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Office of the Director

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

July 15, 2014

Re: *FOIA Control No. 2014-487*

This letter responds to your Freedom of Information Act ("FOIA") request of June 13, 2014, for correspondence regarding Questions for the Record since January 1, 2012. I am enclosing a copy of our correspondence. Your fee has been waived, as you requested, given the cost to produce these records was minimal.

The Commission is not required to, nor does it, maintain records via voicemail, facsimile, or telephone. If you consider this to be a denial of your FOIA request, you may file an application for review with the Office of General Counsel within 30 days of the date of this letter, see 47 CFR 0.46(j).

If you have any questions concerning this response, please contact Alethea Lewis of my office at 202-418-1900.

Sincerely,


Sara W. Morris

cc: Office of Performance Evaluation and Records Management

Questions for the Record from Senator Rockefeller
OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION
MAY 16, 2012

Questions for Chairman Julius Genachowski

E-Rate

Under the Lowest Corresponding Price rule adopted in 1998 for the E-Rate program, providers of eligible E-Rate services are barred from charging the recipients of E-Rate funds more than they charge other similarly situated customers. This rule is intended to make sure that E-Rate funds go as far as possible to serve schools and libraries. But recent press reports have alleged that some providers may have been charging schools and libraries many times more than they charge others in the same region for the same services.

Q: Can you provide a history of the Commission's efforts since 1998 to enforce the Lowest Corresponding Price Rule?

Response:

Adopted in 1998, the Lowest Corresponding Price (LCP) rule (47 C.F.R. § 54.511(b)) prohibits "providers of eligible services" from charging schools and libraries "a price above the lowest corresponding price for supported services." The rule reinforces the E-rate competitive bidding rule, provides schools and libraries with bargaining power, and gives the FCC an additional tool for oversight.

The FCC has taken several actions to ensure LCP compliance, including an \$8.3 million FCC-DOJ settlement agreement in 2009 with AT&T regarding over-billing, and a 2011 FCC-DOJ investigation involving two Wisconsin E-rate service providers. Also in 2011, the FCC's Inspector General subpoenaed data and information regarding LCP from various E-rate service providers.

USAC's current audit procedures test for cost-effectiveness by requesting a vendor's price list to determine if the customer was charged the LCP and comparing the prices charged to E-rate beneficiaries and other similarly-situated customers. In the spring of 2012, USAC included LCP training in its vendor trainings and will include it in its applicant trainings beginning in October.

Q: Does the fact that some states have existing state master contracts for communications with providers for prices that may not comply with the Lowest Corresponding Price rule complicate the Commission's enforcement of the rule?

Response:

The requirements of the LCP rule are well-established and clear. Participants in the E-rate program are required to ensure compliance with all applicable Commission rules, including LCP.

Q: Recently the Universal Service Administrative Company (USAC) that administers the Universal Service Fund, including the E-Rate program, amended its training materials to include information about the Lowest Corresponding Price rule. Is the Commission aware of how USAC trained companies that participate in the program about the rule before this presentation was updated? What guidance did the Commission give to telephone companies before this year? Are you aware of why USAC decided to make these changes to the presentation?

Response:

Internal discussions during the 2011 LCP whistle-blower investigation led to the Commission directing USAC to include training on the LCP rule in the 2012 vendor and applicant trainings. The Commission prepared materials regarding LCP compliance and provided them to USAC for incorporation in its annual trainings for service providers and applicants. Commission staff reviewed all USAC training materials and attended the vendor trainings that took place in May 2012.

Q: I have received reports that some providers have been awarded lengthy multi-year E-Rate service contracts? What is the rationale behind awarding multi-year contracts? Are they necessary to attract bidders to serve rural areas? What are the mean and median lengths on multi-year contracts? How many of these contracts are longer than three years? How long is the longest contract?

Response:

The E-rate program does not award multi-year contracts. Applicants for E-rate funds may enter into multi-year contracts with service providers but must seek approval for E-rate funding each year. An E-rate applicant cannot enter into pre-paid multi-year contracts unless the applicant itself pays in advance and gets reimbursed from USAC on a pro-rata basis. Therefore, there is never a guarantee that E-rate will fund each year of a multi-year contract.

The Commission found in the E-rate First Report and Order that multi-year contracts could potentially reduce the costs incurred by the USF in serving the E-rate program. The Commission found "educators often will be able to negotiate better rates for . . . multi-year contracts, reducing the costs that both they and the universal service support mechanisms incur."

The Commission and USAC do not track data on the duration of multi-year contracts entered into by E-rate applicants.

Payphones

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.

Before you became FCC Chairman, as part of your nominations hearing in 2009, I asked if you would review existing payphone policies at the FCC in order to ensure that the Congressional mandate to compensate each and every completed call is met. You responded that you would “review existing policies to ensure that the Congressional mandate in Section 276 of the Communications Act—to compensate each and every completed call—is met.” I also asked if you would work to “ensure that disputes over payphone compensation are resolved in an expeditious manner.” You replied in the affirmative.

In light of the important role that payphones play and the risk associated with the loss of communications service, please provide an update on what the Commission has done since you became Chairman to review its payphone policies and to resolve payphone compensation disputes in a timely manner.

Response:

On September 7, 2010, I circulated a final order that resolves several payphone compensation petitions, including a petition for declaratory ruling filed by Illinois Public Telecommunications Association seeking refunds from Bell Operating Companies and petitions filed by independent payphone associations from the states of Illinois, Mississippi, New York, Florida, Ohio, and Michigan seeking Commission preemption of decisions by individual state commissions. The issues in these multiple petitions raise complex issues based on unique procedural facts. The Commission has compiled an extensive record submitted by payphone service providers and interested parties from several states. The order is awaiting the votes of my fellow Commissioners.

Mobility Fund

Currently, West Virginia receives a substantial amount of funding under the legacy Universal Service Fund high-cost support mechanism, which is being completely phased out. Can you guarantee that our state will receive funding in the upcoming Phase I Mobility Fund auction?

Please explain whether your auction methodology for Phase I of the Mobility Fund contains any adjustments that factor in the higher costs of providing coverage to mountainous and foliated areas such as those in West Virginia. If not, please explain what incentives are contained in the auction to get companies to invest in West Virginia using federal high-cost support.

Response:

West Virginia carriers are currently receiving \$18.5M annually in USF support and are receiving an additional \$4.6M in CAF Phase I support to serve an additional 15,000 currently unserved homes and businesses.

The Mobility Fund Phase I Auction (Auction 901) will offer up to \$300 million in one-time support to carriers that commit to provide advanced mobile voice and broadband services in areas where such services are currently unavailable. Winning bidders will have to deploy 3G service within two years or 4G service within three years of the award of support.

Using a reverse auction format, bidders will identify a per-road mile support price at which they are willing to meet our requirements to cover the qualifying road miles in a given area. The states that receive funding will be determined by the bids that are received. Bidders are responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on their bid amounts. Support will be awarded based on the lowest bid amounts submitted.

Lifeline

I believe strongly in making sure all Americans have access to affordable communications services – including rural and low-income Americans. That is why I support the goal of the FCC's Lifeline program. At the same time, I recognize there has been rapid growth in the program, particularly in the prepaid wireless area. To make sure that this program continues to serve Americans who need it most, we must root out waste, fraud, and abuse.

Earlier this year, the FCC adopted reforms of the Lifeline program and sought comment on additional reforms. Do you believe that those measures are sufficient to protect the Lifeline program against waste, fraud, and abuse?

Response:

As you note, earlier this year, the FCC issued an Order to eliminate waste, fraud, and abuse in the Lifeline program. The Order includes a number of reforms to constrain program growth, including establishment of national eligibility criteria and a national database, and independent audits. On July 31, 2012, the Wireline Competition Bureau (WCB) issued a Progress Report estimating that Lifeline reforms have already generated approximately \$42.75 million in savings thus far in 2012 by eliminating more than 300,000 duplicate customers. This puts us on target to meet our savings goal of \$200 million in 2012. WCB will continue to monitor the implementation of these reforms.

Cable Rates

According to the FCC's 2012 Report on Cable Industry Prices, there is evidence that cable rates have risen at a rate in excess of inflation. The report noted that rates for expanded basic cable service increased by 3.7 percent during 2010, compared to an increase of 2.5 percent in the Consumer Price Index. Over time, this increase has been more substantial. Your report states that from 1995 to 2010, rates increased 144 percent, compared to the Consumer Price Index increase of 44 percent.

I know that, under the 1992 Cable Act, the FCC cannot regulate the rates of the basic tier where there is "effective competition." Given the continuing increase in cable rates that you found, does the "effective competition" standard need to be revisited?

Response:

The Commission applies the effective competition standards as promulgated by Congress. If Congress decides to revisit the issue, Commission staff will be available to provide technical assistance. As you note, our most recent cable price surveys do show basic and expanded basic cable rates increasing more quickly in the 25 percent of communities where there have been findings of effective competition, but when the data is evaluated on a per channel basis, the average overall price decreases by 7.3% for expanded basic service.

Cramming

Last July, this Committee released a staff report that uncovered the harm caused to consumers when bogus companies cram fraudulent charges onto phone bills. We learned that cramming costs consumers as much as \$2 billion a year in fraudulent charges—and that phone companies had been making huge profits from these charges.

After the report exposed the extent of these practices to the light of day, several major landline telephone companies committed to me that they will stop it. That's good news. But we cannot let crammers run from one kind of bill to another – we must stop cramming from moving into wireless and other services. Are you working to make sure cramming does not move to other services, such as wireless?

Response:

Like you, I am concerned about cramming practices and the adverse effects that they have on consumers. Your report highlights the problems that consumers face when they receive unwanted charges on their wireline bills. Our Order issued earlier this year requires wireline carriers that currently offer blocking of third-party charges to notify consumers of the option at the point of sale, on each bill, and on their websites. The Order also requires that wireline carriers place charges from non-carrier third parties in a distinct bill section separate from carrier charges.

Similar to the findings in your Committee report on the subject, the Commission concluded that the record before us at the time did not demonstrate a need for rules to address cramming involving wireless – as well as VoIP – services, but we initiated a Further Notice about wireless and VoIP cramming, and we intend to monitor all consumer complaints closely. If the record developed through the comments demonstrates that there is a need for rules to address cramming involving wireless and VoIP service, I am committed to Commission action on the issue.

Political File

For more than five decades, broadcasters have kept paper copies of their public files. The FCC recently required television broadcasters to move into this century and finally make their public and political files available online. I wholeheartedly support this requirement. We're moving to a digital world, and government transparency cannot be stuck in the dark ages. However, I question the wisdom of exempting from the rule broadcasters who are not in the top 50 markets. I understand that you are worried about the bottom line for broadcasters in rural areas – but I am concerned about the citizens they serve. It is often more difficult for citizens in rural areas to make the trip to their nearest broadcaster's station to review paper files. Should you not make sure that citizens in rural areas can access the same information as those in the largest markets?

Response:

I understand your concern and agree that access to this information should be provided to all Americans, regardless of where they live. To be clear, every television broadcast station is required to upload new public file documents into the online system to make them available to the public. Consumers in every area – urban and rural – will be able to access the stations' public file materials using the online system. The Commission provided a limited delay – to July 2014 – for stations in smaller markets in order to provide additional time for those typically smaller stations to prepare for the transition. I believe this was the appropriate balance to strike, considering that the majority of political advertising purchases are made in larger markets. Stations that are not required to upload the political file materials until 2014 are still required to maintain materials in paper form at the station's main studio.

Verizon/SpectrumCo Transaction

The Commission and the Department of Justice are both reviewing a transaction between Verizon and four of the largest cable companies. As part of the proposed deal, Verizon and the cable companies would market and sell services for each other. Some have raised concerns that these joint operating agreements could make it very difficult for other companies to compete—especially companies that cannot offer all of the same services. These concerns are compounded when these competitors might be the only ones that serve consumers in other rural areas. So, if these competitors are harmed directly in a particular market, does that mean there is a risk that all of their rural consumers may

suffer as a result? When you review the joint agreements as part of the larger transaction, do you plan to pay attention to the impact that they may have on the provision of voice, broadband, and video services to rural consumers across the country? Will the Commission consider how the joint agreements affect whether broadband service is further deployed, upgraded, and maintained for residential customers in rural America?

Response:

The Commission's review of the Verizon-SpectrumCo transaction focused on the impact the transaction would have on consumers throughout the country, including in rural areas. I approved the transaction only after the companies made significant pro-consumer, pro-competitive modifications to their original agreements.

**QUESTIONS BY SENATOR DANIEL K. INOUE
OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION
MAY 16, 2012**

Questions for Chairman Julius Genachowski

Applications for Waiver of Universal Service (USF)/Intercarrier Compensation (ICC) Reform Rules

Questions on timing of review and decisions on waiver petitions

- 1. I am concerned about the Commission's ability to provide timely responses to waiver requests filed because of the recent USF/ICC Order. Please provide a list of waiver requests which have been filed to date including the date the request was filed, and the start and end dates of the public comment period. To the extent the FCC has issued a decision on the waiver request, please indicate the date of the decision. With respect to requests filed by native communities subject to the 45-day shot clock, please also include the date on which the shot clock started and time periods during which the shot clock was stopped, and why.**

Response:

Waivers Granted (in part)

- **Allband:** Order (DA 12-1194, rel. July 25, 2012)
- **Windy City Cellular:** Interim Relief Order (DA 12-923, rel. June 12, 2012)

Waivers Withdrawn

- **Big Bend:** (originally filed Feb. 6, 2012; withdrawn via letter July 18, 2012)

Pending High-Cost Cap Waivers

- **Border to Border** (filed June 29, 2012; Public Notice released on July 12, 2012; comments due Aug. 13, 2012; replies due Aug. 28, 2012)
- **Dell Telephone** (filed June 6, 2012; Public Notice released July 11, 2012; comments due Aug. 10, 2012; replies due Aug. 27, 2012)
- **Adak** (filed May 22, 2012; Public Notice released May 31, 2012; comments received July 2, 2012; replies received July 16, 2012)
- **Accipiter** (filed Apr. 18, 2012; Public Notice released May 4, 2012; comments received June 5, 2012; replies received June 20, 2012)
- **Windy City Cellular** (filed Apr. 3, 2012; Interim Relief Order released. June 12, 2012)

- **Sandwich Isles** (filed Dec. 30, 2011; PN rel. Jan 10, 2012; comments received Feb. 9, 2012; Replies received Feb. 24, 2012; 1st data request letter released Mar. 13, 2012; 2nd data request letter released June 6, 2012)

The Commission has received waiver requests from three carriers serving Tribal Lands: Sandwich Isles, Adak and Windy City Cellular. Sandwich Isles has requested a waiver of Section 54.302 of the Commission's rules, which establishes a total limit on high cost universal service support of \$250 per line per month. The company received \$892.15 per line per month in 2011, or more than 3.5 times the overall \$250 per line cap set unanimously by the Commission in the USF order.

The Wireline Competition Bureau (WCB) issued a Public Notice on the carrier's petition on January 20, 2012. Comments were due on February 9, with replies due on February 24, 2012. At that point the shot clock was stopped. WCB issued a letter seeking initial information on March 13, 2012; and followed up requesting additional information on June 6, 2012, noting concerns about the carrier's projected revenues and expenses. Staff is currently reviewing that additional information provided by the carrier. The redacted version of the follow-up letter to Sandwich Isles is available at: http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-12-893A1.pdf. As noted above, interim relief has already been granted to Windy City Cellular (the wireless affiliate of Adak) for six months or until the waiver petition for Adak is resolved. The Adak petition remains under consideration and, unless the Wireline and Wireless Bureaus need additional information from the carrier to resolve the waiver petition, the 45 day shot clock expires on August 30, 2012.

2. How will companies be assured that if they apply for a waiver, your staff will move faster than they have previously?

Response:

In all cases, the Commission's bureaus are reviewing each waiver petition individually and will make final decisions as expeditiously as possible. A thorough review is needed to protect consumers and small businesses that pay into the fund.

3. Does the Commission have enough staff to handle the amount of work needed to quickly comb through the massive amount of data to respond quickly to the waiver requests?

Response:

Implementing the Commission's comprehensive overhaul of USF is an enormous effort, and the FCC staff is working hard on it. The Commission has released a total of 20 orders to date implementing the USF-ICC Transformation Order. As I noted at our

appropriations hearings this year, our staff level is at a ten-year low, but we have requested funding that would ensure that we can successfully carry out our core functions, including implementing and administering the USF program consistent with Congress' directives under Section 254.

Question on loss of voice service requirement for waivers

- 1. The stated purpose of the FCC's reforms is to modernize the USF program to enable access to broadband. Yet, it is my understanding that these waivers can only be obtained if customers would lose voice service in an area served by a small company.**
- **Is my understanding correct that customers could lose access to their fixed broadband and yet the service provider would not qualify for a waiver as long as those customers still get voice service?**
 - **If my understanding is incorrect and a provider could in fact get a waiver to avoid loss of fixed broadband for customers, please identify the rule or provision of the Order contradicts this understanding.**
 - **If my understanding is correct, please explain why you think this waiver structure will help to promote universal access to broadband.**
- **Is my understanding correct that customers could see significant increases in the prices they pay for voice or broadband service, and yet the service provider would not qualify for a waiver as long as those customers can still get voice service?**
 - **If my understanding is incorrect and a provider could in fact get a waiver to avoid significant price increases to consumers on voice or broadband services, please identify the rule or provision of the Order that contradicts this understanding.**
 - **If my understanding is correct, please explain how this complies with the statutory requirement to ensure reasonably comparable rates for services in rural and urban areas.**

Response:

I circulated an order to clarify that waivers can be granted to prevent loss of broadband service and to account for rate changes. The draft order was temporarily removed from circulation to address additional requests raised by stakeholders, but I expect to recirculate it for vote shortly.

Our obligation is to review these issues carefully to ensure consumers and small businesses paying into the fund are protected, while ensuring consumers do not lose access to service. In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner. Unsubstantiated claims that rates will increase are not sufficient

to justify a request for significant public funding. Accordingly, it is incumbent upon carriers to demonstrate that current support amounts are actually necessary and rate levels appropriate. It is worth noting that many carriers charge very low rates while receiving USF support. For example, a July 31, 2012 report from USAC recently noted that carriers serving 233 study areas are currently charging their customers *less than \$10 per month* while receiving USF support.

Impact on carriers with Rural Utilities Service (RUS) Loans

In response to a question by Senator Klobuchar on the impact of the FCC’s new rules on the RUS loan portfolio, you stated that resolving the problem is going to require “flexibility on the FCC’s part, the RUS’s part, potentially flexibility on Congress’s part.” Further, in your response to Senator Klobuchar, you also stated that you did not want to “have RUS loans mean that consumers are paying for unjustifiable services for a long time.” In addition, The FCC has repeatedly claimed that most carriers would experience less than a ten percent reduction in funding under the FCC’s new program as compared to the USF program prior to reform.

- 1. How many carriers with RUS loans will experience more than a ten percent reduction in funding absent a waiver?**

Response:

RUS administers its loan program and has a better understanding of its loan portfolio. Commission staff worked closely with RUS throughout the USF reform process to understand their concerns and to estimate the potential impact of different reform options on RUS borrowers, and we continue to do so. Any carrier who believes they may have difficulty in repaying RUS loans as a result of reductions in support is free to file a waiver, and one factor the Commission will explicitly consider is the ability of a carrier to service outstanding debt. In addition, the information that carriers should submit when requesting a waiver explicitly includes information regarding outstanding loans, including RUS loans.

- 2. Please explain specifically what kind of flexibility you believe is necessary on the part of the FCC, the RUS, and the Congress to ensure that RUS borrowers do not default on their loans.**

Response:

By flexibility, I mean that the waiver process must include a data-driven, case-by-case analysis of individual company circumstances, while ensuring we are protecting consumers and businesses that pay into the fund. As noted above, I support modifying the waiver standard to take a loss of broadband service, not just voice service, into consideration. In addition, the National Broadband Plan recommended that one way to accelerate implementation of USF reforms would be for Congress to provide a one-time capital infusion into the Universal Service Fund.

3. As you review the RUS loan portfolio in hindsight, what types of services do you consider “unjustifiable” and why?

Response:

The rate of return system has not historically had strong accountability measures or good incentives for carriers to control costs. In addition, our previous universal service funding mechanism gave rate of return carriers control over their own funding spigot and incentives to outspend their peers. As we review practices generally (not specific to RUS portfolio) a variety of potentially concerning practices have come to light. For example: the number of employees and operating costs of some companies of similar size and service area are often very different, with some carriers having many more employees and much higher costs for essentially the same service; some carriers receiving very high per-line and total USF support levels are simultaneously giving millions in “capital credits” to investors; some carriers have set up a web of family-owned affiliates and have essentially contracted with family-owned businesses at costs much higher than they used to pay non-family-owned companies for the same service.

4. As noted in the recently filed Notice of Oral Ex Parte Contact by the Administrator of the Rural Utilities Service, RUS loans were issued under the rules that were current at the time of the loan. Please explain the basis on which the FCC believes it is justified in changing rules mid-stream in a manner that could disrupt the ability of borrowers to repay RUS loans and potentially trigger major budgetary problem for the federal government.

Response:

The USF-ICC benchmark reforms adopted in the Order only affect support going forward. In recognition of business realities and the need for carriers to have time to adjust, the Commission is phasing in changes gradually over 18 months. Commission staff has an ongoing dialog with RUS and meet with them regularly to understand their lending practices and their overall loan portfolio, and to understand the potential impact of our actions on their borrowers, including what tools they have to address troubled loans. We said we would consider RUS debt in evaluating waiver petitions and we have been doing just that as Commission staff works through the small number of waiver petitions that have been filed. To expedite review of waivers, the Commission delegated

authority to the Wireline Competition Bureau and Wireless Competition Bureau. The Order requires the Bureaus to initiate the process for public comment within 45 days of receipt of a petition, and they have consistently done so. To date, fewer than ten companies have filed a waiver. Of those, one has been withdrawn, and two have already been resolved.

I would also like to address the misimpression that we have changed rules midstream and that parties could not have anticipated changes. All stakeholders have been on notice that comprehensive reform was coming to the universal service program for at least the last decade. In 2001 when the Commission, under then-Chairman Powell, adopted a reform order in response to a proposal by the Rural Task Force (RTF), which included RUS, the Commission agreed that the methodology was to be only temporary (5 years) while a more comprehensive reform was developed. (FCC 01-157, paras. 165-177). In 2006, the Commission voted to temporarily extend that mechanism, stating that the rules would remain in effect “until the Commission adopts new high-cost rules for rural carriers.” (FCC 06-69, para. 2). That decision was followed by additional notices seeking comment on reform in 2008 and in 2010, which ultimately led to the Order we adopted in 2011. Arguments that rules were changed without adequate notice ignores the procedural history of the reforms we have undertaken. Coupled with the transition periods provided to carriers and the waiver process to address unique circumstances, I firmly believe the reforms the Commission unanimously adopted strikes the right balance between the needs of rural carriers for support and the need to protect consumers and small businesses that pay into the fund. It is worth noting that the overwhelming majority of rural carriers (more than 700 of the approximately 800 rural carriers that receive USF support) are not affected by the caps or see slight increases in support.

April 25, 2012, Benchmark Order

The FCC’s April 25, 2012 Order set benchmarks for reasonable capital and operating expenses based on comparisons among similarly situated rate-of-return carriers. According to the FCC, as a result of the Benchmark order 500 carriers will see increases in High Cost Loop Support (HCLS) and 100 carriers will have expenses limited to bring costs down to levels of similarly situated peers.

- 1. Pleases explain the FCC’s process in determining the appropriate similarly situated rate of return carriers to be used in determining reasonable capital and operating expenses for rate of return carriers in Hawaii and Alaska.**

Response:

In determining reasonable reimbursements for capital and operating expenses, the limits take into account what the actual costs are of rate of return companies, and compares those companies with one another on various dimensions – companies with a similar number of loops, companies with similar soil, companies with similar climate, companies with similar levels of underappreciated plant – and only limits those companies that are

extreme outliers compared to their peers. The purpose of benchmarking carriers to their peers is to identify the outliers and to determine the causes for their higher support amounts. The Bureau's Order identifies and limits only those companies whose costs are higher than 90 out of 100 companies operating under similar conditions. Under the methodology adopted by the Bureau, over 700 carriers face no limits this year and will see increases or no change in their high cost loop support.

The Order included Alaska-specific considerations to ensure carriers compared to their peers within the state, including a specific Alaska variable. Sandwich Isles Communications is the only rate of return carrier operating in Hawaii. As noted above, that carrier has requested a waiver of section 54.302 of the Commission's rules, which establishes a total limit on high cost universal service support of \$250 per line per month. The company received \$892.15 per line per month in 2011, or more than 3.5 times the overall \$250 per line cap set unanimously by the Commission in the USF order. Staff is currently reviewing that filing.

2. Of the approximately 100 carriers that will see decreases in HCLS, how many have outstanding RUS loans?

Response:

Our understanding from information provided by RUS is that approximately 35 of the affected carriers have RUS loans. However, RUS may be in a better position to answer this based on their internal analysis.

Petitions for Reconsideration and Further Proceedings

I share the concerns raised by Senators Thune and Begich about the importance of fully understanding the implications of the reforms and reductions adopted in the USF order prior to implementation. To this end, please provide a summary of the status of the outstanding petitions for reconsideration including the primary issues presented for reconsideration and the manner in which the FCC has responded to those petitions.

Response:

In response to the USF/ICC Transformation Order, twenty-four petitions for reconsideration or clarification were filed. These petitions sought reconsideration or clarification across an array of issues involving both the Commission's universal service and intercarrier compensation reforms. Consistent with standard practice, public comment was sought on these petitions.

To date, the Commission has issued four reconsideration orders addressing aspects of eleven different petitions for reconsideration or clarification. In addition, the Wireline Competition Bureau and Wireless Telecommunications Bureau have issued four orders that clarify the rules adopted in the USF/ICC Transformation Order. The Bureaus also have issued multiple orders to implement the reforms set forth in the USF/ICC Transformation Order across a range of topics, from this year's interstate tariff filing to benchmarks for high cost loop support. Finally, the Bureaus have taken a number of other actions in response to waiver and other requests from parties in connection with the proceeding.

Incentive Auctions

With respect to incentive auctions designed to allow television broadcasters the ability to sell all or a portion of their spectrum for mobile uses, what steps is the FCC taking to work with broadcasters to ensure stations that do not wish to participate are able to offer robust services now and into the future?

Response:

The amount of spectrum cleared through the incentive auctions will depend on the voluntary participation of broadcasters. The Commission is educating broadcasters on the options that are available to them, as well as encouraging their participation. The Commission held a TV Broadcaster Relocation Fund Workshop to focus on the design of the Commission's program to reimburse some broadcasters for the relocation costs they will likely incur as a result of the channel reassignments in connection with repacking as authorized by the Act. While it is not expected that all broadcasters will participate, voluntary incentive auctions present a compelling economic opportunity for many broadcasters. The Commission will reach out to, and work with, all affected parties in a process that is transparent and fair.

Verizon-Cable Transaction

- 1. The FCC is currently reviewing the Verizon - Cable transaction. The transaction involves not only spectrum transfer but also commercial agreements between the parties with potentially far-reaching impact. Is the agency reviewing the impact of the entire transaction -- including the impact of the commercial agreements - -- upon consumers, prices, competition, network investment, and jobs? If so, do you anticipate that the agency will release a final Order that addresses the issues raised by the commercial agreements at the same time that it issues its decision on the spectrum transfer?**
- 2. Since the commercial agreements between the parties are confidential, the FCC review of this transaction to ensure that it serves the public interest**

takes on special import. Can we expect that the FCC will review this transaction with the same rigor and vigilance that it used in the review of the AT&T/T-Mobile proposed merger?

Response:

The FCC recently completed its review of the Verizon Wireless-SpectrumCo and related transactions, which was rigorous and thorough. As part of that review, the Commission reviewed and worked to ensure significant changes were made to the commercial agreements.

Low Power Television

In your recently released Report and Order, the Commission states with regard to low power TV stations the following:

“Because we license low power television stations and TV translators on a secondary interference basis, they create no impediment to repacking as we need not protect these facilities in our repacking plan. For that reason, relinquishment of spectrum by these licensees through channel sharing arrangements will not aid the band clearing or relocation process—our immediate goal in this proceeding.”

- 1. If the Commission does not afford protection to low power TV in its repacking plan, should low power licensees be afforded spectrum rights similar to those of many other licensees such as allowing licensees more technical freedom and greater spectrum flexibility?**

Response:

I recognize and appreciate the important the news, information, and programming that LPTV stations provide to their audiences. I have instructed Commission staff to continue to work with the LPTV community as we implement the Middle Class Tax Relief and Job Creation Act of 2012. As you know, LPTV stations always have been secondary services to full power TV stations, and Congress did not provide additional protections for LPTV stations in the Middle Class Tax Relief and Job Creation Act of 2012.

- 2. What is the FCC’s plan for Class A stations going forward?**

Response:

Class A stations have enhanced spectrum rights, and those Class A stations that continue to meet license requirements will have the opportunity to participate in the incentive auction process.

QUESTIONS FOR ALL COMMISSIONERS

Media Ownership by Women and People of Color

Are you satisfied with the level of media ownership by women and people of color today? If not, I would appreciate your suggestions on how media ownership by women and people of color can be improved. What role can the FCC play to encourage greater media ownership opportunities for women and people of color?

Response:

I believe that the FCC must ensure that the communications field is competitive, generates widespread opportunities, and is open to new ideas from all sources. The Commission currently is evaluating our diversity policies as part of the Quadrennial Media Ownership rule review. Additionally, in an effort to better understand how to best move forward in this area, the Office of Communications Business Opportunities is actively reviewing the state of the market as it prepares the Commission's 2012 Section 257 Report to Congress. Finally, over the past several years, the Commission has implemented recommendations from the Advisory Committee on Diversity for Communications in the Digital Age in order to enhance and increase opportunities and participation in the broadcast industry by underrepresented groups.

Spectrum Swaps

Some industry representatives as well as a few Members of Congress have suggested that spectrum swaps are a direct and faster way to increase competition in the wireless broadband market. Do you agree with this suggestion? What efforts are being taken or can be taken by the FCC to explore spectrum swaps as a way to increase competition in the wireless broadband market?

Response:

There are currently no proposals or proceedings pending before the Commission on spectrum swaps. Should any proposals come forward, we will give them full consideration while coordinating with all interested stakeholders.

**SENATOR JOHN KERRY
UNITED STATES SENATE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
“OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION”
MAY 16, 2012**

Question for the Record

Updating the Law

- **Question for all the Commissioners:** The FCC has a wireless bureau, a wireline bureau, and a media bureau. Given that all three operate in a broadband world, should we have a broadband bureau at the agency that either incorporates these three separate bureaus or helps us understand the state of broadband competition and define and eliminate duplicative bureau functions?

Response:

During my time as Chairman, I have focused the FCC on broadband, including through major initiatives to advance wired and wireless broadband deployment and adoption. Every FCC bureau—including the wireline, wireless, and media bureaus—is working to unleash the opportunities of broadband for our country. This work often involves collaboration across bureaus, as with the development of the National Broadband Plan, last year’s landmark reform of the Universal Service Fund, and our ongoing implementation of voluntary incentive auctions.

- **Question for all the Commissioners:** The 1992 Act is 20 years old this year, and the 1996 Act is entering its late teens. Should we update these laws and if so, using what set of principles?

Response:

If Congress chooses to revisit the Cable Act of 1992 or the Telecommunications Act of 1996, the Commission stands ready to offer whatever assistance it can. Over the past few years, Congress has made significant changes to the communications laws, including through enactment of The American Recovery and Reinvestment Act, The Twenty-First Communications and Video Accessibility Act , and The Middle Class Tax Relief and Jobs Creation Act. The FCC is focused on carrying out its important responsibilities under the existing communications laws to unleash the opportunities of broadband for our country, including by promoting broadband-related innovation, investment, and competition and protecting and empowering consumers.

Spectrum

Cisco's US mobile data forecast projects that the volume of data traffic on mobile service provider networks will increase 16 times from 2011 to 2016. With that kind of demand for space in our airwaves for wireless broadband, the Commission should be making every effort to make as much existing spectrum as usable as possible quickly.

- **Question for all the Commissioners:** What are the prospects for federal and private users to share the spectrum that agencies currently hold without disrupting vital public services and what can we do to speed up the process?

Response:

Meaningful spectrum sharing among government and commercial users is a key element of the Commission's "all of the above" approach to unleashing more spectrum for mobile broadband and increasing the efficiency of spectrum use, as reflected in our Mobile Action Plan. The Commission recently approved a proposal from T-Mobile, working with the National Telecommunications and Information Administration (NTIA), to test commercial-government LTE sharing in the 1755-1780 MHz band. This test could allow us to pair that band with existing (AWS-3) mobile broadband spectrum at 2155-2180 MHz to enhance its value and usefulness prior to auctioning AWS-3 within the next three years, as required by the Middle Class Tax Relief Act of 2012. The Commission is also preparing a rulemaking to enable commercial use of the 3.5-GHz band while protecting government users, which could free up 100 MHz of spectrum for wireless broadband. Congress's continued support for commercial-government spectrum sharing will be important to the success of these efforts.

- **Question for all the Commissioners:** As space on the airwaves becomes increasingly congested, how will the FCC better arbitrate interference disputes between neighboring services in the future?

Response:

The Commission believes that the efficient use of spectrum will increasingly depend on the effective control and management of interference between neighboring services. The Commission traditionally addresses interference issues by setting parameters for transmitters to ensure that they do not emit excessive energy into frequency bands used by other services. The Commission then relies on equipment manufacturers, service providers, and other stakeholders to ensure their receivers comply with those technical parameters. Challenges faced by recent efforts to eliminate regulatory restrictions on use of spectrum for mobile broadband have highlighted the importance of receiver performance in maximizing the overall efficiency of spectrum use. The Commission conducted a successful workshop this past March to discuss the importance of addressing receiver performance in ensuring efficient use of the spectrum and better defining interference protection rights. We have tasked our Technological Advisory Council to

make recommendations in the near future as to how the Commission might approach this issue.

- **Question for all the Commissioners:** Can you talk about the priority that the Commission places (or that you will place) on ensuring that there is an appropriate mix of spectrum coming to market both for auctions and for such unlicensed use?

Response:

Unleashing more spectrum for broadband, including both licensed and unlicensed use, is and will continue to be one of the Commission's highest priorities. It is part of the Commission's Mobile Action Plan, which focuses on five main areas: unleashing new spectrum, removing barriers to broadband infrastructure build-out, driving greater efficiency in networks and devices, promoting competition, and empowering consumers.

Privacy

The FCC recently concluded an investigation into the Google Wi-Fi data collection incident where the agency found that Google's actions did not violate section 705 of the Communications Act due to the fact that the incident occurred on unencrypted Wi-Fi, rather than a secured network.

- **Question for all the Commissioners:** In light of the result of this investigation, do you believe that Congress should update section 705 to account for this gap in the FCC's wiretap provisions?

Response:

Congress has directed us to protect the privacy of consumers when they use communications networks and services. The FCC has extensive experience and a long record of protecting this information. The FCC will continue to implement its statutory mandates, including section 705, and stands ready to work with Congress should it choose to address gaps or ambiguities in the statute.

Interoperability

Interoperability of consumer devices within a spectrum band helps promote competition in wireless services. Since the early 1980s, the Commission has adopted rules or sent strong messages that it expects wireless service licensees to offer consumers equipment that can operate over the entire range of an allocated spectrum band. But interoperability does not yet exist in perhaps the most valuable spectrum bands the FCC has ever allocated – the lower 700 MHz band. In March, the FCC initiated a proceeding to promote interoperability in this band. I noticed that the NPRM would prefer that the industry propose a voluntary solution, as would I, but you also indicated an interest in moving to rules if that voluntary approach is unsuccessful.

- **Question for the Commissioners:** Do you believe interoperability of devices within this band matters, what is the FCC staff doing to monitor the efforts of the industry at arriving at a voluntary solution for the lower 700 MHz band, and how much more time do you believe the industry should have before you would push to conclude this proceeding and adopt rules if it appears that an industry solution is not possible?

Response:

Rural providers are facing hurdles utilizing 700 Mhz spectrum holding where 4G is being deployed. We are seeking comment on interference risks and possible solutions. The comment cycle in this proceeding closed on July 16, and staff is currently evaluating the record. At this time it would be premature to predict what action the Commission may take and when, but staff is working expeditiously to address this critical issue.

Public Broadcasting

As a long-time supporter of public broadcasting, I believe that it plays a special and necessary role in our media landscape. I was pleased to see that on November 4, 2011 the FCC Consumer Advisory Committee adopted a recommendation that the FCC work with the Administration and Congress to support continued federal funding of the Corporation for Public Broadcasting and local public broadcast stations, including those providing service to rural, tribal, native, and disability communities.

- **Question for the Commissioners:** Do you support this recommendation from the FCC Consumer Advisory Committee and can you share your views on the unique and necessary role that public broadcasting plays in our media landscape?

Response:

I strongly support continued federal funding for the Corporation for Public Broadcasting and local public broadcast stations. They have long served the American public by providing high quality and innovative educational, cultural, children's and news programming to their local communities. The FCC stands ready to work with the Administration and Congress to ensure the public broadcasters continue to have the opportunity to flourish.

The U.N. and International Negotiations on Internet Governance

As former Congressman Boucher recently explained, “The best way to understand the current system of global Internet governance is as a hub-and-spoke relationship. At the hub, a loose confederation of standards-setting bodies ensures the Internet’s continued stability and functionality. Little, if any, regulation occurs at the hub. This arrangement leaves tremendous leeway for the sovereign governments — the “spokes” — to regulate the Internet within their borders.”

And that system has worked relatively well, with some unfortunate outliers trying to control their population’s access to information. Yet, there is pressure abroad for a new U.N. agency to assert international governmental control over the Internet. That pressure is coming from countries who wish to impose new tolls on service and countries that fear the power of open discourse on the Internet.

In a recent blog post, NTIA Administrator Strickling wrote about these proposals from China and others, “This is contrary to President Obama’s vision of an Internet that is interoperable the world over, and the United States will vigorously oppose such barriers.” And I know that this is a priority for Ambassador Philip Verveer and the State Department as well.

- **Question for the Commissioners:** Do all of you share the Administration’s point of view?

Response:

Yes. I have been very concerned by indications over the past year that some countries would attempt to use the ITU World Conference on International Telecommunications (WCIT) to give the ITU authority over Internet governance, undermining the longstanding multi-stakeholder governance model. While the existing International Telecommunications Regulations (ITRs) have been accepted as a framework for negotiations without any pending proposals related to traditional Internet governance issues like Internet naming and numbering, critical Internet public policy issues will be discussed at the WCIT.

Of particular concern are proposals that would change Internet protocol interconnection and charging mechanisms, as well as limit the ability of companies to manage their traffic by requiring them to provide calling party number identification information so that countries can track where traffic originates. In addition, some countries have proposed adding cybersecurity provisions to the ITRs.

As the U.S. government agency with primary responsibility for implementing the 1988 ITRs, the FCC plays a key role in domestic and international preparations for the WCIT. The FCC is working in the U.S. delegation on WCIT to vigorously oppose any expansion of the ITRs to issues related to Internet governance or proposals to abandon the multi-stakeholder model. The FCC is actively participating in U.S. delegations on WCIT, where we continue to reinforce the bipartisan U.S. government position to maintain a free

and open Internet that is not encumbered by detailed ITU regulations that would jeopardize innovation and the free flow of information. Moreover, we are working closely with the State Department and others to coordinate with like-minded countries to form a strong coalition that can work together to develop a high level, technology neutral treaty and to resist any efforts for ITU regulation where none is needed.

Questions for the Record for Honorable Julius Genachowski from Sen. Bill Nelson of Florida Submitted Wednesday, May 30, 2012

According to the National Hurricane Center of NOAA, the lack of awareness and preparation compound the impact of all major hurricanes and other disasters.

- *As we approach the start of Atlantic hurricane season on June 1st, can you detail exactly what the Commission is doing to ensure enhanced warnings for citizens living in the path of deadly hurricanes and other natural disasters? How are traditional media and social media outlets assisting with these efforts?*

Response:

Since its inception, the Commission has been charged by Congress to promote safety of life and property. We have fulfilled that obligation by pursuing a variety of public safety emergency communications policies, including 911 and E911; emergency alerting (Emergency Alert System, Commercial Mobile Alert System); operability and interoperability of public safety communications; communications infrastructure protection and disaster response (Disaster Information Reporting System, Network Outage Reporting System, Special Temporary Authority); and network security and reliability. During a major public emergency, we work with our federal partners and the communications sector to detect communications outages and rapidly restore critical communications systems and services.

Integrating social media such as Twitter and Facebook into traditional public safety communications media can promote the flow of information before, during and after disasters. The FCC uses new media outlets, including our website, Twitter and Facebook, to provide important information to consumers when disasters occur. The Commission has recommended the use of social media for non-emergency communications during disasters instead of making non-essential voice calls, which can create congestion on voice networks. Social media also provides another outlet for people to let family and friends know they are safe.

The cost to the family members of inmates of staying in touch with the inmates by telephone is often prohibitive. Studies have shown that recidivism is reduced when inmates are able to remain in touch with family members during incarceration. In addition, studies have shown real benefits to the children of inmates if the children are able to remain in touch with their incarcerated parents. The Commission has before it a proceeding, Docket No. 09-144, which has the potential to provide competitive benefits, while maintaining security, through the mere enforcement of existing Commission policies. However, the docket in this proceeding has been open for some time.

- *Is there any additional information the Commission needs to take action in this proceeding, and when can any such action be expected?*

Response:

The Commission's responsibility to ensure that inmate calling services are available at reasonable rates is an important one. The multiple, competing petitions before the Commission regarding this matter raise complex factual questions and issues. Commission staff is currently reviewing the record that has been compiled on these issues, including recent filings by prison payphone operators, civil liberties groups, and others, and I expect they will soon develop a recommendation regarding how best to proceed.

Senator Maria Cantwell
Senate Committee on Commerce, Science, and Transportation
FCC Oversight Hearing
May 16, 2012
Questions for the Record

For Chairman Genachowski

Question #1 – Proposed Media Ownership Rule

- Chairman Genachowski, what are the key differences between your proposed media cross ownership rule and the media cross ownership rule put forward by then-Chairman Martin and voted on by the full Commission in December 2007?

Response:

Court cases obviously impact how we proceed in this area, and the Commission must make sure its rules are sustainable to the Third Circuit. The 2006 proceeding was a starting point for our current review, and I believe the recommendations in the NPRM continue to protect the core goals of localism, diversity of ownership and programming, but also take the realities of the current marketplace into consideration.

- Do your proposed media ownership rules address all of the issues identified by the Third Circuit Court of Appeals in its decision in *Prometheus versus the FCC*, including those regarding ownership of media outlets by women and minorities?

Response: Yes.

- Do you believe that shared services agreements are being used by some as a means to get around the spirit if not the letter of the Commission's media ownership rules? If so, how will you address this problem?

Response:

The Commission sought comment on current attribution issues, included shared services agreements, in the pending Quadrennial Review. Staff is currently reviewing the record in that proceeding.

Question #2 – Verizon / SpectrumCo. Agreement

Chairman Genachowski, I opposed the Comcast-NBCU merger and I was glad that both the Commission and Department of Justice effectively rejected AT&T's proposed acquisition of T-Mobile. In general, I am very concerned about the concentration of economic power into the hands of a few. I know that the Commission and the DOJ are reviewing the proposed Verizon – SpectrumCo agreement. I realize that you can't discuss the substance of the ongoing review.

One of things I found helpful in thinking through the ramifications of the two deals I cited above were the various filings made by interested parties at the Commission and the reply comments.

Given the potential far-reaching impact of a Joint Operating Agreement (JOA) between Verizon and SpectrumCo, it is important that many of the key stakeholders and interested parties who may be impacted by the proposal be able to offer informed comments to the Commission in order to help it make a more informed decision. I know that I have a number of questions about the level of integration between Verizon and SpectrumCo under its proposed JOA, and ultimately whether the proposed JOA is anti-competitive.

My understanding is that what documents there are, are heavily redacted because they have been declared confidential. It makes it difficult for these stakeholders and interested parties to express their concerns, or have their concerns allayed because they can't get access to the details.

- What is the current process for interested parties to gain access to the documents filed by Verizon and Spectrum Co. regarding its Joint Operating Agreement or related agreements?

Response:

Over the years, the Commission has developed what is now a fairly standardized process for balancing the need of both applicants and other stakeholders to protect their confidential business information with the need for commenters to have access to sufficient information to participate effectively in Commission proceedings. That process involves two general levels of protective orders—one for “confidential” information and one for “highly confidential” information (limited to specified categories approved in advance by the Commission staff)—which allow representatives of parties to a proceeding to have access to the information under specified conditions for the purpose of the proceeding only. Both levels of orders were issued in the Verizon/SpectrumCo proceeding. The two orders were issued on January 17, 2012, and are available at the following link: <http://transition.fcc.gov/transaction/verizonwireless-spectrumcocox.html>.

- Overall, do you believe that the transparency surrounding access to the details of the proposed Verizon – SpectrumCo deal to date for interested parties to comment has been adequate? Are there things that can be done to improve it?

Response:

I am proud of the process Commission staff ran to review the complex transactions at issue in this proceeding. The process enabled commenters to access sufficient information to participate effectively. As stated above, this is a standardized process for balancing the need of both applicants and other stakeholders to protect their confidential business information against the need for commenters to have access to sufficient information to participate effectively.

- You decided to bifurcate the Commission's review. The wireless division is evaluating the spectrum component. The wireless and enforcement divisions are evaluating the Joint Operating Agreement. Are these evaluations going to remain on separate tracks or will the Commission ultimately consider the deal as one?

Response:

The Order the Commission adopted on August [21], 2012 after completing its review of the transaction addressed both the spectrum transfers and the commercial agreements.

Question #3 – Use of Broadcast White Spaces for Unlicensed Broadband (Super Wi-Fi)

- Chairman Genachowski, what is the current status of the FCC's broadcast white space proceedings and pilot projects?

Response:

Last year the United States became the first country to free up white spaces in the TV band for unlicensed use. This policy innovation holds the promise of new value-creating breakthroughs on the order of magnitude of Wi-Fi. The Commission is now in the implementation stage and we have approved data base managers, devices, and deployments. We are finalizing the process for registering wireless microphones for protection in the database. Also, the Commission is considering whether we can use similar methods to provide unlicensed access to other spectrum bands.

- Given the challenges with freeing up new spectrum for licensed use, do you see unlicensed spectrum (across several bands) as playing an increasingly important role in overall spectrum policy?

Response:

Freeing up more spectrum for unlicensed use is a key component of the Commission's spectrum policy, which we continue to pursue as part of our holistic approach to improving spectrum management and efficiency.

- Are you concerned that the "The Middle Class Tax Relief and Job Creation Act of 2012" may effectively block the creation of a super Wi-Fi broadband network operating in broadcast white spaces for mobile broadband as envisioned by the Commission?
- How does the Commission plan to manage these factors to ensure that super Wi-Fi over the broadcast white spaces reaches its potential?

Response:

The availability of white spaces in the broadcast television spectrum nationwide continues to be a high priority for me.

While the Commission is still working on our Notice of Proposed Rulemaking to implement the Middle Class Tax Relief and Job Creation Act of 2012, staff is exploring ways to enable the use of additional spectrum for white spaces. Consistent with the Act, the plan is to seek comment on the potential use of white space devices in the new guard bands called for by the Act, as well as to preserve existing white space uses on unused television channels and in other interstitial spectrum.

Nationwide contiguous bands of spectrum are desirable to help ensure that innovation in this market can continue to blossom and consumers benefit from this important technology. One of the hallmarks of white space technology is its flexibility, however, and the Commission's rules permitting such operations were specifically designed to allow opportunistic uses in spectrum that may vary from location to location and time to time. I continue to believe enhanced use of underutilized spectrum should be encouraged by such innovative technologies.

Question #4 – December's International Telecommunications Union (ITU) Conference in Dubai

Chairman Genachowski, as you know, this December in Dubai there is a conference hosted by the United Nation's International Telecommunications Union (ITU) that will look at revising International Telecommunications Regulations. The last revision to these regulations occurred in 1988. Much has changed with respect to information and communications technologies since then. I know the Commission is supporting the State Department's efforts.

- What are your expectations for the conference?

- What do you think are some of key issues on the table for consideration?
- Much discussion has been about that the ITU will use the forum to try and take greater control of the Internet. There are some new Internet fees being discussed. Should U.S. policymakers be concerned?

Response:

I have been very concerned by indications over the past year that some countries would attempt to use the ITU World Conference on International Telecommunications (WCIT) to give the ITU authority over Internet governance, undermining the longstanding multi-stakeholder governance model. While the existing International Telecommunications Regulations (ITRs) have been accepted as a framework for negotiations without any pending proposals related to traditional Internet governance issues like Internet naming and numbering, critical Internet public policy issues will be discussed at the WCIT.

Of particular concern are proposals that would change Internet protocol interconnection and charging mechanisms, as well as limit the ability of companies to manage their traffic by requiring them to provide calling party number identification information so that countries can track where traffic originates. In addition, some countries have proposed adding cybersecurity provisions to the ITRs.

As the U.S. government agency with primary responsibility for implementing the 1988 ITRs, the FCC plays a key role in domestic and international preparations for the WCIT. The FCC is working in the U.S. delegation on WCIT to vigorously oppose any expansion of the ITRs to issues related to Internet governance or proposals to abandon the multi-stakeholder model. The FCC is actively participating in US delegations on WCIT, where we continue to reinforce the bipartisan U.S. government position to maintain a free and open Internet that is not encumbered by detailed ITU regulations that would jeopardize innovation and the free flow of information. Moreover, we are working closely with the State Department and others to coordinate with like-minded countries to form a strong coalition that can work together to develop a high level, technology neutral treaty and to resist any efforts for ITU regulation where none is needed.

Question #5 – ‘Wi Spy’

Chairman Genachowski, I would like to ask you a few questions about what is referred to as Wi-Spy and the Commission’s Notice of Apparent Liability. As you know, when Google collected data from Wi-Fi networks for its Street View project it also collected so-called payload data, which is the content of the Internet communications.

Paragraph 51 from the un-redacted version of the Notice reads:

“For more than two years, Google’s Street View cars collected names, addresses, telephone numbers, URLs, passwords, e-mail, text messages, medical records, video and audio files, and other information from Internet users in the United States.

“The record shows that Engineer Doe intended to collect, store, and review payload data for possible use in other Google projects. On at least one occasion, Engineer Doe reviewed payload data to identify frequently visited websites. The Bureau was unable to determine whether Engineer Doe did anything else with the data because he declined to testify.

“The record also shows that Google’s supervision of the Wi-Fi data collection project was minimal. In October 2006, Engineer Doe shared the software code and a “design document” explaining his plans with other members of the Street View project.”

Let me stop there.

My understanding is that the FCC’s \$25,000 fine was the result of the company’s deliberate efforts to impede and delay the investigation by failing to respond to requests for information material to the investigation. Additionally, I believe the company also failed to provide certifications and verifications that the company conducted a comprehensive search of all materials within its possession.

- Did the FCC only have the legal authority to look at whether Google’s actions violated Section 705(a) of the Communications Act, nothing else?
- Do you believe Section 705(a) of the Communications Act doesn’t apply to unencrypted communications? What is the basis of that interpretation?

Response

Congress has directed us to protect the privacy of consumers when they use communications networks and services. The FCC has extensive experience and a long record of protecting this information.

The Notice of Apparent Liability cites the relevant sections of the Communications Act where the FCC has authority to take action on Google’s violations. In addition, as stated on the Notice of Apparent Liability, there is no Commission precedent addressing the application of Section of 705(a) in connection with unencrypted Wi-Fi communications.

The FCC will continue to implement its statutory mandates, including section 705, and stands ready to work with Congress should it choose to address gaps or ambiguities in the statute.

- The Street View team with personal knowledge of the Engineer Doe’s project did not submit sworn statements. Did the Enforcement Bureau request the Google staff with personal knowledge provide sworn statements? Given Google’s action to impede and delay the investigation would it not have made sense to obtain sworn statements from the Street View team? With respect to this and other investigations, can the Enforcement Bureau require sworn statements from all those with personal information regarding an allegation?

Response:

As stated in Paragraphs #3 and #45 of the Notice of Apparent Liability, the FCC interviewed several individuals who worked on the Street View project, and, after several unmet demands, did receive compliant declarations from Google on the accuracy and completeness of the its submissions. However, Google provided incomplete responses to the FCC Letters of Inquiry, which constituted willful and repeated violations of Commission orders.

- It was brought to my attention that in November 26, 2008, Google filed a patent pertaining to the collection and use of payload data to derive more specific location information for mobile handsets entitled ‘Wireless Network-Based Location Approximation’ (Application Number: 12/315,079). Were any of the five individuals listed as inventors on the patent application part of the Street View team interviewed by the Enforcement Bureau? Was the Enforcement Bureau aware of the patent application at the time of its investigation? Are the details of the patent claims relevant to subject matter of the Enforcement Bureau investigation (whether there was a violation of Section 705(a) of the Communications Act)? For example, can any of the claims in the patent application also be applied to encrypted communications?
- Chairman Genachowski, the Notice of Apparent Liability states: “There is not clear precedent for applying Section 705(a) of the Communications Act to the Wi-Fi communications at issue here.” Why so? What kind of precedent does the Commission require?
- Increasingly, 3-G wireless and 4-G broadband service providers offload their networks onto encrypted and unencrypted Wi-Fi systems as part of their architecture. Does the Commission need to re-examine Section 705(a) in light of this?

Response:

As stated above, there is no Commission precedent addressing the application of Section of 705(a) in connection with unencrypted Wi-Fi communications. The FCC stands ready to work with Congress should it choose to address gaps or ambiguities in the Section 705.

Question #6 – Experimental Licensing

Chairman Genachowski, research institutes and companies involved in research and development often depend on ready access to spectrum to develop and conduct experiments on new products. The Commission has long maintained an experimental licensing program specifically for this purpose. In the past, with only few exceptions, the Commission routinely authorized experimental spectrum uses without requiring experimental license applicants to secure the consent of incumbent spectrum users in the same area as long as the experimental operations were unlikely to cause harmful interference.

More recently, the Commission appears to be requiring nearly all experimental licensees proposing to operate in numerous spectrum bands to coordinate and secure the consent of other spectrum users regardless of whether a significant risk is posed of harmful interference. These coordination and consent requirements can be very burdensome on researchers because incumbent spectrum users often have little incentive to cooperate and provide consent. As a result, critically important experimental operations are frequently delayed and sometimes cancelled due to the inability to secure consents on a timely basis, if at all.

- Can you confirm that there has been a change in Commission policy regarding the coordination and consent requirements for experimental licenses? If so, why the change?
- How does the Commission ensure that incumbent spectrum users respond in a timely manner to those entities seeking experimental licenses for temporarily sharing spectrum?

Response:

The FCC has long included coordination or consent requirements in experimental authorizations where appropriate to ensure that incumbent licensed operations are not negatively affected by experimental operations. In general, this process has worked well to enable experimentation and research without disrupting the various radio-based services relied on by businesses and the public. The Commission is currently seeking public input on and taking a close look at our experimental licensing rules and procedures to ensure that the process works as efficiently and effectively as possible to promote the experimentation and research critical to the development of new technologies while protecting existing radio operations. Comments from the public have been filed and staff is carefully reviewing them and preparing recommendations for next steps.

Question #7 – Low Power FM

Chairman Genachowski, I have been a long-time advocate of making more low-power FM (LPFM) stations available to community broadcasters. I appreciate the work performed by the Audio Division and the Office of Engineering Technology over the years in advancing LPFM service for local community broadcasting.

In particular, in 2006, after I consulted with the Congressional Research Service, I suggested to the Audio Division that KYRS-LP in Spokane, which faced going off the air due to the encroachment of a full service FM station, could relocate to a second adjacent channel to a full service FM station if the interference model submitted proved out. The FCC agreed and KYRS-LP was saved. The decision was challenged at the DC Circuit Court of Appeal and the FCC's actions were upheld.

President Obama signed the Local Community Radio Act into law on January 4, 2011. It was a difficult negotiation. Representative Doyle and I, along with our public interest allies, had to make several concessions to the National Association of Broadcasters in

order to undo the prohibition on locating a low-power FM stations on the third adjacent channel to a full service FM station.

Effectively the law overturned the court decision with respect to the FCC licensing low-power FM stations for operation on the second adjacent channel. The intent of the language was that the FCC should only grant waivers in a very limited set of (unspecified) circumstances. That is why the bar on the waiver process is set so high. With that said though, within those very limited set of circumstances, I believe the FCC should have the flexibility to try and make waiver work. It should look at things such as directional antennas or only take interference into account in populated areas, as is it does with translator stations.

There remains a disparity on some technical matters in how low-power FM stations are treated with respect to translator stations. One issue is use of the contour methodology to determine area of interference, another issue is power level. There is no technical reason why low-power FM stations cannot operate safely at the same 250-Watt power level as translator stations do. In fact, the initial proposed notice of proposed rulemaking on low-power FM service released in the late 1990's envisioned three classes of LPFM stations operating at 1000-Watts, 100-Watts, and at 10-Watts. As you know, the Commission did not go forward with its proposed 1000-Watt service.

I want the low-power FM window to be opened as soon as possible. I believe that if the LPFM power level is raised to 250 Watts, it will lead to a lawsuit leading to further delays in opening the new LPFM window. For that reason I can't support it. A likely argument put forward will be that the FCC performed insufficient testing on the effects of interference from the 250 Watt LPFM service to full service FM stations – even though 250 Watt translator service operates today. I don't see the same challenges with LPFM power levels between 10 and 100 Watts.

- Mr. Chairman, what is the status of the low power FM rulemakings?
- What are the remaining steps for a new low-power FM window to open?
- When do you expect this new low-power FM window to open?

Response:

I agree that LPFM stations are an essential outlet for local news and information. Commission staff is working diligently to implement the LCRA as quickly as possible. We have adopted two orders to implement various sections of the LCRA and are working through the remaining issues. We have specifically sought public input on a proposal submitted by the Amherst Alliance and the Catholic Radio Association to raise the maximum power level for LPFM stations to 250 watts and whether such an increase is consistent with the LCRA.

I anticipate that we will be able to announce the dates for the LPFM window when the Commission acts on these final LCRA implementation issues. The window will open

after the Media Bureau substantially completes the expedited processing of the frozen FM translator station applications. I hope this process will start this fall.

SENATOR FRANK R. LAUTENBERG
COMMERCE, SCIENCE, TRANSPORTATION COMMITTEE HEARING ON
OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION– 5/16/12
QUESTIONS FOR THE RECORD

Questions for Chairman Genachowski and Commissioner McDowell:

1. In response to a question on News Corporation, Chairman Genachowski responded that the FCC does not comment on the status of investigations and Commissioner McDowell concurred. Yet following the hearing, the press reported that Commissioner McDowell responded to reporters' questions by commenting on the status of an investigation—saying he was unaware of any investigation into News Corporation. How is it possible that neither of you could comment on the status of the investigation during the Congressional hearing, yet Commissioner McDowell could respond directly and candidly to a reporter immediately after the hearing?

Response:

I defer to Commissioner McDowell to address his comments.

2. During the hearing I asked you what it takes for the FCC to begin an investigation into the misconduct of News Corporation and whether that misconduct calls into question News Corporation's fitness to hold 27 broadcast licenses in the United States. I was not asking you to prejudge the outcome of such an investigation, but rather whether the FCC would initiate one. What does it take for the FCC to begin an investigation into whether News Corporation is fit to hold its broadcast licenses in the United States?

Response:

The Commission considers allegations of broadcast licensee misconduct made in formal complaints and filings made in response to applications, and it may investigate possible licensee misconduct on its own motion. Inquiries into a licensee's qualifications to hold a license focus on the licensee's proclivity to deal truthfully with the Commission and to comply with our rules and policies. The Commission generally considers non-FCC misconduct only after there is an adjudicated finding of wrongdoing, although the Commission retains discretion to consider such misconduct prior to adjudication if it is so egregious as to shock the conscience. Adjudicated non-FCC misconduct is relevant to a licensee's qualifications if it involves fraud before another government agency, convictions for felonies and certain other crimes, or violations of competition and antitrust laws. The FCC has applied these policies faithfully and will continue to do so.

Questions for Chairman Genachowski:

3. The Congressionally mandated deadline for implementing positive train control (PTC) is fast approaching. Amtrak and other commuter rail agencies across the country have been prioritizing PTC to meet the deadline; however, PTC cannot successfully operate without sufficient dedicated spectrum.
 - a. Are there channels being held in the FCC's spectrum inventory that have not yet been licensed to any person or entity and that could be made available to the rail industry for PTC use? If so, what are the FCC's plans for making these channels available for PTC use?
 - b. The FCC issued a Public Notice in May 2011 seeking comment from freight and passenger railroads, equipment manufacturers, railroad associations, and other interested parties on spectrum issues related to the implementation of positive train control (PTC). A substantial number of rail carriers responded seeking FCC assistance to provide additional spectrum expressly for PTC use. What actions, if any, has the FCC taken to accommodate PTC implementation in response to the request for assistance?

Response:

The Commission recognizes the importance of rail safety and the importance of spectrum as a necessary component of implementing PTC systems as required by the Rail Safety Improvement Act of 2008 (RSIA). The RSIA did not direct the Commission to set aside spectrum for PTC. On May 5, 2011, to implement the PTC provisions of the RSIA, the Commission issued a public notice seeking comment on the spectrum needs of rail carriers. Commission staff has worked with numerous commuter rail carriers to educate them about ways to acquire spectrum pursuant to the Commission's secondary market policies and to otherwise facilitate such transactions. In recent months, secondary market transactions have been consummated for some of the most challenging markets, including Los Angeles and New York City. Commission staff will continue to work with commuter rail carriers to assist them in meeting their obligations under the RSIA.

4. It is my understanding that the FCC is looking into allegations that News Corporation deliberately misled the FCC regarding its application to renew the license of WWOR in New Jersey. When can we expect a finding in this inquiry?

Response

Commission staff is reviewing the record developed as part of the renewal process for WWOR-TV, including the misrepresentation issues alleged against News Corporation, and will consider the allegations of misrepresentation in the context of that review. I cannot predict when the staff review will be completed.

5. The NTIA recently issued a report that raised the possibility of relocating government users to 2025 – 2110 MHz, which is currently used for Electronic News Gathering (ENG) operations. If this spectrum band is used for government users, what will the FCC do to ensure ENG operations are not disrupted?

Response:

NTIA's report estimated that relocating federal users into the 2025-2110 MHz band would cost \$18 billion dollars and take at least 10 years. As a potentially lower-cost, faster alternative to bring spectrum to market, NTIA is investigating the possibility of making spectrum in the 1755-1850 MHz band available through sharing between commercial and federal entities, and the FCC is working with NTIA on that effort. Sharing could obviate the need to relocate federal users into the 2025-2110 ENG band.

Senator Pryor's Questions for the Record: FCC Oversight Hearing Held on May 16, 2012

CVAA (for all)

The 21st Century Communications and Video Accessibility Act (CVAA) was enacted to update the media and communications accessibility requirements and expand access to current and emerging technologies.

I have heard concerns about the population of the statutorily required advisory committees and the resulting recommendations. Consumer and advocacy groups that serve on these committees face technical and legal capacity constraints that many businesses do not.

- *Will you be cognizant of these inherent limitations and keep them in mind as you consider the recommendations put forth by the advisory committees?*

Response:

Yes. I believe the VPAAC and its subcommittees have done great work together and have prepared strong recommendations for the Commission.

It is my understanding that the Commission will soon consider the Advanced Communications Services provisions of the CVAA.

- *How does the Commission plan to ensure that video conferencing services used by consumers who are deaf or hard of hearing are interoperable with each other?*

Response:

Our rules require that Video Relay Services (VRS) and equipment be fully interoperable, ensuring that eligible users – deaf, hard of hearing, deaf-blind, or speech-disabled individuals who communicate in sign language – who obtain VRS video conferencing services and equipment are able to communicate with one another. The Commission has sought comment on how interoperability should work in the broader ACS context, including for users who are deaf or hard of hearing.

Phone Theft (for Chairman Genachowski and Commissioners McDowell and Clyburn)

In March, I sent a letter to Chairman Genachowski expressing my concern at what seems to be an epidemic of cell phone thefts. It is my understanding that technology within the phone could enable a manufacturer or wireless provider to identify a stolen phone and prevent reactivation of service. This has significant consumer privacy implications. I applaud the Commission's recent initiative to mitigate the theft of cell phones but I remain concerned.

- *Would you walk me through the steps that the Commission has taken with regard to cell phone theft, particularly the establishment of the database and how you have addressed the privacy concerns that have been raised?*

Response:

On April 10, 2012, together with Senator Schumer, major city police chiefs, and the wireless industry, I announced new initiatives by wireless carriers to deter theft and secure customer data. The implementation of the initiatives can prevent stolen devices from being used by thieves and safeguard the consumer's private information contained in the smartphone.

- **Implementation of a database to prevent use of stolen smartphones.** Customers can call their participating wireless provider and report their wireless devices stolen; their provider will block that device from being used again. This system will be rolling out globally using common databases across carriers over the next 18 months.
- **Encourage users to lock their phones with passwords.** Smartphone makers will notify and educate users in the most highly visible ways—through messages on the smartphone itself and through “Quick Start” user guides—about how to use passwords to deter theft and protect their data.
- **Educate users on lock/locate/wipe applications.** Wireless providers will directly inform their customers about how to find and use applications that enable customers to lock/locate/and wipe smartphones remotely.
- **Public education campaign on how to protect your smartphone and consumers.** The wireless industry will launch a campaign, with media buys, to educate consumers on how to protect their smartphones and themselves from crime.
- **Progress benchmarks and ongoing dialog.** The wireless industry will publish quarterly updates and submit them to the FCC on progress on these initiatives.

We received the first of the required quarterly compliance updates on June 29, 2012 and all the parties involved in this important initiative have met their obligations to this point. In addition, it appears they will meet their targets for the rest of the year. I am pleased we were able to address this issue in a constructive way with the wireless providers and public safety community so that we can deter theft and protect consumers' private data.

Universal Service Fund Reform (for Chairman Genachowski and Commissioners McDowell and Clyburn)

I am concerned about the impact of Universal Service Fund reform on the continuation of public and private investment in broadband deployment.

- *Would you provide more information about the rationale for the retroactive component of the regression caps?*

Response:

As with all the USF-ICC reforms, the benchmarks only affect support going forward. The actions we have taken were prudent steps to ensure that rate of return companies have the right incentives to invest efficiently. In recognition of business realities and the need for carriers to have time to adjust, the Commission is phasing in changes gradually over 18 months. Additionally, the methodology adopted now takes account of recent investment. Waivers are available for carriers with demonstrated need. The Commission has an open door policy – Commission staff takes meetings or call requests from companies to address any questions, and has made all aspects of the benchmark analysis available for public comment. Interested parties can find a significant amount of data and analysis beyond what is included in the Benchmarks Order at <http://transition.fcc.gov/wcb/iatd/neca.html>.

- *What opportunities are there for carriers to correct data in the regression analysis other than submitting corrections to study area boundaries?*

Response:

The Commission utilized the best available nationwide data to determine the benchmarks, but we also provided a streamlined, expedited process to correct any inaccuracies. So far, the Wireline Competition Bureau has received two petitions to correct data, and both of the petitioners received responses within two weeks of the initial filing. A third petition remains under consideration. The FCC also launched a process to collect a full set of updated data from companies before the benchmarks take full effect. As noted above, Commission staff is ready and willing to meet with carriers regarding their specific issues. To the extent carriers wish to correct other potential non-boundary data errors they are free to do so using the same streamlined waiver process available for updated study area boundaries.

- *Would you explain the Commission's formulation of setting benchmarks for High-Cost Loop Support?*

Response:

The High Cost Loop support mechanism benchmarks compare carriers to other similarly-situated carriers based on a range of criteria. For instance, the benchmarks factor in variables that account for certain cost-related factors, such as population density, soil

type, climate, as well as any recent investment by the company. Benchmark analysis identifies and limits reimbursement for those companies whose costs are higher than 90 out of 100 companies operating under similar conditions – based on the actual cost data, not a hypothetical perfectly operated company. In some cases, carriers spend almost three times as much per customer as carriers located in a nearly identical area.

- *Some contend that regression analysis will change cost recovery revenues from year-to-year which creates uncertainty and may negatively impact investment in rural areas. How will the Commission balance the need to control costs while encouraging network investment in rural areas?*

Response:

Before the Commission unanimously adopted the USF-ICC Transformation Order last year, rural carriers faced significant uncertainty regarding both USF and ICC revenues, which could fluctuate significantly year to year. The benchmarks analysis identifies and limits reimbursement for those companies whose costs are higher than 90 out of 100 companies operating under similar conditions – based on actual cost data, not a hypothetical perfectly operated company. Because the analysis is new to carriers does not mean that it is unpredictable. The original HCLS mechanism was initially unfamiliar, too, but over time companies learned how to operate within the confines of that system. In response to concerns about the timing of changes to the benchmarks, the Wireline Competition Bureau's order earlier this year determined that the initial benchmarks should remain in effect until 2014. In the interim, the Commission will consider whether benchmarks should subsequently be set for multiple years rather than reset every year.

700 MHz Spectrum (for all)

It is my understanding that the Commission has initiated a Notice of Proposed Rulemaking regarding interoperability in the lower 700 MHz band.

- *Does the Commission anticipate the completion of this proceeding before the end of the year?*

Response:

The comment cycle in this proceeding closed on July 16, and staff is engaged in evaluating the record. At this time it would be premature to predict what action the Commission may take and when, but staff is working to address this critical issue.

Low Power Television (for all)

For many years, Class A and Low Power Television Service (LPTV) stations have provided valued local, religious, Spanish language, and other programming. Communities have come to rely on this niche programming that may not otherwise be available.

- *How will the Commission work to ensure the viability of Class A and LPTV during its implementation of the Middle Class Tax Relief and Job Creation Act?*
- *What is your position on mandatory channel sharing for LPTV?*

Response:

I fully appreciate and recognize the news, information and programming that LPTV stations provide to their communities. I have instructed Commission staff to continue to engage with the LPTV community as we work thorough implementation of the Middle Class Tax Relief and Job Creation Act of 2012. As you know, LPTV stations always have been secondary services to full power TV stations, and Congress did not provide additional protections for LPTV stations in the Middle Class Tax Relief and Job Creation Act of 2012.

Questions for the Record from Senator McCaskill

Last year, I raised concerns with the FCC regarding the Universal Service Fund's (USF) Lifeline Program. In response to these concerns, the Commission has taken steps to crack down on waste, fraud and abuse within the program. The recent announcement that 20,500 letters will be sent in Missouri to eliminate duplication was welcome news. The implementation of a database to help detect and prevent duplicates is an important tool, but I remain concerned that further action needs to be taken to address fraud.

- Has the FCC conducted its own investigation into possible fraud occurring within the Lifeline program, and if so what were the findings of that investigation?
- Has the Commission examined the marketing agreements providers are using to advertise Lifeline products to consumers?

Response:

The Commission has taken steps to address waste associated with duplicative payments, beginning in 2010 with increased audits and a referral to the Joint Board. Beginning in June 2011, the Commission began investigating instances of duplicative Lifeline support. As part of the process to resolve duplicates, USAC has identified over 700,000 instances of duplicative support since last year, which is expected to provide over \$50 million in savings to the Fund. On August 13, 2012, USAC issued a Request for Proposal for a vendor to build the National Lifeline Accountability Database, which will improve detection and prevention of duplicative support going forward.

The Commission's overhaul of the Lifeline program requires that providers (1) disclose to Lifeline consumers the requirements for participating in the program and (2) collect annual certifications from consumers that they follow those requirements. Carriers may no longer tell consumers that proof of eligibility is not required for participation in Lifeline.

The Wireline Competition Bureau is reviewing carriers' marketing and advertising material in the course of its review of pending compliance plans.

As required by the Commercial Advertisement Loudness Mitigation (CALM) Act, the FCC published an order last December outlining practices that networks and cable stations must implement by this December. I understand these rules have not yet been published in the Federal Register, and I have heard little about progress since December. Are we on track to see this legislation – strongly supported by consumers – fully implemented by the end of the year?

Response:

Yes. The CALM Act rules were published in the Federal Register on July 9, 2012. Media Bureau staff is reviewing issues raised in a Petition for Reconsideration filed by the National Cable & Telecommunications Association. The rules are on track to be effective on December 13, 2012.

In December, the International Telecommunication Union (ITU) will convene the World Conference on International Telecommunications (WCIT-12) in Dubai to renegotiate the International Telecommunication Regulations. A key topic of discussion is expected to be whether and how to expand it to cover the Internet.

- To what extent is the FCC involved in policy and technical discussions in advance of the ITU meeting?
- What is the view of the Commission on proposals by other nations to move oversight of critical Internet resources, such as naming and numbering authority, to the ITU or other international body?

Response:

I have been very concerned by indications over the past year that some countries would attempt to use the ITU World Conference on International Telecommunications (WCIT) to give the ITU authority over Internet governance, undermining the longstanding multi-stakeholder governance model. While the existing International Telecommunications Regulations (ITRs) have been accepted as a framework for negotiations without any pending proposals related to traditional Internet governance issues like Internet naming and numbering, critical Internet public policy issues will be discussed at the WCIT.

Of particular concern are proposals that would change Internet protocol interconnection and charging mechanisms, as well as limit the ability of companies to manage their traffic by requiring them to provide calling party number identification information so that countries can track where traffic originates. In addition, some countries have proposed adding cybersecurity provisions to the ITRs.

As the U.S. government agency with primary responsibility for implementing the 1988 ITRs, the FCC plays a key role in domestic and international preparations for the WCIT. The FCC is working in the US delegation on WCIT to vigorously oppose any expansion of the ITRs to issues related to Internet governance or proposals to abandon the multi-stakeholder model. The FCC is actively participating in US delegations on WCIT, where we continue to reinforce the bipartisan U.S. Government position to maintain a free and open Internet that is not encumbered by detailed ITU regulations that would jeopardize innovation and the free flow of information. Moreover, we are working closely with the State Department and others to coordinate with like-minded countries to form a strong coalition that can work together to develop a high level, technology neutral treaty and to resist any efforts for ITU regulation where none is needed.

American companies have had an historical advantage when it comes to the Internet because the innovation that has fueled the growth of the Internet started here. Companies were created in an environment where unconstrained Internet access provided them with a platform to succeed. In this way, America had a 'strategic bandwidth advantage' over other countries. It was perhaps inevitable that this advantage would narrow, as broadband speeds have improved around the world. Given that context:

- Is it your view that this 'strategic bandwidth advantage' has led and will continue to lead to job creation and greater innovation?

Response

Robust broadband infrastructure is crucial to enabling innovation and job creation, and to maintaining America's global competitiveness. Over the past few years, the U.S. has regained global leadership in key areas of the broadband economy, including mobile, where we lead in mobile apps and 4G deployment. Since 2009, we have gone from less than 20 percent to more than 80 percent of Americans living in areas with broadband infrastructure capable of delivering 100+ megabits per second, putting us near the top of the world in deployment of high-speed broadband networks. But, in this flat, competitive global economy, we need to keep driving toward faster broadband and universal access.

- There has been bipartisan consensus in this body to encourage deployment and adoption of broadband for the economic and social benefits it brings. How do data caps help or hinder in accomplishing that goal?
- On the surface, usage-based billing makes sense for consumers but I am concerned about the chilling effect data caps could have on future growth of Internet video and other content. How do we ensure fair billing practices for consumers without creating a system that stifles innovation and growth of the Internet?

Response:

The nation faces not only a broadband deployment gap, but also an adoption gap. Nearly 1/3 of Americans – about 100 million people – still haven't adopted broadband in the home.

Getting these Americans online would deliver dramatic benefits to each of these individuals – in the form of access to job listings that are exclusively online, children who can research on the Internet to help with homework, and deals that can save consumers thousands a year.

Getting these 100 million Americans online would have tremendous benefits for our overall economy. Imagine if we could expand the online marketplace by 50% and how much that would do to drive sales for small businesses and make the U.S. a more attractive market for investment.

When it comes to speed and capacity, an environment of abundance, not scarcity, will open the door to new innovation – some we can envision and others that we can't even imagine today.

New business models and new services can be a good thing for consumers by driving efficiency, providing more choices, and improving affordability by offering lower prices per bit. It can also help ensure that lower users aren't subsidizing heavier users.

At the same time, to drive U.S. leadership in the broadband economy, new business models and new services by broadband providers should not come at the expense of competition, including from over-the-top providers, or at the expense of increases in broadband speed and monthly capacity.

I am sure you would acknowledge the FCC's long-standing support of low power television and appreciate the success of low power TV since the FCC created the service in 1982. During this span of 30 years you are no doubt aware that low power TV has developed into an essential source of information and entertainment for many diverse communities across the country. I think two perfect examples of this dynamic would be the audiences who enjoy Spanish-language programming and those who enjoy religious programming. Likewise, LPTV has been the an entry point for small businesses into the broadcast market and today, many LPTV owners are small businessmen who work hard to continue to serve their local communities with news and resources aimed at the community.

- With this in mind, and also considering the likely end to a great deal of low power programming as a result of the repacking, how do you expect that this approaching void in unique programming will be filled with respect to the core missions of diversity and localism?
- I would ask each of the commissioners, will you support rules that allow LPTV to survive after the repack?

Response:

I fully appreciate and recognize the news, information and programming that LPTV stations provide to their communities. I have instructed Commission staff to continue to engage with the LPTV community as we work thorough implementation of the Middle Class Tax Relief and Job Creation Act of 2012. As you know, LPTV stations always have been secondary services to full power TV stations, and Congress did not provide additional protections for LPTV stations in the Middle Class Tax Relief and Job Creation Act of 2012.

Senator Klobuchar
Questions for the Record
Federal Communications Commission Oversight
Senate Commerce Committee
May 16, 2012

For all Commissioners –

As I brought up in the FCC nominations hearing in November, we have a population of television stations currently operating on the northern border of Canada, particularly in Lake of the Woods County. They applied for channel reallocation after the DTV transition but had to wait years to get final approval from the Canadian government and the FCC this January.

- Looking ahead to the future, the need for international cooperation when it comes to spectrum is important to our translator operators on the northern border. Has the Commission begun coordination with our Canadian counterparts as it relates to incentive auction legislation passed in February?

*** (Senator Klobuchar asked this question in Committee and requested written follow up)*

Response:

Since the passage of the incentive auctions legislation in February, Commission staff has met with Industry Canada twice to discuss the specifics of the law. As the Canadians work to finalize their own digital television transition, we both agree that we should maintain open communications to maximize beneficial opportunities in our repacking. The Commission will continue to work closely with our Canadian counterparts to find satisfactory solutions to whatever repacking challenges may occur. Once the Commission releases its Notice of Proposed Rulemaking, the International Bureau, in conjunction with the State Department, will be in a better position to begin more detailed technical coordination discussions with Industry Canada.

For Chairman Genachowski –

I am concerned about the impacts on the RUS loan program. Under the Federal Credit Reform Act, federal agencies are prohibited from making large changes to their loan programs without congressional approval. Due to the apparent impacts of the USF order on RUS loan applicants, it looks like RUS may be facing a situation where they may have to make such changes. This creates even more uncertainty for rural companies.

- Can you please indicate your understanding of the financial implications under the Federal Credit Reform Act to the extent that RUS is required to restructure its

debt portfolio as a result of the USF and intercarrier compensation reforms? Was this understanding factored into the consideration of the reform order?

Response:

We worked closely with RUS throughout this process to understand their portfolio of loans and the potential impact of reforms on those loans, and we continue to do so. The agencies share the same objectives: preserving voice and broadband service where it exists today while extending service to as many of the 19 million Americans without broadband as possible, at the lowest total cost to the American consumer. Existing RUS loans and future USF dollars both represent actual costs to taxpayers and ratepayers; we must work together to protect those scarce resources.

For all Commissioners –

I believe of one of the most impressive programs the FCC operates is the E-rate program supporting communications technology in schools and libraries. Senator Rockefeller and Senator Snowe led the effort in creating a program that truly benefits schools and kids around the country. Minnesota has received a total of \$344 million since the E-rate program started in 1998. This support has enabled schools and libraries across rural Minnesota to have telecommunications and broadband service giving students the ability to enhance their education. I understand that with the increase in demand from schools for broadband support, E-rate program resources are stretched thin, including staff time to review and audit applications.

- Will you commit to keeping the resources for administering the E-rate program targeted at the intended focus of connecting schools and libraries with communication technologies?

Response:

Yes, the Commission's focus is to use the resources of the E-rate program to connect schools and libraries with communication technologies. The Commission has worked to modernize the E-rate program to ensure that America's students have the connectivity required to get an education to compete in the 21st century economy.

Senator Tom Udall

Questions for the Record

FCC Oversight Hearing

Committee on Commerce, Science and Transportation

May 16, 2012

Questions for the Record

To FCC Chairman Julius Genachowski

1. USF Reform and Tribal Communities

Chairman Genachowski, I support reforms to bring the universal service fund into the broadband era. Broadband is a wise infrastructure investment. Restoring American leadership in broadband will help create jobs and provide a platform for economic growth. One of the past failures of USF is on Tribal lands. As you know, Native American communities have the worst telephone connectivity rates in the country. Broadband availability rates are even worse, perhaps just 10 percent of households. These are precisely the areas that can benefit the most from Internet technologies that eliminate geographical distance--whether it is for e-Commerce, distance learning, or telemedicine. So I want to thank you and all the Commissioners for continued attention to the “digital divide” challenge on Tribal lands.

- Could you discuss how USF reforms will better serve Tribal communities that currently face a digital divide when it comes to broadband?
- Given the unique digital divide challenge on Tribal lands, how will USF reforms ensure that telecommunications companies in Tribal areas are able to bring broadband to unserved communities?

Response:

The Commission’s unanimous Order modernizes USF for broadband, and improves accountability and efficiency to ensure maximum impact of funds to extend service in unserved areas, including Tribal lands. For the first time, dedicated funding for mobile voice and broadband service is provided through a two-phase *Mobility Fund* (\$300 million in one-time support for Phase I; \$500 million annually for Phase II).

In addition to the general Mobility Fund Phase I, the Order establishes a separate and complementary *Tribal Mobility Fund Phase I*, providing \$50 million for one-time support for unserved areas with no 3G or 4G service on Tribal lands, as well as a *Tribal Mobility Fund Phase II*, providing as much as \$100 million (out of a total \$500 million of Mobility Fund support) in ongoing annual support. Carriers seeking to serve Tribal lands may participate in both phases of the general Mobility Fund and the Tribal Mobility Fund.

We are also seeking comment on a proposal to provide Tribal governments “priority units” to ensure that Mobility Fund support for Tribal areas best serves Tribal needs.

Waiver petitions from carriers serving Tribal lands will receive priority review. The Order requires the Wireline or Wireless Bureaus to complete review of waiver petitions in these instances within 45 days of the record closing. Waiver applicants serving Tribal lands and insular areas are specifically asked to share “any additional information about the operating conditions, economic conditions, or other reasons warranting relief based on the unique characteristics of those communities,” which FCC will consider when reviewing waiver requests.

In addition, the Order includes unique tribal engagement provisions requiring all carriers serving Tribal lands to meaningfully engage with Tribal governments.

With respect to the Lifeline program, earlier this year the Commission adopted comprehensive reform, which recognizes the unique circumstances faced by Tribal communities. We preserved additional funding for Lifeline subscribers, and maintained the Link-Up program on Tribal lands, which ensures that low-income consumers stay connected, even as we eliminated the program everywhere else in the country. The Lifeline Reform Order also created a broadband pilot program to increase adoption; at least one of these pilot projects will be directed at providing support on Tribal Lands.

2. USF Reform and Tribal Governments

My understanding is that some Tribal Governments have concerns that the FCC waiver process for Tribally-owned telecommunications providers could potentially require disclosure of unrelated Tribal Government financial information.

- Will the Commission require that Tribal Governments provide specific details about their operations in order for a telecommunications provider to receive a waiver?

Response:

The intent of waiver process is to take account of all revenues associated with USF-supported infrastructure, but not unrelated revenues. Accordingly, we will not take such revenues into account and require disclosure of unrelated information.

3. Connect America Fund - Mobility Fund Eligibility

Chairman Genachowski, my understanding is that the vast majority of the Navajo Nation, which encompasses an area the size of West Virginia, will be ineligible for mobility fund support in upcoming auctions because the Commission finds that this area already has 3G service. This would surprise me since many parts of the Navajo Nation still lack cell phone service.

- Could you look into this to see if one of the least served areas of the country could potentially be excluded from mobility fund support in these auctions?
- If there is uncertainty or controversy over whether service exists in these areas, should the Commission's default position be to keep these Tribal lands eligible for the Mobility fund auction?

Response:

For the first Mobility Fund auction, to be held in September 2012, eligible areas are based on the best available public data, which is supplemented by a detailed challenge process. There will be further opportunities for carriers or communities to raise issues with coverage maps prior to any future auctions. With respect to the Navajo Nation, a portion of the Navajo Nation is eligible for the first Mobility Fund Auction: 4,057 eligible census blocks, covering a population of 7,797, an area of 2,111 square miles, and 4,123 qualifying road miles.

4. USF Reform and Impact on Rural Utility Service Loans to Telephone Companies

Chairman Genachowski, rural telephone cooperatives from my state are very concerned about the impact USF reforms will have on their ability to provide service in high cost areas. I am concerned by reports that many rural telephone companies may even have difficulty repaying loans from the Rural Utility Service.

- Can the FCC work more closely with RUS to ensure that changes in USF programs take place in a manner that does not have unintended impacts on outstanding RUS loans?

Response:

Throughout this process, we worked closely with our counterparts at RUS to understand their portfolio of loans and potential impact of reform, and we will continue to do so. The transition will require flexibility by both agencies to address issues and specific cases that will arise. The agencies share the same objectives: extending service to as many of the 19 million Americans without broadband as possible, ensuring that consumers do not lose existing voice and broadband service as reforms proceed, and minimizing the total costs borne by consumers and businesses that pay taxes and pay in to the Universal Service Fund.

5. Cell Phone Bill Shock

Chairman Genachowski, I want to thank you for making cell phone “bill shock” a priority. I introduced legislation, the *Cell Phone Bill Shock Act*, that requires carriers to alerts customers before they reached their monthly limits. This helps consumers avoid unexpected bills in the hundreds and even thousands of dollars. Yet I support the agreement that the FCC announced last October with CTIA, a wireless trade association. Cell phone carriers have agreed to warn customers before they reach monthly usage limits. That is a positive development, not just for consumers but also for innovation, especially as more wireless devices connect to the Internet.

- Will you assure me that you will keep an eye on this agreement and make sure that wireless companies follow through with their commitments?

Response:

Yes, and I thank you for your leadership in Congress on this issue.

The Commission has been at work on the problem of bill shock since 2009 as a part of our Consumer Empowerment Agenda. In 2010, we proposed rules to require that carriers provide alerts to customers when they approach and when they exceed their monthly plan limits, and when they are traveling abroad and are about to incur international roaming charges not covered by their monthly plans. While Commission staff was reviewing the comments on those rules, CTIA approached the FCC with a revised Code of Conduct requiring its carriers to provide the types of alerts the Commission had proposed, and to do so for free and automatically, without any action needed by the customer.

By the Code revisions, which were announced on October 17, 2011, CTIA’s member carriers, which serve 97 percent of U.S. wireless customers, must provide at least two of the four types of alerts by October 17, 2012, and the remainder by April 17, 2013.

To assist consumers in knowing which carriers are providing these alerts, on April 19, 2012, the Commission launched a web portal that tracks each participating carrier’s progress in meeting these commitments. We will update the portal as more carriers start providing the alerts. We are monitoring and working closely with carriers to ensure that commitments are kept.

6. Spectrum Auction

I supported legislation to unleash more spectrum for commercial mobile broadband and public safety broadband uses. But I also know that broadcasting, our first wireless technology, still plays an important role in communities throughout New Mexico.

- As the Commission works to implement voluntary incentive auctions, can you comment on the steps the Commission will take to ensure transparency during the auction process and the viability of local broadcasting after the auctions?

Response:

The amount of spectrum cleared through the incentive auction will depend on the voluntary participation of broadcasters. My colleagues and I are committed to, and will continue to run, a public, transparent process to implement the auction. We are also committed to fully educating broadcasters on the options that are available to them, as well as encouraging their participation in the process. On June 12, 2012, the Commission held a TV Broadcaster Relocation Fund Workshop to focus on the design of the Commission's program to reimburse some broadcasters for the relocation costs they will likely incur as a result of the channel reassignments in connection to repacking as authorized by the Act. While not all broadcasters appear likely to participate in the auction, I expect the auction to present a compelling economic opportunity for many broadcasters. The Commission will reach out to, and work with, all affected parties in a process that is transparent and fair. I expect there will be a healthy and diverse broadcasting industry once the incentive auction is complete.

7. Spectrum Reform and Future of Low Power Television

Given that spectrum is a scarce and valuable resource, our airwaves should be used as efficiently as possible. However, I have heard from low power TV license holders that the Commission sent letters concerning their licenses. Low power TV stations often serve their local communities with niche programming not offered by more traditional TV outlets.

- As the Commission considers how to manage spectrum auctions and potential spectrum "repackaging," will low power TV stations still have the opportunity to serve their local communities?

Response:

I fully appreciate and recognize the news, information, and programming that LPTV stations provide to their audiences. I have instructed Commission staff to continue to work with the LPTV community as we work thorough implementation of the Middle Class Tax Relief and Job Creation Act of 2012. As you know, LPTV stations always have been secondary services to full power TV stations, and Congress did not provide additional protections for LPTV stations in the Middle Class Tax Relief and Job Creation Act of 2012.

8. Making More Spectrum Available for Commercial Use

My understanding is that the Commission is looking into how to make spectrum from the 1.7 GHz band available for commercial mobile broadband use and potentially pair spectrum within that band with other currently available spectrum set to be auctioned.

- How can the Commission work with the Department of Commerce and others to help identify where more spectrum could be made available for commercial use without harming national security, public safety, and other critical government functions?

9. Spectrum Sharing

Chairman Genachowski, you suggested in recent public remarks that “spectrum sharing” is “the most promising way forward” to making more spectrum available for mobile broadband.

- Could you share more about what role spectrum sharing between public and private entities can play as the Commission looks at how to meet growing commercial spectrum needs?

Response (8 and 9):

Through my Mobile Action Plan we are leaving no stone unturned to free up more spectrum, promote more efficient use of spectrum, and explore new ways to manage spectrum. The plan focuses on five main areas: unleashing new spectrum, removing barriers to broadband infrastructure build-out, driving greater efficiency in networks and devices, promoting competition, and empowering consumers.

My goal is to clear spectrum for auction, where appropriate, while also exploring new ideas on sharing spectrum. This should not be an either/or choice because we will likely have to utilize both models to unlock the full value of this scarce natural resource. Meaningful spectrum sharing among government and commercial users can make available valuable spectrum for broadband in the 1.7-GHz band. The Commission is working with the National Telecommunications and Information Administration (NTIA) to test LTE sharing in the 1755-1780 MHz band, which could allow us to pair it with existing (AWS-3) mobile broadband spectrum at 2155-2180 MHz to significantly enhance the value of AWS-3 prior to auctioning it as required by February 2015. Also, small cells can significantly increase the density of network deployment and the efficiency of spectrum use. The Commission is working with NTIA on enabling small cells in the 3.5-GHz band, which could free up 100 MHz of spectrum for wireless broadband, and we plan to pursue a proposal later this year to make this spectrum available for mobile broadband.

10. E-Rate and Digital Literacy Efforts

The e-Rate initiative helps some of the poorest schools in New Mexico enhance students' learning experiences with broadband and digital learning technologies that would otherwise be unaffordable. Unfortunately, e-Rate does not fully meet the needs of school districts across New Mexico and throughout the country. I am therefore concerned that e-Rate funding may be diverted to other digital literacy efforts. During the hearing, you assured Senator Rockefeller that e-Rate would be held harmless.

- Could you also assure me that e-Rate will not be harmed as the FCC considers innovative new ways to improve digital literacy?

Response: Yes.

Senator Mark R. Warner
Questions for the Record

Senator Mark Warner
Senate Committee on Commerce, Science, & Transportation
Full Committee Hearing Questions
Oversight of the Federal Communications Commission
May 16, 2012

Question for all Commissioners:

1. Two years ago, the President announced his intention to free up 500 MHz of spectrum for wireless broadband use. This initiative is even more necessary today due to exploding data usage by consumers, which is leading to faster-than-expected capacity constraints across the country.
 - a. Are you satisfied with the current pace of the identification and reallocation of spectrum to commercial broadband use? If not, why not?
 - b. Do you have additional suggestions about how Congress or the federal government could accelerate the process?

Response:

When I arrived at the Commission in 2009, demand for spectrum was skyrocketing but the spectrum pipeline was empty, and the agency had no comprehensive spectrum strategy. Actions taken in the 1990s led to two important auctions in 2006 and 2008 – the AWS band and the 700 MHz band, but just as the mobile revolution was accelerating, no efforts had been made ensure that there was sufficient spectrum in the pipeline, even though historically it has taken approximately a decade to bring spectrum to market.

Throughout my time at the Commission, increasing the availability of spectrum for broadband has been one of my highest priorities because of its critical importance to U.S. leadership in technological innovation, growing our economy, and maintaining our global competitiveness. Early on, I asked Commission staff to develop options for freeing up spectrum, faster, and in new innovative ways. I also oversaw the development of the first National Broadband Plan, which set audacious targets for freeing up spectrum: 300 MHz in 5 years, and 500 MHz in 10 years. That plan also introduced the idea of incentive auctions as a tool to help meet our nation’s spectrum needs. I am pleased that Congress granted the FCC that authority earlier this year, and I recently initiated a formal rulemaking process to set the rules for that auction.

The Commission has continued to work with all stakeholders to free up additional spectrum for wireless broadband use, and has made significant progress. My Mobile Action Plan contemplates a “no-stone-left-unturned” approach that includes freeing up

more spectrum, but also making more efficient use of spectrum and envisioning new ways to manage spectrum. A few examples of our successes follow:

- Moving forward on new auctions — up to 65 MHz in the next three years, in addition to the significant amount of spectrum that will be freed up by incentive auctions;
- Working to remove regulatory barriers to enable up to 40 megahertz of Mobile Satellite Services (MSS) spectrum to be used for land-based mobile broadband;
- Paving the way for innovative use of small cells in the 3.5 GHz band, which could free up 100 MHz of spectrum for wireless broadband;
- Working with the National Telecommunications and Information Administration (NTIA) and industry to test LTE sharing in the 1755-1780 MHz band, which could allow us to pair it with existing AWS-3 mobile broadband spectrum at 2155-2180 MHz to enhance its value and usefulness prior to auctioning AWS-3 as required within the next three years;
- Enabling white spaces in the television broadcast band to be used on an unlicensed basis;
- Working to unleash at least 25 megahertz of spectrum in the Wireless Communications Services (WCS) band by removing technical rules that had impeded broadband use;
- Revamping our wireless backhaul rules to lower costs and reflect advances in technology; and
- Changing technical rules to accelerate the rollout of LTE in the 800 MHz band.

If and when the need arises for Congress to potentially provide more tools and avenues for accelerating the process I look forward to working with you and your colleagues to help reach the ultimate goal.

2. The USF reforms--which I supported--seek to deploy more mobile and fixed broadband services to rural and underserved America. At the same time, mobile data forecasts indicate that the volume of data traffic on mobile service provider networks will increase 16 times from 2011 to 2016. Rural Virginia wants to be part of the broadband economy, however, high quality broadband service just hasn't been available where consumers and rural economic development needs demand it.

- a. What would happen to the pace of rural broadband deployment if Universal Service Fund Reforms are blocked or slowed down at this time? Why is it important to move forward in terms of leveraging existing federal funding to deploy more broadband to rural and underserved America?

Response:

When I became Chairman, the Universal Service Fund was backward-looking, not forward-looking. The Fund was not focused on extending broadband service and had become wasteful and inefficient, supporting multiple carriers in some areas, supporting carriers even in areas where an unsubsidized competitor also provides service, and often rewarding inefficient spending.

The Commission's unanimous landmark reforms to the program adopted late last year are designed to bring broadband to the approximately 19 million unserved consumers throughout America. The reforms put the nation on the path to universal broadband and advanced mobile coverage, while maintaining support for existing rural broadband and voice service. By cutting waste, incentivizing efficiency, and setting an annual budget of \$4.5 billion for the program for the first time ever, the reforms control the size of the fund – and therefore the burden on consumers and businesses that pay for the program.

In order to extend broadband to unserved rural communities while ensuring fiscal responsibility, it is important to keep moving forward with implementation of the reforms. If we do not move forward, we will be left with pervasive inefficiencies of the old system, and will fail to connect all Americans to broadband and the enormously important economic, educational, health care, and other benefits that broadband brings.

b. I sent a letter to the FCC in 2011 arguing that although 4 Mbps download/ 1 Mbps upload may be adequate for now, this standard should not be considered an acceptable level of service in the future. How important is it to you to see that the acceptable level of broadband service advances over time?

Response:

It is critical that America's broadband infrastructure keep pace with changing demands and technology, as the Commission recently underscored in this year's Broadband Progress Report, which emphasized the vital importance of increasing the speed and capacity of broadband networks throughout the country. The Connect America Fund Order also recognized that broadband performance must improve over time. Fiscal responsibility requires that the Commission use limited resources carefully, and it is vital that we get basic broadband capabilities to all Americans as quickly as possible. That means funding at least 4 Mbps download and 1 Mbps upload speeds in the immediate term, while setting expectations that broadband speeds must improve over time.

2. The Commission has a number of highly anticipated open Notices of Proposed Rulemaking. Now that the Commission has five highly capable commissioners, how soon do you expect to reach decisions on key issues? I would encourage you to reach decisions on important matters as soon as possible because the delay of longstanding rulemakings has caused some frustration.

Response:

The Commission has made extensive progress in clearing items and reforming outdated programs. We have eliminated 222 obsolete regulations and have modified many others to reduce burdens. Over the past six months we have made significant reductions in our backlog, including a more than 20 percent reduction in items pending more than six months in the Wireline Bureau, and an across the board 20 percent reduction in license applications and renewals pending more than six months. 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. Better than 95% of all license transfer applications received since I became Chairman have been acted on within the 180-day period. We have also cut the average number of days required to review routine wireless transactions in 2012 by more than half.

I have also made modifications of the Commission's "must vote" rules on pending items. The must-vote rule is designed to ensure that the Commission releases items in a timely fashion once it has secured the votes of a majority of Commissioners (currently three votes). Previously there was virtually no time limit and when votes would occur, extensions were granted liberally and virtually indefinitely. I believe this improvement has served the Commission well and has led to faster approval of pending items. I will continue to work to find ways to make the Commission more efficient in reaching decisions.

3. Looking back at FCC data stretching to 2005, the number of full-time equivalents in the Office of Engineering and Technology appears to have dropped from 116 to 81. Do you believe this reduction is the source of the back-log? Why has this office, which would seem to be at the heart of the Commission's work, have declined over time when other bureaus or offices have grown or at least stayed flat?

Response:

I have placed an emphasis on recruiting and maintaining engineers at the FCC in order to ensure that we have the expertise necessary to carry out our core technical mission. We continually monitor and balance the number of full time engineers that we require based on the work that is before the Commission.

It is important to note that the FCC's overall FTE numbers are currently at their lowest levels in more than 15 years, and the number of engineers as well as general staff in each bureau is similarly reflected in this overall decrease. The number of engineers as a percentage of the FCC overall workforce historically has not changed significantly.

Engineers are deployed throughout the Commission, not just in the Office of Engineering and Technology. While the number of staff in the Office of Engineering and Technology has been reduced, this is large measure is due to the relocation of staff and functions to the Public Safety and Homeland Security Bureau that was created a few years ago. OET has recently hired top-notch engineers in recent years and has been authorized to hire

additional engineers to meet agency priorities such as spectrum management and incentive auctions. Nevertheless, we do not expect the FY 2013 numbers to differ significantly from the FY 2012 numbers. A chart showing the number of engineers at the FCC over the last four years is below.

In addition, I have established an Engineering Work Force to assess the overall engineering resources of the agency and make recommendations as to how we can strengthen our engineering resources and make the most effective use of the resources that we have. The Engineering Task Force is considering a number of recommendations, including how we can improve our recruitment and hiring and that we reestablish our Engineer in Training program.

FCC Engineers as of End of FY 12				
Bureau	FY09	FY10	FY11	FY12 (5/5/12)
EB	82	85	86	82
IB	34	35	34	31
MB	49	48	46	46
OET	49	47	50	49
PSHSB	21	21	19	21
WCB	4	4	3	3
WTB	30	30	30	30
Total	269	270	268	262

Senator Begich Opening Statement:

Chairman Genachowski, I want to thank you for working with me during the FCC's recent efforts to reform the Universal Service Fund. I understand the need for efficiencies, and overall support the notion of USF reform. I also understand the FCC's efforts to work within a reasonable budget. However, the reality is that given Alaska's geography, distance from the lower '48, and the very remote locations of small rural communities, all of whom must be connected to 'the grid' via "middle-mile" terrestrial, satellite or undersea fiber circuits, means that Alaska is very different. Our distances are greater, our population is smaller, and our costs are much higher, particularly as it relates to the very high cost of middle-mile circuits for broadband.

QFR's

Mr. Chairman:

I know you saw a small corner of Alaska last year, thank you for coming and we hope to host you and members of your staff again this year. However, I still feel the need to remind the Commission of the extremely remote and insular areas in Alaska. Some Alaskan communities, including the entire island of Adak are on the brink of disaster because of the sever USF funding cuts established in your reform order.

According to the National Broadband Plan, there were to be no flash-cuts in universal service reform.

*Just yesterday folks from the **Adak** Telephone Utility reported that their wireless leg of the company saw a reduction in USF support of 84 percent from December 2011 to January 2012. This sudden slash in funding has put the critical wireless service in jeopardy. Without the wireless leg the entire utility goes under, and the island goes dark.*

Without a waiver, Adak will be out of business by the end of the year and it will default on RUS loans, which were granted in part on the FCC's determination of USF support available at certain levels.

Mr. Chairman, you and your staff often point to the waiver process as a safety net for rural companies disproportionately impacted by recent changes in high cost support. The waiver process is nearly as problematic as the underlying regulation given the substantial cost and investment of human resources required just to apply.

- *Wouldn't public policy be better served is the FCC granted smaller companies (under 50,000 lines) a waiver from the filing costs as well as establishing a hold harmless policy whereby companies seeing their high cost support, cut by more than 10% can seek a waiver and have the process automatically delayed for a period of time to investigate and ease the transition?*

Response:

There are approximately 800 rate-of-return carriers that receive USF support, and thus far the Commission has received fewer than ten waiver requests. Of those, one has been withdrawn and two were granted some relief. Staff is diligently reviewing the submitted information and the public record for the remaining requests and will make final decisions as expeditiously as possible.

In response to carriers' requests for specific guidance on the waiver process, the *USF/ICC Transformation Order* laid out criteria to make it easier for companies to understand the information needed to evaluate a claim that changes in USF support would lead to loss of service for consumers. Most of the information requested, such as key financial data and basic information about cost of service, should be readily available to carriers. While some carriers may choose to hire outside experts to assist them, there is no requirement to do so. We recommend companies that are considering applying for a waiver to contact bureau staff before filing. Each company's situation is different and we can advise on which information is likely to be most important in evaluating their individual case. For carriers receiving millions of dollars annually in USF support, who have costs much higher than their peers, some one-time burdens to enable Commission staff to conduct a meaningful review of their finances is not unreasonable.

In the case of Adak, specifically, the company receives \$1,482.99 per line each month, or nearly 6 times the overall \$250 per line cap set unanimously by the Commission in the USF order. Staff has requested additional information from the company to address issues regarding affiliate payments and executive compensation, for example. Our obligation is to review these issues carefully to ensure consumers and small businesses paying into the fund are protected.

While staff investigates, the Bureau provided interim support for Windy City, Adak's wireless affiliate. Although this comes at a significant cost to the consumers and businesses that pay into the fund, staff concluded it was appropriate to ensure they had time to fully evaluate Adak's financial situation before making a final decision.

Entire panel

I understand the Commission desire to establish capital expense and operating expense limits for rural rate of return carriers. And, whether I agree or not, I understand that your staff's recent order establishing what is called a "regression analysis" to limit expenses puts a limit on most small companies at their current level of capital and operating expenses. Thank you for revisiting the formula recently, however there are still some companies that will be severely impacted by reductions to be implemented on July 1. I understand that your staff is well aware that the model contains data errors and other possible analytic flaws.

- Since your staff admits that these flaws exist, why doesn't the FCC limit the July 1 impact to the proposed limitation of all companies to their current level of expenses instead of implementing the reduction on a few when the reductions

may be based on data errors and flaws. I know that the order limits the initial level of the impact and transitions in the impact, but why implement this reduction on a few until you know that you have it right?

Response:

The Commission provided a streamlined, expedited process to correct any inaccuracies in the data at issue. So far, the Wireline Competition Bureau has received two petitions to correct data, and both of the petitioners received responses within two weeks of the initial filing. A third petition remains under consideration. The FCC also launched a process to collect a full set of updated data from companies before the benchmarks take full effect.

Even as the Commission continues to make necessary adjustments, in order to extend broadband to unserved rural communities while ensuring fiscal responsibility it is critical to keep moving forward with implementation of reform. As it does so, the Commission will continue to run a fair, open process in which the valid concerns of stakeholders are addressed – working closely with affected carriers to ensure that residents of the nation’s rural and high-cost areas receive the quality voice and broadband services that all Americans need.

Mr. Chairman

The FCC has issued a Further Notice of rulemaking that proposes yet more changes to USF support for smaller carriers.

- *As was suggested in a letter I co-led with Senator Thune in April, which was also signed by 17 others Senators, with all the drastic changes made in last year’s USF reform order, don’t you think it’s time to back off the Further Notice and let the industry, lenders, investors and consumers adjust to the reforms and evaluate their impact on rural communities and providers?*
- *I understand that USF caps will change every year. If that’s the case, how can a company plan for longer-term investments?*
- *How can lenders know what the caps will be in determining whether to extend credit?*
- *Do you think it’s reasonable to ask companies to file 5-year network build-out plans as the FCC’s new rules do when the “budget” your new caps set for network build-out will change each year?*

Response:

In recognition of business realities and the need for carriers to have time to adjust, the Order allowed for reasonable transition periods, gradually phasing in changes over 18 months. I believe its important to keep moving forward with implementation of these once-in-a generation reforms and not roll back the progress that has been made. In order to extend broadband to unserved rural communities while ensuring fiscal responsibility, it

is important to keep moving forward with implementation of the reforms. If we do not move forward, we are left with inefficiencies of old system, and will not be able to close the gaps to ensure that residents of the nation's rural and high-cost areas receive the quality voice and broadband services that all Americans need.

The Order took steps to improve the high-cost loop support (HCLS) mechanism, one of the principal sources of USF funding for rate-of-return carriers. The High Cost Loop support mechanism caps compare carriers to other similarly-situated providers based on a range of criteria. Most of the independent variables change little each year – climate, soil type and the like change only slowly if at all. Those variables that do change, such as the percentage of underappreciated plant and line count, are in the control of, or at least known to, each provider. Benchmark analysis identifies and caps only those companies whose costs are higher than 90 out of 100 companies operating under similar conditions – based on the actual cost data, not a hypothetical perfectly operated company, and only affect support going forward. The addition of these variables made the methodology more accurate and equitable for all carriers. The Bureau does not intend, and the mechanism is not designed to reduce support dramatically each year.

Mr. Chairman

The very high cost of providing broadband services in Alaska is directly related to the very high cost of "middle mile" terrestrial, satellite and undersea fiber circuits. The middle mile circuits are necessary to connect small rural Alaska communities to the nationwide broadband system. In rural Alaska these middle mile circuits can cost 20 times or more than the same circuit in an urban area. So:

- How will the FCC ensure that broadband continues to be deployed in rural Alaska ---- at affordable rates comparable to urban rates --- when the FCC Connect America Fund order fails to contain any mechanism for dealing with Alaska's extraordinarily high middle mile costs?
- Isn't the goal of the national broadband plan to ensure rural broadband customers receive broadband service at rates comparable to urban areas?
- How can you ensure that rural and remote areas that are genuinely high cost, such as Hawaii and Alaska, receive ongoing sufficient, stable and sustainable support necessary to build and operate mobile broadband networks, particularly if you use a nationwide reverse auction to distribute support?

Response:

The *USF/ICC Transformation Order* took several steps to ensure that rural and remote areas that are genuinely high cost, such as Hawaii and Alaska, receive the ongoing sufficient, stable, and sustainable support necessary to build and operate fixed and mobile broadband networks. For example, by including lands in Alaska and Hawaii within the Tribal definition in the Order, Alaska and the Hawaiian Homelands are eligible for the *Tribal Mobility Fund Phase I* (providing \$50 million for one-time support for unserved areas (no 3G or 4G) on Tribal lands) and the *Tribal Mobility Fund Phase II* (providing as much as \$100 million (out of a total \$500 million) in annual support for Tribal lands). Alaska and the Hawaiian Homelands are also eligible for support in the general Mobility Fund Phase I and II.

In addition to establishing the Tribal Mobility Fund, the *USF/ICC Transformation Order* provides special relief for Alaska wireless carriers with respect to the transition away from the legacy funding mechanism for wireless carriers. While all other wireless carriers are immediately subject to a five-year phase down in support under the old rules as we ramp up the Mobility Fund, we delay the beginning of the five-year transition period for two years for remote areas of Alaska (areas outside Anchorage, Juneau, and Fairbanks). Over 50 remote communities in Alaska have no access to mobile voice service today, and many remote Alaskan communities have access to only 2G. Therefore, the Order concludes that carriers serving remote parts of Alaska, including Alaska Native villages, will have a slower transition path during the national transition to the Mobility Fund.

Regarding middle mile costs, we have sought comment on several proposals to explicitly include middle mile costs in various programs within the Connect America Fund. Those proposals remain under consideration. In providing funding for all rural areas, including Alaska, we have to ensure that all Americans are able to take advantage of the benefits of broadband while also protecting consumers and small businesses that pay into the Fund. In addition, recognizing the reliance on lower bandwidth satellite backhaul in many areas of Alaska, for areas with no terrestrial backhaul options, the broadband public interest obligations have been relaxed. Rather than being required to provide broadband speeds of 4Mbps downstream and 1 Mbps upstream, fixed broadband providers compelled to use satellite backhaul need only provide service of 1 Mbps downstream and 256 kbps upstream to receive USF support. This is yet another example of the Order taking into consideration Alaska's unique circumstances.

It appears highly likely that as a result of the November USF/ICC order many rural carriers will lose revenues – both USF support and from elimination of crucial intercarrier compensation. Is that correct?

Alaska, like 22 other States, has a complimentary State level universal service program. The Alaska state fund disburses over \$15 million to Alaskan carriers each year. Do you anticipate these State funds will have to expand to cover revenue lost from the reforms you are implementing? And if so, have you calculated how much these State funds will need to grow?

Response:

While the vast majority of carriers see an increase of support as a result of reform, some carriers will see reductions phased in over a period of years as a result of corporate operations expenses that are in excess of similarly situated carriers, lower than average rates, and other factors. As carriers adjust to our targeted reforms that are designed to promote broadband deployment in a fiscally responsible way, we expect that they will make changes in their operations to adjust to any potential support reductions before seeking additional federal or state universal service funding – which must ultimately be paid for by consumers and small businesses.

As a general matter, the Commission supports the efforts of many states who have established state funds to assist in the deployment of broadband-capable networks as the statute contemplates. In many instances state USF funds, like the federal USF fund, impose a burden on consumers and small businesses and are trying to balance these concerns as they set a budget for their funds. Federal and state funds working together to meet consumer needs is the essence of the federal-state partnership envisioned by Congress in the universal service provisions of the 1996 Act. It is possible that some states will modify their state universal service funds in response to the FCC's recent reforms, but we cannot predict what individual states will do.

Mr. Chairman

Would you agree the FCC's November universal service and intercarrier compensation order is the most major reform of these programs since the 1996 Act?

Why then didn't you, as the chair, use the process established by Congress and refer issues to the Federal-State Joint Board on Universal service?

Congressional intent is clear. The joint board process was created for a reason yet it was not used. Why is that? Why didn't you follow Congressional intent?

Response:

Section 254 (c)(2) of the Communications Act states that the "Joint Board may, from time to time, recommend to the Commission modifications in the definition of the services that are supported by Federal universal service support mechanisms."¹ The Commission instituted a special comment cycle for State Members of the Federal-State Joint Board on Universal Service to seek specific input regarding the proposals in the USF/ICC Notice of Proposed Rulemaking. Many of the policy innovations the Commission adopted in the USF/ICC Transformation Order arose from Joint Board recommendations, including, among others, determining that USF support be directed where possible to networks that provide advanced services, as well as voice services; establishing a budget for the high cost program of \$4.5 billion; and the creating a separate

¹ 47 U.S.C. § 254(c)(2).

Mobility Fund . We will continue our ongoing dialogue with the State Members of the Joint Board.

Entire panel

The E-Rate program has always meant a great deal to the State of Alaska, ensuring that the children and educators living and working in our state's most remote towns and villages have access to the Internet and distance learning and professional development courses that are otherwise unavailable to them locally.

Let me quote from comments filed with the FCC last week by the Superintendent of the Dillingham City School District: As a small, rural school district in Alaska that has high poverty, low socio-economic, and predominantly native Alaskan population (Yupik), "I want to thank the FCC for our current level of E-rate funding. We are an "off the road" community, meaning the only way in and out is by air, dog sled, snow machine, or boat. We just recently acquired access to high-speed fiber Internet via GCI Corporation extending this service to rural, remote areas of Alaska. The cost for this more than doubled our annual rate and without the current E-rate support we could not afford this service."

- Is there a better way to administer the digital literacy program without damaging E-rate processing?

Response:

The E-Rate program has achieved remarkable success -- 97 percent of American schools and nearly all public libraries now have basic Internet access. I supported the needed improvements to upgrade and modernize the E-rate program to ensure that America's students can keep up with the innovative high-tech tools that are now essential for a world-class education and to compete in the 21st Century economy. The FCC's 2010 E-rate Order makes it easier for schools and libraries to get the highest speeds for the lowest prices by increasing their options for broadband providers and streamlining the application process for educators and librarians.

I can assure you that I will not support any action that will potentially damage this vital program. The Commission's goal is to provide the important benefits of the E-rate program to eligible schools and libraries protect the integrity of the program and investigate potential waste, fraud and abuse.

Entire panel

Also wish to highlight the importance of keeping intact reliable source of communications to relay emergency and lifesaving information to those areas that lack reliable cellular or internet service.

It is imperative that rural communities continue to have reliable sources of communications in cases of emergency and lifesaving situations.

Can the Commission comment on ways to improve the distribution of emergency alert information?

The Commission has improved the distribution of Emergency Alert System (EAS) alerts by requiring that EAS Participants (e.g., broadcast stations) have the capability to receive EAS alerts formatted in the Common Alerting Protocol (CAP). CAP allows EAS Participants to receive EAS alerts directly from the alert originator (e.g., the Federal Emergency Management Agency, National Weather Service, state and local governments). CAP alerts also have the potential to provide geographically targeted alerts that can include rich content such as streaming video and multilingual alerts.

Last year, the Commission also conducted the first nationwide test of the EAS. This test allowed the Commission and FEMA to test each link within the EAS cascade architecture. The test showed that the cascade architecture was basically sound, but that there are areas of the current system that need improvement. We will continue to work with FEMA and the EAS Participants to address the weaknesses so that the system will work as planned.

The due diligence work done day in and day out by local broadcasters will be lost if constituents can't receive it. How does the FCC intend to improve this?

The Commission, Federal Emergency Management Agency (FEMA) and other federal agencies work together to assist broadcasters and other communications services during emergencies, particularly those involving severe weather. One tool the Commission utilizes is the Disaster Information Reporting System (DIRS)—this is a voluntary web-based system where broadcasters and providers inform the FCC about their operating status following a major disaster.

In the most recent storm – Hurricane Isaac – the Commission began outreach and coordination with agencies and broadcasters in the days leading up to the storm. The FCC coordinated with FEMA and deployed teams to conduct safety scans in advance of the storm's arrival to coastal states. DIRS was instrumental in providing the Commission with information about the status of communication services throughout the storm. In addition, the coordinated efforts and information received allowed Commission and FEMA to provide an emergency supply of fuel to keep generators running at New Orleans Spanish-language TV and radio stations so that they could stay on the air as the storm came through the region.



Office of the Director

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

November 16, 2012

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

Dear Chairman Walden:

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

Sincerely,


Greg Guice
Director
Office of Legislative Affairs

Enclosure

The Honorable Greg Walden

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Honorable Lee Terry

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

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

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

-Can you please explain the enforcement process?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

-Would legislation in this area be helpful?

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

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

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

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

-Who is responsible for verifying that customers qualify?

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

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

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

The Honorable Cliff Stearns

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

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

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

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

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

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

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

The Honorable Mike Rogers

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

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

The Honorable Marsha Blackburn

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

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

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

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

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

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

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

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

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

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

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

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

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

The Honorable Brian Bilbray

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

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

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

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

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

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

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

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

The Honorable Steve Scalise

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

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

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

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

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

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

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

The Honorable Bob Latta

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

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

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

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

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

Response: Over the past four years, the U.S. has regained global leadership in mobile infrastructure and innovation – becoming the first country in the world to deploy the next generation of wireless broadband networks (4G LTE) at scale, and leading the world in the development of smartphone and tablet operating systems and apps. Maintaining U.S. leadership in mobile requires making more licensed and unlicensed spectrum available for broadband, and there is no higher priority at the FCC. The Commission is executing on its Mobile Action Plan, a comprehensive, “all of the above” strategy to make more spectrum available for broadband. Key elements include:

- **Traditional auctions.** We are on track to auction 75 MHz of licensed Advanced Wireless Service spectrum – essential for 4G LTE service – by 2015. This includes an auction of shared rights to the 1755-1780 MHz band, which could be paired with the 2155-2180 MHz band already in inventory to extend the valuable AWS band by 50 MHz. We expect the first of these auctions – of the AWS-2 H-block – will happen in 2013.
- **Removing regulatory barriers to flexible spectrum use.** Later this year, we will finish removing outdated rules and restrictions on a total of 70 MHz of spectrum.

This includes 40 megahertz of mobile satellite spectrum that I expect the Commission will repurpose for land-based mobile use, and 30 megahertz the Commission recently freed up in the long-troubled Wireless Communications Service band.

- **Clearing new bands for flexible broadband use.** On September 28, the Commission launched a proceeding to implement an incentive auction to repurpose for mobile broadband valuable spectrum in the broadcast television band -- the 600 MHz band, just below the 700 MHz band now being used for 4G LTE. We expect to hold the world's first incentive auction in 2014. There are also significant opportunities to clear and reallocate underutilized government spectrum for commercial use.
- **Dynamic sharing.** In 2010 the Commission created a new spectrum sharing paradigm by allowing unlicensed devices to access valuable unused spectrum in between broadcast TV channels -- known as "white spaces." This action freed up the most new low-band unlicensed spectrum in 25 years -- at least several 6 MHz channels in most major markets and more than 100 megahertz in many parts of the country. The FCC also developed an idea to use database technology to enable sharing between commercial broadband and military radar systems. In a major report this summer, the President's Council of Advisors on Science and Technology, or PCAST, recommended doing this in the 3.5 GHz band, which is virtually unused in the U.S. By year's end, I intend to launch a formal proceeding to enable commercial use of 100 MHz of spectrum in this band.

4. As you may recall, over the past year, we have corresponded about the issue of call completion in rural areas. I began hearing of this issue in April 2011 and the problem only exacerbated in my rural, northern Ohio district into the summer and fall. Local exchange carriers were reporting frequent incidences of customers- individuals and small businesses - not receiving phone calls. Your attention to this serious matter is greatly appreciated, and I was encouraged by the establishment of the FCC's Rural Call Completion Task Force in October 2011 which was tasked with examining the problem of phone calls being terminated in rural areas. While I am pleased to have heard from one company in my district that they have experienced positive developments in regard to call completion, I am concerned with the overall findings of an industry call completion test project, which found that rural consumers continue to encounter significant problems receiving calls. Could you provide me with an update on the issue and the Rural Call Completion Task Force?

Response: The consequences of call completion and service quality problems can be dire, impacting families, businesses, and public safety. I am committed to ensuring reliable telephone service in rural America. We're taking action in this area on multiple fronts, including ongoing investigations by our Enforcement Bureau. The FCC's Rural Call Completion Task Force has established a dedicated process for rural providers to alert the Commission on a real-time basis about call completion problems. In addition, a new website (<http://xrl.us/bm8fke>) focuses on the rural call completion problem and instructs consumers on how to file complaints with the Commission. Many rural telephone customers and

carriers have taken advantage of these new resources to report problems. The Commission also is working with rural carrier associations to identify the geographic areas and the specific providers most affected by call completion problems. Information provided through these sources is assisting the FCC in its investigations and has aided us in swiftly resolving specific problems. We continue to work to solve the problem on an industry-wide level. The Declaratory Ruling that the Commission's Wireline Competition Bureau issued earlier this year reminds carriers of their responsibilities and potential liability if they engage in, or use underlying providers that engage in, practices prohibited by the Communications Act or Commission rules.

5. There are concerns that some broadcasters may choose to exit the television business out of fear of a possible harm to their signal. This fear may be ill-founded. What steps will you take to ensure that broadcasters can feel confident that these incentive auctions will not diminish the quality of their signals? Will you ensure that broadcast stations have sufficient time to review auction rules and expected impact of the auction before commencing the auction process? On the back end, will the FCC release repacking and channel reassignment proposals for consideration before implementation?

6. While I'm aware that the incentive auction legislation we passed includes some protections for television stations that do not participate in the auctions, these stations may be repacked involuntarily. I'm wondering what kind of notice you'll be giving to those broadcasters, and whether they will have the opportunity to review the repacking plan prior to its implementation?

Response (5 and 6): Congress provided protections to broadcasters by directing the Commission to make all reasonable efforts to preserve the coverage area and population served of each broadcast television licensee. The Commission will follow all statutory mandates, including with respect to repacking. The Commission released a Notice of Proposed Rulemaking (NPRM) on October 2, 2012 seeking comment on detailed proposals to implement our incentive auction authority. Initial comments are due December 21. All parties have the opportunity to review and comment on the Commission's proposals, and we encourage them to do so.

7. How many competitive carriers are operating in Ohio?

8. How many of the competitive carriers certificated in Ohio responded to the FCC's data collection efforts for special access?

9. I understand that the Office of Management and Budget has set up 366 Metropolitan Statistical Areas (referred to as "MSAs") and that the MSA for my district is the Toledo MSA.

10. On September 19, 2011, the FCC issued a public notice seeking information about 25 MSAs. The FCC's public notice sought information for three MSAs located in Ohio. Unfortunately, the FCC did not seek to collect data about the market in the Toledo MSA.

11. Does the FCC have any plans to study the market for special access services in the Toledo MSA?

12. Why did the FCC only pick 25 MSAs out of the 366 MSAs to study in this proceeding?
13. Why did the FCC decide to overlook the market in the Toledo MSA?
14. Does the FCC have any plans to study the market for special access services in the Toledo MSA?
15. Did any responses provide data and information about market conditions in the Toledo MSA for 2011?
16. To what extent are wireless carriers operating in the Toledo MSA using Gigabit Ethernet to provide backhaul for their cell sites?
17. Does the FCC have any maps of the competitive carriers' service area territories for special access services in the Toledo MSA?
18. What is the range of prices, terms, and conditions competitive carriers offer customers for special access services in the Toledo MSA?
19. Can you follow-up with an overview description of these prices, terms, and conditions for the record?

Response (7-19): The Public Utilities Commission of Ohio identifies 154 competitive LECs certificated to provide service in Ohio. Twenty-six competitive LECs certificated in Ohio (or one of their affiliates) provided data in response to our first voluntary data request. The voluntary data requests did not include the Toledo MSA; thus, the Commission does not have detailed data or maps for Toledo. The comprehensive special access data collection order I circulated to my colleagues in early October would collect data across all MSAs, including the Toledo MSA. Those data would allow us to examine the special access market in the Toledo MSA.

20. With the stipulation that I don't think there's anyone either side of this Committee who would defend the practice of "cramming," I understand that the Commission is considering extending its anti "cramming" rules to wireless in spite of the fact that the last time the FCC's own data shows there were any complaints about this was in 2002, a full decade ago. Given the lack of evidence in the Commission's own data, is it really necessary to take this step?

Response: In 2012, the Commission has already received almost 900 complaints of wireless cramming, more than in the previous two years combined. Wireless complaints now make up over 60 percent of the cramming complaints we receive in an average month. Furthermore, various outside sources – including some state public utility commissions – have provided additional data showing that wireless cramming complaints are on the rise. Our Further Notice of Proposed Rulemaking sought to obtain information on the scope of wireless complaints. Commission staff is reviewing the record developed in the cramming proceeding.

The Honorable Adam Kinzinger

1. After the completion of the DTV transition in 2009, WLS, the local Chicago ABC affiliate, found its channel 7 allocation inadequate to reach many of its viewers. To remedy this situation, WLS devoted countless hours and spent millions of dollars to build and transition to a new broadcasting facility on channel 44 in order to maintain its pre-transition coverage area. With the Middle Class Tax Relief and Job Creation Act of 2012 instructing the FCC to conduct voluntary incentive auctions, it is possible that WLS could find itself in a similar situation. What plans does the FCC have in place to ensure WLS will not be adversely impacted by reallocation or repacking as a result of voluntary incentive auctions?

Response: Congress provided protections to broadcasters by directing the Commission to make all reasonable efforts to preserve the coverage area and population served of each broadcast television licensee. The Commission will follow all statutory mandates, including with respect to repacking. The Commission released a Notice of Proposed Rulemaking (NPRM) on October 2, 2012 seeking comment on detailed proposals to implement our incentive auction authority. Initial comments are due December 21. All parties have the opportunity to review and comment on the Commission’s proposals, and we encourage them to do so.

The Honorable Anna Eshoo

1. As co-chair of the Medical Technology Caucus, I'm always interested in finding new ways to embrace innovative technologies within our health care system. The National Broadband Plan offered a number of recommendations with respect to health IT. How can we best work together to expand telemedicine, while removing many of the barriers outlined in the FCC's plan?

Response: The National Broadband Plan identified health care as an area of enormous promise for broadband-enabled innovation. The FCC is working to help implement the Plan’s broadband and health recommendations, many of which relate to other federal agencies that we are coordinating closely with. We welcome your support for these efforts. The FCC is particularly focused on promoting connectivity, ensuring that wireless spectrum is optimally allocated and managed, and facilitating the development of wireless medical devices. For example:

- The FCC entered into an unprecedented partnership with the Food and Drug Administration to ensure that communications-related medical innovations can swiftly and safely be brought to market.
- Late last year, the Commission adopted an order to provide spectrum for Medical Micropower Networks, which have the potential to enable paraplegics to stand.
- The Commission has taken significant steps to spur broadband connectivity for rural health care providers through reforms to the Universal Service Fund. This includes

transitioning legacy high-cost programs to the broadband-focused Connect America Fund, which includes specific requirements to ensure broadband availability for community anchor institutions, including health care providers.

- The Commission is moving forward soon with reforms to the Rural Health Care program, based on lessons learned from a successful pilot program – including the California Telehealth Network. The reform effort will build on numerous projects that have already successfully deployed state-of-the-art telehealth capabilities, creating new opportunities and cost savings for consumers and health care providers alike.
- The Commission has adopted new rules to allow greater use of spectrum for Medical Body Area Network, or MBAN, devices. This technology has tremendous potential to untether patients from tubes and wires, improving the quality of health care and enabling better outcomes for patients. The U.S. is the first country in the world to allocate spectrum for Medical Body Area Networks.

2. As you know, interoperability in the 700 MHz band has been raised as a competitive roadblock in several open proceedings, including Verizon's proposed transaction with the cable companies. 700 MHz interoperability is also the subject of a proposed rulemaking that the FCC issued in March. When do you expect to complete this proceeding?

Response: Commission staff is currently reviewing the record in this important proceeding and developing recommendations.

3. I'd like to revisit a topic I raised when you testified before the Subcommittee in February regarding the need to hire more engineers for the FCC's Office of Engineering and Technology. At the time you agreed that this was a concern. What is the status of your efforts to address the need for additional engineers?

Response: The FCC's engineers are essential to achieving the Commission's core mission and I have prioritized recruiting and retaining engineers at the FCC. To that end, I established an Engineering Task Force to assess the overall engineering resources of the agency and make recommendations as to how we can strengthen our engineering resources and make the most effective use of the resources that we have. The Engineering Task Force is considering a number of recommendations, including how we can improve our recruitment and hiring and that we reestablish our Engineer in Training program. We continually monitor and balance the number of full time engineers that we require based on the work that is before the Commission. While we are actively working to recruit and retain more engineers, the number of FCC engineers and their share of the Commission's overall workforce has remained constant at approximately 15% for the past several years.

Earlier this year, the Commission asked for and received reprogramming authority from the House and Senate Appropriations Committees to fund two more engineers for incentive auction activities during the current fiscal year. In addition, at the Commission's request, both the House and Senate FY13 Financial Services appropriations bills raised the auctions

spending cap to ensure that engineers and other personnel are available to handle the complex engineering issues related to the incentive auction process.

The Senate appropriations bill for the current fiscal year fully funds the FCC's workforce, which would enable us to add much-needed engineers to our workforce. In contrast, the House number would require the FCC to reduce its current workforce, which could result in a reduction in our engineering staff through attrition, leaving important positions unfilled.

The Honorable Henry Waxman

1. Given the extremely high phone rates the families of prisoners have to pay to communicate with family members behind bars, some have utilized IP-based services that allow for lower phone charges. Despite the promise of these IP-based services, however, these calls have been blocked by some prison phone providers seeking to preserve the revenues they collect from existing long distance rates. This issue has been pending at the Commission for over three years. Does the Commission's policy prohibiting call blocking apply to calls between inmates and their families? When will the Commission address this issue?

Response: Prison phone rates are a serious issue for families, communities, and security. The multiple, competing petitions before the Commission regarding this matter raise complex factual questions and policy issues. Commission staff is currently reviewing the record that has been compiled on these issues, including recent filings by prison payphone operators, advocacy groups, and others, and this week I circulated a Notice of Proposed Rulemaking which is the next step in resolving these issues.

2. Last week, the FCC released a Notice of Proposed Rulemaking regarding an update of the FCC's regulatory fee process. I support your efforts to modernize the regulatory fee structure to reflect the way the Commission allocates its resources. What further steps do you anticipate the FCC will take to ensure transparency in the regulatory fee process that allows companies to plan for changes in their fees?

Response: As you state, the Commission recently issued an NPRM, for the first time in several years, to conduct a comprehensive review and potential overhaul of the fee process. Once the comments and reply comments have been reviewed by staff, we will make any adjustments that are supported by the record.

3. Special access services can be delivered via various technologies, including fiber optic cable and copper wire. Do you believe the Communications Act treats special access services in a technologically-neutral manner? Should the Commission regulate the special access market based on the presence or absence of competition or based on the technology involved?

Response: On October 9, I circulated an order to my colleagues at the Commission to conduct a mandatory, comprehensive data collection order that will provide the Commission with sufficient data to enable us to evaluate the extent of competition in special access

markets and adjust our rules as appropriate, consistent with the requirements of the Communications Act.

The Honorable John Dingell

1. Will the Commission make public the Allotment Optimization Model (AOM) it has used to evaluate the effects of an incentive auction and subsequent repacking of broadcast frequencies, as well as the assumptions and variables it has input into the AOM, when it publishes its NPRM to implement the voluntary incentive auction authorized by the Middle Class Tax Relief and Job Creation Act of 2012?
2. At the Subcommittee's July 10, 2012, hearing, you responded to the question above that the Commission will release "all information relevant to the [auction]." Will such "relevant information" include all the assumptions, variables, and other inputs the Commission has used with the AOM in order to evaluate the effects of an incentive auction and subsequent repacking of broadcast frequencies?
3. The Middle Class Tax Relief and Job Creation Act of 2012 allows the Commission to reassign broadcast channels along the Northern and Southern borders subject to coordination with Canada and Mexico. Has the Commission updated the AOM using this statutory requirement as an input?

Response (1, 2 and 3): The Allotment Optimization Model (AOM) developed during the National Broadband Plan will have limited if any applicability to the incentive auction process. The Commission released a Notice of Proposed Rulemaking (NPRM) on October 2, 2012 seeking comment on detailed proposals to implement our incentive auction authority. Initial comments are due December 21. All parties have the opportunity to review and comment on the Commission's proposals, and we encourage them to do so.

4. On a related note, has the Commission or any other agency begun consultations with Canada and Mexico about abiding by treaty stipulations when reassigning U.S. broadcast channels? If so, please submit for the record a summary of the issues discussed at such meeting or meetings, as well as their outcomes. Please also submit the names of the participants at such meeting or meetings.

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

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

5. At the Commission's June 2012 repacking roundtable, Harris Corporation noted that three years might not be sufficient time in which to modify all broadcast towers impacted by repacking. Has the Commission gathered empirical evidence to support or refute such claim? If so, please submit for the record the conclusion such evidence supports.

Response: The Incentive Auction Notice of Proposed Rulemaking released on October 2 seeks comment on the appropriate process to ensure a successful transition from broadcast to wireless broadband use after the incentive auction concludes. We recognize that the incentive auction presents unique and complex issues to resolve – including the issues related to tower construction and modification. Our past experience with the DTV transition will help inform this process, and we are seeking specific input on these issues in the NPRM.

6. Please submit for the record the names and responsibilities of all the consultants the Commission has retained to help it implement the voluntary incentive auction of broadcast frequencies authorized by the Middle Class Tax Relief and Job Creation Act of 2012. Have any of those consultants previously lobbied the Commission or otherwise advocated on behalf of incentive auctions? If so, please indicate which consultants have lobbied the Commission on this matter, as well as for what action they have advocated.

Response: The Commission will follow all rules related to the input of consultants contracted for the incentive auctions process. We have solicited input from three world-renowned groups – Auctiononomics, Power Auctions LLC, and MicroTech, none of whom have previously lobbied the Commission on the subject of broadcast incentive auctions.

Auctiononomics Chairman Paul Milgrom is the Ely Professor of Humanities and Sciences in the Department Economics at Stanford University, and a member of the National Academy of Sciences and the American Academy of Arts and Sciences. Milgrom is the recipient of the Nemmers Prize in Economics for contributions dramatically expanding the understanding of the role of information and incentives in a variety of settings, including auctions, the theory of the firm, and oligopolistic markets. He is widely regarded as one of the foremost thinkers in auction theory and design, and he helped create the first FCC spectrum auction design, which has served as a blueprint for similar auctions worldwide.

Also with Auctiononomics are Professors Jonathan Levin and Ilya Segal of Stanford University. Professor Levin is the Chair of the Department of Economics at Stanford, and a recipient of the John Bates Clark Medal as the economist under the age of forty who has made the most significant contribution to economic thought and knowledge. Ilya Segal is the Anderson Professor in the Humanities and Sciences at Stanford, and is a recipient of the Compass-Lexecon prize for the most significant contribution to the understanding and implementation of competition policy.

Power Auctions LLC is led by Lawrence Ausubel, a Professor of Economics at the University of Maryland. Professor Ausubel is a widely published author on auctions, industrial organization, and financial markets, and is a leading expert on efficient auction design. Power Auctions, based in Washington, DC, has extensive experience in the design

and implementation of high-profile auctions around the globe and currently provides spectrum auction design and software services to the Governments of Canada and Australia. Power Auctions and Auctionomics are both assisting the Commission with auction design and implementation.

MicroTech, a leading technology and systems integrator for critical infrastructure and information technology solutions, will provide state-of-the-art security, systems development, and implementation support directly tied to their cloud computing solutions.

7. The Commission's recent Viewability Order allows cable companies to provide converter boxes to customers, so they can continue viewing certain must-carry stations. Did the Commission review any empirical evidence on the cost or availability of such converter boxes prior to approving the Order?

Response: Yes.

8. For the DTV transition, consumers had 22 months to purchase converter boxes with coupons, and that transition still did not go smoothly. Does the Commission believe the six-month timeline provided in the *Viewability Order* is sufficient to ensure an orderly transition for consumers?

Response: Yes. The situations are not directly comparable. Cable operators may continue to provide programming in analog indefinitely, but should they decide to move some must-carry stations to digital, during the viewability transition period cable operators must continue to carry the must-carry stations in analog format to all analog subscribers. This will allow time for the cable operator to obtain an adequate supply of equipment and notify consumers of the changes in service, and to allow consumers to make necessary arrangements. The Commission has encouraged cable operators to provide broadcasters with additional advance notice of any planned carriage change, so stations can provide notice to their viewers about their options for continued access to the station's programming.

9. At the Subcommittee's February 16, 2012, hearing about the Commission's budget, I expressed concern about the proposed diversion of funds away from the Wireline and Wireless Bureaus to increases in your office and the offices of the other commissioners. The Obama Administration recently issued a Statement of Administration Policy (SAP) in opposition to the fiscal year 2013 Financial Services and General Government Appropriations bill, partly because the bill's five percent reduction in the Commission's budget would threaten progress reforming the Universal Service Fund (USF). Do you now believe that your proposed reductions to the Wireline and Wireless Bureaus' respective budgets are ill advised? If the Commission now needs additional funds for the completion of USF reform, will you make appropriate reductions to the increases you have proposed for your office, the offices of your fellow commissioners, and the Office of Strategic Planning and Policy Analysis?

Response: The Commission is not proposing a reduction in the size of those bureaus.

10. What level of broadband service has the Commission determined a carrier must provide in order to receive Universal Service Fund (USF) support, and what has the Commission determined to be "reasonably comparable rates" for such level of service? In addition, if the Commission's USF Reform Order harms the financial viability of small rural providers, what steps is the Commission taking to ensure that these carriers are given the proper incentives to build the networks needed in the future?

Response: The *USF/ICC Transformation Order* includes broadband public interest obligations that require companies receiving support from the Connect America Fund to provide broadband speeds of 4 Megabits per second (Mbps) downstream and 1 Mbps upstream. The Wireline Bureau is in the process of implementing a rate survey to determine "reasonably comparable rates" for such service.

The *USF/ICC Transformation Order* maintained overall support to rate of return carriers at approximately \$2 billion annually, approximately equal to their current overall annual support, while adopting rules to moderate the expenses of those carriers with unreasonably high costs and further encouraging other rate-of-return carriers to advance broadband deployment. The new rules ensure fairness to the consumers and small businesses that pay into the Universal Service Fund.

11. The 1996 Telecommunications Act prohibits the Commission from regulating Internet services. The Commission's 2003 Triennial Review maintains that "next generation" technologies should and would not be regulated. Does the Commission intend to attempt to regulate fiber or any other new broadband technologies?

Response: Ensuring strong incentives to invest in fiber, mobile, and other advanced communications infrastructure has been one of my top priorities. And fiber deployment has been increasing: More than 19 million miles of optical fiber were installed in the United States in the last year, "the most since the boom year of 2000," according to *The Wall Street Journal*. Promoting competition and removing barriers to investment have been vital parts of this success. I remain committed to policies that promote competition, remove barriers to broadband buildout, and protect and empower consumers, all of which are critical to robust network investment.

12. The Securus Petition 09-144 has been pending for more than three years. Similarly, the Wright Petition CC 96-128 has been pending since November 2003. When will the Commission rule on these matters? Has the Commission assigned staff to these two petitions, and if not, when will staff be assigned to them? Finally, may common carriers block calls absent prior express authorization by the Commission?

Response: Prison phone rates are a serious issue for families, communities, and security. The multiple, competing petitions before the Commission regarding this matter raise complex factual questions and policy issues. Commission staff is currently reviewing the record that has been compiled on these issues, including recent filings by prison payphone

operators, advocacy groups, and others, and this week I circulated a Notice of Proposed Rulemaking which is the next step in resolving these issues.

13. When does the Commission intend to give device manufacturers and carriers more detailed guidance about how to comply with new regulations promulgated pursuant to the Twenty-First Century Communication and Video Accessibility Act, particularly with respect to proving compliance during a device's design and development process?

Response: Under Section 508 of the Rehabilitation Act, the U.S. Access Board is authorized to provide technical assistance to individuals and Federal departments and agencies concerning the requirements of this section. The U.S. Access Board is currently working on providing guidance for implementation of Section 508 of the Rehabilitation Act, as well as Section 255 of the Communications Act. Their guidance will have implications as well for advanced communications services covered by the Commission's rules. The Access Board is currently in the midst of a rulemaking and is hoping to issue proposed rules within months. To date, they have issued two advanced NPRMs on this issue. Once the Access Board has taken its final action, the Commission will be in a position to move forward on this matter.

The Honorable Doris Matsui

1. With a mandatory data request on the horizon, how are you going to guarantee that you will get all the necessary data to properly analyze the special access market? What are the next steps, how long will the comment period last, how long will it take to analyze the data, and will this mandatory data collection lead to action?

Response: On October 9 I circulated an order to my colleagues at the Commission to conduct a mandatory, comprehensive data collection order that will enable us to evaluate the extent of competition in special access markets and adjust our rules as appropriate. The data collection will become effective once it has received final approval from the Office of Management and Budget in accordance with the Paperwork Reduction Act. While it is difficult to predict the exact timing on such approval, we can anticipate that the approval process and data collection will take several months. The Commission will then need to analyze the data. We will conclude overall reform of our special access policies as soon as possible following this process.

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

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

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

The Honorable John Barrow

1. As the author and strong supporter of legislation to authorize voluntary incentive auctions, I would like an update on where the Commission stands with its efforts. What is the timing for the incentive auction Notice of Proposed Rulemaking to be released and when do you anticipate seeing that effort completed? I think we all know that this process will take time, but until the Commission determines how it structure and conduct the auction, the entire process is on hold.

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

2. The spectrum crunch will have a significant impact on our economy if not addressed. The Commission has embraced the goal of clearing 300 MHz before 2015. I'm interested in finding out where that spectrum will come from within the government's holdings. Many are concerned that agencies don't want to give up spectrum or move their services to other bands. I have seen reports that clearing one swath of spectrum may cost \$18B. I worry that between agency interests and cost fears over clearing spectrum, we may lose track of the most important issue here: that clearing and auctioning spectrum can be the greatest spark for job creation and innovation.

3. How do you intend to meet the consumer's need for more spectrum in the next three years, and what assistance if any assistance do you need from Congress to meet that goal?

Response (2 and 3): Over the past four years, the U.S. has regained global leadership in mobile infrastructure and innovation – becoming the first country in the world to deploy the next generation of wireless broadband networks (4G LTE) at scale, and leading the world in the development of smartphone and tablet operating systems and apps. Maintaining U.S. leadership in mobile requires making more licensed and unlicensed spectrum available for broadband, and there is no higher priority at the FCC. The Commission is executing on its Mobile Action Plan, a comprehensive, "all of the above" strategy to make more spectrum available for broadband. Key elements include:

- **Traditional auctions.** We are on track to auction 75 MHz of licensed Advanced Wireless Service spectrum – essential for 4G LTE service – by 2015. This includes an auction of shared rights to the 1755-1780 MHz band, which could be paired with the 2155-2180 MHz band already in inventory to extend the valuable AWS band by

50 MHz. We expect the first of these auctions – of the AWS-2 H-block – will happen in 2013.

- **Removing regulatory barriers to flexible spectrum use.** Later this year, we will finish removing outdated rules and restrictions on a total of 70 MHz of spectrum. This includes 40 megahertz of mobile satellite spectrum that I expect the Commission will repurpose for land-based mobile use, and 30 megahertz the Commission recently freed up in the long-troubled Wireless Communications Service band.
- **Clearing new bands for flexible broadband use.** On September 28, the Commission launched a proceeding to implement an incentive auction to repurpose for mobile broadband valuable spectrum in the broadcast television band -- the 600 MHz band, just below the 700 MHz band now being used for 4G LTE. We expect to hold the world's first incentive auction in 2014. There are also significant opportunities to clear and reallocate underutilized government spectrum for commercial use.
- **Dynamic sharing.** In 2010 the Commission created a new spectrum sharing paradigm by allowing unlicensed devices to access valuable unused spectrum in between broadcast TV channels – known as “white spaces. This action freed up the most new low-band unlicensed spectrum in 25 years – at least several 6 MHz channels in most major markets and more than 100 megahertz in many parts of the country. The FCC also developed an idea to use database technology to enable sharing between commercial broadband and military radar systems. In a major report this summer, the President's Council of Advisors on Science and Technology, or PCAST, recommended doing this in the 3.5 GHz band, which is virtually unused in the U.S. By year's end, I intend to launch a formal proceeding to enable commercial use of 100 MHz of spectrum in this band.

The Honorable Donna Christensen

1. In the USF/ICC Transformation Order, you recognized that insular areas, like the U.S. Virgin Islands, are unlike mainland rural telephone company service areas in many ways. For example, insular areas face higher costs to ship, deploy and maintain telecommunications infrastructure because of their remoteness and exposure to severe weather. They also suffer from high unemployment and poverty levels, which inhibits access to telephone service. Can you please explain how your Connect America Fund (CAF) Phase II cost model will take these factors into consideration in projecting the cost of deploying broadband service in the insular areas?

2. Are you aware that the U.S. Virgin Islands, American Samoa, and Northern Marianas Islands are outside the customs territory of the United States, so that the telephone companies serving these territories have to pay customs duties on all equipment and material they purchase from U.S. as well as foreign vendors? Will your cost model take this additional cost into account?

Response (1, 2, 5 and 7): The *USF/ICC Transformation Order* directed the Wireline Bureau to consider any unique costs to serve insular areas as it implements the Connect America cost model. It is important that any providers serving insular areas, or other entities with insular-specific information, submit data into the record demonstrating any unusual costs in their service areas. The Wireline Bureau recently held a workshop on the cost models that have been submitted into the record to date and announced a virtual workshop (see http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0912/DA-12-1487A1.pdf). This virtual workshop, in addition to the regular ex parte process, will provide an opportunity for all stakeholders to provide cost data on insular areas.

3. Chairman Genachowski, in your recent letter to me, you mentioned that as part of the USF reform, Connect America Fund (CAF) Phase I support of up to \$300 million has been offered to price cap carriers, including those in insular areas, to advance broadband development, and the Virgin Islands Telephone Corporation ("Vitelco") has been offered CAF Phase I support. How much support was offered to Vitelco? What are the conditions attached to that support? Was incremental support offered to any other telephone companies serving insular areas?

Response: Vitelco was offered \$255,231 in CAF Phase I support. As a condition of receiving support, which Vitelco declined, the carrier would have received \$775 per location served and would have been required to deploy to all supported locations within three years. No other carrier serving an insular area qualified for CAF Phase I support.

4. Chairman Genachowski, your letter also mentioned an expedited waiver process for telephone companies serving insular areas. Can you please explain how this waiver process differs from the regular waiver process that applies to non-insular areas?

Response: Waiver petitions of carriers serving insular areas and Tribal lands receive priority review. The Order requires the Wireline or Wireless Bureaus to complete review of waiver petitions in these instances within 45 days of obtaining a complete record. Waiver applicants serving insular areas and Tribal lands are specifically asked to share "any additional information about the operating conditions, economic conditions, or other reasons warranting relief based on the unique characteristics of those communities," which the FCC will consider when reviewing waiver requests.

5. In the USF/ICC Transformation Order, the FCC recognized that unique circumstances exist in insular areas and directed the Wireline Competition Bureau to consider those unique circumstances as it implements a forward-looking cost model for price-cap carriers. I understand that the Bureau is considering using the CQBAT Model proposed by America's Broadband Connectivity Coalition to determine price cap local exchange carriers (LECs) support levels. However, I have been told that some parties affected by the CAF Phase II mechanism have had limited access to the cost inputs and assumptions on which this model is based. Do you think that the CQBA T model satisfies the Commission's requirements for transparency and verifiability of a cost model? Are there any specific steps you plan to take to improve access to the cost model inputs and the ability to analyze and verify its results?

Response: See response to Question 1 above.

6. Also, the Transformation Order instructed the Bureau that if the adopted Phase II cost model does not adequately account for the costs of telephone companies outside the continental United States, it could choose to exclude those companies from the Phase II mechanism and continue to provide them Phase I support instead. I understand that Phase I support for the non-continental states and territories accounts for only about 112 of one percent of the total high-cost support budget for price cap companies [approx. \$93 million out of \$1.8 billion] Would you agree that, given this relatively small percentage, the Bureau should not devote extraordinary resources to developing special adjustments to the cost model to account for the costs of non-continental areas, but instead should continue to provide Phase I support if the model cannot easily be adjusted?

Response: As you note, the *USF/ICC Transformation Order* permits the Wireline Bureau to determine that non-continental states and territories should continue receiving frozen Connect America Phase I support amounts after the cost model is developed, rather than receiving a model-generated amount of support. That is an option under consideration as we develop the model.

7. According to the National Broadband Map, the three lowest ranked areas in the percentage of households with broadband service of download speeds greater than 3 Mbps and upload speeds greater than 768 Kbps are the U.S. Virgin Islands, Puerto Rico, and American Samoa. However, if the ABC cost model were used, the companies serving these three territories would see major reductions in their USF support. What will the FCC do to ensure that its policies do not leave these insular areas even further behind the mainland in broadband deployment than they already are?

Response: See response to question 1 above.

8. In the Lifeline/Link Up Reform Order, the FCC reformed the Lifeline reimbursement system by replacing tiered support with a single support system (\$9.25 a month with a \$25 additive for Tribal Areas) and eliminated the Link Up program for non-Tribal Areas. Given the unique circumstances that exist in insular areas like the U.S. Virgin Islands, why did the FCC decide to treat insular areas differently than Tribal Areas for Lifeline support? Why did the FCC decide to eliminate the Link Up program for insular areas?

Response: Given the low subscribership levels in Tribal communities and the significant telecommunications deployment and connectivity challenges on Tribal lands, the Commission in 2000 created enhanced Lifeline support and enhanced Link Up on Tribal lands. The Commission recognized that the factors causing low subscribership on Tribal lands may not be identical to the factors causing low subscribership among other populations. Due to the continuing significant communications deployment and adoption challenges on Tribal lands, the Commission decided to maintain enhanced Link Up support for ETCs on Tribal lands also receiving high-cost support. The Commission eliminated Link Up support on non-Tribal lands for all ETCs because it determined that consumers (including those in insular areas) were paying into the Fund for a program that was not providing a significant

consumer benefit. Since the *Lifeline Reform Order* was released, there is no evidence that carriers have increased sign-up costs as a result of the elimination of the Link Up program.

9. The FCC is considering plans to expand the Lifeline program to include support for broadband services and implementing a pilot program. Does the FCC have any plans to include insular areas like the U.S. Virgin Islands in the Lifeline Broadband Pilot Program?

Response: The Commission put out a public call for applications for the Pilot Program. In response, we received more than 20 applications for participation. Four are from providers serving insular areas. The Wireline Bureau has reviewed the applications and will soon announce the winners.

10. I want to ask you about the Lifeline program. Do you believe that the reforms undertaken recently by the Commission are sufficient to ensure that the program is responsibly managed? And, do you believe that the growth in the program is related more to inappropriate marketing, as some critics of the program charge, or to the continued challenges we see in the economy, which can lead more people to take advantage of programs that offer a financial safety net?

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

11. Once again, cell phone systems failed after the recent storm that swept through the District, Maryland and Virginia. Cell phone towers were inoperable in the immediate aftermath, leaving individuals without the ability to use their mobile devices to place or receive calls. During times of emergency, whether weather related or otherwise, consumers should have instant access to lifesaving information. Do you believe the inclusion of an activated radio chip in cell phones, which would provide access to over-the-air radio broadcasts even when cell towers are down, would improve access to this lifesaving information in times of emergency?

12. I represent the U.S. Virgin Islands and during hurricane season we are always under the threat of a major weather-related disaster. Ensuring the safety of my constituents is of the utmost importance. The wireless industry has not yet developed a fail-safe system to keep their towers up and running during an emergency, and I am concerned that the 90-character text-based system being developed by the wireless industry is not sufficient to provide critical information to the public during times of emergency. Do you believe that the 90-character text-based system being developed by the wireless industry is sufficient to provide robust information during times of

emergency? Could a radio enabled cell phone that would provide access to over-the-air radio broadcasts even when cell towers are down also provide a public service during emergencies?

Response (11 and 12): We note that FM radio capability is already available in multiple mobile devices offered by wireless carriers. Last summer, the FCC staff held a meeting with broadcasters, wireless carriers, and equipment manufacturers to discuss this issue. In addition, the Commission considered the issue of FM chips in cell phones in 2008 when it adopted rules establishing the Commercial Mobile Alert System (CMAS) (otherwise known as Wireless Emergency Alerts (WEA)). At that time, the Commission decided not to require or prohibit the inclusion of FM chips in mobile devices in the context of CMAS/WEA. CMAS/WEA allows consumers to receive geographically-targeted text-like emergency alerts over their mobile devices. Since the system was deployed in April 2012, government alert originators have used the system to send over 1,000 emergency alerts to consumers. For example, the City of New York recently issued CMAS/WEA alerts warning consumers about Sandy.

13. Mr. Chairman, in an Order released last week, the FCC suspended and set for investigation nearly every new tariff filed to implement the FCC's intercarrier compensation reforms as adopted last fall. There apparently is significant confusion and concern about how to implement the new rules, and even the FCC's Order uses the word "complicated" at several times in the first several paragraphs to describe its new regime. Yet even as carriers and consumers -- and apparently you and the state and territorial commissions as regulators -- struggle to understand and implement the reforms you've adopted, the FCC is also considering further changes to the intercarrier compensation and universal service mechanisms that are so important to affordable services in places like the Virgin Islands. Why would you proceed forward with adopting and implementing further changes in the face of what appears to be nearly universal and unprecedented confusion over the new rules you've just adopted?

14. Shouldn't we all get the chance to understand what you've just adopted, implement it, and study the effects of it before considering or making yet more changes?

Response (13 and 14): It is common for the Commission to temporarily suspend many filed tariffs after significant changes in intercarrier compensation rules. The Wireline Bureau has already resolved the vast majority of issues associated with the suspended tariffs, and we expect the remainder to be addressed in the coming weeks. Our comprehensive reform of this byzantine and outdated system will save consumers billions of dollars over the coming years. In order to extend broadband to unserved rural communities while ensuring fiscal responsibility, it is important to keep moving forward with implementation of our unanimous universal service and intercarrier compensation reforms.

15. Today's Communications Act framework, especially Title II, was designed for an era in which one company provided monopoly service over copper. Does that framework make sense when you have multiple providers using different communications platforms to provide voice, video and data over copper, fiber, coaxial cable, and spectrum?

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

16. Mr. Chairman, I think most of us agree that we're facing a spectrum crunch for high speed wireless broadband services. What steps is the FCC taking to alleviate this crunch, and what is your timetable? Is there any way that the FCC can move faster on this?

Response: Over the past four years, the U.S. has regained global leadership in mobile infrastructure and innovation – becoming the first country in the world to deploy the next generation of wireless broadband networks (4G LTE) at scale, and leading the world in the development of smartphone and tablet operating systems and apps. Maintaining U.S. leadership in mobile requires making more licensed and unlicensed spectrum available for broadband, and there is no higher priority at the FCC. The Commission is executing on its Mobile Action Plan, a comprehensive, “all of the above” strategy to make more spectrum available for broadband. Key elements include:

- **Traditional auctions.** We are on track to auction 75 MHz of licensed Advanced Wireless Service spectrum – essential for 4G LTE service – by 2015. This includes an auction of shared rights to the 1755-1780 MHz band, which could be paired with the 2155-2180 MHz band already in inventory to extend the valuable AWS band by 50 MHz. We expect the first of these auctions – of the AWS-2 H-block – will happen in 2013.
- **Removing regulatory barriers to flexible spectrum use.** Later this year, we will finish removing outdated rules and restrictions on a total of 70 MHz of spectrum. This includes 40 megahertz of mobile satellite spectrum that I expect the Commission will repurpose for land-based mobile use, and 30 megahertz the Commission recently freed up in the long-troubled Wireless Communications Service band.
- **Clearing new bands for flexible broadband use.** On September 28, the Commission launched a proceeding to implement an incentive auction to repurpose for mobile broadband valuable spectrum in the broadcast television band -- the 600 MHz band, just below the 700 MHz band now being used for 4G LTE. We expect to hold the world’s first incentive auction in 2014. There are also significant opportunities to clear and reallocate underutilized government spectrum for commercial use.
- **Dynamic sharing.** In 2010 the Commission created a new spectrum sharing paradigm by allowing unlicensed devices to access valuable unused spectrum in between broadcast TV channels – known as “white spaces. This action freed up the most new low-band unlicensed spectrum in 25 years – at least several 6 MHz

channels in most major markets and more than 100 megahertz in many parts of the country. The FCC also developed an idea to use database technology to enable sharing between commercial broadband and military radar systems. In a major report this summer, the President's Council of Advisors on Science and Technology, or PCAST, recommended doing this in the 3.5 GHz band, which is virtually unused in the U.S. By year's end, I intend to launch a formal proceeding to enable commercial use of 100 MHz of spectrum in this band.

17. Chairman Genachowski, how long will it take to complete the incentive auctions, both the reverse and the forward auction?

Response: We anticipate conducting the incentive auction in 2014.

18. Chairman Genachowski, what auctions does the Commission plan to conduct over the next two years?

Response: See answer to Question 16 above.

Michael

19. For all of the Commissioners, while it's Congress's job to write the laws, do you think that the Communications Act is outdated? More specifically, do the Communications Act's requirements make sense in an IP world?

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

The Honorable Edolphus Towns

1. How much time will a broadcaster have to decide whether to volunteer to turn in or share its license?

2. When will you give specific information about which markets are likely to need volunteers?

3. What information will you provide ahead of time about the volunteering process?

4. Will you be giving information on the likely effect to stations that do not volunteer? That is, how many will be repacked? Will they preserve the same service area and population they currently serve?

5. Would a broadcaster be able to change or withdraw a bid once it has volunteered?
6. When would a broadcaster know if it is selected?
7. What reimbursement is a broadcaster likely to get?
8. If a broadcaster does not volunteer, will anything happen to its station?
9. If a broadcaster needs new equipment to relocate its channel, when will it get paid for that equipment?

Response (1-9, 11-18): The Commission released a Notice of Proposed Rulemaking (NPRM) on October 2, 2012 seeking comment on detailed proposals to implement our incentive auction authority. Initial comments are due December 21. All parties have the opportunity to review and comment on the Commission’s proposals, and we encourage them to do so.

10. Will channels reassigned for repacking be fully coordinated and approved as required by treaty or agreement with our Canadian or Mexican neighbors?

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

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

11. Will border stations have the full three years provided in the legislation to construct facilities and be reimbursed?
12. How will the FCC ensure that broadcasters and their viewers are not hurt during any repacking?
13. Will cable systems be required to carry a broadcast signal if that broadcaster goes off the air for some period of time during the rebuilding of the station?
14. Will a broadcaster be reimbursed for costs incurred to get its signal to the cable system or to keep its signal on the air during the rebuild caused by repacking?
15. How will new channels be assigned during the repacking process? Will stations have an opportunity to make changes to these channels as was done in the original DTV Table?

16. Will all repacked stations be assigned a new channel so that they have the full three years to build their new facilities as specified in the legislation?

17. Which rebuilding costs (such as temporary antennas/transmitters needed during the rebuilding) will not be eligible for reimbursement?

18. What if a station is not required to move channels but it shares a facility with a station that volunteers or is repacked? Will the first station's costs be reimbursed?

Response (Questions 11-18): See response to Questions 1-9 above.

19. How will the FCC minimize the impact of changes on consumers?

20. Will stations that elect not to participate keep the same viewers?

21. What about access to specific stations? People care about local stations for news, weather and local information. Are you going to make sure they can get the information they need?

Response to Questions 19-21: Congress directed the Commission to make all reasonable efforts to preserve the coverage area and population served by TV licensees. We are running an open and transparent process to determine the best approach to implementing this Congressional mandate.

22. Are consumers going to need to get new equipment? Will they incur any cost to receive the same station programming on a different channel?

23. Will consumers need to retune their television sets?

24. Will the government do an education campaign to help consumers know what to do?

Response to Questions 22-24: Over-the-air viewers should not need additional equipment due to the repacking of channels. In markets where stations change channels, over-the-air consumers will have to re-scan TVs or digital-to-analog converter boxes for the equipment to properly display the relocated TV channels. In the Incentive Auction NPRM, the Commission seeks comment on what kind of outreach efforts the Commission should undertake in order to ensure an orderly transition and minimize disruptions in service to consumers.

25. For areas served by TV translators, will consumers in those areas still have access to over-the-air television?

Response: I recognize and appreciate the important news and other programming that TV translators provide to their audiences. I have instructed Commission staff to continue to work with the TV translator community as we implement the Middle Class Tax Relief and Job Creation Act of 2012.

26. At the hearing, you indicated your view that the framework for the FCC's special access rules is "not working," and so you circulated a special access order in early June. Can you describe the process by which you consulted with your colleagues and stakeholders before circulating the Special Access order in June?

27. There were reports indicating that the Chief of the Wireline Competition Bureau concluded that the data collection efforts had not provided enough information to do an analysis to prepare for the order. Can you comment on whether you or your colleagues took this into account before the order was circulated?

28. Reports indicate that approximately 10,000 pages of documents were submitted into the record after the order was circulated in June. Should these have been subject to public comment before circulating the order? Why or Why not?

29. Has the FCC provided the public an opportunity to review and comment on the specific language of any proposed rules in this rulemaking? Do you feel that sufficient options for resolving the special access issue were considered before circulating this order?

30. Has the FCC conducted analyses that any proposed rule will not impose additional burdens on consumers?

Response: Our special access proceeding has been, and will continue to be, an open and transparent rulemaking based on the best data available to the Commission. Stakeholders have participated through hundreds of substantive filings and *ex parte* meetings with staff and Commissioners, and the Wireline Bureau has issued multiple Public Notices soliciting data and comments over the last three years. All Commissioners received ample time to review the order circulated in June and engage substantively before voting. The Wireline Bureau public notice released simultaneously with circulation of that order highlighted certain publicly available sources that the Commission might consider during the Commission's deliberations, but all these sources were available for public comment prior to that filing. The Commission's decision to suspend grants of new pricing flexibility petitions was thoroughly supported by a detailed and careful review of extensive evidence in the record and thirteen years of experience with the current pricing flexibility rules. Indeed, it was by far the most thorough and up-to-date evaluation of the special access rules we've ever done. Our Wireline Bureau Chief led this effort, and any reports along the lines you describe would be inaccurate. As with all Commission actions, we considered the benefits and burdens of all proposals before acting. To continue applying our prior rules in the face of the best and most up-to-date data would have been contrary to our responsibilities as an expert agency.

The Honorable Bobby Rush

1. In September 2009, the FCC Advisory Committee on Diversity for Communications in the Digital Age recommended that the Commission renew its 2000 Adarand studies to determine whether the agency could support certain actions, including enacting policies and promulgating

rules that seek to increase diverse viewpoints and minority ownership of media and communications license, that may be subject to heightened judicial scrutiny under the US Constitution. Some of the same Adarand-related studies and reports that the Diversity Committee recommended the FCC complete (almost three years ago) would also produce data that could better inform and support, for example, national media ownership rule changes, which were appealed to the US Court of Appeals for the Third Circuit in the FCC's Prometheus Radio Project line of cases. Will the FCC be funding revised Adarand and media diversity ownership studies in this or in the next fiscal year? Please briefly describe the planned scope and deliverables schedule for this work.

Response: We commissioned several studies during the media ownership review process, including studies that specifically addressed diversity issues. Recently, we released the first ever Ownership Report that analyzed racial and ethnic minority and female broadcast ownership data collected through the revised Form 323 submissions by commercial broadcast stations. The collection and analysis of this data will assist the Commission on a going forward basis as we work to develop legally-sustainable diversity policies.

Our Office of Communications Business Opportunities (OCBO) continues to review the state of communications and media markets as it prepares the Commission's 2012 Section 257 Report to Congress. As part of this process, earlier this year we commissioned a review of existing studies that analyze the critical information needs of the American public, conducted under the direction of The University of Southern California Annenberg School for Communication and Journalism. The Annenberg report was submitted to the Commission in July 2012. Following the release of the literature review, in order to assist implementation of its recommendations, OCBO retained an independent contractor to design a research model to examine how media ecologies function, how critical information is made available in various media ecologies, and how individuals construct their own media ecologies to meet their critical information needs. Work on the research model is currently on-going, with completion of a final report anticipated next year.

Finally, in our FY 2013 budget request, the Commission included a request of \$500,000 for a Communications Industry Participation and Impact Study which would enable the FCC to gather new data and perform additional research and analysis to better inform and support the Commission's efforts related to minority and female ownership.

2. To date, the FCC has not acted on a petition for rulemaking that Martha Wright filed with the FCC, on her behalf and the behalf of others, docketed as CC Docket No. 96-128 back in October 2003. Her filing arose out of a class action suit that she and a number of plaintiffs brought back in February 2000, in the U.S. District Court of the District of Columbia. Mrs. Wright protested that the rates she and other telephone subscribers paid to make and to receive calls from prison inmates were not cost-based and excessive, resulted from exclusive dealing arrangements, and that companies providing prison phone services had violated the nation's communications and competition laws. In March 2007, Mrs. Wright submitted an alternative rulemaking petition to

the FCC proposing that the agency adopt benchmark rates of no more than \$0.20 per-minute for debit calling and \$0.25 per-minute for collect calls, with no separate per-call charges imposed by the inmate telephone service provider. Although these proposed benchmark rates are considerably less than retail rates which are being charged for inmate prison calling services in most states, the proposed rates are still actually higher than the per-minute calling rates found in at least 10 states (FL, LA, MA, MI, MO, MT, NE, MH, ND, SC). With all of the technological progress that has been made in secured, communications networking over the last decade, keeping in touch with loved ones who are incarcerated or behind bars should not be as terribly costly as is the case.

The FCC's indecisiveness regarding a matter such as this which directly impacts over-stretched American household budgets and affects family unit resiliency and prisoner rehabilitation and recidivism rates is troubling. Over 2.2 million adults are incarcerated in US federal and state prisons and county jails. Notwithstanding their guilt or innocence, these individuals are still accorded certain privileges and rights, including the privilege of communicating with their families and loved ones. In addition to helping connect the nation through implementation of its National Broadband Plan, the FCC can also connect families by expeditiously moving this stalled rulemaking forward. What are the next steps the FCC will take with regard to CC-Docket No. 96-128? By when, will these steps be taken?

Response: Prison phone rates are a serious issue for families, communities, and security. The multiple, competing petitions before the Commission regarding this matter raise complex factual questions and policy issues. Commission staff is currently reviewing the record that has been compiled on these issues, including recent filings by prison payphone operators, advocacy groups, and others, and this week I circulated a Notice of Proposed Rulemaking which is the next step in resolving these issues.

3. After the completion of the DTV transition in 2009, WLS, the local Chicago ABC affiliate, found its channel 7- allocation inadequate to reach many of its viewers. To remedy this situation, WLS devoted countless hours and spent millions of dollars to build and transition to a new broadcasting facility on channel 44 to maintain its pre-transition coverage area. With the Middle Class Tax Relief and Job Creation Act of 2012 instructing the FCC to conduct incentive auctions, it is possible that WLS could find itself in a similar situation. As these auctions moves forward, I am concerned that WLS will again be forced to spend millions of dollars and countless hours to maintain its current coverage area after the inevitable channel reassignments occur. What will the FCC do to ensure that WLS will not be negatively impacted by any reallocation or repacking conducted as part of the incentive auctions?

Response: Congress provided protections to broadcasters by directing the Commission to make all reasonable efforts to preserve the coverage area and population served of each broadcast television licensee. The Commission will follow all statutory mandates, including with respect to repacking. The Commission released a Notice of Proposed Rulemaking (NPRM) on October 2, 2012 seeking comment on detailed proposals to implement our incentive auction authority. Initial comments are due December 21. All parties have the

opportunity to review and comment on the Commission’s proposals, and we encourage them to do so.

4. Something that has always been important to me is to me is maintaining a diversity of voices in the television landscape. I recognize that part of this spectrum incentive auction is to encourage those television stations on the edge of profitability to perhaps give back their spectrum for auction. While I applaud the overall goal of incentive auctions, I'm concerned that at the end of the day, we are encouraging those unique and diverse voices who speak to specific constituencies to exit television broadcasting and I'm concerned about the impact on consumers. How can we ensure a successful auction, and ensure we don't take steps backwards on finding diversity on the television dial? What will you do to make sure that won't happen?

Response: Media diversity is critically important, and promoting and expanding opportunities for minority and female ownership is an important FCC goal. The Commission is seeking detailed information about programming diversity in our incentive auctions Notice of Proposed Rulemaking. It is important to note that there will be additional ways for existing licensees to participate in an incentive auction other than exiting the broadcasting business. The statute provides for channel sharing and for existing licensees to choose to move from UHF to VHF frequencies. Additionally, we specifically seek comment within the incentive auction proceeding on ways to address any impact on diversity as a result of the auction itself – such as encouraging multicasting or other alternative means of program distribution.

The Honorable Diana DeGette

1. With the known reliance upon satellite-based military applications and the quality of Internet service currently available by satellite service providers, persistent questions involving latency appear to overshadow actual satellite broadband capability. In fact, it appears the default position is that satellite is an inferior way to provide access to broadband - in particular - in unserved areas.

2. Does the FCC study the current state of satellite technology or consider data related to the future capabilities of satellites for the delivery of broadband Internet? Does the FCC study or collect data on the future capacity of mobile wireless technology? Would the FCC share with the Committee the data it relies upon to assess the speed, reliability and cost of satellite broadband in today's marketplace?

Response (1 and 2): Satellite providers play a critical role in ensuring that all Americans can access broadband. Commission staff regularly review a variety of public sources and meet with industry and other stakeholders to stay current on satellite broadband advances. The Commission has sought comment on the role of satellite technology in numerous active proceedings, including the Connect America Fund Further Notice of Proposed Rulemaking and the latest Notice of Inquiry for the Commission’s annual Broadband Progress Report. In addition, the Commission’s next Measuring Broadband America report (providing detailed

information on the actual performance of different broadband services) will for the first time include data on the performance of satellite broadband technology.

3. What is the authority of the FCC regarding retransmission consent negotiations?

Response: Section 325 of the Communications Act contains the statutory provisions regarding retransmission consent.

4. Please explain why the FCC has authority to order interim carriage of channels in the program access and program carriage contexts, but does not have it in the retransmission consent context. Does the FCC have any authority to protect consumers from retransmission consent disputes?

Response: Section 325(b) of the Communications Act specifically prohibits the retransmission of a broadcast station signal without the station’s consent; thus, as noted in the 2011 Retransmission Consent Notice of Proposed Rule Making, the Commission believes it does not have the authority to require interim carriage for retransmission consent disputes. The Commission is concerned about the impact of retransmission consent disputes on consumers, and we have been monitoring the marketplace while staff reviews the record developed in the proceeding.

5. Does the FCC have or maintain general or market-specific data on the number of failed retransmission consent negotiations that lead to blackouts? Does the FCC know the number of retransmission consent agreements in force today and when they expire? Does the FCC need new authority to gain access to this data?

Response: The Commission staff informally monitors the marketplace by periodically requesting information from major MVPDs and broadcasters as we become aware of possible disputes or expiring contracts. We do not formally collect data in this area.

6. With respect to the broadcast band repacking and auctions, should the FCC examine the future of public media and the position of public broadcasting in each market as this process moves forward? Before too long, should the FCC hold a roundtable or workshop with broadcasters, educators, public interest advocates, information providers, and other stakeholders to seek input on how to maximize and preserve noncommercial TV service and the value of noncommercial TV spectrum?

Response: Non-commercial broadcast stations have long served the American public by providing high quality and innovative educational, cultural, children’s, and news programming to their local communities. The FCC stands ready to work with Congress and other stakeholders to ensure the public broadcasters continue to have the opportunity to flourish.

Senator John Thune
Questions for the Record
Nomination of Mr. Thomas Wheeler to be
Chairman of the Federal Communications Commission
Senate Committee on Commerce, Science and Transportation
Hearing on June 18, 2013

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?
 - A. 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 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. We are a nation founded on common law, which uses precedent to inform future decisions. This seems to be an unexceptional concept and one that is the bedrock of our Nation’s laws.**
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?
 - A. Yes.**
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?
 - A. 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 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.

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.

A. I am not in a position now to say what action I would take. I will meet with the General Counsel and others at the Commission to explore this.

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?

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

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?

A. Yes, in addition to the appropriate consultation with the Department of Justice.

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?

A. Yes.

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.

A. As a member of the Board of USAC in the late 90s, I was able to help establish the 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 their 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.

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.

A. A goal of the Commission's unanimously adopted high cost universal service program reforms was to ensure that the Fund could deliver broadband to the more than 18 million Americans that lack access to this service in a fiscally responsible way. 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.

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?

A. 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.

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.

A. 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.

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?

A. 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.

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?

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

14. Rural Americans are facing significant call completion problems. One study indicates that, during one period between 2011 and 2012, the incompleteness 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?

A. 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 they hand 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.

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?

A. 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 mission. 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 we know from our 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.

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?

A. 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.

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?

A. 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 requirements: (1) ensure that all are eligible to participate, but (2) the Commission could 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.

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.

A. See previous answer.

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?

A. A diverse offering of service area sizes and spectrum blocks promote 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.

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?

A. 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.

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?

A. This is a situation that will take all of us – Congress, the Commission, NTIA, and federal spectrum users, working together to resolve. I intend to fully engage on this issue to find those “win-win” opportunities.

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?

A. 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.

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?

A. The National Broadband Plan established a clear spectrum target to address growing demand and Congress’ passage of incentive auctions legislation will be helpful in achieving that target. More can certainly be done and I look forward to working with the Committee to explore other opportunities.

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?

- A. 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 and I am certain the Commission staff is committed to it as well.**

Senator Roger Wicker
Questions for the Record
Nomination of Mr. Thomas Wheeler to be
Chairman of the Federal Communications Commission
Senate Committee on Commerce, Science and Transportation
Hearing on June 18, 2013

1. USF/CAF

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?
- A. 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?
- A. See answer to previous question.**
- c. Putting aside any concerns about USF, where do you stand on the satellite broadband deployment capabilities?
- A. 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.**

2. Forbearance Expansion

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?

- A. 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, though, I am committed to ensuring that the Commission's rules achieve their objective in the least burdensome way possible.**

3. Broadband Usage-based billing

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?

- A. For the Internet economy to continue to thrive, it is critical for consumers & businesses, and for America's global competitiveness that speed and capacity increase. New business models and services can be beneficial in that they can help drive efficiency, provide more choices, and improve affordability by offering lower prices per bit. At the same time, new business models and services must not come at the expense of competition, including from over-the-top providers, or at the expense of increases in speed and capacity. I can assure you that I will have FCC staff monitor these developments and report to me and my fellow commissioners on these trends.**

4. LPFM

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?

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

5. IP Transition

- a. 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?

A. 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 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.

b. 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?

A. Rural and remote areas, as we know from our 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.

Senator Roy Blunt
Questions for the Record
Nomination of Mr. Thomas Wheeler to be
Chairman of the Federal Communications Commission
Senate Committee on Commerce, Science and Transportation
Hearing on June 18, 2013

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?

A. 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 are working hard to structure a successful auction consistent with these objectives and I will strongly support such efforts. Regarding bidder eligibility, the statute passed by Congress provided the Commission with two requirements: (1) ensure that all are eligible to participate, but (2) the Commission could 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.

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?

A. Yes.

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?

A. 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 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. We are a nation founded on common law, which uses precedent to inform future decisions. This seems to be an unexceptional concept and one that is the bedrock of our Nation's laws.

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?

A. 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. I do think a properly structured arrangement with clear service rules could make sharing an attractive approach for wireless providers.

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?

A. 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 mission while freeing up valuable spectrum for commercial use.

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?

A. As a father and grandfather I am concerned about some of what I see on TV and find it to certainly be very different from the TV shows I grew up with. 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.

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?

A. 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.

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?

A. 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.

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?

A. 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.

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?

A. See answer to previous 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?

A. I understand that better than 95% 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 and I commit to you that I will ensure FCC staff and my fellow commissioners continue to review these transactions in a timely manner.

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?

A. 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 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. We are a nation founded on common law, which uses precedent to inform future decisions. This seems to be an unexceptional concept and one that is the bedrock of our Nation's laws.

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?

A. 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.

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?

A. 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.

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?

A: 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 noncommercial 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.

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?

A. I will demand an open and transparent process that is guided by the Administrative Procedures Act, Congressional directives and Commission precedent in pursuing rulemakings.

Senator Marco Rubio
Questions for the Record
Nomination of Mr. Thomas Wheeler to be
Chairman of the Federal Communications Commission
Senate Committee on Commerce, Science and Transportation
Hearing on June 18, 2013

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?

A. 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.
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?

A. 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.
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.

A. 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 to meet that demand. I look forward to working with Congress to make each of these tools as effective as possible.

4. Will you make it a priority as Chairman to identify spectrum to be auctioned for commercial use?

A. Yes.

5. Will you work with NTIA to identify and clear federally held spectrum for commercial use? How will you do that as Chairman?

A. 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.

6. Do you think bidders view spectrum they would share with government systems as valuable as spectrum cleared of such systems?

A. 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. I do think a properly structured arrangement with clear service rules could make sharing an attractive approach for wireless providers.

7. What are the three most-important decisions you will need to make to ensure that the broadcast incentive auction is a success?

A. 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 that the Commission is currently seeking public input on and I look forward to working with my fellow commissioners to bring about a successful result.

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?

A. 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 mission while freeing up valuable spectrum for commercial use. The Commission has circulated an item that, as I understand it, explores these issues.

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?

A. The TAC, as a group, did suggest a target date of 2018 for sun-setting 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 prepared 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 guided by the core values that have always guided the Commission, namely, the promotion of competition, consumer protection, universal service and public safety.

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?

A. I cannot speculate on what future action I would take without the benefit of reviewing the court's decision and the appropriate consultation with the Department of Justice.

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?

A. As a venture capitalist that has funded Internet-based business opportunities, I can tell you from my personal experience, the status of this docket is 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.

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?

A. I believe that whenever possible, the marketplace should drive communications provider investment decisions and business practices. The Commission should not inject itself unless required by Congress or there is a clearly demonstrated need for Commission action to ensure important public policy objectives (e.g. access to 911, making spectrum available, disability access, data roaming requirements) that would not likely be achieved absent Commission action.

Or you could say:

I do believe, as Congress directed the FCC, that the Commission plays a critical role in fostering competition in the wireline, wireless, and media marketplace. It does this through policies that ensure open markets and that essential inputs, such as spectrum, are available. The Commission also has a Congressionally-mandated role to protect consumers of the various communication services that are offered. Those rules ensure accurate billing for services and privacy of consumers’ information. The FCC has also been charged with promoting public safety and as such has responsibility for ensuring that 911 service is available and that first responders have the spectrum they need to conduct their work.

Senator Kelly Ayotte
Questions for the Record
Nomination of Mr. Thomas Wheeler to be
Chairman of the Federal Communications Commission
Senate Committee on Commerce, Science and Transportation
Hearing on June 18, 2013

Upcoming Spectrum Auctions

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% more than CBO estimated. Also, it had over 100 winning bidders with 1400 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?

- A. **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 are working hard to structure a successful auction consistent with these objectives and I will strongly support such efforts. Regarding bidder eligibility, the statute passed by Congress provided the Commission with two requirements: (1) ensure that all are eligible to participate, but (2) the Commission could 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.**

Universal Service Fund

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.

- A. 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)

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?

- A. 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

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?

- A. 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

- 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?
 - A. 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.**

Senator Dean Heller
Questions for the Record
Nomination of Mr. Thomas Wheeler to be
Chairman of the Federal Communications Commission
Senate Committee on Commerce, Science and Transportation
Hearing on June 18, 2013

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.

1. 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?

A. I am committed to meeting that timeline.

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?

A. 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.

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?

A. 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.

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?

A. 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.

5. Do you believe the 1996 telecommunications act was technology neutral?

A. 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.

6. Do you believe the Commission should work to upgrade America’s communication networks to IP-based technology? Will this be a priority?

A. 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.

7. Some believe that applying Title 2 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?

A. Regardless of regulatory classification, 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 mission. One exciting aspect of potential technology trials that the Commission’s Technology Transitions Policy Task Force is currently considering is that they can provide real world data about which federal and state rules remain necessary and also which regulations are ripe for elimination.

Senator Dan Coats
Questions for the Record
Nomination of Mr. Thomas Wheeler to be
Chairman of the Federal Communications Commission
Senate Committee on Commerce, Science and Transportation
Hearing on June 18, 2013

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."

a. What did you mean by this statement?

A. ???

Comment [GWG1]: We could not develop an answer for this one.

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.

a. I am concerned about your statement. Can you amplify on your views on increased regulation?

A. 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 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. We are a nation founded on common law, which uses precedent to inform future decisions. This seems to be an unexceptional concept and one that is the bedrock of our Nation's laws.

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?**

A. Yes.

- 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?**

A. 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.

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.

a. 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?

A. 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. One exciting aspect of potential technology trials that the Commission's Technology Transitions Policy Task Force is currently considering is that they can provide real world data about which federal and state rules remain necessary and also which regulations are ripe for elimination.

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?

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?

A. 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 their 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.

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 non-profit organizations), and covers both interstate and intrastate telemarketing calls.

a. Is this an issue you're aware of, and if so can you share your views on this topic with me?

- A. 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.**

Senator Ted Cruz
Questions for the Record
Nomination of Mr. Thomas Wheeler to be
Chairman of the Federal Communications Commission
Senate Committee on Commerce, Science and Transportation
Hearing on June 18, 2013

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?

A: The Commission has only the authority Congress grants it by statute and the Commission, in interpreting that authority, must respect the First Amendment. The DISCLOSE Act has not been enacted into law, so it cannot be, and is not, the source of any authority for the Commission. The Commission's authority must be found in the statutes Congress has enacted, principally the Communications Act, as amended. I discuss the relevant provisions of that Act below, all of which must be interpreted in light of the First Amendment.

In response to your other questions, in this area, as in others, Congress has primary responsibility, and the FCC has only the authority that Congress grants to it by statute. 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 Congress' directives under the Communications Act, legal precedent, and the Constitution, especially the First Amendment. I will thus adhere to the statutes that Congress has passed.

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.

Senator Jeff Chiesa
Questions for the Record
Nomination of Mr. Thomas Wheeler to be
Chairman of the Federal Communications Commission
Senate Committee on Commerce, Science and Transportation
Hearing on June 18, 2013

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?
 - A. 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 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 not ever 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 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.**
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?
 - A. I believe that whenever possible, the marketplace should drive communications provider investment decisions and business practices. The Commission should not inject itself unless required by Congress or there is a clearly demonstrated need for Commission action to ensure important public policy objectives (e.g. access to 911, making spectrum available, disability access, data roaming requirements) that would not likely be achieved absent Commission action. Current technology**

transitions offer substantial benefits for consumers and businesses. 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.

Questions for the Record
Senator Mark Pryor
Senate Committee on Commerce, Science and Transportation
On the Nomination of Thomas Wheeler to be Chairman of the FCC

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?

A. 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.
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?

A. 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 every broadcaster, public or commercial, to voluntarily decide on 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 station.

- Have you considered how public educational television will continue to be successful after the incentive auctions?

A: 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.

By recent estimates, Arkansas has the highest percentage of cell-only households at 35 percent. Nationwide, 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?

A. 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 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.

Questions for the Record
Senator Barbara Boxer
Senate Committee on Commerce, Science, and Transportation
Hearing on the Nomination of Mr. Thomas Wheeler to be FCC Chairman
June 18, 2013

1. Universal Service Fund Contributions

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?

- A. 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 saddling new innovative technologies with USF contribution burdens. 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.**

2. Media Ownership

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?

- A. 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.**

3. Data Caps and the Open Internet

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?

- A. For the Internet economy to continue to thrive, it is critical for consumers & businesses, and for America's global competitiveness that speed and capacity increase. New business models and services can be beneficial in that they can help drive efficiency, provide more choices, and improve affordability by offering lower prices per bit. At the same time, new business models and services must not come at the expense of competition, including from over-the-top providers, or at the expense of increases in speed and capacity. I can assure you that I will have FCC staff monitor these developments and report to me and my fellow commissioners on these trends.**

4. IP Transition and Rural Call Completion

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 prevalent 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?

A. Yes, 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 do not. That does not mean that the same rules and regulations should apply to newer technologies, but certain core capabilities, like interconnection and access to 9-1-1 service, must be maintained regardless of the technological platform. The rural call completion issues many rural carriers are experiencing today are an unfortunate example of the potential challenges associated with the transition to IP-based systems. The most important thing the Commission can do is to ensure that regulatory requirements for providers are made clear and to enforce those rules when they are being violated. As Chairman, I commit to taking concrete actions to address this issue.

5. E-Rate Funding

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% 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?

A. As I mentioned to Chairman Rockefeller, updating the E-Rate program to ensure that our 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.

6. Public Safety Networks

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?

A: 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 to meet the policy objectives laid out by Congress. As you note, funding FirstNet is one of these critical objectives and one of the key reasons to move quickly, so I look forward to working with my fellow commissioners who I am certain are also focused on this goal.

7. Low Power Stations and Translators

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?

A. As you are aware, 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 will ensure that important programming they provide continues to reach viewers. The Commission's notice asked for comment on achieving just that 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.

8. Positive Train Control

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?

A. 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 once 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.

Nomination of Tom Wheeler, to be Chairman, Federal Communications Commission

June 25, 2013

Questions for the Record

Senator Claire McCaskill

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% 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?
- A. **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 through 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. Getting these 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.

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?
- A. 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% 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 and I commit to you that I will ensure FCC staff and my fellow commissioners continue to review these transaction in a timely manner.**
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?
- A. 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.**
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?

A: 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 has implications for what the Commission may or may not be able to do. If confirmed, I will discuss this case with the agency's experts to better understand the ramifications of that decision.

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?

A: You can put me in the camp with those that would like to see expanded use of PEDs on flights. I understand that the FCC is working with the FAA to determine what rule changes may be appropriate and I can assure you that I will make certain that coordination continues and hopefully it will bring about changes that allow for expanded access.

Senator Mark Warner

June 18, 2013 – Senate Committee on Commerce, Science and Transportation
Confirmation Hearing for Tom Wheeler to be Chairman of the FCC

1. Federal Spectrum

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?

A. 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 1990’s I worked with the government to find a win-win 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.

2. USF Reform

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?

A. 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.

3. Incentive Auctions

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?

A. The state of technology is a driver of spectrum's usefulness. As technology evolves, the relative value of spectrum will too. The questions you ask are all important questions and ones that are actively being reviewed by the Commission. I look forward to engaging with the my fellow commissioners and FCC staff on these issues.

4. IP to IP Network Transition

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?

A. Most importantly, 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 mission. It is very important to maintain a competitive marketplace during and after the transition, and I am committed to ensuring such an outcome. In pursuing such an objective, I am mindful of the fact that technology transitions can bring tremendous benefits, but the migration to all-IP platforms does not automatically ensure increased competition. One thing exciting about potential technology trials is that they can provide real world data about which federal and state rules remain necessary and also which regulations are ripe for elimination.

SENATOR WILLIAM M. COWAN
UNITED STATES SENATE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
HEARING QUESTIONS FOR THE RECORD
“NOMINATION OF THOMAS WHEELER TO BE FCC CHAIRMAN”
JUNE 18, 2013

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?

A. Competition amongst wireless providers is critical to encouraging innovation. The incentive auction presents a significant opportunity for these providers to inject their businesses with its most essential input – spectrum. Beyond that, I know this is an open matter before the Commission, and I look forward to engaging more fully if I am confirmed.
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?

A. 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 pending matters.
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?

A. I am committed to promoting competition and as you point out the 1996 Act provides the FCC with certain tools to do that. 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.

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?

A. 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 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.

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?

A. Under the 1992 Cable Act, the FCC cannot regulate the rates of the basic tier where there is “effective competition.” The Commission’s most recent cable price surveys do show basic and expanded basic cable rates increasing more quickly in the 25 percent of communities where there have been findings of effective competition, but when the data is evaluated on a per channel basis, the average overall price decreases by 7.3% for expanded basic service. Should Congress decide to revisit the issue, I will make certain that the Commission’s expert staff is available to provide technical assistance.

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?

A. Yes.

Senator Begich Questions for the Record
June 20, 2013
To be presented to Federal Communication Commission
Chairman Nominee Mr. Tom Wheeler

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?

A. Yes.

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?

A. 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.

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?

A. Yes.

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?
 - A. **I can assure you that should I be confirmed the decisions the Commission makes will be consistent with the directives of Congress contained in the Middle Class Tax Relief and Job Creation Act of 2012.**
5. What are your views on data caps or data tiers on wired and wireless broadband and their impact on the growth of online video?
 - A. **For the Internet economy to continue to thrive, it is critical for consumers & businesses, and for America's global competitiveness that speed and capacity increase. New business models and services can be beneficial in that they can help drive efficiency, provide more choices, and improve affordability by offering lower prices per bit. At the same time, new business models and services must not come at the expense of competition, including from over-the-top providers, or at the expense of increases in speed and capacity. I can assure you that I will have FCC staff monitor these developments and report to me and my fellow commissioners on these trends.**
6. What should the FCC do if the DC Circuit Court overturns the net neutrality rules?
 - A. **This is a matter pending before the courts and I cannot speculate on it or future decisions by the FCC.**
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?
 - A. **I will take seriously Congress' directive in section 309(j) of the Communications Act to ensure auctioning of spectrum licenses disseminates licenses to among 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.**
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 moved 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?

A. 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 remains available in Alaska. The Commission's notice asked for comment on this issue and I look forward to looking into this issue further if confirmed.

Questions for the Record from Senator Rockefeller
Senate Committee on Commerce, Science, and Transportation
Nominations Hearing on Thomas Wheeler to be FCC Chairman
June 18, 2013

1. Universal Service Mobility Fund

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 it works effectively for all rural areas, including those areas, like West Virginia, that face topographical challenges?

A. Yes. Ensuring all Americans have access to robust wireless voice and broadband service, regardless of location, is an important objective I am committed to meeting.

2. Cramming

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?

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

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

- A. 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.**

3. Online Video/Cable Rates

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?

- A. Yes. I will make certain the Commission's policies foster opportunities for competition, innovation, and investment.**

4. Interoperability

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?

A. Yes.

5. Payphones

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?

A. Yes.

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

A. Yes.

6. IP Transition

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?

- A. 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 mission. 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 we know from our 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.**

7. Violent Content

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 wellbeing.

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?

- A. Yes.**

8. Media Ownership

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?

- A. 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.**

9. Cybersecurity

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?

- A. Cybersecurity is a real and pressing threat. I know the Commission has had success with its Communications Security, Reliability, and Interoperability Council (CSRIC) in reaching agreement with 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 to implement 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.**

**Post-Hearing Questions for the Record
Submitted to Thomas Wheeler
From Senator Brian Schatz**

**“Nomination of Thomas Wheeler to be Chair of the Federal Communications
Commission”
June 18, 2013**

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?

A. Yes.

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?

A. 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.

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?

A: 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.



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

July 1, 2014

Office of the Director

NBC Washington
4001 Nebraska Avenue
Washington, D.C. 20016
Attn: Scott MacFarlane

Re: *FOIA Control No. 2014-502*

Dear Mr. MacFarlane:

This letter responds to your Freedom of Information Act ("FOIA") request of June 23, 2014¹, for correspondence regarding Questions for the Record since January 1, 2014. I am enclosing a copy of our correspondence. Your fee has been waived, as you requested, given the cost to produce these records was minimal.

The Commission is not required to, nor does it, maintain records via voicemail, facsimile, or telephone. If you consider this to be a denial of your FOIA request, you may file an application for review with the Office of General Counsel within 30 days of the date of this letter, see 47 CFR 0.46(j).

If you have any questions concerning this response, please contact Alethea Lewis of my office at 202-418-1900.

Sincerely,


Sara W. Morris

cc: Office of Performance Evaluation and Records Management

¹ Your FOIA request included a request for expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(v). By responding to your FOIA request within 10 days of the filing of your request, your request for expedited processing is granted.

Responses from Chairman Tom Wheeler to Questions for the Record

The Honorable Greg Walden

1. Chairman Upton and I sent a letter after the Commission announced it would make changes to the UHF discount and apply them retroactively to the date of the notice. Is it consistent with the APA to announce that you plan to apply yet unwritten rules retroactively? Could you explain how this comports with good administrative process?

Response:

In the UHF Discount Notice of Proposed Rulemaking (NPRM), the Commission provided notice of a proposal to grandfather the existing groups and any pending license transfer applications that would exceed the 39% national TV ownership cap absent the UHF discount rule, as of the date of the release of the NPRM. See *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, MB Docket No. 13-236, Notice of Proposed Rulemaking, 28 FCC Rcd 14324, 14331, Note 58 (2013). The Commission followed this same approach (of grandfathering interests held as of the date of the NPRM) in 1999 with respect to a change in its attribution of ownership interests and again when dealing with the attribution of Local Marketing Agreements (LMAs). The broadcast industry has been on notice since the release of the 1998 Biennial Review in 2000, that the UHF Discount could be eliminated after the DTV transition. The Commission sought comment in the current NPRM on the specific proposals regarding grandfathering in addition to seeking comment on whether to eliminate the UHF Discount at all. The proceeding is pending, and no final decisions have been made.

2. The FCC has found on two previous occasions that an absolute ban on newspaper/broadcast cross-ownership is not necessary to serve the public interest and that, to the contrary, cross-ownership fosters local journalism without harming diversity or competition, a finding which was affirmed by a court of appeals. And, since these conclusions were reached, competition to newspapers has only continued to expand while the financial condition of the industry has deteriorated further. Against this backdrop, wouldn't it be exceedingly difficult for the FCC to justify a conclusion that changes remain unnecessary to the media ownership rules?

Response:

Prior to my arrival at the Commission, there was a concerted effort to have a data-driven proceeding to evaluate the current broadcast ownership rules as required by Congress. Given the complexities involved in the proceeding, I determined at the end of last year that it would be best to take a fresh look at these issues. The Commission is on-track to seek a new round of comments in the near term that will help us make an informed decision going forward, keeping in mind our duty to serve the public interest, as well as complying with the issues raised by the Third Circuit's remand.

3. The newspaper/broadcast cross-ownership rule is the only one of the FCC's media ownership rules that has not been relaxed at all since its adoption, and all of the other FCC media rules allow at least some degree of common ownership. At a minimum, shouldn't the FCC relax the newspaper cross-ownership rule so that it allows at least as much flexibility as the other rules? Would you agree that it makes sense to relax the media ownership rules in view of increased competition in the content market?

Response:

The role of the Commission, pursuant to Congressional directive, is to review the broadcast ownership rules on a periodic basis to determine if the rules continue to serve the public interest as a result of competition. I am committed to carrying out that directive, and doing so by reviewing the impact of each individual rule, and basing decisions on a complete, data-driven record. As noted, I have determined to take a fresh look at the issues in the pending quadrennial review, and we are on-track to seek a new round of comments in the near term.

4. An engineering analysis prepared by the New York State Broadcasters Association in 2012 found that over a three-day period there were 49 alleged illegal radio stations operating in the Bronx and Brooklyn. The study estimated that there may be more illegal radio stations operating in the FM and AM band than there are legal radio stations throughout New York City. Continued illegal operations could interfere with vital EAS functions provided by licensed radio stations. Based on public records, the FCC issued 42 Notices of Unlicensed Operations in New York City in 2013. What actions has the FCC taken regarding these stations since issuing the Notices of Unlicensed Operation? Has the FCC confirmed that they have ceased illegal operation?

Response:

Pirate radio enforcement remains one of the highest priorities for the Enforcement Bureau's New York field office as well as our other field offices nationwide. Our agents generally focus on quickly issuing Notices of Unauthorized Operation (NOUOs) to as many pirate broadcasters as possible. In Fiscal Year 2013, the New York Field Office issued 73 NOUOs, and in some cases, the same station may have received multiple NOUOs. For several weeks in summer 2013, agents were detailed from several other field offices to work on a special pirate enforcement initiative in New York City. These agents were successful in shutting down various pirates, and their work resulted in a significant uptick in pirate enforcement such that, in FY 2013, NY was responsible for more than 60 percent of the NOUOs issued by the entire field. While an NOUO often is enough to shut down the offending station, some pirates refuse to comply even after repeated FCC visits. In such cases, the Field Office can escalate its enforcement actions by issuing Notices of Apparent Liability (NALs) against the pirate broadcaster, but as with the NOUOs, some pirates ignore the NALs and continue operating.

The seizure of equipment through an *in rem* action requires a coordinated effort with the U.S. Attorney's office and U.S. Marshals. One of the benefits of an *in rem* action is that it is directed at the equipment, so in cases where a pirate station is unattended, the process can move forward without having to identify the operator. Several such actions have occurred in the last few years, and several actions are pending with NYC-area U.S.

Attorney's Offices. Due to the confidential nature of the Enforcement Bureau's investigations, additional details regarding the pending actions are not available. However, I want to assure you that agents continue to work to reduce the instances of unlicensed operation in NYC and across the country.

The Honorable Bob Latta

1. Chairman Wheeler, almost all small and medium sized MVPDs license most of their programming through a single buying group, the National Cable Television Cooperative (NCTC). Existing law clearly indicates that Congress intended a “buying group” to have protections under the program access rules. However, in practice, program access rules provide essentially no protection at all to buying groups such as the NCTC due to problems with the manner in which the rules were drafted by the Commission. This problem was brought to the Commission’s attention in June of 2012. In October 2012, the FCC issued an FNPRM tentatively concluding that its definition of a “buying group” needs to be modernized and sought comment on this and other related matters to ensure that buying groups utilized by smaller cable operators avail themselves of the rules as Congress intended. The issue has now been before the FCC for one and one-half years. What’s the hold up on issuing an Order on this matter?

Response:

The Media Bureau is currently evaluating the record in this proceeding, which raises complex legal and policy issues impacting not just small cable operators but also programmers. The Bureau is analyzing the costs and benefits of such a rule change as well as the effect of this proposed rule change on the video marketplace generally. While I understand the concerns raised by the NCTC, nothing is prohibiting the NCTC from qualifying as a buying group under the existing rules, as they previously have done.

2. Chairman Wheeler, the way we watch television today has changed dramatically over the past 20 years. As compared to two decades ago, consumers now have hundreds of programming channels and a myriad of ways to view programming – through traditional subscriptions from cable, satellite and now telcos, video on demand, online streaming of live events, libraries of content available on Netflix and Hulu, new platforms like Aereo, and on hundreds of websites with video clips and episodes. In 1992, the landscape was quite different with basically two evenly matched players – cable and broadcasters. What are your views on whether the current rules governing the video marketplace need updating?

Response:

There is no question that the video marketplace of 2014 barely resembles that of 20 years ago. Innovation and competition, especially those flowing from IP-enabled technologies, have led to a commingling of many previously distinct and separate services. In light of this dynamism, it is essential that the Commission exercise its lawful discretion to interpret the Communications Act to meet contemporary circumstances. As you know, the FCC is statutorily required to assess its media ownership rules every four years and determine if they need to be modified to serve the public interest. In fact, it’s been eight years since the Commission last completed a quadrennial review, so it goes without saying that the video marketplace has changed dramatically since the FCC last updated these rules. In the near term, the Commission will begin in earnest its 2014 quadrennial review. This will be an open evaluation undertaken to understand how evolving market structures and competition should influence how we act to preserve the continuing values of competition, localism, and diversity of voices in our local media.

3. As Congress recognized in passing the Spectrum Act of 2012, the 5 GHz band may be the best chance we have to allocate additional spectrum for unlicensed Wi-Fi services. Earlier this year the FCC started a proceeding to expand the amount of spectrum in the 5GHz band that could be used by current and next-generation Wi-Fi devices. Chairman Wheeler, I would like to know whether you view this proceeding as a priority, and whether you agree with a number of your colleagues that the FCC should move expeditiously in the lower UNII-1 (UNII pronounced U-NEE) band to encourage greater spectrum sharing that will make the promise of Gigabit Wi-fi speeds a reality? Would any of the other Commissioners care to share their views on this issue?

Response:

I do consider this a priority, and the Commission is committed to advancing the tremendous promise the 5 GHz band offers for unlicensed use. Staff has been working with all of the stakeholders to resolve technical challenges associated with increasing the utility of this spectrum, while also protecting incumbent, licensed users. In February 2013, the Commission adopted a *Notice of Proposed Rulemaking* seeking comment on how to increase the utility of the existing U-NII 5 GHz bands – including the UNII-1 band – as well as the technical feasibility of allowing operation of U-NII devices in the 5350-5470 MHz and 5850-5925 MHz bands following the release of NTIA’s January 2013 initial study evaluating the 5 GHz bands. . I plan to circulate an Order to my fellow Commissioners for their consideration at the March Open Meeting that, among other things, would remove indoor-use only restrictions and increase permitted power levels in the UNII-1 band.

The Honorable Brett Guthrie

1. Many smaller cable operators rely upon buying groups to license programming. For more than one and one-half years, the FCC has been working on modernizing its “buying group” definition and I have heard from local cable operators in Kentucky about the importance of ensuring these entities have protections under the program access rules. Can you please provide a status update on whether you intend to release further guidance on the “buying group” definition and when we can expect that?

Response:

The Media Bureau is currently evaluating the record in this proceeding, which raises complex legal and policy issues impacting not just small cable operators but also programmers. The Bureau is analyzing the costs and benefits of such a rule change as well as the effect of this proposed rule change on the video marketplace generally. While I understand the concerns raised by cable operators like yours in Kentucky, nothing is prohibiting local cable cooperatives from qualifying as a buying group under the existing rules, as they previously have done.

2. Smaller carriers like Bluegrass Cellular, which serves portions of my district, have previously expressed concerns to the FCC that they may not be able to participate in spectrum auctions that use Economic Area sized licenses. Can you share with me how the Commission plans to ensure the geographic license sizes are done in such a way to ensure the maximum number of participants and the ability to generate the maximum possible revenue?

Response:

Section 6403(c)(3) of the Spectrum Act directs the Commission to “consider assigning licenses that cover geographic areas of a variety of different sizes” when adopting rules for the incentive auction. In the Incentive Auction *Notice of Proposed Rulemaking*, the Commission proposed to license the 600 MHz band in Economic Areas (EAs), and also sought comment on other geographic sized license areas. Additionally, in response to a proposal from Competitive Carriers Association (CCA), in December 2013, the Commission released a Public Notice seeking comment regarding licensing the 600 MHz band in new license areas called Partial Economic Areas (PEAs). The Commission continues to review the record related to geographic areas, and has not made any final decisions.

The Honorable Mike Pompeo

1. Chairman Wheeler, you recently spoke about the marriage of computing and connectivity, and how history has shown that new networks “catalyze innovation, investment, ideas, and ingenuity.” Could you elaborate on the benefits that modern broadband networks can provide compared to the existing telephone network and how the FCC is committed to a policy that delivers these benefits as quickly as possible to consumers?

Response:

Our communications networks are rapidly transitioning from copper-based networks that Alexander Graham Bell would recognize to wired and wireless IP-based networks – and that’s a good thing. These new networks are more efficient, which can enable better products, lower prices, and massive benefits for consumers.

The Commission’s overarching goal is to protect the core values embodied in the Network Compact and codified in the Communications Act: public safety, universal service, competition, and consumer protection. Our challenge is to preserve the values that consumers and businesses have come to expect from their networks, while unleashing new waves of investment and innovation. This will deliver untold benefits for the American people.

2. Chairman Wheeler, with NIST in the process of finalizing its Cybersecurity Framework, I would imagine that agencies will begin to review their own cybersecurity requirements. But, as far as I am aware, the FCC does not currently impose cybersecurity requirements on network providers. If the FCC chose to do so, either in response to the President’s Executive Order or otherwise, what would be the FCC’s legal basis for imposing such requirements. Specifically, what part or parts of the Communications Act provide the FCC with authority to impose cybersecurity requirements?

Response:

The Communications Act directs the Commission to promote the reliability, resiliency, and availability of the nation’s communications networks at all times through the adoption and enforcement of rules, including rules related to cybersecurity. For example, existing regulations include requirements for certain communications providers to report on the reliability and security of communications infrastructures, such as service disruptions and outages that meet specific thresholds that affect public safety communications and emergency response regardless of the cause of the disruption.

The Commission will continue to work with our colleagues in other federal agencies, as well as our Federal Advisory Committees – such as the Communications, Security, Reliability, and Interoperability Council (CSRIC) – to assess and make recommendations in all public safety arenas, including cybersecurity.

3. Chairman Wheeler, I am concerned that the current Administration has not voiced its concerns in international forums about protecting existing commercial spectrum users in various spectrum bands. I fear that as the World Radio Conference of 2015 (WRC 2015) approaches, other nations will be ready to manipulate the Conference to intrude on the spectrum of the existing commercial spectrum users. Can you assure me that you will make defense of U.S. commercial spectrum uses a top priority for the Administration as it prepares its strategies for WRC 2015?

Response:

The Commission is the policy and technical expert that assists the Department of State as it prepares for the WRC-15. You can be assured Commission staff work very closely with the State Department and other agencies on issues that will be discussed at the WRC-15. The Commission has renewed the charter for the Advisory Committee that collects private sector recommendations on issues to be considered at WRC-15. To date, four meetings on preparations for WRC-15 have been held and over 35 recommendations on WRC-15 issues have been provided. The fifth meeting is scheduled for March 12, 2014.

The Commission also is actively seeking to advance the U.S. wireless broadband objectives by participating in international meetings concerning future international allocations for the implementation of mobile broadband systems through meetings of the Joint Task Group (JTG) during ITU meetings.

The Honorable Henry Waxman

1. In many markets, low power television stations (LPTVs) operating on Channel 6 developed new local services since the audio on these stations can be heard on 87.7 FM using the radio dial. In order to comply with the upcoming analog-to-digital television transition, some broadcasters have proposed combining digital LPTV signals with analog audio streams into one channel, using existing modulation. Please state your view in regards to this approach.

Response:

I think it is important to note that these stations are licensed as TV stations and not radio stations. Although technically compliant with Commission rules as long as a video signal is provided, the intent of our allocation and licensing rules is for these licensees to provide video services. In August 2012, the Video Division of the Media Bureau dismissed an application from an LPTV station seeking to provide such a hybrid analog-digital signal because it did not comply with existing rules regarding transmission standards and they hybrid operation proposal could cause impermissible interference. I am not aware of any existing proposal currently pending at the Commission that would address the concerns raised by the Division in 2012.

2. Congress created the program access rules to level the playing field for competitors seeking to acquire video programming. Small cable operators use buying groups to purchase programming. I understand that the FCC has been working on updating the definition of a buying group for two years. What is the status of this proceeding?

Response:

The Media Bureau is currently evaluating the record in this proceeding, which raises complex legal and policy issues impacting not just small cable operators but also programmers. The Bureau is analyzing the costs and benefits of such a rule change as well as the effect of this proposed rule change on the video marketplace generally. While I understand the concerns raised by small cable operators, nothing is prohibiting these cooperatives from qualifying as a buying group under the existing rules, as they previously have done.

3. As the FCC continues its ongoing work on the IP transition, will the task force examine how service providers are marketing or communicating with consumers about replacing copper based services with IP? How will the FCC ensure that any trials are truly voluntary for consumers?

Response:

The *Technology Transitions Order* sets forth certain values-based conditions and rebuttable presumptions that will guide the Commission's evaluation of proposals for any voluntary service-based experiments. In that *Order*, the Commission concluded that "[w]e can only achieve our goal of advancing technology transitions if customers are fully educated and informed." To that end, one of the critical components of the evaluation process will be how the provider proposes to notify customers of any experiments.

Moreover, the *Order* unambiguously stated that no experiment can be initiated in a manner that requires existing customers to participate. To the extent that providers wish to temporarily stop offering new deployments of legacy services (e.g., to new customers) at the initiation of an experiment, Section 214 of the Communications Act requires providers to obtain authority to discontinue, reduce, or impair service. After successful initiation of an experiment, the Commission is prepared to consider additional requests to withdraw the offering of legacy services. If a provider feels it needs relief from any requirements of the Act or the Commission's rules, or state rules, that provider must seek the appropriate relief from the Commission at the time it submits its experiment proposal.

The Honorable John Dingell

1. I understand that the Commission is considering a methodology for “scoring” bids by reverse auction participants based on factors “in addition to bid amount, such as population coverage or geographic contour, or other relevant measurable factors” (see: GN Docket No. 12-268, pp. 145-56). Does the Commission believe sections 6402 and 6403 of the Act permit it to conduct a weighted reverse auction? Does the Commission believe any other provision of the Act or the Communications Act of 1934 (e.g., subsection 309(j)) grants it authority to conduct a weighted reverse auction? Finally, what effect does the Commission estimate a weighted reverse auction would have on the number of participants and amount of spectrum recovered compared to an unweighted auction? Please explain your response.

Response:

As you note, the Incentive Auction *Notice of Proposed Rulemaking* (NPRM) sought comment on whether and how the Commission should recognize the heterogeneous nature of the television spectrum that different broadcasters might contribute to the auction. In particular, the Commission sought comment on the possibility of “scoring” broadcaster bids to reflect the differences between the spectrum contributions of different bidders. We are not considering taking into account a station’s value as an ongoing broadcasting concern. Staff is currently considering whether scoring bids could demonstrably improve auction outcomes and lower the cost of clearing spectrum in the auction by improving how the auction selects the stations that are assigned a channel and those that are paid to relinquish spectrum rights. The record currently is under review, and there have not been any final decisions.

2. I understand the National Telecommunications and Information Administration (NTIA) is currently conducting a second round of testing regarding the 5850-5925 Megahertz band that it expects to complete in the spring of 2014. The Government Accountability Office’s (GAO) November 2013 report, “Intelligent Transportation Systems: Vehicle-to Vehicle Technologies Expected to Offer Safety Benefits, but a Variety of Deployment Challenges Exist” (GAO-14-13), states the following on page 26:

As NTIA continues its analysis of potential risk mitigation strategies, DOT officials told us that the department is working cooperatively with the agency to examine spectrum-sharing arrangements that have been proposed for the 5 GHz band and expects results of this analysis to be available in spring 2014. According to DOT officials, the automobile and Wi-Fi industries are discussing other possible spectrum-sharing techniques, but specific approaches have not yet been defined.

Does the Commission believe the Commission, NTIA, the Department of Transportation, the automobile industry, and the Wi-Fi industry should work collectively – rather than separately – in order to ensure these studies explore all potential risk mitigation strategies for the 5850-5925 Megahertz band? If so, does the Commission intend to facilitate such collaboration? Please explain your response.

Response:

The Commission supports joint efforts among NTIA, the Department of Transportation, and industry stakeholders to develop and test technical solutions that would also unlicensed use of the 5850-5925 MHz band, while protecting Intelligent Transportation Systems. The Commission is coordinating closely with NTIA to monitor and evaluate the work of the DSRC Coexistence Tiger Team, established by the Institute of Electrical and Electronics Engineers (IEEE), which is working to develop a technical solution to the spectrum sharing issues in the band. The goal is to reach an expeditious resolution to these complex matters that best provides for effective utilization of the spectrum.

On February 7, 2014, the Tiger Team filed a letter with the FCC noting positive collaboration with the participants, and anticipating initial results from simulations by mid-2014. Prototype tests are slated to begin later in the year, and the Tiger Team plans to explore additional coexistence techniques throughout the year.

3. On December 11, 2013, the Commission's Wireless Bureau released a public notice seeking comment on a Partial Economic Areas (PEAs) licensing scheme for the 600 Megahertz band. Does the Commission support licensing the 600 Megahertz band in this fashion (as opposed to using the Economic Areas approach outlined in the *Broadcast Television Incentive Auction NPRM* (GN Docket No. 12-268)? Does the Commission believe a PEA licensing scheme for the 600 Megahertz band will result in participation by the greatest possible number of wireless providers in the incentive auction? Similarly, does the Commission believe a PEA licensing scheme for the 600 Megahertz band will generate the greatest possible amount of revenue from such auction? Please explain your answer.

Response:

Section 6403(c)(3) of the Spectrum Act directs the Commission to "consider assigning licenses that cover geographic areas of a variety of different sizes" when adopting rules for the incentive auction. In the Incentive Auction *Notice of Proposed Rulemaking*, the Commission proposed to license the 600 MHz band in Economic Areas (EAs), and also sought comment on other geographic sized license areas. Additionally, in response to a proposal from Competitive Carriers Association (CCA), in December 2013, the Commission released a Public Notice seeking comment regarding licensing the 600 MHz band in new license areas called Partial Economic Areas (PEAs). The Commission continues to review the record related to geographic areas, and has not made any final decisions.

The Honorable Doris Matsui

1. The FCC, NTIA, and federal agencies have all made real progress in advancing a roadmap that would move a significant portion of the federal users out of the 1755-1780 MHz band so that it can be re-purposed and paired in an auction with the AWS-3 band.

My understanding is that the Commission must now take action on this proposal. Can you update the committee on the FCC's upcoming plan regarding re-purposing the 1755-1780 MHz band and the timing of the next steps by the commission and the target date for auction?

Response:

Commission staff has appreciated the opportunity to meet with the Committee and its staff regarding this subject. The Commission remains committed to meeting the statutory deadlines set forth in the Middle Class Tax Relief and Job Creation Act for auctioning and licensing the 2155-2180 MHz band, which could be paired with the 1780-1855 MHz band.

I plan to circulate an Order to my fellow Commissioners for their consideration at the March Open Meeting that would set the framework for the AWS-3 auction. We anticipate that we will auction AWS-3 spectrum as early as September 2014.

The Honorable Ben Ray Lujan

1. Commissioners, I appreciate your work to extend new communications networks across the digital divide to rural and difficult-to-connect regions of our country. As many of you are aware, my district in New Mexico is home to many Native Americans. Tribal lands are amongst the most underserved—with only about 10% of all homes connected to broadband and some of the lowest rates of wireless communications in the country. The Commission’s recent reforms of the Universal Service Fund acknowledged this need by including a “tribal coefficient” to increase capital expenditures and operating expenses on tribal lands. I plan on introducing legislation to make the FCC’s Office of Native Affairs and Policy, which provided invaluable advocacy in the adoption of the tribal coefficient, into a permanent agency and ensure that it reports directly to the Chairman instead of to another office or Bureau. My legislation has the support of the National Tribal Telecommunications Association, which is comprised of eleven Tribally-owned communications companies from around the country. Do you believe that the telecommunications needs of Native Americans are being adequately addressed by the FCC’s current structure? How do you believe that ONAP could be better empowered to advocate on behalf of Tribal Americans?

Response:

I agree that it is essential to provide resources to ensure that the FCC is able to address the telecommunications needs of Tribal Nations and Native Communities. Prior to three years ago, ONAP was not an individual office within the Consumer and Governmental Affairs Bureau. Liaison with Tribal Governments was then part of the responsibilities of the Office of Intergovernmental Affairs. The decision to create ONAP and reorganize internally, as well as commit specialized personnel, has had an important, positive impact on our work in this area. You have my commitment to follow this important path as we continue to address the telecommunications needs of all Americans.

ONAP, however, benefits greatly by its position within the Consumer and Governmental Affairs Bureau – which is well-situated to continue to facilitate cross-agency coordination and provide administrative oversight and leadership. We take seriously the need to encourage bureau efficiencies and reduce or pool administrative costs. Providing this administrative structure also frees up the specialized ONAP staff to participate directly in tribal consultations instead of day-to-day management and planning sessions that occupy our Bureau and Office Chiefs and their deputies.

2. While I appreciate the Commission’s efforts to include the Tribal Coefficient in its calculation of USF funds, I believe that more is needed in order to connect our tribal lands to modern communications networks. This coefficient must be properly calculated to recognize the full cost impact of providing service on Tribal lands. In fact, the coefficient’s impact is substantially less than a similar coefficient that is provided to measure the cost of providing service on National Park Service lands. Do you believe that the Coefficient is adequate to connect Tribal lands?

Response:

One of the core components of the Network Compact is universal access, and, consistent with that value, the deployment of voice and broadband infrastructure on Tribal lands is a high priority for the Commission. Throughout the process to reform the legacy high-cost universal service mechanisms, the Commission has recognized that the unique circumstances and challenges of providing service on Tribal lands require special consideration.

I am a firm believer in the importance of universal service, and the Commission must make timely decisions in order to provide regulatory certainty and create incentives to further efficient investment in broadband networks. We must also be open to modifications to the reforms if it is clear that particular rules are not serving their intended purpose. To that point, as I stated during the Subcommittee's hearing, I have directed the Wireline Competition Bureau to prepare an item for the Commission's consideration that would eliminate the Quantile Regression Analysis (QRA) benchmarks for rate of return carriers. I look forward to continuing the work of reforming and modernizing the Universal Service Fund high-cost program – as well as other components of the Fund – and to working with stakeholders, including Tribes and carriers serving Tribal lands, to ensure that all Americans have access to robust voice and broadband services.

3. The Navajo Nation, which is partially in my district, has some of the highest rates of poverty and lowest rates of wireless broadband access in the United States. NTUA Wireless, LLC, which is majority owned by the Navajo Nation, has been seeking an ETC designation in order to access universal service fund support to help make telecommunications service available to more residents of the Navajo Nation. This designation would enable NTUA to make additional investments into infrastructure, which would in turn spur job growth and economic development. NTUA Wireless initially petitioned the FCC for an ETC designation on March 3, 2011, and I have repeatedly joined with New Mexico's Senators to support this petition and urge its resolution. To date, I am not aware of a single filing in opposition to this application, yet the FCC has not acted upon it. What is the current status of the NTUA application and when should the Navajo Nation expect the matter to be resolved?

Response:

On February 18, 2014, the Wireline Competition Bureau and the Wireless Telecommunications Bureau conditionally designated NTUA Wireless as an eligible telecommunications carrier (ETC) for those areas on the Navajo Nation in which NTUA Wireless becomes authorized to receive support in Tribal Mobility Fund Phase I. In areas in which NTUA Wireless's designation becomes effective pursuant to the Tribal Mobility Fund, NTUA Wireless will be required to provide Lifeline services and satisfy other ETC obligations. Otherwise NTUA Wireless is designated as a limited ETC, eligible to receive Lifeline-only support on the Navajo Nation in areas where NTUA Wireless does not receive support in the Tribal Mobility Fund Phase I.

4. The FCC was given significant responsibilities in meeting the challenges of Positive Train Control deployment. Nevertheless, it is my understanding that the FCC was just notified this past May that railroads will need to install over 20,000 new antennas along their tracks. I'm shocked that the railroads would wait 5 years after passage of the Rail Safety Improvement Act of 2008 to notify the FCC of this fact. As I'm sure you're aware, railroads in New Mexico cross Tribal lands and have the potential to affect a number of religious and cultural sites in my home state. Could you please explain the steps that the Commission is taking to not only expedite the deployment of positive train control, but also ensure that the needs of Tribal Nations are met?

Response:

It is a top priority of the Commission to work with all parties to help them fulfill their various legal obligations and responsibilities and advance the deployment of Positive Train Control (PTC) within the timeframe prescribed by the Railroad Safety Improvement Act of 2008 (RSIA).

Until early 2013, the Commission had been informed by the railroads that positive train control (PTC) would be deployed largely on existing infrastructure. However, in the spring of 2013, the railroads disclosed to the Commission plans to deploy PTC using more than 20,000 new wayside poles.

The National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) require environmental and historical review of the construction of facilities that use licensed spectrum. Consistent with statutory requirements, since May 2013, Commission staff has been working with all stakeholders to modify our current process under Section 106 of the NHPA to handle our review of PTC deployments more efficiently. Steps taken in this regard include:

- (1) Meetings with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO);
- (2) Listening and consultation sessions with Tribal Nations, including presentations by the Class 1 freight railroads and sessions with railroad representatives in attendance, as well as government-to-government consultation sessions; and
- (3) Release of scoping documents and a draft Program Comment for stakeholder and public comment to modify our Section 106 process.

As a result of these efforts, on January 8, 2014, FCC staff made available to the Class 1 freight railroads a Beta test batching format to submit some of their proposed wayside facilities for Tribal and State historic preservation review. The Commission intends to submit the Program Comment to ACHP by the end of February, allowing for adoption by ACHP by mid-April under ACHP's rules.

The Commission is also in regular communication with the Department of Transportation, the Federal Railway Administration, and the National Transportation Safety Board regarding PTC issues.

5. As you know, Section 254 of the Communications Act includes a statutory and laudable goal of providing low-income families access to telecommunications services. As part of this mandate, the FCC has managed the Lifeline program that provides discounted mobile telephone service to eligible consumers. The FCC has recently taken action to strengthen and preserve the Lifeline program by working to confirm that consumers may only receive one phone per household, certify that they are eligible for the service and agree to recertify their eligibility each year. To date these steps have proven fruitful, saving an estimated \$2 billion to the program and resulting in the collection of \$90 million in fines from enforcement actions over the past 3 months. How would you evaluate the effectiveness of the recent FCC reforms to the Lifeline program? What work remains to be done to ensure that it continues supporting the low income Americans who depend upon it?

Response:

Lifeline has been an essential program – for jobs, safety and security, and access to government services – for millions of Americans who otherwise could not afford phone service. While the Commission’s comprehensive 2012 Lifeline reforms have made significant progress to address concerns about the program, our work is not complete.

The Commission is continuing to monitor the impact of its reforms, and actively enforcing its rules. In addition, the Commission is evaluating additional potential steps to ensure the integrity of the Lifeline program based on proposals contained in a *Further Notice of Proposed Rulemaking* that accompanied the 2012 *Lifeline Reform Order*, as well as proposals contained in two petitions for rulemaking that were put out for comment. The Commission is actively reviewing the record in response to the proposals in the *Further Notice* and the petitions, in light of developments in the Lifeline market.

6. As required by provisions in the Middle Class Tax Relief Act of 2012, the Commission has an open Notice of Proposed Rule-making (NPRM) to allow greater Wi-Fi use in the 5 GHz band. Finalizing this rule could greatly benefit consumers by providing the spectrum necessary for tremendously faster Wi-Fi connection speeds, with greater capacity and a host of new Wi-Fi applications. Given it is a secondary use, Wi-Fi provides tremendous value to the American public and is frequently used to offer free access in public spaces. It is a great example of maximizing the use of this scarce resource. The President’s June 2013 memorandum – Expanding America’s Leadership in Wireless Innovation – calls for the FCC, in consultation with NTIA, to “promulgate and enforce rules for licensed services to provide strong incentives for licensees to put spectrum to use and avoid spectrum warehousing. Such rules may include build-out requirements or other licensing conditions as appropriate for the particular circumstance” Despite having been allocated this spectrum in 1999, there is still only one DSRC test deployment in the entire United States. Furthermore, the Department of Transportation has stated pilot deployments will not begin until 2015 or 2016. It seems that if we are going to require strict build-out requirements for companies that pay significant sums for spectrum, we should, at a minimum, require incumbents who have spectrum and are not fully utilizing it to work with entities that want to use that spectrum on a secondary basis, in this case the Wi-Fi industry. It only makes sense to maximize the use of that spectrum. Do you think that is a fair requirement?

Response:

Yes. The Commission is committed to advancing the tremendous promise the 5 GHz band offers for unlicensed use. As part of an ongoing rulemaking process in this matter, our staff has been working with all of the stakeholders to resolve the technical challenges associated with increasing the utility of this spectrum, while also protecting incumbent, licensed users.

7. The President's June 2013 memorandum – Expanding America's Leadership in Wireless Innovation – also calls for the FCC in consultation with NTIA, to: “identify spectrum allocated for nonfederal uses that can be made available for licensed and unlicensed wireless broadband services and devices, and other innovative and flexible uses of spectrum, while fairly accommodating the rights and reasonable expectations of incumbent users” I, along with several of my colleagues, recently wrote to you regarding the importance of looking for all sharing solutions in the 5850-5925 block. The 5850-5925 block is a key component of maximizing use of the 5 GHz band, but I understand the incumbent in that spectrum, the Intelligent Transportation System of America, has continually raised concerns and objections to sharing despite any final conclusions about the possibilities for successful sharing. That approach seems inconsistent with the President's call for “reasonable expectations.” Can you explain how you interpret this from the Commission's perspective, and in this particular case, would you agree “reasonable expectations” for ITS require at least a full dialogue looking for sharing with the respective agencies and stakeholders? If it were necessary, would you view small adjustments to the DSRC standards to facilitate shared use at this nascent point in its development, given it is only deployed in 2,800 vehicles in a pilot program, as a reasonable expectation?

Response:

The Commission supports joint efforts among NTIA, the Department of Transportation, and industry stakeholders to develop and test technical solutions that would also unlicensed use of the 5850-5925 MHz band, while protecting Intelligent Transportation Systems. The Commission is coordinating closely with NTIA to monitor and evaluate the work of the DSRC Coexistence Tiger Team, established by the Institute of Electrical and Electronics Engineers (IEEE), which is working to develop a technical solution to the spectrum sharing issues in the band. The goal is to reach an expeditious resolution to these complex matters that best provides for effective utilization of the spectrum.

On February 7, 2014, the Tiger Team filed a letter with the FCC noting positive collaboration with the participants, and anticipating initial results from simulations by mid-2014. Prototype tests are slated to begin later in the year, and the Tiger Team plans to explore additional coexistence techniques throughout the year.

8. I appreciated Mr. Pai's comments on 5 GHz. He hits the nail on the head talking about the benefits that can come from maximizing unlicensed use in those bands, and the opportunities it presents consumers. It's important that a technically sound outcome on whether sharing can be achieved with DSCR and Wi-Fi is reached. Is it your understanding that all parties with interest in that band are working together to explore all sharing opportunities and reach a consensus based on technical findings? Is there more the Commission can be doing to facilitate that work?

Response:

The Commission is working collaboratively with the stakeholders and the IEEE Tiger Team to identify potential technical methods for addressing these issues, and staff will continue to monitor this situation and work toward a successful completion of the rulemaking process.

The Honorable Bobby Rush

1. Section 257 of the Communications Act requires the Commission to promote diverse ownership of the airwaves, particularly ownership by entrepreneurs and small businesses (including those owned by women and minorities) by taking regulatory action to *identify and eliminate* market entry barriers in the provision and ownership of telecommunications and information services, or in the provision of parts or services to providers of telecommunications or information services. Under the statute, the Commission is also directed to *eliminate* statutory barriers to market entry by those entities, consistent with the public interest, convenience, and necessity. These efforts are to be memorialized by the Commission in a report that it is to prepare and submit to Congress every three years.

Recently, under Chairman Wheeler’s direction the FCC decided to hold off on adopting and to reassess certain broadcast-ownership NPRM proposals that could foreseeably undermine Section 257 and decrease already-anemic and abysmally low levels of diversity in ownership of communications licenses and facilities.

What steps should the Commission take going forward to ensure that the statutory goals of Section 257 are met and to increase already-abysmally low levels of female and minority ownership?

Response:

As you note, Section 257 of the Communications Act requires the FCC to examine and eliminate market entry barriers for entrepreneurs and other small businesses in the provision of telecommunications services. In addition to the on-going work on the current Section 257 review, the Commission’s Office of Business Opportunities (OCBO) has taken steps to address some of these issues. For example, OCBO hosts annual conferences on access to capital and supplier diversity. Its most recent access to capital conference focused on angel investment strategies for small businesses. OCBO also works closely with the Advisory Committee on Diversity in the Digital Age to develop diversity related initiatives for the Commission. The current Diversity Committee is focusing on economic opportunities in the area of unlicensed devices, second tier opportunities in wireless, and diversity related employment best practices in the broadcasting industry. Additionally, in 2013, the Media Bureau released a Declaratory Ruling clarifying the process regarding license transfer applications that involve more than 25% foreign investment. Such clarification was requested in the hopes that additional revenue streams would potentially be available to help existing or new entrants in the broadcasting industry – including minority and female station owners.

- **In light of existing market trends and forces attendant to upcoming spectrum auctions, is it reasonable to anticipate further diminution in diverse ownership of broadcasting licenses and cable systems?**
 - **If so, what should the Commission be doing to offset that diminution in ownership share?**

Response:

It is difficult to predict the exact impact of upcoming spectrum auctions on the diversity of ownership given the voluntary nature of the incentive auction, but we continue to carefully consider this issue. It is possible that the channel sharing and other opportunities presented in the incentive auction could bolster existing minority and female owners economically, while allowing them to continue broadcasting over the air. In addition, diversity issues also are being examined as part of the Commission's ongoing broadcast ownership rule review.

- **When will the Commission be prepared to release its next Section 257 Report?**

Response:

The Commission anticipates that it will release its next Section 257 Report by this coming summer.

2. In prior testimony before our subcommittee, it has been stated that added regulations on broadcasters “stem from what some have characterized as a ‘social contract’ between the government and the broadcasting industry: broadcasters use licensed spectrum to serve the public interest and offer their service free to American consumers.” (see Testimony of Edward L. Munson, Jr., C&T Subcommittee Hearing, *Innovation versus Regulation in the Video Marketplace* 1)(9/11/2013)

Many of these American broadcast TV consumers and watchers are minorities. In the 2013 Ownership Survey and Trend Report, it was cited that 22 percent of all African-American households and 25 percent of Hispanic households are broadcast-only homes. Additionally, minorities comprise 41 percent of all broadcast-only homes.

Notwithstanding these considerable percentages, minority and female ownership of television stations and cable systems has shrunk dramatically over the years.

- **Do you concur or disagree with the proposition that minority TV broadcast and cable system owners can be just as if not more responsive to the needs of their minority viewers and audiences?**
- **Other than, or in addition to the reinstitution of minority tax certificates what measures can Congress take so that more programming and news meeting the critical needs of minority viewers and consumers gets carried over the public airwaves?**

Response:

Generally, broadcast licensees are expected to serve the public interest by providing programming responsive to the needs of their respective communities. Beyond that, due to First Amendment concerns, the Commission cannot dictate what programming a station must provide to its viewers. However, the impact of diversity of ownership and diversity of viewpoint as they relate to the individual ownership restrictions are considerations under the quadrennial broadcast ownership review. The Commission

continues its work on the current Section 257 report with the specific goal of identifying and eliminating the barriers that currently exist for new entrants into telecommunications – including the broadcast industry. Completion of the report to Congress could provide additional recommendations for action. As you note, access to capital appears to be one of the major hurdles for small businesses, and tax certificates could be one way Congress could act to help increase the total of minority and women owned stations.

3. Federal law mandates that railroads install a safety technology known as positive train control by December 2015. This technology will require the installation of more than 20,000 antenna poles to ensure communication among railroad locomotives, computer servers and GPS devices.

- **Is it necessary to submit these short antenna poles to the same level of agency scrutiny and tribal review under the National Historic Preservation Act, as, for instance, much taller cell towers?**
- **Would you agree many of these smaller poles located on railroad rights-of-way where the property has been disturbed for many decades (or longer) could be exempted from the review process?**

Response:

It is a top priority of the Commission to work with all parties to help them fulfill their various legal obligations and responsibilities and advance the deployment of Positive Train Control (PTC) within the timeframe prescribed by the Railroad Safety Improvement Act of 2008 (RSIA).

The National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) require environmental and historical review of the construction of facilities that use licensed spectrum. The construction of any infrastructure that will be used in connection with a license granted by the Federal Communications Commission is subject to FCC review under NHPA Section 106. It is the fact of the FCC license, rather than the size of the infrastructure, that requires the review.

Railroad rights-of-way are not currently exempt from Section 106 review. Under applicable statutes and regulations, a wholesale exemption of PTC infrastructure from NHPA review would require negotiation and consultation with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO), as well as government-to-government consultation with Tribal Nations and a full notice-and comment rulemaking. Even if the record would ultimately support broad exclusions, this process would take far longer than the December 31, 2015, statutory deadline to complete.

Until early 2013, the Commission had been informed by the railroads that PTC would be deployed largely on existing infrastructure. However, in the spring of 2013, the railroads disclosed to the Commission plans to deploy PTC using more than 20,000 new wayside poles.

Consistent with statutory requirements, since May 2013, Commission staff has been working with all stakeholders to modify our current process under Section 106 of the NHPA to handle our review of PTC deployments more efficiently. Steps taken in this regard include:

- (1) Meetings with the ACHP and the NCSHPO;
- (2) Listening and consultation sessions with Tribal Nations, including presentations by the Class 1 freight railroads and sessions with railroad representatives in attendance, as well as government-to-government consultation sessions; and
- (3) Release of scoping documents and a draft Program Comment for stakeholder and public comment to modify our Section 106 process.

As a result of these efforts, on January 8, 2014, FCC staff made available to the Class 1 freight railroads a Beta test batching format to submit some of their proposed wayside facilities for Tribal and State historic preservation review. The Commission intends to submit the Program Comment to ACHP by the end of February, allowing for adoption by ACHP by mid-April under ACHP's rules.

The Commission is also in regular communication with the Department of Transportation, the Federal Railway Administration, and the National Transportation Safety Board regarding PTC issues.

The Honorable G.K. Butterfield

1. The FCC has launched a proceeding to modernize the highly successful E-rate program. I have heard from my school districts that their websites are becoming more and more essential to their educational mission. For example, today schools use their websites for emergency communications, parental engagement and digital learning. Today this service is supported through the E-rate program through the webhosting category. There is some concern that this funding may be eliminated or phased out. Given the emphasis on digital learning and the critical function a school's website plays in delivering digital learning do you have a perspective on continued funding for webhosting?

Response:

The E-rate Modernization *Notice of Proposed Rulemaking* sought comment on phasing out support for supplemental or “ride-over” services that are not directly related to connectivity, such as webhosting and e-mail service. Specifically, the Commission sought comment on whether E-rate funds should continue to be used to support services such as webhosting and email at costly monthly rates when many such services are offered at lower prices or for free to other users, and particularly in light of the fact that there are many schools which do not receive any E-rate support for critical connectivity needs. The Commission will take all views on this issue into full consideration as we move forward with modernization of the E-rate program.

2. Schools in my Congressional District are following the FCC's E-rate Modernization efforts very closely. I understand that many school districts around the country have weighed in with comments to the FCC. I hope the FCC will give serious consideration to the concerns of school districts on issues like streamlining the application process and revisions to the current list of eligible services. Can you give me a sense of how you are going to approach the modernization generally and what steps is the FCC taking to ensure that school districts have input into the final decisions?

Response:

Last summer, the Commission began a process to collect input on the modernization of the E-rate program. The Commission specifically sought comment on streamlining the application process, increasing transparency, and providing more assistance to schools and libraries to help them lower the prices they pay. Over 1,400 comments have been received to date, and hundreds of meetings have been held with interested parties. Let me assure you that the Commission will continue to seek public comment on E-rate reform issues from all stakeholders, including schools and libraries, and will take their views into full consideration.

Prioritizing E-rate program resources to focus on high-speed broadband and making administrative improvements to the program can significantly expand the amount that goes to high-speed broadband without additional spending, and ensures that funds intended for schools and libraries get to them faster and go farther. Other steps to improve the management of the program, such as resolving a substantial appeals backlog, will free up additional reserved funds.



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

Office of the Director

April 22, 2014

The Honorable Richard Blumenthal
Chairman
Committee on Commerce, Science, and Transportation
Subcommittee on Surface Transportation and Merchant Marine
Infrastructure, Safety, and Security
United States Senate
427 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Blumenthal:

Enclosed please find responses to Questions For the Record submitted to Geoffrey Blackwell, Chief of the Federal Communications Commission's Office of Native Affairs and Policy, regarding his March 6, 2014, testimony at the Subcommittee hearing entitled, "Enhancing Our Rail Safety: Current Challenges for Passenger and Freight Rail."

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

Sincerely,

A handwritten signature in black ink, reading "Sara W. Morris". The signature is fluid and cursive, with the first letters of each word being capitalized.

Sara W. Morris
Director
Office of Legislative Affairs

Enclosure

Committee on Commerce, Science and Transportation
Subcommittee on Surface Transportation and
Merchant Marine Infrastructure, Safety, and Security
Hearing on
“Enhancing Our Rail Safety: Current Challenges for Passengers and Freight Rail”
Thursday, March 6, 2014

Senator Richard Blumenthal Questions for the Record Mr. Geoffrey Blackwell

FCC Question: PTC Spectrum

One key aspect to implementing PTC is providing the necessary spectrum. Various types of equipment owned by many different railroads must be able to communicate on any track equipped with PTC. It would be most efficient to utilize a single radio frequency band across the entire PTC system to minimize the cost of radio receivers and network equipment. A consortium of the Union Pacific, Norfolk Southern, CSX, and BNSF railroads, has purchased licenses to some frequencies in the 220 MHz range. Along with Amtrak and other railroads, the consortium has requested additional 217-222 MHz spectrum and appropriate license and rule changes, claiming 220 MHz will be insufficient in congested urban areas. Although frequencies may be available in various bands, the railroads prefer the 217-222 MHz range due to compatibility with current infrastructure and the radio communication technology they have chosen to employ. Because of uncertainty over spectrum needs, the FCC issued a public notice seeking comments from stakeholders on May 5, 2011, but has not instituted a formal rulemaking process regarding PTC radio spectrum issues.

Mr. Blackwell: What is the status of the FCC’s rulemaking for PTC radio spectrum?

What did the FCC glean from the public comment period? Has progress been made based on the findings from the public comments?

When can we expect a final rule on PTC spectrum?

ANS: The Commission has not initiated a rulemaking with respect to PTC spectrum, focusing instead on directly helping the railroads secure the necessary spectrum. Also, Congress did not direct FCC to provide spectrum to commuter rails, or any railroads, in the Rail Safety Improvement Act of 2008. The public record from the 2011 Public Notice indicated that most commuter rails did not know how much spectrum they needed to deploy PTC and lacked familiarity with how to secure spectrum in the secondary markets by lease or acquisition. As a result, the Commission has worked to educate the commuter rails and the American Public Transportation Association (APTA) about securing spectrum in the secondary markets. In addition, we have granted substantial technical relief to enable PTC system implementation. In fact, Commission staff has been working closely with the freight and commuter railroads to identify available spectrum suitable for PTC deployment.

We will continue to work with all parties on this issue and believe that we will be able to help the remaining railroads identify and secure sufficient spectrum for their PTC deployments. In fact, with the Commission’s assistance, approximately 75 percent of the commuter railroads have

acquired or are in discussions to lease spectrum. In lieu of a rulemaking, therefore, the Commission will continue to assist all railroads to acquire the necessary spectrum they need through secondary market transactions and technical relief.

FCC Question: PTC/ FCC Antennas

As part of PTC implementation, railroads must install tens of thousands of new antenna structures nationwide to transmit PTC signals. The Federal Communications Commission (FCC) maintains that all PTC antenna structures are subject to the National Environmental Protection Act (NEPA) and the National Historic Preservation Act (NHPA). The location of each antenna must be submitted to the FCC so Native American tribes can determine if the installation will negatively impact areas of historic, cultural or religious significance. In January 2014, the FCC released a proposal that was intended to expedite the review of PTC infrastructure.

Mr. Blackwell, has the FCC processed this level of applications before? Do you agree with Mr. Hamberger's assessment? What additional challenges might the agency face in processing the applications quickly?

ANS: The Tower Construction Notification System (TCNS) is a secure technology solution that allows parties interested in constructing communications towers to ascertain whether their proposed construction would implicate a Tribal Nation's interest in culturally or religiously significant sites in the area of the proposed construction. A parallel system, E-106, exists to facilitate review of communications towers by interested State Historic Preservation Officers (SHPOs). On average, the Commission processes more than 10,000 applications a year for new or collocated communications infrastructure through these systems, which were originally designed for tower-by-tower review.

When the railroads informed FCC staff of the extent of construction necessary to deploy PTC in the spring of 2013, and after continued discussions with the railroads, we concluded (and the railroads agreed) that the Commission's TCNS and E-106 processes, as they existed, were not suited to ensure efficient review of PTC wayside infrastructure on such a large scale. At the same time, we recognized that TCNS and E-106 offer unique efficiencies that will provide many advantages to the railroads, Commission staff, SHPOs, and Tribal Nations. In consultation with Advisory Council on Historic Preservation (ACHP) and the Administration's Council on Environmental Quality (CEQ), the Commission moved forward with drafting a Program Comment intended to streamline existing procedures and promote administrative efficiency for review of PTC wayside infrastructure.

The Commission does not agree with the overall assessment of the program comment by Mr. Hamberger and the Association of American Railroads (AAR). In fact, many of the changes made to the Program Comment prior to submission to ACHP were based on comments from AAR and the individual railroads. Commission staff is fully committed to working with the railroads subject to the PTC deployment deadlines. We expect the procedures proposed in the Program Comment to materially reduce the time it will take railroads to complete required reviews of PTC infrastructure. Specifically, overall time limits for review are reduced by 40 percent and appeals must stop at the end of 90 days in most cases. The Program Comment is

currently under review by ACHP, and we look forward to working with the railroads to help them take advantage of the new procedures once ACHP has completed its review.

The existing poles constructed without NHPA and NEPA review pose the most significant challenge to moving forward expeditiously. The Commission is currently in discussions with the relevant stakeholders, including the railroads, Tribal Nations, and SHPOs, regarding multiple mitigation proposals so that we can help expedite resolution of the pre-construction issues and move forward toward completion of PTC deployment.

Committee on Commerce, Science and Transportation
Subcommittee on Surface Transportation and
Merchant Marine Infrastructure, Safety, and Security
Hearing on
“Enhancing Our Rail Safety: Current Challenges for Passengers and Freight Rail”
Thursday, March 6, 2014

Senator Amy Klobuchar Questions for the Record

Mr. Blackwell, railroad companies are waiting on the Federal Communications Commission (FCC) to approve the siting, construction and replacement of an estimated 22,000 communication towers and antenna structures before they can move forward on implementation of positive train control (PTC) technology.

- *What is the FCC doing to make this approval process more efficient?*
- *Aside from extending the deadline to allow more time for implementation, are there steps that the FCC could do to speed up the approval process?*

ANS: Commission staff is fully committed to working with the railroads subject to the PTC deployment deadlines. We have drafted a Program Comment intended to streamline existing procedures and promote administrative efficiency for review of PTC wayside infrastructure. We expect the procedures proposed in the Program Comment to materially reduce the time it will take railroads to complete required reviews of PTC infrastructure. Specifically, overall time limits for review are reduced by 40 percent and appeals must stop at the end of 90 days in most cases. The Program Comment is currently under review by the Advisory Council on Historic Preservation (ACHP), and we look forward to working with the railroads to help them take advantage of the new procedures once ACHP has completed its review.

The draft program comment also includes a provision for individual railroads to enter into voluntary alternative arrangements with State Historic Preservation Offices (SHPOs) and Tribal Nations. One railroad has approached the Commission with ideas that might form the basis for such alternative arrangements, and we are working with that railroad to advance those ideas.

Another issue is the roughly 10,000 poles that have already been constructed without the required review pursuant to Section 106 of the National Historic Preservation Act (NHPA) and the National Environmental Protection Act (NEPA). The Commission is currently in discussions with the relevant stakeholders, including the railroads, Tribal Nations, and SHPOs, regarding multiple mitigation proposals so that we can help expedite resolution of the pre-construction issues and move forward to completion of PTC deployment.

Committee on Commerce, Science and Transportation
Subcommittee on Surface Transportation and
Merchant Marine Infrastructure, Safety, and Security
Hearing on
“Enhancing Our Rail Safety: Current Challenges for Passengers and Freight Rail”
Thursday, March 6, 2014

Senator Heidi Heitkamp Questions for the Record

Mr. Geoffrey Blackwell
Chief, Office of Native Affairs and Policy
Federal Communications Commission

- 1.) Please explain the challenges regarding PTC implementation before your agency and the steps that you are taking to address them.

ANS: Commission staff is fully committed to working with the railroads subject to the PTC deployment deadlines. We have drafted a Program Comment intended to streamline existing procedures and promote administrative efficiency for review of PTC infrastructure. We expect the procedures proposed in the Program Comment to materially reduce the time it will take the railroads to complete required reviews of PTC infrastructure. Specifically, overall time limits for review are reduced by 40 percent and appeals must stop at the end of 90 days in most cases. The Program Comment is currently under review by the Advisory Council on Historic Preservation (ACHP), and we look forward to working with the railroads to help them take advantage of the new procedures once ACHP has completed its review.

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FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3841

September 5, 2013

Mr. Gary Epstein
Senior Advisor and Co-Lead, Incentive Auction Task Force
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Mr. Epstein:

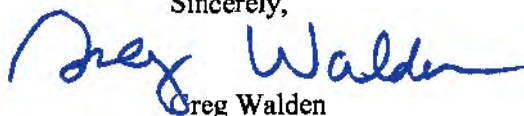
Thank you for appearing before the Subcommittee on Communications and Technology on Tuesday, July 23, 2013, to testify at the hearing entitled "Oversight of Incentive Auction Implementation."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on September 19, 2013. Your responses should be e-mailed to the Legislative Clerk in Word format at Charlotte.Savercool@mail.house.gov and mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden

Chairman

Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

The Honorable Greg Walden

1. Will the auction design automatically yields higher prices for stations with significant repacking/clearing impact and lower prices for stations with less significant repacking/clearing impact?, If so, would that obviate the need for FCC "scoring"? What is the significance of artificial measurements, such as population served, when it comes to spectrum that will be resold in blocks without regard to these factors?

The Honorable Renee Ellmers

1. While I was serving on the conference committee that used this spectrum auction to pay for parts of deficit reduction, I remember there were different opinions about how much we might actually raise. While the Spectrum Act anticipates that this auction will derive about \$27.95 billion with about \$20.4 billion attached to deficit reduction, I am still wondering how much we think we will actually be able to raise. Do you think this estimate is on the mark? As you are working on the rules to design the auction, what factors are you considering to be the most important? Are you focusing on maximizing revenue or something else?



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

Office of the Director

June 5, 2014

The Honorable Chris Collins
Chairman
Subcommittee on Health and Technology
Committee on Small Business
U.S. House of Representatives
2361 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Collins:

Thank you for the opportunity to provide responses to the Questions for the Record regarding the Subcommittee's March 30, 2014, hearing entitled, "Expanding Broadband Access and Capabilities to Small Businesses in Rural New York." Enclosed please find responses, which have been prepared by the Office of Legislative Affairs.

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

Sincerely,

A handwritten signature in black ink that reads "Sara W. Morris".
Sara W. Morris

Enclosure

cc (with enclosure): The Honorable Janice Hahn
Ranking Member
Subcommittee on Health and Technology
Committee on Small Business

Expanding Broadband Access and Capabilities to Small Businesses in Rural New York
Committee on Small Business
Subcommittee on Health and Technology
U.S. House of Representatives
March 20, 2014

Questions for the Record

The Honorable Chris Collins

1. The FCC recently stated their intention to modify the formula for how the Universal Service Fund (USF) is distributed to carriers to expand broadband. How do you plan to update the USF in a way that accounts for the unique challenges of small carriers operating in diverse rural areas and allows all consumers the option of purchasing only broadband from their provider?

Response: In April, the Commission voted to move forward with Phase II of the Connect America Fund. We also took several steps to improve the climate for broadband investment in areas served by incumbent rate-of-return carriers. In a Further Notice of Proposed Rulemaking, we seek comment on establishing a Connect America Fund for rate-of-return carriers. Specifically, the Commission proposes to adopt a standalone broadband funding mechanism for rate-of-return carriers, and seeks comment on how to support the deployment of broadband-capable networks by rate-of-return carriers within the current budget for the program. We welcome a dialogue regarding how a standalone broadband mechanism could be structured to provide support consistent with the \$2 billion budget for rate-of-return territories. The Commission is focused on updating the universal service program to ensure that we are delivering the best possible voice and broadband experiences to rural America within the Connect America budget, while providing increased certainty and predictability for all carriers and a climate for increased broadband expansion

2. Many small wireless carriers have stated they are unable to participate in spectrum auctions that only make spectrum available in large geographic sizes/blocks. Can you provide details on the steps the FCC is taking to ensure that small wireless carriers have an opportunity to participate and obtain spectrum from upcoming auctions?

Response: It is a priority of mine to ensure that wireless providers of all sizes are able to participate in upcoming auctions. The Commission has historically made spectrum available in block sizes that vary by both geography and frequency to meet the needs of providers of all sizes.

On May 15, the Commission adopted service rules for the 600 MHz Band, which will be subject to competitive bidding in the forward auction component of the broadcast

television spectrum incentive auction. The 600 MHz Band Plan is comprised of paired 5 +5 megahertz building blocks to facilitate the rapid deployment of networks, including by smaller carriers and new entrants. In addition, the Commission adopted Partial Economic Areas (PEAs) (416 license areas) as the service area for the 600 MHz Band, to permit entry by providers that contemplate offering wireless broadband services on a localized basis.

Earlier this year, the Commission also adopted service rules for the AWS-3 Bands, which will be auctioned this Fall. The 1695-1710 MHz band will be available in 5 and 10 megahertz unpaired blocks on an economic area basis (176 license areas). The 1755-1780/2155-2180 MHz band will be made available in a 5 + 5 megahertz paired block on a cellular market area basis (734 license areas), two 5 + 5 megahertz paired blocks on an economic area basis, and one 10 + 10 megahertz paired block on an economic area basis. Making these bands available in licenses that vary in both frequency and geography will meet the spectrum needs of providers of all sizes.

In addition, the Commission has historically administered an effective bidding credit program that promotes auction participation by designated entities, including small businesses. For the AWS-3 auction and the forward auction component of the incentive auction, the Commission adopted bidding credits of 15 percent for small businesses (entities with average gross revenues for the preceding the 3 years not exceeding \$40 million), and 25 percent for very small businesses (entities with average gross revenues for the preceding 3 years not exceeding \$15 million). The Commission will initiate a proceeding in the coming months to review its designated entity program to ensure that it continues to ensure that qualified small businesses can participate meaningfully in spectrum auctions. We will implement any appropriate changes prior to the incentive auction.

3. At the hearing, both carriers and users voiced concerns over the authenticity of the National Broadband Map (NBM). Even though the NBM showed they have access to broadband, the local carriers and residents explained how they were no access to broadband in that area. Considering that the FCC and policy makers use the NBM to direct funding, including through the Connect America Fund, what is the FCC doing to ensure that we're allocating funding to the most appropriate areas? And what is the FCC doing to ensure that carriers are not being passed over in funding opportunities because of errors in the NBM? Finally, how are you working with state and local communities to collect and analyze the NBM data to ensure it reflects the most accurate rate of service?

Response: The Commission uses the National Broadband Map as the starting point for determining which census blocks are unserved, but it also has adopted a challenge process to allow all interested stakeholders, including incumbent providers, competitors, state regulators, and local communities, to provide evidence on whether a particular census block in fact is unserved. Commission staff undertakes a thorough review of all evidence submitted in the challenge process before making any determination.

4. On the day of the hearing, the FCC announced in a public notice that the Rate Floor, which requires small rural carriers to increase their telephone voice service rates to avoid losing universal service support, could increase from \$14 to \$20.46 in a few months. These rate hikes could lead to consumers dropping voice service which, under current Commission rules, could lead to a 2 to 3 times rate hike on broadband service. Does the Commission plan to take action on this issue to avoid these rate hikes?

Response: In the 2011 *USF/ICC Transformation Order*, the Commission unanimously adopted reforms to make universal service a fairer system for all consumers and businesses. The *Order* includes a phase-out of excessive subsidies for basic phone service, which allowed some phone companies to charge their customers as little as \$5 a month while average urban, suburban, and even some other rural consumers were paying over three times that amount. The Commission determined it was inappropriate to use limited federal high-cost support to subsidize local rates beyond what is necessary to ensure reasonable comparability between urban and suburban rates, and rural rates, as required by Congress. The reforms adopted in the 2011 *Order* gradually eliminate these excessive subsidies to level the playing field for all consumers and contain the cost of the program, which is funded by universal service fees paid by consumers.

Importantly, the Commission's rules do not require carriers to raise their local rates. Nevertheless, the Commission has recognized concerns over potentially sizable rate increases and possible difficulties some carriers may experience in making any rate adjustments at the state level in a short period of time. To address these concerns, the Commission adopted an order on April 23, 2014 that delays any potential universal service support reductions for lines that remain below the rate floor until January 2015. In addition, the universal service support reductions that go into effect in January will only be for those lines with rates below \$16, with no further increases until July 2016, at which time reductions in universal service support will be limited to an increase of no more than \$2 annually.

5. Is it true that FCC rules effectively force some rural consumers to purchase regulated voice service in order to make broadband affordable? That is- the customer's broadband rates go up if they choose to stop buying voice service because the rules provide USF support for a line only when the customer actually purchases voice?

Response: Some small carriers have suggested that they should be able to receive support for delivering standalone broadband services (i.e., without providing a voice service). Our current rules don't allow for this. However, as noted above, in a Further Notice of Proposed Rulemaking adopted last month, the Commission proposes to adopt a standalone broadband mechanism to provide support consistent with the \$2 billion budget for rate-of-return territories.

a. Doesn't a policy that increases local voice rates more or less push people over time to take only broadband - why would we have a rule that leads broadband rates to increase when that happens?

Response: Although concerns regarding increased landline rates because of the increased rate floor are understandable, we have seen minimal impact on consumers since the Commission implemented this rule in 2012. The rate floor increased from \$10 in 2012 to \$14 in 2013, a 40 percent increase. However, consistent with our rules, many carriers continue to report lines with rates well below the \$14 rate floor, suggesting that they may have made a business decision to grandfather the lower rates for those customers and accept the associated support reductions. In 2013, carriers in 34 study areas in 16 states were still reporting a number of lines with residential local service charges of \$5 or less, further reinforcing that individual carriers may choose not to raise rates in response to the current rate floor.

As noted above, the Commission has adopted both a delay until January 2015 and a phase-in of the reductions in universal service support resulting from not meeting the 2014 rate floor. This will minimize any impact on service providers and customers.

Financial Services and General Government
Committee on Appropriations
Hearing Questions for the Record

Ranking Member Senator Jerry Moran

1. Waiver

In our previous discussions about USF reform, you have cited the “waiver process” as a remedy for companies who may experience severe financial challenges as a result of lost USF support. The Order published on November 18 clearly states “We permit any carrier negatively affected by the universal service reforms we take today to file a petition for waiver that clearly demonstrates that good cause exists for exempting the carrier from some or all of those reforms, and that waiver is necessary and in the public interest to ensure that consumers in the area continue to receive voice service.” The threshold you have established for the waiver is related to a consumer’s loss of access to voice service. This is an extremely low threshold of service to consumers particularly in the transition to a broadband world.

At the March 19 event here in Washington, FCC Commissioner Robert McDowell stated, “If your company looks like it won’t survive, there is a clear waiver process.” Later the day, when questioned at an Appropriations hearing, Commissioner McDowell said “We also looked at a waiver process that is very frugal ... if indeed there is a carrier experiencing undue hardship because of the reform they can file a waiver with the FCC where they will have to open their books in a very detailed fashion so we know exactly what is going on with the money but they can get a waiver.”

Question:

Can you explain to me how can we make certain waivers will be granted to those companies who might have to walk away from their current networks?

Answer:

In reforming the Fund, the Commission unanimously agreed that, as a matter of fiscal responsibility and accountability, and to protect consumers and small businesses paying into the Fund, a thorough, but fair waiver process was necessary for any company seeking a waiver. Any carrier facing reduced support as a result of the Commission’s universal service reforms may file a petition for waiver clearly demonstrating that good cause exists for exempting the carrier from some or all of those reforms, and that the waiver is necessary and in the public interest to ensure that consumers in the area continue to receive service.

Waivers will be granted where an eligible telecommunications carrier can demonstrate that, without additional universal service funding, its support would not be “sufficient to

achieve the purposes of section 254 of the Act.” In particular, a carrier seeking such a waiver must demonstrate that it needs additional support in order for its customers to continue receiving service in areas where there is no terrestrial alternative. Several weeks ago, I circulated a draft order to my colleagues to clarify that waivers can be granted to prevent loss of broadband service, not just loss of voice service.

A full discussion of the Commission’s waiver process is available in the CAF Order beginning at page 177 (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf).

Question:

Additionally, assume a waiver is granted. What rules will companies who are granted a waiver fall under?

Answer:

The waiver process is structured to address the specific relief needed by the company and to grant tailored relief to address its needs. Otherwise, the generally applicable rules for USF will apply. Careful, tailored relief is consistent with fiscal responsibility and accountability and to protect consumers and small businesses paying into the fund.

Question:

Will there be increased reporting requirements?

Answer:

That is a possible condition for granting a waiver. As the Commission stated in the Order, we intend to subject such requests to a fair and thorough review and will take appropriate measures to both ensure consumers do not lose service and protect public funds from waste, fraud, or abuse. This is consistent with our commitment to fiscal responsibility to consumers and businesses paying into the Fund.

Question:

Will companies receive more support to help fund their networks? If so, what money will be used to pay for companies who are granted waivers?

Answer:

Any money used to grant a waiver will necessarily come from funds that could otherwise be used to support deployment of broadband to unserved areas. In the Order, to address concerns about growth in the Fund and to protect consumers and small businesses paying into the fund, we adopted an overall budget for the Fund.

Question:

Is it possible rural Americans could lose broadband service which is currently available to them today?

Answer:

The Commission's framework will ensure that consumers who have access to broadband will continue to have access to broadband.

Question:

What is the time frame within which the FCC will respond to waiver requests from companies?

Answer:

The Bureau is reviewing each petition individually and will make final decisions as expeditiously as possible. To expedite review of waivers, the Commission delegated to the Wireline Competition and Wireless Telecommunications Bureaus the authority to approve or deny all or part of requests for waivers of phase-downs in support. We required that the Bureaus initiate the process for public comment within 45 days of receipt of a waiver petition.

2. Regression Model

That regression model outline in the USF/ICC reform order has raised concerns. It was brought to my attention that the FCC may have entered incorrect data into the quantile regression analysis used to set the upper limit of the high-cost loop paid to incumbent rate-of-return local exchange carriers. This is important for future broadband investment. Another criticism of the regression model is that the outcomes will change from year to year as companies choose whether or not to make investments. I have been told companies are fearful to invest because if they choose to and other companies do not, the regression model may return results that indicate the company is an outlier in the model and therefore will not eligible for recovery of the investment.

Question:

Can you comment on the regression model and potential incorrect inputs and what the FCC is doing to address this issue?

Answer:

The Commission created a streamlined, expedited process to correct any problems. So far, the Wireline Competition Bureau has received two petitions to correct data, and both of the petitioners received responses within two weeks. The FCC also launched a process to collect a full set of updated data from companies before benchmarks take full effect.

Question:

How is the FCC determining what caps for support should be in various areas?

Answer:

The caps are based on comparing carriers to other similarly-situated providers based on a range of criteria. For instance, the benchmarks take account of local conditions like population density, soil type, climate, as well as any recent investment by the company. In some cases, carriers spend almost three times as much per customer as smaller carriers right next door.

Question:

How is the Commission able to tell companies they should invest in serving their areas if the regression caps are changing year to year?

Answer:

The reforms adopted by the Commission will make support more predictable for carriers spending efficiently. In response to concerns about the timing of changes to the benchmarks, the Wireline Competition Bureau's order determined that the benchmarks should initially remain in effect until 2014. In the interim, the Commission will consider whether benchmarks should subsequently be set for multiple years.

Question:

How are you responding to companies who have asked about the regression model?

Answer:

The Commission has an open door policy – Commission staff takes all meeting or call requests from companies to address any questions that come up, and has made all aspects of the regressions available for public inspection.

Senator Mark Kirk

I strongly support the deployment of fixed and mobile broadband to increase economic development, productivity and America's global competitiveness. One analysis estimates the productivity gains from the deployment and use of wireless broadband will generate almost \$860 billion in additional GDP by 2016. Spectrum auctions and rural broadband development are key tools to accomplishing our ambitious goals and ensuring economic success. However, I am concerned about the Administration's execution of these programs and have the following questions:

Question:

The Administration recently announced its support for spectrum sharing in order to accelerate broadband development throughout the nation.

Given that the National Telecommunications and Information Administration (NTIA) recently reported that moving federal users off the Federal Exclusive Band airwaves will take more than a decade and cost \$18 billion, how does the Federal Communications Commission (FCC) intend to work with the NTIA to ensure that the mutually beneficial short-term goal of spectrum sharing occurs, while at the same time balancing longer-term spectrum reallocation and incentive auction plans?

Answer:

The Commission's Mobile Action Plan employs an "all of the above" approach to the spectrum crunch which includes more spectrum but also more efficient use of spectrum and new ways to manage spectrum, both in the near-term and in the long-term. The Commission is working now with NTIA and other stakeholders on near-term sharing and small cell opportunities in the 1755 MHz and 3.5 GHz bands. We are moving expeditiously forward with incentive auctions in a parallel process. We will continue to work with all stakeholders to meet the nation's spectrum needs.

Question:

How long will it take to complete the testing process with NTIA before spectrum sharing can be implemented?

Answer:

I am hopeful that testing of sharing in the 1755 MHz band can be completed in a timeframe that would allow it to be paired with the 2155 MHz band for auction, as required by statute. The FCC intends to initiate a 3.5 GHz rulemaking this year.

Question:

How does the FCC intend to handle the costs of federal spectrum relocation?

Answer:

The Commission will follow the direction of Congress, as set forth in the statute with respect to reimbursing relocation costs.

Question:

What assurances does the FCC have from government spectrum users that they will participate in spectrum sharing and that such sharing can be implemented in a timely manner?

Answer:

The Commission will continue to engage in discussions with NTIA and other federal agencies, particularly the Department of Defense, to find solutions that meet commercial spectrum needs, while also enabling vital government operations to continue.

Question:

I have introduced legislation to establish a process nearly identical to the successful Base Realignment and Closure (BRAC) process to determine which Federal spectrum should be auctioned for sole or shared use by the private sector. I believe this is a key model for spectrum relocation because it forces the relocation process to move forward unless Congress passes legislation to block it. What is the FCC's position on using a BRAC-like approach to addressing our spectrum crunch and providing the telecommunications industry with a certain path forward to reliably clear spectrum for wireless advancements?

Answer:

This is an intriguing approach and I am interested in discussing all potential methods for identifying and deploying Federal spectrum. We should consider a broad range of solutions to the spectrum crunch and ensure that we have not left any concept off the table.

In the meantime, the Commission has moved ahead to work with its counterparts to deploy Federal spectrum as soon as possible. The National Broadband Plan recommended a number of approaches to increase the availability of spectrum for commercial mobile and fixed wireless use, including working with NTIA to develop a roadmap to identify opportunities to make federal spectrum available for exclusive, shared, licensed and/or unlicensed use. The FCC continues to collaborate with NTIA on this approach and we will work with our federal partners to develop plans for identifying and freeing up this valuable resource.

Question:

I am concerned about the overlap in programmatic goals and implementation of the Universal Service Fund (USF) and the Department of Agriculture's Rural Utility Service (RUS). Additionally, carriers use USF funds, that would otherwise have been used to build out broadband, to repay their RUS loans. What are the default criteria mechanisms in place that the FCC will use to enforce repayment of RUS loans?

Answer:

RUS administers its loan program and has a better understanding of its default criteria. That said, as I mentioned at the hearing, we have worked closely with RUS throughout the USF reform process and our waiver criteria specifically consider debt, including RUS loans.

Question:

How is the FCC working with the Department of Agriculture's RUS to ensure that taxpayer dollars are not diluted through duplicative projects that are also funded under USF?

Answer:

RUS loans and USF support serve complementary purposes. USF provides ongoing support, while RUS provides low-cost loans. More generally, our USF reform was designed to ensure that USF support only goes where it's needed, and includes new accountability and safeguards for all USF spending.

Question:

A recent study conducted by a Georgetown University researchers found that, based on the analysis of previous FCC auctions, the success of spectrum auctions depends greatly on whether or not conditions are placed on the auction. The study found that the full auction potential of broadcast spectrum with no conditions imposed could generate as much as \$91 billion in revenue, whereas the same auction which carries heavy conditions, such as net neutrality requirements. A free auction could raise 250 percent more funds than an unconditioned one.

What, if any, kinds of conditions will the FCC place on the spectrum auctions authorized by P.L.112-96? Will any restrictions be placed on participants?

Answer:

The FCC's incentive auctions team currently is preparing rulemaking notices for the incentive auction process. The Commission will comply with all statutory requirements, and our process will be open, inclusive, fact-based, and guided by economics and engineering.

Question:

How will the FCC ensure that the value of the spectrum will be upheld throughout the auction process?

Answer:

The Commission has a long history of raising revenue through the auctions process, generating \$50 billion to the United States Treasury since 1993. Spectrum value goes beyond direct payments to the Treasury for spectrum licenses – spectrum deployment supports technological development, job creation and economic growth. The Commission will consider these factors as well as all relevant statutory mandates as it initiates the incentive auctions process.

Questions for the Record
Geoffrey Blackwell, Chief, Office of Native Affairs & Policy
Federal Communications Commission

Submitted by Congressman Don Young

Question:

- 1. The Rural Utility Service (RUS) currently has over \$200 million in outstanding broadband loans in just Alaska. How does a one year \$50 million FCC tribal infrastructure fund even make a dent in Alaska, all of which is considered tribal lands, let alone the rest of tribal lands across the Lower 48 and in Hawaii? Even with an additional \$100 million "remote" fund, this Order falls far short of even serving just Alaska.**

Answer:

Tribal Mobility Fund and the Remote Areas Fund are new support mechanisms that provide incremental support above and beyond existing mechanisms. The rate-of-return carriers, including eight Tribally owned rate-of-return carriers, will continue to receive a total of approximately \$2 billion in annual support after reform, which is roughly the same amount of support they received prior to reform. Most unserved consumers on Tribal lands, however, are served by price cap carriers, who are receiving substantially more support under our reform, in an effort to target money to the unserved. Price cap carriers will receive up to \$1.8 billion on an annual basis as a result of reform, which will result in increased deployment on Tribal lands.

Carriers serving Tribal lands in Alaska, Hawaii, and the lower 48 states are eligible to participate in both the general Mobility Fund Phase I (\$300 million) and the Tribal Mobility Fund Phase I (\$50 million). Carriers on Tribal lands qualify for both parts of Phase I. However, only Tribal lands are involved the Tribal Mobility Fund portion of Phase I. Those carriers will also be eligible to participate in Phase II of both the general Mobility Fund and the Tribal Mobility Fund, which will include \$500 million in annual support, with up to \$100 million of that annual amount available as the Tribal Mobility Fund portion exclusively to carriers serving Tribal lands.

Overall, Tribal lands in Alaska, Hawaii, and the lower 48 states will continue to receive millions of dollars in USF support. The Commission is now, however, better targeting the money to areas that currently lack broadband, while ensuring the preservation of existing voice and broadband service.

Question:

2. **What are the FCC's plans to deal with Carrier of Last Resort (COLR) responsibility should a carrier with this responsibility cease to exist or go out of business because of this Order? Even if they're able to file a waiver, what if this waiver does get approved in time or does not provide sufficient funding to prevent bankruptcy? Who then assumes COLR responsibility, especially if no company wants to enter into that marketplace and serve that area?**

Answer:

The *USF-ICC Reform Order* specifically maintained the existing state authority to establish and maintain carrier of last resort (COLR) obligations, so states will continue to play a role with COLR obligations moving forward, including rules associated with a carrier with COLR obligations that seeks to no longer provide service or goes out of business.

The Commission recognizes that smaller rate-of-return carriers often face unique circumstances. Commissioners and staff have taken hundreds of meetings, reviewed data from companies and performed significant analysis to understand the likely impacts and craft reforms to ensure appropriate transition periods that allow companies time to adjust. In addition, where a provider can show that rule changes endanger existing service, including situations where a carrier needs to pay off debt for past investments, the Bureaus will consider waiver requests on an individualized, fact intensive basis. Chairman Genachowski has circulated a draft order to clarify that waivers can be granted to prevent loss of broadband service, not just loss of voice service. To date, fewer than ten companies have filed a waiver. No Tribally-owned carrier has filed a waiver.

Question:

3. **In a hearing on May 9, 2012, in the Senate Appropriations Subcommittee on Financial Services, the FCC Chairman Julius Genachowski said:**
"Both the FCC and RUS, and potentially Congress, will have to show flexibility to solve this problem the right way ... there may be actions that we'll collectively need Congress to take ... some of these hard issues could be softened by an appropriation for a one-time capital infusion into the fund. "

As I understand it, RUS' lending program is highly successful, has a tiny default rate, is not on budget, and actually makes money for the U.S. Government. What did Chairman Genachowski mean when he said this? Is he essentially asking Congress to write off and bail out RUS' successfully \$4 billion lending program with U.S. taxpayer's money? What specifically is that "one-time capital infusion?" How much would that "one-time capital infusion" be?

Answer:

Throughout this process, we worked closely with our counterparts at RUS to understand their portfolio of loans and potential impact of reform, and we will continue to do so. The transition will require flexibility by both agencies to address issues and specific cases that will arise. The agencies share the same objectives: extending service to as many of the 19 million Americans without broadband as possible, ensuring that consumers do not lose existing voice and broadband service as reforms proceed, and minimizing the total costs borne by consumers and businesses that pay taxes and pay in to the Universal Service Fund.

With respect to a one-time capital infusion, Chairman Genachowski was referring to a recommendation in the National Broadband Plan that suggested that one way to accelerate implementation of USF reforms would be a one-time capital infusion approved by Congress. Thus far, Congress has chosen not to select this path. The Commission remains committed to the principal of fiscal responsibility in USF reform and we look forward to working with the Congress on the next steps for this initiative.

Question:

- 4. OTZ Telephone is Co-Op that is 85% tribally owned. However, while the FCC's High Cost Order claims to have preference for tribally owned companies, how does giving less money (in both USF and ICC) to OTZ help this "tribally owned" Co-Op better deploy and support broadband infrastructure? How does it allow them to expand/broaden their broadband service to Alaska Native villages?**

Answer:

We estimate that OTZ will experience a modest impact on its USF support as a result of reform, with a reduction of between 1% and 2%. OTZ's high cost loop support (HCLS) is not limited by the *HCLS Benchmarks Order*. Instead, OTZ's reductions are due primarily to the newly instituted benchmarks on Interstate Common Line Support (ICLS) corporate operations expenses. This limitation on recovery of corporate operations expenses has been applied to HCLS since adoption of the *Universal Service First Report and Order* in 1997. We concluded in the *USF/ICC Reform Order* that the same reasoning with respect to prudent facility investment and maintenance applies to ICLS. Therefore, we extended the limitation on the recovery of corporate operations expenses to ICLS to further our goal of fiscal responsibility and accountability for the universal service fund.

In August, I and senior staff of the Office of Native Affairs and Policy, while on an extended visit throughout Alaska, traveled to Kotzebue and met with the General Manager, several Board members, and senior staff of OTZ. We met with several organizations in Kotzebue and from throughout the region. We spent a day with OTZ, beginning with a meeting at their headquarters where we discussed the *USF/ICC Reform Order*. We then traveled with OTZ and others to the Native Village of Noatak, where we

toured their facilities and met formally with the Village Council. As the question indicates, OTZ has a high degree of Native involvement at virtually every level, from the members of its Board to a majority of its cooperative owners; however OTZ is not owned and controlled by a Tribal Nation, or Alaska Native Village government. Nevertheless, OTZ does benefit from the Tribal lands variable found within the HCLS Benchmarks Order, as the variable encompasses carriers that operate on Tribal lands as OTZ does. See also response to question 8.

At this time, OTZ has not sought a waiver of the new requirements.

Question:

5. **Section 254(b)(3) of the 1996 law creating the Universal Service Fund provides that "consumers...in rural, insular, and high cost areas should have access to telecommunications and information services...including advanced telecommunications and information service" like the internet "that are reasonable comparable to those services provided in urban areas "and "at rates that are reasonable comparable" to urban rates. The USF order that your agency released last fall seems to undermine that critical goal. In fact, in many rural, insular, and high cost areas of the country, where advanced services deployment lags behind other states, your order actually cuts funding (when ICC reforms are taken into context), resulting in a slow down and even potential halts to the deployment of broadband in many rural and remote areas. Projected 2012 disbursements to all of Alaska will be about \$30M less than 2011 disbursements. How can you comply with the mandate, in Section 254(b)(3), to provided advanced telecommunications at affordable rates when you have cut funding to the areas of the country that most need help, including insular areas and the non-contiguous states? How can you ensure that rural and remote areas that are genuinely high cost to serve, such as Hawaii and Alaska, receive ongoing sufficient, stable and sustainable support necessary to build and operate mobile broadband networks, particularly if you use a nationwide reverse auction to distribute support?**

Answer:

The Commission recognized that Alaska faces uniquely challenging operating conditions, and made a number of important modifications to serve the public interest. For example, due to a lack of wireless backhaul in Alaska, the *USF/ICC Reform Order (Order)* stipulates that Alaskan broadband providers that are compelled to use satellite backhaul facilities will only be required to provide 1 Mbps upstream/256 kbps downstream rather than 4/1 requirement to receive USF support.

The Commission also included a specific Alaska variable for capital investment. The *Order* delays the five-year transition period to the Mobility Fund by two years for remote areas of Alaska (areas outside Anchorage, Juneau, and Fairbanks) to provide more time to adapt. In addition, as previously noted, the *Order* establishes *Tribal Mobility Fund Phases I & II* for Tribal lands, including Alaska and Hawaiian Home Lands, to provide dedicated funds to those chronically underserved areas. Carriers seeking to serve Tribal

lands may participate in both phases of the Mobility and the Tribal Mobility Funds.

The *FNPRM* seeks comment, among other Tribal-specific topics, on a proposal to provide Tribal governments “priority units” to ensure that Mobility Fund support for Tribal areas best serves Tribal needs. In addition, Tribally-owned and operated carriers will receive a 25% bidding credit when bidding on their own Tribal Lands during general Mobility Fund Phase I and Tribal Mobility Fund Phase I. We are seeking comment on the same proposal for Phase II.

In the exceptional cases where a provider can show that rule changes endanger existing service – including because carriers need to pay off past investments – the Commission will consider waiver requests on an individualized, fact intensive basis, and will provide expedited treatment of any related waiver requests for all Tribal and insular areas. To date, the Commission has received nine waiver requests, including three from carriers serving Alaska and one carrier serving Hawaii. No Tribally-owned carrier has filed a waiver request.

Question:

- 6. The FCC has stated that the goal of its current policies is to bring advanced broadband services to all Americans. Yet in Alaska, where small rate of return companies have done an outstanding job investing in broadband compliant infrastructure under extremely difficult conditions, the FCC's policies appear to have exactly the opposite effect. Every small company in Alaska now faces a situation in which they are unsure if they'll have sufficient revenues to meet their current debt obligations. All have already scaled back investment in their networks and none of them have the "sufficient and predictable" revenues required by the Telecommunications Act of 1996.**

Consequently their chances for obtaining future financing are very much diminished, if not altogether obstructed. Additionally, some of these companies have already had to lay off employees and several are preparing to file petitions for waiver of FCC rules. One has already filed a petition for waiver and has been granted extremely restricted relief. This company still faces the possibility of being in bankruptcy by the end of the year. It should be noted that many of these small companies, including the one that faces imminent bankruptcy, serve communities that are predominantly Native American and that several of these companies are cooperatives of which the boards of directors are controlled by Native Americans. Given the situation described above, please explain, in detail, what the FCC is specifically doing to encourage continued investment by Alaska's small rate of return carriers. Additionally, when a small carrier is forced to suspend operations what contingency plans does the FCC have in place to assure continued service to the affected consumers?

Answer:

The Commission recognizes that smaller rate-of-return carriers often face unique circumstances and rejected serious calls to eliminate legacy programs supporting these entities. The *USF/ICC Reform Order (Order)* sets aside approximately \$2 billion dedicated to rate-of-return carriers, similar to their overall existing support, and adopted some modifications to the rules to ensure greater accountability and improved incentives for prudent investment. While some carriers in Alaska will face a reduction, many will see an increase in support.

The *Order* included a recovery mechanism to assist carriers with the access transition that will provide rate-of-return carriers with significantly more revenue certainty than the status quo, enabling carriers to reap the benefits of efficiencies and reduced switching costs, while giving providers stable support for investment as they adjust to an IP world.

Commissioners and staff have taken hundreds of meetings, reviewed data from companies and performed significant analysis to understand the likely impacts and craft reforms to ensure appropriate transition periods that allow companies time to adjust. As noted above, where a provider can show that rule changes endanger existing service – including situations where a carrier needs to pay off debt for past investments – the Commission will consider waiver requests on an individualized, fact intensive basis. To date, fewer than ten companies have filed a waiver.

With respect to the case of Adak, in 2011, the company received \$1,482.99 per line each month, or nearly 6 times the overall \$250 per line cap set unanimously by the Commission in the USF order. I understand from the Wireline Competition Bureau staff reviewing the waiver that another provider has stated in the record that they already serve almost the entire area for less than Adak is requesting, and would be willing to serve the entire Adak service area within the \$250 per line cap established by the Commission.

Our obligation is to review these issues carefully to ensure consumers and businesses paying into the fund are protected. Staff have also requested information from Adak to address issues regarding affiliate payments and executive compensation. While we investigate, we provided interim support for Windy City, which is Adak's wireless affiliate. Although this comes at a significant cost to the consumers and businesses that pay into the Fund, staff concluded it was appropriate to ensure we had time to fully Adak's financial situation before making a final decision.

Question:

- 7. In order to obtain approval of a petition for waiver, the FCC rules require a wireless company to complete a "drive test" to demonstrate that no other wireless company is serving the area. In Alaska, some small wireless carriers serve fishing fleets, with the wireless signal extending as far as 120 miles out over the ocean, as well as remote Native American villages. To accomplish a drive test under those conditions would require the company to lease a boat or fly to a remote village and try to find a snow machine that could be used. Under such conditions the drive test would be expensive and conducted under extremely difficult, even hazardous,**

conditions. In developing its rules what consideration has the FCC given to the unique conditions that exist in Alaska and the difficult challenges faced by the companies providing service to the state's remote Native American communities? What specifically is the FCC doing to address these unique conditions in the waiver process and in the High Cost Order as whole? I would like specific details.

Answer:

The Commission unanimously agreed that, as a matter of fiscal responsibility and accountability, and to protect consumers and small businesses paying into the Fund, a thorough, but fair waiver process was necessary for any company seeking a waiver. There are approximately 800 rate-of-return carriers that receive USF support, and thus far, the Commission has received nine waiver requests, including two from carriers serving Alaska and one carrier serving Hawaii. No Tribally-owned carrier has filed a waiver request.

To expedite review of waivers, the Commission delegated authority to the Wireline Competition Bureau and Wireless Competition Bureau. Waiver applicants serving Tribal lands receive priority review. The *USF/ICC Reform Order (Order)* requires the Wireline or Wireless Bureaus to complete review of waiver petitions in these instances within 45 days of the record closing. The Office of Native Affairs and Policy is involved in these reviews. Waiver applicants serving Tribal lands and insular areas are specifically asked to share “any additional information about the operating conditions, economic conditions, or other reasons warranting relief based on the unique characteristics of those communities” which FCC will closely consider when reviewing waiver requests.

A full discussion of the Commission’s waiver process is available in the *Order* beginning at page 177 (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf).

Question:

- 8. The FCC adopted an Alaska variable of - .6 for capital investment in the regression analysis. But when you apply that variable to the high cost algorithm it actually results in lowering construction costs by 46 percent. Based on this variable, has the FCC concluded that construction costs in Alaska are 46 percent lower than in the other states? If so, on what basis did the commission reach that conclusion?**

Answer:

According to cost data submitted by rate of return companies, in 2010, Alaska companies spent less on capital expenditures than similarly situated non-Alaska companies, but spend more on operating expenditures than similarly situated non-Alaska companies. This does not mean that construction costs for any given location in Alaska are lower than construction costs in the lower 48 states; rather, it means that Alaska companies have spent less on construction than carriers in other states, when controlling

for other variables such as number of lines, number of road miles, soil type, and the other variables considered in the USF High Cost Benchmarks Order.

Question:

9. **Given paragraph 508 of the FCC's November USF High Cost Order, referenced here: *a. 508. That said, it is important to ensure our approach is flexible enough to take into account the unique conditions in places like Alaska, and we make a number of important modifications to the national rules, particularly with respect to public interest obligations, the Mobility Funds, and competitive ETC phase down, to account for those special circumstances, such as its remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season. Further, to the extent specific proposals have a disproportionate or inequitable impact on any carriers (wireline or wireless) serving Alaska, we note that we will provide for expedited treatment of any related waiver requests for all Tribal and insular areas. We believe this approach, on balance, provides the benefits of our national approach while taking into account the unique operating conditions in some communities. Analogous proposals to maintain existing wireline and wireless support levels in other geographic areas, including the US Territories and other Tribal lands, suffer the same infirmities as the proposals related to Alaska, and are also rejectedand the challenges that Alaska faces, what specifically is the FCC doing to address each of the challenges listed in paragraph 508 (underlined)? What special treatment, if any, is being given to carriers that experience each of these challenges?***

Answer:

As noted above, the Commission made a number of important modifications in recognition of the unique and challenging operating conditions in Alaska. With respect to remoteness, the Order delays the five-year transition period to the Mobility Fund by two years for remote areas of Alaska (areas outside Anchorage, Juneau, and Fairbanks). Over 50 remote communities in Alaska have either no access to mobile voice service today, or access is limited to only 2G. Therefore, the *USF/ICC Reform Order (Order)* concludes that carriers serving remote parts of Alaska, including Alaska Native villages, will have a slower transition path during the national transition to the Mobility Fund.

Recognizing the reliance on lower bandwidth satellite backhaul and the lack of terrestrial backhaul options in Alaska, the broadband public interest obligations are relaxed. Rather than being required to provide broadband speeds of 4Mbps downstream and 1 Mbps upstream, fixed broadband providers compelled to use satellite backhaul need only provide service of 1 Mbps downstream and 256 kbps upstream to receive USF support.

Based on comments in the record that Alaska is unique because of its harsh climate and other factors, the Bureau adopted an Alaska variable. And due to the difficulties to construct and maintain networks on Tribal lands because of permitting and similar issues, the Bureau adopted an independent Tribal lands variable that considers the percentage of

each study area that is a federally recognized Tribal land.

Question:

10. Does the FCC have any suggestions of how best to improve the complex and costly waiver process to ensure that carriers which serve rural, remote, tribal, and Alaskan lands do not go out of business and can continue to provide comparable (in both cost and services) to robust broadband capabilities?

Answer:

As noted above, the Commission delegated authority to the Wireline Competition Bureau (WCB) and Wireless Telecommunications Bureau to expedite waiver review. The *USF/ICC Reform Order (Order)* requires the Bureaus to initiate the process for public comment within 45 days of receipt of a petition, which they have met. There are approximately 800 rate-of-return carriers that receive USF support, and thus far the Commission has received fewer than ten waiver requests. Of those, one has been withdrawn and two were granted some relief. Staff is diligently reviewing the submitted information and the public record for the remaining requests and will make final decisions as expeditiously as possible.

In response to carriers' requests for specific guidance on the waiver process, the *Order* laid out criteria to make it easier for companies to understand the information needed to evaluate a claim that changes in USF support would lead to loss of service for consumers. Most of the information requested, such as key financial data, and basic information about cost of service should be readily available to carriers. While some carriers may choose to hire outside experts to assist them, which would be their prerogative, there is no requirement to do so. We recommend companies that are considering applying for a waiver to contact bureau staff before filing. In the case of carriers that serve Tribal lands, the Office of Native Affairs and Policy will be engaged. Each company's situation is different and we can advise on which information is likely to be most important in evaluating their individual case. Where carriers are receiving millions in USF support, and have costs much higher than their peers, some one-time expense to take a careful look at finances is responsible oversight.

Question:

11. Taken as a whole, and not attempting to piecemeal the Order, what companies, trade organizations, interest groups, and any other groups support the FCC's November USF High Cost Order? Which groups do not support this Order?

Answer:

As I mentioned at the hearing, numerous stakeholders over the years agreed on the need to reform the USF. The program that helped connect Americans to the 20th century communications grid, first bringing basic telephone service to places where there was no economic case for service, and extending the benefits of mobile phone service across the

country, had become poorly suited for the challenges of a 21st century world where high-speed Internet, not telephone, is our essential communications platform.

While some components of the Fund supported broadband networks, most of the Fund did not. This created a rural-rural divide: some rural areas had broadband faster than in many urban areas, while many other rural areas were left entirely behind. The Fund also had become wasteful and inefficient, supporting multiple carriers in some areas, supporting carriers even in areas where an unsubsidized competitor also provides service, and often rewarding inefficient spending. That's why there has been longstanding and widespread agreement that USF must be modernized and streamlined for the 21st century.

The Commission unanimously adopted the *USF/ICC Reform Order (Order)* following consideration of tens of thousands of pages of public comments, hundreds of meetings, extensive review of data submitted by carriers and extensive analysis to comprehend impacts of the proposed reforms. No single entity was completely satisfied with the final *Order*, but the views of all stakeholders were given serious consideration throughout the reform process. As such, I am not aware of any company, trade organization, or other stakeholder that supports or opposes the *Order* taken as a whole, and not attempting to piecemeal it.

Question:

12. Does the FCC believe that satellite service is viable solution to provide robust broadband to rural, tribal and remote areas? How does the existing technology of satellite service adequately satisfy the 1996 statute referenced here?

"ACCESS IN RURAL AND HIGH COST AREAS- Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. "

Answer:

The *USF/ICC Reform Order (Order)* has specific performance obligations that any provider of service must be able to meet. For some programs already in place, such as CAF Phase I, the *Order* made clear that support is available only for fixed terrestrial providers. For other programs, moving forward satellite providers may be eligible for support but they would be required to meet minimum performance requirements.

Question:

13. As both wireline and wireless broadband teleology continues to advance, evolve, and speed up, especially in urban areas, how does the FCC expect satellite service to keep up with much more robust middle-mile technology?

Answer:

The Order has specific performance obligations that any provider of service must be able to meet. For some programs already in place, such as CAF Phase I, the Order made clear that support is available only for fixed terrestrial providers. For other programs moving forward satellite providers may be eligible for support but they would be required to meet minimum performance requirements.

Question:

14. Given the existing and well-intentioned tribal coordination provisions in the FCC Order and Alaska's 231 tribes, what changes will the FCC adopt to ensure that broadband deployment in Alaska is not hurt by tribal coordination?

Answer:

In adopting the Tribal government engagement obligation requirement, the Commission agreed with commenters in the USF/ICC proceeding that engagement between Tribal governments and communications providers is vitally important to the successful deployment of and provision of service on Tribal lands in Alaska, Hawaii, and the contiguous 48 states.

On July 19, 2012, the Office of Native Affairs and Policy, the Wireline Competition Bureau, and the Wireless Telecommunications Bureau released a Public Notice providing further guidance on the Tribal government engagement requirement, with the goal of ensuring the effective exchange of information between Tribal governments and communications providers receiving USF support on the deployment and improvement of communications services on Tribal lands. We anticipate that genuine dialogue and common understandings will ultimately lead to improvement of communications services on Tribal lands.

Question:

15. The FCC has approved the application of the quantile regression analysis on a retroactive basis thereby placing small rural rate of return companies in the position of potentially being unable to maintain their current debt coverage. Some of these companies are on the verge of bankruptcy and, if they fail, existing service (both voice and broadband) to their customers will be severely impacted. In doing their part to comply with the Universal Service Principles outlined in the 1996 Telecommunications Act, these companies incurred debt so as to further deploy "advanced services" to all Americans. In addition, since the FCC has not found their investments to be unlawful or unreasonable, and has admitted that, in some

cases, the FCC analysis is based on errors of fact, why is the FCC continuing to put these small rural carriers at risk as it implements a flawed and retroactive regression analysis?

Answer:

As with all the USF-ICC reforms, the benchmarks only affect support going forward. The reforms improve the high-cost loop support (HCLS) mechanism, one of the principal sources of USF funding for rate-of-return carriers. HCLS has been capped for nearly 20 years, and that cap constrained reimbursement for carriers' preexisting investments, not just new investments. Under the previous HCLS rules, carriers that took measures to reduce costs to operate more efficiently lost support to their peers that increased costs. At the same time, some carriers with high costs had up to 100 percent of their expenditures on loop costs reimbursed through USF, giving carriers incentives to increase costs with little regard to efficiency or the burden on the Fund, and without regard to whether a lesser amount would be sufficient to provide supported services to their customers.

The benchmarking rule is intended to moderate the expenses of those rate-of-return carriers with very high costs compared to their similarly situated peers, while freeing up funds that can be used by other rate-of-return carriers to advance broadband deployment. The benchmarking rule keeps the total size of HCLS roughly the same while addressing the problematic incentives of the previous HCLS rules by placing reasonable limits on carriers' costs eligible for reimbursement.

We understand rural carriers concerns about sufficiency of funding to cover investments they've already made. The Commission recognized and addressed this concern: where a provider can show that rule changes endanger existing service – including because carriers need to pay off past investments – we will consider waiver requests on an *individualized, fact intensive* basis. However, some carriers are instead asking for a *blanket exemption* from any changes for the full lifetime of any investments previously made – 20 years or more. This would effectively block any reform of USF, despite the longstanding bipartisan call to update the program and eliminate waste and inefficiency in the program and allow carriers to get funding even where they can effectively serve consumers with less USF support, for the whole life of past investments

Furthermore, the FCC has not admitted to making errors of fact. To the extent any carrier feels our reforms are based on flawed data they can bring the error to our attention and we will respond accordingly. The Commission utilized the best available nationwide data to determine the benchmarks, but we also provided a streamlined, expedited process to correct any inaccuracies. So far, the Wireline Competition Bureau has received two petitions to correct data, and both of the petitioners received responses within two weeks of the initial filing.

Question:

How does this increased limitation of funds, especially given the \$4 billion in outstanding and nationwide RUS debt, help these companies increase their broadband infrastructure deployment? How does it help them support both

existing and future deployment? Given these legitimate problems, what specifically is the FCC's opposition to freezing current support levels until existing debt can be reduced? Is this not a more stable and long-term solution?

Answer:

Commission staff worked closely with RUS throughout the USF reform process to understand their concerns and to estimate the potential impact of different reform options on RUS borrowers, and we continue to do so. Any carrier who believes they may have difficulty in repaying RUS loans as a result of reductions in support is free to file a waiver and one factor the Commission will explicitly consider is the ability of a carrier to service outstanding debt. In addition, the information that carriers should submit when requesting a waiver explicitly includes information regarding outstanding loans, including RUS loans.

These once in a generation reforms are geared to bring broadband to 19 million unserved consumers as quickly as possible. The reforms put the nation on the path to universal broadband and advanced mobile coverage while maintaining support for existing rural broadband and voice service. By cutting waste, incentivizing efficiency and setting an annual budget of \$4.5 billion for the program for the first time ever, the reforms control the size of the fund – and therefore the burden on consumers and businesses that pay for the program.

In order to extend broadband to unserved rural communities while ensuring fiscal responsibility, it is important to keep moving forward with implementation of the reforms. If we do not move forward, we are left with inefficiencies of old system, and will not be able to close the gaps to ensure that 19 million residents of the nation's rural and high-cost areas who lack broadband today receive the quality voice and broadband services that all Americans need.

Question:

- 16. The FCC regression analysis stipulates that the Matanuska Telephone Association (MTA) is spending too much per customer on infrastructure investment. MTA not only serves rural Alaskans, but it serves many isolated locations including the native village of Tyonek.**

Specifically, the FCC staff analysis shows that MTA spends \$430 per customer on infrastructure, a figure far lower than the cost per customer in much of rural America much less Alaska.

However, the staff analysis comes up with a figure that concludes, with no apparent explanation, that MTA should only spend \$327 per customer on infrastructure. At the same time the FCC analysis says that Matanuska could reasonably spend up to \$506 per customer on operating expenses, but the company actually only spends \$391 per customer. When you combine the capital and operating expenses and compare what the company actually spends against what the staff model predicts it

should spend, Matanuska actually spends \$12less per customer than what the FCC analysis would allow in the aggregate.

MTA management tells my staff that they have done everything regulators have told them to do. They have cut operating expenses, as reflected by the results that show they spend far less than the FCC regression model predicts. Additionally, MTA has taken savings from it operating expenses and invested in improving the infrastructure in the rural Alaska community they serve.

Yet, the result of the FCC regression analysis is that they will be severely punished with the loss of nearly \$3.5 million dollars of USF support because of the way the staff mechanism works. Other FCC rule changes will cost Matanuska more than another \$ 1 million of annual revenues. As a result, Matanuska will have to cut back on the investment it makes in rural Alaska infrastructure including that Alaska native lands it serves. I am told that the revenue loss will result in the loss of at least 60 jobs. MTA is a high performing broadband company is a leader in offering advanced services to their customers. Why is FCC not adopting policies that encourage the excellent performance demonstrated by MTA management rather than penalizing it? What is the specific explanation why MTA should only spend \$327 per customer on infrastructure? How does cutting their funding allow them to better serve their service area, especially the native village of Tyonek?

Answer:

Thank you for providing additional information on the specifics concerning MTA. This is the type of information providers are encouraged to submit in their waiver applications. MTA has submitted a waiver request. The Bureau staff, coordinating with the Office of Native Affairs and Policy, will work closely with them to understand their circumstance and tailor a specific remedy, should one be warranted based on the information submitted.

Submitted by Congresswoman Colleen Hanabusa

Question:

- 1. It is my understanding that the FCC is subjecting Rural Local Exchange Carriers (RLECs) to another review of their eligibility for USF. Specifically, the FCC is questioning the eligibility for USF on facilities that have already been built using long term loans that rely on USF funding for repayment. What is the FCC's justification for this?**

Answer:

As with all the USF-ICC reforms, the benchmarks only affect support going forward. The reforms improve the high-cost loop support (HCLS) mechanism, one of the principal sources of USF funding for rate-of-return carriers. HCLS has been capped for nearly 20 years, and that cap constrained reimbursement for carriers' preexisting investments, not just new investments. Under the previous HCLS rules, carriers that took measures to

reduce costs to operate more efficiently lost support to their peers that increased costs. At the same time, some carriers with high costs had up to 100 percent of their expenditures on loop costs reimbursed through USF, giving carriers incentives to increase costs with little regard to efficiency or the burden on the Fund, and without regard to whether a lesser amount would be sufficient to provide supported services to their customers.

The benchmarking rule keeps the total size of HCLS roughly the same while addressing the problematic incentives of the previous HCLS rules by placing reasonable limits on carriers' costs eligible for reimbursement.

We understand rural carriers concerns about sufficiency of funding to cover investments they've already made. Any carrier facing reduced support as a result of the Commission's universal service reforms – including situations where a carrier needs to pay off debt for past investments, such as RUS loans – the Commission will consider waiver requests on an individualized, fact intensive basis. To date, fewer than ten companies have filed a waiver.

Question:

- 2. Does the FCC have or is it planning to implement a pre-approval process whereby RLECs wishing to provide service to high-cost-to-serve areas can receive approval of their costs prior to incurring those costs? If not, what is the reasoning for this lack of preapproval process?**

Answer:

Carriers understand what costs are to be covered and what costs are not. It is up to them to determine how best to serve their communities within the confines of the program. Should they need clarification on how the program operates, they are free to file a petition for clarification or declaratory ruling at any time.

Question:

- 3. For RLEC's that have historically served high-cost-to-serve areas with expenses that exceed the FCC's newly imposed per line price cap, absent a waiver, how are these RLEC's expected to continue to provide service to high-cost-to-serve areas?**

Answer:

Providers that truly need relief to continue serving their communities can seek a waiver.

Question:

- 4. During the Oversight Hearing on Universal Service Reform, the FCC's witness stated that the FCC's waiver process does not require telcos to hire outside consultants as long as they follow Generally Accepted Accounting Principles (GAAP) and provide the FCC with their GAAP financials. However it is my**

understanding that while telcos are required by the FCC to follow GAAP for their company financials, cost accounting, not GAAP, is what is required by the FCC, for the telcos monthly reports submitted to obtain USF recovery. Is this true?

Furthermore, it is my understanding that cost accounting and GAAP do not readily reconcile and may explain the need for outside consultants and accountants who can explain and correlate the two accounting principles. Why are these two different accounting standards being used?

Answer:

A full discussion of the Commission's waiver process is available in the Order beginning at page 177 (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf).

Question:

- 5. What efforts has the FCC undertaken to quantify the financial losses that RLECs will suffer due to reductions in federal USF and FCC mandated reductions in the prices for access service?**

Answer:

The Commission in adopting reform provided a full analysis of its reforms in the Order. (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf).

Question:

- 6. What is the total dollar amount that will be lost by RLECs due to reductions in USF?**

Answer:

As stated above, in adopting reform to the high-cost mechanism, the Commission allotted \$2 billion to the rural rate-of-return mechanism, which is approximately the same level of support as currently delivered under the previous system to this group of carriers.

Question:

- 7. What is the total dollar amount that will be lost by RLECs due to FCC mandated reductions in prices for access service?**

Answer:

As a result of the access reforms, carriers will have increased certainty and stability that they would not have experienced under the status quo. The *USF/ICC Reform Order*

included a recovery mechanism to assist carriers with the access transition. The recovery mechanism provides rate-of-return carriers with significantly more revenue certainty than the status quo (which had been characterized by downward trends in ICC revenues, declining switching costs and minutes of use), enabling carriers to reap the benefits of efficiencies and reduced switching costs, while giving providers stable support for investment as they adjust to an IP world.

Question:

- 8. How many RUS loans are at risk of default due to reductions in federal USF and FCC mandated reductions in the prices for access service?**

Answer:

RUS administers its loan program and has a better understanding of its loan portfolio. That said, Commission staff worked closely with RUS throughout the *USF/ICC Reform Order* process to understand their concerns and to estimate the potential impact of different reform options on RUS borrowers, and we continue to do so. As previously noted, any carrier who believes they may have difficulty in repaying RUS loans as a result of reductions in support is free to file a waiver and one factor the Commission will explicitly consider is the ability of a carrier to service outstanding debt. In addition, the information that carriers should submit when requesting a waiver explicitly includes information regarding outstanding loans, including RUS loans.

Question:

- 9. What is the total dollar amount that will be lost by taxpayers due to such RUS loan defaults?**

Answer:

See previous response to question 8.

Question:

- 10. How many LECs are at risk of being forced out of business due to the FCC's actions and the resulting RUS loan defaults?**

Answer:

The Commission recognizes that smaller rate-of-return carriers often face unique circumstances. Commissioners and staff have taken hundreds of meetings, reviewed data from companies and performed significant analysis to understand the likely impacts and craft reforms to ensure appropriate transition periods that allow companies time to adjust.

As previously mentioned, Commission staff worked closely with RUS throughout the *USF/ICC Reform Order* process to understand their concerns and to estimate the potential impact of different reform options on RUS borrowers, and we continue to do so. In addition, where a provider can show that rule changes endanger existing service, including situations where a carrier needs to pay off debt for past investments, the Commission will consider waiver requests on an individualized, fact intensive basis. Chairman Genachowski has circulated a draft order to clarify that waivers can be granted to prevent loss of broadband service, not just loss of voice service.

There are approximately 800 rate-of-return carriers that receive USF support, and thus far, the Commission has received only nine waiver requests. Of those, one has been withdrawn and two were granted some relief. Staff is diligently reviewing the submitted information and the public record for the remaining requests and will make final decisions as expeditiously as possible, but we do not anticipate carriers will go out of business.

Question:

11. If those LECs are forced into bankruptcy, how many jobs will be lost in this country?

Answer:

See response to question 10.

Question:

12. What rural areas of the country are at risk of being without a landline ILEC to serve them due to the FCC's actions and the resulting RUS loan defaults?

Answer:

See response to question 10.

Question:

13. What analysis has the FCC performed of the impact on rates that RLECs will have to charge rural residents for local telephone service in order to offset the financial losses they will suffer from less USF and less and perhaps no revenue from access service?

Answer:

The Order contains a discussion of end-user rates and high-cost reform beginning on page 87 (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf)

Question:

14. Has any other country tried moving access service pricing to bill-and-keep and what were their results? How much future infrastructure investment (in dollars) may be lost due to less USF and bill-and-keep? Which parts of this country stand to lose the most investment in infrastructure?

Answer:

The FCC has not conducted a comprehensive survey of access service pricing models in other countries. In the *USF/ICC Reform Order (Order)*, the Commission did cite a paper from the Body of European Regulators of Electronic Communications (BEREC) about its on-going study of bill-and-keep.

In the United States, bill-and-keep, which is explicitly contemplated in the Act, has worked well as a model for the wireless industry. As a result of the intercarrier compensation reforms adopted in the *Order*, FCC Staff estimated that consumers will likely gain benefits of over \$1.5 billion annually. Furthermore, bill-and-keep is consistent with and promotes deployment of IP networks; will eliminate competitive distortions between wireline and wireless services; and best promotes our overall goals of modernizing our rules and facilitating the transition to IP. Finally, the *Order* included a transitional recovery mechanism to mitigate the effect of reduced intercarrier revenues on carriers and facilitate continued investment in broadband infrastructure, while providing greater certainty and predictability going forward than the *status quo*.

Questions for the Record from Senator Rockefeller

Question for Chairman Genachowski

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 wellbeing.

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 your 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.

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?

Response:

As you noted, in 2007, the Commission released a report at the request of the House Energy and Commerce Committee that studied the impact of excessively violent programming on children, the advisability of government regulation of such programming, and the legal issues raised by such potential regulation.

That report stated that research provides strong evidence that exposure to violence in the media can cause aggressive behavior in children, at least in the short term. It also concluded that Congress could develop an appropriate definition of such programming, but that such a definition would have to be narrowly tailored and in conformity with judicial precedent to withstand constitutional review.

In August 2009, pursuant to the Child Safe Viewing Act of 2007, the Commission issued a Report to Congress in which it assessed the state of the marketplace with respect to the existence and availability of advanced blocking technologies, methods of encouraging the development, deployment, and use of such technologies. The Report also assessed the existence, availability, and use of parental empowerment tools and initiatives already in the market.

In October 2009, as a follow-up to the CSVA Report, the Commission issued a Notice of Inquiry seeking comment on how to help parents and children take advantage of the opportunities made possible by electronic media technologies while protecting children from the potential risks posed by these technologies. This "Empowering Parents" proceeding remains open.

Given the technological changes to which you refer, a reasonable first step would be for the Commission to update the record to collect data on the most current

technologies available to best empower parents to protect their children from objectionable programming.

Question for Chairman Genachowski

On March 1, I sent letters to the four national wireless providers to express my concerns about the growing evidence of wireless cramming. As I have expressed in the past, it is important for both the FCC and Congress to be proactive in this area. As last year's investigation in this Committee found, wireline cramming costs consumers and businesses billions, and we have to apply the lessons learned from that experience to stop wireless cramming. As we continue to move to a more wireless world, we must remain vigilant. What should the agency be doing to make sure cramming doesn't move to other services, such as wireless? Has the agency seen evidence of an increase in wireless cramming complaints in the past year?

Response:

A pending Notice of Proposed Rulemaking seeks to obtain information on the scope of wireless cramming complaints. Commission staff is reviewing the record developed in that proceeding and the data we are receiving from complaints, as well as the trends in the number of wireless cramming complaints we are receiving.

On April 18, the Commission held a Public Workshop with industry experts as well as consumer and state representatives, to help educate consumers to protect themselves from both Bill Shock and Cramming. We plan to utilize the information obtained in the pending item and at the workshops to formulate potential next steps.

Question for Chairman Genachowski

Prior to the FCC's adoption of last year's reforms to the universal service high-cost fund, I discussed with you and your colleagues the importance of making 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 recently 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. Will you commit to a thorough review of this method to be sure that it works effectively for all rural areas, including those areas, like West Virginia, that face topographical challenges?

Response:

It is critical that we extend the benefits of mobile communications to rural areas, including those in West Virginia.

Phase I used a competitive bidding process in areas where it would be cost effective to develop with a one-time investment. A total 894 bids were submitted, and \$300 million awarded to extend service to up to 83,000 road miles.

We are conducting a thorough review of this auction to identify successes and areas for improvement. Following the auction, we solicited further comment on lessons learned, and have been carefully reviewing the comments received.

Questions for the Record
Senator Barbara Boxer
Senate Committee on Commerce, Science, and Transportation
Hearing on Oversight of the Federal Communications Commission
March 12, 2013

Questions for Chairman Genachowski

For years, rural telephone consumers have been reporting to the FCC that they frequently experience dropped calls and poor call quality. Last month, the Commission released a Notice of Proposed Rulemaking (NPRM) proposing data collection to better identify the source of rural call completion problems. That was a good first step and one that is long overdue.

- Will the data the Commission receives as a result of the NPRM be shared with States so that they may better address intrastate call termination problems?

Response:

The NPRM sought comment on whether the data the Commission proposed to collect should be treated as confidential or be open to public inspection. We will be reviewing the record carefully on this issue.

In addition, in other contexts we have shared even non-public data with state officials subject to protections, and will consider that option here as well. We have encouraged our state partners to participate in the proceeding, and we look forward to working with them to address rural call completion problems.

- Can we expect the FCC, in the near future, to undertake additional enforcement actions like today's consent decree with Level 3 Communications?

Response:

Resolving rural call completion issues is a major priority for the FCC. We are aggressively pursuing this problem and there will be significant consequences for those companies that are not fulfilling their obligations to rural America.

The E-Rate program, which has furthered the goal of bringing broadband Internet access to classrooms and libraries all over the country, is severely underfunded. Last year alone, it had to turn away more than \$2 billion in applications from schools and libraries nationwide, including many in California. Experts project that demand for E-Rate support will continue to grow, particularly as wireless devices proliferate in the classroom. Yet, the E-Rate cap, which was set 15 years ago by the FCC, only increases by one percent each year and may not be able to support the future bandwidth needs of our schools and libraries.

- What is the Commission's plan for addressing the E-Rate funding shortfall and ensuring that schools and libraries can obtain affordable, high-speed broadband?

Response:

The E-Rate program has achieved remarkable success -- 97 percent of American schools and nearly all public libraries now have basic Internet access.

We are at a moment of great opportunity for digital learning. Broadband and digital tools have game-changing potential for education. Our significant E-Rate reforms in 2010 were a strong start to lower costs and expand broadband access to schools and libraries.

As with all our universal service programs, it is critical that we regularly review E-Rate to ensure it is keeping pace with needs, operating efficiently and targeting support effectively.

As you know, under the E-Rate program service providers are required to charge schools the lowest price offered to comparable customers. However, there is evidence that the program's crucial low-price requirement has been widely neglected.

- What steps are the Universal Service Administrative Company and the FCC taking to ensure that E-Rate funds are used correctly, and that schools and libraries are receiving the proper discounts on services?
- What are the USAC and the FCC currently doing to ensure that service providers under the E-Rate program are charging schools and the federal government the lowest available prices?

Response:

E-rate program participants are required to ensure compliance with all applicable Commission rules, including the lowest corresponding price (LCP) rule.

USAC's annual trainings for applicants and service providers include a reminder that service providers are required to comply with the LCP rule.

FCC has taken actions to ensure LCP compliance, including, in 2009, an \$8.3 million FCC-DOJ settlement agreement with AT&T regarding over-billing.

We will continue to work to ensure LCP compliance going forward.

The National Broadband Plan recommended making changes to the E-Rate program to make services more cost-efficient, prioritize funding, and give schools and libraries more flexibility regarding how funds are used. Added flexibility and efficiency are vital for broadband access expansion in California, where sadly 15 percent of schools still lack a broadband connection.

- Can you detail any progress made toward these goals, including actions taken and future plans?

Response:

The FCC's 2010 E-rate Order is making it easier for schools and libraries to get the highest speeds for the lowest prices by increasing their options, streamlining the application process for educators and librarians, and strengthening protections against fraud and abuse. We are continuing to update programs across USF and in other areas to meet the needs of the broadband age.

Unleashing spectrum for wireless broadband is critical to our economy. However, California television stations have inquired about the existence of translator and low power service 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.

- Where do translator and low power services fit in the Commission's plan to auction broadcast television spectrum?

Response:

Congress chose not to provide special protection in the Spectrum Act for low power TV and TV translators, which are secondary services. However, we recognize the important services low power and TV translator stations provide, particularly in rural areas, and are seeking input on measures to ensure that their valued programming continues to reach viewers.

In his testimony, Commissioner Pai expressed concern that the incentive auction may fail to provide sufficient funding 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 are you taking to ensure that FirstNet will receive sufficient funding to fulfill its mandate and ensure our nation has a reliable public safety network?

Response:

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

A key goal of the incentive auction is to raise sufficient revenues to meet the policy objectives of the Spectrum Act, including funding FirstNet. Other auctions required under the Spectrum Act, such as the H Block auction later this year, will also be a

source of funding for FirstNet. As Chairman Genachowski stated when the Commission adopted the Notice of Proposed Rulemaking on implementation of the incentive auction, “Our duty and intention is to faithfully implement the law, freeing up spectrum, raising very substantial revenue, and helping fund FirstNet first responders.”

On March 4, 2013, you released a statement supporting consumers’ ability to unlock their cell phones so that they can use them with a different mobile phone company. My colleagues, Senators Klobuchar, Lee, and Blumenthal, have introduced the Wireless Consumer Choice Act, which directs the Commission to order carriers to allow cell phone unlocking.

- Would the Commission need additional authority from Congress to enforce a cell phone unlocking order?

Response:

From a communications policy perspective, the decision of the Copyright Office of the Library of Congress raises serious competition and innovation concerns. For wireless consumers, it doesn't pass the common sense test. The FCC has been closely examining this issue, with the goal of preserving consumers' ability to unlock their mobile phones. We also encourage Congress to consider a separate legislative solution.

A recent Government Accountability Office report concluded that the FCC’s cell phone safety standards, which were adopted in 1996, “may not reflect the latest evidence” of the health risks of mobile phone radiation. You reportedly circulated a draft Notice of Inquiry (NOI) proposing a review of the Commission’s outdated cell phone safety standards in June 2012, but the public is still waiting for the Commission to take action.

- When can the public expect the release of the NOI and the initiation of the Commission’s review of mobile phone safety standards and testing requirements?

Response:

The Commission released this item on March 29, 2013 and it can be found online at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-39A1.pdf

We are confident that, as set, the emissions guidelines for devices pose no risks to consumers. The United States has one of the most conservative emissions standards in the world. This item provides for a routine review of our standards. We hope and expect that other federal agencies and organizations with whom we work with on this issue will participate in the process.

I was pleased to see that, after considering the issue for nine years, the Commission initiated a rulemaking to consider how to eliminate predatory prison phone rates. Exorbitant prison phone rates impose a significant financial burden on families and reduce contact between inmates and loved ones, contributing to recidivism.

- When can we expect the Commission to adopt rules on prison phone rates?

Response:

The record on the *Inmate Calling Services NPRM* closed on April 22. We are actively reviewing the record and considering next steps.

The Commission has suspended the media ownership proceeding, and it has not yet moved ahead on the long-awaited studies considering the information needs of communities, which implement Congress' directive in Section 257 of the Communications Act. The civil rights community is anxiously awaiting these studies.

- When can we expect to see the planned framework for these studies and when will they produce policy recommendations suitable for Commission action?

Response:

Our Office of Communications Business Opportunities (OCBO) continues to review the state of communications and media markets as it coordinates the Commission's Section 257 Report to Congress. As part of this process, in 2012, we commissioned a review conducted under the direction of The University of Southern California Annenberg School for Communication and Journalism, of the existing literature analyzing the critical information needs of the American public.

The Annenberg report was submitted to the Commission in July 2012. Following the release of the literature review, and to assist implementation of its recommendations, OCBO retained an independent contractor to design a research model to examine how media ecologies function; how critical information is made available in various media ecologies; how individuals construct their own media ecologies to meet their critical information needs; and what barriers exist in our media ecologies to providing and accessing this information.

The work on the research model was recently completed and delivered to the Commission. The research model is currently on the Commission's website and remains open for public comment.

I was very pleased to see that the Commission finally finished implementing the Local Community Radio Act of 2010 and that it has set an October 2013 application date for new stations.

- Is the Commission on track to begin accepting applications in October?
- What else is the Commission doing to ensure that as many organizations as possible are able to take advantage of this opportunity?

Response:

Commission staff continues to work diligently to process the pending FM translator applications in advance of an LPFM window currently anticipated in October of this year.

The Commission has created new tools for entities interested in the LPFM service. For example, we released a new LPFM Channel Finder that searches the FCC database for available LPFM channels at specific locations. We also held a Public Forum regarding the new rules adopted under the LCRA.

Our webpage provides detailed information on LPFM service, and the public will be provided notice well in advance of a filing window opening.

A number of private entrepreneurs are in the process of purchasing television stations that will be eligible to participate in the spectrum auction. There have been anecdotal reports that a number of these stations are currently contributing unique perspectives or niche programming not available anywhere else. Community groups are concerned that the purchase of these stations might harm the already-dismal media ownership diversity levels.

- Has the Commission analyzed the current market impact of these transactions on media ownership diversity?
- What is the Commission considering as options to minimize the potentially devastating impact of these transactions on diversity?

Response:

The Incentive Auction NPRM specifically seeks comment on measures that can be taken outside of the media ownership rules context to address any impact on diversity as a result of an incentive auction. Specifically, those measures could include encouraging multicasting or other distribution methods that could ensure continued access to minority-oriented or niche programming. In addition, the Commission continues to evaluate other ways to help increase minority and female ownership of broadcast stations.

Questions for all commissioners

On November 30, 2012, I along with eight of my colleagues sent a letter urging you not to relax the Commission's cross-ownership rules without responding to our concerns about the low levels of female and minority ownership of broadcast radio and television stations. In February, the Commission announced that it would be delaying its vote on the new rules as it awaits the results

of a study by the Minority Media and Telecommunications Council regarding the effects of cross-ownership rules on minority ownership and newsgathering.

- Given the fact that MMTC's study is to be conducted by a broadcast industry analyst who is backed by the newspaper and broadcast industry associations and has publicly supported a relaxation of the cross-ownership rules, do you believe the study represents an independent and impartial analysis of the impact of cross ownership on minority owners?
- Do you believe the study's methodology will provide the kind of analysis required by the Third Circuit Court of Appeals when it ordered the Commission to provide better justification for proposed diversity efforts?
- Does the Commission believe that radio contributes to viewpoint diversity?
- If the Commission were to conclude that radio does not contribute to diversity, how would that decision undermine future efforts to ensure that radio ownership is as diverse as the country it serves?

Response:

We believe that the study proposed by MMTC will augment the record in the pending media ownership quadrennial review proceeding. The Commission will review the MMTC study, including its methodology, when it is submitted and take appropriate action at that time based on all of the evidence in the record.

While it is true that recent research shows that most radio stations do not produce significant amounts of local news and that most consumers do not rely on radio stations as their primary source of local news, the Commission has held that certain radio ownership limits are necessary to promote viewpoint diversity "by ensuring a sufficient number of independent radio voices and by preserving a market structure that facilitates and encourages new entry into the local media market." 2006 Quadrennial Review Order, 23 FCC Rcd at 2077, ¶ 127 (citing 2002 Biennial Review Order, 18 FCC Rcd at 13739, ¶¶ 305-06).

The Commission has acknowledged that rural consumers are experiencing significant problems receiving long distance or wireless calls on their landline telephones. The problem appears to be attributable to the use of IP-based least-cost routing providers.

- What does the Commission plan to do to ensure that such interconnection and reliability problems do not become more prevalent as our nation's telephone networks transition to wireless and IP-based services?

Response:

First, public safety and consumer protection are core principles guiding the work of the FCC's Technology Transitions Policy Task Force on the migration of communications networks and services. Ensuring the basic ability of all Americans to reliably receive phone calls is a critical consideration in this effort.

In addition, actions in the USF/ICC Transformation Order are aimed at ensuring reliable communications, including transitioning from old systems of intercarrier compensation to "bill and keep" (which would largely eliminate incentives for practices that undermine the reliability of rural service) and an express prohibition on call blocking.

The Commission has also created a Rural Call Completion Task Force to provide intra-agency coordination and a dedicated process for rural carriers and consumers to report problems.

In light of the recent complaint filed in federal court by VoIP providers claiming that the Commission lacks authority under the Communications Act to apply the no-blocking rule to VoIP calls, is additional authority needed from Congress to address the rural call completion problem?

Response:

The Commission currently has authority to apply its ban on call blocking and other rules to address the rural call completion problem on VoIP services as appropriate. The Commission generally has not yet decided whether VoIP services that are exchanged with local exchange carriers over the public switched telephone network should be classified as "telecommunications services" or "information services" under the Communications Act.

If the Commission ultimately determines that such VoIP services are telecommunications services, it would have authority to ban call blocking and practices that result in the failure to complete calls to rural areas as "unjust and unreasonable practice[s]" under Section 201(b) of the Communications Act, in addition to other possible sources of authority.

If the Commission ultimately determines that such VoIP services are information services, it still would have authority under its Title I jurisdiction to adopt rules reasonably ancillary to the effective performance of its statutorily mandated responsibilities, such as enforcing a prohibition on call blocking and related practices by carriers.

The Commission has a pending Notice of Proposed Rulemaking seeking comment on these issues, and the resulting record will inform what additional steps it is appropriate for the Commission to take in this regard.

More than half of U.S. broadband subscribers are subject to some form of bandwidth cap or usage-based pricing. Experts have pointed out that broadband caps are inefficient for addressing network congestion and may, instead, have anticompetitive effects.

- What does the Commission plan to do to ensure that caps do not undermine access to affordable, high-speed broadband?

Response:

The provisions of the Open Internet order require transparency in carrier pricing of broadband service. Business model experimentation can help consumers, in particular providing lower priced options to low volume users.

At the same time, new business models and new services by broadband providers should not come at the expense of competition, including from over-the-top providers, or at the expense of increases in broadband speed and monthly capacity. We will continue to monitor this space.

Questions for the Record

Senator Bill Nelson

Online Public File:

As we discussed during the hearing, top broadcast stations in the largest of markets are now required to put their public files, which includes political ad information, on the Internet.

- Is there a policy or statutory rationale for not requiring the same practice from other multichannel video programming distributors that maintain similar files?

Response:

Currently all television broadcast stations are required to place substantially all public file contents online, with the exception of political files. In addition, television stations affiliated with the top four networks (ABC, CBS, Fox and NBC) in the top 50 Nielsen markets are required to place their political files online. All other broadcast television stations will transition their political files online by July 1, 2013.

The Commission limited the online disclosure requirement to broadcast television stations because the proceeding at issue grew out of the digital transition, which had addressed only broadcast TV, and not radio or MVPDs, and extending the requirements beyond TV stations was not possible on the existing record.

The Commission also noted that limiting applicability at the outset would help ease implementation and allow for a smoother transition.

NG911:

The FCC has stated that one of its objectives is to ensure that any NG911 solution ultimately includes the ability of cell phone users to transmit video and photos to 911 call centers in real time during a public safety or law enforcement event (in addition to voice and text). However by most estimates, availability of such capability (photos and video, or MMES - multimedia emergency services) in a pure IP NG911 environment, is at least 3-10 years away, given the cost and development required.

- If the technology already exists today, to deploy video and photos in a hybrid SMS/IP solution, that could be deployed now, on existing analog or digital PSAP (911 call center) infrastructure, and that technology would be compatible with any future upgraded IP NG911 system, what can the FCC do to help advance such solutions so that they are available to all Americans?

Response:

The FCC is taking a number of steps to advance NG911 and to promote a variety of technological solutions that will enhance access by public safety to cutting edge technology. For example, as a part of the transition to NG911, the Commission has

proposed to require carriers to provide text-to-911 service as an essential first step. The four largest wireless providers (AT&T, Verizon Wireless, Sprint Nextel and T-Mobile) have already voluntarily committed to provide text-to-911 service to public safety answering points capable of receiving texts by May 15, 2014. The Commission has proposed to require other carriers and certain interconnected text messaging providers to do the same.

Earlier this month the Commission imposed an obligation on wireless carriers and certain over the top interconnected text messaging providers to supply a “bounce back” message to consumers that attempt to send a text to 911 where the service is not supported. This “bounce back” message service must be implemented no later than September 30, 2013.

The Commission is also examining ways to secure the current and future NG911 infrastructure, and recently adopted a Notice of Proposed Rulemaking to examine vulnerabilities in the 911 system. This is a part of the Commission’s focus on infrastructure reliability and resiliency arising out of the communications issues that followed the mid-Atlantic derecho and Superstorm Sandy.

While the Commission can impose requirements on those within our jurisdiction, NG911 will also require the commitment and investment from a variety of stakeholders outside of the Commission’s purview. Carriers, manufacturers, application developers, and state and local governments must collaborate to ensure the transition is timely, cost-effective and meets the needs of both public safety and consumers. To that end, Congress directed the Commission to submit recommendations on the promotion of NG911, which were submitted earlier this year. The Commission’s report included recommendations that would provide incentives for each of these stakeholder segments to participate and promote NG911 deployment, including the provision of needed funding to state and local authorities.

600 MHz Band Incentive Auction:

Under the Middle Class Tax Relief and Job Creation Act of 2012, Congress directed that you only have one chance at this broadcast incentive auction. Although the market will determine how much spectrum will be repurposed, it is the Commission that will come up with a mark and a band plan prior to the auction’s start.

- Will you seek the most amount of spectrum you can reasonably identify for commercial use, and at a minimum, to the 120 MHz called for by the National Broadband Plan?

Response:

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

1755-1780 MHz & Federal Spectrum:

The March 2012 NTIA Report on the potential for clearing and reallocation of the 1755-1850 MHz band indicates that full relocation of government users may take up to 10 years and cost some \$18 billion. I understand these projections were provided by the affected Federal spectrum users.

- Is the FCC working with NTIA to assess and scrutinize these projections to confirm the accuracy of these projections? Are these timeframes consistent with major relocation efforts? What can the FCC do to gain a better understanding of the cost to relocate Federal spectrum users and to tighten the timeframes for vacating the band?

Response:

The Commission continues to work with NTIA and other stakeholders, including the Department of Defense, to free up spectrum for commercial use, consistent with the President's goals, while also enabling vital government operations to continue. The process requires complex technical analysis before any decisions are made. Commission staff has been working with our counterparts at NTIA and DoD to help facilitate sharing of information with industry stakeholders in order to perform that technical analysis. We are hopeful that analysis of the 1755 MHz band can be completed in a timeframe that would allow it to be paired with the 2155 MHz band for auction.

USF:

The FCC's National Broadband Plan Goal #4 said that anchor institutions in all communities should have high-capacity 1 Gigabit per second connections by the year 2020. Many schools, libraries, health clinics and other anchor institutions are straining to obtain affordable, high-capacity broadband connections to keep up with the growing demand for Internet-based services.

- What actions are planned by the agency to promote high-speed broadband for anchor institutions and to make these services affordable?"

Response:

The Commission has taken several steps to promote high-speed broadband for anchor institutions:

- **Through the Commission's Broadband Acceleration Initiative, we have expanded the reach of robust, affordable broadband by streamlining access to utility poles and improving policies for wireless facilities siting. We also have initiated a proceeding to examine whether federal, Tribal, state, and local government policies for access to rights of way could be improved, and have worked closely with other**

federal agencies to implement Executive Order 13616 and streamline access to federal land and buildings to speed broadband deployment.

- **The 2012 Healthcare Connect Order aims to increase access to broadband and broadband networks for health care providers, especially those serving rural areas. Eligible anchor institutions include: public/not-for-profit hospitals, rural health clinics, community health centers, health centers serving migrants, community mental health centers, local health departments or agencies, post-secondary educational institutions/teaching hospitals/medical schools, or a consortium of the above.**
- **The 2011 USF/ICC Transformation Order adopts performance goals to ensure the availability of broadband and voice service to homes, businesses, *and community anchor institutions*. To that end, the Order requires funding recipients to identify and report on the community anchor institutions that newly gain access to fixed broadband service as a result of the funding. The Commission also expects funding recipients to engage with community anchor institutions in the network planning stages with respect to the deployment of supported networks.**
- **The Special Access data collection order balances the burden and need for necessary data for an annual \$12-\$18 billion market. Getting these rules right is critical to competition and providing broadband access for small businesses.**
- **The 2010 E-Rate Reform Order makes it easier for schools and libraries to obtain highest speeds for the lowest prices by increasing their options, streamlining application process for schools and libraries, and strengthening protections against fraud and abuse.**

SENATOR FRANK R. LAUTENBERG
COMMERCE COMMITTEE OVERSIGHT HEARING ON THE FEDERAL
COMMUNICATIONS COMMISSION
QUESTIONS FOR THE RECORD
Tuesday, March 12, 2013

Questions for Chairman Genachowski:

New Jersey's only high power television station, WWOR, is required to serve the unique needs of New Jersey. But WWOR has largely failed to do so. The FCC could place additional conditions on WWOR's license, which expired in 2007, to better ensure local New Jersey coverage. But the Commission has not acted on that application for six years now.

- When can we expect the FCC to make a decision on WWOR's license renewal application?

Response:

The renewal application is pending as the staff works through the various issues presented in Petitions to Deny renewal, as well as a separate misrepresentation issue related to additional information submitted under the Commission's ex parte rules. There is no specific time frame for action on the renewal.

As you know, I am concerned about allegations of misconduct and dishonesty by News Corporation in its phone hacking and bribery allegations overseas, and in its WWOR renewal application. Despite these serious allegations, there has been no indication that the FCC is taking seriously its duty to ensure that those entrusted with serving the public interest are deserving of broadcast licenses.

- What has the FCC done to demonstrate that it takes reviews of the character of its broadcast license holders seriously?

Response:

The Commission takes all character issues seriously when they are presented – typically through complaints – such as indecent programming complaints or as Petitions to Deny renewal or license transfer applications. If a party raises a character issue, the application is immediately placed on hold and an investigation is conducted.

Many railroads—particularly commuter railroads—are having difficulty meeting the 2015 requirement to install Positive Train Control because of a lack of available spectrum.

- With the 2015 deadline looming, what steps is the FCC taking to accommodate PTC implementation?

Response:

The FCC staff is working closely with industry stakeholders, the National Transportation Safety Board, and the Federal Railroad Administration to address the spectrum needs of the commuter rails. As you may know, the FCC faces challenges in providing spectrum for PTC because the Rail Safety Improvement Act of 2008 did not designate spectrum for PTC or provide funding to rails for purposes of acquire spectrum to implement PTC. However, the staff is actively working with key stakeholders to help negotiate spectrum needs on the secondary market and have granted waivers of technical, construction, and other rules to enable timely PTC deployment. At staff's request, PTC-220, a consortium of the largest U.S. freight railroads which hold substantial nationwide spectrum, is working closely with many commuter rails to meet their PTC spectrum needs.

Question for Chairman Genachowski and Commissioners Rosenworcel and Clyburn:

Nineteen states currently restrict local governments' ability to offer broadband, even in areas where companies won't make it available or affordable. I have previously introduced bills that would prevent states from restricting municipal broadband, and I am considering reintroducing this legislation.

- Do you agree that states should not be permitted to restrict municipalities from offering broadband to their residents?

Response:

High-speed broadband is vitally important to our global competitiveness and the continued growth of our economy, and we must keep pushing for faster speeds and greater capacity through new investments in broadband networks.

“Oversight of the Federal Communications Commission”

March 12, 2013

Questions for the Record

Senator Claire McCaskill

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.

- Given Chairman Genachowski’s stated position on the issue, can I trust that you will be directing the FCC’s representative on the ARC to convey the opinion of the Commission that the rules should be changed and work to aggressively push the FAA to do so?

Response:

The Commission’s representative is actively participating in the work of the FAA Aviation Rulemaking Committee examining the issue. The committee includes representatives from the various stakeholders, including aircraft manufacturers, pilots, flight attendants, consumer device manufacturers and various other organizations with expertise in this area. The committee is conducting a thorough examination of the issues, is reviewing all relevant data and plans to make its recommendations to the FAA in late summer. We will continue to work closely with the FAA to develop common sense actions to allow for the expanded use of electronic devices during flight.

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 you on this topic, the reforms appear to have had little effect in limiting the rapid growth of the program.

- While I commend the Commission for its attempt to rein in the rapid growth of the Lifeline program and address the problems you inherited when the program was expanded to include wireless providers without any additional safeguards to prevent waste, fraud and abuse, even with the reform order in place the Lifeline program grew by 26 percent (\$445 million) last year. What additional action is the Commission considering to address waste, fraud and abuse in the Lifeline program?
 - Specifically, would the Commission consider suspending new enrollment in the program while the reforms continue to be implemented?

Response:

The Commission's reforms have fundamentally altered the course of this program. In each of the past two quarters, Lifeline disbursements are down compared to the previous quarter. USAC projects another decrease in the third quarter. Disbursements have declined steadily from \$185.1 million in December 2012 to \$145.8 million in May of this year. Subscriberhip has steadily declined each month since reform took effect, dropping from 18.2 million subscribers in August 2012 to 13.35 million in May 2013. The Commission exceeded its \$200 million savings target in 2012 and is on track to save \$2 billion by the end of 2014. Certainly, the Commission is monitoring the effect of its reforms and, based on this, will determine whether additional reforms are necessary.

- Would the Commission consider capping the program?

Response:

When the Commission adopted reforms in early 2012, it unanimously determined that a savings target was appropriate to determine the impact of the reforms. We exceeded the \$200 million savings target in 2012, and are on track to save \$2 billion by the end of 2014. We continue to monitor the impact of our reforms and determine whether additional reforms are necessary.

- 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 in 1984. Because technology has changed and competition has grown, basic telecommunications services are as affordable as ever. I am wondering if the Commission has recently looked at whether the Lifeline program is even still necessary, and if not if you would be willing to do so?

Response:

In the 1996 Telecom Act, Congress codified into law the principle that "consumers in all regions, including low-income consumers . . . should have access to telecommunications and information services." The Commission's Lifeline program implements that directive.

In 2010, the National Broadband Plan recommended that the FCC work with states on Lifeline issues. Shortly thereafter, the FCC asked the Federal-State Joint Board on Universal Service (Joint Board) for input on reforming the Lifeline program. Building on recommendations from the Joint Board, as well as recommendations in a 2010 report from the Government Accountability Office (GAO), in 2011 the FCC initiated reforms of the Lifeline program not only by commencing a comprehensive

rulemaking, but also by implementing intermediate steps directed at reducing duplicative support, including targeted audits. The rulemaking ultimately culminated in a complete overhaul of the program in early 2012 when the Commission approved the Lifeline Reform Order. Currently, the Commission is reviewing the impact of these reforms to gauge whether additional actions are warranted. As with all our universal service programs, it is critical that we regularly review Lifeline.

Last year Congress passed a Rubio-McCaskill resolution, S.Con.Res. 50, stating that Internet infrastructure and content should remain free from international regulation. Members of the U.S. delegation to the 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 a free and open Internet around the world?
- A handful of countries, such as China and Iran, want to heavily censor the Internet content people can access inside their borders, while many other nations are simply looking for ways to generate revenue from Internet traffic that moves through their country, much in the same way they have done with voice communications for years. Are there policies the United States can and should be promoting around the globe to help other nations develop their telecommunications infrastructure, unleash the economic activity that comes with it, and thus remove their desire to use global Internet traffic as a revenue source?

Response:

Though the Department of State heads U.S. participation in international meetings, the Federal Communications Commission is an expert agency and member of U.S. delegations to many international telecommunications meetings. In that capacity, at the International Telecommunication Union's (ITU) World Conference on International Telecommunications (WCIT) in Dubai last December, we witnessed the benefit of strong bipartisan support from the U.S. Senate in the form of S.Con.Res. 50. Such unity of purpose going forward as the United States seeks to promote a free and open Internet will continue to be helpful.

The discussions at the WCIT in Dubai highlighted the criticality of working with developing countries to highlight the benefits of the Internet and how to achieve those benefits. We are working with the U.S. State Department and other agencies to continue outreach efforts that focus on promoting an enabling environment for broadband development that creates opportunities for the private sector to invest in innovative technologies. For example, the United States has encouraged countries to adopt transparent policy and legal frameworks; open telecommunications markets to competition; adopt licensing and taxation reforms; establish transparent universal

service programs to support telecommunications instead of subsidies from international services; and encourage the efficient and innovative use of spectrum for mobile broadband. We have and will continue to emphasize in our work with developing countries and others that regulations that seek to control revenue flows will hinder investment and impede broadband growth.

The benefits of that outreach were evident at the ITU's recent World Telecommunications Policy Forum May 14-16, where consensus was quickly reached on non-binding opinions concerning Internet policy and governance issues. There are many additional opportunities over the next several months to advance these outreach efforts, including at the ITU's Global Symposium for Regulators in July, and bilateral meetings with individual countries.

The upcoming incentive auctions have been pitched to Congress as a market-based mechanism that would help put spectrum in the hands of those most capable of unleashing its economic potential. That was an appealing idea, and on that basis Congress authorized you to conduct them. Now there is some concern that the Commission is contemplating going beyond what will be freed up by the auctions and is considering repurposing or reallocating many more megahertz in rural areas just through repacking broadcasters and eliminating LPTV and translator service.

- Is your intention to deal only with what is freed up by auctions, or is your intention to reallocate as much spectrum from broadcasters to broadband providers as possible?
- Has the Commission studied the impact of reclaiming spectrum on LPTV and translator service, especially in more rural states that rely heavily on them to reach areas where no other service is available?

Response:

The Commission is committed to running a market-driven process focused on providing opportunities for broadcasters in all markets to participate in the incentive auction. To this end, our goal is to match wireless demand with broadcaster supply as best we can, in both urban and rural markets. A successful auction will result in nationwide, contiguous blocks of spectrum for commercial wireless service while maintaining a vibrant broadcast industry. This newly available spectrum will enable significant economic growth and consumer benefits in all areas, urban and rural.

Congress envisioned that full power and Class A TV stations that choose not to participate, or participate and do not have their bids accepted, may need to be repacked. Therefore, in the Spectrum Act, Congress provides relocation funding and requires the Commission to make reasonable efforts to preserve the coverage areas and populations served of such stations.

Additionally, Congress chose not to provide special protection in the Spectrum Act for low power TV and TV translators, which are secondary services. However, we recognize the important services low power and TV translator stations provide,

particularly in rural areas, and are seeking input on measures to ensure that their valued programming continues to reach viewers.

Questions for the Record
Federal Communications Commission Oversight Hearing
March 12, 2012
Senator Amy Klobuchar

Question for the Chairman:

The FCC released its Sixth Order of Reconsideration on USF Reform. I understand that this order made some near-term changes to the model-based caps on universal service support. However, there are still concerns being voiced, including by the Secretary of Agriculture.

- How are you responding to the concerns raised by the Secretary of Agriculture and others to ensure that companies can continue to make investments to build out future proof broadband networks with some reasonable understanding of what universal service support will or won't be available?

Response:

Commission staff worked with RUS throughout the USF reform process to understand its concerns and to estimate the potential impact of different reform options on RUS borrowers. We recognize this has been a period of transition, but it was critical to reform a system that had become wasteful and inefficient and was focused on phone service, not broadband. We will continue to work with RUS as we complete our implementation of reforms.

Question for the Chairman:

Last year, Congress passed the Spectrum Act, authorizing the FCC to conduct the world's first-ever incentive auction. The Act specifically mentions that the FCC should coordinate with Canada and Mexico prior to the auction to protect broadcasters from interference in any repacking. I know that this Committee will continue to look into the implementation of the Spectrum Act as the FCC moves forward with designing the Spectrum Act, but it is important to lay the ground work and have clarity when it comes with our international neighbors.

- Has the Commission begun coordination with our Canadian and Mexican counterparts, if so, please comment on any of the discussions and their progress. Does the timeline for coordination align with the timeline for television repacking resulting from the auction?

Response:

The Spectrum Act requires that the FCC coordinate with the Canadian and Mexican governments during the incentive auction proceeding, and the FCC and the State Department have been engaged in on-going discussions with our counterparts in the Canadian and Mexican telecommunications authorities relating to the auction.

As is typical of open spectrum proceedings with cross-border implications, the United States and its Canadian and Mexican counterparts have established government-to-

government working arrangements to help ensure optimal outcomes for all three countries. Historically, this process has resulted in mutually beneficial understandings on efficient, interference-free use of the spectrum in the U.S.-Canada and U.S.-Mexico border areas.

The U.S.-Canada working arrangement has resulted in several teleconferences over the past several weeks. The Commission expects these consultations will ultimately lead to a better-designed and more successful incentive auction, and will create opportunities for greater spectrum efficiency and band harmonization across North America.

Question for the Chairman:

Last year in this committee, you came before us just after taking action on wireline cramming – a practice that has gone on too long and cost consumers billions of dollars. I recognize there are intricacies to the wireless industry that vary from wireline billing practices, but I strongly urge the Commission to take up the issue for wireless consumers sooner rather than later. Americans are moving to wireless at exponential rates. Consumers cannot afford to fall victim to crammers because the FCC does not act.

- Mr. Chairman, last year you committed to look into the wireless cramming problems, have you made any progress or additional findings?

Response:

A pending Notice of Proposed Rulemaking seeks to obtain information on the scope of wireless cramming complaints. Commission staff is reviewing the record developed in that proceeding and the data we are receiving from complaints, as well as the trends in the number of wireless cramming complaints we are receiving.

On April 18, the Commission held a Public Workshop with industry experts as well as consumer and state representatives, to help educate consumers protect themselves from both Bill Shock and Cramming. We plan to utilize the information obtained on the pending item and at the workshops to formulate potential next steps.

Senator Blumenthal
QFR: FCC Oversight Hearing, March 2013

Broadband Competition

In 2010 the FCC stated in the National Broadband Plan that, "...there are reasons to be concerned about wireline broadband competition in the United States. Whether sufficient competition exists is unclear and, even if such competition presently exists, it is surely fragile."

The plan further stated that, "To ensure that the right policies are put in place so that the broadband ecosystem benefits from meaningful competition as it evolves, it is important to have an ongoing, data-driven evaluation of the state of competition," and that "additional data are needed to more rigorously evaluate broadband competition."

The Plan specifically recommended the Commission undertake a number of reforms to data collection including:

1. "[C]ollect broadband availability data at the census block level, by provider, technology and offered speed."
2. "[C]ollect data on advertised prices, prices actually paid by subscribers, plans, bundles and promotions of fixed and mobile broadband services that have material penetration among users, as well as their evolution over time, by provider and by geographic area." The Plan stated that in particular, it "is crucial that the FCC track and compare the evolution of pricing in areas where two service providers offer very high peak speeds with pricing in areas where only one provider can offer very high peak speeds."
3. "[C]ollect information related to switching barriers, such as early termination fees and contract length."

The National Broadband Plan also recommended that the Commission establish a general policy of making the data it collects available to the public, including via the Internet in a broadband data depository.

These recommendations reflect the comments of the Department of Justice, who told the Commission that it "...should expand its efforts to include an assessment of the nature and extent of competition in each local broadband market."

Nearly two years after the National Broadband Plan was released, the Commission issued a Notice of Proposed Rulemaking (NPRM) that encapsulated many of these recommendations. The Commission has yet to act on this NPRM.

- Chairman Genachowski, Commissioners McDowell, Clyburn, Rosenworcel and Pai, do you agree with the National Broadband Plan's recommendations on the need to collect these additional broadband data? Do you think the Commission, policymakers and the public have the appropriate data to determine if the Commission's competition policies

are, in the words of the Department of Justice, using the appropriate "policy levers... to produce superior outcomes," and if not, what additional data is needed?

- Chairman Genachowski, When will the Commission take action on the 2011 Data NPRM, and will it result in the Commission collecting detailed pricing data, and more granular availability data at the census block level? When will the Commission make these data available to the public?

Response:

Commission staff is working diligently to design a collection that ensures the FCC has the data it needs while minimizing the burden on industry and protecting sensitive data. We will update you as we move forward with these efforts.

Sports Blackouts

Over one year ago, I wrote the FCC and requested the agency allow public comment on a petition for rulemaking asking the Commission to reexamine the Sports Blackout Rule. This rule is nearly forty years old and, along with other federal rules and league policies, is one of many obstacles making it unreasonably difficult for fans to watch their favorite teams play.

I thank the Commission for taking my letter seriously and opening a Notice of Inquiry (NOI) to solicit comments from the public and other stakeholders. However, that docket was opened in January of 2012 and the Commission has yet to take any further action.

The response in the proceeding was overwhelming. The NOI garnered thousands of comments from consumers impacted by local sports blackouts, including elderly and disabled sports fans unable to attend live games. The NFL's revised local blackout policy seems to have done little in the last regular season to help the most heavily impacted markets. Commenters have proposed several options, including preserving the status quo, eliminating the Sports Blackout Rule altogether, or adopting a sunset period requiring a public interest showing to renew the rule.

- Chairman Genachowski, given this robust record, when will the Commission issue a Notice of Proposed Rulemaking framing these options and seeking public input?
- Chairman Genachowski, Commissioners McDowell, Clyburn, Rosenworcel and Pai, what else can the Commission do to help fans unable to watch their favorite teams compete?

Response:

The Sports Blackout NOI proceeding remains pending as the Bureau staff reviews the record. According to the record, only 6% of the 2011 NFL season was blacked out, and most of the blackouts were centered in 4 markets – Buffalo, Tampa Bay, San Diego and Cincinnati.

We recognize that this is a topic that is important to sports fans, but note that the Sports Blackout rules essentially give effect to the existing system of private contractual agreements between the various sports leagues and their distributor partners. The underlying issue remains primarily a copyright issue because the NFL has the right to negotiate private contractual agreements for carriage rights with the various distributors. Those private agreements typically include restrictions on how the content is distributed (*i.e.*, blackout provisions). Thus, although we are monitoring this situation closely, the repeal of the Sports Blackout rule without some restrictions on these private agreements might have little impact on the blackout of sporting events.

Incentive Auctions

In September last year, I joined other members of the Connecticut Congressional delegation in writing the FCC to inquire about the process being undertaken in its incentive auction rulemaking. My concern is that when the FCC moves stations, as it will need to do to facilitate this auction, it could cause disruptions to Connecticut constituents relying on free over-the-air broadcasts for news and information. As we wrote in our letter, we believe that any plan that the commission adopts should not negatively impact the ability of our constituents to receive free local programming via free over the air service.

In your written response, the Commission committed to making the auction process, “as transparent and easy-to-understand as possible.” Further the FCC stated, “the Commission established a program which is designed specifically to educate and solicit substantive input from broadcasters on all aspects of the incentive auction.”

- Chairman Genachowski, in addition to generally educating broadcasters, what additional steps are being taken to minimize the potential for consumer harm during the repacking process?

Response:

The Spectrum Act requires the Commission to make all reasonable efforts to preserve coverage area and population served when repacking stations in connection with an incentive auction. The Incentive Auction Notice of Proposed Rulemaking sought comment on the best approaches to achieve that goal. As you note, the Commission developed the Learn Everything About Reverse-Auctions Now (LEARN) program in order to help educate stakeholders, particularly broadcasters. We also recognized in the NPRM that consumer outreach may be necessary in order to inform the public about possible changes and what they would need to do to continue to receive the over-the-air signals – the NPRM sought comment on how and when to do that. The NPRM also sought input on how the post-auction transition process can be managed to minimize any disruption to viewers, and the staff is evaluating the input received.

SENATOR WILLIAM M. COWAN
UNITED STATES SENATE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
HEARING
“Oversight of the Federal Communications Commission”
March 12, 2013

Questions for the Record

Incentive Auctions and Innovation in Unlicensed Spectrum

Chairman Genachowski, I understand that you recently visited MIT to discuss the future of innovation in communications.

- Can you give us a sense of the potential for innovation and economic growth that making space available for unlicensed use in the broadcast bands would generate?

Response:

Both licensed and unlicensed spectrum have contributed to an explosion of new services and applications and increasing mobile broadband speeds, and both will be essential parts of the landscape in the future. The Incentive Auction NPRM proposals seek a balanced approach to repurposing the 600 MHz band for broadband. Freeing up additional spectrum -- both licensed and unlicensed -- is key to maintaining the United States' global leadership in mobile.

The Commission proposed clearing and auctioning as much spectrum as possible for licensed use, adding spectrum for commercial providers and substantial revenues for FirstNet and the Treasury. The Commission also proposed making a significant amount of spectrum available for unlicensed use, creating an open platform for innovation to drive economic growth.

Unlicensed spectrum also has a proven record of driving innovation, investment, and economic growth – hundreds of billions of dollars of value creation for our economy and consumers. Opening up opportunities for unlicensed spectrum in the 600 MHz band promises to increase these benefits, unleashing important innovations like “Super Wi-Fi,” next-generation Smart Grid monitoring, “Smart City” monitoring, enhanced distance learning, and services and applications that innovators have not even thought of yet.

- I understand the pressure on wireless companies to expand their spectrum holdings because of the demand from their customers for video and other high bandwidth services but aren't they using Wi Fi today to offload some of their traffic and couldn't this create another mechanism to help them become more spectrum efficient?

Response:

Today, approximately one-third of mobile data traffic is offloaded to Wi-Fi, as carriers increasingly develop new methods to manage capacity on their networks.

However, unlicensed spectrum is not a substitute for exclusive use spectrum to meet the growing demands of consumers' growing reliance on smart phones, tablets and other devices that use more bandwidth.

The Incentive Auction NPRM proposals seek a balanced approach to repurposing the 600 MHz band for broadband to free up additional spectrum -- both licensed and unlicensed.

Universal Service Fund

Chairman Genachowski and Commissioner McDowell, my state contributes dramatically more to the USF program than we receive, which is particularly problematic because so much of western Massachusetts lacks the wired broadband and wireless infrastructure that many USF recipient states enjoy.

- How will the reform of the USF program ensure that states like Massachusetts get a fair share of the subsidies the fund releases and in turn makes communications in places like the Berkshires more reliable?

Response:

According to the most recent data from the State Broadband Initiative, 15 million Americans still do not have access to broadband. While we are making progress, more remains to be done. The USF/ICC Transformation Order is generating hundreds of millions of dollars in savings that are being redirected to preserve and extend availability of voice and broadband in areas across the country.

Commission staff continues to make progress in developing a forward-looking cost model for Connect America Phase II that will be used to estimate support amounts in price cap areas. The next steps are to finalize the inputs for the model and address other policy issues concerning the implementation of Phase II.

Chairman Genachowski, the demand for the E-rate program far exceeds the available reimbursements. And there are some who fear that adding more services like digital literacy training or e-textbooks to the E-Rate's allowable use of funds will only deplete the already oversubscribed program funds.

- Is there a way to avoid that outcome and ensure that the focus of the funds remain on the poorest schools and districts while we simultaneously pursue the distribution of more advanced services?

Response:

The E-Rate program has achieved remarkable success -- 97 percent of American schools and nearly all public libraries now have basic Internet access.

We are at a moment of great opportunity for digital learning. Broadband and digital tools have game-changing potential for education. Our significant E-Rate reforms in 2010 were a strong start to lower costs and expand broadband access to schools and libraries.

As with all our universal service programs, it is critical that we regularly review E-Rate to ensure it is keeping pace with needs, operating efficiently and targeting support effectively.



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

May 5, 2014

The Honorable John Thune
Ranking Member
Committee on Commerce, Science and Transportation
United States Senate
560 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Thune:

Enclosed please find the response of William T. Lake, Chief of the Federal Communications Commission's Media Bureau, to the Question for the Record regarding his testimony before the Committee's Subcommittee on Communications, Technology and the Internet at its April 1, 2014 hearing entitled, "Reauthorization of the Satellite Television Extension and Localism Act."

If I can be of further assistance, please have your staff contact me at (202) 418-1900.

Sincerely,

A handwritten signature in cursive script that reads "Sara W. Morris".

Sara W. Morris
Director
Office of Legislative Affairs

Enclosure

Senator Dan Coats (IN):

My understanding is that the standard for measuring whether a home can get a broadcast over-the-air signal involves using a 30-foot antenna on their roof. I travel all over Indiana on a regular basis, and I cannot remember the last time I saw a 30-foot antenna on a home. In fact, I am not even sure where one would purchase a 30-foot antenna. Where did this standard come from, and should it be changed to reflect the smaller, more compact indoor antennas that consumers can purchase at any store?

RESPONSE: In 1998, the Commission developed a model for predicting when a household is “unserved” and thus eligible to receive distant signals via satellite. That model was based on the National Telecommunications and Information Administration’s “Individual Location Longley-Rice” (ILLR) radio signal propagation methodology, which is used to predict the coverage of television signals by industry and government alike. In the Satellite Home Viewer Improvement Act of 1999 (SHVIA), Congress endorsed the Commission’s ILLR predictive model to be used as the means of predicting whether households were served by an over-the-air broadcast signal for purposes of eligibility to receive satellite-delivered distant signals. In addition to the predictive model, SHVIA created a testing regime to measure signals as received by a household. Both the predictive model and the testing regime consider the signal based on its availability for reception at the location of the household; that is, as available 20 or 30 feet above the ground (20 feet is used for one story homes, 30 feet for homes two or more stories). The Commission’s rules have traditionally used an outdoor antenna mounted at 30 feet (a “rooftop” antenna) as the standard for TV reception in defining the service areas of broadcast television stations.

Initially, the rules applied only to analog signals, but the Commission reviewed and updated its rules to account for the digital television transition in compliance with Satellite Home Viewer Extension and Reauthorization Act (SHVERA) in 2004. The ILLR predictive model was revised to measure the presence and strength of a digital television signal at 30 feet from the ground (or 20 feet if the home in question is one story). This model provides accurate, reliable and repeatable results.

In 2010, the Satellite Television Extension and Localism Act (STELA) removed the statutory limitation to “outdoor” antennas in the distant signal statutory license. In compliance with STELA, the Commission again considered the digital signal strength standard to determine if reliance on an indoor measurement would provide more reliable results in predicting whether a household is served or unserved. The Commission affirmed the prior determinations that creation of an indoor TV signal measurement procedure would be difficult due to the wide variation in the construction of homes, possible placement of the antenna within the home, and the performance and quality of indoor antennas. Further, the Commission noted that STELA specified the use of the digital television signal strength standard in Section 73.622(e)(1) of the Commission’s rules as the threshold to determine whether households are served or unserved. This rule is premised on the use of an outdoor antenna, and the Commission concluded that it was appropriate to retain the same requirements for the signal strength measurement standards. At the time, proponents of relying on indoor antennas as the basis for the standard did not provide the Commission with a reliable indoor testing method, and we believe that nothing has changed since that time to warrant a re-examination of this issue.

**The Budget and Spending of the Federal Communications Commission
February 16, 2012**

Questions for the Record

**House Energy and Commerce Committee
Subcommittee on Communications and Technology**

The Honorable Greg Walden

Question. What was the FCC's IT spending for FY2011 and FY2012 (estimated)? Please detail the amounts spent on federal employees, contractors, and service as those amounts relate to the Commission's various IT programs (including, for example, the electronic Comment Filing System, the Universal Licensing System, etc...).

Answer. Please see the chart below, which provides the information requested in your question.

FY 2011 and FY 2012 IT Cost		
	FY 2011	Estimated FY 2012
FTEs	\$5,147,705	\$5,386,803
Contract Services:		
--Licensing Systems	21,429,215	22,454,937
--Business Systems	4,724,083	4,950,204
--Infrastructure Support	19,605,235	20,543,650
--Cyber Security Initiative	0	4,500,000
	<u>\$45,758,533</u>	<u>\$52,448,791</u>
Software & Hardware Maintenance	8,623,668	7,660,253
ITC Hardware	1,711,248	1,919,663
-- Cyber Security Initiative	0	5,500,000
ITC Software	1,528,270	282,188

Telecommunications	4,847,834	5,223,441
ITC Other Cost	122,556	60,653
	\$67,739,814	\$78,481,792

Question. The Commission has requested \$6.1 million in its FY2013 budget for commission-wide IT initiatives, including the consolidation of redundant data centers and the use of hosted online services. Your testimony indicates that previous IT consolidations have saved the agency almost \$8 million. Will these initiatives lower the expected IT spending of the FCC in the future? If so, by how much and in what fiscal years?

Answer. The new initiatives will save money through increased efficiencies projected to begin in the next fiscal year when the data center consolidation is complete and when Agile Cloud Provisioning is complete. The charts below detail the savings:

Data Center Consolidation	Annual Savings
Energy Cost Savings	\$ 189,433
Staff Productivity	\$ 459,200
Operational Efficiencies	\$ 515,200
	\$ 1,163,833

Agile Cloud Provisioning, Management and Security	Annual Savings
Energy Cost Savings	\$ 236,791
Staff Productivity	\$ 574,000
Operational Efficiencies	\$ 644,000
	\$ 1,454,791

Question. The FCC's recently redesigned website has received mixed reviews from stakeholders. How much did the FCC spend on that redesign? How have the costs of maintaining the FCC website changed as a result of that redesign?

Answer. After the creation of its original website in 1995, the FCC underinvested in maintaining and updating it – dedicating only approximately \$300,000 for maintenance

and upgrades during the next fifteen years. The FCC's website failed to keep pace with changing technologies and user expectations. In 2010, the FCC redesigned its website with an initial cost of \$1,330,470 and became the first federal agency to use the cloud to host its public-facing website. Since its launch in May 2011, support for the new website, combined with cloud-hosting and the development of new tools and technologies, has resulted in additional costs. Over time and in combination with the other IT initiatives described above, however, we expect the FCC will save money from the website overhaul as a result of increased efficiencies.

Question. At our hearing, you noted that you were not aware of any employees working on GN Docket No.10-127, Framework for Broadband Internet Service, and you promised to discuss with your staff and colleagues whether that docket should be closed. Have you spoken with your staff and Commissioners McDowell and Clyburn about closing that docket? Is the Commission planning further action in that docket? If so, when? And if not, when will the Commission close the docket?

Answer. The Commission routinely leaves notice of inquiry proceedings open so that the public can continue to comment as appropriate. After discussion with staff, I concluded that this continues to be the right approach. The Commission is not planning further action in this docket at this time.

Question. Your testimony noted that the agency is at a ten-year staffing low and that the FCC has reduced the number of contractors by 50 percent in the past year. To provide the Committee with a fuller understanding of the FCC's staffing, please detail the total number of full-time equivalent employees, contractors, and special counsels each bureau and office had or will likely have each year for FY2009, FY2010, FY2011, FY2012, and Y2013.

Answer. Please find below in the first chart a list of FCC staff by bureau and office. The second chart below is a list of contractors by bureau and office. We do not have information for FY2009 contractors by bureau and office. "Special Counsels" are not a separate category of employment within the Commission.

**Federal Communications Commission
Full-Time Equivalents (FTEs) History
At End of Each Fiscal Year**

Bureaus/Offices	Actual FY 2009	Actual FY 2010	Actual FY 2011	Estimated FY 2012	Estimated FY 2013
Office of the Commissioners	23	27	30	30	30
Consumer & Governmental Affairs Bureau	193	183	180	180	180
Enforcement Bureau	301	286	276	276	276
International Bureau	124	122	124	124	124
Media Bureau	218	215	197	197	198
Public Safety & Homeland Security Bureau	110	109	112	112	112
Wireless Telecommunications Bureau	215	217	214	217	223
Wireline Competition Bureau	148	148	157	157	157
Office of Administrative Law Judges	3	3	3	3	3
Office of Communications Business Opportunities	14	13	12	12	12
Office of Engineering & Technology	84	81	81	81	85
Office of the General Counsel	73	73	72	72	72
Office of Inspector General	42	45	41	41	41
Office of Legislative Affairs	10	13	14	14	14
Office of Managing Director	210	216	213	215	218
Office of Media Relations	15	15	14	14	14
Office of Strategic Planning & Policy Analysis	23	25	30	30	30
Office of Workplace Diversity	4	4	6	6	6
Total FTE by Fiscal Year	1,810	1,795	1,776	1,781	1,795

**Federal Communications Commission
Contractor History
At End of Each Fiscal Year**

Bureaus/Offices	Actual FY 2009	Actual FY 2010	Actual FY 2011	Estimated FY 2012	Estimated FY 2013
Office of the Commissioners	0	0	0	0	0
Consumer & Governmental Affairs Bureau	0	36	25	25	25
Enforcement Bureau	0	1	1	1	1
International Bureau	0	0	0	0	0
Media Bureau	0	6	0	0	0
Public Safety & Homeland Security Bureau	0	6	2	2	2
Wireless Telecommunications Bureau	0	0	0	0	0
Wireline Competition Bureau	0	14	14	14	14
Office of Administrative Law Judges	0	0	0	0	0
Office of Communications Business Opportunities	0	0	0	0	0
Office of Engineering & Technology	0	3	1	1	1
Office of the General Counsel	0	0	0	0	0
Office of Inspector General	0	18	15	15	15
Office of Legislative Affairs	0	25	0	0	0
Office of Managing Director	0	689	493	493	493
Office of Media Relations	0	0	0	0	0
Office of Strategic Planning & Policy Analysis	0	15	0	0	0
Office of Workplace Diversity	0	0	0	0	0
Total Contractors by Fiscal Year	959	813	551	551	551

Question. To provide the Committee with a fuller understanding of the FCC's engineering staff, please detail the total number of full-time equivalent engineers employed by each bureau and office for FY2009, FY2010, FY2011, FY2012, and FY2013. Similarly, what resources is the FCC devoting to its Certification Laboratory to make sure it does not become an innovation bottleneck?

Answer. Please see the chart below of FCC Engineers for each year requested. We do not expect the FY 2013 numbers to be any different from the FY 2012 numbers.

FCC Engineers as of End of FY				
Bureau	FY09	FY10	FY11	FY12 (5/5/12)
EB	82	85	86	82
IB	34	35	34	31
MB	49	48	46	46
OET	49	47	50	49
PSHSB	21	21	19	21
WCB	4	4	3	3
WTB	30	30	30	30
Total	269	270	268	262

***The FCC has requested \$500,000 for Fiscal Year 2013 to upgrade the OET's Columbia Laboratory facility as part of the plan to ensure that authorizations and certifications are timely.

Question. The Middle Class Tax Relief and Job Creation Act of 2012 authorized the Commission to conduct several spectrum auctions over the next ten years, including voluntary incentive auctions of broadcaster spectrum. You testified that given the Fiscal environment, your auctions team was planning to work within the current \$85 million per year cap. Please delineate the FCC's expected schedule for auctioning spectrum through FY2022.

Answer. Based on the hearing transcripts and my recollection, I testified that (1) the auctions cap was a ceiling that prevented additional expenditures; (2) we were working within current fiscal restraints; (3) we could possibly work faster with additional funding; and (4) we would have significant challenges during the next fiscal year to ensure that the incentive auctions process is funded under the \$85 million cap.

At this stage, the House and Senate Financial Services Appropriations Subcommittees have granted the FCC permission to reprogram \$2.1 million of FY12 auctions spending toward implementation of The Middle Class Tax Relief and Job Creation Act of 2012. The Commission has asked for an increase in the \$85 million cap of \$13 million during the next fiscal year, in order to purchase and contract for necessary IT equipment and workforce adjustments, as well as other administrative costs. These costs were anticipated in section 6403 of the Act and will represent a temporary increase in funding related to implementation.

The Commission is working to implement several spectrum auctions within the timeframe required by the law. This includes auctioning 65 megahertz of specified frequencies within three years, as well as an incentive auction of broadcast TV spectrum. We are aiming for Notices of Proposed Rulemaking implementing the incentive auction provisions of the new law by the fall of this year. The Commission intends to meet statutory deadlines and move expeditiously to meet the growing demand for wireless spectrum. I anticipate a positive return on investment from the auctions process.

Question. Current policy would keep the FCC's budget for auctions at \$850 million through FY2022, with the FCC receiving \$85 million each year no matter what auctions (if any) were conducted that year. If the FCC could reallocate \$850 million through FY 022 to maximize the speed and efficiency of spectrum auctions, how would it do so? Under that reallocated budget, what would be the FCC's expected schedule for auctioning spectrum through FY2022?

Answer. As noted above, the FCC has already requested and received reprogramming authority for the current fiscal year and is requesting additional, temporary funds above the cap level. The Commission does not have a schedule for the process through FY2022, but I will keep this committee and the Appropriations Committee apprised of our progress.

Question. Section 9 of the Communications Act requires regulatory fees to be apportioned among industries based on full-time equivalent employees, but there seems to be a continuing mismatch between employment in the bureaus and the assessment of regulatory fees. For example, the Wireless Bureau and the Media Bureau each have more employees than the Wireline Bureau, and yet wire line providers pay almost three times as much in regulatory fees as wireless providers and cable providers. Last July the Commission promised to open a further rulemaking on rebalancing regulatory fees before the end of 2011. What is the status of that rulemaking? Do you believe the current assessment of regulatory fees accurately reflects the changing .communications marketplace?

Answer. The Commission's Office of Managing Director has now circulated for consideration a Regulatory Fee Notice of Proposed Rulemaking to provide a complete review of the process and ensure the proper balancing of regulatory fees. Regulatory fee reform and rebalancing is complex, and it is likely that we will receive a high volume of comments in the proceeding. I anticipate that the rebalancing of regulatory fees will be implemented in FY 2013.

Question. The FCC's FY2013 budget notes that the agency as collected \$66 million in excess regulatory fees in the last few years. Are those excess fees available to the Commission to spend? Is there any reason, legal or otherwise, those excess fees should not be transferred to the Department of Treasury to reduce the deficit?

Answer. The allocation and use of these funds are within the purview of Congress. The Commission does not control the distribution of these funds or their use.

Question. The administration of the Universal Service Fund is an important part of the Commission's work. Ratepayers deserve to know that their funds are being spent efficiently and that Commission rules minimize the potential for waste, fraud, and abuse. Although current rules may serve these ends, that bureaucratic process means that applicants must navigate reams of paperwork to qualify for USF funding. For thousands of schools, libraries, health care providers, and rural carriers, the administrative burden can be daunting. What steps has the Commission taken to identify needless paperwork and strike red tape from the funding process? Conversely, what steps has the Commission taken to prevent waste, fraud, and abuse? How do the remedies differ for honest or technical mistakes and malicious actions?

Answer. Please see responses to each of your questions:

Reducing Regulatory Burdens

During my tenure, the Commission has taken a broad range of actions to eliminate unnecessary and burdensome regulations. These include unanimously adopted USF program reforms that have streamlined and otherwise improved processes for schools, libraries, rural health care providers and rural carriers, including:

- Simplification of the E-rate application process, which includes removal of the E-rate program technology plan requirement for priority one (telecommunications services and Internet access) services.
- Transition to an electronic support disbursement process for all USF programs.
- Elimination of some existing high-cost reporting requirements for rural carriers and implementation of narrowly tailored, uniform high-cost reporting requirements to demonstrate compliance with statutory requirements and Commission rules.
- Reduction of paperwork in the Lifeline program by allowing eligible telecommunications carriers (ETCs) and state agencies to capture a qualifying consumer's signature electronically at sign-up, including through the use of interactive voice response systems and via text message in compliance with the requirements of the E-Sign Act and the Government Paperwork Elimination Act.
- USAC's recent implementation of a streamlined online interface ("MyPortal") to help simplify the process for applicants in the rural health care telecommunications and Internet access programs (the "Primary Program"). USAC has also expanded its training programs for Primary Program applicants and conducts intensive training sessions in approximately 10 cities each fall. FCC participated in each applicant training session last year.
- USAC conducts training around the country each year focused on providing assistance to service providers participating in the E-rate program. In addition, USAC also conducts Helping Applicants to Succeed (HATS) consultations with individual schools and school districts to help applicants with their participation in the E-rate program.

Preventing Waste, Fraud and Abuse

The FCC is focused on eliminating waste, fraud and abuse from all program we administer, including USF. Based on reforms adopted over the past three years, the Commission has saved or will save billions of dollars for consumers who pay into these programs. For example, in establishing the Connect America Fund, the Commission, for the first time put high-cost universal support on a budget and made a commitment to eliminating wasteful and duplicative support.

Through targeted efforts to eliminate waste, fraud and abuse in the Lifeline program, the Commission expects to save at least \$200 million this year and up to \$2 billion over the next three years compared to the pre-reform status quo path. Additional examples of actions that will eliminate waste, fraud and abuse across the USF programs include but are not limited to:

Lifeline:

- Development of a comprehensive subscriber database that, when launched in 2013, will safeguard against duplicate Lifeline subscriptions.
- Audits in a number of states to identify and eliminate duplicative support.
- Release of periodic reports made to each FCC Commissioner providing information on whether the Lifeline reforms are succeeding in meeting the first-year \$200 million savings target.
- Creation of clear goals and performance metrics to measure program performance and effectiveness.

High-Cost:

- Improved accountability, including regular financial and performance reporting, from companies receiving support to ensure that public investments are used wisely to deliver intended results.
- Benchmarks for reasonable spending by rate-of-return carriers in the high cost program, based on comparisons to similarly situated companies, to ensure carriers are not receiving excessive support.

E-Rate:

- Strengthened rules regarding gifts between applicants and service providers.

Rural Health Care:

- USAC site visits to participants in the Commission's Rural Health Care "Pilot Program," at the Commission's direction, to guard against waste, fraud, and abuse, through records checks to ensure compliance with Commission rules and procedures.

Technical Errors and Malicious Activity

Pursuant to the Commission waiver and application review process, petitioners are afforded an opportunity to demonstrate why application of a rule should be waived or a funding decision should be reversed. Factors considered include technical mistakes for funding denials in the decision-making process.

Question. In his written testimony, Inspector General Hunt stated that the FCC "needs to develop a more robust suspension and debarment regime" that extends beyond the E-Rate program. Please describe the current suspension and debarment procedures of the FCC for all of the programs funded by the Interstate TRS Fund and the Universal Service Fund, as well as the plans of the FCC to broaden and invigorate these procedures to ensure a robust oversight regime.

Answer. Suspensions and debarments under 47 C.F.R. Section 54.8 are an important part of overall efforts by the Commission to combat waste, fraud, and abuse related to the Universal Service Fund support mechanisms. Since 2003, the Enforcement Bureau has taken 40 suspension and debarment actions for criminal and civil violations related to the Universal Service Fund, primarily the E-Rate program. Suspension and proposed debarment actions generally are initiated within 45 days of notification that a person has been convicted or found civilly liable for committing or attempting to commit a wrongful act against one of the Universal Service Fund programs.

A person may contest the suspension, scope of the suspension, proposed debarment or scope of the debarment within 30 days of notification or publication of the notice in the Federal Register. In the absence of extraordinary circumstances, the Enforcement Bureau will notify the person of its decision to debar within 90 days of receiving any information submitted by the respondent.

In addition to these procedures, the FCC has broadened and invigorated its oversight in other ways. For instance, with regard to Lifeline, the FCC has taken significant steps to cut waste, fraud and abuse, projected to save up to \$2 billion over three years compared to the program's status quo path:

- Adopted a savings target of \$200 million in 2012
- Eliminated duplicate subscriptions through a National Lifeline Accountability Database
- Imposed verifiable eligibility standards with biannual audits

With respect to interstate telecommunications relay services (TRS), section 64.604 of the Commission's rules permits the TRS Fund Administrator or the Commission to suspend or withhold payments from TRS providers if they fail to comply with the Commission's mandatory minimum standards, including technical and functional standards. All providers of Internet-based TRS (such as video relay service (VRS) and IP Relay), are required to be certified by the Commission in order to receive compensation from the interstate TRS fund. The Commission can revoke that certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In addition, the Commission can grant certifications on a conditional basis, and if it denies permanent certification, the conditional certification automatically terminates after 35 days

The FCC's April 2011 Fraud Order succeeded in weeding out approximately 50 VRS providers that had been engaged in questionable and potentially illegitimate practices. Several of these "white label" companies as they came to be called, were – at

varying levels – involved in schemes designed to pump minutes to obtain reimbursement from the TRS Fund for illegitimate relay calls. The result was a number of indictments, which in turn resulted in multiple guilty pleas and two convictions. The Commission has been working closely with law enforcement authorities, most notably the Department of Justice, to investigate and prosecute actions pertaining to illicit TRS claims.

Specific examples of successful cost-saving Commission actions include a consent order with the Publix Companies revoking its certification to operate as a carrier – and also as a TRS provider – based on its fraudulent receipt of TRS funds. The Commission also entered an agreement with Purple Communications that provided for the recovery of more than \$18 million for the TRS fund.

The Commission has taken several additional steps to reduce fraud, waste, abuse and improper payments from the TRS Fund:

- Awarded a contract to a new TRS Fund Administrator, Rolka Loube Saltzer and Associates (RLSA). This contract allows for greater oversight of TRS payments.
- Developing an audit program with the new Administrator that will target all recipients of TRS Fund money.
- Initiated a rulemaking to reform the structure and compensation of VRS.

The Honorable Lee Terry

Question. Payphones, which are deployed and serviced by all businesses, are the only form of telephone service for low income Americans that currently do not receive lifeline subsidies. Between \$500 million and a billion calls a year are made over pay phones. Payphone providers argue that accelerated deployment of subsidized cellphones are effectively putting them out of business, and that many low income Americans will lose access to the public telephone network as a result. Has the commission performed an analysis of the impact of its policies on payphones and whether the extinction of payphones serves the public interest? While circumstances have certainly changed, I note that Section 276 of the 96 Act does give the commission specific responsibility for oversight of payphones.

Answer. The Commission addressed this issue in its January 31, 2012 Lifeline Order in response to a petition filed by the American Public Communications Council (APCC), which represents payphone providers. APCC asked the Commission to redefine “qualifying low-income consumers” to include payphone service providers. The Commission concluded that Lifeline support should not be redirected in this manner. The Order also found that APCC’s request was inconsistent with our longstanding commitment to ensure that low-income consumers have access to phone service in their homes.

Question. I am concerned about the new eligibility requirements. The FCC is expanding its current eligibility from "one Lifeline discount per residential address" as noted in paragraph 70, to one Lifeline discount per "separate economic unit" where more than one

"economic unit" can reside at one physical address. Won't this significantly expand eligibility and hence the overall size of the Fund? I would like data on how the new eligibility requirements will impact the overall size of the Fund.

Answer. Before the Commission comprehensively and unanimously reformed Lifeline in January of this year, some eligible telecommunications carriers (ETCs) argued and presumed for many years that Lifeline did not have an enforceable one-per-household limitation, while others argued that it was unclear whether the program permitted more than one benefit per household. As a result, Lifeline may have been providing funding for multiple benefits in many households, but the Commission does not have data on the extent of such practices.

In the January 31, 2012 Lifeline Order, the Commission unanimously took the necessary step of further defining the one-per-household limitation in the Lifeline program. The Commission determined that a one-per-household rule, limiting Lifeline support to one supported line in an economic unit, is a "reasonable way to ensure that voice and broadband service are available to low-income consumers while minimizing the contribution burden on consumers."

The Commission deemed it an appropriate balance between ensuring that support is available for low-income families and that universal service funds are spent in a fiscally prudent way.

The Honorable Cliff Stearns

Question. I appreciate the responsiveness you demonstrated when Congresswoman Eshoo and I wrote to you back in November and asked you to provide direct access from the Commission's homepage to data about the agency's budget and performance. One element that we asked you to include, however, has not been added to the Budget and Performance Reports tab, and that is the number of full-time equivalents employed at the FCC. Other agencies, such as the Federal Trade Commission, make this information accessible. Will you commit to add this data to the FCC's Budget and Performance page?

Answer. Although information about FTEs and funding levels is routinely included in the FCC's budget submission, which is located on that page, I have instructed the Office of Managing Director to place a quarterly tally of FTEs on that page going forward. The actual current number of employees on staff as of this submission is 1723.

Question. At the FCC Budget Hearing, Rep. Waxman pointed out a number of housekeeping efforts you have made as Chairman, for example, eliminating 190 rules. Congratulations on that achievement. Can you describe which, if any, of the rules that were eliminated were economically significant and whether their elimination has helped improve the climate in a way that will lead to both preserving existing jobs and creating new ones?

Answer. The Commission thus far has eliminated 219 obsolete regulations and modified others to reduce regulatory burdens and to spur economic growth. In addition to eliminating outdated rules such as the Fairness Doctrine, we removed rules to eliminate unnecessary programs, such as Link Up for non-tribal consumers, simplified and streamlined the E-rate program and amended rules to make USF more fiscally responsible. We also eliminated paper filings for tariffs and eliminated regulatory barriers to efficient use of spectrum for wireless backhaul, wireless broadband services and satellite services. In our effort to eliminate unnecessary rules, we have been mindful of the need to foster a climate in which companies can preserve existing jobs and create new ones, for example, by pursuing new spectrum opportunities.

Below is a list of the eliminated rules, many of which are economically significant:

Eliminated rules for International Fixed Public Radio Communication Services.
Part 23

Eliminated restrictions on mobile repeater stations for the business radio frequency users.
90.247(b), 90.247(c), 90.267(e)(3)

Eliminated restrictions on WCS service.
27.53(a)(6), 27.53 (a)(9)

Removed rules in order to simplify and streamline the E-rate program.
54.506, 54.517, 54.522

Revised the Amateur Radio Service rules to clarify the rules with respect to amateur service vanity call signs, eliminating licensee confusion.
0.191(o), 0.392(g)

Eliminated restrictions on Amateur Radio Service: Eliminated the automatic power control provision in order to reduce implementation costs, and encourage amateur stations to experiment with spread spectrum communications technologies.
97.311 (d), 97.5(b)(4)

Eliminated outdated and unnecessary reporting requirements related to international telecommunications traffic.
43.53, 43.61 (b), 43.61 (c), 63.23 (e)

Rule revisions enabling all tariff filers to file tariffs electronically over the Internet.
61.21, 61.22, 61.23, 61.32, 61.33, 61.151, 61.152, 61.153, 61.52(a)

Eliminated Fairness Doctrine, Personal Attack & Political Editorial Rules.
73.1910, 76.209, 76.1612, 76.1613

Eliminated Broadcast Flag.
73.8000, 73.9000-9009

Eliminated Cable Programming Service Tier Complaints.
76.950-951, 76.953-957, 76.960-961, 76.1402, 76.1605-1606

Eliminated Part 1, Subpart D Broadcast Applications & Proceedings (duplicative of rules in Part 73).
1.502-615

Eliminated rules requiring Commission to review the Interstate Cost Recovery Plan (the TRS Fund) and the TRS Fund administrator's performance after two years (i.e., in 1995). Removed note that certain provisions of the rule are not effective until OMB approval. OMB approval received August 2000.
64.604(c)(5)(iii)(J), 64.2401

Eliminated rule describing the Commission's former "protest" process, which does not apply to applications filed on or after December 12, 1960.
1.120

Eliminated rules pertaining to comparative hearings for broadcast license renewal applications. The enactment of section 309(k) of the Communications Act eliminated comparative broadcast hearings for license renewal applicants.
1.227 (b)(6), 1.229(b)(2)

Eliminated rules pertaining to comparative hearings involving applicants for new commercial broadcast facilities and calling for the production of a Standardized Integration Statement and other information pertaining to the Commission's former integration standard and other broadcast comparative hearing criteria. Under §309(j), the Commission no longer has authority to conduct comparative hearings for new commercial broadcast facilities and instead awards licenses for new broadcast service using competitive bidding.
1.325(c)

Eliminated rules requiring common carriers to file reports regarding pensions and benefits, and compliance with a regulation in Part 43 of the rules that the Commission has eliminated.
1.788

Eliminated rules requiring common carriers engaged in public radio service operations to file reports in conformance with Part 23, which the Commission has eliminated.
1.805

Eliminated rules requiring that carriers engaged in domestic public radio services report and file documents in accordance with Part 21, which has been eliminated.
1.811

Eliminated rules that had set forth random selection procedures for Multichannel Multipoint Distribution Service (MMDS). The Commission no longer has authority to use random selection for MMDS or its successor service, Broadband Radio Service.
1.821, 1.822, 1.824

Eliminated duplicative rule (Anti Drug Abuse Certification).
1.2003

Eliminated rules implementing PUHCA 1935, which was repealed and replaced with Public Utility Holding Company Act of 2005.
1.5000, 1.5000, 1.5002, 1.5003, 1.5004, 1.5005, 1.5006, 1.5007

Eliminated provisions regarding complaints filed by television stations alleging that a satellite carrier has retransmitted their signals in violation of Section 325(b)(1) of the Communications Act. No new complaints may be filed after December 31, 2001, and no complaints filed on or before that date are pending.
1.6000, 1.6001, 1.6002, 1.6003, 1.6004, 1.6005, 1.6006, 1.6007, 1.6008, 1.6009, 1.6010, 1.6011, 1.6012

Eliminated backup power requirements for communications providers. This rule never took effect.
12.2

Eliminated rule providing that UHF television translators on Channels 70 to 83 must operate on a secondary basis to land mobile operations in the 800 MHz band and will not be protected from such operations. There are no UHF television translators operating on Channels 70 to 83, and the Commission has eliminated the TV allocation from these channels.
90.621 (d)

Eliminated allocation of specified channels for Basic Exchange Telecommunication Radio Service (BETRS). FCC removed the allocation in 2005.
90.621 (h)

Eliminated rule provisions that provided a framework for the relocation of incumbent site-based licensees in the upper 200 channels of the 800 MHz Band by incoming geographically based (EA) licensees. These provisions were a component of the 1995 reconfiguration of the 800 MHz band from site-based to geographic-based service that has since been completed.
90.699 (a), (b),(c), (e), (f)

Question. After paying close attention to the FCC's process this Congress, I am concerned that the elimination of old rules is often offset by the imposition of new rules. How many new proceedings have been opened during your tenure and how many new rules have resulted from those proceedings?

Answer. During my tenure, the Commission has initiated proceedings in response to new laws passed by Congress, such as the CVAA, which has expanded access to 21st century technology for persons with disabilities. We also initiated proceedings to update programs that were no longer functioning efficiently, such as the Universal Service Fund and the Video Relay Service fund, resulting in savings of hundreds of millions of dollars annually. Accordingly, the Commission published 99 new rules in the Federal Register from October 1, 2009 to April 30, 2012, including 34 new rules required by statutory provisions such as the CVAA, and 37 new rules as part of the USF reform effort.

Consistent with administrative law practice, the Commission publishes all new rules in the Federal Register, which publishes a quarterly update that is publicly available online.

Question. I think the FCC would save significant amount of resources if it focused on actual, rather than theoretical, problems. For example, I understand you appear to be replacing the 2007 "enhanced disclosure" rules with new disclosure obligations that will require TV stations to post their public inspection files, including political advertising records, online. This could cost an average of \$120,000 -140,000 per station per year, ultimately diverting resources for local programming. And it appears you are working to wrap up this proceeding as soon as possible. So, Mr. Chairman, what's the rush here? Wouldn't it be wiser if we got a better idea of what this is really going to cost, what the competitive implications are, and how burdens me this will be for broadcasters?

Answer. On April 27, the Commission adopted an order to move broadcasters' public files from paper to online. The Commission voted unanimously with respect to the non-political component of the public file, including hosting those components in an online database on the Commission's website.

The final order provided an extensive analysis of the cost and benefits of converting from paper to online files, based on the substantial record developed in the proceeding. The analysis shows substantial long-term cost savings from the conversion. As with all paper-to-paperless conversions, the broadcasters will experience some one-time upfront costs. Based on the record, the Commission has estimated these costs at an average of \$80 -- \$400 per station, spread over a six month period.

After the conversion, however, broadcasters will realize cost savings and efficiencies. Moving the file online will minimize disruptions in the daily operation of a station, and reduce the burdens placed on station staff that currently field phone calls and chaperone in-person requests to inspect files. In order to assist smaller stations in preparing for any additional costs, the conversion to electronic files will be completed in phases. Stations in the top 50 DMAs, approximately 200 stations out of approximately 2000 stations nationwide, must post new public file materials online when the rules become effective, with the rest of the industry complying by July 2014.

In 2007 when the Commission last considered this issue, broadcasters claimed that the greatest cost would be for them to individually host the information on their

websites. To reduce that cost, the Commission will host the information on the FCC's website to save the broadcasters this potential cost.

Question. Earlier this week, the FCC released a public notice about removing LightSquared's authority to build a terrestrial network within 24 hours of receiving a recommendation from NTIA. Have you examined the basis for the NTIA recommendation 'independently'? How could you have possibly acted so quickly, before even asking for any sort of input on the NTIA letter?

Answer. The Public Notice you refer to seeks public input on the NTIA recommendation, as well as on other related issues. Commission staff is currently reviewing the record developed in response to that Public Notice.

The Honorable Anna Eshoo

Question. How do your programmatic initiatives on IT benefit both industry and consumers?

Answer. The Commission's programmatic IT initiatives are designed to save costs over the long term and to improve the Commission's ability to serve the public and industry. For example, as detailed in the charts below, we expect to reap significant cost saving efficiencies from a number of IT improvements while improving performance. The Agile Cloud Provisioning and Management initiative will save \$1.45 million annually and improve transparency, promoting greater access for consumer and industry. The Data Center consolidation follows OMB directives on consolidation and virtualization and will eliminate redundancies between Gettysburg and DC sites, while ultimately saving \$1.1 million annually.

Data Center Consolidation	Annual Savings
Energy Cost Savings	\$ 189,433
Staff Productivity	\$ 459,200
Operational Efficiencies	\$ 515,200
	\$ 1,163,833

Agile Cloud Provisioning, Management and	Annual Savings
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Security		
Energy Cost Savings	\$	236,791
Staff Productivity	\$	574,000
Operational Efficiencies	\$	644,000
	\$	1,454,791

The Honorable Henry Waxman

Question. Under your chairmanship, the FCC has eliminated 210 obsolete regulations and identified 25 data collections for elimination. How have the collective experiences of the agency's FTEs played a role in making the Commission more efficient? Explain how any further reduction of the number of FTEs would impact the Commission's ability to carry out its responsibilities?

Answer. Lowering expected personnel costs would result in fewer employees and reduced levels of service to the public, with adverse consequences for the Commission's ongoing efforts to auction spectrum, reform the Universal Service Fund, protect consumers, enforce the Communications Act and the Commission's rules, and protect public safety.

The FCC's engineering operations are particularly essential to unleashing spectrum and facilitating product development activities that spur economic growth. For instance, last year a senior Apple executive advocated additional staffing for the FCC's OET. Apple's executive wrote, "If OET can complete its work efficiently, companies building innovative devices can get those new products to customers quickly. But if applications for innovative devices are delayed because OET staff is overtaxed, consumers are the losers."

Moreover, the Middle Class Tax Relief and Job Creation Act of 2012 places additional human resource demands on the Commission, and any reductions at this juncture would have a negative impact on important congressionally mandated tasks.

The Honorable John Dingell

Question. Do you believe that eligibility rules for bidders in voluntary incentive auctions of spectrum will increase or decrease revenues gotten from such auctions by the Commission? Please explain your response.

Answer. The incentive auction authority provided to the FCC by Congress will lead to substantial economic value beyond the one-time revenues raised through the auction. Under Title III of the Communications Act, there are a number of factors the Commission must consider as it makes spectrum available through auctions, including factors related to bidder eligibility. As we address these and other important issues involved in the unprecedented task of developing incentive auctions, please be assured that our process will be open, inclusive, fact-based, and guided by economics and engineering.

Question. Has the Commission issued guidance to device manufacturers and carriers about how to comply with regulations promulgated pursuant to the 21st Century Communications and Video Accessibility Act (Pub. L. No. 111-260)? If so, please submit a copy of such guidance with your response. If not when will the Commission issue such guidance?

Answer. On March 15, 2012, the FCC released the Small Entity Compliance Guide, prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. The Guide is intended to help small entities – small businesses, small organizations (non-profits), and small governmental jurisdictions – comply with the new rules adopted in this matter. The Commission’s Consumer Bureau also is working with the business community to provide outreach programs and additional assistance.

The Small Entity Compliance Guide is available on the FCC’s website:

<http://www.fcc.gov/document/twenty-first-century-communications-and-video-accessibility-act-2010>

The Honorable Frank Pallone

Question. Can you talk briefly about the work the FCC is doing in the health space, for example telemedicine as well as the health care related initiatives in the National Broadband Plan, and what progress the FCC has made on growing this space?

Question. Can you talk briefly about the work the FCC is doing in the health space, for example telemedicine as well as the health care related initiatives in the National Broadband Plan, and what progress the FCC has made on growing this space?

Answer. The National Broadband Plan identified health care as an area of enormous promise for broadband-enabled innovation. The FCC is working to help implement the Plan’s broadband and health recommendations, many of which relate to other federal agencies. The FCC is particularly focused on promoting connectivity,

ensuring that wireless spectrum is optimally allocated and managed, and facilitating the development of wireless medical devices.

To help accomplish these tasks, the FCC entered into an unprecedented partnership with the Food and Drug Administration to ensure that communications-related medical innovations can swiftly and safely be brought to market and also easing testing restrictions on anchor institutions like universities and research organizations. And late last year, the Commission adopted an order to dedicate spectrum for Medical Micropower Networks, which have the potential - literally - to enable paraplegics to stand.

We have taken significant steps to spur broadband connectivity for rural health care providers through reforms to the Universal Service Fund (USF). In establishing the Connect America Fund, the Commission established a specific goal to ensure universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions, including medical and healthcare providers. The Commission has made clear that it expects recipients of USF support to engage with community anchor institutions in the network planning stages with respect to the deployment of CAF-supported networks, and required carriers to identify and report on the community anchor institutions that gain access to broadband as a result of CAF support. These requirements build on the Commission's rural healthcare program, including several pilot projects that have deployed state of the art telemedicine capabilities, creating new opportunities and cost savings for consumers and health care providers alike.

On May 25, 2012, the Commission took the next step forward on our health communication agenda with new rules to allow greater use of spectrum for Medical Body Area Network, or MBAN, devices. This technology has tremendous potential to untether patients from tubes and wires, and improve the quality of health care and ensure better outcomes for patients. These rules will help maximize the potential of MBAN technology by providing access to relatively quiet spectrum where this technology can develop and flourish.

With this order, the U.S. becomes the first country in the world to dedicate spectrum for Medical Body Area Networks in hospitals, clinics, doctors' offices, as well as in homes. Previously, this spectrum was used almost exclusively by commercial test pilots. This order represents a multi-industry effort to foster innovation in this spectrum band by allowing distinct but compatible users to share airwaves. These rules are a great example of how parties working together and with the FCC can achieve win-win outcomes for various industries and for the America people.

Question. Next, would you be able to tell me whether your agency has any current working groups or Task Forces set up to work with the health agencies, specifically those under HHS?

Answer. The FCC collaborates with HHS, FDA, NIH and other health agencies on communications-related health issues, and that coordination is increasingly vital. Collaboration between the FCC and these agencies can help unleash innovations and

breakthroughs in how care is delivered – from improvements in remote diagnostics and treatment, to new devices that can save lives while helping contain rising health care costs. The FCC also is an active member of “FedTel,” a new cross-federal workgroup dedicated to coordination and promotion of telehealth across all sectors of the federal government.

As part of the Rural Health rulemaking, the FCC is currently reviewing the implementation and use of regional health broadband networks that are part of the rural health care “pilot” program and coordinating with HHS staff to ensure program reforms are aligned with broader health care policy objectives.

As I noted in the previous question, the FCC also entered into an unprecedented partnership with the Food and Drug Administration to help ensure that communications-related medical innovations can swiftly and safely be brought to market. The MOU we signed explicitly recognized the significant benefits of providing more certainty and clarity to the innovators and investors who will develop and launch the next generation of health-related communications technologies. I look forward to continuing our work with the FDA and other health agencies to achieve this goal.



Federal Communications Commission
Washington, D.C. 20554

June 13, 2013

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

Dear Chairman Walden:

Please find attached responses from Julie Veach, Chief of the Federal Communications Commission's Wireline Competition Bureau, to the post-hearing questions from the Subcommittee's April 25, 2013 hearing titled "The Lifeline Fund: Money Well Spent?". Please let me know if I can be of further assistance.

Sincerely,

Greg Guice
Director
Office of Legislative Affairs

Enclosure

The Honorable Henry Waxman

- 1. Mr. Gregg's testimony cited data claiming that eight states have more Lifeline subscribers than low income households – Alaska, Arkansas, Georgia, Louisiana, Maryland, Ohio, Oklahoma, and Rhode Island. After our hearing, one analysis questioned this conclusion, arguing that Mr. Gregg's conclusions were based on outdated poverty statistics and an undercount of eligible recipients, among other issues. What is the FCC's perspective on Mr. Gregg's data?**

Mr. Gregg asserted that, in certain states, the actual disbursed Lifeline support exceeded 100% of the amount that would be disbursed if all eligible households subscribed to the Lifeline program. I understand that Mr. Gregg reached this conclusion by comparing a state's actual annual disbursements to his estimate of the potential number of eligible households. By doing so, it is our view that Mr. Gregg's calculation underestimates the number of eligible households because it accounted only for households eligible based on income and did not consider that many households are eligible through participation in one of seven Federal programs. These programs include Medicaid, Supplemental Nutrition Assistance Program (SNAP), Low-Income Home Energy Assistance Program (LIHEAP), Federal Public House Assistance (Section 8), National School Lunch Program, Supplemental Security Income (SSI), and Temporary Assistance to Needy Families (TANF). By excluding these households, Mr. Gregg underestimated the potential number of eligible households, causing his estimate of the percentage of eligible households subscribing to Lifeline to be too high.

The Census Bureau provides the data (Current Population Survey March 2012 Supplement) necessary to correctly estimate the number of eligible households using both the income and program participation criteria. Using these data reveals lower estimates of the subscription rate in every state Mr. Gregg reported. For example, Mr. Gregg's estimates overstate the subscription rate in Maryland by approximately 83 percent and in Louisiana by approximately 38 percent.

- 2. Mr. Feiss stated in his written testimony for the hearing that “no application for Lifeline-only ETC designation has been denied anywhere in the U.S.” Is that accurate? Has the FCC denied any Lifeline ETC applications?**

States generally designate ETCs but, in the instance where a state commission does not have jurisdiction, Congress has directed the FCC to evaluate a carrier's request for designation as an ETC. The FCC currently designates wireless carriers in the following jurisdictions: Alabama, Connecticut, Delaware, Florida, New Hampshire, North Carolina, New York, Tennessee, Virginia, Texas and the District of Columbia. Given that states have primary jurisdiction to designate carriers as ETCs, the FCC cannot comment on the number of Lifeline-only ETC designations that have been denied nationwide. Since 2008, the FCC has granted 6 ETC designation petitions and currently has pending 38 Lifeline-only ETC petitions. The FCC accords rigorous scrutiny to such applications and has encouraged states to do the same for state ETC applications. In the April 29, 2013 letter to the Committee submitted by the National Association of Regulatory Utility Commissioners (NARUC), NARUC explains how states are

combatting waste, fraud and abuse in the Lifeline program and notes that at least seven states have “pulled” ETC designations and at least six have refused to designate carriers as ETCs.

3. Mr. Feiss’ testimony also characterized the FCC’s ETC approval process as “lenient.” Do you agree? Could you explain the requirement for ETC compliance plans that the FCC adopted as part of the 2012 Lifeline Reform Order?

No. The Commission’s ETC process is not “lenient”. Rather, the FCC has imposed a rigorous approval process for non-facilities based carriers that seek designation as ETCs. With its ongoing commitment to fight waste, fraud, and abuse in the program, the FCC, through its 2012 reforms, now requires that every non-facilities based carrier seeking to become a Lifeline-only ETC must first receive approval of its compliance plan before becoming an ETC. In a Public Notice, FCC staff set forth the key elements that must be contained in a compliance plan, which include a detailed explanation of how the carrier will comply with the FCC’s rules (including a thorough review of the carrier’s marketing and outreach materials) as well as a description of its future service offerings. The staff undertakes a rigorous review of each carrier’s compliance plan before granting approval. A non-facilities-based carrier cannot seek designation as an ETC (from the FCC or a state commission) or receive federal universal service fund (USF) support until it has a compliance plan approved. Commission staff also coordinate with staff from state commissions on a regular basis to ensure appropriate management and oversight the ETC designation process at the state level.

4. There was some discussion at the hearing about an “explosion” of ETC designations for Lifeline. Does the FCC have information about what percentage of the carriers certified to participate in Lifeline are also receiving high-cost support? How many are only certified to participate in Lifeline?

Approximately 70 percent of the ETCs certified to offer Lifeline services are also receiving high-cost support and approximately 30 percent are designated as ETCs for the limited purpose of offering Lifeline services.

The Honorable Doris Matsui

1. Is there such a thing as a “Free” government phone?

No. Lifeline support cannot be used to support a phone or any other device. The flat-rate support amount can only be used towards the purchase of voice telephony service and the FCC’s rules require that the ETC must pass through to the Lifeline consumer the entire subsidy amount. If a company offers a free phone to Lifeline subscribers, it is doing so as part of its business model.

2. Is it accurate to say that the Lifeline program is not contributing to “any current growth” within the Universal Service Fund at this point?

Yes. Lifeline reforms have led to a reduction in disbursements. For example, in July 2012, the program disbursed \$190,451,629 in support to ETCs. In May 2013, the program

disbursed \$145,521,710, a savings of \$45 million. Overall, the Commission has already saved over \$214 million since the reforms went into effect and we are on track to save \$2 billion by the end of 2014. The contribution factor in the first quarter of 2012, before implementation of Lifeline reforms was 17.9 percent, whereas the most recent contribution factor for the second quarter of 2013 was 15.5 percent.

3. What is the current status for the duplicates database?

The Universal Service Administrative Company, or USAC, administers the Lifeline program on behalf of the FCC. USAC has announced its selection of the vendor for the National Lifeline Accountability Database (NLAD), and work is already underway. The NLAD will be operational this year.

4. In the Lifeline Reform Order, the FCC adopted a goal for the program to “ensure the availability of broadband service for low-income Americans.” The order also established a broadband pilot program which is now underway with 14 pilots in over 20 states to test how the program can potentially support broadband. Can you discuss why the Commission felt a goal of the program should be to ensure broadband availability for low-income Americans and what you hope to learn from the pilots?

In its 2012 Lifeline reforms, the FCC established specific goals for the program, including a goal of “ensuring the availability of broadband service for low-income Americans.” This goal reflects the principle in section 254 of the Communications Act that all consumers, including low-income consumers, should have access to advanced telecommunications and information services at affordable rates. It is also consistent with the recommendations of the National Broadband Plan, which recognizes how broadband has become essential to all Americans to access jobs, education and economic opportunity in the 21st century. As a first step towards achieving this goal, the FCC launched a broadband pilot program on February 1, 2013, that will provide high-quality data on how the Lifeline program could be structured to promote the adoption and retention of broadband services for low-income Americans. The fourteen selected projects will provide various broadband services to Lifeline eligible consumers and will gather data and provide analysis on a wide range of geographic, technological and programmatic variables. The pilot will test subsidy amounts, end-user charges, access to digital literacy training, equipment types, speed ranges, data usage limits and other variables to assist the Commission in determining how the program could potentially be modernized to support broadband.

5. Does the Lifeline program have any impact on the U.S. budget or our nation’s fiscal deficit?

The Lifeline program does not have an impact on the U.S. budget or the nation’s fiscal deficit. The program, like all USF programs, is funded through a fee imposed on providers of interstate telecommunications. Wireless companies, wireline telephone companies, and interconnected voice over Internet protocol (VoIP) providers contribute to the Fund and generally recover those contributions from their end-user customers. Funds are remitted not to the U.S. Treasury, but rather to USAC to administer the four universal service programs. Thus,

increasing or decreasing the size of the Lifeline program, or any other component of the overall universal service program, will not impact the federal budget, the deficit, or the debt.

The Honorable Ben Ray Lujan

1. As mentioned at the hearing, I represent a very rural district. It stretches across the farmlands of eastern New Mexico and the rugged mountains of the Rio Grande valley. Many of my constituents depend upon Lifeline to follow up on job opportunities, communicate with their doctors, or contact emergency services. Lifeline is often mischaracterized by its critics as being an urban program, but I can assure you that it also serves many of the most vulnerable populations in rural America. How many lifeline users live in rural communities? Is the participation rate in rural communities comparable to urban areas?

Since 1985, the Lifeline program has provided a discount on phone service for qualifying low-income consumers to ensure that all Americans have the opportunities and security that phone service brings, including being able to connect to jobs, family and emergency services. This program is available to eligible low-income consumers in every state, territory, commonwealth, and on Tribal lands, regardless of whether the consumer resides in a rural or urban area. While we have data on the overall number of subscribers in each state and on Tribal lands, the FCC does not have data showing whether Lifeline subscribers live in rural or urban areas.

2. My district is also home to a large Tribal population, much of which is severely underserved by modern infrastructure networks, including telecommunications networks. The FCC has recognized the dire needs for network connections and high cost of making those connections in these areas and preserved a higher subsidy to service providers on Tribal lands. This subsidy has gone to good use as Tribal telecom companies have utilized it to connect a large number of their populations to telecommunications networks for the first time. In letters to the Subcommittee, both the Mescalero Apache Telecom, Inc. and Gila River Telecommunications, Inc. expressed their reliance upon the program in their work. They tell us that 611 households on the Mescalero Apache Nation in New Mexico have been connected by the Lifeline program and 78% of Gila River's Tribal subscribers in Arizona are subscribers. Does the FCC have any estimates of how important this program is to Tribal communities? How many Lifeline users live on Tribal lands? What is the FCC doing to keep the program relevant to Tribal populations and other underserved communities?

Since 2000, the Tribal Lifeline and Link Up programs have provided invaluable assistance in helping to dramatically improve access to telephone service for low-income residents of Tribal lands, many of whom face often endemic levels of cyclical poverty. Given the significant telecommunications deployment and connectivity challenges on Tribal lands, and the high percentage of Tribal residents with incomes under the Federal Poverty Guidelines, the Lifeline program has served as an important resource for Tribal residents. In 2012, over 800,000 subscribers on Tribal lands participated in the Lifeline program.

In its 2012 reforms of these programs, the FCC recognized the unique circumstances facing residents on Tribal lands and adopted a number of Tribal-specific provisions to ensure that the programs remain relevant and accessible. For example, the FCC learned that many Tribal elders opted for the Food Distribution Program on Indian Reservations (FDPIR), commonly referred to as the “commodity program,” rather than the Supplemental Nutrition Assistance Program (SNAP). Because FDPIR was not considered an eligible program for participating in Lifeline and Link Up, FDPIR beneficiaries had been excluded from receiving the benefits of Lifeline and Link Up support. To address this, the FCC made FDPIR an eligible program for purposes of Lifeline and Link Up.

As another example, the FCC preserved the Link Up program on Tribal lands (with certain limitations) while eliminating it elsewhere, acknowledging the significant telecommunications deployment and access challenges that persist today on Tribal lands. The FCC also adopted a broadband adoption pilot program, in an effort to gather data on broadband adoption and deployment among low-income consumers. Of the 14 applicants selected for the program, two Tribally owned ETCs – Gila River Telecommunications, Inc. and Hopi Telecommunications, Inc. – were accepted into the pilot program. That program is currently underway.

3. If our hearing brought about any agreement between the two parties, it’s that a reform of the Lifeline program has been sorely needed. I commend the FCC for the changes to the program announced last year. The FCC is now requiring proof of eligibility for the program and compiling eligibility and enrollment databases to ensure that Lifeline is not abused. How does the implementation of these reforms impact the FCC’s decisions regarding the programs funding, modernization, and any additional reform efforts?

The tough reforms that the FCC unanimously adopted are working; the number of subscribers enrolled in the program is down by 5 million since the reforms were adopted, and the program is on track to save \$2 billion by 2014. Establishing automated means for checking for duplicate subscribers and subscriber eligibility should lead to further savings. In this regard, the National Lifeline Accountability Database (NLAD), which will enable carriers to check for duplicate subscribers, is on track to be operational by the end of this year, and the FCC is making progress working with other federal agencies also to automate verification of subscriber eligibility. When the FCC adopted reforms in early 2012 it determined that it was appropriate to assess the impact of the reforms before moving forward with other potential changes to the program, including whether to establish a budget, the permanent per-subscriber support level, and whether other federal programs should be added to the list of those enabling subscriber eligibility. While the FCC’s reforms have taken hold and have reduced the size of the Fund in one year, the FCC is continuing to monitor the impact of its reforms to see whether additional measures are necessary.

a. What is the current status of the two databases? Do you expect them to be online and in use by the end of the year?

USAC has announced that the vendor for the National Lifeline Accountability Database (NLAD) has been selected, and work is already underway. The NLAD will be operational this year.

The FCC has also directed the FCC staff to create an automatic means of verifying eligibility. The FCC is leading discussions at the federal level with the Department of Agriculture and the Department of Health and Human Services. Simultaneously, the FCC is also working with those states that are seeking to develop automated means for verifying subscriber eligibility. About 10 states already have automatic means of verifying eligibility, with the possibility that more states will follow.

b. Some have suggested that a minimum co-payment be required for consumers receiving Lifeline service, so that they have some “skin in the game.” Did the FCC consider requiring a co-payment as part of the reform Order? Why didn’t the FCC adopt one?

The FCC considered a minimum charge during the Lifeline rulemaking process in 2011-2012, but voted unanimously not to mandate it, indicating that there was insufficient data to establish that such a federal requirement would effectively protect the program from waste, fraud, and abuse without thwarting the goal of making vital communications services available to low-income consumers. The Commission also found that it was unnecessary to impose a federal minimum charge at that time requirement in light of the other significant steps being taken to reform the Lifeline program. States, however, are free to adopt minimum charges if they decide to. Georgia, for example, just adopted a \$5 minimum charge; California, on the other hand, used to have a minimum charge but recently permitted carriers to offer Lifeline without a charge.

The Honorable Steve Scalise

1. How many and what percentage of Lifeline subscribers that receive subsidized mobile service choose to upgrade their cell phone plans?

The FCC does not track information about individual subscribers, such as their usage patterns or whether they choose to upgrade their service plans. Carriers can be contacted regarding their subscribers’ usage patterns. The USAC website (<http://www.lifelinesupport.org/lis/companies/companies.aspx>) provides a listing of all the carriers designated as ETCs within each jurisdiction.

The Honorable Billy Long

1. What percentage of Lifeline cell phone users go over the free 200 minutes on the cellular phones provided through the program?

The FCC does not track information about individual subscribers, such as usage patterns or whether they exceed their allotted minutes for their service plans. Carriers can be contacted

regarding their subscribers' usage patterns. The USAC website (<http://www.lifelinesupport.org/lis/companies/companies.aspx>) provides a listing of all the companies designated as ETCs within each jurisdiction.

2. Are Lifeline cell phone users able to forward their personal cell phone to their Lifeline phone in order to use up the free 200 minutes? This of course would allow 200 minutes of cell phone use paid for by the Lifeline program.

Each carrier has its own procedures for handling call forwarding. The FCC does not track this information and its rules do not address this matter. To gather information regarding individual carriers' call forwarding procedures, the USAC website (<http://www.lifelinesupport.org/lis/companies/companies.aspx>) provides a listing of all the companies designated as ETCs within each jurisdiction.

**Financial Services and General Government Subcommittee
Hearing on the Federal Communications Commission FY 2013 Budget**

QUESTIONS for CHAIRMAN GENACHOWSKI

Questions for the Record Submitted by Chairwoman Jo Ann Emerson

POLITICAL FILES

The FCC recently released a Notice of Proposed Rulemaking related to broadcasters' political files. Currently the FCC is responsible for making sure advertisers disclose political sponsors in ads.

I understand that this is merely a proposed rule at this point, but you must have some idea of the cost to the Commission related to this rule.

Question. Chairman Genachowski, how much would the Commission-run website cost?

Answer. On April 27, the Commission adopted an order to move broadcasters' public files from paper to online. The Commission voted unanimously with respect to the non-political component of the public file, including voting unanimously to host those components in an online database on the Commission's website. There would be no separate, distinct or additional costs to include the political file information in the online database used for all public file record keeping.

The final order provided an extensive analysis of the cost-benefits to broadcasters in converting to online files. The analysis is similar to most cases involving a move from paper to electronic files. The complete database costs for the public file will be included in the FCC's Fiscal Year 2012 Information Technology (IT) budget. On a going forward basis, the Commission is leveraging several improvements to its IT infrastructure, including adding cloud capacity. These investments have lowered the costs of web-based services currently hosted by the Commission and these cost savings will also apply to the maintenance of online files. Actual start-up costs for hosting the public file would be less than \$350,000, with an estimated out-year cost of less than \$175,000.

Question. Would there be any Commission staff that would be required to review the disclosures? And if so, how many staff and at what cost?

Answer. The political file already exists pursuant to Section 504 of the Bipartisan Campaign Reform Act of 2002. As is the current practice, the Commission would not assign staff to review this material except where a complaint has been filed concerning the licensee's recordkeeping, which would occur whether the information was in electronic or paper form. The costs of this review will only be reduced by converting the paper files to an online file.

Question. How does the FCC distinguish between its responsibilities over broadcaster behavior versus campaign spending?

Answer. Congress explicitly directed the FCC to implement political file obligations on FCC licensees. Those obligations require licensees to “maintain, and make available for public inspection, a complete record of a request to purchase broadcast time.” (Section 504 of the Bipartisan Campaign Reform Act of 2002, Public Law 107-155, 116 Stat. 81. This law amended section 315 of the Communications Act of 1934 to codify and expand the Commission’s political file rule, first adopted in 1938 under 47 C.F.R. 73.1934.)

Section 315 serves broader public disclosure goals than those identified in the FEC’s organic statute. Congress established the FEC to regulate federal elections, and FEC reporting requirements are limited to federal elections. The FCC’s political file requires disclosure of information regarding all elective offices, including federal, state and local, as well as advertisements concerning political matters of national importance.

BUDGET

Question. Chairman Genachowski, A large part of your fiscal year 2013 request is for programmatic increases related to data center consolidation and cloud management. Can you tell the Committee why you need \$6 million for cloud management and security as well as data consolidation?

Answer. The Commission’s IT infrastructure is central to the FCC’s ability to accomplish its mission and to communicate with the public, industry and other governmental entities. The \$6.1 million investment the Commission will use to upgrade and consolidate its systems will produce significant cost savings during successive fiscal years in lower energy costs, higher staff productivity, and other operational efficiencies.

The Agile Cloud Provisioning and Management initiative (\$2.75 million) will reduce barriers to consumer and industry accessibility and lower the cost of existing host or cloud providers. It will improve transparency and interactions with the agency by consumer and industry. Annual savings are estimated at a total of \$1,454,791 – \$236,791 for energy costs, \$574,000 in staff productivity and \$644,000 in operational efficiencies.

The Data Center Consolidation follows OMB directives on consolidation and virtualization, and would eliminate redundancies between the FCC’s Gettysburg and DC headquarters sites. Annual savings are estimated at a total of \$1,153,833 – \$189,433 for energy costs, \$449,200 in staff productivity and \$515,200 in operational efficiencies.

Question. When will the savings be realized?

Answer. The cost savings are projected to begin in the next fiscal year.

Question. Are these systems critical?

Answer. Yes. Problems with the Commission’s use of legacy equipment and systems became apparent this past year during reprogramming of funds to deal with cyber threats. Also, the

implementation of the new spectrum legislation will require cross-agency IT integration with new software and hardware.

Question. Other programmatic increases include upgrades to technical equipment. Can you please explain to the Committee why these upgrades are needed this year?

Answer. The Commission requested \$2.5 million for Enforcement Bureau Direction Finding and Wireless Monitoring Equipment; \$1.1 million for Radio Direction Finding Vehicles; and \$500,000 for equipment upgrades at the Columbia, Maryland laboratory. These requests include replacement of outdated and non-operational equipment as well as some related upgrades.

The Wireless Monitoring Equipment and the Radio Direction Finding Vehicles are essential to one of the Commission's core missions: preventing signal interference. Much of the equipment is specially developed and built by the Commission's engineers. These devices must have the ability to communicate and/or locate sources of interference with a sophisticated degree of accuracy and frequency agility, along with the ability to operate in unfriendly radio environments.

The Commission must maintain and replace legacy equipment as well as stay abreast of new and diverse forms of interference in the field. Newer technology incorporates quicker and more accurate measurements, better battery life, and in some cases, smaller and lighter packages. Aging equipment fails due to worn and obsolete human user interfaces, dimming displays, deferred maintenance, and battery packs that are no longer manufactured.

Among other things, the Field Offices of the FCC's Enforcement Bureau use their specialized equipment to:

- Identify and resolve interference cases. During FY 2011, the Field Offices resolved 1669 interference matters, of which 470 were public-safety related. Interference issues are increasing, and we expect the problem to grow as the number and variety of wireless devices increases.
- Resolve radiofrequency interference cases across the country, which often present public safety and health issues.
- Respond to requests from the Coast Guard to locate vessels in distress, aid in finding the source of errant transmitters, and identify and resolve interference along coasts and waterways.
- Locate signal jammers. The proliferation of jammers and the public safety threat they represent are increasing daily. The NextGen airspace system depends on GPS functioning at a highly accurate and reliable level. Cell jammers not only block distracting calls, but also critical public safety communications, including 911 calls.
- Resolve cable signal leakage issues that interfere with FAA signals. Last fiscal year, the Field Offices resolved 360 cable signal leakage cases and proposed \$64,000 in forfeitures.
- Resolve interference to FAA radar. Certain wireless Internet service devices, when set up improperly, can create a public safety issue by interfering with

FAA radar systems used for the detection of wind shear. The Field Offices shut down 17 of these systems last year, more than double the number from the previous year.

- Assist the US Secret Service in tracking down interference sources at National Security Special Events, *e.g.*, NATO/G8 Summits, inaugurations, presidential debates, and political conventions.
- Assist NOAA in locating downed aircraft and sinking vessels, errant transmitters, and sources of interference to emergency locator frequencies.
- Work with FEMA to re-establish a public safety communications network as soon as practical following a natural disaster.
- Assist Customs & Border Protection in tracking interference sources along and across the borders.
- Locate and resolve tower painting and lighting issues. The Field Offices took actions on 935 tower issues last fiscal year.

One significant area where the Field Offices of the Commission's Enforcement Bureau must utilize this equipment is the detection and shutdown of pirate radio operations. The Field Offices use their cars and other direction finding equipment to track down pirates, who often conceal their operations in remote or highly urbanized locations. Interference with authorized broadcasters limits their licensed coverage and/or affects the quality of the signal received by the consumer from the licensed station. In addition, many pirates cause interference with FAA landing systems at airports, creating a public safety hazard. Last fiscal year, the Field Offices in the Enforcement Bureau shut down 118 pirate operations and proposed \$227,000 in forfeitures.

Without new and upgraded equipment, the Commission's enforcement of public safety rules and other critical rules designed to protect our nation's airwaves will suffer and could lead to serious, undeterred interference problems.

With regard to the Office of Engineering and Technology Columbia Laboratory facilities request, the engineers need equipment to test new and sophisticated technologies for rules compliance, including dynamic frequency allocation and sensing. They also require special test equipment to simulate a variety of broadband systems' operating conditions. OET certifies that wireless devices use spectrum efficiently and do not create harmful interference, among other things. The number of applications for certified devices has grown from 3,671 in 2001 to 13,645 in 2011, and the explosive growth of complex devices like smartphones and tablets is increasing demands on OET staff and equipment with no signs of slowing down.

As I noted in my testimony, last year a senior Apple executive recently wrote the FCC advocating for additional staffing for the FCC's OET. Apple's executive wrote, "If OET can complete its work efficiently, companies building innovative devices can get those new products to customers quickly. But if applications for innovative devices are delayed because OET staff is overtaxed, consumers are the losers." Engineers cannot perform their tasks without necessary equipment. A \$500,000 investment to improve OET's capabilities at this juncture will pay dividends in economic value later.

Question. Couldn't you look for additional savings within your budget to accommodate this proposed increase?

Answer. There are no available funds outside of current spending levels for equipment replacement and upgrades. As this Subcommittee is aware, this past year, the Federal Communications Commission reprogrammed all available unobligated and de-obligated funds and dedicated most to deter significant cyber-security threats to its IT systems.

SPECTRUM

As part of the payroll tax extension that Congress passed last month, the FCC is tasked with holding incentive auctions.

Question. Chairman Genachowski, What are your thoughts on the Commission's new responsibilities?

Answer. Incentive auctions are unprecedented and the U.S. will be the first country to conduct an auction of this type. It will be a multifaceted task affecting major parts of our economy, involving many challenging questions of economics and engineering.

Question. Do you think current owners of spectrum will easily give up the spectrum they are sitting on for this new incentive auction?

Answer. I believe that incentive auctions can and will work. While we do not expect all broadcasters to participate, voluntary incentive auctions present a compelling economic opportunity for many broadcasters. The Commission will reach out to and work with all affected parties in a process that is transparent and fair.

Question. Do you plan to have an open auction?

Answer. We will implement the incentive auction statute in accordance with the Middle Class Tax Relief and Job Creation Act of 2012.

Question. In your fiscal year 2013 budget, you request \$1 million for a technical and operational framework related to the build out of the public safety broadband network. Can you explain to the Committee how these funds will be used and how the Commission will help with the D-block build out?

Answer. The FCC submitted its budget prior to the passage of the Middle Class Tax Relief and Job Creation Act of 2012. This law mandates that the Commission allocate and license the D Block to the First Responder Network Authority and requires the FCC to establish and work with the Technical Advisory Board for First Responder Interoperability. The Commission has moved ahead to create the board and provide funding and assistance for its activities. The Commission also must support the reallocation and licensing process from regular budget funds. Originally, the \$1 million programmatic increase would have funded the technical and engineering activities

of the FCC's Emergency Response Interoperability Center (ERIC), which supports interoperability of public safety communications, both narrowband and broadband. The requested funds will support ERIC and other interoperability operations during the next fiscal year.

Question. The Administration proposes to cap the amount of auction proceeds that are available to you for administration at \$85 million. Given your new spectrum auction responsibilities, does this amount need to be revisited?

Answer. Yes. The Commission's staff has concluded its initial review of the costs for this process and received reprogramming for an additional \$2.1 million during the current fiscal year. At this stage, the Commission anticipates needing additional out year costs of \$13 million for FY13 above the \$85 million cap.

FCC REFORM

As you know the House Energy and Commerce Committee recently approved two bills related to reforming the FCC. This legislation seems to have a number of good government concepts within these bills, including a "shot clock" so that parties know how quickly to expect action on FCC proceedings. This seems fair, particularly with regard to your rulemaking on cable carriage complaint reforms. The Commission issued an order last year addressing part of the issue, but has yet to finish the proceeding after 4 years.

Question. Chairman, Genachowski, generally, what are your thoughts on these reform bills?

Answer. From the beginning of my tenure as Chairman, I have made reform of agency processes a top priority. A key focus of this reform effort has been carrying out our statutory mission in a manner that recognizes changes in technology and the marketplace and reduces burdens on industry, promoting economic growth and innovation. By eliminating unnecessary requirements, modifying rules as needed, and improving our internal processes, the Commission is retooling to capitalize on the technological and economic opportunities of the new millennium.

This commitment to process reform has resulted in tangible improvements throughout the agency. We have eliminated 210 obsolete regulations and identified 25 data collections for elimination. We have reduced the number of open dockets by 43%, including by closing 999 dormant proceedings. We have reduced Commission backlogs, including a 52% reduction in pending satellite licensing applications and a 24% reduction in the number of pending petitions for reconsideration and applications for review.

We have increased the percentage of Notices of Proposed Rulemaking (NPRMs) that contained the text of proposed rules from 38% to 86%, while recognizing on a bipartisan basis that in certain circumstances it is premature to include draft rules in an NPRM. The Commission has also significantly reduced the time between the vote on a Commission decision and release of the full text of the decision, from an average release time of 14 calendar days before I became Chairman to just 3 calendar days since, with a majority of decisions released within 1 calendar day. And as part of an agency-wide transition from paper to electronic filing, we expanded

electronic filing of information about rates, terms, and conditions of telecommunications services. This reform will improve public access to information and reduce burdens on industry.

The Commission is working effectively, and we are moving in the right direction. Of course, there is more we can do to improve performance and I am committed to continuing our efforts at reform.

Question. Can you address when this proceeding will be finished and whether you think the “shot clock” requirement within the Energy and Commerce bill is a good idea?

Answer. The Commission has over 70 different types of proceedings it addresses, and every filing within a category potentially raises unique circumstances the Commission must consider. It is not workable to have a universally applicable “shot clock” requirement for all proceedings and still afford the Commission sufficient flexibility and discretion to give adequate attention to each filing.

Where appropriate, the Commission has adopted its own internal shot-clocks to facilitate expedited processing of important matters. For example, the Commission uses an informal 180-day shot clock for reviewing applications to transfer control of licenses and authorizations to determine whether the transfer serves the public interest. Better than 95% of all license transfer applications received since I became Chairman have been acted on within the 180-day period.

With respect to program carriage complaints, the current goal is to resolve a complaint within approximately 7-10 months (in cases decided by the Media Bureau, depending on whether discovery is conducted) or 13 months (in cases decided by an Administrative Law Judge) after the complaint is filed, assuming that the parties do not elect Alternative Dispute Resolution or seek to toll the deadlines. Commission staff currently is reviewing additional issues raised in the program carriage proceeding, and a draft order may be circulated later this year.

Question. How much would the consumer complaint database included in H.R. 3309, cost to stand up?

Answer. The Commission has performed only a basic review of the potential costs since the measure has not passed both chambers. Costs could be \$1.5 million to \$2 million for equipment. If additional FTEs are required for processing and implementation, costs could increase to approximately \$5 million.

Question. How much would the operating costs be once the database is stood up?

Answer. We are not able to calculate ongoing costs at this juncture.

TEXT TO 911

At last year's hearing we spoke about how cell phone users are currently unable to text to 911. It is my understanding that the Commission is looking into requiring operators to support text to 911 service.

Question. While I know this is a difficult time budget-wise to ask cities to support this service, I am interested to hear your thoughts on this issue.

Answer. In the Middle Class Tax Relief and Job Creation Act of 2012 Congress set aside up to \$155 million in revenues generated from the incentive auctions for grants to State and local governments responsible for operating 911 call centers to promote the adoption on NG 9-1-1 services, including texting.

As these new technologies emerge, I'm acutely aware of the necessity of reducing the cost of NG911 development and deployment. While the FCC is not a grant-making institution, we can provide policymakers with information about the costs associated with deploying the network infrastructure required to link PSAPs and carriers. Last September, the Commission initiated plans to develop a cost-effectiveness model utilizing the cost study that the Public Safety and Homeland Security Bureau developed. This important study informed states and localities, as well as Congress and federal agencies, about the cost implications of design choices as they plan their NG9-1-1 networks.

This issue continues to be a top priority for the Commission and I have challenged the industry to accelerate progress in this area. Last August, I announced a five-step plan for accelerating the deployment of Next Generation 911 (NG911), and the Commission has since has taken a number of steps to implement the plan. For example, the Commission released an Order and Further Notice of Proposed Rulemaking on location accuracy, which sought to close the accuracy gap between mobile and landline 911 calls and to lay the groundwork for location accuracy in NG911 networks and applications.

Last September, the Commission released a Notice of Proposed Rulemaking seeking to accelerate the development and deployment of NG911 technology that will enable the public to send emergency communications to 911 call centers via text, photos, videos, and data. Since release of that notice, we have seen significant progress towards development of text-to-911 technologies that we believe could be implemented in the near term.

This March, the Commission's Emergency Access Advisory Committee (EAAC) held an Exhibition Fair to showcase current and future text-to-911 technologies and applications at the FCC headquarters. These technologies will make the 911 system far more accessible to people with hearing and speech disabilities, and can provide an important alternative to the general public in situations where voice communication with 911 is not possible or advisable (such as the "silent call" scenario where placing a voice call to 911 could put the caller in danger).

I am also pleased that earlier this month, Verizon Wireless announced plans to deploy text-to-911 capability throughout its nationwide network by early 2013, which will enable Verizon Wireless customers to send emergency communications by text to select 911 call centers. This is an important step, and I hope that other carriers will follow this example.

I remain committed to doing what it takes to launch nationwide text-to-911 as quickly and cost-effectively as possible, and I expect the Commission to take further action in this area soon. This is an important national challenge and I encourage broad engagement as we move forward.

CYBER SECURITY

Question. What are you doing to help ISPs address the threat of cyber security?

Answer. The FCC is the nation's expert agency on communications networks, and the security and reliability of communications networks is central to the agency's mission. The Commission is focused on practical steps involving commercial communications service providers to help minimize cyber security threats. Cyber criminals can wreak significant financial harm on businesses and consumers. For instance, almost three-fourths of small and medium businesses report being affected by cyber attacks. A report by Gartner found 3.6 million Americans get redirected to bogus websites in a single year, costing them \$3.2 million. An estimated 8.4 million credit card numbers are obtained fraudulently online every year. Taking steps to address major vulnerabilities will contribute to economic growth, encourage the wider adoption of broadband, and protect the enormous opportunities created by the Internet.

The Communications Security, Reliability, and Interoperability Council (CSRIC) is a federal advisory committee established at the direction of the Chairman of the FCC to provide recommendations regarding the security, reliability and interoperability of the Nation's communications system. CSRIC and its predecessor FCC Advisory Committees have been involved in cybersecurity issues for over a decade. In March 2011, I initiated the current CSRIC, which is composed of over 50 communications sector leaders from the private sector, public safety, consumer organizations and Tribal, local, state and federal governments. They were tasked with developing recommendations for Internet Service Providers (ISPs) to mitigate three major cyber threats: botnets, attacks on the Domain Name System (DNS), and Internet route hijacking. On March 22, 2012 CSRIC produced a report with proposals in each of these three areas.

First, to reduce the threat of botnets in residential networks, CSRIC recommended that ISPs participate in a voluntary U.S. Anti-Bot Code of Conduct for Internet Service Providers (ABC). Under this recommended code of conduct, ISPs would agree to educate consumers about the botnet threat, take steps to detect botnet activity on their networks, make consumers aware of botnet infections on their computers, offer assistance to consumers whose computers are infected and collaborate with other service providers that have also adopted the ABC.

Second, CSRIC recommended that ISPs implement best practices to better secure the DNS. Specifically, under CSRIC recommendation, ISPs should ensure that their networks are DNSSEC-AWARE. A significant first step toward full DNSSEC implementation, this voluntary action by ISPs will allow, for example, browsers and operating systems in user devices to validate that consumers are not being redirected to fraudulent websites.

Third, CSRIC recommended an industry framework for the deliberate adoption of secure routing procedures and protocols.

The companies that to date have agreed to abide by CSRIC recommendations serve 86 percent of all U.S. broadband consumers.

The FCC also has worked with the Small Business Administration and others to develop and release a Cyber-security Tip Sheet for small businesses. Also, with its partners, the FCC released the Small Biz Cyber Planner, an easy-to-use online tool to help small businesses create their own customized cyber-security plan.

CSRIC's efforts are aimed at voluntary and industry-based initiatives and leverage the FCC's expertise and long-held relationships with communications providers. FCC staff works in close coordination with our Federal partners at DHS, who occupy a seat on the CSRIC and have made significant contributions to the CSRIC's work. I believe that the work of the two agencies is complementary and not duplicative.

A small percentage of the Commission's budget funds operations related to cyber-security in the Public Safety-Homeland Security Bureau.

Question. Do your efforts duplicate the efforts of the Department of Homeland Security? Are there similarities, how do your efforts differ?

Answer. The work of the two agencies is complementary and not duplicative. The Commission's efforts leverage the FCC's expertise and longstanding relationships with commercial communications providers. The FCC's staff works in close coordination with our Federal partners at DHS, who occupy a seat on the CSRIC, and have made significant contributions to the CSRIC's work.

Questions for the Record Submitted by Ranking Member Jose Serrano

BUDGET REDUCTION AND SEQUESTRATION

Question. Chairman Genachowski, your budget request notes that the FCC has taken steps to eliminate low-priority programs, resulting in a reduction of 1.8% below the fiscal year 2012 enacted budget. Please tell us about this reprioritization and what programs were eliminated?

Answer: The Commission developed a range of cost-savings opportunities to keep its requested increases low, without harming ongoing programming. Examples of these savings include:

- Rent – A savings in rent in the amount of \$1.4 million due to reducing the size of FCC headquarters and field office space.
- Contracts Services – \$4.1 million. This savings includes a reduction in contracts throughout the FCC, with significant savings identified in IT services contracts, administrative services, human resources and financial operations contracts.
- Equipment - Overall FCC equipment was reduced by \$500,000. The majority of these savings are in ITC software and hardware.

CYBERSECURITY

Question. I see in your testimony that one of your initiatives is working to help small businesses improve their cybersecurity. A lot of agencies in the federal government are getting involved in cyber-security, so what role does the FCC play in this particular effort? And how do you fit into federal cybersecurity planning more broadly?

Answer. The FCC is the nation's expert agency on communications networks, and the security and reliability of communications networks is central to the agency's mission. The Commission is focused on practical steps involving commercial communications service providers to help minimize cyber security threats. Cyber criminals can wreak significant financial harm on businesses and consumers. For instance, almost three-fourths of small and medium businesses report being affected by cyber attacks. A report by Gartner found 3.6 million Americans get redirected to bogus websites in a single year, costing them \$3.2 million. An estimated 8.4 million credit card numbers are obtained fraudulently online every year. Taking steps to address major vulnerabilities will contribute to economic growth, encourage the wider adoption of broadband, and protect the enormous opportunities created by the Internet.

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PRISON CALLING RATES

Question. In many places across the country families of inmates must pay astonishingly high rates to talk to their loved ones while they are incarcerated. This makes it difficult for them to remain in regular contact. I am troubled by this, since studies have shown that inmates with a greater connection to home are less likely to re-offend. I understand that the FCC has a role to play in regulating prisoners' telecommunications. Without jeopardizing justifiable security concerns, what steps can you take to reduce the cost of these calls for families of prisoners?

Answer. The Communications Act requires the FCC to ensure that rates for inmate calling services are just and reasonable, while the prisons' legitimate security interests related to inmate calling services are adequately protected.

Multiple, competing petitions on these rate issues have been filed by stakeholders. In addition, the Commission has before it a petition regarding use of IP-based calling services by families of prisoners. These petitions raise complex factual questions and issues. Commission staff is reviewing the record that has been compiled on these issues and continues to meet with interested parties to obtain a better understanding of the information submitted to the agency.

Questions for the Record Submitted by Congressman Mario Diaz-Balart

FCC FOIA TRANSPARENCY

Question. Data from www.foia.gov shows that the FCC denies almost half of all FOIA requests it receives. In fact, www.foia.gov indicates that, not only is the FCC denying more FOIAs, but the FCC denies a significantly greater percentage of FOIAs when compared to the U.S.

Government – in 2010, the FCC denied 48% of FOIA requests while the rest of the Government denied an average of only 7.3%. Why is the FCC denying so many FOIA requests?

Answer. The FCC's FOIA record demonstrates that it grants, in whole or in part, the overwhelming majority of requests it receives and denies in full very few requests. Data from www.foia.gov, which is drawn from the agency's FOIA Annual Reports, shows that only 3.4% of the FOIA requests received by the FCC in FY 2011 were denied in full; 2.5% were denied in full in FY 2010; and 3.2% were denied in full in FY 2009. These statistics do not include instances where a FOIA request did not reasonably describe the records sought, was withdrawn, or otherwise was categorized by the Department of Justice as denied for reasons other than a FOIA exemption.

The Commission's staff has worked hard to ensure that the agency is transparent and responsive. House Oversight Committee Chairman Darrell Issa recently gave the FCC an "A" for its FOIA record-keeping. Also, the Attorney General recently recognized the FCC for its "particularly exemplary" use of the FCC.gov website to proactively release agency records and data.

Question. The same data indicates that the FCC has started denying an unusually large percentage of FOIA requests because the records were "not reasonably described." Since FY 2009, the FCC has denied more FOIA requests because the records were "not reasonably described" than the CIA. Why is the FCC denying so many FOIA requests because records are "not reasonably described"? How does the FCC determine whether the records were "not reasonably described"? Can the FCC provide an explanation for each of the 246 FOIA requests denied because the records were "not reasonably described" since FY 2009?

Answer. A FOIA requested is denied for failure to "reasonably describe" the records sought when the requester fails to provide enough information to allow the FCC's staff to do a reasonable search. The Department of Justice considers "not reasonably described" responses (and other responses not related to a FOIA exemption) as a "denial" of the request for FOIA annual reporting requirements, but these denials are not considered to be "full denials," which are described in the preceding answer.

For FYs 2009 through 2011, the FCC denied a total of 246 FOIA requests because the requesters did not "reasonably describe" the records sought. This represented 11.4% of the FOIA requests filed in FY 2009, 16.5% of the requests filed in FY 2010, and 12.5% of the requests filed in FY 2011. These percentages are substantially *lower* than the government-wide figures for requests denied as not reasonably described, according to Department of Justice statistics. In FY 2010, the most recent year for which data are available, 25% of FOIAs filed government-wide were denied as "not reasonably described." See <http://www.justice.gov/oip/foiapist/fy2010-ar-summary.pdf> at page 6.

The 246 FCC FOIA requests you cite were all requests made by individuals for records concerning themselves. In virtually all cases, these requests did not provide any further identifying information that would allow the Commission to design a reasonable search for records. In this situation, the Commission asks the requester to provide proof of identification to ensure that personally identifiable information is not being sought by someone who is not entitled to it. The Commission also asks individuals to specify what Privacy Act system(s) of

records they wish the agency to search. *See* 47 C.F.R. §§ 0.554(a) and 0.554(b). If the individual responds with this information, the FCC's staff processes the request. If the requester does not provide the required information, the FOIA file is closed and reported as denied for failure to reasonably describe the records sought.

Question. What fees has the FCC charged for FOIA requests, and how does the FCC handle FOIA fee waiver requests?

Answer. The Commission is required by the FOIA (5 U.S.C. § 552(a)(4)(A)) and its implementing rules (47 C.F.R. §§ 0.466 – 0.470) to charge fees for processing FOIA requests. Search, review, and copying fees are assessed depending on the classification of the requester. Commercial requesters bear all FOIA processing costs; educational, scientific and news media requesters pay only for copying more than 100 pages; and “all other” requesters pay for more than two hours of search and review time and copying more than 100 pages. In FY 2011, the Commission collected \$16,620.39 in FOIA fees, amounting to 0.75% of the actual cost of processing FOIA requests. In FY 2010, \$16,583.51 was collected, representing 0.73% of actual processing costs.

Requests for waivers of FOIA fees are referred to the FCC's Office of General Counsel for handling in the first instance (47 C.F.R. § 0.470(e)(1)). OGC weighs the facts set forth in the FOIA (5 U.S.C. 552(a)(4)(A)(iii)) and the agency's implementing rules (47 C.F.R. § 0.470(e)(2)) in deciding whether to grant or deny a fee waiver. Requesters may seek review of the OGC determination by the full Commission.

Question. I understand that the House Oversight Committee recently reviewed the FCC's FOIA logs and determined that the FCC's logs “have all available information.” Other agencies make their FOIA logs accessible to the public. Will the FCC make its FOIA logs publicly available?

Answer. The agency's FOIA logs currently are not publicly posted because they constitute a Privacy Act system of records due to the personally identifiable information (PII) contained in a FOIA request (for example, the requester's name and address). In FY 2011, however, all four requests for the FOIA log received under the FOIA were granted. The Office of General Counsel is working to revise the system of records to accommodate posting the logs on the FCC's new website.

FCC EMPLOYEES

Question. In its FY 2013 request, the FCC proposes to spend \$245.9 million, and as you explained at the hearing, that amount would fund 1776 FTEs. But in prior years the FCC has spent far less to maintain that number of FTEs. In FY 2008, the FCC spent approximately \$210 million for 1,775 FTEs, and in FY 2011, the FCC spent approximately \$232 million. Why can't the FCC's personnel expenses for FY 2013 be held to a \$240.7 million, which would be a 2% increase over the FY 2011 level of \$236 million?

Answer. The FCC, like all federal agencies, adheres to the federal pay scale and personnel rules. The FCC currently has its lowest FTE level in a decade. FTE numbers peaked in 2003 at 2,015.

The current level is 1,776. Lowering expected personnel costs would result in fewer employees and reduced levels of service to the public. In addition, the Middle Class Tax Relief and Job Creation Act of 2012 places additional human resource demands on the Commission, and any reductions at this juncture would have serious, adverse consequences to congressionally mandated tasks and undermine specialized work geared toward deficit reduction.

Additional costs associated with these employees are based on personnel trends and agency workforce development. The Commission has a highly professional staff with average retention rates 6-8 years greater than other federal agencies. Attrition and controlled hiring has resulted in fewer employees overall but a larger percentage at the upper end of the professional scale, as well as more experienced, technically knowledgeable administrative staff accumulating higher grade and step levels. The FCC also tends to hire staff with technological or telecommunications experience at higher grade levels in order to carry out its complex statutory missions.

Question. According to data from www.fedscope.opm.gov, approximately 30% of FCC employees are paid \$150,000 or more. This represents a large increase over the number of FCC employees paid at that level in 2008, when less than 3% of the FCC earned at that level. How many employees has the FCC hired at this salary level since 2008?

Answer. As I noted during the hearing, this increase is explained by the change in the government pay scale. In FY08 the maximum pay for a GS-15/10 was \$149,000. In FY09, the maximum pay for GS-15/9 and GS-15/10 was approximately \$153,000 (step 9-\$153,053; step 10-\$153,200). The FCC hired 41 employees in FY 2009, 23 employees in FY 2010, and 27 in FY 2011 that earned a salary of \$150,000 or more.

CONTRACTOR HEADCOUNT AND COSTS

Question. The FCC is asking for \$500,000 to hire contractors “to gather data and study” the communications industry as part of a “Communications Industry Participation and Impact Study.” See FCC FY 2013 Budget Request at pg. 12. Why do you need to hire consultants to study the communications industry? Why can’t some of the FCC’s existing 1,776 employees do this study?

Answer. The study will gather data and information to fulfill three statutory obligations: Section 257 of the Communications Act; Section 202 of the Telecommunications Act of 1996, which requires a quadrennial review of our broadcast ownership rules; and Section 634 of the Communications Act. The Third Circuit also directed the Commission to conduct up-to-date studies when the FCC performs its statutorily-required quadrennial review of its broadcast ownership rules. See *Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011).

Studies that analyze how communications markets and owners are affected by Commission rules and other factors are generally prepared by social scientists in the fields of communications, economics and political science. The FCC’s limited full time social science staff is occupied with existing projects, leaving insufficient time to undertake the additional work of preparing this statutorily required study.

Contractors provide specific expertise, on a limited term basis, that may not be available from the Commission's permanent staff. Commission staff, however, has collected and organized the ownership information of broadcast television and radio stations that is intended to form the foundation of the data needed to develop the communications industry participation and impact study. Moreover, past Chairmen have utilized these contracting resources to conduct studies of this nature.

Question. How many contractors will be working for the FCC under your FY 2013 budget, and what will they be doing?

Answer. At this stage, I cannot predict the number of potential contractors for FY13, especially with the Commission's new responsibilities related to incentive auctions under the Middle Class Tax Relief and Job Creation Act of 2012. At last count for FY11, the FCC employed 551 contractors at a cost of approximately \$99.7M. This number represents a significant reduction over FY09 numbers of 959 contractors at a cost of approximately \$154.3M.

Question. What is the salary range for the FCC's contract workforce (*i.e.*, highest salary, lowest salary, and average salary)?

Answer. The average salary range for the FCC contract work force is based on the contract labor rates. The contract labor rates do not necessarily reflect the salaries being paid to the individual contractors and the FCC does not have visibility into all of the costs going into the labor rates. The hourly FCC contract labor rates begin at \$24.73 per hour and extend to a high of \$294.50, with an average labor rate for all contractors of \$87.10 per hour.

CUTTING THE FCC'S COSTS FOR CONTRACTS

Question. According to www.usaspending.gov, the FCC has increased its use of non-competitive contracts. In FY 2008, the FCC awarded only about \$1.84 million – or approximately 2.5% of the FCC's contracting dollars – through non-competitive contracts; in FY 2011, this amount grew to \$8.1 million and 12.5% of the FCC's contracts. Why has the FCC increased its use of non-competitive contracts?

Answer. For some of the contracts that were not competed, the FCC originally planned to have a successor contract vehicle in place before the expiration date. Unfortunately, the FCC lost key procurement personnel due to unexpected attrition and was unable to staff up or train existing staff soon enough to ensure additional solicitation activities. This situation has been remedied and the Commission will move ahead to ensure that personnel are trained and proficient in the procurement process, in order to expand competitive bidding practices.

The FCC in the last two years re-competed multiple large contracts and the results thus far have resulted in significant cost savings. Examples of contracts with cost savings are listed below:

- Consolidation of IT maintenance – total savings \$4,500,000. Re-competed two large IT contracts and combined them into one contract. The new contract was implemented FY-2011

- Implemented a new financial system – total savings of \$866,000. The re-competed contract resulted in fewer financial systems to maintain and a reduction in contractor support. The contract was a firm fixed price contract.
- Facilities services contract – total savings of \$1 million in annual cost savings. This contract was re-competed in FY-2011.
- Standardized move to Microsoft – total savings in three years is \$500,000 to \$750,000. This was achieved through the purchase of Enterprise license, allowing the FCC obtained a cheaper price for the components the agency needs instead of purchasing separate pieces.

REPROGRAMMING REQUESTS / CARRY-OVER FUNDS

Question. In the FCC's Budget Requests for FY 2009 and FY 2010, the FCC provided a detailed chart estimating funds that could become eligible for carrying over. Why did the FCC stop disclosing this information to Congress and the public?

Answer. This information is currently being provided each quarter to Congress, but the FCC will provide this information in future budget requests.

Question. Concerning the reprogramming request submitted in the fall of 2011, why did the FCC choose to spend funds on new projects instead of carrying these funds over to reduce the FCC's FY 2013 budget request?

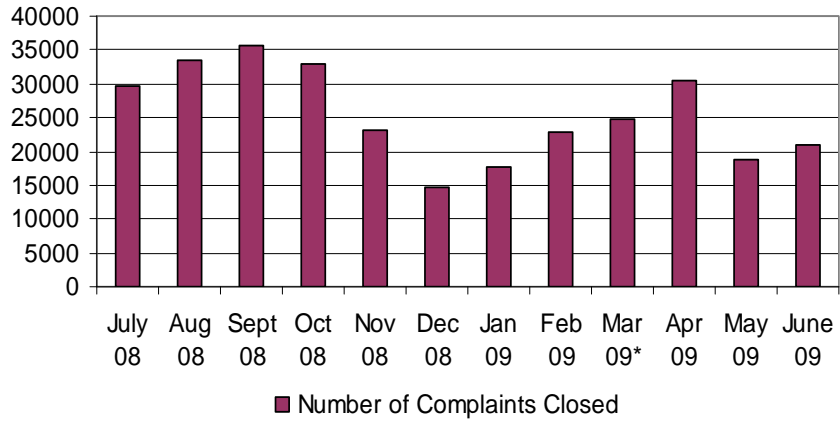
Answer. The FCC provided a classified briefing to the Financial Services Subcommittee staff concerning internal IT security issues. The reprogramming was based on that briefing and deemed essential.

TRANSPARENCY OF FCC ENFORCEMENT

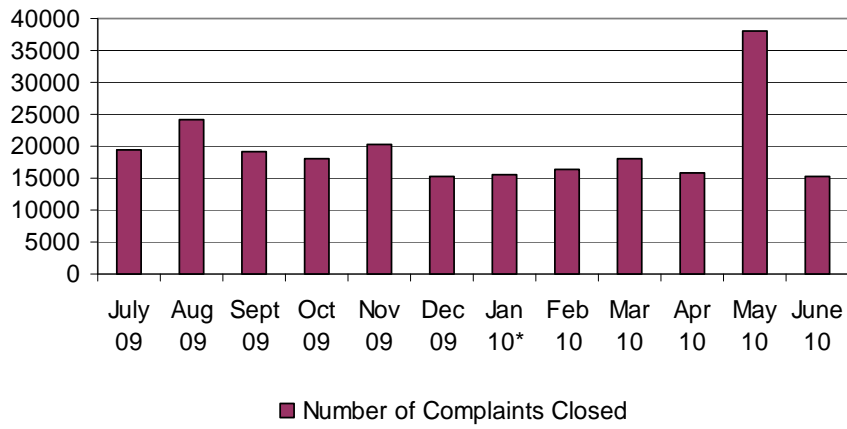
Question. The FCC used to publicly report information and data about the FCC's enforcement investigations, processing applications for licenses, and responding to consumer complaints. Why did the FCC cut this information from its performance report?

Answer. The decision to discontinue this information in the FCC's performance plan was implemented before I became Chairman and I am unaware of the reason for doing so. This information will be published in future reports and available online going forward. In addition, please see the information below:

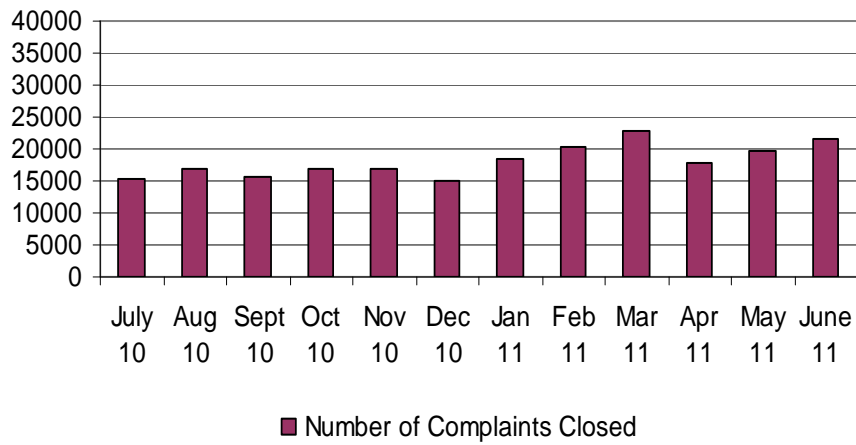
FCC Consumer Complaint Processing July 2008 to June 2009



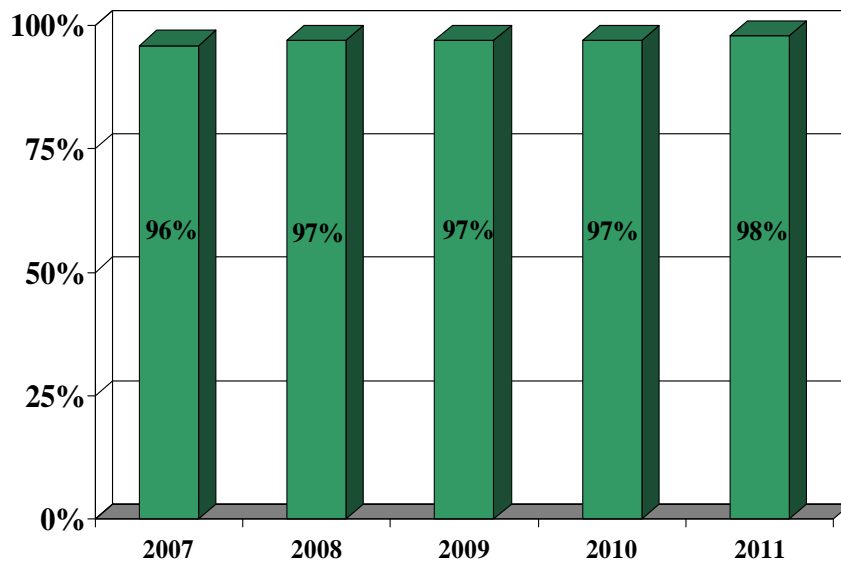
FCC Consumer Complaint Processing July 2009 to June 2010



FCC Consumer Complaint Processing July 2010 to June 2011



Actions Disposed of Within Speed of Disposal Goal



REGULATORY FEES

Question. In the past, the FCC used to disclose publicly information about how much of its budget the FCC raised through fees on telephone companies, wireless companies, media companies, and so forth. Why did the FCC stop disclosing this information about the sources of its budget?

Answer. The FCC has not stopped disclosing this information. Every year, the Commission adopts a rulemaking to assess regulatory fees, which includes this information. For example, in FY 2011, Attachment B of the Commission's regulatory fees *Report and Order* identifies the revenue that the FCC expects to collect from various industry segments. This annual rulemaking is public and published in the Federal Register, as well as available on the FCC's website.

Question. When will you circulate the FCC's annual Notice of Proposed Rulemaking examining regulatory fees?

Answer. The Commission adopted the Further Notice of Proposed Rulemaking on May 3, 2012 and released the item on May 4, 2012.

SPENDING ON NEW DIRECTION FINDING EQUIPMENT AND VEHICLES

Question. Why has the FCC stopped disclosing details about the number of public safety and non-emergency spectrum interference investigations and whether the FCC met its processing goals?

Answer. The decision to discontinue this information in the FCC's performance plan was implemented before I became Chairman and I am unaware of the reason for doing so. This information will be published in future reports and available online going forward.

Question. The FCC is seeking \$2.5 million for "direction finding and wireless monitoring equipment." How is this equipment different from the direction finding vehicles?

Answer. This direction finding and wireless monitoring equipment initiative involves both stationary use devices installed at the Commission's field offices and portable devices used in the field. This initiative would fund a few basic fixed-location monitoring systems with limited-range "receive and locate" capability, unlike the more sophisticated mobile systems (direction-finding vehicles).

These monitoring systems would be distributed in a few metropolitan areas of greatest need and not to all field offices. In contrast, the Commission's mobile systems (direction finding vehicles) are much more sophisticated, in that they provide graphical spectrum data, maps of licensees, and a directional indicator showing the direction from which the radio signal originates. Because many interference problems originate with a mobile source, field agents must employ mobile techniques with the radio equipment in the vehicle. The initiative for wireless monitoring equipment would provide for new portable technical equipment and devices

to allow field agents to perform on-site measurement and analysis to aid in enforcement of the Commission's spectrum regulations.

FCC AUCTIONS SPENDING

Question. The FCC has raised less than \$85 million in auctions proceeds in FY 2009, FY 2010, and in FY 2011. Specifically, in FY 2009, the FCC raised approximately \$6.4 million in auctions revenue; in FY 2010, the FCC raised approximately \$26.2 million in auctions revenue; and in FY 2011, the FCC raised approximately \$30.9 million in auctions revenue. How did the FCC obtain the \$85 million in auctions funding for these years?

Answer. Section 309(j) of the Communications Act provides for auctions as a primary assignment mechanism, regardless of whether the individual auction will generate high revenues. An auction can result in the assignment of hundreds or even thousands of licenses essential to various businesses and industries, spurring significant benefits to the economy even if auction revenues are modest.

The FCC is required to follow "Federal Generally Accepted Accounting Principles," which require that revenue from auctions be recorded when the license is granted, not when the auction has been completed. Typically there is a gap of some time between these two events. It is only after granting a license that auction revenue is earned and is available for use by the FCC to run the auctions program. Taking into consideration the above Federal accounting principles, the FCC actually recorded \$16.7 billion in auction revenue in FY 2009, \$391 million in FY 2010 and \$66 million in FY 2011. The FCC used \$85 million in auctions proceeds from these years to operate its auction program.

TRAVEL

Question. The Office of Government Ethics (OGE) makes available on the Internet the Semi-Annual Reports of Section 1353 travel for Federal agencies identifying the employees who have received travel costs paid for by outside groups. While OGE has Section 1353 reports available for the Federal Trade Commission, the Securities & Exchange Commission, it does not have any such reports available through its Internet site for the FCC. Has the FCC maintained the ban on Section 1353 travel for its employees since FY 2008? If not, how many FCC employees have received travel costs paid for by outside groups and for how much? Please describe any Section 1353 travel FCC employees have accepted since FY 2009?

Answer. The FCC has maintained a ban on Section 1353 travel since 2008. Accordingly, no Section 1353 trips have been taken by any Commission employees.

Questions for the Record Submitted by Congressman Steve Womack

REGULATORY FEES

Recently, you told another House committee that you plan to update the FCC's fee-assessment system for the first time in nearly 20 years. Commissioners past and present, Republicans and Democrats alike, have said this is long overdue. The FCC sought public comment on the matter in 2008; however, despite significant praise for modernization, it has languished.

Question. Are you committed to completing that proceeding in order to ensure transparency and fairness in the assessment of regulatory fees?

Answer. Yes. I intend to circulate a Notice of Proposed Rulemaking after the adoption of the FY12 Fee Rulemaking to provide a complete review of the process and ensure the proper balancing of regulatory fees.

Question. Will your changes be in effect when all regulated entities write their checks to the FCC later this year?

Answer. No. Regulatory fee reform and rebalancing is very complex, and it is likely that we will receive a high volume of comments in the proceeding. Addressing all of the comments for a proceeding of this nature would leave insufficient time between now and the regular fee filing deadline to complete both rulemakings. I anticipate that the rebalancing of regulatory fees will be implemented in FY 2013.

BUDGET REQUEST

I understand that implementation of the Commission's Universal Service and Inter-Carrier Compensation Order, its Lifeline Order and further notice, and a Universal Service contribution reform proceeding will require a great deal of the Wireline and Wireless Bureaus' time. I was therefore surprised to see the FY2013 budget request would cut these bureaus, while increasing the budget of the Offices of the Chairman and Commissioners. Work on these issues will continue well into FY2013 and perhaps beyond.

Question. Please explain the rationale behind these reductions, as well as the proposed increase to your budget?

Answer. There is no anticipated reduction to the staff in the Wireline Competition Bureau or the Wireless Telecommunications Bureau and they are properly staffed to ensure that the rulemaking is carried out. Increases to individual Commissioner offices reflect standard staffing numbers adjusted for uncontrollable cost increases. The Commissioner increases reflect funding for four fully staffed Commissioner offices and the Chairman's office.

Questions for the Record Submitted by Congressman Peter Visclosky

PUBLIC INSPECTION FILES

I understand that the discussion surrounding the FCC's proposal to require broadcasters to make their statutorily mandated Public Inspection Files available to the public online has largely focused on political advertising. However, it is my understanding that the political advertising component of the public file is merely a fraction of the statutorily required information that must be provided. For instance, I previously had a constituent contact me expressing concern that a news station, which owned a broadcasting license in our district, was not living up to its licensing requirements by airing sufficient local content. Under the current rules, I was aghast that the only option was to refer my constituent to the station to view the file in person, despite it being physically located in the next state over. While I am sympathetic to my colleague's expressed concerns as it relates to political advertising, I would not want the Subcommittee's focus on one small component of the file to stall a proposal that ultimately increases transparency.

Question. Understanding that it may vary from station to station, what percent of the Public Inspection File relates to political advertising?

Answer. The percentage varies from broadcaster to broadcaster, but you are correct that the political information is only one part of all of the material contained in the public file. Public files contain a broad range of material, including station ownership documents, equal employment opportunity compliance reports, children's programming information, and records of broadcast time purchased by candidates and other advertisers addressing "political matter(s) of national importance."

Question. I understand that Commissioner McDowell has estimated that the proposal would cost broadcasters \$15 million in upfront costs and an additional \$140,000 per year to maintain the files online. Is this an official estimate based on a study conducted by the FCC? Additionally, how many broadcasters is the \$15 million distributed across and what is the average cost per station? Would there be easy solutions to mediate overly burdensome costs to the station without scrapping the proposal in its entirety?

Answer. Prior to adoption of the Order on April 27, 2012, the FCC's staff considered the estimates provided by the industry that Commissioner McDowell noted during the hearing. In 2007 when the Commission last considered this issue, broadcasters stated that the greatest cost would be for them to individually host the information on their websites. The Commission accordingly proposed hosting the information on the FCC's website to save the broadcasters this potential cost.

As with all paper-to-paperless conversions, the broadcasters will experience some one-time upfront costs. Based on the record, the Commission has estimated these costs at an average of \$80 -- \$400 per station, spread over a six month period.

After the conversion, however, broadcasters will realize cost savings and efficiencies. Moving the file online will minimize disruptions in the daily operation of a station, and reduce

the burdens placed on station staff that currently field phone calls and chaperone in-person requests to inspect files. Also, broadcasters will no longer need to maintain paper copies of eight routine items that they already file with the Commission. These items compose about a third of all items in the public file. Instead, the Commission will take responsibility for filing the material online. Even for those elements of the file still managed by the broadcasters, the online file should be less burdensome than a local file, because uploading a file will be easier and more efficient than photocopying it, walking it to the local paper file, finding the appropriate folder and inserting it in the proper order.

In order to assist smaller stations in preparing for any additional costs, the conversion to electronic files will be completed in phases. Stations in the top 50 DMAs, approximately 200 stations out of approximately 2000 stations nationwide, must post new political file materials online when the rules become effective, with the rest of the industry complying by July 2014.

Questions for the Record Submitted by Congressman Jo Bonner

UNIVERSAL SERVICE FUND

Question. The USF/ICC reform order released late last year provided larger price cap carriers with specific support for broadband and incremental funding, but it appears that the small rural carriers were left with legacy voice USF and cuts in funding? Why? How will rural providers build 4 Mbps to rural America with no incremental broadband support? Won't areas served by small providers need ongoing support – especially if you are charging carriers with building faster speeds to more people? Aren't you asking them to do a lot more with less?

Answer. In establishing the Connect America Fund (CAF), our goals for consumers in areas served by price cap or rate of return carriers were the same – (1) extend broadband to areas where it is currently not available while (2) ensuring that those with access to voice and broadband service continue to have access to such offerings and (3) do this in a fiscally responsible way to minimize the universal service contribution burden. Many parties advocated for the elimination of legacy programs supporting small rate-of-return carriers, suggesting that these carriers move to a system using a forward-looking cost model similar to the existing system for price cap carriers, or that support be awarded exclusively through a competitive bidding system on a going-forward basis. However, the Commission recognized the unique circumstances facing many rate-of-return carriers and instead elected to adopt more gradual changes for these companies, compared to price cap companies.

For the first time, and acting unanimously, the Commission adopted a budget for the high-cost portion of the USF, setting aside approximately \$2 billion in annual support for rate-of-return carriers. Based on the record, the Commission concluded that this funding would enable continued expansion of broadband by rate-of-return carriers.

Question. Not only were the rural providers left with legacy voice USF but I understand that the order capped and cut portions of that cost support. Would the caps the FCC has already adopted

apply to investment made under the old rules? Doesn't that deter investment if carriers perceive that the FCC can change the rules midstream? Did the FCC evaluate whether that will put existing federal or private loans at risk of default, and how much in loans are at risk?

Answer. Among other reforms, the Order took steps to improve the high-cost loop support (HCLS) mechanism, one of the principal sources of USF funding for rate-of-return carriers. HCLS has been capped for nearly 20 years, and that cap constrained reimbursement for carriers' preexisting investments, not just new investments. Under the previous HCLS rules, carriers that took measures to reduce costs to operate more efficiently lost support to their peers that increased costs. At the same time, some carriers with high costs had up to 100 percent of their expenditures on loop costs reimbursed through USF, giving carriers incentives to increase costs with little regard to efficiency or the burden on the Fund, and without regard to whether a lesser amount would be sufficient to provide supported services to their customers.

As part of its reforms, the Commission adopted a benchmarking rule intended to moderate the expenses of those rate-of-return carriers with very high costs compared to their similarly situated peers, while freeing up funds that can be used by other rate-of-return carriers to advance broadband deployment. The benchmarking rule keeps the total size of HCLS roughly the same while addressing the problematic incentives of the previous HCLS rules by placing reasonable limits on carriers' costs eligible for reimbursement. Under the revised mechanism, approximately 500 rate-of-return carriers will receive additional support to use for broadband deployment, while requiring approximately 100 carriers to adjust their support levels based on having costs that exceed their similarly-situated peers.

The Commission understands the concerns of some rural carriers regarding sufficiency of funding under the reformed rules to cover investments they have made. The Commission has held numerous meetings and continues to engage with rural trade associations, individual carriers, and lenders to these companies, including the Rural Utilities Service (RUS). In the Wireline Competition Bureau's recent Order implementing the benchmarks framework, it made a number of adjustments to address these concerns, including concerns about past investment and outstanding debt.

Question. The FCC also issued a Further Notice of rulemaking that proposes yet more cuts to USF support for smaller carriers. With all the drastic changes made in last year's reform order, do not you think it's time to back off the Further Notice and let the industry, lenders, investors and consumers adjust to the reforms?

Answer. The Further Notice seeks targeted comment on certain issues necessary to implement rule changes adopted in the Order, such as the rule to eliminate support where there is 100% overlap with an unsubsidized competitor as well as a long-term support mechanism for rate-of-return areas proposed by the national rural carrier associations.

We have received a significant number of comments in response to the Further Notice and have had numerous meetings with rural carriers and their trade associations since the release of the Order and Further Notice. Commission staff is currently reviewing that input.

FCC BUDGET

Question. The FY2013 budget request notes that the Commission sometimes collects fees in excess of the amount allowed by the annual appropriation. If I read the reference correctly, the Commission collected \$6.2m more than allowed by our bill in FY2011 and that the cumulative amount collected above the level mandated in our annual legislation currently stands at \$66 million. I understand that collecting such fees is probably both an art and a science; however, given the current balance, should the Committee consider reducing the Commission's FY2013 fee level by that \$66 million and provide for a one time use of those excess funds?

Answer. The funds have been accumulating for more than ten years. The allocation and use of these funds are within the purview of Congress. The Commission does not control the distribution of these funds or their use.

Question. The FY2013 budget request includes a 21% increase in "compensation" for the offices of the Chairman and Commissioners and a 35% increase in "compensation" for the Office Strategic Planning, but in both cases no proposed increase in the number of FTE's. For what would those funds be used?

Answer. The increased amount mentioned above for the Chairman and Commissioners' offices is an increase only because the FY 2012 enacted number does not reflect four fully staffed Commissioner's offices and the FY 2013 request number does. The increase is not a true increase of their budget but instead reflects what is usually provided to those offices.

At this stage, there is no plan to increase the FTE numbers for OSP.

Question. There are now multiple executive branch agencies addressing our nation's cybersecurity issues, including DHS and DoD. I want to make sure the Commission does not see this as a "growth industry," intending to compete with other existing cyber security actors for funding and staff. Commissioner, to your credit, I understand the Commission has an ongoing initiative with industry based on the voluntary adoption of cybersecurity best practices. But what exactly is the end point of that initiative? How much of the Commission's current and proposed budget is devoted to cybersecurity and do you ultimately intend to request authority to regulate in that space?

Answer. The FCC is the nation's expert agency on communications networks, and the security and reliability of communications networks is central to the agency's mission. The Commission is focused on practical steps involving commercial communications service providers to help minimize cyber security threats. Cyber criminals can wreak significant financial harm on businesses and consumers. For instance, almost three-fourths of small and medium businesses report being affected by cyber attacks. A report by Gartner found 3.6 million Americans get redirected to bogus websites in a single year, costing them \$3.2 million. An estimated 8.4 million credit card numbers are obtained fraudulently online every year. Taking steps to address major vulnerabilities will contribute to economic growth, encourage the wider adoption of broadband, and protect the enormous opportunities created by the Internet.

The Communications Security, Reliability, and Interoperability Council (CSRIC) is a federal advisory committee established at the direction of the Chairman of the FCC to provide recommendations regarding the security, reliability and interoperability of the Nation's communications system. CSRIC and its predecessor FCC Advisory Committees have been involved in cybersecurity issues for over a decade. In March 2011, I initiated the current CSRIC, which is composed of over 50 communications sector leaders from the private sector, public safety, consumer organizations and Tribal, local, state and federal governments. They were tasked with developing recommendations for Internet Service Providers (ISPs) to mitigate three major cyber threats: botnets, attacks on the Domain Name System (DNS), and Internet route hijacking. On March 22, 2012 CSRIC produced a report with proposals in each of these three areas.

First, to reduce the threat of botnets in residential networks, CSRIC recommended that ISPs participate in a voluntary U.S. Anti-Bot Code of Conduct for Internet Service Providers (ABC). Under this recommended code of conduct, ISPs would agree to educate consumers about the botnet threat, take steps to detect botnet activity on their networks, make consumers aware of botnet infections on their computers, offer assistance to consumers whose computers are infected and collaborate with other service providers that have also adopted the ABC.

Second, CSRIC recommended that ISPs implement best practices to better secure the DNS. Specifically, under CSRIC recommendation, ISPs should ensure that their networks are DNSSEC-AWARE. A significant first step toward full DNSSEC implementation, this voluntary action by ISPs will allow, for example, browsers and operating systems in user devices to validate that consumers are not being redirected to fraudulent websites.

Third, CSRIC recommended an industry framework for the deliberate adoption of secure routing procedures and protocols.

The companies that to date have agreed to abide by CSRIC recommendations serve [86] percent of all U.S. broadband consumers.

The FCC also has worked with the Small Business Administration and others to develop and release a Cyber-security Tip Sheet for small businesses. Also, with its partners, the FCC released the Small Biz Cyber Planner, an easy-to-use online tool to help small businesses create their own customized cyber-security plan.

CSRIC's efforts are aimed at voluntary and industry-based initiatives and leverage the FCC's expertise and long-held relationships with communications providers. FCC staff works in close coordination with our Federal partners at DHS, who occupy a seat on the CSRIC and have made significant contributions to the CSRIC's work. I believe that the work of the two agencies is complementary and not duplicative.

A small percentage of the Commission's budget funds operations related to cyber-security in the Public Safety-Homeland Security Bureau.

Question. The Enforcement Bureau's FY2013 budget request includes a \$4.2m increase for "Equipment," but only \$2.5m of that increase appears to be directly attributed, in this case to the purchase of direction finding equipment. For what is the balance of that proposed increase to be used?

Answer. The total request for new initiatives for the bureaus and offices was \$4.5 million. This included the \$2.5 million for Enforcement Bureau's Direction Finding and Wireless Monitoring Equipment; \$1 million for Public Safety & Homeland Security Bureau's Interoperability Assurance and Management; \$500,000 for the Office of Engineering and Technology's Technical Equipment for FCC's Laboratory; and \$500,000 for Media Bureau's Communications Industry Participation and Impact Study (*see* page 12 of the FCC's Budget Request).

Questions for the Record Submitted by Congressman Tom Graves

CONTRACTORS

Question. The FCC is asking for \$500,000 to hire contractors "to gather data and study" the communications industry as part of a "Communications Industry Participation and Impact Study." Why do you need to hire consultants to study the communications industry? Why can't some of the FCC's existing 1,776 employees do this study?

Answer. The study will gather data and information to fulfill three statutory obligations: Section 257 of the Communications Act; Section 202 of the Telecommunications Act of 1996, which requires a quadrennial review of our broadcast ownership rules; and Section 634 of the Communications Act. The Third Circuit also directed the Commission to conduct up-to-date studies when the FCC performs its statutorily-required quadrennial review of its broadcast ownership rules. *See Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011).

Studies that analyze how communications markets and owners are affected by Commission rules and other factors are generally prepared by social scientists in the fields of communications, economics and political science. The FCC's limited full time social science staff is occupied with existing projects, leaving insufficient time to undertake the additional work of preparing this statutorily required study.

Contractors provide specific expertise, on a limited term basis, that may not be available from the Commission's permanent staff. Commission staff, however, has collected and organized the ownership information of broadcast television and radio stations that is intended to form the foundation of the data needed to develop the communications industry participation and impact study. Moreover, past Chairmen have utilized these contracting resources to conduct studies of this nature.

Question. The FCC is requesting to spend approximately \$100 million on various contracts in FY 2013. The FCC has stated that the FCC had more than 900 contractors working for it in 2009 and again in 2010. What are all these contractors doing for the FCC? What are the FCC's contracts and how many contractors are employed under each contract?

Answer. Please see the list below the answer to the next question, which includes contracts, number of contractors and a description of the services provided by the contractor.

Question. How many contractors will be working for the FCC under your FY 2013 budget, and what will they be doing? Can you provide the number of contractors working on each contract and explain their job functions?

Answer. Because Congress recently directed the Commission to initiate a complex incentive auctions program involving a broad range of tasks and related activities, it is not yet possible to determine the exact number of contractors that will be required in FY13. Currently, the FCC maintains a contractor force that is one third smaller than it was in 2009. Below is a basic break-out of the contracts and personnel numbers:

Contract Vendors	Number of Contractors	Descriptions
AAC, Inc./ Serco	89	Provides Support for Auction Systems Including System Integration Efforts
All Shred/ E-end	9	Document Destruction Services
Ambit Group	32	Provides Database Infrastructure Support, Information Technology Analysis, Web Services, and 3rd Party Software Support
Answer Staffing	1	Special Assistance for Handicapped Employees
Base Technologies	2	Analysts for OIG
Bobby Dodd Industries (BDI)	2	Facilities Maintenance and Janitorial Services for Hiram GA Facility
BIA Financial (Off-Site)	3	Financial Services
Booz Allen Hamilton	1	Provides Engineering Support Services
Carlson Wagonlit	2	Travel Services
CGI-Federal	26	Provides Core Financial System Replacement
Clifton Gunderson	9	Auditing Services OIG
Computech	90	Provides Support Service for Information Systems and Websites
Computech	7	Provides Support Service for Financial Systems and Databases
Connectioneers, Inc.	2	Telecommunications Service
DIGITALBiz	9	Information Technology and Data Entry Support Services
Ernst & Young (E&Y)	10	Provides Support Service for Financial Systems and Databases
Federal Working Group	30	FCC Customer Service and Auction Support Services
FPMI Solutions	4	Human Resources Support Services
GRA, Inc.	2	Expert Consulting for Basic Negotiation Agreement
Information Network Assoc	6	Provides Security Guard Service

Infused Solutions	84	Provides Maintenance Services
KPMG	20	Provides Audit Support Services
Metro Star Systems	9	FCC.gov Website Re-design
Michael Baker Jr., Inc.	11	Auto News, Data and Other Services
Navigant	4	Audit Investigations OIG DOJ
Octo Consulting	6	Provides Acquisition Support
Omniplex	38	Provides Uniform Security Guard Service for FCC's Headquarters
Open Systems Sciences	11	Provides IT Security Management Support
RF Analytics	1	Systems Engineering
Scientific Research Corp (SRC)	1	Technical Shop and Laboratory Fabrication and Assembly
Soneticom (DRS)	1	Provides Software Development
Technatomy/ Arya IT	4	Provides Program Management Activity
van Doorn, Arlan	1	Expert Consulting for Executives
Vistronix (Library)	4	Provides Library Database Support Services
VMD Systems	19	Provides Financial Support Services
Xerox Business Services	1	Copy Machines Lease and Maintenance

Total # of contractors*: **551**

*82 contractors—13% of the total—are part time contractors.

Question. What is the salary range for the FCC's contract workforce (i.e., highest salary, lowest salary, and average salary)?

Answer. The average salary range for the FCC contract work force is based on contract labor rates. Contract labor rates do not necessarily reflect the salaries being paid to the individual contractors and the FCC does not have visibility into all of the costs going into the labor rates. The hourly FCC contract labor rates begin at \$24.73 per hour and extend to a high of \$294.50, with an average labor rate for all contractors of \$87.10 per hour.

Question. What will the FCC do to reduce the number and cost of its contractors?

Answer. The FCC already significantly reduced the number of contractors from FY09 through the end of FY11, from a high of 959 to a current level of 551, of which 82 or 13% are part time contractors. This fluctuation is directly related to Congressional mandates for increased activities such as the massive nationwide outreach effort required to help transition Americans

from analog to digital television (the DTV Transition) and to ensure that the Commission met its statutory requirement to produce a National Broadband Plan. During the next fiscal year, the FCC will continue to review all contracts with an eye toward minimizing costs and personnel.

COSTS FOR CONTRACTS

Question. According to www.usaspending.gov, the FCC has increased its use of non-competitive contracts. In FY 2008, the FCC awarded only about \$1.84 million - or approximately 2.5% of the FCC's contracting dollars - through non-competitive contracts; in FY 2011, this amount grew to \$8.1 million and 12.5% of the FCC's contracts. Why has the FCC increased its use of non-competitive contracts?

Answer. For some of the contracts that were not competed, the FCC originally planned to have a successor contract vehicle in place before the expiration date. Unfortunately, the FCC lost key procurement personnel due to unexpected attrition and was unable to staff up or train existing staff soon enough to ensure additional solicitation activities. This situation has been remedied and the Commission will move ahead to ensure that personnel are trained and proficient in the procurement process, in order to expand competitive bidding practices.

The FCC in the last two years re-competed multiple large contracts and the results thus far have resulted in significant cost savings. Examples of contracts with cost savings are listed below:

- Consolidation of IT maintenance – total savings \$4,500,000. Re-competed two large IT contracts and combined them into one contract. The new contract was implemented FY-2011
- Implemented a new financial system – total savings of \$866,000. The re-competed contract resulted in fewer financial systems to maintain and a reduction in contractor support. The contract was a firm fixed price contract.
- Facilities services contract – total savings of \$1 million in annual cost savings. This contract was re-competed in FY-2011.
- Standardized move to Microsoft – total savings in three years is \$500,000 to \$750,000. This was achieved through the purchase of Enterprise license, allowing the FCC obtained a cheaper price for the components the agency needs instead of purchasing separate pieces.

Question. For all contractors that the FCC has awarded more than \$1 million on a non-competitive basis, please provide an explanation for choosing not to use fully competitive procurement procedures?

Answer. As explained in the answer to your previous question, the FCC lost key procurement personnel due to unexpected attrition and was unable to staff up or train existing staff soon enough to ensure additional solicitation activities. This situation has been remedied and the

Commission will move ahead to ensure that personnel are trained and proficient in the procurement process, in order to expand competitive bidding practices.

The FCC originally planned to have a successor contract vehicle in place before the expiration of the Computech contract but the lack of procurement staff at that juncture interfered in this process.

The 8(a) Program is authorized by statute and provides participating small businesses with training, technical assistance, and contracting opportunities in the form of set-asides and sole-source awards. WMATA is the only source for the SmartBenefits travel program.

A list of the non-competitive contracts over \$1 million is below:

FCC FY 2011 Awarded Contracts - Not Competed

Vendor Name	Contracting Officer's Business Size Determination	Base and All Options Value	Reason for Not Competeting
COMPUTECH INC	SMALL BUSINESS	\$1,265,273.20	BRIDGE essential to continuity of operations
COMPUTECH INC	SMALL BUSINESS	\$1,299,761.81	BRIDGE essential to continuity of operations
COMPUTECH INC	SMALL BUSINESS	\$2,321,768.94	BRIDGE essential to continuity of operations
TECHNATOMY CORPORATION	SMALL BUSINESS	\$3,141,359.31	8(A) Set Aside - Authorized by Statute
VMD SYSTEMS INTEGRATORS, INC.	SMALL BUSINESS	\$3,557,105.66	8(A) Set Aside - Authorized by Statute
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY	OTHER THAN SMALL BUSINESS	\$7,500,000.00	ONLY ONE SOURCE

Question. Why can't the FCC help reduce its operating costs by getting vendors to compete on price and quality for the FCC's business?

Answer. The Commission utilizes competitive bidding whenever feasible, and has already reduced costs in its contracting process as outlined above.

Question. According to www.usapsending.gov, the FCC made non-competitive awards of approximately \$3.99 million to re-design its web site. Why did the FCC believe non-competitive awards were appropriate in this instance?

Answer. The FCC had planned to redesign its outdated website to significantly improve accessibility, transparency, security, reliability, and ease of use. The previous FCC website was inadequate on all these fronts. Unfortunately, at the time the Commission initiated this project,

the FCC lost key procurement personnel due to unexpected attrition and was unable to staff up or train existing staff soon enough to ensure proper solicitation activities. This situation has been remedied and the Commission will move ahead to ensure that personnel are trained and proficient in the procurement process, in order to expand competitive bidding practices going forward.

Question. The FCC used to disclose publicly the level of competition in its contracts. Why did the FCC stop disclosing this information?

Answer: The decision to discontinue this information in the FCC's performance plan was implemented before I became Chairman and I am unaware of the reason for doing so. This information will be published in future reports and available online going forward.

Question. What steps is the FCC taking to make sure that the Universal Service Administrative Company fully discloses the level of competition in its contracts? What is the level of competition in USAC's contracts?

Answer. In order to facilitate the efficient management and oversight of the USF program, the FCC entered into a Memorandum of Understanding (MOU) (available at <http://www.fcc.gov/encyclopedia/universal-service-fund-telecommunications-relay-services-and-numbering-administration-a>) in 2008. Pursuant to the MOU, USAC contracting actions must be consistent with certain Federal Acquisition Regulation ("FAR") requirements including the requirements for full and open competition, permissible business practices, and audit requirements.

In addition, under the MOU, USAC is required to submit to the Commission for its review and advance approval any proposed USF Administrator solicitations and contract award decisions for (1) all sole source and limited competition (*i.e.*, other than full and open competition) contracting actions above \$25,000 and (2) all competitive, including the exercise of contract option years, contracting actions in excess of \$250,000. For competitive solicitations involving purchases exceeding \$25,000, the USF Administrator will, at a minimum, advertise its requirements in advance at www.fedbizopps.gov.

USAC posts all open requests for proposals on its procurement webpage at: <http://www.usac.org/about/tools/procurement/default.aspx>. These postings facilitate a high-level of competition and interest for the numerous procurements USAC posts annually. Prior to approval of its procurements, USAC also provides the Commission with recommendations concerning selection of a contractor, which includes detailed information on the level of competition and analysis explaining why USAC has recommended a particular vendor.

USAC provides information on contracts awarded with payments greater than \$1 million in its Annual Report: (<http://www.usac.org/about/tools/publications/annual-reports.aspx>).

Question. Why did the FCC approve a no-bid contract valued at more than \$40 million a year for providing USAC with application review and other support services? Did the FCC perform any review or analysis to ensure that USAC's vendor has no conflicts-of-interest? Can the FCC verify that no party who owns or controls USAC's vendor has any financial interest in the

Universal Service Fund? What will the FCC do to ensure that consumers can reap the benefits of competition for these services procured by USAC in the future?

Answer. Following completion of a competitive procurement, on July 1, 2002, USAC entered into a contract with the National Exchange Carrier Association (NECA) for provision of operational support services (OSS) for the E-rate program. USAC entered into this contract consistent with the requirements of the *First Universal Service Order*, which required USAC to engage a contractor to operate the application process for the E-rate program.

After a full and open competitive process, USAC entered into an additional contract with NECA for Rural Health Care Program operations support. In 2001, NECA created a subsidiary, NECA Services, Inc., to perform this contract and seek business opportunities from federal, state and local and commercial entities.

In 2005, NECA Services, Inc. legally separated from NECA and changed its name to Solix, Inc (Solix). Since that time, there has been no affiliate relationship between Solix and NECA. As of December 2011, Solix had 166 shareholders of which the 10 largest held a combined total of 43 percent of the equity. No single shareholder may own more than 7.5 percent of Solix. USAC's agreement with Solix has been extended while the Commission works closely with USAC to conduct a full and open re-competition of the OSS contract in accordance with FCC instructions, the Memorandum of Understanding, and Federal Acquisition Regulations. In particular, in March 2012 the FCC approved, subject to cost savings, a request to extend USAC's existing agreement with Solix, Inc. for two additional years or until the re-competition is completed.

The Commission has also worked closely with USAC to identify any conflict of interest scenarios with the OSS contract. No program beneficiaries (e.g., school and libraries) have a financial interest in Solix, but a small amount of service providers with a minority ownership interest in Solix participate in the E-rate and Rural Health Care programs. FCC and USAC are currently developing controls to protect against conflicts of interest with these service providers.

Question. Is the FCC meeting its contracting goals for small business, veterans-owned businesses, women-owned businesses, and minority-owned businesses? How did the FCC perform at meeting these contracting goals in FY 2009, FY 2010, and FY 2011?

Answer. The FCC met or exceeded its goals in all categories with the exception of HubZone in FY2010 and FY2011. The decline in HubZone dollars in 2010 was due primarily to de-obligation of DTV funds. The data is below.

	Statutory Goals	FY2009 Dollars	FY2009 (%)	FY2010 Dollars	FY2010 (%)	FY2011 Dollars	FY2011 (%)
Total Small Business Eligible Dollars		\$152,700,507.18		\$121,242,800.58		\$71,341,900.42	
Small Businesses	23%	\$54,633,795.69	35.7784%	\$41,912,280.6	34.5689%	\$38,809,213.57	54.3989%
Small Disadvantaged Businesses	5%	\$19,089,041.09	12.5010%	\$9,184,445.2	7.5752%	\$13,750,407.74	19.2740%
Women-owned Small	5%	\$14,997,991.57	9.8218%	\$12,594,387.13	10.3877%	\$9,179,009.38	12.8662%

Businesses							
HubZone	3%	\$8,695,117.43	5.6942%	-\$320,698.48	-0.2695%	\$52,493.73	0.0736%
Businesses							
Service-	3%	\$13,832,408.79	9.0585%	\$5,032,468.81	4.1507%	\$5,396,272.81	7.5640%
Disabled							
Veteran-							
Owned Small							
Businesses							

REDUCING REGULATION

Question. You state in your budget that a top priority is to "conduct a review of rules and regulations within each FCC bureau and office with the goal of eliminating or revising requirements that are outdated." In the FCC's FY 2013 budget, the FCC indicates that it will add approximately 140 new FTEs. See FCC FY 2013 Budget Request at 6. How many of the 140 new employees will be working on this priority in FY 2013?

Answer. Please see note 2, page 6 of the FCC's FY13 Budget Request. The FCC has been consistent in requesting funding for a static level of 1,776 employees, except with regard to the OIG where noted. The FCC's Full Time Equivalent (FTE) ceiling is 1,917, but the FCC has not requested funds for this level of FTEs. This language has not changed year to year in the FCC's budget justifications. Since the submission of the FCC's FY13 Budget Request, Congress has mandated that the FCC organize and conduct a complex and novel incentive auction process. Accordingly, in a letter dated April 20, 2012, the FCC's Managing Director requested reprogramming authority to hire 19 FTEs above the 1,776 level from de-obligated auctions funds.

Because the goal of removing outdated regulations generally informs the staff's work across bureaus, it is difficult to identify a subset of employees working on this priority. Please see additional details in the answer below.

Question. How many of the current 1,776 employees are currently working on this priority of removing outdated regulations?

Answer. Removing outdated regulations is a top priority across the agency, guiding the work of Commission staff throughout all bureaus and offices, including in rulemakings and routine Commission activities. Because the goal of removing outdated regulations generally informs the staff's work across bureaus, it is difficult to identify a subset of employees working on this priority. I am including below a list of rules eliminated during my tenure in order to provide a clear picture of the varied nature of this workload, which is also available in an appendix to The Federal Communications Commission public report dated November 7, 2011, "Preliminary Plan for Retrospective Analysis of Existing Rules." The report is available on the FCC's website at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-310874A1.pdf.

Here is a list of the eliminated rules with a brief description of each:

Eliminated rules for International Fixed Public Radio Communication Services.
Part 23

Eliminated restrictions on mobile repeater stations for the business radio frequency users.
90.247(b), 90.247(c), 90.267(e)(3)

Eliminated restrictions on WCS service.
27.53(a)(6), 27.53 (a)(9)

Removed rules in order to simplify and streamline the E-rate program.
54.506, 54.517, 54.522

Revised the Amateur Radio Service rules to clarify the rules with respect to amateur service vanity call signs, eliminating licensee confusion.
0.191(o), 0.392(g)

Eliminated restrictions on Amateur Radio Service: Eliminated the automatic power control provision in order to reduce implementation costs, and encourage amateur stations to experiment with spread spectrum communications technologies.
97.311 (d), 97.5(b)(4)

Eliminated outdated and unnecessary reporting requirements related to international telecommunications traffic.
43.53, 43.61 (b), 43.61 (c), 63.23 (e)

Rule revisions enabling all tariff filers to file tariffs electronically over the Internet.
61.21, 61.22, 61.23, 61.32, 61.33, 61.151, 61.152, 61.153, 61.52(a)

Eliminated Fairness Doctrine, Personal Attack & Political Editorial Rules.
73.1910, 76.209, 76.1612, 76.1613

Eliminated Broadcast Flag.
73.8000, 73.9000-9009

Eliminated Cable Programming Service Tier Complaints.
76.950-951, 76.953-957, 76.960-961, 76.1402, 76.1605-1606

Eliminated Part 1, Subpart D Broadcast Applications & Proceedings (duplicative of rules in Part 73).
1.502-615

Eliminated rules requiring Commission to review the Interstate Cost Recovery Plan (the TRS Fund) and the TRS Fund administrator's performance after two years (i.e., in 1995). Removed note that certain provisions of the rule are not effective until OMB approval. OMB approval received August 2000.
64.604(c)(5)(iii)(J), 64.2401

Eliminated rule describing the Commission's former "protest" process, which does not apply to applications filed on or after December 12, 1960.

1.120

Eliminated rules pertaining to comparative hearings for broadcast license renewal applications. The enactment of section 309(k) of the Communications Act eliminated comparative broadcast hearings for license renewal applicants.

1.227 (b)(6), 1.229(b)(2)

Eliminated rules pertaining to comparative hearings involving applicants for new commercial broadcast facilities and calling for the production of a Standardized Integration Statement and other information pertaining to the Commission's former integration standard and other broadcast comparative hearing criteria. Under §309(j), the Commission no longer has authority to conduct comparative hearings for new commercial broadcast facilities and instead awards licenses for new broadcast service using competitive bidding.

1.325(c)

Eliminated rules requiring common carriers to file reports regarding pensions and benefits, and compliance with a regulation in Part 43 of the rules that the Commission has eliminated.

1.788

Eliminated rules requiring common carriers engaged in public radio service operations to file reports in conformance with Part 23, which the Commission has eliminated.

1.805

Eliminated rules requiring that carriers engaged in domestic public radio services report and file documents in accordance with Part 21, which has been eliminated.

1.811

Eliminated rules that had set forth random selection procedures for Multichannel Multipoint Distribution Service (MMDS). The Commission no longer has authority to use random selection for MMDS or its successor service, Broadband Radio Service.

1.821, 1.822, 1.824

Eliminated duplicative rule (Anti Drug Abuse Certification).

1.2003

Eliminated rules implementing PUHCA 1935, which was repealed and replaced with Public Utility Holding Company Act of 2005.

1.5000, 1.5000, 1.5002, 1.5003, 1.5004, 1.5005, 1.5006, 1.5007

Eliminated provisions regarding complaints filed by television stations alleging that a satellite carrier has retransmitted their signals in violation of Section 325(b)(1) of the Communications Act. No new complaints may be filed after December 31, 2001, and no complaints filed on or before that date are pending.

1.6000, 1.6001, 1.6002, 1.6003, 1.6004, 1.6005, 1.6006, 1.6007, 1.6008, 1.6009, 1.6010, 1.6011, 1.6012

Eliminated backup power requirements for communications providers. This rule never took effect.
12.2

Eliminated rule providing that UHF television translators on Channels 70 to 83 must operate on a secondary basis to land mobile operations in the 800 MHz band and will not be protected from such operations. There are no UHF television translators operating on Channels 70 to 83, and the Commission has eliminated the TV allocation from these channels.
90.621 (d)

Eliminated allocation of specified channels for Basic Exchange Telecommunication Radio Service (BETRS). FCC removed the allocation in 2005.
90.621 (h)

Eliminated rule provisions that provided a framework for the relocation of incumbent site-based licensees in the upper 200 channels of the 800 MHz Band by incoming geographically based (EA) licensees. These provisions were a component of the 1995 reconfiguration of the 800 MHz band from site-based to geographic-based service that has since been completed.
90.699 (a), (b),(c), (e), (f)

Question. Section 11 of the Communications Act of 1934, as amended, requires the FCC to conduct a biennial review of regulations in every even-numbered year. How many FCC employees have been assigned to on the biennial review of regulations required 2012?

Answer. This process is handled through the Office of General Counsel, in coordination with personnel throughout all other offices and bureaus. Given the broad range of employees who contribute to this work, it is difficult to identify a specific number of employees assigned to this task.

Question. What are the FCC's plans for conducting the biennial review required by section 11 this year? What milestones does the FCC have planned and what deliverables will the FCC produce? For example, has the FCC started a proceeding to conduct the 2012 biennial review? If not, when will you circulate an item to your colleagues?

Answer. The Office of General Counsel will initiate work in the third calendar quarter of this year. Given the complexity and cross-bureau coordination involved, completion of the review is not expected before the end of the calendar year.

Question. What are the names of the Commission's 25 largest vendors and how much was paid to them last year?

Answer. The vendors and amounts are listed in the following chart..

	Vendor	Dollar Payments in FY 2011	Description
1	GSA OFFICE OF FINANCE	\$49,508,307.39	Rent - HQ & Field Offices, Phones, & Utilities
2	BUREAU OF THE PUBLIC DEBT	\$48,098,188.01	Credit Reform Subsidy
3	COMPUTECH, INC	\$19,005,807.50	IT Contract Services
4	AAC, INC.	\$15,230,266.08	IT Contract Services
5	AMBIT (Well Fargo Business Credit)	\$5,212,226.77	IT Contract Services
6	DEPARTMENT OF JUSTICE	\$3,760,504.00	Litigation Support
7	NATEK, INC.	\$3,459,884.76	Administrative Services
8	VION CORPORATION	\$3,415,296.44	IT Software
9	CSC INFORMATION SYSTEMS, LLC	\$3,012,530.32	IT Contract Services
10	JP MORGAN CHASE	\$2,622,919.01	Purchase Card Purchases
11	OMNIPLEX WORLD SERVICES CORP	\$2,474,453.04	HQ Guard Services
12	METROSTAR SYSTEMS, INC.	\$2,392,440.70	IT Contract Services
13	CGI FEDERAL, INC	\$2,391,381.24	Financial Systems
	REALTY LEASING & MANAGEMENT		
14	CO	\$2,377,660.64	Rent - Gettysburg Building
15	IRON BOW TECHNOLOGIES	\$1,917,380.18	IT Hardware
16	FEDERAL WORKING GROUP, INC.	\$1,772,497.97	Gettysburg Call Center
17	CSC SYTEMS AND SOLUTIONS LLC	\$1,437,639.03	IT Contract Services
18	SOFTCHOICE CORPORATION	\$1,411,793.66	Software & Software Maint.
19	VMD SYSTEMS INTEGRATORS, INC.	\$1,325,602.82	Financial Operation Services
20	WMATA	\$1,214,370.03	Metro Subsidy
21	GOVERNMENT PRINTING OFFICE	\$1,209,321.40	Printing & Federal Register
22	KMPG, LLP	\$1,159,334.93	Audit Services
23	OPEN SYSTEMS SCIENCES	\$1,143,232.08	IT Contract Services
24	INFUSED SOLUTIONS, LLC	\$1,100,157.94	Administrative Services
25	XEROX CORPORATION	\$1,075,743.82	Leasing Xerox Copiers

FCC STAFFING

Question. The FCC has provided conflicting information about the number of employees the FCC will have in FY 2013. In several places, the FCC indicates that it expects to maintain 1,917 employees, and so the FCC requests \$245.9 million to fund this staffing level. In another place, the FCC indicates that it expects to maintain only 1,776 employees. What is the FCC's requested staffing level in FY 2013?

Answer. Please see note 2, page 6 of the FCC's FY13 Budget Request. The FCC has been consistent in requesting funding for a static level of 1,776 employees, except with regard to the

OIG where noted. The FCC's Full Time Equivalent (FTE) ceiling is 1,917, but the FCC has not requested funds for this number of FTEs. This language has not changed year to year in the FCC's budget justifications. Since the submission of the FCC's FY13 Budget Request, Congress has mandated that the FCC organize and conduct a complex and novel incentive auction process. Accordingly, in a letter dated April 20, 2012, the FCC's Managing Director requested reprogramming authority to hire 19 FTEs above the 1,776 level from de-obligated auctions funds.

Question. In its FY 2013 request, the FCC proposes to spend \$245.9 million, and as you explained at the hearing, that amount would fund 1776 FTEs. But in prior years, the FCC has spent far less to maintain that number of FTEs. In FY 2008, the FCC spent approximately \$210 million for 1,775 FTEs, and in FY 2011, the FCC spent approximately \$232 million. Why can't the FCC's personnel expenses for FY 2013 be held to a \$240.7 million, which would be a 2% increase over the FY 2011 level of \$236 million? What explains the increased spending on compensation and benefits?

Answer. The FCC, like all federal agencies, adheres to the federal pay scale and personnel rules. The FCC currently has its lowest FTE level in a decade. FTE numbers peaked in 2003 at 2,015. The current level is 1,776. Lowering expected personnel costs would result in fewer employees and reduced levels of service to the public. In addition, the Middle Class Tax Relief and Job Creation Act of 2012 places additional human resource demands on the Commission, and any reductions at this juncture would have serious, adverse consequences to congressionally mandated tasks and undermine specialized work geared toward deficit reduction.

Additional costs associated with these employees are based on personnel trends and agency workforce development. The Commission has a highly professional staff with average retention rates 6-8 years greater than other federal agencies. Attrition and controlled hiring has resulted in fewer employees overall but a larger percentage at the upper end of the professional scale, as well as more experienced, technically knowledgeable administrative staff accumulating higher grade and step levels. The FCC also tends to hire staff with technological or telecommunications experience at higher grade levels in order to carry out its complex statutory missions.

Question. The FCC's FY 2013 Budget Request indicates that, at a staffing level of 1,917 FTEs and compensation and benefits budget of \$244.8 million in FY 2012, the FCC's per-FTE cost is approximately \$127,000 per FTE. See FCC FY 2013 Budget Request at pg. 6, pg. 71. Based on this estimate, if the FCC maintains a smaller staff of only 1776 FTEs, then the FCC's per-FTE estimate would yield a savings to taxpayers of almost \$18 million for the current fiscal year?

Answer. Please see note 2, page 6 of the FCC's FY13 Budget Request. The FCC has been consistent in requesting funding for a static level of 1,776 employees, except with regard to the OIG where noted. The FCC's Full Time Equivalent (FTE) ceiling is 1,917, but the FCC has not requested funds for this number of FTEs. This language has not changed year to year in the FCC's budget justifications. Since the submission of the FCC's FY13 Budget Request, Congress has mandated that the FCC organize and conduct a complex and novel incentive auction process. Accordingly, in a letter dated April 20, 2012, the FCC's Managing Director requested

reprogramming authority to hire 19 FTEs above the 1,776 level from de-obligated auctions funds.

Question. Is the FCC's FY 2013 Budget Request submitted to Congress accurate, or have these cost estimates changed? If these cost estimates are correct, what does the FCC plan to do with these extra funds arising from maintaining a lower staffing level? If these cost estimates are incorrect, what is the accurate information and what is the FCC going to do to ensure that Congress has accurate information needed to assess the FCC's spending?

Answer. Please see note 2, page 6 of the FCC's FY13 Budget Request. The FCC did not request funding for 1,917 FTEs. Since the submission of the FCC's FY13 Budget Request, Congress has mandated that the FCC organize and conduct a complex and novel incentive auction process. Accordingly, in a letter dated April 20, 2012, the FCC's Managing Director requested reprogramming authority to hire 19 FTEs above the 1,776 level from de-obligated auctions funds.

Question. According to data from www.fedscope.opm.gov<<http://www.fedscope.opm.gov>>, approximately 30% of FCC employees are paid \$150,000 or more. This represents a large increase over the number of FCC employees paid at that level in 2008, when less than 3% of the FCC earned at that level. How many employees has the FCC hired at this salary level since 2008?

Answer. As I noted during the hearing, this change is explained by the government pay scale. Pay-scales for FY08 and FY09 confirm this anomaly. In FY08 the maximum pay for a GS-15/10 was \$149,000. In FY09, the maximum pay for GS-15/both step 9/10, was approximately \$153,000 (step 9-\$153,053; step 10-\$153,200).

The FCC hired 41 employees in FY 2009; 23 employees in FY 2010; and 27 in FY 2011 that earned a salary of \$150,000 or more.

Question. If the FCC does not expect to maintain 1,917 FTEs as requested in FY 2012, how will the FCC handle spending less than the enacted amount on personnel compensation and benefits? Will the FCC seek a reprogramming request?

Answer. Please see note 2, page 6 of the FCC's FY13 Budget Request. The FCC has been consistent in requesting funding for a static level of 1,776 employees, except with regard to the OIG where noted. The FCC's Full Time Equivalent (FTE) ceiling is 1,917, but the FCC has not requested funds for this number of FTEs. This language has not changed year to year in the FCC's budget justifications. Since the submission of the FCC's FY13 Budget Request, Congress has mandated that the FCC organize and conduct a complex and novel incentive auction process. Accordingly, in a letter dated April 20, 2012, the FCC's Managing Director requested reprogramming authority to hire 19 FTEs above the 1,776 level from de-obligated auctions funds.

Question. Did any of the money used in the FCC's FY 2010 and FY 2012 reprogramming requests come from FCC compensation and benefits accounts? If so, how much salary expense money did the FCC de-obligate and then spend on other projects?

Answer. No funds used in reprogramming requests were derived from FCC compensation and benefits accounts.

Question. The FCC is proposing to add 11 FTEs to the 124 FTEs currently working in the FCC's International Bureau. See FCC FY 2013 Budget Request at 6. But the FCC indicates that most FTEs working in the International Bureau are not working to support the FCC's International Strategic Goal - only 37 FTEs in FY 2012 and that only 41 will do so in FY 2013. See FCC FY 2013 Budget Request at 7-8. Why does the FCC need these additional 11 employees in the International Bureau when the FCC indicates that so few are actually working on the FCC's International strategic goal? Why does the FCC need to assign 124 FTEs to the International Bureau when the FCC indicates that so few apparently work on international issues?

Answer. The permissible number of FTEs for each bureau is not equivalent to actual FTEs funded and on staff. (Please see note 2, page 6 of the FCC's FY13 Budget Request). The FCC's budget submission does not request additional FTEs to reach the ceiling levels cited in your question. FTE levels may fluctuate throughout the fiscal year only within the appropriation level. The current number of FTEs in the Bureau as of submission of these Questions for the Record is 120.

International Bureau employees support a broad range of activities, including international negotiations, satellite licensing and complex spectrum issues that cut across multiple bureaus. This year, the International Bureau will be tasked with a complicated series of negotiations with Canada and Mexico related to spectrum repacking called for in the incentive auctions process under the Middle Class Tax Relief and Job Creation Act of 2012.

Question. The FCC's FY 2013 Budget Request seeks to add another 23 employees to the FCC's Enforcement Bureau. In FY 2008, it looks like the FCC accomplished quite a lot with fewer employees - for example, the FCC issued over a 1,200 citations for violations of the junk fax, Do-Not-Call, and pre-recorded messages rules alone. But this past year, your Annual Performance Report indicates that the FCC issued only 19 citations for junk fax, Do-Not-Call, and pre-recorded messages. Why can't the FCC do what it was doing back in 2008 to enforce its rules?

Answer. The permissible number of FTEs for each bureau is not equivalent to actual FTEs funded and on staff. (Please see note 2, page 6 of the FCC's FY13 Budget Request). The FCC's budget submission does not request additional FTEs to reach the ceiling levels cited in your question. FTE levels may fluctuate throughout the fiscal year only within the appropriation level. The Enforcement Bureau had almost 25 fewer employees at the end of FY 2011 (278) than it did at the end of FY 2008 (302) – an 8% reduction in staff, consistent with the current ten-year low of FTEs agency-wide. The current number of FTEs in the Bureau as of submission of these Questions for the Record is even lower, at 269

Despite this staff reduction, in both FY 2008 and FY 2011, Enforcement Bureau investigations led to notices of apparent liability (NALs) or settlements totaling more than \$60 million, but in FY 2011 Bureau investigations led to over 100 more actions than in FY 2008. A

substantial portion of the penalties in the FY 2011 enforcement actions (or voluntary contributions in the case of settlements) came from the Bureau's consumer protection efforts in new areas: cramming, unauthorized data charges and deceptive marketing of prepaid calling cards.

The Enforcement Bureau also substantially increased its efficiency and cost-effectiveness since 2008. For instance, the Bureau consolidated the investigation of similar cases against the same or related entities, reducing the overall numbers of NALs. Instead of issuing multiple smaller judgments against the same party, the Bureau now issues a single large judgment. In FY 2011, the Commission focused enforcement of the Telephone Consumer Protection Act (including do-not-call, junk fax, and robocall standards) on targets with more numerous violations and increased the penalties against these repeat offenders.

Bureau staff engages in numerous activities in addition to investigations. Some of the Bureau's lawyers serve as confidential mediators of disputes between carriers. Other Bureau staff – highly specialized engineers – build equipment that track signals nationwide to serve the Commission's core mission of spectrum management and interference resolution. Bureau staff routinely tracks a broad range of illegal spectrum uses and coordinate and assist national security and police agencies in their law enforcement and public safety activities.

Question. Will these new employees help deliver faster turn-around times on investigations and complaints? If so, what does the FCC expect will be the improvement? And will the FCC commit to providing detailed information that Congress and the public can use to evaluate whether the FCC met its commitments?

Answer. As explained previously, the FCC's budget submission does not request additional FTEs to reach the ceiling levels cited in your previous question. The permissible number of FTEs is not equivalent to actual FTEs funded and on staff. (Please see note 2, page 6 of the FCC's FY13 Budget Request). FTE levels may fluctuate throughout the fiscal year only within the appropriation level.

Question. The FCC indicates that a top priority for promoting competition in FY 2013 is to "Review all carrier tariff filings for compliance with Commission rules and statutory requirements." This broad goal to review "all carrier tariff filings" does not seem to appear in the FY 2012 budget request. Does this signal a change in priorities?

Answer. The Commission is charged by Congress with carrying out all provisions of the Communications Act. Tariff review is a specific and longstanding mission of the FCC under Title II of the Act. The FCC's budget does not enumerate each specific Commission activity mandated by the Communications Act.

Question. In FY 2012, the FCC listed as a top goal "Review all disputed carrier tariff filings for compliance with Commission rules and statutory requirements." How many disputed tariff filings have you seen since you've been Chairman?

Answer. The Commission had approximately 35 disputed carrier tariff filings during this period.

Question. Do you plan on expanding the FCC's use of tariffs? Is this why you're seeking to add another 13 employees to the staff in the Wireline Competition Bureau?

Answer. No, we are not planning to expand the use of tariffs.

Question. Please detail the average salary paid to employees in the following areas:

- A. Office of the Chairman and Commissioners
- B. Consumer and Governmental Affairs Bureau
- C. Enforcement Bureau
- D. International Bureau
- E. Media Bureau
- F. Public Safety and Homeland Security Bureau
- G. Wireless Telecommunications Bureau
- H. Wireline Competition Bureau
- I. Engineering and Technology
- J. General Counsel
- K. Legislative Affairs
- L. Managing Director
- M. Media Relations
- N. Office of Strategic Plans and Policy

Answer. It is important to note that average numbers do not indicate the type of work or duties performed in any bureau. Average salaries for each bureau and office as of January 14, 2012, are as follows:

- O. Office of the Chairman and Commissioners - \$119,923
- P. Consumer and Governmental Affairs Bureau - \$104,122
- Q. Enforcement Bureau - \$114,911
- R. International Bureau - \$131,559

- S. Media Bureau - \$124,157
- T. Public Safety and Homeland Security Bureau - \$119,496
- U. Wireless Telecommunications Bureau - \$125,632
- V. Wireline Competition Bureau - \$131,838
- W. Engineering and Technology - \$124,836
- X. General Counsel - \$141,861
- Y. Legislative Affairs - \$118,507
- Z. Managing Director - \$114,704
- AA. Media Relations - \$104,916
- BB. Office of Strategic Plans and Policy - \$133,884

Question. How many of the Commission's FTEs earn more than \$100,000 a year? How many earn \$125,000 or more?

Answer. As of January 14, 2012, 1,225 FCC FTEs earned more than \$100,000. As of January 14, 2012, 937 FCC FTEs earned more than \$125,000.

Question. Please detail the number of employees in the Office of Engineering and Technology for each of the last ten fiscal years?

Answer. The FCC's FTEs are at a 10-year low across the agency. The number of employees in the Office of Engineering and Technology reflects those reduced staffing numbers. The staffing level at the end of FY2002 – FY2011 is as follows:

FY02 – 114
FY03 – 117
FY04 – 118
FY05 – 114
FY06 – 91
FY07 – 93
FY08 – 86
FY09 – 82
FY10 – 82
FY11 – 84

Question. Were any of these vendors awarded business by means other than competitive bid? If so, which vendors received this work and how were they chosen?

Answer. List of Contracts awarded in FY-2011 and not competed.

FCC FY 2011 Awarded Contracts - Not Competed

Vendor Name	Contracting Officer's Business Size Determination	Base and All Options Value	Reason for Not Competing
COMPUTECH INC	SMALL BUSINESS	\$1,265,273.20	BRIDGE essential to continuity of operations
COMPUTECH INC	SMALL BUSINESS	\$1,299,761.81	BRIDGE essential to continuity of operations
COMPUTECH INC	SMALL BUSINESS	\$2,321,768.94	BRIDGE essential to continuity of operations
TECHNATOMY CORPORATION	SMALL BUSINESS	\$3,141,359.31	8(A) Set Aside - Authorized by Statute
VMD SYSTEMS INTEGRATORS, INC.	SMALL BUSINESS	\$3,557,105.66	8(A) Set Aside - Authorized by Statute
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY	OTHER THAN SMALL BUSINESS	\$7,500,000.00	ONLY ONE SOURCE

Questions for the Record Submitted by Congresswoman Barbara Lee

UNIVERSAL SERVICE FUND

The modernization of the Universal Service Fund is welcome and some would say overdue. I am concerned that when subsidies are supplied for the first service provider to enter a space, that the first mover advantage of that provider, along with the initial subsidy may price additional entrants, who would provide price and service competition, out of that market.

Question. How many Americans have access to a single broadband internet provider nationwide?

Answer. Based on the most recent, publicly available National Broadband Map data, approximately 94% of Americans have access to at least one terrestrial fixed broadband provider offering service of at least 3 megabits per second downstream and at least 768 kilobits per second upstream; approximately 14% of U.S. households have access to only one such provider.

Question. How can the FCC maximize competition in the broadband markets?

Answer. Fostering a competitive market for communications and media services is at the core of the FCC's mission and is essential to promoting innovation, investment, and job creation and to ensuring consumers have meaningful choices for affordable services. The Commission monitors the state of competition in the communications and media marketplace and acts where appropriate. Key actions include:

- Unleashing more spectrum for mobile broadband.
- Launching a rulemaking to modernize and streamline the collection of data regarding the broadband marketplace.
- Empowering consumers with data regarding actual broadband performance, which enables more informed choices in the marketplace.
- Requiring mobile broadband providers to offer data roaming on commercially reasonable terms.
- Reviewing proposed transactions expeditiously and thoroughly to ensure they are in the public interest.
- Reducing barriers to broadband buildout as part of the Commission's Broadband Acceleration Initiative. This includes establishing a shot clock to expedite wireless tower siting decisions, and comprehensively reforming the Commission's pole attachment rules to significantly reduce the time and expense required to attached wired and wireless communications equipment to utility poles.
- Reforming the intercarrier compensation system to remove competitive distortions that burden wireless and long-distance consumers.
- Ensuring interconnection between communications networks.

Question. I know that the national broadband plan is developing and I hope improving, but can you tell the subcommittee how the FCC and the Congress can do more to increase broadband adoption and access and reduce the digital divide in our low income and working poor communities in rural areas, the suburbs and in the urban environment?

Answer. Robust, affordable broadband has become essential to access jobs, education and economic opportunity. For example, more than 80 percent of Fortune 500 companies today – including Wal-Mart and Target – require online job applications. And students with broadband at home have a 7% higher graduation rate. But nearly one-third of Americans – 100 million people – still haven't adopted broadband. According to the U.S. Census Bureau, fewer than 36 percent of families with incomes less than \$25,000 subscribe to broadband at home, compared to nearly 92 percent of families with incomes over \$75,000.

We are taking significant steps to help close gaps in broadband adoption. Last year the Commission facilitated the launch of the Connect to Compete Initiative, which has enlisted government, nonprofit, and private sector leaders to tackle key barriers to adoption.

The FCC's E-Rate program has already helped connect virtually every library and classroom in America to broadband, and in 2010 we took several important steps to modernize

the program, including removing barriers to off-campus wireless use, and removing barriers to schools opening their computer labs as hot spots for community Internet use when students are not in school.

The Commission also recently released an Order reforming and modernizing the Lifeline program to include a broadband pilot program aimed at determining the best ways to increase broadband adoption rates among low-income Americans. This program uses \$25 million in savings from major reforms of Lifeline to launch pilot projects across the country to test best practices around issues of cost, digital literacy and relevancy.

Innovative programs like those outlined above can lead to increased access to broadband for all Americans, and I am committed to working with Congress to find other solutions to address this critically important goal.

MODERNIZING TO E-TEXTBOOKS

Many well funded schools are making the switch to e-texts, which actually reduce costs in the long run and can mean more up to date texts and more engaged and interactive learning for students.

Question. How can the FCC help to ensure that low income communities and their school districts can afford to keep up?

Answer. I agree that interactive digital textbooks are essential to America's educational future and should be accessible to all of our students, regardless of their family's income. Digital textbooks help improve student engagement, achievement, and productivity and provide real-time information to teachers on how well students understand core curriculum materials. The transition from paper to digital textbooks also will ensure up-to-date content in a rapidly changing educational environment. The FCC is working to eliminate challenges to interactive digital textbook accessibility, and including by tackling the challenges of connectivity and affordability.

By modernizing the E-rate program, the largest source of funding for connectivity for K-12 schools, the FCC is providing additional opportunities for digital textbook accessibility. Last year, I announced E-rate funding for 20 schools and libraries under the 2011 "Learning On-The-Go" wireless pilot program. This new program will help K-12 students connect to the Internet at home and increase their access to digital textbooks and other cutting-edge interactive learning tools. The Commission also announced the creation of "School Spots" to allow schools to open their E-rate funded computer labs to the community after school hours.

The FCC also has helped launch public-private initiatives to promote more digital opportunities for students. Answering a challenge from the Federal Communications Commission and the U.S. Department of Education, experts from across the education and technology space formed the Leading Education by Advancing Digital (LEAD) Commission. The LEAD Commission will meet with educational and industry stakeholders and release its findings and a blueprint for action in late 2012.

To complement these efforts, I recently joined U.S. Education Secretary Arne Duncan and leaders from the digital learning space, including CEOs from mobile broadband companies, publishers and digital device manufacturers, in a working group on transitioning U.S. K-12 schools to interactive digital textbooks. Secretary Duncan and I challenged the leaders of the digital learning ecosystem to develop an affordable solution so that all K-12 students in America are using interactive digital textbooks within five years. This challenge marked a key milestone after nearly a year's worth of work on this issue with the Department of Education and other stakeholders in the space; we will continue that dialogue in the coming months.

I am committed to working across the federal government, with state governments, and with schools and businesses to lift roadblocks and drive this effort to provide all students with equal access to our nation's digital resources. Converting to interactive digital textbooks will help our students, create efficiencies and help ensure America's continued global competitiveness.

Questions for the Record Submitted by Congressman Kevin Yoder

MOBILE DEVICES ON PLANES

As a frequent passenger on airplanes, I am constantly inconvenienced by the requirement to turn off my electronic devices. According to the FAA, this is a safety precaution.

Question. Did the FAA coordinate the testing of electronic devices with your agency?

Answer. Tablets, e-readers, and other personal electronic devices are increasingly interwoven into our everyday lives. They empower people to stay informed and connected with friends and family. They enable both large and small businesses to be more productive and efficient. They are driving economic growth and boosting U.S. competitiveness.

The FAA directed the Radio Technical Commission for Aeronautics (RTCA) to conduct studies that culminated in reports that were published several years ago on the use of electronic devices on airplanes. RTCA is a private, not-for-profit corporation that develops consensus-based recommendations regarding communications, navigation, surveillance, and air traffic management system issues.

The FCC staff participated in this work primarily as a resource to provide expertise on the characteristics of radio transmitters and radio frequency devices. While the FCC is an expert agency in the area of evaluating radio frequency interference, the potential for interference to aeronautical communications and flight systems from radio transmitters and radio frequency devices used by passengers within an aircraft presents a unique situation that is subject to an aircraft-specific analysis requiring the FAA's expertise. The FCC stands ready to provide appropriate technical assistance for any further FAA efforts to study this area.

Question. Would you agree with their determination that these electronic devices could disrupt the operation of an airplane?

Answer. The FAA, not the FCC, is the expert agency with respect to air safety.

BROADCASTER PUBLIC AND POLITICAL DATABASE

As I understand your proposal to put television broadcasters' public and political files online, this would be done with a FCC-hosted website. From what I'm hearing, this could involve literally hundreds of thousands, if not millions, of pages of information. This sounds like a complicated and expensive proposition.

Question. What are the anticipated costs for setting up this database?

Answer. On April 27, the Commission adopted an order to move broadcasters' public files from paper to online. The Commission voted unanimously with respect to the non-political component of the public file, including voting unanimously to host those components in an online database on the Commission's website. There would be no separate, distinct or additional cost to include the political file information in the online database used for all public file record keeping.

The final order provided an extensive analysis of the cost-benefits to broadcasters in converting to online files. The analysis is similar to most cases involving a move from paper to electronic files. The complete database costs for the public file will be included in the FCC's Fiscal Year 2012 Information Technology (IT) budget. On a going forward basis, the Commission is leveraging several improvements to its IT infrastructure, including adding cloud capacity. These investments have lowered the costs of web-based services currently hosted by the Commission and these cost savings will also apply to the maintenance of online files. Actual start-up costs for hosting the public file would be less than \$350,000, with an estimated out-year cost of less than \$175,000.

Question. What about the estimated annual costs for maintaining this database?

Answer. Out-year costs are anticipated at less than \$175,000 for all public files.

Question. Does the FCC have the necessary expertise or personnel to get something of this magnitude done properly?

Answer. The FCC has set up numerous filing systems in its efforts to reduce paper traffic and improve consumer accessibility and transparency. We already maintain various databases that include essential file information. This database would not pose any particular challenges. The broadcasters would scan their document or transfer information into a file and upload it into the database.



Federal Communications Commission
Washington, D.C. 20554

January 23, 2014

The Honorable John D. Rockefeller
Chairman
Committee on Commerce, Science and Transportation
United States Senate
254 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Rockefeller:

Enclosed please find responses to the Questions for the Record submitted for Gary M. Epstein, Special Advisor and Chair of the Incentive Auction Task Force, regarding his December 10, 2013, testimony before the Senate Commerce Committee's hearing entitled, "Crafting A Successful Incentive Auction: Stakeholders' Perspectives."

If I can be of further assistance, please have your staff contact me at (202) 418-1900.

Sincerely,

A handwritten signature in cursive script, reading "Sara W. Morris".

Sara W. Morris
Director (Acting)
Office of Legislative Affairs

Enclosure

Senator Mark Warner
Senate Committee on Commerce, Science, and Transportation Hearing
“Crafting a Successful Incentive Auction: Stakeholders’ Perspectives”
Questions for the Record
December 10, 2013

Questions for Mr. Epstein

Question 1. The Federal Communication Commission’s (FCC) Broadcast Television Spectrum Incentive Auction Notice of Proposed Rulemaking (NPRM), released in December 2012, requested comments about the process of scoring bids in the reverse/broadcaster auction based on factors such as “population coverage, geographic contour, or other relevant measurable factors.” I am glad to see the FCC is exploring innovative new concepts as we try to overcome barriers to clearing spectrum in major markets. I would like to know more about the scoring bids concept.

Question 1a. How is the FCC evaluating the potential use of scoring bids?

Question 1b. Is it possible that such a model could be applied in larger markets (i.e. markets where spectrum is in demand, expected to be competitive)?

Question 1c. Do you have a sense of whether such a valuation process may yield more spectrum than the more traditional options—single round or multiple round?

Question 1d. Should the FCC focus most of its attention on overcoming barriers to clearing spectrum in major markets?

Answer:

1a. As you note, the Incentive Auction Notice of Proposed Rulemaking (NPRM) sought comment on whether and how the Commission should recognize the heterogeneous nature of the television spectrum that different broadcasters might contribute to the auction. In particular, the Commission introduced the possibility of “scoring” broadcaster bids, to reflect the differences between the spectrum contributions of different bidders. We are not considering taking into account a station’s value as an ongoing broadcasting concern. We are currently considering whether scoring bids could lower the cost of clearing spectrum in the auction by improving how the auction selects the stations that are assigned a channel and those that are paid to relinquish spectrum rights. The record currently is under review, and there have not been any final recommendations made to the full Commission.

1b. If the Commission adopts a scoring process, it could be applied in larger markets.

1c. Staff is currently considering whether scoring bids could lower the cost of clearing spectrum in the auction by improving how the auction selects the stations that are assigned a channel and those that are paid to relinquish spectrum rights. Regardless of auction type, lowering these costs could increase the likelihood of a successful auction that clears the maximum amount of spectrum.

1d. Staff expects that clearing spectrum in major markets will be a key Commission priority, and has focused significant attention to those markets to date. However, given the potential for market variation due to border and other potential constraints, and the resulting potential for inter-service interference to adjacent markets, staff has not limited its analysis to major markets.

Question 2. During the hearing, I asked you about a proposal that would allow for a common downlink band nationwide, and would provide for variation in the uplink band. Do you have any additional information you would like to provide, to expand upon your answer?

Answer: In the NPRM the Commission identified the ability to accommodate market variation (i.e., the varying amounts of spectrum that the auction could recover in different geographic areas) as an important objective. In order to accommodate market variation, the NPRM proposed implementing a band plan that keeps the downlink spectrum consistent nationwide while varying the amount of uplink spectrum in more spectrally constrained markets. The Commission has examined approaches to accommodating market variation through a thorough and transparent comment and reply comment process, band plan workshop, and public notice. We continue to explore how the 600 MHz band plan can accommodate different levels of spectrum recovery and have made this a central factor in our band plan consideration.

Question 3. In their December 2012 Broadcast Television Spectrum Incentive Auction Notice of Proposed Rulemaking (NPRM), the Federal Communications Commission (FCC) sought comment on the use of spectrum aggregation limits in the forward auction. There is a wide range of opinions on this issue.

Question 3a. What is the most equitable way for the FCC to administer a spectrum screen? Should the FCC require carriers to divest comparable spectrum below 1 GHz in order to meet limits? Why or why not?

Question 3b. Given the fact that it is less expensive to build networks using lower-band spectrum, should the FCC consider these costs in its evaluation of competition? Why or why not?

Question 3c. Has the FCC considered applying a market-by-market review of spectrum assets limited to major markets, since these are the areas which have the greatest demand for spectrum? Why or why not?

Answer: The longstanding directives of Section 309(j) of the Communications Act require that, with respect to spectrum auctions, the Commission “shall include safeguards to protect the public interest in the use of the spectrum,” and seek to “promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants...” The relationship between spectrum policy, competition and consumer choice was reinforced in a filing submitted to the Commission by the Antitrust Division of the Department of Justice in April 2013. Commission

staff also recognizes that under Section 6404 of the Middle Class Tax Relief and Job Promotion Act of 2012, no qualified bidder may be excluded from the auction, but that Section 6404 affirms the Commission's authority "to adopt and enforce rules of general applicability, including rules concerning spectrum aggregation that promote competition."

The United States has a long and successful history of spectrum auctions that have promoted competition, facilitated profound benefits for consumers, and generated substantial revenue for the U.S. Treasury as a means of recovering for the public a portion of the value of the public spectrum resource. Commission staff is committed to recommending to the Commission an auction that fully meets all statutory obligations and objectives, including freeing up a significant amount of spectrum for commercial use in a manner that promotes competition and drives our economy forward.

Commission staff is carefully reviewing the records in both the Mobile Spectrum Holdings proceeding and the Incentive Auction proceeding, including the record on the specific questions you raise, and has not yet presented a recommendation to the Commission.

Question 4. The Middle Class Tax Relief and Job Creation Act of 2012 allows the Federal Communications Commission (FCC) to create new guard bands in the 600 MHz band for unlicensed use. I am supportive of white spaces, and I hope that the FCC will be successful in creating a guard band that is adequate for unlicensed and licensed uses. According to some estimates, the unlicensed ecosystem generates as much as \$50 to \$100 billion per year for the U.S. economy.

Question 4a. How important do you think it is to maintain white spaces?

Answer: Unlicensed spectrum use has a powerful record of driving innovation, investment, and economic growth, and the record in the Incentive Auction proceeding demonstrates significant support for unlicensed use. In the NPRM, the Commission proposed measures that, taken together, would make a substantial amount of spectrum available for unlicensed uses, including a significant portion that would be available on a uniform nationwide basis for the first time. Specifically, under the proposal:

- Television white spaces would continue to be available for unlicensed use in the repacked television band;
- Guard band spectrum in the 600 MHz band plan would be available for unlicensed use;
- Channel 37 would be available for such use; and
- Two channels currently designated for wireless microphone use would be made available for white space devices.

The Commission also noted that proposed measures to promote unlicensed spectrum use are limited by the bounds of the Commission's statutory authority. Staff continues to carefully review the record related to unlicensed use.

Questions for All Panelists

Question 1. In March 2010, the Federal Communications Commission (FCC) released its National Broadband Plan (NBP). I was hopeful that we could clear 120 MHz in the incentive auction, but now it looks like there will not be more than 84MHz cleared in most markets.

Question 1a. What do you believe will happen to the band plan if less than 84MHz is made available for the incentive auction? It's important to me that we maintain room for innovative uses of spectrum, such as white spaces, for instance.

Answer: We will not know the actual amount of spectrum we will recover until we conduct the incentive auction, and we are not limiting our plans to recovering 84 MHz. The amount of spectrum we recover will depend on a range of factors, including broadcaster participation in the reverse auction, the proceeds generated by the forward auction, the 600 MHz band plan, our ability to repack stations that will remain on the air after the auction, and international coordination with Canada and Mexico. Commission staff is diligently working to recommend an auction design that will maximize the amount of 600 MHz spectrum repurposed for flexible licensed use, while also promoting unlicensed use.

Questions for the Record
Hearing on Crafting a Successful Spectrum Auction
December 10, 2013
Senator Amy Klobuchar

Mr. Epstein, earlier this year, the DOJ weighed in with the FCC on the spectrum auction rules emphasizing the importance of competition in the wireless market and the need for smaller national networks currently lacking in low-band spectrum have a chance to acquire it. Chairman Wheeler has said that a major focus of his term will be promoting competition. In a recent speech he said, “We must protect competition where it exists. We must promote competition where it may not be fulsome.” As Chairman of the Antitrust Subcommittee, I have seen how strong competition in the wireless industry has been a tremendous benefit to consumers. A competitive market is the best way to ensure that consumers will benefit from low prices and quality service and thus I’m pleased to see that the new Chairman is so focused on competition.

- Do the amount and quality of spectrum held by a wireless carrier impact its ability to compete? Is the FCC’s current method of measuring competition adequate or is it in need of upgrading?

Answer: The longstanding directives of Section 309(j) of the Communications Act require that, with respect to spectrum auctions, the Commission “shall include safeguards to protect the public interest in the use of the spectrum,” and seek to “promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants...” The relationship between spectrum policy, competition and consumer choice was reinforced in a filing submitted to the Commission by the Antitrust Division of the Department of Justice in April 2013. Commission staff also recognizes that under Section 6404 of the Middle Class Tax Relief and Job Promotion Act of 2012, no qualified bidder may be excluded from the auction, but that Section 6404 affirms the Commission’s authority “to adopt and enforce rules of general applicability, including rules concerning spectrum aggregation that promote competition.”

The United States has a long and successful history of spectrum auctions that have promoted competition, facilitated profound benefits for consumers, and generated substantial revenue for the U.S. Treasury as a means of recovering for the public a portion of the value of the public spectrum resource. Commission staff is committed to recommending to the Commission an auction that fully meets all statutory obligations and objectives, including freeing up a significant amount of spectrum for commercial use in a manner that promotes competition and drives our economy forward.

Commission staff is carefully reviewing the records in both the Mobile Spectrum Holdings proceeding and the Incentive Auction proceeding, including the record on the specific questions you raise, and has not yet presented a recommendation to the Commission.



Office of the Director

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

April 7, 2014

The Honorable John Thune
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
560 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Thune:

Enclosed please find responses to Questions For the Record submitted to Geoffrey Blackwell, Chief of the Federal Communications Commission's Office of Native Affairs and Policy, regarding his March 6, 2014, testimony before the Senate Commerce, Science & Transportation Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety and Security hearing entitled, "Enhancing Our Rail Safety: Current Challenges for Passenger and Freight Rail."

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

Sincerely,

A handwritten signature in black ink, reading "Sara W. Morris". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Sara W. Morris
Director
Office of Legislative Affairs

Enclosure

**SENATE COMMERCE COMMITTEE HEARING
“ENHANCING OUR RAIL SAFETY: CURRENT CHALLENGES FOR
PASSENGER AND FREIGHT RAIL”**

MARCH 6, 2014

QUESTIONS FOR MR. BLACKWELL

From Senator Thune:

- **It is my understanding that the Federal Communications Commission (FCC) has sent letters to each Class I Railroad asking for an accounting of all Positive Train Control (PTC) towers that are currently installed but did not go through the FCC approval process. Why has the FCC not sent letters to passenger railroads asking for an accounting of their already-installed towers? Does FCC envision the passenger railroads using the same expedited process as the freight railroads once the final system is put in place?**
- ANS: We currently have no reason to believe that the passenger railroads have constructed PTC infrastructure without going through the required National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) review processes. We believe that commuter railroads are still in the planning stages for their networks. Because of the geographies in which they operate, commuter lines have many more options for using pre-existing infrastructure to co-locate their equipment. If we determine that a passenger railroad has constructed infrastructure without the requisite reviews, we will proceed just as we are proceeding with the Class I freights. To the extent NEPA and NHPA reviews are necessary, passenger railroads may use any of the procedures we are putting into place for the freights. FCC staff has reached out to the American Passenger Train Association to provide guidance to its members on initiating the environmental compliance process.
- **How many railroads have used the FCC’s BETA testing program for PTC tower approval? How many towers have been approved? How long does it take for a tower to be approved under this beta-testing process, and how does this compare to the average time for approval under the Tower Construction Notification System?**
- ANS: Since January 8, 2014, six of the major freight railroads have submitted proposed PTC wayside poles to Tribal Nations for review through the Tower Construction Notification System (TCNS). However, none of these submissions have included all of the information required under the BETA process. Tribal Historic Preservation Officers (THPOs) and other Tribal cultural resource officials have indicated to FCC staff that:

- Batched submissions have lacked certain information required under the BETA test format, such as surveys and information about historic properties. Further, information submitted by the railroads has been in formats that are difficult to access;
- Railroads are not adequately responding to communications from THPOs, including requests for additional information needed for review; and
- Even though railroads are not adequately providing requested information and are not responding to communications, they have been sending follow-up notices to the Tribal Nations stating that the Tribal Nation is non-responsive.

In order to move forward in a manner that will meet the statutory deadline for PTC deployment, all parties will need to work in a cooperative, communicative, and responsive fashion. We are in contact with the railroads to attempt to resolve the issues with the BETA submissions.

From Senator Blunt:

During the hearing you stated that the FCC is fully committed to tailoring the tower approval process “in a way that will enable the railroads to meet the current statutory deadline.” What is the process you will use for existing towers constructed by the railroads before the moratorium? Will you use the existing process or the beta testing process? Or will you create new process for approval?

- **ANS:** The FCC is currently in discussions with the relevant stakeholders, including the railroads, regarding treatment of the poles constructed without undergoing Section 106 review. The existing towers that have been constructed without National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) review pose a significant challenge. We are currently working with all stakeholders, including the railroads, to discuss multiple proposals for an expeditious path forward for dealing with the pre-constructed infrastructure. Commission staff is fully committed to working with railroads subject to the PTC deployment deadlines to get their infrastructure deployed as quickly as possible. We have drafted a Program Comment to streamline existing procedures that is currently under review by the Advisory Council on Historic Preservation (ACHP). We expect the procedures proposed in the Program Comment to materially reduce the time it will take railroads to complete required reviews of PTC infrastructure. Overall time limits for review are reduced by 40% and appeals must stop at the end of 90 days in most cases. ACHP is expected to complete its review by mid-

April and we look forward to working with railroads to help them take advantage of the new procedures.

The BETA testing program was developed as an interim step pending ACHP approval of the Program Comment to allow railroads to gain approval for some construction. The Program Comment is fundamentally more efficient than the BETA process. Consequently, we would not anticipate railroads continuing to use the BETA process after the Program Comment is approved.

The draft Program Comment also includes a provision for individual railroads to enter into consensual alternative arrangements with State Historic Preservation Offices (SHPO) and Tribal Nations. One railroad has approached the FCC with ideas that might form the basis for such alternative arrangements, and we are working with that railroad to advance those ideas.

Senator Ted Cruz
Questions for the Record
Nomination of Mr. Michael O’Rielly to be
Commissioner, Federal Communications Commission
Senate Committee on Commerce, Science and Transportation
Hearing on September 18, 2013

1. Mr. O’Rielly: as you may be aware, on April 10 of this year myself, along with Leader McConnell, Sen. Cornyn, Ranking Member Thune, and the remaining Republican members of the Commerce Committee, sent a letter to the FCC expressing our grave concerns over any FCC attempt to impose the requirements of the failed DISCLOSE Act by regulatory fiat. In light of those concerns, I have several questions I’d like you to answer:
 - a. Does the FCC have the authority to implement the kind of requirements laid out in the DISCLOSE Act?

The DISCLOSE Act, as it was considered by Congress in 2010, was a comprehensive bill to regulate certain practices involving political campaigns, providing authority to the Federal Election Commission to implement its numerous provisions. To the extent the FCC attempted to use its limited authority, which is at best tangentially-related to the issue, to impose DISCLOSE Act-type requirements, absent Congressional direction via a new law, it would likely raise issues challengeable in our court system.

- 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?

The Commission is a creation of Congress and exists to implement and enforce laws passed by the Congress.

- 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?

As a general matter, I believe the Commission must tread extremely cautiously when taking any actions with First Amendment implications. The Communications Act of 1934 grants the Commission only limited authority in the area of political speech. Specifically, Congress provided the Commission with authority under section 317 of the Communications Act to require broadcasters to include, at the time of the broadcasting, an announcement about sponsorship if the broadcast was paid for or furnished by another entity. In addition, under Section 315 of the Act, Congress established certain requirements on broadcasters to allow for equal opportunities for candidates for public office and public disclosure. To determine whether or not any particular action to regulate political speech was within the Commission’s authority would require additional legal analysis based on the specific action being considered. But, again, any such actions would need to be

solidly within the specific authority granted to the Commission by the Congress and consistent with First Amendment jurisprudence.

- 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?

As a strong supporter of the First Amendment to the U.S. Constitution, I would be reluctant to impose any limitations -- either directly or indirectly -- that had an impact on political speech.

- 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?

I am not an expert on the issues resulting from the IRS review of conservative not-for-profit organizations' tax filings. If the FCC was to modify its rules, promulgated to implement Section 317, to require greater disclosure in political ads, it could potentially have a negative impact on local television and radio broadcasters, as the burden of compliance lies with broadcasters, not the ad sponsor. To the extent broadcasters increase scrutiny or cease to accept political ads under additional regulatory provisions, political speech may be harmed or lessened, raising potential constitutional issues. I would have concerns that the FCC could execute changes to its rules that could pass constitutional muster or enforce such rules in a way that does not lead to further problems.

- 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?

It is my view that it would be in the best interest of the Commission to focus its attention on its extensive list of items in which it must address (e.g., incentive auctions) and avoid involving itself in any area still under considerable debate by Congress.



Federal Communications Commission
Washington, D.C. 20554


August 14, 2013

The Honorable Dan Coats
United States Senate
493 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Coats:

Please find the attached responses from Eric J. Bash, Associate Chief of the FCC's Enforcement Bureau, to your post-hearing questions from the July 10, 2013 hearing before the Consumer Protection, Product Safety & Insurance Subcommittee on "Stopping Fraudulent Robocall Scams: Can More Be Done?"

Please let me know if I can be of further assistance.

Sincerely,

Greg Guice
Director
Office of Legislative Affairs

Enclosure

cc: Republican Staff, Committee on Commerce, Science & Transportation

Questions for the Record from Senator Dan Coats

1. I commend the work the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC) have done in establishing a national Do-Not-Call Registry pursuant to their authorities under the Telephone Consumer Protection Act (TCPA). The registry is nationwide in scope, applies to all telemarketers (with the exception of certain non-profit organizations), and covers both interstate and intrastate telemarketing calls. Recently, I have heard a number of 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.

a. Does the technology exist to identify these high volume, auto-dialer initiated calls in real time?

Response: Technology exists that can identify -- and block -- a high-volume of calls in certain instances, such as calls originating from a single number, or sharing the same electronic signature, such as call length, call source and destination numbers, or certain VoIP call attributes. Large businesses often purchase this type of technology to protect their corporate networks from voice SPAM, VoIP Denial of Service attacks, and other activities the business seeks to prevent.

b. My understanding is that when phone calls are made, there are usually two user-facing identifiable pieces of information: a phone number and a Caller ID Name (CNAM). I understand that the CNAM can be used to display the calling party's name alongside the phone number, to help users easily identify a caller. I have also been told that there are numerous CNAM lookup services which allow you to pay a small fee to lookup the CNAM of a specified caller (by phone number). Do any prohibitions exist to prevent this practice by telemarketers?

Response: CNAM databases link Calling Party Numbers (CPNs) to the individuals and entities to whom the numbers have been assigned. Some terminating providers maintain their own CNAM database and others purchase CNAM database services from third-party providers that aggregate the listing information from a variety of sources. Typically this aggregation is done with real-time information feeds and may involve a chain of feeds through several layers of providers and resellers. When a phone call is made, Caller ID services often dip into the CNAM database to look up the name or other identifying information of the caller. We are not aware of any specific legal restrictions prohibiting access to CNAM databases. Commission staff would be happy to discuss these issues in further detail with your staff.

**Responses to Questions for the Record to
the Federal Communications Commission from
Hearing entitled “Oversight of FirstNet and the Advancement of Public Safety Wireless
Communications” Before the
Subcommittee on Communications and Technology on November 21, 2013**

Questions from Honorable Greg Walden

- 1. The Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) required the Commission to create a Do-Not-Call registry for Public Safety Answering Points (PSAP) to address concerns about the use of “automatic dialing equipment which can generate large numbers of phone calls in a short period of time, tie up public safety lines, divert critical responder resources away from emergency services and impede access by the public to emergency lines.. [sic] The Commission released a Notice of Proposed Rulemaking (NPRM) on May 22, 2012 and an order on October 17, 2012. When will the registry be operational? Please identify the enforcement actions taken, if any, by the Commission to these complaints. If no action has been taken please explain why.**

Response: The Commission continues to take steps to create the registry to safeguard PSAP phone numbers from autodialled calls, and has sought to do so in a way that is consistent with maintaining the security of these PSAP numbers and optimizes efficiencies and cost savings. Toward this end, we have worked closely with the Federal Trade Commission and its contractor for the National Do-Not-Call registry on ways to effectively and efficiently develop and administer the PSAP Do-Not-Call registry that would not require the FCC to invest in and build its own registry completely separate from that of the FTC. Reflecting the savings from this approach, the Commission has sought sufficient funding levels to establish the registry and for maintenance. The timing and amount of funding will be an important factor in determining when the registry can be completed.

Since February 22, 2012, we have received two complaints to our consumer call center about autodialled calls to PSAPs and staff has been made aware of other complaints about such calls. These incidents primarily involve barrages of calls unleashed against PSAPs as part of schemes to extort money. We have worked with several portions of the federal government, including law enforcement, as well as communications carriers and public safety entities to address these complaints. Separately, the FCC continues to enforce its more general robocalls rules before the registry is operational, and autodialled calls to registered numbers will become an additional offense. The Commission’s Enforcement Bureau currently has a number of active robocall investigations which are potentially relevant, although not specifically focused on PSAPs. Given the prevalence of spoofing (i.e., altering the caller ID displayed on a called party’s phone) by robocallers, identifying those behind such calls presents particular law enforcement challenges.

- 2. The Spectrum Act provides an opt-out mechanism for states intending to opt out of the FirstNet network and deploy their own radio access network. In those instances where a state elects to do so the state must submit its network plan to the FCC for approval. Has the FCC**

taken any steps to establish the process through which a state can obtain approval? Is the FCC coordinating with FirstNet to ensure that a process will be in place before FirstNet provides notice to the states that triggers the opt-out process? When will the process for Commission review and approval of state network plans be established?

Response: The Commission will coordinate closely with FirstNet to ensure that the review process by the FCC of state “alternative plans” is conducted in a timely manner, consistent with FirstNet’s deployment plans and associated timeframes. We intend to provide clear guidance on how our process will work before states have to choose whether to opt out under the Act, so that each state can make an informed and timely decision.

3. The Commission released a Notice of Proposed Rulemaking in June 2012 looking for ways to improve spectrum efficiency and promote greater use of the 4.9 GHz spectrum band. When will the Commission issue an order?

Response: In March 2013, following the filing of initial comments and replies in response to the Commission’s July 2012 NPRM on the 4.9 GHz band, the National Public Safety Telecommunications Council (NPSTC) formed a working group to develop a proposed 4.9 GHz national plan for the FCC’s consideration. On October 24, 2013, NPSTC filed a final report on its national plan recommendations. On October 30, 2013, the Commission’s Public Safety and Homeland Security Bureau sought comment on the NPSTC report. Comments were filed on November 22, 2013 and replies were filed on December 13, 2013. Based on this record, the Bureau is preparing options for moving forward on this issue.



Office of the Director

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

June 25, 2012

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

Dear Chairman Walden:

Attached please find responses to the post-hearing questions from the hearing on "Cybersecurity: Threats to Communications Networks and Public-Sector Responses" held on March 28, 2012. Please note that Admiral Barnett has left the Commission since his appearance at the hearing.

Sincerely,

A handwritten signature in blue ink, which appears to be "Gregory W. Guice", is written over a printed name and title.

Gregory W. Guice
Director

**House Committee on Energy and Commerce
Subcommittee on Communications and Technology
Hearing on
“Cybersecurity: Threats to Communications Networks and Public-Sector”
Responses of Federal Communications Commission to Questions for the Record**

The Honorable Anna Eshoo

1. What challenges do you expect smaller ISPs will face in adopting the industry best practices recommended by CSRIC?

Response: Because the process for adopting industry best practices is voluntary, smaller ISPs have the flexibility to proceed with implementation in a way and on a schedule that meets their particular needs. Compliance becomes easier and cheaper as best practices become more widely adopted. One benefit from the recommendations not setting an implementation date is that smaller ISPs are at liberty to implement the best practices consistent with their normal business processes and timetables. They can also draw on the knowledge and experience of companies and associations that have already adopted or focused closely on the best practices, including organizations that represent smaller ISPs.

CSRIC is continuing its work and is making a concerted effort to address the unique needs of smaller ISPs. For example, a CSRIC Working Group has assembled an impressive set of practitioners to address barriers to implementation and how to overcome them.

2. What is your view of the communications supply chain risk, and how can we best address this concern?

Response: The Commission has been working with other governmental partners on this important issue. Because its own authority was not originally designed to address supply chain risk challenges, it could be appropriate to explore changes.

Separately, a number of experts have suggested a tiered approach to the Commission to address supply chain issues, in order to mitigate risk at a tolerable cost. Under this approach, government involvement would increase with the level of risk. Only the most critical elements of our communication networks would be provided the most protection, allowing for a less costly approach for less critical tiers.

Federal partners have a number of tools with which to address a potential supply chain threat and to consider adoption of various supply chain standards. Any comprehensive solution would require coordination among several agencies of government.

The Honorable John D. Dingell

1. You mention in your testimony the Communications Security, Reliability, and Interoperability Council’s (CSRIC; pronounced “Scis-rick”)

recommendations about preventing domain name spoofing, route hijacking, and botnet attacks. Are those recommendations are (sic) voluntary?

Response: Yes.

2. How many Internet Service Providers (ISPs) have adopted CSRIC's recommendations?

Response: Nine ISPs covering roughly 86% of American Internet users have already pledged to implement the CSRIC recommendations. We will continue to work on any obstacles to, and to promote, voluntary adoption of these recommendations in order to achieve 100 percent adoption.

3. You mention in your testimony that you "[...] hope more ISPs will adopt these measures." Would you please submit for the record why you believe other ISPs might not adopt CSRIC's recommendations?

Response: We cannot speak to why ISPs may or may not adopt the recommendations, but the increased implementation of these standards creates momentum toward 100% adoption. CSRIC is continuing its work and is making a concerted effort to address the unique needs of smaller ISPs. For example, a CSRIC Working Group has assembled an impressive set of practitioners to address barriers to implementation and how to overcome them.

There is a concerted effort to address the unique needs of smaller ISPs that have not yet pledged to implement the recommendations.

4. Industry witnesses told this Subcommittee on March 7, 2012, that the federal government should facilitate better intra-industry and public-private information sharing. Do you agree with that opinion? Please explain your response.

Response: Yes. Information sharing is a very important tool to address the threat of cyber attacks. Initiatives like CSRIC bring industry stakeholders together in a forum that facilitates sharing of information between practitioners in an environment of trust. We believe public/private ventures like CSRIC are vital to the smooth flow of information among service providers that are on the front-lines of cybersecurity.

5. Senator Lieberman's cybersecurity bill, S. 2105, requires the Secretary of Homeland Security to promulgate risk-based cybersecurity performance requirements for owners of critical infrastructure. Do you believe the promulgation of such requirements is wise? Please explain your response.

Response: We have not taken a position on the various legislative proposals in Congress concerning cybersecurity. In assessing the proper role of government in cybersecurity, key principles include: preserving the multi-stakeholder model; enabling stakeholders

across the ecosystem to work together and develop practical solutions to secure our networks; facilitating smart, practical, and voluntary solutions through cooperative efforts to achieve cybersecurity; and enabling Federal partners to work closely together in a whole-of-government approach.

- 6. Similarly, do you believe the promulgation of such performance requirements would stifle innovation and harm industry's ability to protect consumers from cyber-threats? Please explain your response.**

Response: See Response to Question 5.

- 7. Can and should CSRIC's recommendations be adopted by the FCC or other federal agencies and thereby be made mandatory? Please explain your response.**

Response: The Commission has a long history of working with industry to develop voluntary best practices. For example, the FCC's NRIC, a predecessor of CSRIC, came up with the first cyber-security best practices back in 2002.

Nonetheless, it is important to confirm whether CSRIC's voluntary best practices are actually having their desired effect. Toward that end, outcome-oriented performance metrics should be used to assess success.

The Honorable Bob Latta

I'd like to hear a little more about the Code of Conduct developed by CSRIC (pronounced cisrec). What did that process involved (sic) and how are you encouraging ISPs to participate?

Response: The Cybersecurity and Communications Reliability Division was formed in 2009, and augmented the PSHSB's cybersecurity and communications capabilities. This division helps coordinate the work of our federal advisory committee, the Communications Security, Reliability, and Interoperability Council (CSRIC)

The CSRIC is now made up of over 50 leaders from the private and public sectors, including cyber experts from DHS and NIST and a veritable all-star cast of Internet pioneers and world class cybersecurity experts.

In March 2011, Chairman Genachowski tasked the CSRIC with developing best practices to help address major Internet security vulnerabilities. The Chairman identified three areas where action is required to better protect commercial communications networks:

1. Securing the Domain Name System (DNS) to prevent spoofing and DNS cache poisoning;
2. Improving the security of Border Gateway Protocols to prevent Internet route hijacking; and

3. Defeating botnets that cause distributed denial of service attacks and pilfer private information and money.

In March 2012 the CSRIC approved voluntary, industry-based recommendations addressing all three critical problems.

The Commission has a long history of working with industry to develop voluntary best practices. For example, the FCC's NRIC, a predecessor of CSRIC, came up with the first cyber-security best practices back in 2002.



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

Office of the Director

February 20, 2012

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

Dear Chairman Walden:

Please find attached responses from Federal Communications Commission Chairman Julius Genachowski to the post-hearing questions from the Subcommittee's December 12, 2012 hearing entitled "Keeping the New Broadband law On Track". Please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Mulice", written over a horizontal line.

Greg Mulice
Director
Office of Legislative Affairs

Enclosure

The Honorable Lee Terry

1. As the FCC considers identifying additional spectrum for terrestrial wireless use, it is important not to lose sight of the critical services provided by incumbent users of spectrum. What is the process that the Commission intends to use to ensure that the valuable services currently provided -- both to commercial and U.S. Government customers -- will not be disrupted by the potential reallocation or reuse of spectrum?

Response: Maintaining our country's global leadership in mobile requires making more spectrum available for wireless broadband. In doing so, the Commission recognizes the importance of existing spectrum uses—by both government and commercial stakeholders—and will continue to ensure that those uses are fully considered. Our processes will continue to be transparent and open, enabling all parties to engage with the Commission, and our decisions will continue to be data-driven.

The Honorable Mike Rogers

1. The FCC's approach to petitions seeking agency action has been disappointing. For example, I understand that the FCC's Consumer and Governmental Affairs Bureau issued an order in May dismissing a Petition for Declaratory Ruling filed by Anda, Inc., a generic pharmaceutical distributor, asking the agency to clarify the statutory basis for its rule requiring opt-out notices on faxes sent with the recipient's express consent. The Petition languished at the FCC for 17 months without even being docketed, and when the FCC finally did take action, it had its staff simply dismiss the Petition without clarifying the rule's statutory basis. The FCC did so even though the uncertainty about the rule's legal basis apparently has exposed legitimate businesses to lawsuits seeking massive damages that Congress never intended to authorize. Such uncertainty also prompted the U.S. Court of Appeals for the Eighth Circuit to ask the FCC to clarify the legal basis for its opt-out rules in a pending appeal. In light of the substantial uncertainty surrounding the legal basis for this rule—and the resulting exposure to enterprise-crippling liability now faced by businesses across the country—why did the FCC fail to provide the clarification sought in the Petition?

2. The manner in which the FCC staff dismissed this Petition is also troubling. The order was issued by FCC's Consumer and Governmental Affairs Bureau, and so it is reviewable only by the Commission, not by a court. I understand that Anda has filed an Application for Review with the Commission, but I am concerned that the FCC may simply engage in further delay before undertaking that review—or may decline to act at all, in an effort to avoid judicial scrutiny. In fact, it has now been more than two years since Anda first sought a final, reviewable order from the Commission. Does the FCC intend to move more quickly on this Application for Review and finally produce an order that would be reviewable in court? Particularly given the FCC's assertions before the Eighth Circuit Court of Appeals that the FCC alone (and not the courts) may determine the scope of the opt-out notice requirements for faxes sent with express consent, doesn't the FCC have a duty to promptly issue a final agency order in response to requests for clarification?

3. Will the FCC commit to a 90-day timeframe for its review of the staff decision in question? Three months should be more than enough time, particularly given how long the underlying Petition has been pending and commitments made to Members of the House of Representatives in September 2011 to act expeditiously.

Response (questions 1 – 3): On May 2, 2012, the Commission's Consumer & Governmental Affairs Bureau issued an order dismissing the petition filed by Anda, Inc. to issue a declaratory ruling clarifying the statutory basis for a Commission rule on fax advertisements. The Administrative Procedure Act provides that an agency, in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty, but the Bureau found that the Petition did not identify any controversy to terminate or uncertainty to remove. The Bureau also concluded that, to the extent that the Petition challenged the Commission's authority to issue the rule itself, the challenge was time-barred, because under the Act and the Commission's procedural rules, requests for reconsideration of this rule were due in June 2006. The Bureau also observed that a previous Commission order had specifically tied the opt-out notice requirement to the purposes of section 227 of the Act.

It is not uncommon for a Bureau to dismiss a petition for declaratory ruling when, in the opinion of the Bureau, no controversy or uncertainty has been identified. Anda has filed an Application for Review of the Bureau order to the full Commission, which is currently under review. I anticipate that an order resolving the Application for Review will be circulated to the other Commissioners for their consideration in the next few months.

The Honorable Marsha Blackburn

1. Chairman Genachowski, I understand that the FCC's Consumer and Governmental Affairs Bureau issued an order in May 2012 dismissing a Petition for Declaratory Ruling asking the agency to clarify the statutory basis for its rule requiring opt-out notices on faxes sent with the recipient's express consent. The Petition, which was filed by Anda, Inc., a generic pharmaceutical distributor, languished at the FCC for 17 months without even being docketed, and when the FCC finally did take action, it had its staff simply dismiss the Petition without clarifying the rule's statutory basis. The FCC did so even though the uncertainty about the rule's legal basis apparently has exposed legitimate businesses to lawsuits seeking massive damages that Congress never intended to authorize.

- Why did the FCC wait 17 months before taking action on this Petition?
- Why, after Chairman Genachowski promised to act "expeditiously" on the Petition in a September 2011 letter to Members of House of Representatives, did it take an additional 8 months for the FCC to act?
- Why did the FCC fail even to docket the Petition, issue a public notice, or seek public comment during that entire 17-month period?

- In light of the substantial uncertainty surrounding the legal basis for this rule—and the resulting exposure to enterprise-crippling liability now faced by businesses across the country—why did the FCC fail to provide the clarification sought in the Petition?
- Since this issue was reviewable only by the Commission and not by a court, did the FCC act in this manner in order to avoid judicial review?

Response: On May 2, 2012, the Commission's Consumer & Governmental Affairs Bureau issued an order dismissing the petition filed by Anda, Inc. to issue a declaratory ruling clarifying the statutory basis for a Commission rule on fax advertisements. The Administrative Procedure Act provides that an agency, in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty, but the Bureau found that the Petition did not identify any controversy to terminate or uncertainty to remove. The Bureau also concluded that, to the extent that the Petition challenged the Commission's authority to issue the rule itself, the challenge was time-barred, because under the Act and the Commission's procedural rules, requests for reconsideration of this rule were due in June 2006. The Bureau also observed that a previous Commission order had specifically tied the opt-out notice requirement to the purposes of section 227 of the Act.

It is not uncommon for a Bureau to dismiss a petition for declaratory ruling when, in the opinion of the Bureau, no controversy or uncertainty has been identified. Anda has filed an Application for Review of the Bureau order to the full Commission, which is currently under review. I anticipate that an order resolving the Application for Review will be circulated to the other Commissioners for their consideration in the next few months.

The Honorable Phil Gingrey

1. Mr. Chairman, I am curious about what the FCC's spectrum plans are for places like my State of Georgia. My entire district falls within the Atlanta media market, which is the 9th largest in the country. However, there are other parts of Georgia that wouldn't fall into the top 50 television markets. Can you tell me if the FCC is focusing its spectrum reclamation efforts on the top 20 or 30 television markets, or are you looking at all markets? If that is the focus, would it even be necessary to repack television stations in more rural areas in areas? Can you please describe what the FCC plans are for states like mine or the test the Commission be using to determine where your efforts will be focused?

Response: The Commission is focused on providing opportunities for broadcasters in all markets to participate in the incentive auction. The auction requires broadcasters to volunteer to clear a portion of the current upper UHF TV band, spectrum that is contiguous to the 700 MHz spectrum already allocated for wireless use. A successful auction will result in nationwide contiguous blocks of spectrum for commercial wireless which will enable significant economic growth and consumer benefits in all areas, urban and rural.

Both the Commission and Congress recognized that an incentive auction would have an impact on stations that choose not to participate, potentially resulting in the repacking of spectrum held by some broadcasters in the smaller or more rural markets. This is why there are specific provisions that require the Commission in the repacking process to "make all reasonable efforts to preserve...the coverage area and population served of each broadcast television licensee." Additionally, Congress specifically provided for a relocation fund that will pay for those stations that have to change channels as part of the repacking process.

I am committed to working with the broadcast industry on these issues, and encourage their participation in the process. Resources for broadcasters interested in learning more about the process are available at <http://wireless.fcc.gov/incentiveauctions/learn-program/index.html>.

2. Let me move on to a different topic and one that has an impact on my district in Georgia – The Atlanta Channel. Admittedly, the organization failed to fully complete the necessary application under the Community Broadcasters Protection Act of 1999 for Class A designation. Unfortunately, after denial in 2000, the company's appeal languished at the Commission for 12 years before it was denied once again last month. Given this inaction for so many years when the Commission cited a deadline – particularly in the additional comments by Commissioners McDowell and Pai – was the stated cause of rejection, is it entirely unreasonable for this petitioner to have the opportunity to simply submit application for Class A designation at this point? If each Commissioner could answer, I would appreciate it. One quick follow up for each of you, the missed deadline notwithstanding, what is the Commission's justification to the people and businesses of Atlanta to prevent this station from even the opportunity to apply for Class A status given the footprint that The Atlanta Channel has – even as a low power operator – in the 9th largest market in the county and as a community servant in Atlanta?

Response: Since becoming Chairman, I have worked to significantly reduce the backlog across the Commission, and as I assured you at our oversight hearing last year I would do, I moved this issue to decision. However, regardless of timing, the Commission unanimously denied the request because the substantive issues remain the same – ACI failed to meet the statutory certification deadline, and did not claim or demonstrate that its failure was due to the kind of "extraordinary circumstances" courts have found are necessary for the Commission to toll a statutory deadline. The station has filed a Petition for Reconsideration of the Commission's decision, which is currently being reviewed.

The Honorable Bob Latta

1. As I've read in the NPRM, the Commission proposes doing the reverse and forward auction simultaneously versus separately. Can you elaborate on the differences between those two options, and can you speculate which format will result in more spectrum being available in the forward auction.

Response: In order to be successful, the reverse and forward auctions must work together. The NPRM seeks comment on how to integrate those two processes.

The auctions could run sequentially, running the reverse auction first, followed by the forward auction. This approach could provide greater certainty about the number of licenses available in each geographic area in the forward auction, but would require reverse auction bidders to answer hypothetical questions about their potential bids. A concurrent approach could take less time, and would enable reverse auction bidders to answer questions based on actual demand and competition.

All parties have the opportunity to review and comment on the Commission's incentive auction proposals, and we encourage them to do so. Our decisions will be data-driven and based on a thorough record.

2. In northwest Ohio, we have television stations with signal contours that cover Ottawa and Ontario – that's Ottawa and Ontario, Ohio. But those signals also reach parts of Ontario, Canada. Can you assure me that in implementing any repacking of the broadcast bands, the Commission will coordinate with your Canadian counterparts to ensure that my constituents and others who live near our international borders will continue to have robust access to broadcast television?

Response: Yes. The Commission has already started discussions with Industry Canada with regards to our incentive auction proposals. The Spectrum Act reiterated the Commission's existing duty to coordinate with Canada and Mexico, and we will of course do so.

3. Chuck Jackson, who is an adjunct professor at George Washington University, an electrical engineer, and spectrum expert at a recent event on spectrum policy submitted a paper that predicted that "the 100 MHz of unlicensed spectrum at 5 GHz made available by legislation earlier this year will generate between ten and one hundred times more consumer benefits than will unlicensed use of the TV white space." The FCC has taken considerable effort to create an unlicensed market in the white spaces even though there is no consumer white spaces devices. Mr. Jackson seems to think even in the best case scenario that unlicensed at 5GHz will be far more valuable, so why is the FCC spending so many resources trying to make white spaces work in the TV band?

Response: Over the past few years, America has regained global leadership in mobile communications, leading the world in deploying 4G to scale. We have nearly half the world's 4G LTE subscribers, and we are setting the pace on innovation in mobile software, apps, and devices. This success means that we face a particularly acute challenge to meet exploding mobile demand—the spectrum crunch—and that we must use all policy levers at our disposal to solve it. Both licensed and unlicensed spectrum have contributed to an explosion of new services and applications and increasing mobile broadband speeds, and both will be essential parts of the landscape in the future.

When I arrived at the FCC in mid-2009, my staff and I quickly became aware of the magnitude of the spectrum challenge facing the country. We also saw that the spectrum pipeline we inherited was largely dry. To address this, our work on the National Broadband Plan focused on laying out a comprehensive spectrum strategy and action plan. As part of

that spectrum strategy, the Commission introduced the idea of incentive auctions – an idea that Congress enacted into law last year. We are actively implementing that law and fully expect it to free up very significant amounts of spectrum for auction.

Incentive auctions are a big deal, but they're only one of many ways we've been working to free up additional spectrum for auction for licensed use over the last three years. The Commission is now on track to auction an additional 75 MHz of spectrum by 2015, and we've removed regulatory barriers on another 70 MHz of spectrum, enabling its use for licensed mobile broadband.

The FCC has also pursued an ambitious strategy for unlicensed spectrum. The FCC was the first agency in the world to allow unlicensed use of what were at the time known as "junk bands" of spectrum. Innovators seized this opportunity and brought to market cordless phones, Bluetooth, and Wi-Fi. Today, approximately one-third of mobile data traffic is offloaded to Wi-Fi, as carriers increasingly develop new methods to manage capacity on their networks. People depend on unlicensed spectrum every single day: to connect wirelessly to their home and business Internet networks; to stream news and movies onto their tablets; to connect their hands-free Bluetooth devices; to monitor inventory using RFID tags. New smartphones switch seamlessly between licensed and unlicensed networks, helping consumers whose wireless plans have data caps avoid penalties.

TV white spaces create a powerful new platform for next-generation innovation – a world-leading platform at a time when many other countries are actively working to leapfrog the U.S. While this is still a nascent effort, it is important to remember that it took well over a decade after the mid-1980s decision to allow unlicensed use in the "junk bands" for Wi-Fi to become a major commercial success. Enabling unlicensed use of TV white spaces is a win for innovation and a big opportunity for our country that must be seized. But we also recognize, as did Congress, that there are numerous spectrum bands that offer opportunities for unlicensed use, including the 5 GHz. In fact, at the February Commission meeting, we will consider a Notice of Proposed Rulemaking to unleash up to 195 megahertz in the 5 GHz band for unlicensed use.

4. As you know, the Middle Class Tax Relief and Job Creation Act of 2012 required the FCC to report on the "rejection rate" for certain common carrier microwave bands. In that report, the Commission noted that "It is not possible to calculate a precise rejection rate for coordination requests in the 11 GHz, 18 GHz, and 23 GHz bands because frequency coordinators do not keep records on rejected coordination requests."

As one who supports transparency in the oversight of our national spectrum assets, I'm curious why this information isn't tracked more closely. And as the expert agency charged with the administration of these bands; don't you agree that there needs to be a better, more transparent means of tracking their use and demand? Shouldn't your agency – the one charged with oversight of the nation's communications infrastructure, both wired and wireless – be responsible for knowing exactly what is the status and availability of these critical assets? And if

is not your agency, who is responsible? Since accurate data is what we need to make spectrum policy decisions, I would like to know what you need in order to collect and report on this data.

Response: The Commission has detailed information on all of the licenses that it has granted in all of the microwave bands, as well as all of the applications for such licenses that have been filed. This information is publicly available in the Commission's Universal Licensing System (ULS).

The Middle Class Tax Relief and Job Creation Act of 2012 required the Commission to report on the "rejection rate" for microwave applications in the 11 GHz, 18 GHz and 23 GHz bands. As noted in the Report to Congress, the rejection rate for coordination requests was less than one percent. The Report also noted that the rejection rate for applications filed with the Commission was zero.

In order to calculate the rejection rate more precisely, the Commission would have to impose recordkeeping burdens on potential applicants or change the long-standing microwave frequency coordination process. Such a change could increase costs and burdens on applicants and delay the licensing process.

The Honorable Anna Eshoo

1. Last year, the International Telecommunications Union announced that operations of unmanned aircraft will require radiofrequency spectrum for air traffic control, vehicle command and control, and sense and avoid capabilities – all of which are essential safety functions. This year, the Federal Aviation Administration was instructed to begin integrating unmanned aircraft into the national airspace by 2015.

According to reports from GAO and CRS, one of the biggest obstacles to safely operating these aircraft at home is signal interference. What steps have been taken by the FCC taken to make sure that interference issues are comprehensively addressed before 2015?

Response: The Commission is committed to mitigating the risk of interference to aeronautical uses of radiofrequency spectrum, particularly for air traffic control, vehicle command and control, and sense and avoid capabilities of Unmanned Aircraft Systems (UAS). The World Radiocommunication Conference 2012 (WRC-12) began to address radiofrequency spectrum requirements for UAS operating in non-segregated airspace and is pursuing further studies to provide a basis for considering regulatory, technical, and operational conditions to use certain fixed-satellite service frequency bands for UAS control and non-payload communications. WRC-15 will consider the use of these frequency bands based on the results of these additional studies. The FCC has and will continue to work closely with the National Telecommunications and Information Administration, which represents federal aeronautical stakeholders such as the FAA, and the State Department to prepare for WRC-15 and intervening international forums such as ITU-R Study Groups and

International Civil Aviation Organization working groups. Also, through the advisory committee process, the FCC is working with commercial aeronautical stakeholders to develop innovative policy solutions that would facilitate international deployments and operations of the UAS. As WRC-15 considers actions based on the results of additional studies, the FCC will remain engaged in the international development of UAS spectrum requirements and will consider national spectrum allocations and service rules consistent with international aviation standards and recommended practices.

The Honorable Henry Waxman

1. At the hearing, Chairman Walden displayed several slides on incentive auctions. The first slide states that under the terms of the FCC's Notice of Proposed Rulemaking (NPRM) on the broadcast incentive auction, there will be \$19.2 billion in lost revenue from 23 MHz of spectrum that is not being auctioned "if valued at the same price per MHz-POP as the unencumbered 700 MHz B Block." The 23 MHz includes 6 MHz from Channel 37, 12 MHz from the proposed guard band, and 5 MHz from any "remainder" spectrum. The slide further states that "even at a conservative \$1 per MHz-POP, the FCC's plan would forgo over \$7 billion, enough to fully fund FirstNet." Please comment on Chairman Walden's assumptions about the 23 MHz and lost revenue. Do you believe the FCC is foregoing up to \$19.2 billion in revenue?

Response: I do not believe that the proposals in the incentive auction NPRM regarding guard bands and unlicensed spectrum would result in foregone revenues. To the contrary, the Commission's proposals would (1) provide auction bidders certainty regarding interference protection, thereby bolstering auction revenues; and (2) free up substantial amounts of spectrum for both licensed and unlicensed broadband use, generating very significant economic value and associated revenues for the Treasury on an ongoing basis.

When I arrived at the FCC in mid-2009, my staff and I quickly became aware of the magnitude of the spectrum challenge facing the country. We also saw that the spectrum pipeline we inherited was largely dry. To address this, our work on the National Broadband Plan focused on laying out a comprehensive spectrum strategy and action plan. As part of that spectrum strategy, the Commission introduced the idea of incentive auctions – an idea that Congress enacted into law last year. We are actively implementing that law and fully expect it to free up very significant amounts of spectrum for auction.

Incentive auctions are a big deal, but they're only one of many ways we've been working to free up additional spectrum for licensed use over the last three years. The Commission is now on track to auction an additional 75 MHz of spectrum by 2015, and we've removed regulatory barriers on another 70 MHz of spectrum, enabling its use for licensed mobile broadband.

As to the specifics of the Incentive Auctions NPRM, based on the statutory authority provided by the Middle Class Tax Relief and Job Creation Act of 2012, the proposals seek a

balanced approach to repurposing the 600 MHz band for broadband. Freeing up additional spectrum -- both licensed and unlicensed -- is key to maintaining the United States' global leadership in mobile. The Commission proposed clearing and auctioning as much spectrum as possible for licensed use, adding spectrum for commercial providers and substantial revenues for the Treasury. The Commission is also making a significant amount of spectrum available for unlicensed use, creating an open platform for innovation to drive economic growth, and ultimately tax revenues as well.

Regarding the slide you reference, first, the analysis appears to overstate the appropriate price comparable to use in valuing the guard band spectrum. The price precedents cited in the slide were for high-powered blocks in the 700 MHz auction. In order to provide adequate interference protection to licensed spectrum blocks, the guard bands can permit only low power operations (such as the unlicensed uses proposed in the NPRM), and could not be used for macro-cellular networks. There is no reason to believe that spectrum authorized only for low power operations would generate even a small fraction of the revenues generated by the 700 MHz spectrum licensed for high-powered blocks.

Second, with respect to quantity, the slide appears to overstate the amount of spectrum that could be auctioned. For example, the slide assumes that Channel 37 could be auctioned for high power use. Today Channel 37 is allocated for Radio Astronomy and Wireless Medical Telemetry uses, including patient monitors in hospitals. If Channel 37 incumbents can be relocated, consistent with the statutory relocation cost cap of \$300 million, the spectrum can be cleared and auctioned. But if the incumbents cannot be relocated, the continued presence of Radio Astronomy and Wireless Medical Telemetry will prevent the auction of this spectrum for high power licensed use. The NPRM sought to maximize the utility of this spectrum by proposing Channel 37 as one of the necessary guard bands between television and wireless services. Additionally, the slide overstates the amount of unauctioned "remainder" spectrum, because if five megahertz of remainder spectrum were available, it could be auctioned as an additional licensed block.

Finally, a policy of auctioning guard bands could substantially increase uncertainty about the long-term interference protections afforded by the guard bands, and therefore reduce certainty about the overall value of the high-powered spectrum to be auctioned. Such uncertainty would likely suppress auction revenues. It is notable that wireless carriers, including AT&T, Verizon Wireless, Sprint, and MetroPCS; along with the wireless trade association, CTIA; and the Consumer Electronics Association (CEA), all support unlicensed use in the guard bands to the extent technically feasible.

More generally, foreclosing opportunities for unlicensed spectrum in the 600 MHz band would deprive the United States of a powerful new platform for wireless innovation and investment with tremendous potential for generating economic growth and consumer benefits. It would also risk ceding America's global leadership in spectrum policy, enabling other countries to leapfrog us and become the world's test beds for new wireless technologies.

Unlicensed spectrum has a powerful record of driving innovation, investment, and economic growth – hundreds of billions of dollars of value creation for our economy and consumers, resulting in billions of dollars of tax revenues. Opening up opportunities for unlicensed spectrum in the 600 MHz band promises to increase these benefits, unleashing important innovations like "Super Wi-Fi," next-generation Smart Grid monitoring, "Smart City" monitoring, enhanced distance learning, and services and applications that innovators have not even thought of yet.

2. In his written testimony, Commissioner Pai stated that the NPRM on the broadcast incentive auction appears to envision an auction that will yield "no net revenues." As a result, Commissioner Pai asserts there will be no money for the construction of a nationwide, interoperable public safety broadband network or deficit reduction. Do you agree?

Response: No. A key goal of the incentive auction is to raise sufficient revenues to meet the policy objectives of the Spectrum Act, including funding FirstNet. I would note that other auctions required under the Spectrum Act, such as the H Block auction later this year, will also be a source of funding for FirstNet. As I stated when the Commission adopted the NPRM, "Our duty and intention is to faithfully implement the law, freeing up spectrum, raising very substantial revenue, and helping fund FirstNet first responders." The NPRM points out that Spectrum Act requires incentive auction to raise a minimum amount of proceeds to pay broadcasters in the reverse auction, reimburse Treasury for amounts borrowed for the TV Broadcaster Relocation Fund and cover the costs of conducting the incentive auction. It also asks what other policy issues should be addressed when establishing auction closing conditions, which would include funding FirstNet. The Commission intends to faithfully implement the Spectrum Act, freeing up spectrum and raising very substantial revenue. All parties have the opportunity to review and comment on the Commission's incentive auction proposals, including closing conditions, and we encourage them to do so.

The Honorable John Dingell

1. With respect to the open proceeding concerning the structure and rate methodology of the Video Relay Service (VRS) program, is the Commission considering changes that would, as a practical matter, degrade the quality of service that deaf and hard-of-hearing users receive? If so, please detail such changes. Also, will the Commission preserve or improve the availability and quality of VRS service and technology available to consumers?

Response: The Commission is considering proposals to improve the structure and efficiency of the VRS program, to ensure that it is available to all eligible users and offers functional equivalence – particularly given advances in commercially-available technology – and is as immune as possible from the waste, fraud, and abuse that threaten the long-term viability of the program. Our goal is to ensure that this vital program is effective, efficient, and sustainable for the future. Any actions the Commission takes to reform the VRS program will further our statutory obligations to "ensure that interstate and intrastate

telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States," and will "encourage . . . the use of existing technology" and will "not discourage or impair the development of improved technology."

2. Does the Commission believe that deaf and hard-of-hearing consumers should have the same ability to choose their VRS provider as hearing consumers do with voice telephone providers?

Response:

Yes.

3. I understand that no further accessibility guidance based on Access Board recommendations will be available until mid-2013. What does the Commission intend to do to help industry push forward with implementing provisions of the Communications and Video Accessibility Act of 2010 to the benefit of disabled Americans?

Response: The Commission is committed to the effective implementation of the Twenty First Century Communications and Video Accessibility Act (CVAA). The Commission has met every rulemaking deadline set by the CVAA to date, ensuring full, timely, and effective compliance with the legislation's provisions. We will continue to proactively work with industry to help push forward and achieve the objectives of this landmark legislation.

The Commission has also conducted extensive outreach and training on the CVAA at numerous industry conferences and meetings. Through these events, the Commission's Consumer and Governmental Affairs Bureau has enabled the exchange and sharing of information and ideas with stakeholders on how to best implement the new legislation. The Commission will continue these presentations in the coming months and years.

In addition, since October 2011, the Commission has maintained a clearinghouse of information on accessible communications products and services. The Commission is now taking steps to upgrade this clearinghouse to make it more user friendly, and to enable its use as a tool for companies and developers seeking accessibility solutions that can serve as models for their own products and services.



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

Office of the Director

June 25, 2014

The Honorable Steven M. Palazzo
Chairman
Subcommittee on Space
United States House of Representatives
2321 Rayburn House Office Building
Washington, D.C. 20515-6301

Dear Chairman Palazzo:

Enclosed please find the response of Robert Nelson, Chief Engineer of the Federal Communications Commission's International Bureau, to the Questions submitted for the Record regarding his testimony before the Committee's Subcommittee on Space at its May 9, 2014 hearing entitled, "How to Prevent a Real Life 'Gravity'."

If I can be of further assistance, please have your staff contact me at (202) 418-1900.

Sincerely,

A handwritten signature in blue ink, reading "Sara W. Morris", is positioned above the printed name.

Sara W. Morris

Enclosure

Responses from Robert Nelson to Questions for the Record

The Honorable Steven Palazzo:

- 1. In your written testimony you allude to the FCC's authority under the Communications Act of 1934 as the basis for the Commission's regulations governing orbital debris.**
 - a. Can you give the Committee a more specific description from where the commission derived this authority?**
 - b. Does the Commission believe the boundary of its authority is in orbital debris guidelines or does it plan to assert more jurisdiction over traffic management?**

RESPONSE:

The FCC Order adopting orbital debris regulations cite, as authority for that action, Sections 1, 4(i), 301, 303, 308, 309, and 310 of the Communications Act of 1934, as amended. The authority citations for the rules adopted in that order vary based on the particular rule parts modified (Part 5—Experimental Radio Service, Part 25—Satellite Communications, Part 97—Amateur Radio Service).

The FCC Order included the following discussion of statutory authority (footnote text displayed within square brackets):

[T]he Communications Act provides the Commission with broad authority with respect to radio communications involving the United States, except for communications involving U.S. Government radio stations.[fn 50: 47 U.S.C. § 305(a). The Commerce Department's National Telecommunication and Information Administration is responsible for assignment of frequencies for use by U.S. government stations.] The Act charges the FCC with encouraging "the larger and more effective use of radio in the public interest," [fn. 51: 47 U.S.C. § 301.] and provides for licensing of radio communications, [fn. 52: 47 U.S.C. § 301] upon a finding that the "public convenience, interest, or necessity will be served thereby." [fn. 53: 47 U.S.C. § 307(a).] Satellite communications are an important component of the national and world-wide radio communications infrastructure.[fn. 54: *First Report and Order*, 18 FCC Rcd at 10764 (para. 2)(observing that the satellite industry is a "crucial component of the global communications marketplace").] Because orbital debris could affect the cost, reliability, continuity, and safety of satellite operations, orbital debris issues have a bearing upon the "larger and more effective use of radio in the public interest." In addition, orbital debris can negatively affect the availability, integrity, and capability of new satellite systems and valuable services to the public. Thus, orbital debris and related mitigation issues are relevant in determining whether the public interest would be served by authorization of any particular satellite system, or by any particular practice or operating procedure of satellite systems.[fn.55: Courts have held that the Commission may consider public safety factors as part of its licensing procedures. *See Simmons v. FCC*, 145 F.2d 578, 579 (D.C. Cir. 1944)(finding that the "public interest, convenience and necessity clearly require the Commission to deny applications for construction which would menace air navigation"); *Deep South Broadcasting Co. v. FCC*, 278 F.2d 264, 267 (D.C.Cir. 1960) (confirming FCC authority to consider structural aspects of a radio tower as a "clearly relevant public interest consideration"). For a discussion of the FCC's legal authority concerning orbital debris, *see also* MEO/LEO Constellations: U.S. Laws, Policies, and Regulations on Orbital Debris Mitigation, American Institute of Aeronautics and Astronautics Special Project No. SP-016-2-1999 (1999).]

Furthermore, debris prospectively generated from satellites licensed by, or authorized by, the FCC could affect the public interest in protecting the safety of manned space flight, as well as the safety of persons and property on the surface of the Earth. Because robotic spacecraft are typically controlled through radiocommunications links, there is a direct connection between the radiocommunications functions we are charged with licensing under the Communications Act and the physical operations of spacecraft. Accordingly, we conclude that the actions taken in this Second Report and Order are within the scope of our authority under the Communications Act.

The Commission is examining two types of proposed rule changes with respect to orbital debris mitigation. First, as part of the FCC's comprehensive examination of its licensing rules for satellite communications under Part 25 of the rules, industry suggested changes to the FCC's debris mitigation rules. FCC staff is currently examining these proposals, which address ways to simplify the administration of these FCC rules, but do not involve alteration of their scope. Second, the FCC has an open proceeding in which it is considering whether there are changes needed to frequency allocations to facilitate commercial launch activities. That proceeding is limited solely to radio-frequency matters and does not include any proposed changes to orbital debris mitigation rules.

The FCC has not specifically addressed "space traffic management" apart from its work relating to orbital debris and radio-frequency regulation. (The FCC has not defined "space traffic management"; however, other commentators have described it as "the set of technical and regulatory provisions for promoting safe access into outer space, operations in outer space and return from outer space to Earth free from physical or radio-frequency interference".)

- 2. There are several companies publically discussing the possibility of putting up a commercial space station that humans can visit or that astronauts could do experiments on. Presumably these private space stations would require a license from the FCC for transmitting on spectrum. Does the Commission believe it has the authority to require an orbital debris mitigation plan from this type of private space station?**
 - a. What are the limitations of the FCC's perceived regulatory authority in space?**

RESPONSE:

The FCC's rules require the submission of an orbital debris plan as part of an application for a space station license. Accordingly, applicants for an FCC authorization for the types of space stations described should submit a debris mitigation plan.

In general, the limitations of the FCC's regulatory authority, both in space and on the Earth, are specified in the Communications Act of 1934, as amended, and in legislation concerning the exercise of regulatory authority, such as the Administrative Procedures Act. With respect to orbital debris mitigation, and as indicated in my testimony, the FCC recognizes the specific legislative enactments granting the FAA authority concerning commercial launch activities, and NOAA with authority concerning the licensing of commercial remote sensing activities, including the disposal of commercial remote sensing satellites.

- 3. How does the FCC work with international partners to ensure that foreign providers that transmit to U.S. ground stations are following orbital debris mitigation plans?**
 - a. What enforcement actions are available to the FCC if foreign providers do not follow these regulations?**
 - b. How often has the FCC exercised these enforcement actions?**

RESPONSE:

The FCC's rules require that when a U.S.-licensed earth station operates using a space station licensed by another country, the space station's debris mitigation plans must be disclosed. This disclosure usually occurs through one of two types of procedural mechanisms--either as part of an application for an earth station license, or through a "market access" request, which if granted provides access by a satellite system to certain types of already licensed U.S. earth stations. For these two types of requests, the FCC works primarily with commercial operators, although in some instances that operator may be a governmental entity.

As an alternative to providing specific debris mitigation plans, an applicant can ask the Commission to make a finding that satellite operations are subject to "direct and effective" debris mitigation regulation by another country. The FCC has made such findings for specific satellite projects regulated by France and the United Kingdom. Where discussions with foreign governmental bodies are required in connection with such findings, the FCC works with the State Department.

The FCC, the State Department, and NTIA have also developed a framework for potential waivers of the FCC's licensing requirement for receivers operating with foreign radionavigation satellite service systems, and orbital debris mitigation is one of several substantive considerations under that framework. Under this process, the State Department is the primary point of contact for discussions with foreign radionavigation satellite service operators. (Several commercial radionavigation satellite operators have also approached the FCC directly seeking such waivers, primarily in connection with Wide Area Augmentation System payloads procured under contract with the FAA.)

If a foreign-licensed satellite does not follow its plans and/or the FCC's debris mitigation requirements, FCC actions could include monetary fines and license revocation, setting aside of market access, or other appropriate procedural actions to terminate use by U.S. earth stations of the space station involved. The FCC could also consider past conduct in future licensing or market access decisions. To date, there have been no instances requiring such enforcement action.

- 4. What are the enforcement actions available to the FCC to guarantee satellite operators will indeed follow the appropriate protocols for end of life on a satellite?**
 - a. Does the FCC periodically check in with operators to see that they are leaving enough fuel to move the satellite at the end of the satellite's life?**
 - b. Since there is no fuel gauge on a satellite that tells you how much fuel is left, what assurances do you have that an operator is appropriately prepared for end of life plans?**

RESPONSE:

Possible enforcement mechanisms include monetary fines and license revocation. The Commission may also consider past conduct in evaluating future license requests.

The FCC does not periodically check in with operators concerning remaining fuel, and instead relies on other regulatory mechanisms to ensure that sufficient fuel will remain at the end of a satellite's useful life to conduct the maneuvers necessary for taking the satellite out of operation.

For geostationary satellites, the FCC uses regulatory mechanisms at the applications stage to ensure the sufficiency of fuel reserves, by requiring a license applicant to identify the amount of fuel reserved for end-of-life maneuvers, and in deriving that amount to account for fuel gauging uncertainty. Our experience is that this approach results in licensees meeting or exceeding end-of-life requirements, unless prevented by factors other than fuel constraints, such as catastrophic failure of a critical satellite component.

For non-geostationary satellites, end-of-life protocols are handled on a case-by-case basis. To date, licensees have been forthcoming with data concerning remaining fuel in connection with requests for license modifications or extensions where satellite longevity is a relevant consideration.

We do not have the capability to either gather or check the validity of this information independently. Although there is no fuel gauge akin to an automobile fuel gauge on spacecraft, it is our understanding that operators can gauge fuel levels through book-keeping methods (calculating fuel consumed based on thruster firing duration and anticipated fuel flow rate) and through information derived from telemetry from the spacecraft. As an example, some operators are able to derive relatively precise figures for remaining propellant mass from propellant tank temperature increases when tank heaters are turned on for a set duration.

As a general observation, instances in which a satellite does not meet end-of-life disposal objectives are almost all a result of catastrophic failure of a critical satellite component or system. Such failures result in early mission termination and a technical inability to execute planned end-of-life procedures.

The Honorable Donna F. Edwards

- 1. Do your agency's regulations on orbital debris mitigation encompass the upper stages of commercial launch vehicles, and if so is the launch provider then required to respond to two sets of regulation or do both agencies coordinate with the launch provider? If there is a problem with an upper stage as potential debris, which authority takes precedence?**

RESPONSE:

The FCC currently licenses launch vehicle radio-frequency use through the experimental licensing process. The FCC recognizes the statutory role of the FAA in regulating launch vehicles, including upper stages, and does not require orbital debris mitigation information concerning FAA-licensed launch activities as part of the experimental licensing process.

- 2. How would you define 'space traffic management' and what do you view as the priorities for enabling space traffic management?**

RESPONSE:

The FCC has not adopted a definition for the term "space traffic management." However, one influential study described space traffic management as "the set of technical and regulatory provisions for promoting safe access into outer space, operations in outer space and return from outer space to Earth free from physical or radio-frequency interference".

With that definition in mind, there are in my personal professional opinion three priorities for space traffic management.

One priority is the continued improvement in the quality of space situational awareness data, and the mechanisms for sharing that data among satellite operators, including both government and commercial operators. In addition, there is also the need for continued development by operators of procedures for responding to actionable data.

A second priority is continued work by the FAA to integrate space object re-entry activities into airspace management. The FAA is undertaking this work pursuant to its re-entry vehicle licensing authority. I anticipate that lessons learned and experience gained from that process may also be important for managing similar events that may fall outside the scope of the FAA's current authority because they do not involve re-entry of a substantially intact object. The FCC has not approved any plans that rely on controlled, destructive re-entry over the oceans with debris surviving to reach the earth's surface. However, previous license requests have proposed such plans, and it is reasonable to expect that future missions may require air space management support.

A third priority is continued development of radiofrequency allocations to support emerging commercial space ventures. The FCC has a pending rule making proceeding addressing some aspects of this priority, and I fully expect that the FCC will continue to work with commercial operators and our government colleagues to address these needs.

3. What types of on-orbit operations other than collision avoidance, if any, might require regulation? How soon do we have to start worrying about regulating those operations?

RESPONSE:

There will continue to be a need for adjustments in radio-frequency regulations as space commercialization progresses. We anticipate that this will be a continuous process over the coming years. The FCC proceeding proposing to allocate spectrum to support commercial launch frequencies is a current example. That proceeding also included a Notice of Inquiry that began the public process of identifying what frequency allocations may be needed for on-orbit commercial operations.

Another area in which we anticipate possible additional regulatory activity is with respect to on-orbit servicing. While there are currently no licenses or license applications for such operations, several commercial ventures are under development and may require FCC licensing review within the next few years.

A third significant area of regulatory activity relates to small satellites, such as the so-called “cubesats”. These satellites already constitute a significant source of the FCC’s satellite-related licensing workload, and there is every indication that the number of such satellites launched will continue to increase. This is particularly likely given increasing commercial interest in and use of small satellites. While it is possible that existing regulations are sufficient to address this development, it will be important to monitor whether adjustments in regulations are necessary, and, if so, to make such adjustments.



Office of the Director

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

November 8, 2012

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

The Honorable Nydia Velazquez
Ranking Member
Committee on Small Business
United States House of Representatives
2361 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Graves and Ranking Member Velazquez:

Please find attached responses from Federal Communications Commission Chairman Julius Genachowski to the post-hearing questions from the Committee's July 18, 2012 hearing on the role of the federal government in expanding broadband access to small business in rural America. Please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Guice", is written over the word "Sincerely,".

Greg Guice
Director
Office of Legislative Affairs

Enclosure

The Honorable Mick Mulvaney

1. The FCC has had special access under consideration for number of years and it has issued two voluntary data requests that sought to obtain data from providers and customers about special access facilities, pricing and competition. This data is necessary to determine whether the special access pricing flexibility granted by the FCC in 1999 is still appropriate and warranted. I understand the vast majority of special access competitors had not responded to the FCC's data request. Why has the FCC not pursued a mandatory data request?

Response: On October 9th I circulated an order to my colleagues at the Commission to conduct a mandatory, comprehensive data collection order that will enable us to evaluate the extent of competition in special access markets and adjust our rules as appropriate.

2. Does the FCC have any plans to set price controls on special access arrangements?

Response: Special access services currently are subject to different levels of regulation, including price caps in some areas. The Commission is actively considering whether and how to modify the regulations that govern special access, and the information obtained through the Commission's mandatory data collection will enable us to move forward.

3. The current USF charge for telecommunications customers is around 18% of their bill. What is the FCC doing to ensure USF rates stay as low as possible?

Response: Fiscal responsibility has been one of the central principles of all aspects of our USF reforms under my chairmanship. Because the contribution factor on consumers' bills is driven by the size of the USF programs, I have focused the Commission on combating waste, fraud, and abuse and controlling spending across USF. For example, in the Lifeline program, which helps ensure affordable service for low-income families, our bipartisan reforms have already produced substantial savings this year, putting the Commission on target to meet our savings goal of \$200 million in 2012. In 2011 we acted unanimously to put the USF high-cost fund on a budget for the first time, as we transition from supporting phone service to the broadband-focused Connect America Fund. Along with the existing caps for E-Rate and the Rural Health Care program, these reforms are helping limit the overall contribution burden.

After acting to address waste and inefficiency on the demand side, in April of this year the Commission put forward proposals to reform the contribution side of USF. Contributions reform is part of a broader agency effort to modernize outdated programs, eliminate unnecessary rules, and improve program efficiency and effectiveness. Commission staff is currently reviewing the record developed in the USF contributions proceeding.

4. Currently, almost 90% of Americans have access to wireless services and at competitive, reasonable prices. I'm also told that 95% of Americans have access to broadband from at least one provider. Additionally, there are a number of small business providers that are deploying these services without receiving support from the high-cost fund.

What policies are necessary to encourage more companies to use innovative measures to provide cutting-edge technologies to rural or underserved communities as opposed to relying on government-backed subsidies?

Response: The Commission is taking a number of steps to promote private-sector efforts to deploy broadband in rural and underserved communities. The *USF/ICC Transformation Order* for the first time reformed the high-cost program to ensure that support will no longer be provided in areas where an unsubsidized provider is already providing service. This reform saves universal service funding that would otherwise be wasted or used inefficiently and removes disincentives for private-sector investment. The Commission has also taken important steps to reduce barriers to investment through our Broadband Acceleration Initiative, which has included landmark reforms of the Commission’s rules governing pole attachments, tower siting, and access to wireless backhaul. And the Commission has freed up spectrum that can be used to deliver wireless broadband in rural areas, including through innovative solutions like the TV whitespaces.

At what point do you think that USF subsidies will no longer be necessary?

Response: In the Telecommunications Act of 1996, Congress directed the FCC to advance the availability of communications services to all consumers, including those in rural, insular, and high cost areas at rates that are reasonably comparable to those charged in urban areas. With nearly 19 million Americans living in areas that lack basic broadband, the Connect America Fund is critical to satisfying the mandate Congress gave the FCC and connecting all Americans. We have focused our reform efforts on ensuring that broadband is available to all Americans while ensuring the public’s dollars are spent wisely and within a defined budget.

5. I understand that the FCC under the Reagan Administration required interoperability of devices to ensure that smaller carriers were able to provide analog services to their customers on a competitive basis with larger carriers. Are the market conditions now the same as they were during that time? Should we be considering another interoperability rule?

Response: The Commission sought comment earlier this year on proposals to ensure interoperability in the lower 700 MHz band, and solicited input on the role of interoperability in enabling a competitive wireless market. Commission staff is currently reviewing the record developed in this proceeding.

6. WBFF 45, a television station in Baltimore, Maryland, recently reported on the Universal Service Fund Lifeline Program. The data referenced in the report showed an increase in Lifeline subscribers in Baltimore from 6,000 subscribers in 2008 to 231,000 subscribers in 2011. This is a 3750% increase in 3 years. To what do you attribute such an explosion in Lifeline participation in Baltimore?

Response: For more than 25 years, the Lifeline program has played a vital role in ensuring that the neediest among us stay connected to our communications networks. When this Commission inherited Lifeline more than three years ago, the program faced real and serious challenges, including rules that failed to keep pace with the boom in mobile service; created perverse incentives for some carriers; and, as we came to see, invited fraud and abuse. Since then, we’ve rolled up our sleeves to put this program on a sound path and strong foundation. Earlier this year the Commission fundamentally overhauled the program by enacting rules to strengthen Lifeline by eliminating waste, fraud and abuse and getting rid of outdated rules.

In recent years, the primary driver of the increase in the Lifeline program has been the fact that prepaid wireless companies are now eligible for support, a decision made by the previous FCC. In fact, in Maryland, well over two-thirds of Lifeline support goes to prepaid wireless service providers. Unfortunately, much of the fraud and abuse, including duplicative Lifeline service for the same individual, has been from customers of these services. Our reform efforts tackle this challenge head on.

In our recent *Lifeline Reform Order*, the Commission found that Lifeline participation increased significantly in states where consumers were permitted to sign up without showing proof of eligibility (e.g., self certification), and that failing to require proof of eligibility contributed to waste, fraud, and abuse. To correct for this, in the *Lifeline Reform Order*, the Commission required that all subscribers demonstrate their eligibility by showing proof of income or participation in a qualifying program.

The Commission has also been working to eliminate duplicative support payments, which occurs where there is more than one reduced price Lifeline plan in a household. In Maryland, the Commission reviewed over 170,000 Lifeline subscriptions and eliminated support for over 20,000 duplicative subscriptions, which has resulted in over \$1.5 million in savings to the Fund in 2012. The Commission plans to review more Lifeline subscriptions in Maryland later this year to continue preventing and eliminating duplicative support. As a result of the Order and steps taken in advance of the Order, over 700,000 duplicate subscriptions have been eliminated in 2011 and 2012, for a total of \$80 million in annual savings.

In addition to the steps to eliminate duplicative support, the *Lifeline Reform Order* includes a number of other reforms to constrain program growth, including establishment of national eligibility criteria and a national database, and independent audits in addition to setting an annual savings target for Lifeline. The Order also eliminated Link-Up support on non-Tribal lands, saving nearly \$160 million annually. In July, the Wireline Competition Bureau (WCB) issued a Progress Report estimating that Lifeline reforms had already yielded approximately \$43 million in savings between April 2, 2012, the effective date of the Order, and July 31, 2012, putting the Commission on target to meet our savings goal of \$200 million in 2012. On August 13, 2012, USAC issued a Request for Proposal for a vendor to build the National Lifeline Accountability Database, which will improve detection and prevention of duplicative support going forward.

7. The report said that it only takes 5 to 10 minutes for a person to receive a Lifeline phone. What information and what steps are necessary for an individual to receive a Lifeline phone? About how long would you expect the application, verification, and activation process to take?

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

8. The report mentioned the FCC’s new efforts to track and remove individuals from the program who were receiving more than one Lifeline phone. That is a step in the right direction. However, it is my understanding that it is the participating provider’s job to ask whether a person seeking a new Lifeline phone already has one, and to obtain the individual’s information and share that information with the FCC’s database to track fraud and abuse. The report showcased individuals who were in possession of multiple Lifeline cell phones, received a Lifeline phone while carrying another Lifeline phone, or received Lifeline phones only to turn around and sell them to drug dealers. It seems like there is a disconnect between FCC’s plans to address fraud and abuse and what is happening at the cell phone provider level. What is the FCC doing to ensure that participating providers are asking the right questions and collecting accurate, verifiable data on individuals seeking Lifeline phones?

Response: Waste, fraud and abuse in the Lifeline program, by consumers or providers, will not be tolerated while I am Chairman. Even before adopting the *Lifeline Reform Order* earlier this year, the Commission created procedures to detect and de-enroll subscribers with duplicate Lifeline-supported services, identifying more than 200,000 duplicative Lifeline subscriptions for elimination – saving tens of millions of dollars. In February, the Commission fundamentally overhauled the program by enacting rules to strengthen Lifeline by eliminating waste, fraud and abuse and getting rid of outdated rules.

In the *Lifeline Reform Order*, the Commission established new procedures for how consumers are enrolled in Lifeline, including what information must be conveyed to the consumer at sign up. Specifically, all prospective customers must be provided with the following information: 1) Lifeline is a federal benefit and willfully making false statements to obtain the benefit can result in fines, imprisonment, de-enrollment or being barred from the program; 2) only one Lifeline service is available per household; 3) a household is

defined for purposes of the Lifeline program, as any individual or group of individuals who live together at the same address and share income and expenses; 4) a household is not permitted to receive Lifeline benefits from multiple providers; 5) violation of the one per household limitation constitutes a violation of the Commission’s rules and will result in the subscriber’s de-enrollment from the program; and 6) Lifeline is a non-transferable benefit and that subscribers may not transfer his or her benefit to any other person.

In addition, carriers are required to collect the following information from each subscriber, which the subscriber must attest to under penalty of perjury: the subscriber’s name, residential address, whether the address is permanent or temporary, the subscriber’s billing address if different from the residential address, subscriber’s date of birth, the last four digits of the subscriber’s social security number or Tribal ID number, and proof of eligibility (if a database is not available to determine eligibility.)

Pursuant to the Lifeline Reform Order, USAC will audit carriers to ensure that this information is being conveyed to subscribers. Any carrier that violates the Commission’s low-income rules faces stiff penalties, including monetary forfeitures of up to \$150,000 for each violation, and up to a maximum of \$1,500,000 per continuing violation. In addition, a carrier could face revocation of its eligible telecommunications carrier (ETC) designation for failure to comply with program requirements. One company has already been stripped of its designation to participate in the program, and the Commission has other investigations ongoing.

Finally, it is important to note that, as required by the *Lifeline Reform Order*, the Universal Service Administrative Company (USAC) recently released an RFP to establish the National Lifeline Accountability Database. This database will be the permanent solution to detect and eliminate duplicative Lifeline support. Using the information each carrier collects (as described above), carriers will be required to input subscriber information into the database so that other carriers can check to see if a potential subscriber is already receiving a Lifeline benefit from another provider. This automated process will be in place in 2013 and will be a major step forward in ending duplicates within the Lifeline Program.

9. Since implementing your new processes for Lifeline, has the FCC been made aware of any participating providers who routinely are providing phones to individuals who have already received a Lifeline phone? If so, how have you responded to both the provider and the individual? Is there any penalty for engaging in such activity?

Response: One company has already been stripped of its designation to participate in the program, and the Commission has other investigations ongoing. Any carrier that violates the Commission’s Lifeline rules may face penalties including monetary forfeitures of up to \$150,000 for each violation. In addition, a carrier could face revocation of their authorization to operate as an eligible telecommunications carrier. In addition, all Lifeline subscribers are required to acknowledge that providing false or fraudulent information to receive Lifeline benefits is punishable by law. Consumers willfully making false statements

open themselves up to penalties of perjury and can be punished by fine or imprisonment or can be barred from the program.

The Honorable Kurt Shrader

1. The Notice of Proposed Rulemaking (NPRM) on interoperability in the Lower 700 MHz band that was issued this past March considers requiring interoperability in the Lower 700 MHz band. The deadline for comments was June 1st and reply comments July 16th. One of the frequent comments I receive is the lack of certainty with FCC actions and as a result there is an inability for many businesses to proceed with building out their networks to ensure they will have access to devices. Can you please provide the committee with an exact timeframe of when the Commission will make a decision on interoperability?

Response: Staff is currently evaluating the record of more than 200 comments filed in this proceeding. The comment cycle in this proceeding closed on July 16, and staff is already engaged in evaluating the record, including information that has been added to the record as recently as the end of October. The Commission is actively working to address this critical issue.

The Honorable Gary Peters

1. Chairman Genachowski, could you provide an update on the “Broadband Adoption Lifeline Pilot Program” and any details on approved projects targeting urban areas?

Response: The Broadband Adoption Lifeline Pilot Program was created in January 2012 using savings from the reforms we instituted in the Lifeline program of the Universal Service Fund. On April 30, 2012 the Commission released a Public Notice announcing the deadline for applications for the pilot program of July 2, 2012. The Commission received more than 20 applications and is currently evaluating them.

2. Chairman Genachowski and Secretary Strickling, can you tell us about FCC and NTIA efforts to expand digital literacy in urban areas? Do you coordinate with other agencies on these efforts?

Response: The FCC worked closely with NTIA and eight other agencies to develop an online forum called DigitalLiteracy.gov, which serves a resource for librarians, teachers, workforce trainers, and others to collaborate and develop best practices for improving digital literacy initiatives in their communities.

The FCC also helped catalyze the creation of Connect2Compete, a public-private partnership that not only provides low-cost broadband access and computers to low income Americans, but also connects consumers to digital literacy training in their communities to ensure that they are equipped to take full advantage of the benefits of broadband. In July,

Connect2Compete expanded to include the Department of Labor as an outreach partner. The Department of Labor’s participation will bring digital literacy training to their network of nearly 2,800 employment and training centers across the country.

3. Chairman Genachowski, will Universal Service Fund (USF) reform provide adequate funding for expanded broadband adoption programs beyond the Broadband Adoption Lifeline Pilot Program?

Response: The Broadband Adoption Lifeline Pilot Program is a key step in transitioning USF to support broadband, including to increase broadband adoption. As we learn from the data the Program will generate, we will have a better understanding of how limited USF resources can best be used to increase broadband adoption.

4. Chairman Genachowski and Secretary Strickling, do you believe that new legislation to provide support for broadband adoption in the form of tax incentives or new appropriations could help increase adoption rates? Are there additional tools that Congress could provide that would allow your agencies to expand broadband adoption and digital literacy efforts?

Response: I welcome the opportunity to work with Congress to increase broadband adoption. The Commission’s Broadband Adoption Lifeline Pilot Program requires participants receiving support to design projects that will generate important new data on how support for the monthly cost of broadband can increase broadband adoption among low-income Americans. This information will help inform potential next steps, including steps that Congress can take to help tackle this important issue.

The Honorable Janice Hahn

1. Broadband investment provides substantial benefits to consumers and small businesses. Thanks to the FCC’s thoughtful and inclusive approach, investment in fiber has skyrocketed since 2003. In April, the Wall Street Journal reported that 19.2 million miles of fiber were installed in the United States compared to the 5 million miles installed during 2003. There are now 770 carriers deploying Fiber-to-the-Home around the country.

Fiber now passes over 22.6 million U.S. homes compared to only 180,000 in 2003. Analysts report that 8 million American homes are now connected by fiber and that roughly 32% of commercial buildings in the United States have access to fiber. Thus, we must make sure that future regulation continues to promote competition and foster growth as we continue to make these much needed investments.

So with these facts in mind, I have a question about the FCC’s role in future fiber deployment. What are the future plans for the FCC to regulate fiber services?

Response: Ensuring strong incentives to invest in fiber, mobile, and other advanced communications infrastructure has been one of the FCC’s top priorities under my leadership. And fiber deployment has been increasing: More than 19 million miles of optical fiber were installed in the United States in the last year, “the most since the boom year of 2000,” according to *The Wall Street Journal*. Promoting competition and removing barriers to investment have been vital parts of this success.

I remain committed to policies that promote competition, remove barriers to broadband buildout, and protect and empower consumers, all of which are critical to robust network investment.