent process in which the public is afforded an opportunity to comment on the merger. In the past, under Democratic and Republican chairs, the Commis-

sion has relied on the factual record developed in such transactions and imposed conditions so that a transaction that may otherwise not be in the public interest can be cured of that defect and allowed to move forward.

Question 4. Two weeks ago, the Administration announced that it was moving forward with a policy of allowing government spectrum to be shared with commercial wireless providers. Do you think carriers will be willing to spend potentially billions of dollars at auction to share spectrum with government systems, or will such spectrum need to be cleared in order for carriers to build out systems on it and for consumers to see value from it?

Answer. To address the growing demand for mobile broadband services, we need to pursue a strategy that employs multiple tools to get spectrum into the hands of commercial providers. Those tools should reflect the advances in technology in the wireless space that permit greater use of sharing as well as traditional methods of clearing and auctioning. The challenges associated with sharing will differ among bands, but I do think that in some circumstances a properly structured arrangement with clear service rules could make sharing an attractive approach for wireless providers.

Question 5. Various Federal Government spectrum license holders have stated that they can operate their systems in frequency bands much higher than where they currently operate. Specifically, some Federal license holders in the 1755 MHz band have stated that some of their systems could operate in the 5 GHz band, where they already operate other systems.

What do you believe the best course of action is to address this issue? How do you anticipate working with the Department of Defense and other Federal license holders, in the event that they identify usable spectrum in higher bands and thus are able to vacate some of their lower MHz spectrum holdings, which could then be auctioned for commercial use?

Answer. If confirmed, I look forward to engaging all stakeholders in the process. We should move quickly to explore all viable alternatives presented that enable Federal agencies to meet their missions while freeing up valuable spectrum for commercial use.

Question 6. As you know, the FCC is responsible for enforcing Federal law that prohibits indecency on the public airwaves. However, the FCC has not brought an enforcement action against any program in more than four years. Can you explain your views regarding the FCC's role in preserving decency on radio and television programs? Do you believe that the FCC is doing an adequate job in this area?

Answer. The Supreme Court's recent decision has provided some clarity as to the parameters of the Commission's authority in this area. The Commission has also released a public notice seeking input on its rules. I will be guided by Congressional intent and court precedent as I work with my fellow commissioners on resolving this issue.

Question 7. In response to the FCC's request for public comments on proposed changes to decency enforcement standards, nearly 100,000 comments were submitted, nearly all opposed to changes which, in their mind, would weaken the standard. In various court proceedings over the past decade, broadcasters have argued that the indecency rules are outdated. Specifically, broadcasters have stated that the rules are too vague, they conflict with their First Amendment rights and that parents can control what their kids watch on television anyway.

How do you believe the FCC should move forward on this issue? Are the current indecency laws outdated? Should broadcast networks be treated the same as cable networks in terms of what is considered indecent?

Answer. Again, I look forward to engaging with my fellow commissioners on this issue, recognizing that the communications marketplace has gone through substantial shifts since the days of the original indecency rules.

Question 8. The FCC has not addressed media ownership rules and regulations officially since 2007. The last quadrennial review, which the Commission is legislatively required to complete, have been challenged and stayed in different courts. The current review was postponed until the Commission completed a minority media ownership review, which has now been done. Much has changed in the media landscape in the past decade, specifically in the past six years since the Commission last attempted to update these rules. What do you plan to do to push forward with the Commission's legislative mandate to update outdated media ownership rules?

Answer. As I mentioned at the hearing, the current review is three-quarters of the way through and the Commission is going to have to start another review very shortly. If confirmed, I will look at the proceeding and determine what the best course of action might be. I will be guided in that review by the Commission's longstanding policy goals to promote competition, diversity, and localism.

Question 9. Specific to the current ban on media cross-ownership of newspaper by television broadcasters it has been well documented that newspapers across the country have experienced unprecedented challenges to their business model. As a result of a recession and Internet competition more than half of the industry's advertising revenues have disappeared. Specifically, newspaper advertising revenues have declined from $49 billion in 2006 to roughly $22 billion in 2012.

Newspapers continue to live under the 1975 Federal Communications Commission cross-ownership ban that prevents a broadcast owner from investing in a newspaper in the same local market.

Do you believe that this nearly four-decade old regulation should be recalibrated to reflect the changes in the media marketplace, with cable and satellite television, the Internet, mobile apps and all the other ways people get information today?

Answer. As the courts have made clear, any review and modification of the Commission's media ownership rules must be based on sound data. There have certainly been changes in the media marketplace as you have identified, and the impact of such changes should be appropriately considered by the Commission.

Question 10. With the proliferation of online music, satellite radio providers and cable music stations, do you believe that local market radio caps need to be re-evaluated?

Answer. See answer to previous question.

Question 11. What are your plans to expedite the Commission's merger review proceedings? Specifically, do you believe that a 180 day shot clock could be implemented as a statutory deadline by the Commission to complete merger review proceedings?

Answer. I understand that better than 95 percent of all license transfer applications since 2009 have been acted on within the 180-day period. I believe it is an effective guideline that provides parties to transactions an understanding of the Commission's timing for review. I appreciate the importance of reviewing these transactions in a timely manner, but given the widely varying circumstances of proposed transfers, I do not believe that a statutory deadline would be ideal.

Question 12. Previously, the Commission has attached merger conditions to merger proceedings which seemingly have little to do with addressing a consumer harm, or a potential consumer harm, which will originate as a result of the merger being completed. Do you believe that the Commission should continue to attach merger conditions to further a policy agenda outside of the scope of a proposed merger or should the FCC look to only attach conditions when there is a specific consumer harm that needs to be addressed?

Answer. As I stated at the hearing, I am committed to following statutory directives in reviewing mergers, which requires that the transaction must be in the public interest, convenience, and necessity. The Commission's merger review process is an open, transparent process in which the public is afforded an opportunity to comment on the merger. In the past, under Democratic and Republican chairs, the Commission has relied on the factual record developed in such transactions and imposed conditions so that a transaction that may otherwise not be in the public interest can be cured of that defect and allowed to move forward.

Question 13. Do you think that as the Universal Service Fund migrates to being a subsidy for broadband, as opposed to its original purpose of providing universal telephone service, that it should only be used to fund expansions of broadband in unserved areas?

Answer. I commend the Commission for the landmark USF reforms adopted in 2011 and believe it is important that the Commission move forward with all phases of the Connect America Fund to get broadband to the millions of unserved Americans. In adopting the reforms, the Commission established multiple goals for the program, among them ensuring that consumers in every part of the country have access to both voice and broadband services. I support these goals and the requirement that recipients of USF support provide voice service and the deployment of broadband-capable networks.

Question 14. Do you believe that all technologies, whether they are copper networks, fibre networks, wireless networks or satellite networks, should be eligible to compete for Universal Service Funds if they are able to provide broadband to areas which currently do not have them, and at the most economical rate?

Answer. It is my understanding that the reforms create opportunities for all types of providers, consistent with statutory eligibility requirements and minimum service capabilities that must be met to ensure that consumers in rural areas are provided reasonably comparable service at reasonably comparable rates to consumers in urban areas.

Question 15. Most members of Congress are in favor of keeping the current ban on unwanted phone calls to consumers home phones and cell phones. The Do Not Call List has been a very successful tool provided by Federal Trade Commission. But the Telephone Consumer Protection Act rules were written at a time when home phones and fax machines were considered cutting edge technology. We do not live in that world anymore.

Can I get your commitment that you will take a hard look at the current TCPA rules and apply some common sense and pragmatic updates to these rules that still protect consumers from unwanted solicitations, but don't preclude them from getting updates on goods or services where the consumer has an established relationship with the entity who wants to contact them, specifically on the status of their drug prescription, airline flight updates or even from their student loan holder?

Answer. I agree that consumers should be afforded protection from unwanted autodialed or prerecorded calls or "robocalls", while ensuring they have access to information they wish to receive. To that point, my understanding is that the Commission issued an order last year enhancing the robocall rules while maintaining the existing consent rules for *non-telemarketing, informational* calls, such as those by or on behalf of tax-exempt non-profit organizations, calls for political purposes, and calls for other informational purposes, including informational messages such as school closings, airline flight updates, prescription refill reminders, or notifications regarding possible bank fraud. If confirmed, I will look into the issue to determine if more common sense updates to the rules are needed.

Question 16. As you may know, there those who believe the FCC can sometimes lose sight of the actual intent of their legislative mandate in their rule-making process. In fact, I am familiar with a company from my home state which is currently fending off claims that it owes millions of dollars in damages to a business which actually consented to receiving faxed advertisements from the company, but didn't parrot word-for-word the consent language called for in the FCC's regulations. This kind of enforcement defies common sense, especially when it involves sophisticated communications among consenting businesses rather than unsuspecting consumers. Without asking you to wade into existing litigation, can you give us some insight into your leadership style and priorities when it comes to rule-making?

Answer. I will demand an open and transparent process that is guided by the Administrative Procedure Act, Congressional directives and Commission precedent in pursuing rulemakings.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARCO RUBIO TO THOMAS E. WHEELER

Question 1. Mr. Wheeler, I was pleased to see in your blog, *Mobile Musings,* that you share my concern about moving away from the multi-stakeholder model of Internet governance. As you may know, Congress unanimously passed Senate Concurrent Resolution 50 last year. SCR 50 made it clear that Congress opposes international regulation of the Internet and supports multi-stakeholder governance. And after an encouraging bipartisan agreement, the House recently passed—by a margin of 413–0—legislation making it the policy of the United States to advocate for the multi-stakeholder model of governance.

- If confirmed, will you use your position as FCC Chairman to promote multi-stakeholder governance?
- In light of the departure of Commissioner McDowell, who was a leader on this issue last year, in what ways will you ensure that the fight for Internet freedom continues at the FCC?
- Do you agree that promoting multi-stakeholder governance has been the steadfast policy of the U.S.?
- Do you agree with Democrats and Republicans in the House that this should continue to be the policy of the United States?

Answer. I agree that the bipartisan Sense of the Congress passed last year sent a clear message of support for the multistakeholder model of Internet governance. The FCC is the U.S. Government agency with primary responsibility for implementing the 1988 International Telecommunications Regulations and as such it plays a key role in domestic and international work on these issues. If confirmed, I will continue the bipartisan Commission effort to promote the multistakeholder model.

Question 2. In a March 20, 2013 letter to NTIA, Chairman Genachowski indicated that the FCC wants to auction the 1755–1780 megahertz band paired with the

2155–2180 megahertz band. Are you committed to continuing the work begun by your predecessor to keep this auction on track? Does it make sense to auction the 2155–2180 band without the 1755–1780 band?

Answer. Yes, I am committed to continuing to pursue all options to bring more spectrum to meet the growing consumer demand. As I understand it, the Commission has circulated an item seeking public comment on this issue and I look forward to working with all stakeholders to find a solution.

Question 3. Looking beyond the auctions that are currently authorized, would it be helpful if Congress authorized multiple spectrum auctions, staggered over a period time, so that there would be a pipeline of spectrum entering the marketplace in a steady and predictable manner? Please explain your answer.

Answer. Spectrum demand will continue to grow for the foreseeable future. The Commission will need various tools to meet that need, including: traditional clearing and auctioning of spectrum, sharing, repurposing, and unlicensed. I look forward to working with Congress to make each of these tools as effective as possible.

Question 4. Will you make it a priority as Chairman to identify spectrum to be auctioned for commercial use?

Answer. Yes.

Question 5. Will you work with NTIA to identify and clear federally held spectrum for commercial use? How will you do that as Chairman?

Answer. I will work with NTIA and other Federal users of spectrum to identify opportunities for clearing and sharing spectrum to meet the growing consumer demand for mobile broadband. I will wholeheartedly engage the Commission's Federal partners to make progress on this front.

Question 6. Do you think bidders view spectrum they would share with government systems as valuable as spectrum cleared of such systems?

Answer. To address the growing demand for mobile broadband services, we need to pursue a strategy that employs multiple tools to get spectrum into the hands of commercial providers. Those tools should reflect the advances in technology in the wireless space that permits greater use of sharing as well as traditional methods of clearing and auctioning. In appropriate circumstances, I do think a properly structured arrangement with clear service rules could make sharing an attractive approach for wireless providers.

Question 7. What are the three most-important decisions you will need to make to ensure that the broadcast incentive auction is a success?

Answer. Three key decisions I will need to make, if they are not yet resolved, to ensure a successful auction will be (1) developing a sound band plan; and properly structuring the auction to (2) incentivize robust broadcaster participation and (3) ensure a successful repacking of broadcasters. These are just three of the many issues on which the Commission is currently seeking public input and I look forward to working with my fellow commissioners to bring about a successful result.

Question 8. The Presidential Memorandum released last Friday called for agencies to "enhance the efficiencies of their use of spectrum and make more capacity available to satisfy the skyrocketing demand of consumer and business broadband users." Part of the solution to enhancing Federal agencies' efficiencies in their use of spectrum will be relocating systems out of the lower bands suitable for mobile broadband and into the 4 GHz and 5 GHz bands wherever possible. Yet some agencies have expressed interest in relocating to the Broadcast Auxiliary Spectrum in the 2 Ghz band (2025–2110 MHz). Will you commit to working with NTIA and the agencies to find comparable spectrum for the agencies that relocate in the upper bands wherever technologically feasible to increase efficiencies?

Answer. I am committed to working with all stakeholders to find solutions that could include the relocations you mention or other opportunities. We should move quickly to explore all viable alternatives presented that enable Federal agencies to meet their missions while freeing up valuable spectrum for commercial use. The Commission has circulated an item that, as I understand it, explores these issues.

Question 9. Under your leadership, the FCC's Technology Advisory Council recommended setting a target date of 2018 for sun-setting the public switched telephone network. Do you still support that proposal?

Answer. The TAC, as a group, did suggest a notional target date of 2018 for sunsetting the PSTN. While there is often value in setting firm deadlines, it is also fair to say that this type of transition does not as easily lend itself to a single cutover date like the DTV transition. I am not able to pick a particular date at this point, although I would note that at least one major national carrier has suggested 2020 as the target date for its network to go all-IP. Most important for the Commission, regardless of any particular date, will be to ensure a smooth transition that is guid-

ed by the core values that have always guided the Commission, namely, the promotion of competition, consumer protection, universal service and public safety.

Question 10. In December 2010 the commission adopted the Open Internet Order, currently the subject of litigation before the DC Circuit Court of Appeals. In the event that the commission loses that case, would you support the idea of reclassifying broadband as a telecommunications service under Title II of the Communications Act?

Answer. I cannot speculate on what future action I would take without the benefit of reviewing the court's decision.

Question 11. The Docket for Title II reclassification has remained open at the Commission for over three years. This is a major proceeding to regulate broadband services under common carrier regulations, which would constitute a massive change to how the Internet would be regulated, and it remains open for over three years. Please answer yes or no to the following questions:

- Is keeping a proceeding open for over three years without action the best way to provide certainty in the marketplace?
- Do you agree that this can create problems for stakeholders and create uncertainty when considering future investments and planning?
- If confirmed, will you leave proceedings open for years with no action?

Answer. As a venture capitalist that has funded Internet-based business opportunities, I can tell you from my personal experience, the status of this docket has been irrelevant to my decision making on those ventures. With that being said, if confirmed, I will ask Commission staff to ensure the continuing need for all open dockets.

Question 12. Telecommunications is a fast-paced, dynamic industry operating in a hypercompetitive environment. As an "unabashed supporter of competition," what do you believe is the proper role of the FCC in this dynamic environment?

Answer. I believe that whenever possible, the marketplace should drive communications provider investment decisions and business practices. The history of telecommunications, however, has made it clear that such competition does not occur by accident. The Congress has laid out the expectation as to how the FCC will encourage competition while protecting consumers and the safety of the public and furthering the goal of universal service.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KELLY AYOTTE TO THOMAS E. WHEELER

Upcoming Spectrum Auctions

Question 1. When I look at the upcoming auctions, my 2 main concerns are protecting the consumer and maximizing the amount of revenue that will be raised.

Some argue that keeping larger carriers out of auctions will increase revenues. On the other hand, if you look at the 2008 spectrum auction, it brought in roughly $19 billion, which was over 25 percent more than CBO estimated. Also, it had over 100 winning bidders with 1,400 licenses issued with different geographic areas. I've seen conflicting studies arguing both sides of this, but it is universally agreed that this is the most successful auction the FCC has ever had.

Can you share your thoughts on whether limiting participation will result in more revenues and a more successful auction when our most recent auction does not back up this assertion? Which route would result in lower prices for the consumer?

Answer. The auction should be structured in a way that brings as many broadcasters voluntarily to the table as possible to free up a substantial amount of airwaves for mobile carriers to bid on, while meeting clear statutory policy objectives established by Congress. While a very complex matter, I am certain that FCC staff is working hard to structure a successful auction consistent with these objectives and I will strongly support such efforts. Regarding bidder eligibility, my goal will be to implement congressional requirements. The Commission is currently conducting a public proceeding to explore these issues and I will be guided by the statutory requirements adopted by Congress.

Universal Service Fund

Question 2. As you and I discussed when we met privately, I have been a consistent and vocal critic of the Universal Service Fund and how little New Hampshire gets out of it. We are a country of 50 different states, so I understand there are bound to be some levels of inequities. However, *New Hampshire receives 37 cents for every dollar it contributes to USF.*

Few states have a worse return than New Hampshire, but none of those states are nearly as rural as we are, nor do they have as many unserved areas when you look at the census blocks.

When I addressed this with you in the Committee hearing, you said we need to look at USF in its "totality" both the distribution and contribution side. Can you expand further on how reforming USF in totality will improve outcomes for rural areas of New Hampshire? Please outline the types of USF contribution and distribution reforms that will help New Hampshire.

Answer. Ensuring a stable funding mechanism for universal service is critical. Modernizing the contributions side of USF could result in a more equitable system for New Hampshire contributors. In addition, there are important elements of the Commission's 2011 USF Reform order that still must be implemented, including the second phases of the Connect America Fund and the Mobility Fund, as well as the Remote Areas Fund. These programs are specifically intended to provide targeted support for fixed and mobile broadband in unserved locations, including the many unserved locations in New Hampshire that you mention. Implementing contributions reform and moving forward with the ongoing USF forms that are underway should benefit New Hampshire.

USF Expansion (E-Rate, Lifeline, high-cost fund, etc)

Question 3. At the hearing last week, we heard calls today to expand varying programs of Universal Service Fund. I applaud the goal of trying to provide crucial communications services to every corner of our great country. However, when New Hampshire is losing 63 cents on every dollar it contributes to the nearly $9 billion fund, perhaps we should look a little harder at making the fund more efficient and better managed before expanding it. The distribution side of the fund in New Hampshire is withering.

What do you believe the FCC needs to do in order to get rid of the waste, fraud and abuse within the fund? Do we need to do this before expanding existing programs? Does the FCC need to work within a tighter budget?

Answer. The Commission deserves credit for the substantial reforms to all of the USF programs over the last year, all of which were focused on increasing program efficiencies, improving fiscal responsibility, and eliminating waste, fraud and abuse. At this point, two of the four universal service programs are capped, another has a firm budget in place and the fourth was recently reformed to include a significant savings target which the Commission successfully met in 2012. I believe the Commission should always look at ways to further eliminate waste, fraud and abuse before expanding existing programs.

Spectrum Sharing Policy

Question 4. There are challenging questions pending before the FCC regarding spectrum for auctions. These decisions will provide consumers with greater choice and more powerful mobile broadband offerings, but also must protect national security interests that have rapidly growing wireless broadband needs. With regard to spectrum sharing policy, how do you approach the question of how commercial spectrum can be made available to support Federal broadband requirements, particularly those that are using off-the-shelf, standardized technology such as LTE to meet growing needs?

Answer. There may be a real opportunity for some Federal spectrum users to have their equipment more closely tied to the evolution of commercial technology through spectrum sharing arrangements. It is an opportunity that is worth exploring as it could help reduce procurement costs while also allowing for a faster evolution of government equipment.

Executive Memorandum on Wireless Innovation

Question 5. The recently signed Executive Memorandum on wireless innovation contained provisions about Federal spectrum requirements, including an objective to "eliminate restrictions on commercial carriers' ability to negotiate sharing arrangements with agencies" and an encouragement of the FCC to identify nonfederal spectrum that can be made available to agencies on a shared or exclusive basis. Under your leadership, how do you envision the Commission implementing these provisions?

Answer. I am committed to working with all stakeholders to identify nonfederal spectrum that can be made available to agencies on a shared or exclusive basis. I will work with NTIA and other Federal users of spectrum to identify opportunities for clearing and sharing spectrum to meet the growing consumer demand for mobile broadband. We should move quickly to explore all viable alternatives presented that enable Federal agencies to meet their mission while freeing up valuable spectrum for commercial use. I understand that the wireless industry recently submitted a

spectrum relocation roadmap making recommendations on this subject and also that the Commission has circulated an item that, as I understand it, explores these issues.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DEAN HELLER TO THOMAS E. WHEELER

Question 1. Thank you for your testimony and responses to my questions at your nomination hearing. I would like to follow up with a few more questions regarding spectrum clearing, interference, backhaul capabilities and requests by some telephone companies to transition to all IP. I appreciate the opportunity to learn a little more about your views on these issues. As you and I discussed, the spectrum auction is very complex with multiple moving parts. Do you believe we can hold this auction by 2014?

Answer. I am committed to meeting that timeline if at all possible. However, I must add the caveat that at present I am precluded from seeing information that could form the basis of a definitive decision.

Question 2. We need to work with government agencies to clear up more spectrum, you have a wealth of experience in this area. Do you believe we can move this issue forward to clear unused government spectrum for commercial use? I believe many Senators could be helpful to you in this endeavor; will you lean on us for support if appropriate?

Answer. I appreciate the offer of assistance and can assure you I will take you up on it. Increased clearing and sharing of Federal spectrum will take all of us—Congress, the Commission, NTIA, and Federal spectrum users—working together to solve. I will work with all stakeholders to identify opportunities for clearing and sharing spectrum to meet the growing consumer demand for mobile broadband. We should move quickly to explore all viable alternatives presented that enable Federal agencies to meet their mission while freeing up valuable spectrum for commercial use. I intend to fully engage on this issue.

Question 3. When we move more spectrum to market, interference issues will come up. If new wireless services are licensed in satellite spectrum bands will there be interference? Is there any plan to address this issue if there will be interference?

Answer. As spectrum uses become more tightly packed, interference issues will increase as well. One of the most important ways the Commission can provide leadership to address this concern is in the area of improved receiver performance. I know the engineering staff at the FCC through my work on the Technology Advisory Council and they are working on ways to address this. I look forward to working through these issues in a way that allows robust growth and opportunity to continue.

Question 4. Mr. Wheeler, what are your thoughts on the importance of wireless backhaul networks to the future of wireless communications? What is the current state of wireless backhaul deployment in the wide-area licensed bands (24 thru 39 GHz)? Does FCC policy currently motivate quality builds?

Answer. Wireless backhaul is an important component to addressing increased traffic. It is critical that licensees meet their build out requirements so that valuable spectrum like the spectrum you mention is put to use. I will be vigilant in ensuring spectrum is built out in a timely manner.

Question 5. Do you believe the 1996 Telecommunications Act was technology neutral?

Answer. The definition of "telecommunications" is certainly technology neutral—"the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." As to the specific provisions, some are clearly technology neutral, while others are specific to a particular type of network.

Question 6. Do you believe the Commission should work to upgrade America's communication networks to IP-based technology? Will this be a priority?

Answer. The IP transition offers substantial benefits for consumers and businesses and facilitating the modernization of carrier networks and services will be a priority. At the same time, I recognize that technology transitions do not alter the core mission of the FCC, which is to promote competition, protect consumers, provide universal service, and promote public safety. I am committed to ensuring the achievement of these core goals regardless of technology platform.

Question 7. Some believe that applying Title II rules to IP systems will create confusion, increase costs, and ignore the transformation to next generation broadband

networks. As Chairman, what is your view on Title 2 regulations as it applies to IP delivery of voice?

Answer. Regardless of regulatory classification, the FCC must remain committed to certain core statutory values, including the promotion of competition, consumer protection, universal service, and public safety. While the Commission must analyze legacy rules and regulations and adapt to reflect changes in the communications landscape, new communications networks and services do not change the Commission's mission.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DAN COATS TO THOMAS E. WHEELER

Question 1. I was sorry we did not get a chance to meet prior to the hearing, but I understand you were tied up on other business which precluded you from coming by my office. On August 3, 2011 you posted on your blog an entry titled "Trout in the Milk." In that posting you expressed your surprise that the debt ceiling negotiations at the time did not include revenues derived from the sale of broadcast spectrum as part of deficit reduction. You then wrote, specifically with regards to the National Association of Broadcasters:

> "As a former practitioner of the legislative art I look in awe at the National Association of Broadcasters (NAB) and their new president former Republican Senator Gordon Smith. Their hands must have a slight odor of fish—trout to be specific. Suddenly, when a spectrum sale seemed a fait accompli as a payment on the debt, it vanished. No one is talking about it, but these things don't happen by accident."

What did you mean by this statement?

Answer. I look forward to meeting with you in person. I believe at the time that NAB was not supportive of what was being discussed regarding the reallocation and auction of broadcast spectrum.

Question 2. Again I'd like to reference an entry on your blog, specifically your September 2, 2011 posting relating to the AT&T acquisition of T-Mobile when you implied that the government could have used the proposed merger to assert more regulatory influence over the wireless industry. You wrote:

> ". . . the regulatory oversight of wireless carriers will continue to atrophy as the digital nature of the wireless business separates it from the legal nexus with traditional analog telecom regulation."

My view is, as with any agency, the FCC should be actively working to eliminate any regulatory obstacles that are barriers to innovation and to the development of new products for the consumer. The current marketplace has created a vibrant and competitive communications and technology sector, but the marketplace only works for established players and new entrants if there is transparency and predictability in the Commission's processes. The communications and technology sector continues to innovate, and with their innovation comes job creation. The FCC can stop job growth in this sector dead in its tracks with onerous and unnecessary regulations, as well as unpredictability in its processes.

I am concerned about your statement. Can you amplify on your views on increased regulation?

Answer. As I stated at the hearing, I am committed to following statutory directives in reviewing mergers, which requires that the transaction must be in the public interest, convenience, and necessity. The Commission's merger review process is an open, transparent process in which the public is afforded an opportunity to comment on the merger. In the past, under Democratic and Republican chairs, the Commission has relied on the factual record developed in such transactions and imposed conditions so that a transaction that may otherwise not be in the public interest can be cured of that defect and allowed to move forward.

Question 3. On April 29, 2013, my office addressed a letter to then-Chairman Genachowski regarding Non Commercial Educational (NCE) Public Interest Obligation (PIO) television stations and the FCC's process for reviewing complaints concerning underwriting announcements by these stations. The May 17th response from Michael Perko, Chief of the Media Bureau's Office of Communication and Industry Information, ignored my inquiry and included a reference to parity between PBS and non-PBS television stations, an issue my letter did not address. Later research reveals the FCC sent my office was sent an identical form letter that also was sent to Rep. Andre Carson (IN–7) and Senator Inhofe in May 2013, both of whom addressed the parity between PBS and non-PBS stations.

a. As Chairman, will you and your staff read and appropriately respond to inquiries and/or comments from Members of Congress?

Answer. If confirmed, I will ensure that congressional inquiries are treated with due deference. This includes assuring that they are responded to in an appropriate manner that addresses the issue raised.

b. Given the current economic environment, many of these NCE PIO television stations remain concerned about the FCC's criteria for underwriting announcements and its process for enforcing these rules. Do you support offering greater opportunities for these stations to engage with the FCC to ensure that they do not violate the rules for underwriting announcements, and that the penalties for inadvertent violations are not unduly severe?

Answer. I will need to learn more about this issue before I can provide an opinion on this, but I take your point and I will ensure that Commission staff works with stakeholders to try to resolve concerns they have while recognizing the need to enforce the Commission's rules.

Question 4. I would like to explore your views on the need to eliminate regulatory obstacles that are barriers to innovation and to the development of new products for the consumer. I think we both can agree that the 21st century marketplace has created a vibrant and competitive communications and technology sector, and I think we both can also agree that in order to fairly and effectively compete in the marketplace both established players and new entrants to this space rely on transparency and predictability in the Commission's processes.

As a business leader who has dealt extensively with the FCC in the past, are there specific regulations that you can point to as barriers to innovation that you wish the FCC had rolled back or eliminated?

Answer. I know that my predecessor removed more than 300 regulations during his tenure. I will carry on that work and ensure that the Commission's rules are not creating unnecessary obstacles to innovation.

Question 5. The spectrum incentive auction is a first-of-its-kind process. If executing the auction was not challenging enough, my understanding is that the FCC also faces a number of technical issues such as not yet knowing what chunks of spectrum TV broadcasters will voluntarily surrender.

a. I understand a process is in place via the task force the Commission has created to work through all these issues, but what assurances can you give us that, under your leadership, the Commission will meet its stated goal of 2014 for the auction given the unprecedented nature of the process and technical challenges?

Answer. I am committed to meeting the stated goal of an auction in 2014 if at all possible given the nature of the challenges you have noted.

b. As someone who, until now, has been an "outsider looking in" at the process, can you share your thoughts on how the process is going?

Answer. I am, at this point, still an outside observer as I am precluded from engaging in internal discussions with staff on policy decisions, but based on the publicly available information and watching the Commission's process, I applaud its level of engagement—conducting workshops for broadcasters to promote participation and technical workshops with engineers and other stakeholders to try to get as much input as possible in implementing this auction. I know this is a robust proceeding with lots of public input. I look forward to learning more from the inside should the Senate confirm my nomination.

Question 6. I have heard concerns from my state regarding the regulation of high volume auto-dialer initiated *voice over Internet protocol* (VoIP) "broadcasted" calls. My understanding is that these calls can put 10,000 calls per minute onto Indiana's landline telephone network, by using VoIP technology, in an attempt to get around Indiana's Do Not Call List. The Commission has, pursuant to its authority under the Telephone Consumer Protection Act (TCPA), worked with the Federal Trade Commission (FTC) in establishing a national Do-Not-Call Registry. The registry is nationwide in scope, applies to all telemarketers (with the exception of certain nonprofit organizations), and covers both interstate and intrastate telemarketing calls. Is this an issue you're aware of, and if so can you share your views on this topic with me?

Answer. It is my understanding that, to date, the Commission has not specifically addressed the application of its TCPA rules when VoIP services are used to initiate calls or faxes. However, as Chairman, I would look into this issue. Regardless of the technology used, the privacy of consumers must not be violated by unlawful calls.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TED CRUZ TO THOMAS E. WHEELER

Question 1. In our meeting prior to your confirmation hearing, I asked you if the FCC has the authority to implement the requirements of the failed Congressional DISCLOSE Act through rulemaking-that time, and again during your confirmation hearing, you declined to directly answer the question, stating that you needed more time.

a. Now that you have had that time, and time again following the hearing, I'd like a specific answer: does the FCC have the authority to implement the kind of requirements laid out in the DISCLOSE Act?

b. When it comes to the issue of regulating political speech, which institution do you believe has primary authority in this area—Congress or the FCC?

c. To the extent that you believe the FCC has the legal authority to regulate political speech, what statutory provision or provisions would you point to as the basis for that authority?

d. To the extent that you believe the FCC has the legal authority to regulate political speech, what principles would guide your decisions on when limitations on political speech are justified?

e. With regard to any potential FCC regulation involving political speech, how confident are you that the FCC's involvement in this area could be accomplished while preventing the kinds of abuses that we've discovered were prevalent at the IRS?

f. To the extent that you believe that both Congress and the FCC have the ability to regulate political speech, how would the FCC, under your leadership, proceed with reconciling any differences in approach between the two bodies?

Answer. The Commission has the authority Congress grants it by statute and the Commission, in interpreting that authority, must respect the First Amendment. The Commission's authority is found in the statutes Congress has enacted, principally the Communications Act, as amended.

Congress has delegated to the Commission certain disclosure responsibilities related to sponsorship identification (Sec. 317) and political disclosure (Sec. 315). These are provisions that have been in place since the Commission's inception in 1934 and were previously implemented by its predecessor, the Federal Radio Commission, since 1927. In determining the scope of those provisions, I will be guided by the Constitution, especially the First Amendment, Congress' directives under the Communications Act, and legal precedent.

As I mentioned at the hearing, I am mindful of the fact that the scope of these disclosure provisions is an area of policymaking tension within Congress and in the public at large. If confirmed, I look forward to working with you and others on the Committee on all matters of the Commission's responsibilities, in order best to achieve the shared goals of promoting economic opportunity and investment in the dynamic communications sector.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JEFF CHIESA TO THOMAS E. WHEELER

Question 1. You have served as an executive of two prominent trade associations in DC. In this capacity, you were required to work with companies that—at times—may have had varying opinions, and you were required to come up with a single industry position and then to advocate that position before Congress and the FCC. What lessons will you draw upon from your time as an industry executive if confirmed as FCC Chairman?

Answer. Coming to consensus on complex policy issues with a multitude of stakeholders who are all very differently situated can be a very difficult process. Whether as the head of a trade association or a Federal agency, the most important thing an effective leader can do is to ensure that all parties have an opportunity to be heard and to carefully listen and understand the various perspectives. People and organizations need to know that their opinions and arguments are valued and thoughtfully considered. While some issues may never lend themselves to a solution that everyone can fully support, it is essential that no one be excluded from the process and that everyone is given a fair opportunity to make their case. At the end of the day, the Commission needs to make decisions that are consistent with the law and meet clearly articulated policy objectives based on a full and complete factual record. My experience has also taught me that making decisions affecting multi-billion dollar industries requires a great sense of humility and thick skin,

qualities I have acquired over the years in the communications space. As I noted during my hearing, the FCC is a five-member commission and I intend to work closely with my fellow commissioners to ensure all viewpoints have been considered in the process.

Question 2. You are someone who has had long-running leadership positions in industries that are regulated by the FCC, and you are also an amateur historian who has looked at communications throughout the last few centuries. This gives you a unique perspective to look at how various technologies have disrupted the marketplace and how regulation has impacted the ability of new technologies to make their way into the hands of consumers and improve the lives of Americans. Does your experience teach you that a light-touch regulatory approach is the best way to ensure that new technology is not hamstrung by regulatory overreach?

Answer. I believe that whenever possible, the marketplace should drive communications provider investment decisions and business practices. The Commission must not inject itself unless authorized by Congress when necessary to pursue important public policy objectives that would not likely be achieved absent Commission action. Current technology transitions offer substantial benefits for consumers and businesses. At the same time, as an amateur historian, I recognize that technology transitions have always been times of trial and dislocation for those who relied on the earlier technology. Technology, by itself, does not alter the core statutory mission of the FCC which is to promote competition, protect consumers, provide universal service, and promote public safety. I am committed to ensuring the achievement of these core goals regardless of technology platform.

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