Description of document:	Federal Communications Commission (FCC) former Chairman Kevin J. Martin's 2009 response to the Majority Staff of the House Committee on Energy and Commerce report entitled: Deception and Distrust: The Federal Communications Commission Under Chairman Kevin J. Martin, December 9, 2008
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Federal Communications Commission
Washington, D.C. 20554

December 26, 2013

Re: FOIA Control No. 2014-012

This responds to your Freedom of Information Act (FOIA) request seeking "a copy of the FCC Management Response(s) to the report by the Majority Staff of the House Committee on Energy and Commerce entitled: Deception and Distrust: The Federal Communications Commission Under Chairman Kevin J. Martin, dated December 9, 2008." You state that you seek any responses "whether they are in the form of a document, memo, etc., and any documents reviewing or discussing the House committee report."

Enclosed is a copy of former Chairman Martin's response. We were unable to locate any other records responsive to your request.[1]

You are classified as an "all others" FOIA requester entitled to two free hours of search time and 100 pages of records without copying charges.[2] As less than 100 pages are being provided to you, and because we missed the deadline for responding to your request,[3] no fees will be assessed for processing your request.

If you consider this to be a denial of your FOIA request, you may seek review by filing an application for review with the Office of General Counsel within 30 days of the date of this letter.[4]

Sincerely,

Joel Kaufman
Associate General Counsel and
Chief, Administrative Law Division

cc: FCC FOIA Office

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[1] *See* Nl-173-98-8 (Chairman's chronological files transferred to Archives after termination of his service; routine correspondence destroyed when no longer needed); N1-173-03-2, (Item 5) (Congressional correspondence files either destroyed after three years or transferred to Archives); GRS 23, Item 7 (transitory files (including e-mails) are "Destroy immediately, or when no longer needed for reference, or according to a predetermined time period or business rule (e.g., implementing the auto-delete feature of electronic mail systems)").

[2] *See* 47 C.F.R. § 0.470(a)(3)(i).

[3] *See* 47 C.F.R. § 0.470(a)(3)(ii).

[4] *See* 47 C.F.R. § 0.461(j).

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 19, 2009

The Honorable Henry A. Waxman, Chairman
Committee on Energy and Commerce
United States House of Representatives

The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce
United States House of Representatives

Dear Chairman Waxman and Ranking Member Barton:

Enclosed please find a response to the recent report of the Majority Staff of the Committee on Energy on Commerce.

Sincerely,

Kevin J. Martin

Response of FCC Chairman Kevin J. Martin to
Majority Staff Report of House Energy and Commerce Committee

I am writing to respond to the allegations and conclusions contained in the Majority Staff Report that was publicly released on December 9, 2008. In my view, the Majority's report ignored relevant information, contained numerous errors and lacked substance.

It is critical to note that the Majority staff did not find any violations of rules, laws or procedures. In fact, I followed the same procedures that have been followed for the past 15 years by FCC Chairmen, both Democratic and Republican alike. Additionally, in nearly all of the instances cited in the report, I acted to put the interests of consumers ahead of those of the industries we regulate. For example, I make no apologies for my commitment to ensuring that deaf and hearing impaired Americans have equal access to communications services and for advocating on behalf of consumers who have seen their cable bills more than double over the last decade. Indeed, most of the criticisms contained in the Majority Staff Report reflect the vehement opposition of the cable and wireless industries to my policies to serve and protect consumers.

I feel it is necessary to respond to and correct many of the staff report's errors and mischaracterizations.

Telecommunications Relay Services (TRS)

The Majority staff alleges that under my chairmanship the Commission spent too much money in order to provide telecommunications services to the deaf and disabled. I disagree. I believe it is in the public interest to ensure that the disabled are able to participate in 21st Century communications and take advantage of changes in technology. Therefore, I have consistently advocated initiatives to expand the ability of people with disabilities to access communications services.

The issue discussed in the Majority Staff Report concerning the amount of compensation received by providers of video relay services (VRS) primarily involves a policy difference. Specifically, while the Majority Staff Report claims that the TRS Fund is only supposed to compensate providers for their marginal costs of providing service, the Commission rejected that interpretation of the statute long before I became Chairman and instead interpreted the statute to allow for the reimbursement of additional costs, such as those for installation, equipment and long distance calls. The Commission, as far back as Chairman Kennard, interpreted the reasonable cost language of the statute as including more than the Majority staff referred to as marginal cost. And the basic cost rules were adopted without dissent under Chairman Powell.

I appreciate that the Majority staff may disagree with the Commission's interpretation of the statute and believe instead that deaf individuals should be required to pay for such costs. But a fair examination of the issue would recognize that this disagreement is with the Commission, rather than me personally, and has little to do with

reimbursement decisions for TRS made in recent years. The Majority Staff Report also omits several critical facts regarding the Commission's recent decision setting compensation rates for video relay services (VRS).

First, contrary to the Report's implication, compensation rates for VRS have gone *down* rather than up during my tenure. When I became Chairman, the compensation rate for all VRS providers was $7.293 per monthly minute of use. As a result of reforms instituted during my time as Chairman, the rate now applicable to the largest VRS providers (in terms of monthly minutes of use) has been lowered to $6.30 per monthly minute of use, a decrease of more than ten percent. To be sure, as reflected in the Report, one CGB staffer believed that VRS compensation rates should be lowered even further. However, many advocates for and members of the deaf community personally contacted me and expressed strong opposition to further cuts in funding for VRS, arguing that such cuts would be "devastating"[1] to deaf individuals and would "effectively cut[] VRS availability for the deaf."[2] In fact, the Commission received thousands of e-mails objecting to further cuts, and many of these e-mails were produced to the Committee. Given my commitment to expanding communications services for disabled Americans, I was unwilling to risk harming deaf individuals by instituting the drastic rate cuts advocated by the CGB staffer quoted in the Report.

Second, the Commission *unanimously* adopted the Order in question setting rates for VRS, and no information regarding VRS providers' expenses was withheld from Commissioners in making that decision. Indeed, on July 19, 2007, as documented in records provided to the Committee, the Consumer and Governmental Affairs Bureau (CGB) provided Commissioner Copps's office with detailed projections regarding providers' costs as well as the amount of profit that would be earned by the largest provider, Sorenson, under various proposals.[3] Similarly, on October 15, 2007, as documented in records provided to the Committee, CGB provided Commissioner Adelstein's office with information concerning Sorenson's actual cost of service.[4] Notably, after receiving this information, both Commissioner Copps and Adelstein voted for and praised the Order in question.[5]

Moreover, it should be noted that the staffer in question believed that the "only solution" to the problem he identified was to adopt an "entirely new approach," and he stated that the only approach that could have been implemented absent Congressional

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[1] See Appendix, Attachment 1.

[2] See Appendix, Attachment 2.

[3] See Appendix, Attachment 3.

[4] See Appendix, Attachment 4.

[5] *See, e.g., id.* at 20193 (Statement of Commissioner Copps) (by adopting tiered-rate approach for VRS, "the Commission encourages competition for services while recognizing that there are efficiencies when larger providers have achieved economies of scale"); *id.* at 20194 (Statement of Commissioner Adelstein) (noting that Order addresses variety of open questions about compensation rates for VRS and other services and commending Chairman and Consumer and Governmental Affairs Bureau for their "efforts to improve our management of the fund through this Order").

action was to require deaf users to pay for VRS services. In particular, he argued that deaf customers should be required to pay "for equipment, installation, maintenance, extra call features, [and] long distance."[6] I disagreed with this conclusion and stand by my decision not to impose new charges on deaf Americans.

FCC's A La Carte Report and Annual Video Competition Report

While the Majority staff criticizes me for being heavily involved in the production of a report ("the Further Report") that pointed out mistakes made in an earlier Media Bureau report on a la carte cable prices and attempting to manipulate data in order to give the Commission greater regulatory authority to promote competition and diversity, the Majority Staff Report sets forth an incomplete picture of the internal processes that produced both reports and is entirely disinterested in whether the reports themselves were factually accurate. I have consistently advocated for both greater competition in the cable marketplace as well as more consumer choice in picking programming packages.

A La Carte Report

Turning to the A La Carte Report first, the report does note that the initial A La Carte Report "was not required by statute or regulation" and it "was not circulated to the full Commission for review, but was issued at the direction of Chairman Powell." There was no requirement or expectation that the report be put out for public comment or approved by the full Commission. The Further Report criticized by the Majority staff was produced by Commission staff under the same circumstances and adhering to the same process as the initial A La Carte Report.

The Further Report was produced by Commission staff to correct a mistaken calculation and the unsupported problematic assumptions in the initial A La Carte Report. The mistaken calculation I am referring to was not an obscure or minor error but was a mistake that went to the heart of the Initial Report's conclusions. Specifically, the report made a mistake in calculating the number of channels that the average consumer would receive without an increased cable bill under a la carte.

In a letter to the Commission's Chief Economist prior to the issuance of the Further Report, Booz Allen Hamilton (which produced the data on behalf of the cable industry that also formed the basis of the Initial Report,) acknowledged, "revenues from the broadcast basic tier should have been excluded from the operators video average revenue per user (ARPU) before calculating the average cost per channel under a la carte." Thus, both BAH and the Initial Report overstated the cost per channel leading to an incorrect conclusion that consumers would pay more for fewer channels under a la carte. Just correcting this one mathematical error changed the basic finding of the Initial Report. When the price per channel was accurately calculated, in three out of the four scenarios examined by BAH, consumers fared better under a la carte. The Further Report did not conclude that every consumer would pay less for cable under a la carte. Rather it

[6] House Report, Exhibit 4 at 2.

concluded that given greater choice in the purchasing of channels, consumers would have the option to pay less (and often would pay less). I stand by that conclusion.

The Majority Staff Report also ignores the findings of Congress's own experts. The Congressional Research Service agreed there were significant problems with the BAH study and the initial A La Carte Report. Specifically, CRS points to the same issue addressed by the Further Report; the "breakeven" number of channels a consumer could buy without seeing an increase in their cable bill. CRS concludes, "[I]t may well be that the Booz Allen study and the Initial report overstate the negative impact that a la carte pricing may have on both program networks and operators and, hence, the extent to which that effect might raise a la carte prices. It is not possible to estimate how significant this overstatement might be, but it suggests that the 'breakeven' number of a la carte networks might be greater than indicated by the Booz Allen Study or the Initial Report." CRS goes on to note that corrections to the BAH study have yielded "significantly lower a la carte prices."

According to CRS, "Booz Allen's pessimistic projection that half to three quarters of emerging networks would fail, which is based in part on inflated $4 to $5 a la carte prices, appears to be an overstatement." The Majority Staff Report accuses me of being outcome driven, claiming that "the outcome of the new report was predetermined," but took no issue with the Initial Report that was based almost entirely on inaccurate data supplied by the cable industry, which certainly had a significant interest in influencing Congress. It is also surprising, given the error acknowledged by Booz Allen and CRS, that the Majority Staff Report claims that Media Bureau staff believed that the Initial Report "contained what they believed to be the best analysis of the issue." This is clearly not true, and had the Majority staff conducted a complete examination of the record, it would have revealed that both Media Bureau staff as well as the Commission's Chief Economist recognized that there were several problems with the Initial Report.

The Majority Staff Report also selectively quotes from e-mails in order to create the misleading impression that the conclusions of the Further Report were manipulated over the objection of staff. In particular, while the Majority staff makes it appear as though Catherine Bohigian told Media Bureau economist Daniel Shiman to stop working on the Further Report because she disagreed with his conclusions, further e-mails reveal that such an impression is entirely inaccurate. Namely, they indicate that there was no disagreement between Ms. Bohigian and Mr. Shiman and that Ms. Bohigian directed him to keep working ("OK, please work with Sarah on the consquences/conclusions. Thanks for all the hard work.").[7] The Majority staff also distorts the substance of Mr. Shiman's views on providing consumers with a wider range of choice of programming packages. For example, while the Majority staff accurately notes that Mr. Shiman voiced the view that "pure a la carte would most likely raise cable bills, with fewer channels delivered," it omits Mr. Shiman's further view that he was "much more optimistic about the impact of mixed bundling, which allows MVPDs to continue offering bundles at a good price if

[7] See Majority Staff Report, Exhibit 11.

consumers want it, and of the themed tiers and limited a la carte (i.e., flexible small bundles."[8]

Annual Video Competition Report

In enacting the Cable Television Consumer Protection and Competition Act of 1992, Congress sought to promote video competition. Competition benefits consumers by delivering lower prices and better services to consumers. In particular, Congress was concerned that cable operators were not subject to sufficient competition and that they could therefore exercise market power to the detriment of consumers and independent programmers. Congress thus sought to provide the Commission with greater regulatory authority in the event that future developments provided cable operators with greater market power. Specifically, if the 70/70 test set forth in section 612(g) of the Communications Act is met (meaning that cable systems with 36 or more channels are available to more than 70 percent of American households and are subscribed to by more than 70 percent of households to which such systems are available), "the Commission may promulgate any additional rules necessary to promote diversity of information sources."

Unfortunately, Congress's concerns about the exercise of market power by cable operators has proven to be well-founded as cable subscribers have seen their bills double over the last decade. I therefore remain concerned that there is insufficient competition in the video market and that consumers are literally paying the price.

The Majority staff's assertions that I relied on "weaker" data and "withheld" other data from the other Commissioners in the development of the 13th Annual Video Competition Report is not consistent with the facts. I did not "manipulate" data in the draft report that I circulated to the other Commissioners but rather used the data I considered to be most reliable to determine the level of competition in the cable industry.

In determining whether the 70/70 test has been met, the Majority staff itself notes, "There is nothing in the relevant statute or regulations that requires the FCC to use any particular data in assessing the level of competition on the cable television industry." And in my public statement at the time the report was adopted and in a letter to Ranking Member Barton, I provided a detailed explanation of why I felt data from Warren Communications to be best.[9] In my letter I noted, "the Commission has used Warren's data for its 70/70 calculations since we started reporting on these benchmarks in the Tenth Annual Report." I went on to explain that "we rely on Warren data because it provides information on subscribers and homes passed for cable systems with 36 or more channels," the specific statistics necessary to determine whether the 70/70 test set forth in section 612(g) has been met. Similarly my public statement noted, "We rely on Warren data because it provides information on subscribers and homes passed for cable systems with 36 or more channels as specified in the statute. In addition, Warren collects its data

[8] See *id.*

[9] See Appendix, Attachment 5.

directly from cable television operators or individual cable systems to create a large database of cable industry information." I strongly disagree with the Majority Staff Report's characterization of the Warren data as being "weaker" as does the cable industry itself. Indeed, NCTA argued to the Commission in years past, "Warren's TV Factbook and online database, not the Commission's Form 325 data, is relied upon by businesses and researchers for system-specific information about the cable industry."[10] In addition, in 2003, the first year the Commission addressed whether the cable industry had met the "70/70" test, the Commission relied solely on Warren Communications data to determine that the test had not been met.

The Majority staff criticizes the draft video competition report because it excluded data from Kagan, Nielsen, the Cable Price Survey and the Commission's Form 325. As I explained publicly at the time, however, Kagan and Nielsen, unlike Warren, do *not* report data for cable systems with 36 or more channels which are the systems Congress directed the Commission to examine. Thus, neither company provides the precise data we need to perform the calculation specified by the statute. Moreover, the Kagan estimate regarding the number of households passed by cable, 113,600,000, is greater than the U.S. Census Bureau estimate of 109,450,000 total households. As a result, while the Commission has cited Kagan data in previous Video Competition reports, it has always been clear that it should be used merely as a trend indicator, rather than as a precise estimate for any particular year.

Similarly, there are significant limitations to data derived from the Commission's Cable Price Survey and Form 325. These two sources represent extremely small samples and therefore cannot be relied upon for the purpose of determining whether the 70/70 test has been met. The Commission currently sends questionnaires to only 781 cable systems for its Price Survey (representing only 10.2% of the total 7,634 systems in our database) and collects Form 325 data from approximately 1,100 cable systems (representing only 14.4% of the total 7,634 systems in our database). In contrast, Warren sends questionnaires to all 7,090 cable systems, and states that it has data representing more than 96% of all cable subscribers.

Additionally, the Majority criticizes that all other data was withheld from the other Commissioners until the night before the Video Competition Report was scheduled for a vote. **Rather than being "withheld" from the other Commissioners, the simple fact is that no other Commissioner requested the other data until the night before the vote. Despite the fact that they had the draft item for consideration for several months, it was only the night before the vote that any Commissioner first asked to see the other data.** Had the other Commissioners asked for the other data earlier, they would have received it promptly (as they did when they asked for it the night before the meeting).

Moreover, in the draft report that was circulated, I explicitly included an explanation as to why the Warren data was more reliable than the Kagan data.

[10] NCTA Comments at 7, CS Docket 98-61 (filed June 30, 1998).

Specifically, footnote 94 stated "[w]e note that Kagan, unlike Warren, does not report data for cable systems with 36 or more channels and thus does not provide the precise data we need to perform the calculation specified by the statute. We also note that the Kagan estimate regarding the number of households passed by cable, 113,600,000 is greater than the U.S. Census Bureau estimate of 109,450,000 total households. As a result, we find the Warren data to be more reliable in this regard."

I have already responded to Congress many times on this issue. In particular, I have acknowledged, in a letter to Chairman Dingell, that"[i]n retrospect, given the controversy, I should have included in the item a more detailed explanation of why I believed Warren data was more reliable than other sources we have cited in the past or that were submitted in the record."[11]

NRIC Advisory Subcommittee Report on 911 Services and Hatfield Report on Enhanced 9-11 Services

The Majority staff report alleges that my office suppressed a report produced by subcommittee 1B of NRIC, which was charged with recommending improvements to emergency and Enhanced-911 services. As the Majority staff notes, I have long supported initiatives to ensure consumers can quickly and reliably access 911 in times of emergency whether they are using a wireline, wireless or VoIP phone. Indeed, some of the issues in the report had already been addressed by the Commission.

In any event, as the staff notes, the report is actually publicly available. It is also important to note that the Majority staff concluded in the report that "there is no requirement that the FCC produce such a report and it appears that withholding the report has no direct regulatory implications."

In addition, it is alleged on page 16 of the report that I improperly terminated a report on E-911 wireless services by outside consultant Dale Hatfield. The Majority Staff Report states, however, that I have "strongly supported mandatory implementation of E-911 services."

In conclusion, the Majority staff clearly noted on page 17 that the Commission was justified in canceling Mr. Hatfield's contract and that there was "no evidence that Chairman Martin canceled the contract because he disagreed with the findings." Specifically, the report concludes that "Mr. Hatfield made his May 20, 2006, presentation to the Wireless Bureau more than two months after the final report was due, but never produced the final report, even though he was paid most of the money due under the task order. Under the circumstances, it appears that Chairman Martin was justified in canceling the contract."[12]

[11] See Appendix, Attachment 6.

[12] See also Appendix, Attachment 7 (Letter to Congressman Doyle).

Broadband over Powerline (BPL) Engineering Reports

The Majority staff criticizes me for supposedly withholding from the public portions of engineering reports addressing whether Broadband over Powerline (BPL) technology can cause interference to radio signals. First and foremost, the Majority staff failed to share a key fact about this issue; namely, that the Commission orders in question were not issued by me but were issued under my predecessor, former FCC Chairman Michael Powell.

The Office of Engineering and Technology's (OET) decision on the American Radio Relay League's (ARRL) FOIA request for the reports in question was issued **before I became Chairman.** Similarly, the rules establishing the technical requirements for the deployment of BPL technology were promulgated **before I became Chairman.**[13]

Finally, as Chairman, I have consistently permitted the Commission's Office of General Counsel (OGC) to defend in court all decisions made by the Commission under the previous Chairman, even when I disagreed with those decisions.

Bright House Networks v. Verizon California

The Majority staff alleges that I improperly reversed a draft Enforcement Bureau decision finding that Verizon had violated Customer Proprietary Network Information (CPNI) rules and instructed the Enforcement Bureau to find in favor of Verizon. While the Majority staff claims that both the Wireline Competition Bureau and the Office of General Counsel agreed with the draft Enforcement Bureau decision, that assertion is incorrect. Neither the General Counsel nor the Wireline Bureau Chief supported the Enforcement Bureau's proposed decision.

I did in fact disagree with the Enforcement Bureau's proposed decision, and most press reports about December's oral argument on this case in the U.S. Court of Appeals for the District of Columbia Circuit indicate that the judges seemed to be sympathetic to my position and perspective. Moreover, as the staff acknowledges, there is nothing improper with me doing so. Indeed, the Majority Staff Report concludes that "Chairman Martin certainly had the right to do so."

Unfortunately, a majority of the Commission voted in this case to allow complainants--players providing a bundle of services over one platform (cable VoIP)—to gain an advantage over their competitors—players providing those same bundled services over a different platform (traditional telephone service). Specifically, they decided to prohibit some companies from marketing to retain their customers, even though the marketing practices prohibited today are similar to the aggressive marketing techniques engaged in by the complainants themselves (when they provide cable video service). To reach this result, they in essence created a new law, holding that these complainants are "telecommunications carriers" for purposes of obtaining this competitive advantage, but

[13] See Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband Over Power Line Systems, 19 FCC Rcd 21265 (2004)

that they are not "telecommunications carriers" for other purposes, such as complying with the obligations of "telecommunications carriers."

I have consistently maintained that it is important to create a regulatory environment that promotes competition and investment, setting rules of the road so that all players can compete on a level playing field. I am concerned that Commission's decision here promotes regulatory arbitrage and is outcome driven. It could thwart competition, harm rural America, and frustrate regulatory parity. I stand by my position on this issue and remain hopeful that the courts will have the same concerns and reverse the Commission's decision.

The Majority Staff Report also insinuates that an unspecified source outside the Commission may have provided my office with a draft revised decision. This allegation is false. Indeed, the Majority Staff Report admits that it found no evidence to support the allegation. The report instead leaves the matter for "speculation" based on the "notion" that no one in my office was capable of producing such a "well-written" decision. I am very proud of the quality of the work produced by attorneys within my office as well as attorneys throughout the Commission for the last four years, and any implication that "well-written" decisions must originate outside of the Commission is an insult to the Commission's dedicated professionals.

Personnel Decisions and Agency Management

The Majority staff complains that I have engaged in "micromanagement" and transferred various employees.

First, the Majority Staff Report recognizes that "[t]he Chairman of the FCC is clearly authorized by statute to manage the staff and day-to-day operation of the Commission." With respect to personnel, the Majority staff also concludes that the practice of transferring employees "took place under Chairman Powell and earlier chairmen." Indeed, I have followed the same procedures that have been followed for at least 15 years, by FCC Chairmen, both Democratic and Republican alike. As Chairman, I have consistently sought to place the best person in each position of significant responsibility at the Commission. I make no apologies for doing so and believe that the record over the last four years demonstrates that I have made wise choices. Indeed, it is striking that the Majority staff nowhere identifies even a single specific personnel decision that was unwarranted.

Furthermore, with respect to the charge of "micromanagement," the Commission has been very productive under my chairmanship, issuing hundreds of decisions, and I stand by our record of accomplishment.[14] The Majority staff also criticizes the fact that Media Bureau economists were directed to stop working on "unapproved" research and to work only on "official projects." I find this criticism to be rather remarkable. It is the

[14] See Appendix, Attachment 8 ("Moving Forward: Driving Investment and Innovation While Protecting Consumers")

job of Media Bureau economists to perform official FCC work assigned by their supervisors; it is not their job to use Commission resources to do "unapproved" work that they might find interesting. It was thus entirely appropriate for the front office of the Media Bureau to remind economists that they should only work on "official projects" during work hours.

White House Demands for Local Television Programming – In Times of Emergency

The Majority staff complains that a White House official contacted the Commission to ask about DIRECTV providing certain local television programming to the White House as part of its satellite television service. I have made national security and homeland security a top priority for the Commission and did ask the staff to work with DIRECTV to try to ensure that the White House Situation Room had access to the information they would need during an emergency and to communicate that the Commission's rules limiting the ability to bring distant broadcast signals into another market were not an impediment to doing so.

In contrast, the Majority staff ignores the national security issues. This was not a complaint about simply getting local broadcast channels into the White House for entertainment purposes. Rather, the White House Situation Room, the operational nerve center in times of national emergency, was concerned about being able to access local broadcast channels during an emergency. For instance, if a bomb was detonated in San Francisco or a earthquake occurred in Los Angeles, it would be critical for our national security and homeland security officials to have instant access to the most current and up-to-date information on the ground. The Commission conveyed to DIRECTV that national security was our top priority and thus making such information available for national security and homeland security purposes was critically important.

The T-Mobile Enforcement Action

The Majority staff alleged that I improperly intervened to reduce a fine imposed on T-Mobile regarding complaints related to the National Do Not Call Registry. The Majority staff also questioned whether it was appropriate for the FCC to notify T-Mobile in advance that a fine was under consideration.

The Office of the FCC Chairman routinely works with the Enforcement Bureau in enforcement cases. It is common for the Commission to notify a party of a potential enforcement action to reach a settlement of the case. It is impossible to reach a consent decree without discussing the scope of the violation and the range of penalties; in fact it is a routine part of the legal process.

Derek Poarch, Chief of the Public Safety and Homeland Security Bureau

The Majority staff alleges that Chief Poarch "routinely violated Government-travel regulations" and maintained inaccurate time and attendance records. I am not

aware of the basis of any of these allegations nor have I been provided with any evidence to support them.

Conclusion

I respectfully request that this official correspondence and attachments be entered into the record.