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NOMINATIONS TO THE FEDERAL COMMUNICATIONS COMMISSION AND TO THE DEPARTMENT OF COMMERCE (NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION)

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

SEPTEMBER 12, 2006

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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NOMINATIONS TO THE FEDERAL COMMUNICATIONS COMMISSION AND TO THE DEPARTMENT OF COMMERCE (NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION)

TUESDAY, SEPTEMBER 12, 2006

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

The Committee met, pursuant to notice, at 10 a.m. in room SR–253, Russell Senate Office Building, Hon. Ted Stevens, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Senator STEVENS. Good morning. We have a hearing this morning on nominations from the President for the Chairman of the Federal Communications Commission and the nominee for the Assistant Secretary of Commerce for Communications and Information. We welcome all of you and thank you for coming, and thank the nominees for their willingness to serve.

Kevin Martin is currently serving as Chairman of the FCC, and has been with the agency since 2001. Prior to joining the FCC, Mr. Martin served as a Special Assistant to the President for Economic Policy, as well as an advisor to FCC Commissioner Harold Furchtgott-Roth.

Mr. Martin, I understand Senator Burr is here to introduce you this morning, and we look forward to his remarks.

As many of you know, this Committee recently passed the communications reform bill which would address many of the policy issues that are also before the FCC, and we look forward to hearing from Chairman Martin about the agency's activities.

John Kneuer has been nominated to be an Assistant Secretary of Commerce for Communications and Information. If confirmed, Mr. Kneuer will oversee the National Telecommunications Information Administration, which we call NTIA, and that is the principal advisor to the President on telecommunications information policy. Mr. Kneuer was named Deputy Assistant Secretary of NTIA in 2003, has been the Acting Assistant Secretary since Mr. Gallagher stepped down.

NTIA is charged with carrying out a number of provisions in last year's budget reconciliation bill that impact both the DTV conver-

sion and the $1 billion for interoperability grants for first responders.

We understand that the nominees have family and friends today. We ask them to introduce their families as they come to the table.

First, however, we'll hear from our colleague Senator Burr.

STATEMENT OF HON. RICHARD BURR,
U.S. SENATOR FROM NORTH CAROLINA

Senator BURR. Mr. Chairman, thank you. It is a good morning, and it's my pleasure to introduce the Chairman of the Federal Communications Commission, and my friend, Kevin Martin.

I want to take this opportunity—and I will be brief—to strongly recommend that you confirm Kevin Martin as the next Chairman of the FCC.

As the FCC Commissioner, Kevin's consistently served as an ambassador on behalf of the Commission at a time of great change and uncertainty in the world of telecommunications. He has a unique ability to bring together diverse groups, be they urban or rural or of opposing philosophies, and to forge consensus on complex issues. I've always found his door, as well as his mind, to be open to all who have had issues and concerns before the Commission.

Throughout his tenure at the FCC, Kevin has had the best interest of the Commission at heart. And although our policy views have differed at times, he's always been thoughtful and diplomatic at exploring these differences. Kevin's vision of the industry he currently regulates, and his attention to details, make him eminently qualified and the best person to lead the Commission and help move this industry forward in the 21st century.

Hailing from my home State of North Carolina, I'm proud to call Kevin Martin a fellow North Carolinian, and also a friend. I will also be proud to call him Chairman, once again, when this committee acts. I trust, Mr. Chairman and my colleagues, that all the members of this committee will confirm Kevin Martin as the next Chairman of the FCC as expeditiously as we can.

I thank the Chair, and I thank the Committee for their attention to what I believe is absolutely one of the most crucial sectors of our economy, and that's telecommunications, and the rules and the legislation that it takes for that to flourish in the days, weeks, months, and years ahead.

I thank the Chairman.

Senator STEVENS. Thank you very much, Senator.

Do you have any questions, Senator Rockefeller, of our colleague?

Senator ROCKEFELLER. No.

Senator STEVENS. We'll not ask you any questions, my friend. We appreciate your coming to join us.

Senator BURR. Thank you, Mr. Chairman.

Senator STEVENS. Now, let me turn to Senator Rockefeller to see if he has an opening statement, first.

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

Senator ROCKEFELLER. I'll make this very quick, Mr. Chairman.

I guess I just need to say this directly—I don't think that we've had a real concentration on communications policy in this Administration. The President outlined a goal of universal broadband connectivity by 2007. Clearly, we're not going to meet that goal. We've fallen much farther behind Europe and Asia in the next-generation broadband deployment. I know that many in the industry say that they're doing all that they can, but I, frankly, would disagree. I think access to broadband communications has to be a matter for rural areas, as well as for urban areas. That is not an impossible thing. Wireless will one day take care of that, but it doesn't yet. But a full 25 percent of my constituents in West Virginia have absolutely no access to any form of broadband. I think that Japan is now producing over 90 percent of the world's fiberoptic broadband deployment. However you want to look at it, it's very, very dramatic.

So, I think we have to have an aggressive group of folks on the FCC. Chairman Martin is that, cares very much about these things. I fully support not only his nomination, but also the nomination of Mr. Kneuer.

And I thank the Chairman.

Senator STEVENS. Thank you.

Senator Sununu, do you have any opening comments?

STATEMENT OF HON. JOHN E. SUNUNU,
U.S. SENATOR FROM NEW HAMPSHIRE

Senator SUNUNU. Yes, I do, Mr. Chairman.

I appreciate the opportunity for the hearing—this is an important position—and certainly appreciate the introduction of Senator Burr, and would agree with Senator Burr that Chairman Martin, among the nominees that we're going to be hearing from today, is amicable, is thoughtful, and has tried to lead the Commission to the best of his ability.

My concern, though, and the questions that I have today, have to do with policy and what kind of policies we're going to pursue, what kind of vision and leadership we're going to have at the FCC, given the current dynamic environment in telecommunications and Internet policy today.

Chairman Martin will have an opportunity to provide testimony. I hope we have an opportunity for questions and answers. But, without a doubt, he has pursued policies to restrict marketing of Internet services in an age where those Internet voice services are growing and providing new opportunities for customers today. He's pushed to establish must-carry regulations for multicasting. He's advocated price controls on cable television. And all the while, I think it's fair to say, the Commission has failed to address some of the enormous inequities we see in the universal service system today. And this committee has had hearing after hearing about those problems, about the contribution factor, about weaknesses in distribution, about limitations in access in rural areas. And I think many of those problems fall on the shoulders of a Universal Service Fund that is failing to meet the valuable objective for which it was

established. We've failed to address the access-charge regimes, which are antiquated. We have access charges of 10, 12, and 14 cents a minute, in parts of the country, that make no economic sense whatsoever.

So, I do think these are significant problems in the policy direction that's been established for the FCC. They're issues that I've been outspoken on, but I think others in the House and Senate have raised them, as well. And these policies are particularly problematic in an environment where we have enormous growth in services, choices, options for customers, and new entrants. As a result, it's particularly problematic when the FCC seeks to protect existing business models or enforce specific business models on the industry. It's a dynamic environment; there are some people that don't like that. It's a very fragmented market; there are some people that don't like that.

But I think it's good, from a consumer standpoint, that we have such a proliferation of services and choices on the Internet, choices and—channels and new products and new content being provided by satellite and by cable and by DSL. And it's a mistake to look at what we've had in the way of market structure in the past, or rules or regulations in the past, and say we automatically need to enforce these business models on any future competitors.

There's a great deal of power vested in the FCC, and I think that that power needs to be used very judiciously. And I would hope that, in the comments and the responses we hear from the Chairman, it's made clear that in a dynamic environment we ought to exercise the utmost restraint in imposing new regulations that will adversely affect the competitive structure.

Thank you, Mr. Chairman.

Senator STEVENS. Senator Dorgan, do you have any opening comments?

STATEMENT OF HON. BYRON L. DORGAN,
U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. Mr. Chairman, I do.

Mr. Chairman, the position of the Chairman of the Federal Communications Commission is an incredibly important position. I like Kevin Martin, the Chairman. We've had a chance to meet and talk. I hope to be able to stay; we have an Energy Committee hearing going on, and I hope to stay long enough to ask a series of questions—I'm very concerned about what happens at the Federal Communications Commission, for reasons, perhaps, in some cases similar, in some cases different than my colleague has just explained.

In 2003, the FCC began revising media ownership rules. They came up with a rule that would have said in America's larger cities it's OK for one company to own eight radio stations, three television stations, the dominant newspaper, and the cable company, all under the same ownership. It's not all right with me. I don't think it's all right with other people in this country. That is vesting far too much power in increasingly concentrated media.

It's vesting far too much power in a few hands. We have about four or five hands in this country in which most of the media exists, and this would further concentrate it. I think it's a horrible mistake.

Chairman Martin has announced that he intends to begin new media ownership rule considerations now. Senator Trent Lott and I have sent him a rather lengthy letter about that. My hope is that this committee will address that very aggressively. Chairman Martin was a part of a majority that created those rules that the Court had stayed. My hope is that we will see a different type of ownership rule proceeding come out of the FCC, and a different result, because I think the result they were headed toward is a result that increases concentration, increases the power in the hands of a few, and is, I think, devastating to the future of communications in this country.

So, I hope to be able to be here long enough to ask Chairman Martin a series of questions. I appreciate him being here. I welcome his family. And I look forward to the discussion.

Senator STEVENS. Senator Boxer?

STATEMENT OF HON. BARBARA BOXER,
U.S. SENATOR FROM CALIFORNIA

Senator BOXER. Thank you very much, Mr. Chairman, for holding hearings on these two very important nominations.

I would like to welcome Chairman Martin. And I hear his daughter is communicating very freely or—is that your daughter or—OK, your son.

The FCC has the vast responsibility of regulating interstate communications. And now, more than ever, Americans rely upon various forms of communications to enrich their lives and to conduct their daily business. Whether watching TV or making a call or accessing the Internet, consumers rely on the FCC to be the watchdog over the companies providing these services. And I think that's really worth repeating. Consumers are counting on the FCC to be the watchdog over the companies providing these services. Companies have a voice. The consumers often find they don't.

Currently, there are a number of communications and media issues before the FCC that are of particular interest to the public. These include the FCC's media ownership proceeding, reports that companies are turning customer phone records over to the Federal Government without a warrant, and net neutrality. All of these are very hot-button, tough issues.

I'm deeply concerned that a loosening of the media ownership rules will allow already-large media corporations to grow. These media giants already use—I kind of want to play with the baby—is what's going on.

[Laughter.]

Senator BOXER. I am deeply concerned that a loosening of the media ownership rules will allow already-large media corporations to grow. These media giants already use multiple media outlets to promote their views and dominate public debate. Americans have made it clear that a diversity of viewpoints and localism are extremely important to them, and I hope the Commission listens.

On August the 10th, I sent Chairman Martin a letter urging him to conduct a public hearing in California regarding its recently released media ownership Further Notice of Proposed Rulemaking. I'm very pleased that the Commission just announced that its very first field hearing will be held in Los Angeles on October the 3rd.

And, having said that, I hope the Commission will now pay attention to the public at these field hearings.

It's also vital that the FCC aggressively protect the privacy rights and reasonable expectations of consumers. Reports that telephone companies are handing customer information over to the government without a warrant are very troubling, and I hope that the Commission will examine any allegations of such activity.

As the head of the FCC, Chairman Martin is in a unique position to influence the Commission's activities. I have a number of questions regarding these issues and other issues, and look forward to hearing his answers.

And I also welcome Mr. Kneuer. He's been nominated to head the National Telecommunications and Information Administration, an agency less known to the general public. But as a result of the Deficit Reduction Act, the NTIA has been charged with a number of new and important projects, including the establishment of a $1 billion program to promote interoperable communications, something I think we all agree has to happen, and the establishment of a program to distribute analog-to-digital converter boxes, another very important project. So, I'm very interested in hearing from Mr. Kneuer about NTIA's progress on implementing these important programs.

Mr. Chairman, again, thank you for holding these hearings, and I look forward to hearing from these nominees.

Senator STEVENS. Senator DeMint, do you have an opening statement?

STATEMENT OF HON. JIM DEMINT,
U.S. SENATOR FROM SOUTH CAROLINA

Senator DEMINT. Thank you, Mr. Chairman.

Chairman Martin, I commend you on your renomination to the FCC. I am very interested in a lot of what you've been involved with, but I want to mention one thing, particularly, today, very quickly, if I can skip around in my statement.

I have been working on, along with a number of members of this committee for the last year, an emergency alert upgrade system called the WARN Act. It has passed the Committee here, and, with the help of Chairman Stevens and Ranking Member Inouye, Ben Nelson, and others on this committee, it is headed for the floor today to be added to the port security bill. The same bill is being done on the House side by Congressman John Shimkus.

And my concern, at this point, is, the FCC has proceeded with rulemaking on an emergency alert system, similar to the WARN Act, which would set up a mandatory structure which we believe would diminish the potential of a new emergency alert system using wireless technology all across the country. In a number of hearings and meetings with the wireless networks across the country, the potential of competition for the best system is clearly there. And my fear is, if the FCC moves ahead with its own mandates, that we'll end up with another government top-down, one-size-fits-all system that does not use the innovative possibilities that we have.

As many of you know who have worked on this bill, the ability, in the event of a terrorist attack or a hurricane, tornado, earth-

quake, to use wireless technologies to not only be warned of a possible disaster, but to use NOAA information of wind directions and other available information to tell people which way to evacuate, where food and shelter is, a lot of other information that we've seen in Katrina and other problems, that is not currently available. I believe that if this Federal Government sets up the infrastructure to provide these signals and warnings, that our free-market economy can create the best delivery systems that the world has ever seen.

And my request today, as we have done to your folks already, is to delay this rulemaking until we see what Congress finishes here before the end of the year, so that we can capture the will of the Congress instead of a mandate of the FCC.

And, again, I look forward to your confirmation, but would request, I think, as others have today, that we let the free market work and use government mandates only as the last resort.

Thank you, Mr. Chairman. I yield back.

Senator STEVENS. Senator Pryor, do you have any comments?

Senator PRYOR. I don't, Mr. Chairman, thank you.

Senator STEVENS. Would the Chairman and Mr. Kneuer please come to the table? Thank you.

As Senator DeMint has just said, his amendment is pending on the floor at 10:30, and I will have to leave at that time.

Mr. Chairman, would you please introduce your family for us?

Mr. MARTIN. Yes, Mr. Chairman.

Let me start with my mother, who's here with us today and my older sister, Pam. And my wife and our new son, Luke, have just come back in the room, as Senator Boxer was indicating. He's been anxious to communicate with all of you, as well.

[Laughter.]

Mr. MARTIN. So, I'm sure that he will probably continue to try to do so. But I do want to thank my mother and my sister for being here, and for all of their support in the past, and certainly my wife for all of her support, without which I wouldn't be able to be here and do the things at the Commission that are required. And I do want to make sure and emphasize Luke, whose birth has certainly been the most exciting thing over the last year to happen to our family.

Thank you.

Senator STEVENS. Thank you.

Senator BURNS. How old is Luke?

Mr. MARTIN. He's 10 months old.

Senator BURNS. Send him up here. I know how to quiet him down.

[Laughter.]

Senator STEVENS. You can give him to me. You could have more; I can't.

[Laughter.]

Senator STEVENS. Mr. Kneuer.

Mr. KNEUER. Thank you, Senator.

I've got a cast of thousands here. First and foremost, my lovely and very patient wife, Mimi, my daughter, Christine. I've got the two Josephs, my son and my father. My mother is here—they came from New Jersey—as well as my brother and sister-in-law, Paul and Melissa Kneuer. And, by a happy coincidence, my mother-in-

law's sisters were in town from Texas to see Washington. They're getting a bit of an interactive tour they weren't expecting, but I'm glad that they could be here, as well. We also have our children's nanny, Margaret Bedawa, who is a dear member of the family, as well. And my sister, Ann. And my sister Ann.

[Laughter.]

Senator STEVENS. Well, you're very fortunate to have such a lovely family. We welcome you.

And I want to take the prerogative of the Chair to turn this over to Senator Burns in just a minute. If I may, I'd just like to ask a couple of questions before I go manage the bill on the floor.

Mr. Chairman, net neutrality was the most hotly debated portion of our communications bill. And it is the subject that's holding up the communications bill, and may well lead to its total defeat this year, after 19 months of work on that bill.

I want to ask you, Have you seen any abuse by cable companies or telephone companies in providing access to the Internet? And do you have a system in place for monitoring and identifying any such abuses?

Mr. MARTIN. Well, Mr. Chairman, as you know, the Commission adopted a set of net neutrality principles last August in which we talked about the importance of consumers being able to have access to all of the information that's available for free over the Internet. And we continue to make sure and monitor the situation in the marketplace to see if we've identified any particular problems. And there has only been one instance that's been brought to the Commission's attention, where there was a telephone company that had been preventing consumers from getting access to some of the content that's available on the Internet, and the Commission took action in that instance. We were able to reach an enforcement agreement with them to stop. So, we reacted swiftly to it.

And so, I think that the Commission has continued to monitor the marketplace, has been vigilant about it, has tried to continue to make sure that we are enforcing the net neutrality principles, to make sure that consumers aren't having access blocked.

I am, obviously, aware of the debate that has occurred within this Committee on net neutrality. Certainly one of the helpful proposals that I think was included in your bill was the prospect of the Commission continuing to do ongoing monitoring, including officially issuing a notice asking for people to comment and identify any other problems that might be occurring, even if they haven't been brought to us in the context of a complaint. And so, I have asked the staff to prepare a notice seeking public comment on that, just as the draft legislation that came out of this committee would propose.

But I think we do have in place some steps to monitor the situation.

Senator STEVENS. Do you think you have any existing authority to take action if a problem develops before this bill becomes law?

Mr. MARTIN. I do. The Commission, I think, does have authority, under Title I of the Communications Act. And, indeed, last summer the Supreme Court, in affirming the Commission's *Brand X* decision determining that cable modem service is an information service, stated that the Commission had ancillary authority to adopt

additional rules over the infrastructure providers of broadband access, if they needed to. So, I think we do have that authority.

Senator STEVENS. In our bill, we develop a new concept for universal service and eliminate the concept that only long-distance users pay into the Universal Service Fund. You have discussed a reverse auction concept whereby rural telephone companies, wireless companies, and other competitors would compete for the right to use the Universal Service Fund's support. The rural telephone companies in my state have serious problems with that concept. Could you explain that? And is this something you believe you could do without any further authorization?

Mr. MARTIN. Well, there are significant problems with the Universal Service Fund, both with the number of carriers and providers that contribute into the fund and with the way that the current resources are distributed. The Commission has tried to take action on both. And I think that there are additional steps we need to take on both, both broadening the base of people that are contributing, to make sure that we've got an assessment rate on a broad base that's as low as possible. There are various proposals in front of us. I've talked, in the past, about trying to assess fees based upon telephone numbers. But I also think we need to do some additional work on the distribution side.

Currently, we've seen a significant increase, just during my time at the Commission, on the number of carriers that are receiving so-called "competitive Universal Service grants." When I arrived at the Commission, those grants totalled less than a million dollars. There is close to a billion dollars being distributed to competitive carriers today. That's putting an incredible strain on the Universal Service Fund, and I think that we need to make sure that we are distributing Universal Service resources in the most efficient manner possible.

I grew up in a rural area of North Carolina. My mother still lives on the gravel road where I grew up. My address was Rural Route 3, Waxhaw, North Carolina, when I was growing up. So, I appreciate and understand how important it is to make sure that people in rural areas don't get left behind, but we have to do so in the most efficient manner possible. I think a reverse auction methodology is a serious proposal we should consider.

Senator STEVENS. Well, by definition, an entity with a fixed system, embedded system, having a wireless competitor would always lose. If you put it on a competitive basis, I don't see how existing technology can possibly survive against new technology, so you automatically have a revolving door, as far as Universal Service is concerned.

Mr. MARTIN. I hope that we develop a system that actually encourages the development and deployment of the best new technologies. We should be determining the adequate level of service that people in rural areas deserve to have. But then, we want to make sure that we have a system that doesn't freeze in place one set of technologies, but, rather, encourages the most efficient technology to be able to go in and serve those consumers. So, I think that we need to make sure that we don't do so in a way that causes significant problems for carriers. We need to have it over a lengthy enough period of time to allow them to recover the resources that

they've invested. But I think that we want to have a system that encourages the deployment and moving to new, more efficient technologies.

Senator STEVENS. But if a small rural carrier in a small community that's met the needs of that community for years is facing a national company that comes in and wants just to replace it completely with a wireless system, and do that nationally, the larger company has got enormous advantage over the local provider. I would hope you really take a look at the concept of continuity and, really, community presence, because the absentee owner, once they get the ability to serve, they have no further interest in that community, as the local provider who started the system, does. And I really think that it's going to be a system whereby the existing local providers are just going to be wiped off the map. And I hope that's not the case.

Mr. Kneuer, I do apologize for mispronouncing your name at the beginning. I have a question for you concerning the question of the DTV converter boxes. I'll give it to you and hope you'll answer it for the record.

And, again, I must go and turn this over now to Senator Burns, who will chair the Committee.

I failed to do this. Commissioner McDowell and Commissioner Adelstein, we appreciate your being here. I think it's one of the few times you've been present at the same time.

STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Senator BURNS. [presiding] Well, did we have opening statements by the appointees?

Mr. MARTIN. No.

Senator BURNS. Do you have an opening statement, Mr. Chairman?

Mr. MARTIN. I do.

Senator BURNS. Maybe we should go to those opening statements. And could you keep them short, while I attain the batting order up here?

Mr. MARTIN. OK.

Senator BURNS. If you would, please, and thank you very much. Your full statement will be made part of the record.

STATEMENT OF HON. KEVIN J. MARTIN, RENOMINATED TO BE CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. MARTIN. Thank you, Mr. Chairman and all the Members of the Committee, for this invitation to be here with you this morning. I want to thank Senator Burr for his introduction, and Commissioner McDowell and Commissioner Adelstein for their presence this morning.

I do have a brief opening statement and then look forward to answering your questions.

Senator BURNS. You might want to pull that microphone a little closer.

Mr. MARTIN. I've been fortunate to serve on the Federal Communications Commission for over 5 years, and I've had the opportunity to serve as the agency's chairman since March of last year.

The job is not easy, and is, at times, a very humbling experience, but it has also been an enormous privilege, and it would be an honor to continue to serve the American people for a second term.

As I told this Committee 5 years ago, I recognize that the FCC is an independent agency and a creature of Congress. Our highest priority, therefore, is to implement the will of Congress. If reconfirmed, I'll continue to look to this Committee and to Congress for advice and guidance.

When I came before this committee for my first confirmation hearing, I was asked to make several commitments, all of which I feel I have fulfilled. Senator Stevens asked me to visit Alaska. Over the last few years, I've had the privilege of visiting Alaska several times. The vast beauty was breathtaking, and the communication challenges facing its citizens were eye-opening. Senator Rockefeller, you made me promise to protect the Schools and Libraries Program, which I have faithfully done. And finally, Senator Dorgan, you asked me to have children so that I could fully understand the importance of media from the perspective of a parent. Senator Dorgan, I'm proud to introduce you to my son, Luke, who was born last November.

[Laughter.]

Mr. MARTIN. As you know well, the communications industry is going through a time of unprecedented change. Television programs are sold on the Internet and streamed wirelessly to mobile devices. Teenagers use IM and MySpace, not the telephone. DVRs mean you can watch your favorite TV program whenever you want. And mobile phones show movies, play songs, and photograph your kids. In this fast-paced technological environment, regulations often struggle to keep up.

If reconfirmed, I would continue to make decisions based on the fundamental belief that a robust, competitive marketplace, not regulation, is ultimately the greatest protector of the public interest. Competition drives prices down and spurs innovation, creating better products, and at lower prices.

Government, however, still has an important role to play. We should focus on creating a regulatory environment that promotes investment and competition by setting the rules of the road so that players can compete on a level playing field. And we must be vigilant in our protection of the consumer interest, quick to act when it might be harmed.

In the last 18 months, the Commission has worked hard to create a regulatory—or, rather, a deregulatory environment that promotes broadband deployment. We have removed legacy regulations, like tariffs and price controls, which discourage investment in broadband networks. We have also worked to create a level playing field among broadband platforms so that high-speed Internet access offered by phone companies is treated the same as high-speed Internet access offered by cable companies. And we have begun to see some success as a result of these policies.

A recent Pew research report found that the number of Americans with broadband at home has increased by 40 percent from March 2005 to March 2006, twice the growth rate of the year before. And according to the study, the prices of broadband service have also dropped.

But perhaps most important, the study found that the significant increases in broadband adoption were widespread, increasing by 70 percent among middle-income households and those without a high school diploma, and by over 120 percent among African Americans.

I also believe that the government must act when doing so is necessary to achieve broader social goals. While eliminating economic regulations, we must recognize that there are issues that the marketplace alone might not fully address. Government should ensure that people with disabilities still have access to communications, that people in rural areas, schools, and libraries have access to affordable current technology, and that the local police and fire department can communicate seamlessly during a crisis.

As memories of Hurricane Katrina and 9/11 continually remind us, basic public-safety requirements must be met. We must ensure that the public has the tools necessary to know when an emergency is coming, and to call for help, that the police, fire, and rescue can communicate seamlessly, and that commercial services can be quickly restored when a disaster strikes. The Commission has taken important steps to ensure that public safety keeps pace with the technological advancements in communications.

During my tenure as Chairman, the Commission has taken a balanced approach to policy, eliminating burdensome economic regulations while protecting consumers and preserving our broader social goals. But I am perhaps most proud of the fact that my colleagues and I have been able to achieve such a balanced approach in a bipartisan, collegial manner.

Thank you very much for your time and for your attention this morning. I appreciate the opportunity to share with you some of the recent progress the Commission has made, and I look forward to your questions.

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

PREPARED STATEMENT OF HON. KEVIN J. MARTIN, RENOMINATED TO BE CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Good morning Chairman Stevens, Co-Chairman Inouye, Members of the Committee. Thank you for this invitation to be here with you this morning. I have a brief opening statement, and then I look forward to answering any questions you may have.

I have been fortunate to serve at the Federal Communications Commission for over 5 years, and I have had the opportunity to serve as the agency's Chairman since March of 2005. This job is not easy; it is at times a very humbling experience; but it also has been an enormous privilege. It would be an honor to continue to serve the American people for a second term.

As I told you 5 years ago when first before this Committee, I recognize that the FCC is an independent agency and a creature of Congress. Our highest priority, therefore, is to implement the will of Congress. If reconfirmed, I will continue to look to this Committee and the Congress for advice and guidance.

As you know well, the communications industry is in a time of unprecedented change. Technological advances, converging business models, and the digitalization of services create unparalleled opportunities and considerable challenges. Television programs are sold on the Internet and streamed wirelessly to mobile devices; teenagers communicate over IM, SMS and MySpace, not the landline phone; DVRs mean you watch your TV when and where you want; mobile phones show movies, play songs, photograph your kids, and even send you emergency messages. In this fast-paced technological environment, regulations struggle to keep up.

If reconfirmed, I would continue to make decisions based on a fundamental belief that a robust, competitive marketplace, not regulation, is ultimately the greatest protector of the public interest. Competition is the best method of delivering the

benefits of choice, innovation, and affordability to American consumers. Competition drives prices down and spurs providers to improve service and create new products.

Government, however, still has an important role to play. The Commission should focus on creating a regulatory environment that promotes investment and competition, setting the rules of the road so that players can compete on a level playing field. For example, high-speed Internet access offered by a phone company should be treated the same way as high-speed Internet access offered by a cable operator.

Government also must act when necessary to achieve broader social goals. Thus, while I support eliminating economic regulations, I recognize that there are issues that the marketplace alone might not fully address. For instance, government should ensure that people with disabilities have access to communications in the same manner as all Americans, that people in rural areas, schools and libraries have access to affordable, current technology, and that the communications needs of the public safety community are met.

During my tenure as Chairman, the Commission has taken important steps to remove economic regulations and encourage the deployment of new technologies while protecting consumers and preserving these broader social goals.

Increasing Broadband Deployment

I have made broadband deployment my highest priority at the Commission. Broadband technology is a key driver of economic growth. The ability to share increasing amounts of information, at greater and greater speeds, increases productivity, facilitates interstate commerce, and helps drive innovation. But perhaps most important, broadband has the potential to affect almost every aspect of our lives. It is changing how we communicate with each other, how and where we work, how we educate our children, and how we entertain ourselves.

During my tenure as Chairman, the Commission has worked hard to create a regulatory environment that promotes broadband deployment. We have removed legacy regulations, like tariffs and price controls, that discourage carriers from investing in their broadband networks, and we worked to create a regulatory level playing-field among broadband platforms.

We have begun to see some success as a result of the Commission's policies. A recent report from Pew Internet and American Life Project found that the number of Americans with broadband at home increased 40 percent from March 2005 to March 2006 (from 60 million in March 2005 to 84 million in March 2006), twice the growth of the year before. And, according to the study, the price of broadband services has also dropped in the past 2 years. But perhaps most important, the study found that the significant increases in broadband adoption were widespread and cut across demographics. According to this independent research:

- Broadband adoption grew by almost 70 percent among middle-income households (those with incomes between $40,000 and $50,000 per year).
- Broadband adoption grew by 120 percent among African Americans.
- Broadband adoption grew by 70 percent among those with less than a high school education.
- Broadband adoption grew by more than 60 percent among senior citizens.
- Broadband growth in rural areas was also brisk (39 percent), although overall penetration rates in rural areas still lag behind those in urban areas.

In addition, wireless services continue to grow dramatically. Today, wireless competition is robust, with over 90 percent of the people in this country living in areas where there are at least four cell phone providers. And increasingly, wireless is not just voice, it is also data. Blackberries, hand-held devices, and laptops are increasingly providing broadband connections using traditional cellular, WiFi, and WiMax technologies.

While we continue to further reduce the burden of economic regulation on the telecommunications sector, the Commission has worked also to ensure that law enforcement, public safety, and other public interest needs are met.

Ensuring Public Safety and Emergency Preparedness

When I first became Chairman, I identified public safety and emergency preparedness as another top priority. As memories of Hurricane Katrina and 9/11 continually remind us, one of our most important objectives is to ensure that basic public safety requirements are met. We must make sure that the public has the tools necessary to know when an emergency is coming and to contact first responders. And we must enable first responders to communicate seamlessly. We have taken steps to ensure that public safety keeps pace with the technological advancements in communications.

For instance, last year the Commission expanded its emergency alert system rules to include a broader array of technologies, including providers of digital broadcast and cable TV, digital audio broadcasting, satellite radio, and direct broadcast satellite services.

In addition to making sure that people are alerted to impending emergencies and disasters, we must also ensure that Americans are able to call for help when they need it. That means that new technologies must be able to communicate with emergency operators.

As these new communications technologies come into use, the Commission also has worked to ensure that law enforcement continues to have the necessary tools to obtain appropriate access to them.

Finally, we recognize that wireless communications are vital to Federal, state, and local emergency first responders. We have taken steps over the past year to help ensure that public safety authorities have access to sufficient spectrum to meet their needs.

Serving Those With Disabilities

Accessing communication services is vital to the ability of the individuals with disabilities to participate fully in society. With the passage of the Americans with Disabilities Act in 1990, the Commission was directed to ensure that hearing or speech disabilities not pose a barrier to participating in today's communication revolution.

The Commission has taken a number of important actions over the past year to fulfill our statutory goal of ensuring that every person has equal access to this Nation's communications services. These actions include initiating a proceeding to explore solutions for the disabled to access 911 services; extending video relay services; providing Federal support for the provision of Spanish video relay service, allowing persons who communicate in sign language to communicate with those who speak Spanish; and providing for the Federal certification of carriers, which increases competition and facilitates more provider choices for consumers.

Maintaining Universal Service

The United States and the Commission have a long history and tradition of making sure that rural areas of the country are connected and have the same opportunities for communications as urban areas. In the 1996 Act, Congress explicitly required that the Commission ensure that consumers in all regions of the Nation have access to services that ". . . are reasonably comparable to those services provided in urban areas." Specifically Congress required the Commission to establish Universal Service Fund mechanisms that are ". . . specific, predictable and sufficient . . . to preserve and advance universal service."

Changes in technology and increases in the number of carriers who are receiving Universal Service support have placed significant pressure on the stability of the fund. Over the past year, the Commission has taken several steps to ensure a sufficient and sustainable mechanism to collect and disburse funds in an efficient manner. As a result of our actions, the Universal Service contribution rate has decreased from over 11 percent to 9 percent. The Commission is also actively considering establishing a contribution system that is more technology neutral, and a distribution mechanism that is more efficient. The Commission remains committed to pursuing fundamental Universal Service contribution and distribution reform as needed.

Managing the Agency

Since becoming Chairman last year, I have been most proud of the collaborative manner in which my colleagues and I work. For the first 14 months of my tenure, we had two Republicans and two Democrats, and we were able to tackle extremely complex and controversial issues in a collegial, bipartisan manner. Even since we have had a full complement of Commissioners, almost every Commission item has had bipartisan support. We continue to work together effectively to address the broad range of day to day management issues and respond to the more extraordinary challenges we face.

For example, the Commission is responsible for managing spectrum, an invaluable public resource. We have worked hard to improve our auctions processes to ensure more efficient distribution and use of spectrum resources. This market-driven approach maximizes the benefits to American consumers by making spectrum available for widespread deployment of new innovative wireless services. Today, the Commission is currently auctioning 90 MHz of spectrum for advanced wireless services. To date, the auction has raised more than $13.85 billion. The Commission had sold nearly all of the available licenses (1,082 out of 1,122) to 105 different bidders, more than half (57) of which are small businesses. The licensing rules for this spectrum included some smaller, more manageable license areas that can facilitate access to spectrum by entities seeking to provide service to rural areas.

During the past year, the Commission has also met unprecedented management challenges. In the face of Hurricanes Katrina, Rita, and Wilma, the agency responded quickly and comprehensively in meeting government, industry, and consumer needs. The Commission staff worked around the clock to cut bureaucratic "red tape," reach out to the impacted industries, and help identify resources for use by disaster personnel. We granted more than 90 requests for Special Temporary Authority and more than 100 temporary frequency authorizations for emergency workers, organizations, and companies to provide wireless and broadcast services in the affected areas and shelters around the country. In most cases, these requests were granted within 4 hours, with all requests approved within 24 hours. We are working hard to implement the lessons learned from Hurricane Katrina.

Conclusion

Thank you for your time and attention today. I appreciate the opportunity to share with you some of the recent progress the Commission has made. With that, I would be happy to answer any questions you may have.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Kevin Jeffery Martin.
2. Position to which nominated: Member, Federal Communications Commission.
3. Date of Nomination: April 25, 2006.
4. Address (List current place of residence and office addresses):

Residence: (Information not released to the public).

Office: 445 12th Street, SW, Washington, DC 20554.

5. Date and Place of Birth: December 14, 1966; Charlotte, North Carolina.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).

Catherine Jurgensmeyer Martin. Deputy Assistant to the President and Deputy Communications Director for Policy and Planning, Executive Office of the President.

Luke Jeffery Martin, son, age 8 months

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

Bachelor of Arts, University of North Carolina at Chapel Hill (1989).
Masters in Public Policy, Duke University (1993).
Juris Doctorate, Harvard University (1993).

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

Chairman, Federal Communications Commission.

Commissioner, Federal Communications Commission.

Special Assistant to the President for Economic Policy, Executive Office of the President.

Deputy General Counsel, Bush-Cheney Transition Team.

Deputy General Counsel, Bush for President.

Legal Advisor to Commissioner Harold Furchtgott-Roth, Federal Communications Commission.

Associate, Wiley, Rein & Fielding.

Judicial Clerk, United States District Judge William M. Hoeveler.

9. List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years: None.
10. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational or other institution within the last five years: Executor/Trustee, Richard H. Martin Estate (father's estate).
11. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any or-

ganization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age or handicap.

Member of the District of Columbia Bar Association (1996–present).
Member of the Florida Bar Association (1995–present).
Member of the Federal Communications Bar Association (1998–present).
The University of North Carolina Alumni Association (1989–present).
The Federalist Society (1998–1999); Vice Chair of the Telecommunications Committee.

12. Have you ever been a candidate for public office? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt: No.

13. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $500 or more for the past 10 years: Bush for President, $1,000.00 (1999)

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

Phi Beta Kappa; University of North Carolina Tuition Scholarship; UNC Honorary Societies (Orders of the Golden Fleece, Grail & Old Well): *Pi Sigma Alpha;* UNC James J. Parker Award for Student Achievement.

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

Articles and Editorials:

"Make Cable A La Carte," with Senator John McCain, *Los Angeles Times,* 5/25/06.

"Why Every American Should Have Broadband Access," *Financial Times,* 4/3/06.

"Broadband," *The Wall Street Journal,* 7/7/05.

"Family Friendly Programming: Providing More Tools for Parents," *Federal Communications Law Journal*, 5/03.

"What's Next: Competition's Future," *Telephony Magazine*, 5/13/02.

Speeches: I have delivered numerous speeches in my official capacity at the Federal Communications Commission.

16. Please identify each instance in which you have testified orally or in writing before Congress in a non-governmental capacity and specify the subject matter of each testimony: I have not testified before Congress in a non-governmental capacity.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers.

Federal Thrift Savings Plan.
Executor/Trustee. Richard H. Martin Estate (father's estate).

Spouse:

Federal Thrift Savings Plan.
Steptoe & Johnson 401K (no further contributions being made).
Russell Aggressive CI D.
Russell Equity Aggressive CI D.
Texas Thrift Savings Plan (no further contributions being made).

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

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated: None.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last 5 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated: None.

5. Describe any activity during the past 5 years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy: None other than in my work as FCC Commissioner and Chairman.

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

To the extent that a conflict of interest arises of which I am not currently aware, I plan to consult with agency ethics counsel and comply with all appropriate laws and regulations.

C. LEGAL MATTERS

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

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

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? No.

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

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination: None of which I am aware.

6. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion or any other basis? No.

D. RELATIONSHIP WITH COMMITTEE

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

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

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

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

Senator BURNS. Thank you very much, Chairman Martin.

Mr. Kneuer?

STATEMENT OF JOHN M.R. KNEUER, NOMINEE TO BE ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION; ADMINISTRATOR OF THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION (NTIA), DEPARTMENT OF COMMERCE

Mr. KNEUER. Thank you, Mr. Chairman and Members of the Committee. It is my distinct honor and privilege to be before you today as the President's nominee to serve as the Assistant Secretary for Communications and Information at the Department of Commerce and as the Administrator of the National Telecommunications and Information Administration.

Since 2003, it's been my privilege to serve in the Commerce Department under the leadership of both Secretary Evans and Secretary Gutierrez. I'm also honored to have had the opportunity to work alongside the dedicated men and women who have devoted their careers to NTIA and to the American people. If confirmed, I'm committed to working every day to follow the example they set through their dedication and to give them the leadership that they deserve.

As you know, among its responsibilities NTIA provides telecommunications policy analysis to the Secretary of Commerce and the President, and manages the Federal radio waves. Throughout the Bush Administration, this intersection of telecommunications policy and spectrum management has been the key focus of NTIA. Working with our partners in industry and across government, we have made large amounts of spectrum available for wireless broadband, and other innovative services, as well as maintaining access for critical Federal and public-safety services.

Indeed, as we meet here today, the FCC is in the final stages of an auction of licenses for 90 megahertz of spectrum for advanced wireless services. As of last night, that auction had generated net high bids of nearly $14 billion. More important than the money being raised, however, is the potential for this new spectrum in the marketplace. Once deployed, this spectrum will allow every licensed wireless carrier to be a broadband provider, as well. Carriers that are currently providing broadband services would be able to expand and improve those services. New market entrants will enter the marketplace for the first time. Together, these broadband services and other new technologies are critical to bringing competition to the incumbent cable and fixed-line broadband services, and extending services to rural and other hard-to-serve markets.

Now, while this auction is an important event, the process that made it possible is also as significant, as it represents a real model of intergovernmental cooperation. Before this spectrum could be made available for auction, more than 50 Federal agencies needed to coordinate relocation to alternative spectrum. In order for the agencies to be reimbursed for the costs of this relocation, Congress had to act to pass the Commercial Spectrum Enhancement Act. I'm grateful for the leadership of this committee in passing this important piece of legislation. Finally, the FCC, in addition to making 45 megahertz available from their own allocations, has obviously done the laboring work in issuing service rules and conducting the auction.

As this process demonstrates, new technologies no longer fit easily into regulatory stovepipes. The introduction of new services and new innovative technologies requires cooperation amongst the Administration, the FCC, and Congress. If I'm confirmed, I'm committed to repeating that example and working with my colleagues across government, at the FCC, and Congress so that we can continue to have an environment for future American innovation and competitiveness.

In addition to its traditional role, NTIA has also recently been entrusted with significant responsibilities related to the digital television transition. These include providing financial assistance to consumers to acquire digital-to-analog conversion devices, as well as funding for state and local governments' acquisition and implementation of interoperable communications equipment. We are currently working to ensure these critical programs are executed as efficiently and equitably as possible. And, if confirmed, I'm committing to working with the Congress to make the DTV transition a success for all Americans.

Thank you, again, and I'll look forward to any questions.

[The prepared statement of Mr. Kneuer follows:]

PREPARED STATEMENT OF JOHN M.R. KNEUER, NOMINEE TO BE ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION; ADMINISTRATOR OF THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION (NTIA), DEPARTMENT OF COMMERCE

Chairman Stevens, Co-Chairman Innouye, Members of the Committee, it is my distinct honor and privilege to appear before you today as the President's nominee to serve as the Assistant Secretary for Communications and Information at the Department of Commerce, and Administrator of the National Telecommunications and Information Administration (NTIA).

Since 2003, it has been my pleasure to serve in the Commerce Department under the leadership of both Secretary Evans and Secretary Gutierrez. I am also honored to have had the opportunity to work alongside the hundreds of dedicated men and women within NTIA who have devoted their careers to serving the American people. If confirmed, I am committed to working everyday to follow the example they have set through their dedication and to provide the leadership they deserve.

As you know, among its responsibilities, NTIA provides telecommunications policy analysis to the Secretary of Commerce and the President, and manages the Federal Government use of the radio spectrum. Throughout the Bush Administration, this intersection of telecommunications policy and spectrum management has been the key focus of NTIA. Working collaboratively with our partners in industry and across government, we have made large amounts of spectrum available for wireless broadband and other innovative services while continuing to provide access for critical Federal and public safety systems.

Because of technology and competition policies, American consumers have access to a wide array of innovative services and American companies continue to lead the world in the development and deployment of new technologies, creating global markets for American products.

Today, American consumers have access to licensed wireless broadband services offered by multiple providers, using competing technologies at higher speeds than are available to consumers in Europe or Japan. At the same time, American companies continue to innovate with new unlicensed technologies like WiFi and WiMax. Now these services are rapidly evolving from small local "hot spots" in places like airports and coffee shops to large area networks that cover hundreds of square miles and provide service quickly and cheaply to entire rural communities.

Indeed, as we meet here today, the FCC is in the final stages of an auction of licenses for 90 MHz of spectrum for Advanced Wireless Services. As of last night, this auction had generated net high bids of nearly $14 billion dollars.

But more important than the money being raised is the potential for this new spectrum in the marketplace. Once deployed, this spectrum will enable every licensed wireless carrier to be a broadband provider. Incumbent wireless carriers already offering broadband services will be able to expand and improve their services; other carriers will enter the wireless broadband marketplace for the first time. Together these wireless broadband services and other new technologies are critical to bringing competition to incumbent cable and fixed-line broadband services especially in rural and other hard-to-serve communities.

Now while this auction is an important event, the process that made it possible represents a model of intergovernmental cooperation and coordination. Before this spectrum could be made available for auction, more than 50 Federal agencies needed to coordinate plans to move to alternative spectrum. In order for the agencies to be reimbursed for the costs of their relocation, Congress needed to act to pass the Commercial Spectrum Enhancement Act. I am grateful for your leadership and the efforts of this Committee in moving this critical legislation. Finally, the FCC, in addition to making 45 MHz of spectrum available from its own allocations, has drafted service rules and is conducting the auction. As this process demonstrates, new technologies no longer fit easily into defined regulatory stovepipes. To enable future innovation, we need to work collaboratively together. If confirmed, I am committed to work with the Congress and my colleagues at the FCC and across government to ensure that we continue to create an environment for future American innovation.

In addition to its traditional role, NTIA has recently been entrusted with significant responsibilities related to the digital television transition. These include providing financial assistance to consumers for the purchase of digital-to-analog conversion devices, and funding state and local government's acquisition and implementation of interoperable communications equipment. We are already working to ensure that these critical programs are executed as efficiently and equitably as possible. If confirmed, I am committed to working with the Congress to make the DTV transition a success for all Americans.

Thank you again for the opportunity to testify before you today. I look forward to any questions you may have.

A. BIOGRAPHICAL INFORMATION

1. Name: John M.R. Kneuer.
2. Position to which nominated:
Assistant Secretary for Communications and Information, Department of Commerce;

Administrator, National Telecommunications and Information Administration.

3. Date of Nomination: May 1, 2006.
4. Address:

Residence: (Information not released to the public).
Office: 1401 Constitution Ave., N.W., Rm. 4898 Washington, DC 20230.

5. Date and Place of Birth: October 7, 1968; Long Branch, New Jersey.
6. Provide the name. position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).

Spouse: Mimi Simoneaux Kneuer, Executive Vice President, Pharmaceutical Research and Manufacturers Association.

Children: Joseph K. Kneuer, 3; Christine A. Kneuer, 1.

7. List all college and graduate degrees. Provide year and school attended: Catholic University of America, B.A. 1990; J.D. 1994.
8. List all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

10/2003–Present: Deputy Assistant for Secretary Communications and Information, Department of Commerce.

8/1998–10/2003: Senior Associate, DLA Piper Rudnick (*f.k.a.* Verner, Liipfert, Bernhard, McPherson, and Hand).

6/1997–8/1998: Executive Director Government Affairs, Industrial Telecommunications Association.

6/1996–6/1997: Attorney Adviser, Federal Communications Commission.

9. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years: None.
10. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational or other institution within the last five years.

Member of the Board of Directors, United States Telecommunications Training Institute. The USTTI is a non-profit joint venture between leading U.S.-based communications and IT corporations and leaders of the Federal government who together provide tuition-free management, policy and technical training for talented professionals from the developing world.

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

Member, University Club of Washington, D.C.

The above listed organization does not restrict membership on the basis of sex, race, color, religion, national origin, age, or handicap.

12. Have you ever been a candidate for public office? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt: No.
13. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $500 or more for the past 10 years.

Saxby Chamblis for Senate, $250, 7/31/03.

Richard Burr for Senate, $500, 5/9/03; $250, 6/30/03.
Harold Ford, Jr. for Tennessee, $250, 9/30/00.
Billy Tauzin Congressional Committee, $250, 7/18/00.
Bayou Leader PAC, $500, 9/02/99.
Bruce C. Harris for Congress, $500, 7/28/99.
Bush-Cheney 2004, $1,000, 6/30/03; $1,000, 3/19/04.
National Republican Congressional Committee, $1,000, 10/18/2002.
Dick Monteith for Congress, $250, 4/24/02.
Texas Freedom Fund, $375, 7/05/03.

14. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements: None.

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

Public Speaking Engagements

05/18/06	Washington Space Business Roundtable (WSBR) (Speaking) Satellite Broadband and Satellite Spectrum "Advising on Telecommunications Policy" University Club, University Hall Washington, DC
05/17/06	Computer & Communications Industry Association (Speaking) Washington Caucus, "Telecom Reform" Regis Hotel, Washington, DC
05/09/06	Pike & Fischer's 2nd Annual Broadband Policy Summit 2006 (Speaking) "Charting the Road Ahead Madison Hotel Washington, DC
05/03/06	Aspen Institute Roundtable on Spectrum Policy (Roundtable) Clearing the Air: Convergence and the Safety Enterprise Queenstown, MD
05/03/06	The Federalist Society (Speaking) Telecommunications & Electronic Media Practice Group Cable Franchising: Is it Time for Reform Washington, DC
04/18–19/06	Telecom IQ—International Quality & Productivity Center (Speaking) 2nd Annual ENUM Summit The U.S. Department of Commerce's View on ENUM Boston, MA
04/10/06	National Cable & Telecommunications Association (NCTA) (Roundtable) Annual Convention and Exposition Panelist: Public Policy Atlanta, GA
04/04–05/06	CTIA's Wireless 2006 Annual Conference (Roundtable) Plenary Session "Wireless Industry Regulatory Hot Topics" Las Vegas, NV
03/28/06	Catholic University of America's Columbus School of Law (Speaking) "Bringing America up to Speed: Delivering on Our Broadband Future Without Sacrificing Local Identity" Washington, DC
12/19/05	European American Business Council (Panelist) 6th Annual Digital Economy Workshop "Enabling Wireless Markets & Technologies" Regis Hotel, Washington, DC
11/29–12/1/05	Government Advisory Committee (Speaker) Represent the US delegation to the Government Advisory Committee (GAC) of ICANN Vancouver, Canada
11/15/05	Int'l Institute of Communication (IIC) (Speaker) Telecommunications Forum: "Rethinking Telecommunications Policy—What's So Different" Washington, DC
11/08/05	Mississippi Technology Alliance (Speaker) 6th Annual Conference on High Technology Jackson, Mississippi
10/31/05	Defense Spectrum Summit (Panelist)

Public Speaking Engagements—Continued

	Advanced Ideas in Communications DOD Spectrum Summit: "Spectrum Reform Efforts: Nest Step Toward Implementation" Annapolis, MD
10/20/05	MILCOM 2005 Conference (Panelist) "The Presidential Spectrum Initiative" Atlantic City, NJ
09/27/05	CTIA Wireless IT & Entertainment (Speaking) "Regulatory Panel—Facilitating Wireless Evolution—From Voice to Broadband and Beyond" San Francisco, CA
09/15/05	Law Seminars International (Speaking) Spectrum Management Conference "Evolving Public Policy: Key Government Players, the Way They View Their Roles and Their Policy Priorities" McLean, VA
07/25/05	High Level Consultative Commission on Telecommunications (Speaking) United States—Mexico "Seventh Meeting" Mexico City, Mexico
06/20/05	Software Designed Radio Forum (Speaking) Regulatory Panel: "Global Regulatory Summit on SDR & Cognitive Radio" Fairmont Hotel, Washington, DC
06/16–17/05	University of Texas (Speaking) Workshop on Internet use in the Americas "Keynote overview of US policy in the area of Broadband and Internet connection" Washington, DC
06/06—7/05	Multiparty Roundtable at SUPERCOMM 2005—(Roundtable) Telecommunications Industry Assoc. (TIA) re: to discuss on mechanisms to address the funding problems and technical areas in which Federal funding should be directed. Chicago, Illinois
05/02/05	American Petroleum Institute Telecommunications Mtg (Speaking) re: General Overview of the Agency Washington, DC
04/19/05	Land Mobile Communications Council (Speaking) re: Direction of spectrum policy at NTIA & how it may impact the land mobile community Holiday Inn, Rosslyn-Key Bridge Arlington, VA
03/14–16/05	CTIA Wireless 2005 Annual Conference Policy Outlook Track Panel 1 "Facilitating Intermodal Competition" Las Vegas, NV
01/05–8/05	International Consumer Electronics Assoc. (CEA) Show, 2005 IPV6 Panel "An Introduction to the New Internet: What is IPV6 and how will it effect consumer electronics?"
10/28/04	DoD Spectrum Summit (Roundtable) "Spectrum Transformation: How Military/Commercial Spectrum Sharing Can Work Annapolis, MD
10/26/04	National Cable & Telecommunications Assoc. (NCTA) (Roundtable) NARUC-NEC broadband summit "Broadband Deployment" Arlington, VA
10/18–21/04	Northern Ireland and Republic of Ireland) w/Under Sec. Of Technology Meeting Dublin, Ireland
10/06/04	Chamber of Commerce (Panelist) "The Telecommunications Landscape—Administration and Congressional Perspectives" Washington. DC
09/16/04	Law Seminars International Spectrum Management Conference (Speaker) NTIA: The President's spectrum initiative for the 21st century and the Perspective of Federal Government spectrum users
08/15–18–04	Aspen Institute Conference on Telecommunications Policy (Speaker) "Restructuring Telecommunications"

Public Speaking Engagements—Continued

	Aspen, Colorado
08/09/04	Electronic Industry Alliance (EIA) (Panelist) 22nd EIA Annual Legislative & Regulatory Roundtable Hot Springs, VA
07/22/04	New Jersey Technology Council (NJTC) (Speech) "Domestic and international telecommunications and information technology issues" Voorhees. New Jersey
05/19/04	United Telecom Council (Panelist) Annual Conference and Exposition "The Hunt for Critical Infrastructure Spectrum" Nashville, TN
05/13/04	Heritage Foundation (Speaker) Broadband by 2007: A Look at the President's Initiative Washington, DC
03/08/04	Consumer Electronics Association (CEA) (Panelist) "Public Forum on Spectrum Management" Santa Clara, CA
02/23/04	National Emergency Number Association (NENA) (Speech) Second Annual 911 Goes to Washington Critical Issues Forum Grand Hyatt, Washington, DC

16. Please identify each instance in which you have testifies orally or in writing before Congress in a non-governmental capacity and specify the subject matter of each testimony: None.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers: None.

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

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated: None.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last 5 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated: None.

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

During my employment at my former law firm. DLA Piper Rudnick (*f.k.a.* Verner, Liipfert, Bernhard, McPherson and Hand), I represented a number of clients with interests before the Congress. During the covered period my representation included supporting the initial application to transfer control of DIRECTV to EchoStar, and the eventual sale of DIRECTV to NewsCorp. This representation was on behalf of DIRECTV's former parent corporation, General Motors. I also represented a variety of transportation, defense, and financial services clients monitoring legislative activity. During the covered period this representation did not entail advocacy directly or indirectly related to specific legislation.

During my tenure as Counselor to the Acting Assistant Secretary, and Deputy Assistant Secretary in the Department of Commerce, I have supported Administration initiatives before the Congress, most notably the passage of the Commercial Spectrum Enhancement Act (Pub. L. 108–494).

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

If appointed to the position of Assistant Secretary for Communications and Information, I will take the following actions to avoid a conflict of interest.

As required by 18 U.S.C. § 208, I will continue to disqualify myself from participating personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any other person whose interests are imputed to me, unless such participation is authorized or permitted by regulatory exemption or written waiver.

In particular, I will not participate in a particular matter that will have a direct and predictable effect on my spouse's employment with the Pharmaceutical Manufacturers and Research Association, unless authorized pursuant to a written waiver. In addition, I will not participate in a particular matter involving specific parties in which the Pharmaceutical Manufacturers and Research Association is a party or represents a party, unless authorized or permitted pursuant to ethics regulations.

Within 90 days of my confirmation, I will issue a statement memorializing these recusals.

Also, within 90 days of my confirmation, I will divest my holdings in Omnicom.

With respect to my financial interests (including Omnicom) from which disqualification is not presently required because of the applicability of a regulatory exemption, should a financial interest no longer qualify for an exemption, I will immediately disqualify myself from participating personally and substantially in any particular matter that has a direct and predictable effect on the interest, unless my participation is covered by another exemption, or unless I obtain a written waiver.

C. LEGAL MATTERS

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

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

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere* of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination: None.

6. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? No.

D. RELATIONSHIP WITH COMMITTEE

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

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

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

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

Senator BURNS. Thank you.

And, Mr. Sununu?

Senator SUNUNU. Thank you, Mr. Chairman.

Mr. Kneuer, I apologize for ignoring you. We've got—I hope I have more than a minute and 15 seconds, but I imagine it's about 5 minutes, and I do have a few questions I want to ask Chairman Martin, and I'll probably submit most of these for the written record so you can expand, you don't feel the need to make every single point in your oral testimony.

First, a few questions about the Internet. Let me just ask a few. You can answer them all together.

Do you think that the Internet should be regulated the same as we regulate—with the same regimes that we regulate other communication mediums? Do you support taxing Internet access? And should the FCC be allowed to regulate Google Video and YouTube?

Mr. MARTIN. No, I don't think that the Internet should be regulated in the same manner as other telecommunications networks.

And I actually have been opposed to any kind of taxes on Internet access. And, indeed, I've been opposed to any extension of our universal-service requirements to Internet access. I think that would only discourage people from subscribing to Internet access services, if we raise those prices on it. It's one of the reasons why I've been trying to focus on a telephone-number-based methodology. Telephone numbers are the key to using the public-switched telephone network, and I think that would be a more equitable means of contributing for those who are taking advantage of that public-switched telephone network.

So, no, I'm opposed to taxing the Internet access, and I don't think they should be regulated the same.

Senator SUNUNU. And Google Video and YouTube video services, should the FCC have the power to regulate those?

Mr. MARTIN. No, I don't think that's necessary, at this time.

Senator SUNUNU. You mentioned universal service and your desire to make some changes with regard to both distribution and revenue collection, but the FCC keeps raising the contribution factor. We're over 10 percent now, 10 percent Universal Service fee on consumers' use of communications. Do you think that there is an upper limit to what you ought to be allowed to impose? Are you willing to go to 20 percent, to 30 percent, under the current structure?

Mr. MARTIN. No. And I think that there is an upper limit as to what we would be able to do, practically, before there was political pressure. But I would point out that, when I became chairman, actually, the assessment rate was over 11 percent. And the most recent assessment rate, that we released this quarter, is actually down to 9 percent. During my tenure as chairman, because of the actions we've taken on both trying to control both the distribution side and of beginning to broaden the base, we've actually been able to bring that down from 11 to 9 percent since I became chairman.

Senator SUNUNU. Explain to me what the logic is behind voicemail qualifying for E-Rate money. They qualify, but it's my understanding that IP voice service does not. Why would voicemail qualify?

Mr. MARTIN. I think that what we've said in the past, as far as for E-Rate money, is that telecommunications services qualified for it, but that not all information services qualified for it. We were actually trying to be more restrictive in what we allow schools to be able to receive money for. And most of the focus on information services was actually on infrastructure for the schools to be able to try to connect to the Internet, rather than for the services and applications that would ride over it. We haven't paid—for example, for any of the software for schools, but we do pay for some of the hardware, which means that we pay for their Internet connections and for wiring of the schools.

Senator SUNUNU. You also subsidize their service, though.

Mr. MARTIN. We do, for their access. We subsidize their Internet access services and items that have been telecommunications services or regulated directly as telecommunication.

Senator SUNUNU. I just want to make the point that it's not all hardware, it's not all——

Mr. MARTIN. No.

Senator SUNUNU.—infrastructure.

Mr. MARTIN. It's not.

Senator SUNUNU. And, in fact, the access portion is growing very, very rapidly——

Mr. MARTIN. That's right.

Senator SUNUNU.—and is provided to all parts of the country, suburban as well as rural and high-cost areas.

Mr. MARTIN. That's right.

Senator SUNUNU. And I would simply make a point I've made before, is that you suggest you want to be restrictive so that the objectives of this fund are directed—or the money in the funds are directed—toward the key objectives of high-cost areas and rural areas. There's a tremendous amount of money that remains in the hands of districts that don't necessarily fit that description.

A final question about IP voice service. And I know there are a lot of technical factors that go into determining how you assess contribution requirements for Universal Service, but the contribution factor for IP voice providers is approximately 65 percent, and the contribution factor for wireless providers is 37 percent. I'll stipulate both of these are very arbitrary numbers, but it seems extremely disproportionate, and even punitive, to assign a contribution factor of 65 percent to one, and 37 percent to another, when I think it's fair to argue that the overall mix of the kinds of communications that are taking place are quite similar.

Mr. MARTIN. There's some confusion; that's actually not correct. The contribution factor for both wireless and for IP services is the same.

Senator SUNUNU. I'm talking about——

Mr. MARTIN. It's 9 percent.

Senator SUNUNU. I'm talking about the percentage of revenues.

Mr. MARTIN. No, no——

Senator SUNUNU. You assess——

Mr. MARTIN. What——

Senator SUNUNU.—65 percent of the revenues on IP providers, 37 percent of the revenues——

Mr. MARTIN. We——

Senator SUNUNU.—are the basis for the——

Mr. MARTIN. We——

Senator SUNUNU.—wireless providers.

Mr. MARTIN. We assess a 9-percent surcharge on all of their interstate revenues. We did studies, and we had people submit studies to us that said what percentage of these services are interstate in nature versus local in nature. And in the wireless side, the best estimates we had were that it was around 37 percent. On the Voice over IP side, the only study that we had in the record said that in the last few years, it had been over 66 percent in each instance. So, we selected 65 percent as a safe harbor. But, in both instances, both Voice over IP providers and wireless providers are allowed to come in and demonstrate that their revenues are significantly more local in nature, and then they don't have to pay that safe harbor.

Senator SUNUNU. I respect the fact that you're trying to make a decision based on data, but it is spurious to make such an important and significant financial decision based on one datapoint. And

I think it runs against common sense to assume that the percentage of interstate communication taking place under IP services is twice that taking place under wireless services. I will agree they might not be equal, but a factor of two to one, I think, really does defy common sense.

I appreciate your responses, though; they're very direct.

And I appreciate the indulgence of the Chairman.

Senator BURNS. Mr. Rockefeller?

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Chairman Martin and Mr. Kneuer, I don't have questions for you, and I apologize, but I'm going to vote for you.

[Laughter.]

Senator ROCKEFELLER. The—first of all, I want to thank you. It's my understanding you're going to be issuing an order, before too long, with regard to a West Virginia company——

Mr. MARTIN. Yes.

Senator ROCKEFELLER.—on a particular spectrum problem. And that's very important, and I thank you for that.

As you know, we've talked about this before. We've been working—you've been working with OMB, we've been working together, to try and craft a letter on the Antideficiency Act—and that's a very perilous Act—in which case the result of the Act is the opposite of what is intended in the case of the Universal Service Fund. I know you've been working to resolve that, very hard. But I think it has to be said that the OMB appears to be reasonably openly hostile to the Universal Service Fund, and, as is, unfortunate, to the E-Rate program. So, do you—what is your sense of how this is coming along? Can we resolve this?

Mr. MARTIN. Well, I do think that we'll be able to provide you with some of the details of that soon, I hope. I think that, in general, as we've discussed, the Commission's conclusions are that the Antideficiency Act would otherwise apply to the Universal Service programs, that the high-cost program currently has enough in reserves that it would not be in violation of the ADA, and that if the ADA directly applied to the Schools and Libraries Program today, it would require us to raise the assessment rate slightly. So, that would be our best estimate today.

Senator ROCKEFELLER. And I thank you.

As you know—and Senator Stevens has left—and he's been very helpful to us on this question of the appropriation's 1-year exemption for the Universal Service Program from the Antideficiency Act. And my question to you is, would it be helpful to have another year's extension?

Mr. MARTIN. Well, I think that whether or not Congress decides to extend it any further is really a decision for Congress. I will pledge that, no matter whether it's extended or not, we will make sure it doesn't have a programmatic impact on the program. We will make sure that we have sufficient funds raised and that we are able to continue to have letters go out to the schools and libraries without being delayed. One of the fortunate benefits of some of the steps we've taken to lower the assessment rate is that I do think we have a little bit more cushion if the result is that a slight increase is needed—I think it would be able to be absorbed, at this time, if needed.

Senator ROCKEFELLER. Good.

I have been trying for, I don't know, 10, 12 years, through a crude mechanism called a tax credit—I, along with a whole lot of other people; in fact, I think 75 Members of the Senate—to get broadband deployment done through a tax credit. And I'm unhappy to report to you that it hasn't worked in any single one of those 10 or 12 years. We've gotten absolutely nowhere.

So, do you think that the Universal Service Fund has, in its range, the possibility of support for broadband infrastructure? Do you have the authority to make it a supported service, or is that something that has to come from the Congress?

Mr. MARTIN. I think we have the authority to take some additional steps on the universal service side, but I think that, practically, the fund wouldn't be large enough to absorb that. So, I do think we have the authority. Our authority is pretty broad in Section 254 of the Act, that says that the Universal Service Program needs to ensure that people that live in rural areas have have access to reasonably the same services at reasonably the same prices as those who live in urban areas. I think that language is broad enough that we could do something else, but I also think that the Universal Service mechanism today wouldn't be able to support that financially. So, I think that we wouldn't be able to do that, but I think we have the authority.

Senator ROCKEFELLER. Thank you.

Thank you very much.

Senator BURNS. Mr. Dorgan?

Senator DORGAN. Chairman, thank you very much.

Is it Kneuer?

Senator BURNS. Kneuer.

Senator DORGAN. Mr. Kneuer, thank you.

Mr. Kneuer, I intend to support your nomination.

Mr. KNEUER. Thank you.

Senator DORGAN. I think you have substantial qualifications, and I'm pleased that you offer yourself for service.

I do want to mention that, this morning, the trade numbers came out. Today's monthly trade deficit announcement was $68 billion in a month, highest in history. We are engaged in a trade strategy that is fundamentally faulty and is going to be very damaging to this country. Most of the trade debt is owned by—a bulk of it's owned by the Chinese and the Japanese. And I know that being involved in the Commerce Department, you will hear people in the Commerce Department marching around and talking about how wonderful this trade strategy is. It's a disaster. It's been a disaster under Democrats and Republicans. It's grown much, much worse under this Administration, I might say. But I just wanted to make the point that we've had a pretty devastating announcement this morning about a $68-billion monthly trade deficit. That—at some point, somebody needs to say, "Whoa, this isn't working."

But, Chairman Martin, you were part of a troika in the FCC that said it was OK to create new ownership rules so that in one major city one company—one company—could own eight radio stations, three television stations, the newspaper, and the local cable company, and that would be just fine, no problem at all. The Federal courts found a problem with that. Do you still feel that way? I

mean, you're now beginning a new ownership rulemaking process, but do you still feel comfortable suggesting that in one major American city it's fine for one company to own eight radio stations, three television stations, the cable company, the dominant newspaper? Does that give you pause?

Mr. MARTIN. Yes, it gives me pause. I'm not so sure I would even concede that I was comfortable with the decision when we made the decision previously.

Senator DORGAN. But you voted for it.

Mr. MARTIN. I did. I did. Because I thought that the record indicated, in certain of the largest markets, you should be able to purchase more, under the record that we had in front of us. But were we all concerned about the impact of changes in media ownership requirements? Yes. Did it make me comfortable then? I wouldn't say so. And does it give me pause now? Sure. I think that the Commission is diligently trying to go back and reinitiate the media ownership process, to do so with an open mind regarding what we should end up doing. We start that process by not only receiving comments, but doing public hearings and listening to what the public has to say about where we should go on media ownership.

Senator DORGAN. Chairman Martin, do you think there's been substantial increased concentration in virtually every area of the media?

Mr. MARTIN. I think that it would depend. When you say "increased," I think it depends upon what you're measuring that against. In general, I would say that yes, there has been increase, but I think that there have been some areas where there obviously has been a decrease. The availability of news and information, for example, by the Internet, is significant, and wasn't available previously, depending upon the timeframe you're looking at. Obviously, in the television area, there's a significant number of sources of news and information because of cable that were not available prior to cable, when some of these rules were put in place. So, it depends upon the timeframe you're measuring, but, yes, there has been some, if you're looking at the most recent time.

Senator DORGAN. Would you agree or disagree with this? Right now, the media conglomerates—about six of them, essentially: Viacom, Disney, Time Warner, News Corp, CBS, and NBC/General Electric—control the big-four networks, 70 percent of the prime-time television market share, most cable channels, as well as vast holdings in radio, publishing, movie studios, music, Internet, other sectors. And whenever somebody talks to me about the—all of the Internet opportunities and so on—I've talked before about many voices, one ventriloquist; you can cite many voices, one ventriloquist. Would you agree with me that we have seen very substantial concentration in almost every area of the media in recent years?

Mr. MARTIN. In the recent years, we've seen more concentration. Since the 1996 Act passed, after which the Commission changed some of those rules, there's been significant increase since then.

Senator DORGAN. Do you believe that increased concentration, in most cases, will likely be moving against the issue of localism, and that localism—with respect to broadcasting and the use of the airwaves that belong to all of the American people—localism is essential and central to the notion of what broadcasting is about?

Mr. MARTIN. I think that localism and competition and diversity are the three central tenets of what broadcasting is about, but I think localism is certainly one of the most important.

Senator DORGAN. And you have a localism proceeding underway. It's—in fact, Chairman Powell started it, and then just dropped it, it just sat there, and nothing happened. You have resurrected it. I believe you've resurrected it, or at least have talked about it. When do you expect it to be concluded?

Mr. MARTIN. What we first need to do is compile the record that Chairman Powell started gathering, and put all of the information that we had gathered in that record into the media ownership proceeding to make sure that people have an idea of what information has been gathered. And we have one outstanding hearing on localism, separate from media ownership, that Chairman Powell had committed to do, that's outstanding, that we had never done, either.

Senator DORGAN. It would make much more sense to complete the proceedings on owner—on localism, rather, before you decide on ownership, wouldn't it?

Mr. MARTIN. We will make sure we complete the last hearing on——

Senator DORGAN. And then—I know my time is expiring—one point. Since the Chairman started talking about net neutrality in his first question to you, I want to—when the FCC decided that broadband should be removed from Title II of the Telecommunications Act, and said it is no longer a telephone service, but an information service, that took from it, then, the attachment to nondiscrimination. Nondiscrimination rules applied, up until that point, to all that was described as a telephone service; nondiscrimination rules no longer applied once it was taken out of that definition. Is that correct?

Mr. MARTIN. They did apply to all that was described as a telephone service.

Senator DORGAN. Right.

Mr. MARTIN. It wasn't necessarily all broadband. Cable modem services weren't described as a telephone service. So, it applied to some telephone companies offering it, but not to the cable companies.

Senator DORGAN. And when the FCC made its decision, then the nondiscrimination rules that did attach at that point did not continue to attach.

Mr. MARTIN. Those, and all the rules that applied to telephone services, do not attach.

Senator DORGAN. And you've, instead, developed a set of principles. Do those principles include the principle of nondiscrimination?

Mr. MARTIN. No, they don't include the principle of nondiscrimination.

Senator DORGAN. They do not.

Mr. MARTIN. No.

Senator DORGAN. Any reason for that?

Mr. MARTIN. In terms of access, there is discrimination that has to occur by necessity to deliver different kinds of services. Bits that are being used to deliver voice services or real-time video services

are currently prioritized in order to allow those services to be delivered. I think that, when we talk about nondiscrimination among third parties, there has been discussion about whether the Commission should look at that issue. But just saying you can't discriminate among any bits actually isn't the way that current Internet access services are provided. That's what allows different services to be able to be provided.

Senator DORGAN. But you understand the issue of nondiscrimination—or discrimination, I should say. Would you agree that the television advertisements that ran during our markup, this committee's markup, on the issue of net neutrality—the television commercials that ran, that indicated that the principles that you have established included nondiscrimination principles—that those television commercials were inaccurate?

Mr. MARTIN. I'm not familiar with the ones that said that we included nondiscrimination in our four principles. But, if it did, nondiscrimination was not one of the four principles that we included.

Senator DORGAN. Mr. Chairman, you've been generous with the time.

Chairman Martin, you and the Commission will make some of the most important decisions that will be made, in terms of the development of information in this country. And this democracy thrives on information, the free flow of information. And it seems to me, further concentration in the media, having fewer and fewer people determine what we see, hear, and read in this country, is antithetical to everything we should believe in that fosters and nurtures democracy. And I hope as you and the other commissioners sift through these, you will keep that in mind. And I hope as you have six hearings around the country, the first of which will be in Los Angeles, you will hold one in a rural state, a rural area, as well, to allow us to weigh in on these things.

And let me finish with at least one bone here, and that is, your predecessor held only one hearing and then moved ahead. I appreciate the fact that you're holding six hearings. Some of us will want to hold you up even more, to the extent we can, to slow you down and hope you reach the right conclusion. But thanks, again, for serving in public office. You'll hear, of course, much more from me as we proceed to work together on these issues.

Mr. Kneuer, thank you, again, for offering yourself today to public service.

Senator BURNS. Mr. DeMint?

Senator DEMINT. Thank you, Senator Burns.

Mr. Martin, your son has proved, once again, that Senators can put anyone to sleep.

[Laughter.]

Senator DEMINT. I mentioned the WARN Act in my statement, the emergency alert system that we've been working on here in Congress, and obviously the FCC has an interest in that and has begun the rulemaking process. Our request is that you—as you stated in your statement, as you mentioned, the will of Congress should be expressed sometime in November. Apparently the bill is having hearings on the House side. We will pass it at 12 today. And, we believe, before the end of this year, we will have expressed the will of Congress. Are you willing to wait?

Mr. MARTIN. Yes. The Commission, obviously, thinks it's important to make sure we have an emergency alert system that takes advantage of new technologies, but it's always preferable if Congress can tell us exactly how we should try to implement it.

Senator DEMINT. Yes. Thank you.

Just a couple of questions about net neutrality. And I know we can't get into detail, but these are diagnostic questions.

On the content side, do you believe a content provider, such as Google, should have the right to charge its customers more for prime placement on its pages than those who don't have prime placement?

Mr. MARTIN. Yes. I'm not sure I see any reason why Google shouldn't be able to charge people however——

Senator DEMINT. But——

Mr. MARTIN.—whatever it wants to charge.

Senator DEMINT. OK. Do you think a network provider, such as Verizon, should have the freedom to charge more for higher requirements, such as video, from its customers?

Mr. MARTIN. I do. And I think the Commission has stated that in its principles, as well.

Senator DEMINT. OK. So, you think network providers, if they are offering higher-speed options and different types of products, that they can price those differently.

Mr. MARTIN. I think so. And if we didn't allow them to, then they would not be willing to offer those different kinds of products.

Senator DEMINT. Exactly. And I think, as you know, what you just said is opposed to the concept of network neutrality. So, just wanted to make sure we were on the same page there.

Just a quick question about multicast. And I was happy to see that you had pulled from the agenda the vote on additional must-carry privileges. As we move toward creating more cable competition, more video options in the marketplace, obviously we think it—at least a number of us do—think this is not the time to go in and mandate that our retailers of video services are required to carry different options by their customers, when we think that's going to happen naturally. But is it fair to say—do you intend to bring multicast must-carry up for a vote again at the Commission?

Mr. MARTIN. Well, I don't have any current intentions to, because I don't think there's a majority of the commissioners who support that.

Senator DEMINT. Good. Thank you. That's all my questions.

Thank you, Senator Burns.

Senator BURNS. Mrs. Boxer?

Senator BOXER. Thank you, Mr. Burns.

I want to follow up on the idea of localism that Senator Dorgan started, Mr. Martin. And, by the way, I have questions for both of you, so I'm going to stay a second round if my time runs out.

When the FCC released its media ownership decision in 2003, Congress and the courts criticized the Commission for serious problems. In then-Chairman Powell's words, quote, "In the months that followed, we heard the voice of public concern about the media loud and clear. Localism is at the core of these concerns, and we're going to tackle it head-on."

You said, Mr. Martin, "What local broadcasters provide in terms of local news and information to the community is really important." And you were quoted in *USA Today*, in October 2005. So, I appreciated that, because I certainly agree with that.

You still feel that way about the importance of localism?

Mr. MARTIN. Yes. I do.

Senator BOXER. OK. Now, in August 2003, the FCC established a Localism Task Force to study issues like the impact of media consolidation on local news programming. It is now 3 years later, and we haven't seen a release of any report or any policy recommendations from the staff. What has happened to that?

Mr. MARTIN. When the Localism Task Force was started, under the previous chairman, they had committed to having a series of hearings. I think the final hearing was supposed to be in Maine. At the end of that hearing, they were to release a report that summarized all of the hearings that had occurred up until then. That process was never completed by Chairman Powell; when I took over as chairman, it was already supposed to have been completed. I think Chairman Powell had originally promised to do that by the end of 2004. But it wasn't completed. And so, at this point, we do need to do another localism hearing, which I've committed that the Commission will go do. And——

Senator BOXER. I appreciate that.

Mr. MARTIN.—and I've asked the—and I asked the staff to go back—they had not done the summary they had promised, and I asked them to go back and draft a summary of that, so we'll be able to make that publicly available.

Senator BOXER. OK. Well, let me tell you why I have a problem with your answer. I mean, I'm very happy with what you're going to do, but I think there's work that's been done, and it's been stifled. And I don't know who stifled it. But I have a copy of a draft report, dated June 17, 2004, "Do Local Owners Deliver More Localism? Some Evidence From Local Broadcast News."

And I ask that a copy of this be placed in the record.*

Senator BURNS. Without objection.

Senator BOXER. Now, according to this report—have you seen this report?

Mr. MARTIN. I haven't. And I wasn't chairman in June 2004.

Senator BOXER. You haven't.

Mr. MARTIN. No, I have not seen that.

Senator BOXER. So, you don't think any of the commissioners saw this report.

Mr. MARTIN. I think that the previous chairman may have, but I don't know if the other commissioners saw it.

Senator BOXER. OK. Well, I'm going to ask you to please go back, after you look at it again—I'm going to ask the—all the other commissioners to tell me if they ever saw this report, because, according to it, "Local ownership"—this is a quote—"adds almost 5 and one-half minutes of local news and over 3 minutes of local on-location news. That's over 5 minutes for each 30-minute local news broadcast. In the course of a year, this means locally owned sta-

*The information referred to has been retained in Committee files.

tions provide over 33 more hours of regional news, news that's directly relevant and important to viewers."

Now, this isn't national security, for God's sakes. I mean, this is important information about issues that are key to the people—I would suspect, your own mom, who lives in rural America. So, I don't understand who deep-sized this thing. I want to get to the bottom of it and find out if any commissioners saw this.

And now, we're starting all over again. Well, bless your heart, and I'm glad you did it, but I don't have great confidence. You know, it seems to me—and maybe I'm just a cynic; I've been here a long time—that, you know, this comes out with a very clear response to the question of consolidation versus localism. And we have a pro-localism bit of information, nonbiased, compiled, clear, defended. And it never sees the light of day? Thank you, whoever sent this to me; I don't have a clue. But I'm sure glad somebody out there sent this to me, because I think this is news, that this kind of work has never seen the light of day.

Do you have any clue who may have stopped the release here——

Mr. MARTIN. As I——

Senator BOXER.—of this report.

Mr. MARTIN. As I said, if it was dated in June 2004, I became chairman in March 2005.

Senator BOXER. Were you a commissioner then?

Mr. MARTIN. I was a commissioner then.

Senator BOXER. OK. And will you promise that you will read this report?

Mr. MARTIN. I will. And I don't mean to imply that the staff hasn't pulled that back out in trying to resummarize where we were. I was just saying that the staff didn't have anything that was ongoing in finalizing the evidence that we had gathered. So, I'll make sure that that should be one of the things that they are——

Senator BOXER. OK.

Mr. MARTIN.—looking at trying to——

Senator BOXER. Well——

Mr. MARTIN.—summarize, and would be released. I will go back and make sure.

Senator BOXER. Good. Because I have to tell you, this is—this is a—this is a piece of work. This isn't some lightly pulled-together, you know, deal. They went out, and they did a real good study of this, and they found out that there's more local news. Despite all of the other talk from the big guys, there's more news. There's more local news. And that's what people want.

Let me tell you, all you have to do is ask any of us. When we run for office, we have to take our advertising budget pretty seriously. We go to the local news. That's what the people want. That's what they watch. They want it. And this says you get more news when you have the luxury of having local news stations.

And withhold my other questions until——

Senator BURNS. Mr. Pryor?

Senator BOXER.—the next round.

Senator BURNS. Our team seems to be falling apart, so, you know, our batting order's going to pick up here a little bit.

[Laughter.]

STATEMENT OF HON. MARK PRYOR,
U.S. SENATOR FROM ARKANSAS

Senator PRYOR. Thank you, Mr. Chairman.

Chairman Martin, thank you—thank both of you for being here. And Chairman Martin, thank you for your interest in always trying to reach out and work with me in various capacities. I appreciate that.

Let me follow up on one of Senator Sununu's questions of a few moments ago on the Internet. He asked about whether the Internet should be regulated like, I guess, other media. Let me get to a more specific question about the Internet, and that's decency on the Internet.

Does the FCC have any authority over the Internet right now?

Mr. MARTIN. On the content and decency, no, we don't have any on the Internet.

Senator PRYOR. OK. Should it?

Mr. MARTIN. You know, I think that, unlike the broadcast medium, or even some of the other mediums that are putting forth the same communications to everyone, the Internet is inherently a "pull" media, where you're going to a site and pulling it down. And so, I think that is different than having the same kind of standard that applies to broadcast that's "pushed out," so to speak, to everyone.

Senator PRYOR. OK. Do you think that we, as in the Congress or the FCC or the folks that are—the Internet industry, so to speak—do you think we should try to make the Internet a more decent place?

Mr. MARTIN. Yes. I think that all the policymakers should be trying to make sure that the Internet is a more decent place.

Senator PRYOR. What's the best approach on trying to accomplish that?

Mr. MARTIN. You know, I'm not sure. I think it's quite a challenge. We're facing current challenges in the media environment that we do have more direct authority over. So, I'm not sure.

Senator PRYOR. I know that there's—if I can change gears—I know there's been a media campaign through the Ad Council, et cetera, about parental controls on televisions, and using cable and satellite, et cetera. And I know that you've been involved in watching that, trying to help structure that. What's your assessment of that public relations campaign and the effectiveness of it, as it stands today?

Mr. MARTIN. I think that the public relations campaigns are always a good thing when you're making parents aware of the tools that they have, but I've consistently said that I don't think that's enough in the current environment. I think that we need to have more direct action to empower parents to take more control over the media that's coming into their homes. So, while I think it's helpful, I don't think parental controls are enough.

Senator PRYOR. Would you——

Mr. MARTIN. I mean, I don't think the media campaign about parental controls is enough——

Senator PRYOR. OK, that's fair enough. Would you assess it as being effective or ineffective, or somewhere in between? What—how do you assess it right now?

Mr. MARTIN. I think that the ads themselves may be effective, but I think it's important to remember that the parental control mechanisms that they are promoting are not available to a significant number of homes today. Those are only available if you're a digital cable subscriber, and digital cable subscribers are still, on average across the country, only 40 to 45 percent of the homes——

Senator PRYOR. Yes.

Mr. MARTIN.—and that, even then, they are reliant upon accurate ratings, and many of the programs are not rated, or, if it's live or sports, something could still end up happening, like it did during the Super Bowl. So, I think the ads may be effective at their message, but I'm not sure I agree that that alone is enough.

Senator PRYOR. OK. Now, let me ask you about a state-specific issue that's on another topic, and that is video franchising. The Committee's heard a lot of discussion about the Texas video franchising law, and I'd like to get—as a Federal regulator, I'd like to get your impressions of the Texas video franchising, about—has it increased consumer choice? Has it lowered the costs of programming? How's it working?

Mr. MARTIN. It does seem that, in Texas, it has increased the consumer choice for video services. We went down and had a field hearing in Keller, Texas, where we were able to see Verizon offering their video service alternative, saw a demonstration of what AT&T plans to roll out in San Antonio this year after that franchise reform. So, it does seem to be increasing the ability of new entrants to be able to come in and offer a video alternative.

Senator PRYOR. Is it getting to middle-income and lower-income households at the same rate it's getting to higher-income households?

Mr. MARTIN. You know, we haven't seen any evidence of that yet. I do think that many of the services were more high-end, they were more geared toward users who were purchasing a lot of media. But I haven't seen any evidence yet to see what's going on.

Senator PRYOR. One last question on net neutrality. Chairman Stevens, a few moments ago, mentioned that net neutrality has been a very sticky wicket for this Committee and for the telecommunications bill. There's really not a consensus on it. Actually, I was outvoted, in my position on it, in the Committee. And I think it's one of the major holdups on getting telecommunications done this year on the Senate floor.

Personally, I like the FCC's approach, where you define two or three—I guess, three different items. And I'm willing to add a fourth, if that makes sense. Given your experience on the FCC in net neutrality, how has—from your perspective, how has the FCC approach worked, so far?

Mr. MARTIN. I think, thus far, it has worked effectively. I mean, we identified the principles that we thought would guide us as we try to evaluate the issue. And we've acted where there were complaints that were raised in front of us. And we've been able to do that, thus far. And so, I think, so far, waiting to adopt widespread rules has been more prudent when we might not completely appreciate the implications of those rules. Absent a significant number of complaints that we've identified in the marketplace, or a signifi-

cant number of problems, I think showing your strength through enforcement is the better method, at this point.

Senator PRYOR. Mr. Chairman, I'm out of time. Thank you.

Senator BURNS. Thank you, a lot, Mr. Pryor.

I've got some questions. Mr. Kneuer, we know you're here.

[Laughter.]

Senator BURNS. Even though you're not making any noise. And I've—I got to watch those babies go back and forth, and I said, "Welcome to the Senate Daycare Center."

[Laughter.]

Senator BURNS. And—but I think it's very refreshing. I'm like Mr. Stevens; I think it's very—well, I'm just a new grandpa, though.

I'm going to go to—Mrs. Boxer's got a couple of questions. I've got an important press conference—has to do with agriculture; and so, I take my agriculture pretty serious—and I'm going to submit my questions, but I want Mrs. Boxer to ask her—she's got a couple of more questions. Is that fair to say?

Senator BOXER. Correct, Mr. Burns.

Senator BURNS. Well, if you could do that, and then I can—I will close this thing up a little bit. But I want to give you an idea of what I'll be asking, and I want you to respond both to the Committee and to me. So, thank you.

Senator BURNS. You may proceed, Mrs. Boxer.

Senator BOXER. Thank you, sir.

Mr. Martin, I was very disappointed with your answer on net neutrality. You didn't even hesitate. You know, "We're just going to allow these ISPs to set up their toll roads." Not your words; mine. But, you know, I have to say that your answer was so clear, I appreciate your honesty on the point, but it's only going to make a mess up here, because those of us who really believe in nondiscrimination, who believe that—the reason the Internet is so great is, we've stopped taxes, we've stopped toll roads, we've stopped fees. All of us. Or most of us. And, therefore, we've had this incredible growth. And now, all of a sudden we're going to have the ISPs setting up toll roads, charging different websites different rates. And your answer is, "Well, if we interfere with it, they won't do—they won't make any progress." Well, that is not the history of the net. We've had, you know, nondiscrimination since the beginning, and there are many of us who are just going to fall on that sword.

So, I'm just a little disappointed, because, as you know, the bill that passed out of here really gives you a lot of discretion. And I don't feel real comfortable with that, at this point, given what you have said.

So, I hope you'll take a look again at the way you answered the question. Maybe I misheard it. But I've never heard someone just come straight out, "Yup, we're going to let these folks do what they have to do," to the detriment, in my view, of the people of this country.

I have a question on the NSA warrants, because I think it's an interesting situation here. You wrote a letter to Representative Markey that the Government had asserted—which is correct—the military- and state-secrets privilege in a Federal lawsuit; and,

therefore, you said, you know, "We can't get involved in this." Well, you probably know that the court, a U.S. District Court, refused to dismiss the case on state-secret grounds, is allowing the plaintiffs to seek information, and discovery is going on. I mean, basically, what the court said, "Hey, if there are some of—some of these records that were needed, please tell us, and we will absolutely go forward, but don't do a fishing expedition."

So, in light of this ruling, what plans does the FCC have to launch an investigation into the reported turning over of customer phone records to the NSA that had absolutely no involvement in any nefarious, or even suspected, acts?

Mr. MARTIN. As I understand it, there are multiple cases in many different district courts. You're talking about the district court that allowed that case to proceed. There have been other district courts that have actually dismissed the cases because of the state-secret privilege that's been asserted. And I think that issue was on appeal before the appellate courts. And once there's a consistent ruling, the Commission will follow that consistent ruling. But I think that you have multiple courts coming out with different rulings, at this point.

Senator BOXER. Well, we'll get back to you on that, because the decisions I know basically say that, you know, you could proceed. But I—you know, I'm disappointed in that, too.

Mr. MARTIN. And could I respond to the earlier net-neutrality question?

Senator BOXER. Yes, but I want to make sure I get a question in to Mr. Kneuer. So, we may have to have that between us, which is just fine, if you don't mind. But I feel like Mr. Kneuer has been left out of this, and he has a very important job, because he will be establishing a $1-billion public-safety interoperability grant program, and a lot of us, in a bipartisan way, are concerned that our first responders can't talk to each other.

So, how soon after October 1st will the NTIA be prepared to distribute grants to public-safety entities, Mr. Kneuer?

Mr. KNEUER. Thank you, Senator.

We've—since the day the legislation was passed, we've been working to be prepared to execute our responsibilities and authorities under the statute. As you mentioned, October 1 we have—borrowing authority becomes available. We have executed agreements with the Treasury Department to have access to those monies. We're working closely with our colleagues at the Department of Homeland Security. I've got strong support from the leadership inside the Department of Commerce to make sure that we have all the resources that we need.

Senator BOXER. So, how soon—I hate to cut you off, but I'm running out of time—how soon can we see these grants being distributed to public-safety entities? Give me the date.

Mr. KNEUER. I don't have a date on when grants would be made available. As I've said, we've been working to be prepared to have the monies available——

Senator BOXER. OK. Well, let me just say——

Mr. KNEUER.—working with DHS.

Senator BOXER.—because I've got 8 seconds left, and I—I'm glad that you've planned it. But I have to say, we don't have time here.

You know, everybody knows that we have to prepare—that we have to prepare for an attack, that our law enforcement has to talk to each other. And you have the authority to start, October 1. And you can't tell me the date. So, will you please write to me within the next week or so and give me the projected date that you will be ready to hand out these grants?

Mr. KNEUER. Absolutely.

Senator BOXER. Because it's important. I thank you. And I will submit all my other questions for the record.

I understand, Mr. Chairman, you're off to a press conference, so——

Senator BURNS. I have. And I thank the Senator from California.

I—this is my question. Mr. Kneuer, I'm going to—I have a couple of questions for Chairman Martin, and it has to do with the VoIP 911 order and subsequent filings and this type thing. I want to know the status of those, and we will get those from you.

Mr. Kneuer, on the Enhanced 911 Act. We still have—50 percent of the counties of the United States still do not have a locator service, and some of them don't even have 911 and the PSAPs. And I think we've got to work on that, because we worked very hard to pass that, to make sure those monies, as a pass-through to the—many states were using that money to balance their own budgets rather than passing it through to the countries or the entities that establish those call-in centers. So, my questions will go along with that.

Also, can you bring me up to date, Mr. Kneuer, on ICANN and the—negotiating between them and VeriSign? I think that's very important right now for the Internet and also the routers and this type of thing. And most of my questions have been asked. You have—you responded to them, Mr.—Chairman Martin, and I appreciate that, and your candid responses to us. And—but those are the areas, I think, right now.

911 is particularly important to me, because I think probably the passage of that legislation was the best public-safety legislation that we've passed. In other words, locator service for a cell phone just makes good sense to me, especially in a time when we have more cell numbers now than we have wired numbers. And we need locator services when that 911 call comes in to the nearest first responder.

And so, my questions will be along that line, and if you could respond to me, and to the Committee, I would appreciate that very much. We're moving—and yet, we've still got some ground—very important ground to cover for both of you. I plan to support both of you for these positions and move ahead. But I would have—well, I would like to have responses to those questions. If you'd agree to that, why—I'm going to leave this record open for two weeks for other members to ask their questions and for you to get a response from this hearing.

Without further ado, I'm going to recess this Committee.

[Whereupon, at 11:25 a.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

I am pleased to welcome Chairman Martin and Mr. Kneuer before our Committee today.

Chairman Martin has an impressive resume and an accomplished record as a public servant both as Commissioner and as Chairman of the Federal Communications Commission. I look forward to hearing his plans on how he will address the challenges in overseeing the ever-changing communications industry.

I am especially interested in how he will ensure that consumers are protected and competition is promoted as technology changes and industries consolidate. I have a number of specific questions that I will ask the Chairman to address after we hear from the nominees.

Thank you.

NATIONAL RELIGIOUS BROADCASTERS (NRB)
Manassas, VA, September 11, 2006

Hon. TED STEVENS,
Chairman,
Senate Committee on Commerce, Science, and Transportation,
Washington, DC.

Dear Mr. Chairman:

I write today to express the strong support of the National Religious Broadcasters (NRB) for the re-nomination and confirmation of the Honorable Kevin Martin as Commissioner and Chairman of the Federal Communications Commission.

During my tenure as president of NRB, I have developed enormous respect for the intellect, character, integrity and clear-headed thinking of Chairman Martin, His understanding of the multi-faceted issues facing a rapidly-changing media world is impressive; his carefully reasoned and well-balanced approach to these complex matters is even more so.

I have found Chairman Martin firm in his commitment to public policy values shared by the overwhelming majority of the American people. Unafraid to challenge media professionals to their highest and best, he is also firm in his readiness to seek correction when they stoop to their lowest and least.

While NRB members have not seen every issue before the FCC go their way, we have always found an open door to make our thoughts and concerns known. This is due, in no small part, to Chairman Martin's leadership.

I respectfully urge your quick and favorable action on the re-nomination of Chairman Martin.

Sincerely,

FRANK WRIGHT, PH.D.,
President/CEO

NATIONAL RELIGIOUS BROADCASTERS (NRB)
Manassas, VA, September 11, 2006

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Ranking Member,
Senate Committee on Commerce, Science, and Transportation,
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Dear Senator Inouye:

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During my tenure as president of NRB, I have developed enormous respect for the intellect, character, integrity and clear-headed thinking of Chairman Martin. His understanding of the multi-faceted issues facing a rapidly-changing media world is impressive; his carefully reasoned and well-balanced approach to these complex matters is even more so.

We have been particularly encouraged by Chairman Martin's active support for Multi-Cast Must-Carry. This important public policy question has, in our view, not received the full and fair consideration it deserves by the Congress. We commend Chairman Martin for his efforts to advance the Multi-Cast Must-Carry debate in the regulatory arena.

While NRB members have not seen every issue before the FCC go their way, we have always found an open door to make our thoughts and concerns known. This is due, in no small part, to Chairman Martin's even-handed leadership.

I respectfully urge your quick and favorable action on the re-nomination of Chairman Martin.

Sincerely,

FRANK WRIGHT, PH.D.,
President/CEO.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TED STEVENS TO JOHN M.R. KNEUER

Question 1. Last December this Committee reported out a bill to provide $1.5 billion for the converter box program necessary for the DTV conversion, which will in turn make new spectrum available for first responders. Can you update us on your implementation of the program?

Answer. Since the enactment of the Deficit Reduction Act of 2005, I have devoted significant time and effort to implement plans in accordance with the Act. The Department of Commerce and the Office of Management and Budget (OMB) have given this program high priority and have expedited clearance and procurement schedules to allow us to develop the program consistent with the schedule established in the Act.

Because this program will affect every community, we have attempted to solicit a wide range of public comment on how to design and operate the program. Since enactment of the bill, NTIA has met with a full range of interested parties representing consumers, television stations, equipment manufacturers and retailers, potential vendors of coupon systems, and consumer education services. We have also collaborated with other Federal agencies including the Federal Communications Commission, the Government Accountability Office, and the Department's Office of the Inspector General, to insure the full range of government expertise is brought to bear on creating a program that is effective, efficient, and minimizes waste, fraud and abuse.

On July 25, 2006, NTIA issued a Notice of Proposed Rule Making (NPRM) that seeks public comment on all aspects of the coupon program including eligibility, coupon distribution and redemption, retailer certification, and consumer education. The NPRM also addresses the technical specifications for converter boxes that may be purchased with the coupon. The deadline for public comment in the NPRM is September 25, 2006. NTIA's intention is to publish final rules in early 2007.

Because this is a one-time program and NTIA does not have coupon facilities, the agency intends to obtain services needed for the program through time-limited contracts. NTIA will retain oversight and approval of all work done under contract. Contemporaneously with the NPRM, NTIA has begun the government acquisition process to obtain the services necessary to educate consumers, certify retailers as well as distribute and redeem the coupons. The Request for Information (RFI) published on July 31, 2006, is the first step in the Federal procurement process. The information obtained in the RFI will be used to create cost estimates, performance requirements and other information required in the procurement process. Responses to the RFI were due on September 15, 2006. This information will allow NTIA to begin formal procurement as soon as the Rules are adopted. NTIA intends to award contracts by June 2007, so that vendors will have at least 6 months to have coupon systems operational by January 2008.

In both the NPRM and the RFI, NTIA has sought to design a coupon program that is efficient; minimizes the opportunity for waste, fraud and abuse; and, furthers the objective of a timely transition to digital television.

Question 2. You are considering a proposal that would grant VeriSign the exclusive right to distribute dot.com addresses to registrars who in turn make names available to the public for a fee. We have heard complaints about the perpetual na-

ture of that contract and the price increases it provides for dot.com names. Can you give us an update on where your review stands on that issue and your views on the contract terms?

Answer. Under its Memorandum of Understanding with the Department, the Internet Corporation for Assigned Names and Numbers (ICANN) is required to obtain the Department's approval for any proposed new .com Registry Agreement before it can take effect. On March 3, 2006, ICANN submitted a proposed new agreement as part of a litigation settlement with VeriSign. Since that time, the Department has been reviewing the proposed new agreement in light of its longstanding goals of ensuring the continued stability and security of the Internet domain name system and of promoting the consumer benefits of a competitive marketplace. To that end, the Department has been in consultation with the Department of Justice's Antitrust Division regarding the competition issues raised by the proposed new agreement. In addition, Department officials have met with a number of interested stakeholders, including registrars, Internet service providers, and search engine companies, who have concerns about the agreement. The Department has also heard from a number of stakeholders advocating the benefits of the new agreement for the security and stability of the Internet domain name system. The Department of Commerce has heard from Members of Congress on both sides of the issue. The Department will consider all of these views and concerns as it concludes its review of the new .com registry agreement.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CONRAD BURNS TO JOHN M.R. KNEUER

Question 1. At the end of the 108th Congress, we passed the ENHANCE 911 Act. Among other things, that bill created a joint 911 Program Office between NTIA and NHTSA. Can you describe any progress your agency and NHTSA have made in setting up that office? What are the status and current plans and what is your overall commitment to ensuring that office has the internal resources necessary to be effective?

Answer. I believe that enhanced 911 and wireless E–911 services are very important to the security and safety of the American people. NTIA and NHTSA will continue to work toward greater coordination and communications among Federal, State and local emergency communications systems and organizations involved in this effort. NHTSA and NTIA look forward to working with Congress to develop solutions for the deployment of both wireless and wireline E–911 nationwide.

As of September 14, 2006, NHTSA and NTIA completed the following activities:

Management Plan for the E–911 Joint Program. NHTSA and NTIA completed and submitted to Congress on March 23, 2005, a management plan for the 5-year duration of the joint program to facilitate coordination and communication among Federal, state, and local emergency communications systems, emergency personnel, public safety organizations, telecommunications carriers, and telecommunications equipment manufacturers and vendors involved in the implementation of E–911 services.

Memorandum of Understanding. On April 13, 2006, NHTSA and NTIA completed a Memorandum of Understanding to formalize the joint program mandated by the ENHANCE 911 Act of 2004 (the Act), Pub. L. No. 108–494.

National E–911 Implementation Coordination Office (ICO). NHTSA and NTIA established basic office functions, including telephone, mailing address, office email address, website, and logo. The ICO is housed at NHTSA.

Wireless E–911 Deployment Status. NHTSA, in conjunction with the National Emergency Number Association (NENA), completed tasks to expand the wireless deployment profile to include Public Safety Answering Point (PSAP) FCC Phase II readiness information.

ICO Website. NTIA, in coordination with NHTSA, designed, developed, registered and obtained a URL (*http://www.e-911ico.gov/*) for an ICO website to be fully operational in early FY07. This website will primarily be used for coordination and distribution of information on E–911 issues.

Relative to the status and current plans, NHTSA and NTIA also initiated the following E–911 activities:

Strategic Plan. NHTSA and NTIA developed the initial draft version of a strategic plan for the activities for the ICO. This plan will be completed in early FY07.

Planned Meeting. The ICO is planning to convene a meeting early in Fiscal Year 2007 (FY07) of all Federal agencies involved in 911 activities. During this meeting, the responsibilities of the ICO will be discussed as well as methods for ongoing coordination among involved Federal agencies.

Stakeholder Listening Sessions. To elicit further input of stakeholders on ICO activities and priorities, NHTSA and NTIA are planning a series of formal listening sessions that will be open to all interested parties.

Next Generation 911 Initiative. NHTSA is continuing its Next Generation 911 Initiative by issuing a Request for Proposals (RFP) for a design team to complete a high-level system architecture and a migration plan for the Next Generation of the 911 system, enabling the use of technologies such as Voice-Over-Internet Protocol (VoIP) within the 911 network.

Federal 911 Coordination. Under the Next Generation 911 Initiative, NHTSA will convene a meeting of all Federal agencies involved in 911 activities. During this meeting, the responsibilities of the ICO will be discussed as well as methods for ongoing coordination among Federal agencies.

Outreach. NTIA, in conjunction with NHTSA, initiated outreach with stakeholders on the forefront of E–911 implementation efforts, including state and local public safety experts, experienced emergency personnel, leading equipment manufacturers, PSAP operators, national public safety organizations, and expert Federal agencies. Additionally, the ICO already is working with the National Association of State 911 Administrators (NASNA) to provide leadership and management to ensure that all areas of this country are E–911 enabled for all technologies and moving toward the next generation of technology. One of the main vehicles for doing this will be to facilitate state planning efforts and distribute state's best practices and lessons learned.

Implementation Plan for the National Strategy for Pandemic Influenza. The Department of Transportation, in cooperation with Health and Human Services, the Department of Homeland Security, and the Department of Commerce, is leading an effort to develop model protocols for 911 Call Centers (Public Safety Answering Points) that address the provision of information to the public, facilitate caller screening, and assist with priority dispatch of limited emergency medical services.

Meeting of NHTSA Administrator and NTIA Acting Assistant Secretary. NHTSA and NTIA are planning a meeting between the NHTSA Administrator and the Acting Assistant Secretary, in accordance with the Memorandum of Understanding signed by both agencies.

The ICO is housed at NHTSA. NTIA and NHTSA are continuing to support ICO activities in Fiscal Year 2007 from within existing staff resources. NTIA and NHTSA are fully committed to doing everything possible within the limitations of existing resources to ensure the ICO is effective in providing the necessary leadership to facilitate further deployment of E–911 capabilities where they are lacking today.

Question 2. According to the National Emergency Number Association, today nearly 50 percent of counties in this country do not contain a Public Safety Answering Point (PSAP) that can accept Phase II wireless E–911 calls, meaning the call taker does not know the location of the call. Additionally, 25 percent of counties can not accept Phase I E–911 calls, meaning they have no location or callback number if the call gets disconnected. There are still 300 counties that do not have E–911 for wireline service, over 100 of which lack even basic 911. And of course the VoIP deployment is still ongoing. Progress is being made but these numbers are troubling. Beyond issuing mandates that directly affect communications providers, what do you see as the proper role for the FCC, NTIA and the Federal Government generally in providing leadership and management to ensure that all areas of this country are E–911 enabled for all technologies and moving toward the next generation of technology?

Answer. I believe the proper role for NTIA, NHTSA, the FCC, and the Federal Government is providing leadership and management.

One of the major functions of the new ICO and particularly the ICO website is to provide the industry with examples of "Best Practices" from around the country. NTIA, in particular, has formed a close working relationship with the E–911 Best Practices Working Group jointly led by the Association of Public Safety Communications Officials, International (APCO), the National Emergency Number Association (NENA), and National Association of State 911 Administrators (NASNA). This group, established as an off-shoot of the Network Reliability and Interoperability Council (NRIC) in December 2005, is made up of emergency communications experts

from around the country. It will act as a clearinghouse for the collection and distribution of creative efforts to address E–911 financing, enhancement and deployment questions.

Another function of the ICO is working with the National Association of State 911 Administrators (NASNA) to provide leadership and management to ensure that all areas of this country are E–911 enabled for all technologies and moving toward the next generation of technology. One of the main vehicles for doing this will be to facilitate state planning efforts and distribute state's best practices and lessons learned.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JIM DEMINT TO JOHN M.R. KNEUER

Question. In 2002 Congress enacted the "Dot Kids Implementation and Efficiency Act." This requires the NTIA to ensure that any manager of the .US country code provides a safe set of sites for children. What do you intend to do to promote this virtual playground for children on the Internet?

Answer. I will continue to work to promote the kids.us domain name space, as enacted as part of the Dot Kids Act, to protect children from inadvertently accessing inappropriate content or the threat of online predators while they are exploring the Internet.

Currently, twenty-three organizations—including the Smithsonian, the Library of Congress, Disney, PBS, and Nickelodeon—provide educational and entertaining content on the kids.us website.

If confirmed, I am committed to promoting the kids.us domain by encouraging providers of children's content to build kids.us websites. I will continue to promote the domain as an attractive addition to companies that currently host children's content on their existing websites.

If confirmed, I would work with Congress on creative ideas to build the kids.us domain into a safe, robust and exciting place for children to play and learn online.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO JOHN M.R. KNEUER

Question 1. Many critics of the ICANN-VeriSign settlement agreement argue that the presumptive renewal clause would allow VeriSign to hold on to the dot-com registry in perpetuity. How do you see ICANN holding the registry operator accountable without the strong leverage of being able to award the contract to a competing operator?

Answer. Over the course of the past 6 months, I and other Commerce Department officials have met with a number of interested stakeholders including registrars, Internet service providers, and search engine companies with interests in or concerns about the agreement. The concerns have largely focused on the impact on competition of the proposed price increase for registrations permitted by the new agreement and the terms for future renewals of the revised new .com Registry Agreement. The Commerce Department has sought the advice of the Antitrust Division of the Justice Department on the competition concerns raised.

On the other hand, other interested stakeholders have advocated that the renewal terms of the proposed agreement benefit the security and stability of the Internet domain name system. We have also consulted with those Federal agencies with expertise in the areas of security and stability on this matter.

Based on the information that we have gathered, I am confident that any decision made by the Department will appropriately balance all of the interests to ensure the continued stability and security of the Internet domain name system and of promoting the consumer benefits of a competitive marketplace.

Question 2. One of ICANN's primary missions is to promote competition. How does a presumptive renewal clause promote competition?

Answer. As noted above, the Department is reviewing the proposed new agreement in its entirety to ensure both the continued stability and security of the Internet domain name system and of promoting the consumer benefits of a competitive marketplace.

Question 3. Cyber security is a critical mission that all organizations struggle with. How can ICANN ensure that the registry operators are making the necessary security enhancements to guarantee the stability of the domain name system? How can ICANN hold a registry operator accountable?

Answer. Cyber security standards are developed by the various industry organizations, such as the Internet Engineering Task Force (IETF), ISO, and IEEE, and adherence to the various standards is voluntary for the most part. While ICANN is not a standards organization, it promotes the adoption of industry standards through its agreements with registry operators to comply with these standards. Registry agreements address the technical obligations, including compliance with the various industry developed standards, security requirements and outage reporting that all registry operators must meet. In addition each registry agreement contains a Service Level Agreement which identifies the terms should the registry operator fall below the performance specifications.

Question 4. Do you believe that a registry operator should be required to publicly justify any price increases? If no, why not and how is such an arrangement not anti-competitive? If yes, why is Verisign allowed to increase their prices four out of 6 years without justification?

Answer. The domain name marketplace is not a regulated one. Prices are set based on negotiations between private sector parties. The price cap for .com registrations and price adjustments permitted under the proposed new .com Registry Agreement were negotiated by ICANN and VeriSign.

Nevertheless, the Commerce Department is aware of the concerns raised primarily by the registrar community about the impact of a price increase on their industry. We have been in consultation with the Antitrust Division on this issue and will be guided by its advice in any final decision the Department makes.

Question 5. Would greater competition in the registry space promote price competition and better service?

Answer. I firmly believe that increased competition promotes lower prices and better services for consumers. Accordingly, one of the Department's core objectives during the transition to private sector management of the Internet domain name system has been the promotion of competition in this marketplace to bring the benefits to consumers of betters prices and services. The Department has strongly supported ICANN's efforts to introduce new top-level domains and to develop processes for the future introduction of more names.

Question 6. Commerce asked the Department of Justice's Antitrust Division to review the settlement agreement. Please share with us the agency's concerns. How are these concerns being addressed? Were there recommendations or suggestions made that are not being implemented or considered?

Answer. During its review of the proposed new .com Registry Agreement, the Commerce Department has sought the advice of the Antitrust Division of the Justice Department regarding the impact on competition of the proposed price increase for registrations permitted by the new agreement and the terms for future renewals of the revised new .com Registry Agreement. Like the Commerce Department, the Antitrust Division has been gathering information from the parties, interested stakeholders, and others on these issues, to provide its analysis and advice to the Department on any competition issues that may be raised by the proposed agreement. We expect to rely on this advice to evaluate the potential impact on competition of this agreement.

Question 7. Are you open to bringing together the different stakeholders in order to arrive at a solution that will satisfy the different parties and still ensure the promotion of competition?

Answer. In addition to its consultation with the Department of Justice's Antitrust Division regarding the competition issues raised by the proposed new .com registry agreement, I and other Commerce Department and Antitrust Division officials have met with a number of interested stakeholders, including registrars, Internet service providers, search engine companies, among others, with interests in or concerns about the agreement. The Commerce Department has also heard from a number of stakeholders advocating the benefits of the new agreement for the security and stability of the Internet domain name system. We have also heard from Members of Congress on both sides of the issue. Commerce Department and Antitrust Division officials have been gathering information from proponents and opponents of the agreement and I am confident that this information will be taken into consideration in any final decision that is made.

Question 8. Can you comment on ICANN's transparency issues? How has this improved over the years and how can the organization continue to improve?

Answer. The Department has long considered transparency to be a fundamental principle to ICANN's overall mission and function. The current Memorandum of Understanding (MOU) was structured to ensure that ICANN becomes a sufficiently stable, transparent, representative, and sustainable management organization capable of handling the important tasks associated with the technical management of

the Internet domain name system into the future. This MOU also contains specific provisions intended to improve transparency, efficiency, and timeliness in the consideration and adoption of policies. While ICANN has made several improvements in its decision-making and policy development processes, as well as in internal reviews and evaluations of these processes, I believe ICANN is mindful of the need for continual improvement. The Department's recent public consultation process has revealed strong support from a majority of interested stakeholders for a more specific focus on transparency and accountability in ICANN's internal procedures and decision-making processes.

Question 9. In recent years, the NTIA, working with the Census Bureau, has conducted a survey of Americans that explores their use of the Internet, computers, and other information tools. The last report, "A Nation Online" (the 6th in a series that dates to the 1990s), was released in 2004 and interviewed approximately 57,000 households. This survey has been extremely useful to policymakers at all levels of government and the general public. It may be the only publicly available source of state-level data on the use of information technology and it is widely used by researchers in the academic, private, and public sectors. Does NTIA plan to field another survey in this series? If so, when?

Additionally, this survey has sometimes (but not in 2004) asked respondents about their monthly bill for Internet service. As one of the sole public sources for this information, this consumer price data has been valuable to policymakers and researchers. Will NTIA include a question in the survey asking consumers what they pay, on a monthly basis, for Internet and other information services?

Answer. Although "A Nation Online" has been useful to policymakers, the process of compilations renders it to be untimely in a rapidly changing marketplace. As market penetration stabilizes and is less subject to rapid change, we may consider future studies.

Question 10. A "next generation" measurement question for policymakers is the quality of the Nation's communications infrastructure. Policy debate in the broadband arena will increasingly focus on network quality—the upload and download speeds available to home consumers, the reliability of service, and where advanced high-speed infrastructure is deployed. Network speed is increasingly a benchmark used in international comparisons of broadband deployment, as well as part of regional economic development strategies in the United States. Network speed is also important to economists measuring the "information economy" and for public understanding of the societal impacts of information and communications technology.

However, traditional measurement tools, such as surveys of consumers or reporting requirements for companies, have limitations in addressing this issue. How does the NTIA plan to address this measurement challenge?

Answer. I agree with your thoughts on the challenge of gathering systematic and up-to-date information on the availability and quality of broadband services. As noted in response to the previous question, the communications market is both rapidly expanding and rapidly changing. New service providers are entering the market every month, using a wide variety of different technologies. The services that those providers offer to customers in terms of price, speed, and quality are changing even more rapidly. Today we see various broadband platforms: fiber, cable, satellite, cellular, broadband over power line, and municipal Wi-Fi, just to name a few.

In this competitive marketplace, consumers will demand and carriers will have an incentive to provide accurate information or speed, price and terms of service.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO JOHN M.R. KNEUER

Question 1. NTIA will soon begin distributing one billion dollars in interoperability funds as mandated in legislation we passed last year on the transition to digital television. The conference report states that a portion of these funds should be distributed based on threat and risk of natural disasters and terrorism. Can you describe the factors NTIA will use to determine threat and risk, and how you plan to disburse this money? Will it all be risk-based? If not, what portion?

Answer. We are working to begin this grant program as soon as possible so funds may be applied to the challenges of establishing interoperable communications among first responders across the country. NTIA and the Office of Grants and Training at the Department of Homeland Security (DHS) are working closely together on an agreement that will allow the use of DHS' existing grants infrastructure, technical assistance and outreach mechanisms. The agreement will speed pro-

gram initiation, avoid duplication, and minimize the paperwork and administrative burden for public safety agencies applying for funds from multiple programs.

Distribution of funds will be determined consistent with the guidance found in the legislative history accompanying the Act. Accordingly, NTIA intends:

> to distribute a limited portion of grant funds under this section in a manner that gives priority to those public safety agencies in areas designated as at high risk for natural disasters and threats of terrorism to the agriculture, food, banking, and chemical industries; the defense industrial base; emergency services; energy; government facilities; postal, shipping, public health, health care, information technology, telecommunications, and transportation systems; water; dams; commercial facilities; and national monuments and icons.

Program priorities and allocation of funds have not been determined. We anticipate that the level of risk and need will vary from state to state. Funding decisions, therefore, are expected to be made based on current DHS and SAFECOM guidance as well as documentation provided by first responders in their state interoperable communications plans and information collected during the application process. We also expect the program to provide technical assistance to first responders in each state to assist them in identifying needs and how funds from this program might be best used to address interoperability gaps and weaknesses across the country.

Question 2. We must make sure that we have a robust consumer education campaign so the American people know about the DTV transition and how to prepare for it. What is your plan to best use the $5 million available for this task? Given its local presence in communities and educational mission, will public broadcasting be utilized in this consumer education campaign?

Answer. I agree with you about the importance of consumer education in the digital-to-analog converter box coupon program. NTIA's Notice of Proposed Rule Making (NPRM) emphasizes the importance of carefully leveraging the $5 million allocation by collaborating with and complementing the consumer education efforts of broadcasters, equipment manufacturers, consumer electronics retailers, and consumer groups as well as the ongoing efforts of the FCC. Based on our discussions with these stakeholders, we understand that they are planning to widely publicize the digital television transition with their customer groups. The NPRM seeks additional information on the role and future activities of the stakeholders in providing consumer information about the coupon program.

Any public information campaign undertaken by NTIA will only be successful if other stakeholders in the digital transition and the digital-to-analog converter box coupon program contribute significant effort to the production and distribution of this information. NTIA fully expects that broadcasters—both public and commercial—will play primary roles in alerting their viewers to the availability of Federal assistance to purchase digital-to-analog converter boxes.

In addition, NTIA's Request for Information (RFI), entitled "Market Research for Implementation of Digital to Analog Converter Box Coupon Program," seeks information about the capability of organizations to facilitate the participation of interested partners and to create a consistent and effective message about the coupon program. The RFI also will provide NTIA with information about organizations with the capability to assist in all aspects of the coupon program including consumer information.

Question 3. The Department of Commerce has reportedly consulted with the Department of Justice on the proposed .com registry renewal agreement. Has DOJ provided your agency with any suggestions or comments?

Answer. During its review of the proposed new .com Registry Agreement, the Commerce Department has sought the advice of the Antitrust Division of the Justice Department regarding the impact on competition of the proposed price increase for registrations permitted by the new agreement and the terms for future renewals of the revised new .com Registry Agreement. Like the Commerce Department, the Antitrust Division has been gathering information from the parties, interested stakeholders, and others on these issues, to provide its analysis and advice to the Department on any competition issues that may be raised by the proposed agreement. We expect to rely on this advice to evaluate the potential impact on competition of this agreement. While we have engaged in extensive discussions with the Antitrust Division throughout this review process, the Department has not yet received the Antitrust Division's formal advice.

Question 4. The proposed .com registry renewal agreement would permit the registry operator to raise prices by 7 percent in four out of 6 years of the contract. Must these increases be justified annually? Can you compare and contrast this contract, and the aforementioned pricing, with the .net domain registry operation?

Answer. The domain name marketplace is not a regulated one. Prices are set based on negotiations between private sector parties. The price cap for .com registrations and price adjustments permitted under the proposed new .com Registry Agreement, for example, were negotiated by ICANN and VeriSign, Inc.

Nevertheless, the Commerce Department is aware of the concerns raised primarily by the registrar community about the impact of the potential price increase on their industry. We are also aware of the differences in the pricing provisions of the current .net Registry Agreement and the proposed new .com Registry Agreement. We have been in consultation with the Antitrust Division on this issue and understand that this has been taken into account in its competition analysis of the proposed new agreement. The Commerce Department will be guided by the Antitrust Divisions's analysis of this issue and its advice in any final decision the Department makes on whether to approve the proposed agreement.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO JOHN M.R. KNEUER

Question 1. I share concerns with others that the NTIA and the FCC don't partner closely enough on setting Federal spectrum policy. What steps do you think you could take to more effectively coordinate spectrum policy with the FCC?

Answer. The relationship between the FCC and NTIA is extremely important in setting Federal spectrum policy and over the past few years, our two agencies have worked closely together. In partnership with other government agencies, we've significantly increased the amount of radio spectrum available to commercial licensees, much of which has or will be used to provide broadband services, and we have facilitated the resolution of complicated problems that have enabled Federal users to better complete their missions.

In accordance with President Bush's Spectrum Policy Initiative, NTIA will collaborate even more closely with the FCC in the coming years to craft policies that promote efficient use of radio spectrum by government and commercial users. We are already working together, and with other Federal executive agencies, to develop national strategic plans that address spectrum requirements and the impact of new technologies. In June, NTIA, in collaboration with the FCC, solicited public comment on a proposed spectrum sharing test bed that will enable Federal and non-Federal users of spectrum to test new ways to share the radio spectrum. NTIA and the FCC will also explore the use of advanced information technology capabilities to replace existing manual processes and procedures. Finally, NTIA and the FCC are committed to improving existing processes for assessing the impact of new technologies on incumbent licenses, thereby expediting the introduction of new spectrum uses.

If confirmed, I am committed to work with my colleagues at the FCC and across government.

Question 2. I have heard from a number of my Florida constituents about the proposed settlement between ICANN and Verisign that is under review at your agency. What assurances can you give me that the concerns of Internet users and small business owners are being considered at NTIA? How will you address their concerns?

Answer. Under its Memorandum of Understanding with the Department, ICANN is required to obtain the Department's approval for the proposed new .com Registry Agreement before it can take effect. ICANN submitted the proposed new .com Registry Agreement to the Department of Commerce on March 3, 2006. The Department has been reviewing the proposed agreement in light of its longstanding goals of ensuring the continued stability and security of the Internet domain name system and of promoting the consumer benefits of a competitive marketplace.

To that end, the Commerce Department has been in consultation with the Department of Justice's Antitrust Division regarding the competition issues raised by the proposed agreement. In addition, I and other Commerce Department officials have met with a number of interested stakeholders, including registrars, Internet service providers, search engine companies, representatives of small businesses and the user community, with concerns about the agreement. Based on the information that we have gathered, I am confident that any decision made by the Department will appropriately balance all of the interests to ensure the continued stability and security of the Internet domain name system and of promoting the consumer benefits of a competitive marketplace.

Question 3. At the end of the 108th Congress, we passed the ENHANCE 911 Act. Among other things, that bill created a joint 911 Program Office between NTIA and NHTSA. Can you describe any progress your agency and NHTSA have made in set-

ting up that office? What are the status and current plans and what is your overall commitment to ensuring that office has the internal resources necessary to be effective?

Answer. I believe that enhanced 911 and wireless E–911 services are very important to the security and safety of the American people. NTIA and NHTSA will continue to work toward greater coordination and communications among Federal, State and local emergency communications systems and organizations involved in this effort. NHTSA and NTIA look forward to working with Congress to develop solutions for the deployment of both wireless and wireline E–911 nationwide.

As of September 14, 2006, NHTSA and NTIA completed the following activities:

Management Plan for the E–911 Joint Program. NHTSA and NTIA completed and submitted to Congress on March 23, 2005, a management plan for the 5-year duration of the joint program to facilitate coordination and communication among Federal, state, and local emergency communications systems, emergency personnel, public safety organizations, telecommunications carriers, and telecommunications equipment manufacturers and vendors involved in the implementation of E–911 services.

Memorandum of Understanding. On April 13, 2006, NHTSA and NTIA completed a Memorandum of Understanding to formalize the joint program mandated by the ENHANCE 911 Act of 2004 (the Act), Pub. L. No. 108–494.

National E–911 Implementation Coordination Office (ICO). NHTSA and NTIA established basic office functions, including telephone, mailing address, office email address, website, and logo. The ICO is housed at NHTSA.

Wireless E–911 Deployment Status. NHTSA, in conjunction with the National Emergency Number Association (NENA), completed tasks to expand the wireless deployment profile to include Public Safety Answering Point (PSAP) FCC Phase II readiness information.

ICO Website. NTIA, in coordination with NHTSA, designed, developed, registered and obtained a URL (*http://www.e-911ico.gov/*) for an ICO website to be fully operational in early FY07. This website will primarily be used for coordination and distribution of information on E–911 issues.

Relative to the status and current plans, NHTSA and NTIA also initiated the following E–911 activities:

Strategic Plan. NHTSA and NTIA developed the initial draft version of a strategic plan for the activities for the ICO. This plan will be completed in early FY07.

Planned Meeting. The ICO is planning to convene a meeting early in Fiscal Year 2007 (FY07) of all Federal agencies involved in 911 activities. During this meeting, the responsibilities of the ICO will be discussed as well as methods for ongoing coordination among involved Federal agencies.

Stakeholder Listening Sessions. To elicit further input of stakeholders on ICO activities and priorities, NHTSA and NTIA are planning a series of formal listening sessions that will be open to all interested parties.

Next Generation 911 Initiative. NHTSA is continuing its Next Generation 911 Initiative by issuing a Request for Proposals (RFP) for a design team to complete a high-level system architecture and a migration plan for the Next Generation of the 911 system, enabling the use of technologies such as Voice-Over-Internet Protocol (VoIP) within the 911 network.

Federal 911 Coordination. Under the Next Generation 911 Initiative, NHTSA will convene a meeting of all Federal agencies involved in 911 activities. During this meeting, the responsibilities of the ICO will be discussed as well as methods for ongoing coordination among Federal agencies.

Outreach. NTIA, in conjunction with NHTSA, initiated outreach with stakeholders on the forefront of E–911 implementation efforts, including state and local public safety experts, experienced emergency personnel, leading equipment manufacturers, PSAP operators, national public safety organizations, and expert Federal agencies. Additionally, the ICO already is working with the National Association of State 911 Administrators (NASNA) to provide leadership and management to ensure that all areas of this country are E–911 enabled for all technologies and moving toward the next generation of technology. One of the main vehicles for doing this will be to facilitate state planning efforts and distribute state's best practices and lessons learned.

Implementation Plan for the National Strategy for Pandemic Influenza. The Department of Transportation, in cooperation with Health and Human Services,

the Department of Homeland Security, and the Department of Commerce, is leading an effort to develop model protocols for 911 Call Centers (Public Safety Answering Points) that address the provision of information to the public, facilitate caller screening, and assist with priority dispatch of limited emergency medical services.

Meeting of NHTSA Administrator and NTIA Acting Assistant Secretary. NHTSA and NTIA are planning a meeting between the NHTSA Administrator and the Acting Assistant Secretary, in accordance with the Memorandum of Understanding signed by both agencies.

The ICO is housed at NHTSA. NTIA and NHTSA are continuing to support ICO activities in Fiscal Year 2007 from within existing staff resources. NTIA and NHTSA are fully committed to doing everything possible within the limitations of existing resources to ensure the ICO is effective in providing the necessary leadership to facilitate further deployment of E–911 capabilities where they are lacking today.

Question 4. According to the National Emergency Number Association, today nearly 50 percent of counties in this country do not contain a Public Safety Answering Point (PSAP) that can accept Phase II wireless E–911 calls, meaning the call taker does not know the location of the call. Additionally, 25 percent of counties can not accept Phase I E–911 calls, meaning they have no location or callback number if the call gets disconnected. There are still 300 counties that do not have E–911 for wireline service, over 100 of which lack even basic 911. And of course the VoIP deployment is still ongoing. Progress is being made but these numbers are troubling. Beyond issuing mandates that directly affect communications providers, what do you see as the proper role for the FCC, NTIA and the Federal Government generally in providing leadership and management to ensure that all areas of this country are E–911 enabled for all technologies and moving toward the next generation of technology?

Answer. I believe the proper role for NTIA, NHTSA, the FCC, and the Federal Government is providing leadership and management.

One of the major functions of the new ICO and particularly the ICO website is to provide the industry with examples of "Best Practices" from around the country. NTIA, in particular, has formed a close working relationship with the E–911 Best Practices Working Group jointly led by the Association of Public Safety Communications Officials, International (APCO), the National Emergency Number Association (NENA), and National Association of State 911 Administrators (NASNA). This group, established as an off-shoot of the Network Reliability and Interoperability Council (NRIC) in December 2005, is made up of emergency communications experts from around the country. It will act as a clearinghouse for the collection and distribution of creative efforts to address E–911 financing, enhancement and deployment questions.

Another function of the ICO is working with the National Association of State 911 Administrators (NASNA) to provide leadership and management to ensure that all areas of this country are E–911 enabled for all technologies and moving toward the next generation of technology. One of the main vehicles for doing this will be to facilitate state planning efforts and distribute state's best practices and lessons learned.

Question 5. Related to the 2009 digital TV transition, Congress only authorized $5 million for a consumer education effort that many contend is the most important element of ensuring that Americans are prepared for the day that free, over-the-air television becomes an exclusively digital service. Is that sum sufficient or should Congress appropriate additional monies for this purpose? Given the success of public outreach campaigns that public television has successfully conducted in the past, if you are confirmed by the Senate, will the NTIA—under your leadership—consider giving public television a primary role in the comprehensive consumer education effort that will be necessary to ensure a successful DTV transition for all Americans?

Answer. I agree with you about the importance of consumer education in the digital-to-analog converter box coupon program.

NTIA's Notice of Proposed Rule Making (NPRM) emphasizes the importance of carefully leveraging the $5 million allocation by collaborating with and complementing the consumer education efforts of broadcasters, equipment manufacturers, consumer electronics retailers, consumer groups, as well as the ongoing efforts of the Federal Communications Commission. Based on our discussions with these stakeholders, we understand that they are planning to widely publicize the digital television transition with their customer groups. The NPRM seeks additional information on the role and future activities of the stakeholders in providing consumer information about the coupon program.

Any public information campaign undertaken by NTIA will only be successful if other stakeholders in the digital transition and the digital-to-analog converter box coupon program contribute significant effort to the production and distribution of this information. NTIA fully expects that broadcasters—both public and commercial—will play primary roles in alerting their viewers to the availability of Federal assistance to purchase digital-to-analog converter boxes.

In addition, NTIA's Request for Information, entitled "Market Research for Implementation of Digital to Analog Converter Box Coupon Program," seeks additional information about the capability of organizations to facilitate the participation of interested partners and to create a consistent and effective message about the coupon program. The RFI also will provide NTIA with information about organizations with the capability to assist in all aspects of the coupon program including consumer information.

Based on the public record developed through these proceedings, NTIA intends to design a coupon program within the budget allocation established by Congress. I greatly appreciate your concern about the sufficiency of funding for this program and fully intend to keep you apprised of activities, progress, budget, and all aspects of coupon program implementation and administration.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO KEVIN J. MARTIN

Question 1. One of the conditions adopted by the FCC and agreed to by the parties in the AT&T-SBC/Verizon-MCI mergers was a requirement that the combined entities provide stand-alone ADSL service to 'ADSL-capable customers' within its territory. It is my understanding that under FCC precedent, this obligation to provide stand-alone ADSL applies to both retail and commercial customers. How does the FCC monitor compliance with this condition, and have there been any allegations to date that either party is failing to abide by this obligation to offer stand-alone service to residential consumers or commercial ISPs? Is the Commission aware of concerns regarding *de facto* noncompliance in situations where stand-alone service may be offered, but where the price for stand-alone ADSL service is set well in excess of the price for a bundled package of voice and ADSL service from the carrier? What tools are available to the Commission to address such concerns where a carrier's pricing of stand-alone service makes it economically unreasonable for a consumer to purchase it?

Answer. In last year's merger review process, AT&T and SBC and Verizon and MCI made certain voluntary commitments, including the commitment to offer ADSL service without telephone service for a period of 2 years. Specifically, the condition states that "[w]ithin twelve months of the Merger Closing Date,

[the merging parties] will deploy and offer within its in-region territory ADSL service to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service." See, *e.g.,* SBC/AT&T, Appendix F. The Commission, in approving the mergers made these commitments express conditions of the merger approvals. Accordingly, each company is required to file annually a declaration by an officer of the corporation attesting that the merged company has substantially complied with the terms of the conditions in all material respects. Although the deadline to file its annual declaration of compliance has not been reached, AT&T informed the Commission on June 30, 2006 that it fully implemented the condition offering ADSL service without telephone service under the terms of this condition in each of its states as of June 13, 2006.

I am not aware of any allegations to date that either party is failing to abide by this obligation. Nevertheless, the Commission will vigilantly monitor all consumer-related problems concerning this service, including reviewing consumer complaints and other information. As noted in the merger, we expect that the terms and conditions of this service will reflect the underlying competitiveness of the market. The Commission retains its historical discretion to monitor the market and take corrective action if the public interest requires. Specifically, the Commission is prepared to use all of its enforcement tools to ensure compliance with this condition.

Question 2. In response to concerns about indecent programming on cable television, many cable operators announced plans in recent months to create so-called "tiers" of family friendly programming. In your view, are these "tiers" working? If not, is any further action by the Commission contemplated to assist parents in choosing appropriate programming? If so, what are you considering? In your view, is the new, inter-industry initiative recently announced by former head of the Motion Picture Association of America, Jack Valenti, which is designed to promote

greater awareness among parents of channel blocking technology, sufficient to help parents and protect children from objectionable material?

Answer. The family tiers proposed by the cable industry are an important step, but it is too soon to know if consumers will view these tiers as a viable alternative. For example, several Members of Congress have expressed their concern that the family tiers as proposed would have no sports programming. Moreover, of those cable operators who have announced plans to introduce a family tier, only some have introduced them and, of those, many have not rolled them out in all of their service areas. We will have to see how these tiers evolve.

The industry initiative to educate parents how to block channels should be helpful. Parents, of course, are the first line of defense, but industry also has a responsibility to empower parents by offering them more effective tools with which to supervise their children's TV watching. Consumer education efforts are always welcome but I do not believe it alone is sufficient to help parents and protect children from objectionable material. First, not all television viewers have access to blocking technologies. Only those consumers who own televisions that have a V-chip or subscribe to digital cable have this blocking capability. Second, blocking technologies are dependent upon programs being rated and being rated accurately. Sporting events like the Super Bowl, for instance, are not rated.

Question 3. In November 2005, the FCC initiated a proceeding asking whether the existing franchising process unreasonably impedes the development of cable competition and broadband deployment in contravention of the directive in section 621 and, if so, how the FCC should address this issue. In your opinion, does the FCC have the authority under existing law to preempt or invalidate state or local redlining prohibitions and build-out requirements imposed on video service providers?

Answer. In the Notice of Proposed Rulemaking that the Commission adopted in November 2005, we sought comment on our authority to preempt and our authority to address build-out requirements. The Commission has not yet made a final determination on this issue.

In the Notice, we sought comment on the tentative conclusion that, "pursuant to the authority granted under Sections 621(a) and 636(c) of the Act, and under the Supremacy Clause, the Commission may deem to be preempted and superseded by any law or regulation of a state or LFA that causes an unreasonable refusal to award a competitive franchise in contravention of section 621(a)." The Commission also sought comment on "whether build-out requirements are creating unreasonable barriers to entry for facilities-based providers of telephone and/or broadband services" and on the FCC's authority in this area. In so doing, the Commission took note of Section 621(a)(4)(A) of the Act. That provision provides that, "[i]n awarding a franchise, the franchising authority shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area."

The Commission explicitly recognized the separate prohibition on redlining contained in the statute. The Commission explicitly stated: "For purposes of this discussion, we distinguish between (1) requirements that may function as barriers to competitive entry for providers of telephone and/or broadband services with existing facilities, and (2) prohibitions against discriminatory deployment of cable services based upon economic considerations." (See Section 621(a)(3) which states: "In awarding a franchise or franchises, a franchising authority shall assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.") I would note that, in their comments, the U.S. Department of Justice stated: "In light of the significant entry-deterring effects of mandated build-out requirements, the Department believes that LFAs should not be allowed to impose any such requirements except where necessary to prevent income discrimination, which the statute prohibits."

Question 4. In 2004, SBC (now AT&T) petitioned the FCC to rule that Internet Protocol (IP) platform services, including video services, do not fit any of the service-specific legacy regulatory regimes in the Communications Act, and thus the IP video service offerings that AT&T plans to offer would not be subject to the franchising regime of Title VI. In your opinion, is AT&T's proposed IP video service subject to the requirements of Title VI of the Communications Act? Please explain the legal justification for your answer.

Answer. Section 621(b)(1) of the Communications Act provides that "a cable operator may not provide cable service without a franchise." The Communications Act defines a "cable operator" as "any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is respon-

sible for, through any arrangement, the management and operation of such a cable system." The Act excludes from the definition of a "cable system" "a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of this Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services."

AT&T is a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act. Thus, whether AT&T's video services are subject to the requirements of Title VI depends upon the characteristics of AT&T's video offering. To the extent that the offering involves solely "interactive on-demand services," the franchising requirements of the Act would not apply. The Commission has not yet made a final determination on this issue.

Question 5. To ensure that the media ownership rules are properly drawn, a full understanding of the public interest requirements of localism and diversity is necessary. Do you plan to complete the FCC's pending localism and diversity proceedings before moving forward with a decision in the media ownership proceeding?

Answer. In June 2004, the Commission initiated a diversity proceeding, issuing a Public Notice seeking comment on "constitutionally permissible ways to further the mandates of section 257 of the Telecommunications Act of 1996, 47 U.S.C. § 257, which directs the FCC to identify and eliminate market entry barriers for small telecommunications businesses, and Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j), which requires the FCC to further opportunities in the allocation of spectrum-based services for small businesses and businesses owned by women and minorities."

In July 2004, the Commission initiated a localism proceeding, issuing a Notice of Inquiry "to receive direct input from the public on how broadcasters are serving the interests and needs of their communities; whether we need to adopt new policies, practices, or rules designed to promote localism in broadcast television and radio; and what those policies, practices, or rules should be."

We received numerous comments in both of these proceedings, which will help inform our decisions in the review of our media ownership rules we commenced this past summer. The Media Bureau is preparing a summary of the comments submitted in our localism proceeding that will be released to the public. The Media Bureau also is preparing a summary of the testimony taken at the localism hearings. All of this information will be fully incorporated into the media ownership proceeding. I also have proposed to consolidate the diversity proceeding with our review of the media ownership rules in order to ensure full consideration of the diversity issue with the media ownership proceeding. In addition, localism and diversity will be the focus of several independent studies and among the topics covered at our public hearings as we move forward with the media ownership proceeding.

Question 6. In August 2005, the FCC initiated a rulemaking to consider what consumer protection requirements should be applied to all providers of broadband service. What is the status of this proceeding? In recent decisions, the D.C. Circuit has indicated that there are limits to the scope of the FCC's ancillary authority under Title I of the Communications Act. In your opinion, does the FCC have the authority to implement consumer protections on broadband service providers pursuant to Title I and how would the rationale differ from the failed efforts in the broadcast flag and video description decisions?

Answer. As you note, the Commission initiated a rulemaking to consider what consumer protection requirements should be applied to all providers of broadband service in August of 2005. That proceeding is still pending. While the Commission is still considering what new rules—if any—are needed, the Commission has remained vigilant in protecting the consumer's interest. Moreover, even while the proceeding is pending, the Commission remains able to take appropriate enforcement actions where needed. For example, we recently opened an investigation and issued letters of inquiry to Verizon based on new charges it levied on broadband Internet access services. In response, Verizon abandoned the use of the charges.

The Commission has authority to adopt broadband consumer protection requirements pursuant to Title I of the Communications Act. The Supreme Court reaffirmed last year that the Commission "has jurisdiction to impose additional regulatory obligations under its Title I ancillary jurisdiction to regulate interstate and foreign communications." *National Cable & Telecomm. Ass'n* v. *Brand X Internet Services,* 125 S. Ct. 2688, 2696 (2005) (*Brand X*). Indeed, the Supreme Court specifically recognized the Commission's ancillary jurisdiction to impose regulatory obligations on broadband Internet access providers. *Brand X,* 125 S. Ct. at 2708 ("[T]he Commission remains free to impose special regulatory duties on facilities-based ISPs

under its Title I ancillary jurisdiction. In fact, it has invited comment on whether it can and should do so.").

The Commission may exercise ancillary jurisdiction under Title I when: (1) Title I confers subject matter jurisdiction over the service to be regulated; and (2) the assertion of jurisdiction is reasonably ancillary to the effective performance of the Commission's responsibilities. *United States* v. *Southwestern Cable Co.,* 392 U.S. 157, 177–78 (1968). The Commission has found that both of these conditions are met for consumer protection requirements on broadband service. *Wireless Broadband Internet Access Order,* 20 FCC Rcd 14853, 14914, para. 110 (2005). *See also, id.* At n. 342 (noting that the Commission was concurrently adopting "a Notice of Proposed Rulemaking to determine what specific duties are necessary for broadband Internet access service providers, regardless of the technology they employ, to ensure the Commission's ability to fulfill its statutory obligations in the important area of consumer protection").

First, as the Commission stated, broadband services are "wire communications" or "radio communications," as defined in sections 3(52) and 3(33) of the Act, and section 2(a) of the Communications Act gives the Commission subject matter jurisdiction over "all interstate and foreign communications by wire or radio."

Second, as the Commission has concluded, consumer protection regulations would be "reasonably ancillary" to effective performance of the Commission's responsibilities. Such rules would facilitate the Commission's responsibility to implement sections 222 (customer privacy), 255 (disability access), and 258 (slamming and truth-in-billing), among other provisions, of the Act.

In the broadcast flag decision, the court found that the Commission lacked subject matter jurisdiction over the electronic equipment it sought to regulate and thus failed to satisfy the basic prerequisite to the exercise of ancillary jurisdiction. *See American Library Ass'n* v. *FCC,* 406 F.3d 689 (D.C. Cir. 2005). In the video description case, the D.C. Circuit held that, because of First Amendment concerns, the Commission's ancillary jurisdiction did not extend to direct regulation of video program content. *See Motion Picture Ass'n of America, Inc.* v. *FCC,* 309 F.3d 796 (D.C. Cir. 2002). As discussed above, at issue here are broadband services that are "wire communications" or "radio communications" within the Commission's subject matter jurisdiction over "all interstate and foreign communications by wire or radio."

Question 7. In August 2005, the FCC adopted a Policy Statement laying out four principles "to encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet." While the Supreme Court indicated *in dicta* in the *Brand X* decision that the FCC could attempt to draft rules under its Title I ancillary authority, the D.C. Circuit has indicated that there are limits to the scope of the FCC's ancillary authority. In your opinion, does the FCC have authority to promulgate and enforce these principles under Title I, and if so, what limiting legal principles apply to the FCC's ancillary authority to address discrimination by broadband service providers? Please explain the legal justification for your answer.

Answer. The Commission, under Title I of the Communications Act, has the ability to adopt and enforce the net neutrality principles it announced in the Internet Policy Statement. The Supreme Court reaffirmed last year that the Commission "has jurisdiction to impose additional regulatory obligations under its Title I ancillary jurisdiction to regulate interstate and foreign communications." *National Cable & Telecomm. Ass'n* v. *Brand X Internet Services,* 125 S. Ct. 2688, 2696 (2005) (Brand X). Indeed, the Supreme Court specifically recognized the Commission's ancillary jurisdiction to impose regulatory obligations on broadband Internet access providers. *Brand X,* 125 S. Ct. at 2708 ("[T]he Commission remains free to impose special regulatory duties on facilities-based ISPs under its Title I ancillary jurisdiction. In fact, it has invited comment on whether it can and should do so.").

The Commission may exercise ancillary jurisdiction under Title I when: (1) Title I confers subject matter jurisdiction over the service to be regulated: and (2) the assertion of jurisdiction is reasonably ancillary to the effective performance of the Commission's responsibilities. *United States* v. *Southwestern Cable Co.,* 392 U.S. 157, 177–78 (1968). Both of these conditions are met with respect to the four principles of the Commission's 2005 Policy Statement. Indeed, the Commission found "that both of the predicates for ancillary jurisdiction are likely satisfied for any consumer protection, network reliability, or national security obligation that we may subsequently decide to impose on wireline broadband Internet access service providers." *Wireless Broadband Internet Access Order,* 20 FCC Rcd 14853, 14914, para. 109.

First, as the Commission stated, broadband services are "wire communications" or "radio communications," as defined in sections 3(52) and 3(33) of the Act, and sec-

tion 2(a) of the Communications Act gives the Commission subject matter jurisdiction over "all interstate and foreign communications by wire or radio."

Second, section 1 of the Communications Act confers responsibility on the Commission "to make available . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." This responsibility is guided by the "policy of the United States . . . (1) to promote the continued development of the Internet"; "(2) to preserve the vibrant and competitive free market that presently exists for the Internet"; and "(3) to encourage the deployment of technologies which maximize user control over what information is received by . . . [users of] the Internet." 47 U.S.C. § 230. *See also* 47 U.S.C. § 157 nt (Advanced Telecommunications Incentives). The Commission's net neutrality principles facilitate these responsibilities.

Question 8. Over the last year the FCC has taken action to eliminate contributions to the Universal Service Fund by DSL providers, increase contributions by wireless providers, and for the first time require VoIP providers to pay into the Fund. In your view, are these changes sufficient to ensure the longterm stability of the Fund or are they only a short-term fix? If they are not sufficient in the long term, what actions should the FCC take? Is Congressional action necessary to ensure the FCC has the authority it needs to ensure the long-term stability of the fund? If so, what is required?

Answer. Preserving the stability of the Universal Service contribution system is one of the Commission's most important responsibilities. In June, the Commission took an interim step to ensure the stability of the fund by raising the wireless safe harbor and broadening the contribution base to include interconnected VoIP providers. We took these actions because we recognized the changes that were occurring in the telecommunications marketplace.

Specifically, with respect to wireless, we found that the former safe harbor no longer accurately reflected the increasing extent to which wireless consumers utilize their wireless phones for interstate calls. Thus, it was necessary to update our Universal Service rules to account for this increased use by raising the safe harbor.

The Commission also required interconnected VoIP providers—those providers that use the public switched telephone network (PSTN) to originate and terminate phone calls—to pay into the fund that supports the PSTN, the Universal Service Fund. We recognized that these services are increasingly being used as a substitute for traditional wireline telephone service and rely upon the PSTN to originate and terminate their calls. VoIP providers who do not utilize the PSTN are not required to contribute.

When I became Chairman in March of 2005, the universal service contribution factor was 11.1 percent. Currently the contribute factor is 9.1 percent.

Changes in technology and increases in the number of carriers who are receiving universal service support have placed significant pressure on the stability of the fund. The Commission is also actively considering other changes to the contribution system that may be necessary. We will be vigilant in taking any necessary steps, such as adopting a new contribution mechanism to ensure the stability of the fund.

You also ask whether Congressional action is necessary. In the first instance, we intend to be vigilant in doing all we can to ensure the stability and sustainability of the Universal Service Fund. I note that several years ago the Federal and state members of the Universal Service Joint Board urged Congress to expand the Commission's authority to assess intrastate as well as interstate revenues. Specifically, they explained that "[g]ranting the FCC explicit authority to assess contributions based on interstate *and* intrastate revenues would yield substantial benefits." (Letter to the Honorable Conrad Burns, May 19, 2003.)

Question 9. Despite the introduction and adoption of new technologies by many population segments, Native American households still lag woefully behind in access even to basic telephone service. This Committee recently considered legislation that would establish an Office of Indian Affairs within the FCC. Do you believe such an office would help spotlight the issues uniquely affecting Native Americans? What action is being taken by the FCC to fulfill its responsibility to Indian tribes.

Answer. The Commission takes very seriously the issue of access to telecommunications by Native Americans. To this end, we are actively engaged in continuing our wide-ranging, comprehensive efforts to fulfill the mandate that all Americans, including those living in American Indian and Alaska Native communities, have access to affordable, quality telecom services.

As part of this effort, the Commission has launched an "Indian Telecommunications Initiative" (ITI). The ITI is a comprehensive program that seeks to promote understanding and cooperation and trust among tribes and tribal organizations, the FCC and other governmental agencies, and the telecommunications industry. The

ITI program seeks to build partnerships, identify potential solutions, and bring affordable, quality telecommunications services to Indian Country. The ITI program's goals—to increase the telephone penetration rate; facilitate the deployment of telecommunications infrastructure on tribal lands; and inform tribes about Federal Government programs, including Universal Service Fund programs—are undertaken in Indian Country by the FCC through targeted and effective tribal outreach, coordination and consultation. The Commission's Consumer and Governmental Affairs Bureau has a Tribal Liaison who is dedicated specifically to coordinating FCC work on issues uniquely affecting Native Americans, such as the ITI sponsored events and other outreach activities.

Significantly, the ITI includes interactive regional workshops, staff participation at conferences sponsored by Tribal organizations, meetings with representatives of individual Tribal Nations regarding their unique telecom issues, and dissemination of educational materials to Tribal Nations and organizations. For example, in the past 18 months, we have sponsored two major interactive regional workshops, and have announced a third such event that will take place next month:

- In July 2005 we held such a workshop in Albuquerque, NM, in cooperation with the National Congress of American Indians (NCAI).
- In July 2006, we hosted a Tribal Broadband Workshop and Roundtable with the Southern California Tribal Chairman's Association's Tribal Digital Village and the National Congress of American Indians. The program, which was held in San Diego, CA, featured multiple sessions on Broadband deployment in Indian Country and site visits.
- On September 11th, we released a Public Notice announcing that we will be hosting a Tribal Public Safety/Homeland Security Workshop in Polson, MT on the Flathead Indian reservation on October 24th and 25th. This event, the first to focus on this particular subject matter, is designed as a workshop and intergovernmental consultative meeting between FCC senior staff and the tribal leaders and representatives who have responsibility for homeland security, public safety, and Information Technology security, and will focus on such topics as emergency preparedness and critical infrastructure protection in the communications sector and public safety communications, interoperability and preparedness.

If Congress decides to create an Office of Indian Affairs within the FCC, it could help further highlight the unique issues associated with access to telecommunications by Native Americans. To the extent, however, that just one office in the Commission is assigned these issues, it may reduce the effectiveness of existing tribal outreach activities that are currently integrated and supported by the Commission's multi-disciplinary outreach resources and functions.

Question 10. In recent months new proposals have surfaced striving to help public safety attain robust and reliable interoperable communications systems. Specifically, in April, Cyren Call Communications filed its proposal to reallocate 30 MHz of the returned analog spectrum to create a nationwide broadband network for better public safety communications. Verizon Wireless also is now reportedly proposing a plan to build a nationwide broadband public-safety network in the 700 MHz band. Does the FCC plan to initiate a proceeding in a timely manner in order to establish a record to evaluate the merits of these proposals?

Answer. The Commission has received a petition for rulemaking from Cyren Call Communications regarding its proposal. The Commission's Reference Information Center periodically releases a public notice listing such petitions recently received by the Commission, providing the public the opportunity to comment. Cyren Call's petition should appear on the next comment public notice, which will provide the public with an opportunity to establish a record on Cyren Call's petition. I would note, however, that Congress has directed the Commission to auction some of the spectrum at issue in the proposal. So—absent further Congressional action—the Commission may be unable to take any further action on the petition.

Verizon Wireless has not filed a petition or other type of request with the Commission regarding a plan to build a nationwide broadband public-safety network in the 700 MHz band. We will review any request made by Verizon Wireless once it is filed and take appropriate action.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV TO KEVIN J. MARTIN

Question 1. Chairman Martin, I know that the FCC has two open proceedings where it seeks to understand what barriers the existing local franchising process impose on telephone companies who wish to enter the market.

As you know, Senator Smith and I were the lead sponsors of legislation to streamline the video franchising process, but our bill was incorporated into the larger stalled telecommunications bill.

Can you tell us what authority the FCC has to streamline this process? Do you anticipate the FCC issuing an Order on this issue before the end of the year?

Answer. Section 621(a)(1) states that "a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise." Last November, the Commission opened a proceeding designed to solicit comment on implementation of Section 621(a)(1)'s directive that LFAs not unreasonably refuse to award competitive franchises, and whether the franchising process unreasonably impedes the achievement of the interrelated Federal goals of enhanced cable competition and accelerated broadband deployment and, if so, how the Commission should act to address the problem. Thus, Section 621 empowers the Commission to ensure that the local franchising process does not unreasonably interfere with the ability of any potential new entrant to provide video programming to consumers. If Congress does not act, we are working to move from this notice of proposed rulemaking to an order by the end of the year.

Question 2. Mr. Chairman, I want to congratulate you for all of your hard work on emergency communications. I know that you are deeply committed to improving the emergency communications response infrastructure and capabilities of our Nation.

I know that the FCC is considering requiring emergency alerts over our Nation's wireless telephones. I believe that this is good policy given the fact that so many people now rely on the wireless telephones for their primary communications needs.

I know that the wireless industry is resisting your initiative arguing they do not have the resources or technical ability to be part of the Emergency Alert System. Can you comment on their objections?

Answer. There is a great need to improve the Nation's emergency warning system. Our country needs a more robust warning system that takes advantage of advances in technology and recognizes how people receive communications today. For that reason, I believe wireless participation is critical. Most current wireless networks, however, are not designed to deliver messages to all devices in a specific geographic area. Based on this concern, the wireless industry has told the Commission that it "would like to deliver a short-term SMS-based solution that will benefit Americans," and "while that solution is operational, CTIA and the industry will work closely with the Commission and the other key government agencies to develop a longer term solution" [CTIA *ex parte*, 08/11/06]. The Commission also recognizes that Congress is actively considering this issue. The Commission will continue to work with Congress, the wireless industry, and other government agencies to develop both short-term options and longer term solutions to develop a more robust and comprehensive warning system.

Question 3. Chairman Martin, you recently sent an inquiry to Verizon and BellSouth over recently announced line items that they were adding to their DSL broadband offerings. In light of your public inquiry, they abandoned their plans for charging consumers these fees.

As you know, wireless carriers are also charging consumers similar fees to the ones you were able to encourage Verizon and BellSouth from imposing.

As you may know, the Commerce Committee adopted an amendment I offered that would prevent wireless companies from imposing these junk fees. Since it is unlikely that this legislation will be enacted this year, would you be willing to launch an FCC investigation into the wireless industry's imposition of these line items? I think you could get the industry to abandon these fees.

Answer. The Commission agrees "[i]t is critical for consumers to receive accurate billing information from their carriers to take full advantage of the benefits of a competitive marketplace" [Second Report and Order on Truth in Billing, March 18, 2005]. For this reason, the Commission adopted truth in billing rules to ensure that consumers' bills are brief, clear, non-misleading, and in plain language. The Commission's truth in billing rules do not prohibit carriers from using line items. They do, however, prohibit the use of *misleading* line item charges. The Commission has indicated that it is "misleading for carriers to include administrative and other costs as part of "regulatory fees or universal service charges" or similar line item labels that imply government mandated charges" [Second Report and Order on Truth in

Billing, March 18, 2005]. The Commission concluded that this prohibition applies to all regulatory compliance charges, and that the "burden rests upon the carrier to demonstrate that the charge imposed on the customer accurately reflects the specific governmental program fee it purports to recover" [Second Report and Order on Truth in Billing, March 18, 2005]. In 2005, the Commission issued an order applying all of its truth in billing rules to wireless carriers and subjecting wireless carriers to the Commission's rules prohibiting misleading line items.

Question 4. The 11th Circuit Court of Appeals recently overturned the FCC's most recent Truth-in-Billing order that preempted the states on wireless regulation.

Does the FCC plan to appeal the 11th Circuit Court of Appeals' decision?

Answer. The Commission has not appealed the 11th Circuit Court of Appeals decision to the Supreme Court. The Commission filed a petition for rehearing with the same panel of the Eleventh Circuit in this case on September 14, 2006.

Question 5. Could you elaborate for me what your principles for any preemption of state telecommunications laws should entail? What is the proper role of state regulators vis-a-vis the FCC when it comes to regulating the Internet, the wireless industry, or new technologies like Voice Over Internet Protocol?

Answer. In many areas, the FCC and state commissions work together in a Federal-state partnership to bring consumers more choice, better services, and lower prices. State commissions, however, have a special role because they are on the front lines dealing with consumers. Because states are closer to consumers than the FCC, they are particularly well-equipped to handle a variety of matters, such as consumer complaints. Indeed, the Federal-State Board on Universal Service acknowledged that "states are in a better position than the Federal Government to target the needs of their own consumers." Recommended Decision, FCC 03J–02, para. 25 (re. Apr. 2, 2003). On the other hand, it is also critical that, in keeping with the Commission's charge under section 706 of the Act, there is a uniform national communications policy that fosters the development of new technologies.

Last summer, the Commission initiated a notice of proposed rulemaking to examine how to develop a framework for consumer protection in the "broadband age." This proceeding recognizes that we must work together with our state partners to ensure that consumer protection needs are met by all providers of new technologies. Notably, in the Commission's *Vonage Order*, which preempted Minnesota's entry regulation of Vonage's VoIP service, the Commission expressly noted that its order does not affect Minnesota's general laws governing entities that conduct business within the state, such as laws concerning taxation fraud, marketing, advertising, or general commercial dealings. Similarly, in the Commission's VoIP 911 proceeding, we recognized the historic and important role of states and localities in public safety matters and sought comment on the role that states should play in implementing our VoIP 911 rules. We specifically asked how the Commission and the states can work together to ensure the public's safety.

There are, of course, numerous areas in which we are already working closely with our state counterparts. For instance, we have delegated significant authority to them to administer phone numbers. Another area where we work closely with our state counterparts is in the area of slamming, where the Commission has concluded that the states have primary responsibility for administering the rules. Moreover, we recently created joint Federal/state task forces and working groups in the areas of Lifeline/Linkup and VoIP, and we are actively working with our state colleagues in these very important areas.

Question 6. Many times in my office, we have talked about E-Rate and how much this program means for schools and libraries in West Virginia, and across the country. I want to publicly thank you for your efforts, and the work of your staff to provide outreach to the education community on this important issue. I know that you have issued new orders to allow schools and libraries to correct technical clerical errors to improve the application process—thank you.

I hope to work with you on future improvements to streamline the applications, especially for basic telecommunication and Internet services. I know you and your staff have worked to crack down on real fraud with DOJ, and work to get repayments. This is important and it highlights that the program is working. What are your next steps in these initiatives?

Answer. I fully support the universal service program and the critical function it serves to ensure access for consumers in rural and high-cost areas, and to promote access to advanced services for schools, libraries, and health care service providers in rural areas.

As you note, the Commission adopted two orders earlier this year that start to improve the application process for the E-Rate program. More work remains to be done, and so the Commission is continuing to work with schools and libraries to fur-

ther improve and streamline the application process for the E-Rate program. In addition, the Commission's Enforcement Bureau has suspended or debarred four bad actors from participating in the E-Rate program this year and we continue to assess fines and forfeitures on parties that try to take advantage of the program. We are also exploring what measures could be taken to prevent and detect potential waste, fraud, and abuse so that we can all be certain that E-Rate money is going to the schools and libraries that need it the most. These efforts are part of the Commission's comprehensive review of the entire Universal Service Fund started late in 2005, which is actively being worked on by staff.

Question 7. The Department of Energy, the North American Electric Reliability Council, and others have acknowledged that the electric power system is an integral component of our Nation's critical infrastructure. Virtually all other networks, including telecommunications, depend on electric reliability to a considerable degree. Hurricane Katrina and other disasters have demonstrated this dependence vividly.

Do you think telecommunications reliability is somehow more important than electric reliability, or do you agree that electric reliability is also essential? I ask these questions because I have some concerns about pole attachment policy. I think it's a good thing to encourage the deployment of broadband and other communications technologies, but I think we also need to make sure that the safety and reliability of our critical electric infrastructure is not jeopardized in the process. My understanding is that there has been a chronic problem of having literally tens of thousands of unauthorized cable TV and other communications attachments on utility poles in many places across the country, and many of these attachments do not always meet basic industry safety, reliability, and engineering standards. I am aware that current law addresses these issues in a very general way, but I think the process needs to be reformed to prevent harm to our critical infrastructure. Don't you think that the safety and reliability of critical electric infrastructure should be a paramount concern?

Answer. I agree that the safety and reliability of critical electric infrastructure is a paramount concern. Issues of public safety and homeland security are one of the highest priorities at the Commission. Our work on telecommunications reliability should not come at the expense of other public safety systems. Your concern of unauthorized cable television and other attachments to utility poles across the country is an important one.

Question 8. Do you think it is reasonable to require communications companies that attach their wires and equipment to utility poles ensure that their attachments comply with applicable safety, reliability, and engineering standards before making an attachment to critical electric infrastructure?

Answer. Section 224(f)(2) of the Act expressly authorizes utilities to deny access to their poles on a nondiscriminatory basis for reasons of safety, reliability and generally applicable engineering purposes.

Question 9. Under current law (Sec. 224 of the Communications Act) cable TV companies benefit from a regulated (*i.e.*, subsidized) rate for pole attachments. I am not convinced that the cable industry needs to continue to receive a subsidized pole attachment rate at the expense of electric consumers. The subsidized rates were established in 1978 when the cable industry was considered a "fledgling" industry that needed help to compete. Today the cable industry is a multi-billion dollar industry. Do you think electric consumers—some of whom may have low incomes and not even subscribe to cable—should still be subsidizing multi-billion dollar cable companies?

Answer. In general, I do not think electric companies should be subsidizing cable companies. Section 224 of the Communications Act directed the Commission to adopt regulations consistent with the Act to govern the charges for attaching to poles. The Act specifies the formula that the Commission should apply for attachments by cable companies and for attachments by telecommunications carriers. The Commission adopted those formulas in section 1.1409 of the Commission's rules (47 C.F.R. § 1.1409).

Question 10. My understanding is that FCC staff is actively considering a rulemaking petition submitted by the major incumbent telecommunications companies (*i.e.*, ILECs) that would give them a subsidized pole attachment rates under the Pole Attachment Act for their attachments on electric utility poles. I find this odd because, if I remember correctly, the Pole Attachment Act (as it was amended by the 1996 Telecom Act) expressly excludes ILECs from FCC jurisdiction under that provision of the Act. Since this exclusion is a matter of statute, don't you think Congress should decide whether the exclusion should remain?

Answer. The Commission has a petition before it asking for a declaratory ruling that pole attachment rates are just and reasonable for all attaching providers, in-

cluding incumbent LECs. The scope of the statutory exclusion to which you refer, 47 U.S.C. § 224(a)(5), is at the heart of the issue that the incumbent LECs raise. The Petitioner, the United States Telecom Association, contends that the statute's term "provider of telecommunications service," 47 U.S.C. § 224(a)(4), includes incumbent LECs and indicates that Congress expressly decided not to exclude incumbent LECs from a right to just and reasonable rates for attachments, only from a right to nondiscriminatory access. This proceeding is pending before us, and staff is continuing to review the record and evaluate the arguments on both sides.

Question 11. Congress and the FCC both are seeking to promote competition in telecommunications and video markets. However, under the Pole Attachment Act (Sec. 224 of the Communications Act) cable companies and some telecom providers have the advantage of only having to pay a regulated (*i.e.* subsidized) rate for attachments to utility poles. This subsidy is ultimately borne by utility customers in their electric rates. Do you agree that all users of critical electric infrastructure, regardless of the technology they use, including telecom and cable companies that attach their wires to electric utility poles, should be required to pay a similar pole attachment rate that reflects a fair share of the actual costs of building and maintaining critical electric infrastructure? Is it right for electric utilities and their customers to be required to pay a disproportionately greater share than the telecom and cable TV companies?

Answer. In general, I agree that all users of critical electric infrastructure, regardless of the technology they use, including telecom and cable companies that attach their wires to electric utility poles, should be required to pay a similar pole attachment rate that reflects a fair share of the actual costs of building and maintaining critical electric infrastructure.

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Question 12. Under the existing Pole Attachment Act (Sec. 224 of the Communications Act), an electric utility may deny a cable TV system or a telecommunications carrier access to its poles for reasons of safety, reliability and generally applicable engineering purposes. Despite this requirement, electric utilities tell me that thousands of attachments are being made to their infrastructure without any prior notice to the utility and, therefore, without giving the utility a reasonable opportunity to evaluate the safety and reliability impacts of the attachment. I'm worried about the potential impact of this fact on electric reliability. What is the FCC doing to ensure that cable and telecom companies provide notice to utilities before attaching new wires and equipment on utility poles and that these attachments meet all relevant electric industry safety and engineering standards?

Answer. Our rules require that requests for access to a utility's poles by a telecommunications carrier or cable operator must be in writing. To the extent that companies are not complying with our rules, they are subject to enforcement action.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO KEVIN J. MARTIN

Question 1. In 2003, the FCC formed the Federal Advisory Committee on Diversity in the Digital Age. In 2004, the Committee, led by Ms. Julia Johnson, presented the Commission with a series of recommendations designed to further enhance the ability of minorities and women to participate in the communications industries. But despite the efforts of this Diversity Committee, for 2 years the FCC has been silent on these efforts. What has happened to the Diversity Committee's recommendations?

Answer. We have implemented several of these recommendations. For example, at the Diversity Committee's recommendation, the Commission has established band plans that include a mixture of license sizes and geographic areas in order to accommodate the needs of wireless providers of various sizes serving a range of different geographic areas. We are actively considering other recommendations. For example, the Commission is considering allowing additional time for construction of broadcast facilities licensed to certain designated entities, lengthening the terms for experimental licenses, and conducting a comprehensive channel search for new FM allotments.

We are also putting particular emphasis on the issue of minority ownership in our media ownership proceeding. In the Further Notice of Proposed Rulemaking the

Commission released in July, the Commission sought comment on the recommendations of the Diversity Committee. At the request of the Advisory Committee, the Commission has included their recommendations and filings in the media ownership docket and solicited public comment specifically on their recommendations. Minority ownership also will be the focus of independent studies and among the topics covered at the public hearings as we move forward with our review of the media ownership rules.

Finally, several recommendations called for broader reform, beyond the Commission's authority. For instance, the Diversity Committee adopted a recommendation "urg[ing] the adoption of a Federal program that would use the deferral of Federal capital gains tax liability as an incentive to make available to socially and economically disadvantaged persons and businesses the opportunity to acquire assets necessary to enter the broadcasting and telecommunications marketplace."

Question 2. While minorities now represent more than 30 percent of the population in this country, FCC data show that minority-owned media outlets account for only 3.41 percent of all broadcast entities. Despite improvements in other areas of the economy, little ground has been gained in ownership of these key media licenses. In 2000, an FCC-commissioned study by the Ivy Group documented that minorities and women have always faced discrimination in this Nation's communications industries and these obstacles still persist. Also in 2000, the U.S. Commerce Department found that broadcast industry consolidation has exacerbated these barriers, including equitable access to capital, advertising, and employment opportunities. When does the FCC plan to study this problem and update the findings in these studies? And how does the FCC plan to address this issue before considering broader changes to its media ownership rules?

Answer. In June 2004, the Commission issued a Public Notice seeking comment on "constitutionally permissible ways to further the mandates of section 257 of the Telecommunications Act of 1996, 47 U.S.C. § 257, which directs the FCC to identify and eliminate market entry barriers for small telecommunications businesses, and Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j), which requires the FCC to further opportunities in the allocation of spectrum-based services for small businesses and businesses owned by women and minorities." The Commission also requested that commenters "discuss and proffer specific recommendations for building on a series of market barrier entry studies," including the Ivy Planning Group study. I have proposed to consolidate these comments with our review of the media ownership rules. Moreover, we sought comment on the issue of minority ownership in the Further Notice of Proposed Rulemaking the Commission released in July. At the request of petitioners, I have also proposed that the Commission request further comment more specifically on minority ownership issues. In addition, minority ownership will be the focus of independent studies and among the topics covered at the public hearings as we move forward with our review of the media ownership rules.

Question 2a. Please provide more specific details.

Answer. We are studying and evaluating this problem now, and we are updating our findings now. We have just recently requested comment specifically on the recommendations of MMTC and the diversity FACA in the context of our media ownership proceeding.

Question 2b. When does the FCC plan to study this problem and update the findings in these studies?

Answer. To ensure that we are able to address this issue before considering broader changes to our media ownership rules, we are currently commissioning independent studies, some of which will focus expressly on minority ownership. One in particular will focus solely on minority ownership, studying the levels of minority ownership of media. The study also will investigate potential barriers to entry for minority owners. It also will consider possible reform measures to promote ownership diversity in the public airwaves. We also are planning to hold six hearings around the country to seek public comment on media ownership, and minority ownership will be a topic of discussion. At MMTC's request, we will soon circulate a FNPRM that discusses their recommendations in more detail and requests further comment.

Question 2c. And how does the FCC plan to address this issue before considering broader changes to its media ownership rules?

Answer. I cannot say right now how substantively we plan to address the issue, as we have not yet received public comment on the FNPRM or the results of our independent studies, and have not yet had any of our public hearings. I would be happy to keep you informed as we receive data and recommendations, and I welcome any suggestions you have. I have also proposed to consolidate these comments

with our review of the media ownership rules to ensure that we are able to address this issue before considering broader changes to our media ownership rules.

Question 3. Recently, a group known as the "Diversity and Competition Supporters" petitioned the FCC requesting that the agency withdraw its Notice of Proposed Rulemaking in the media ownership proceeding and correct a series of errors relating to minority ownership. Among other things, the petitioners noted that the Notice of Proposed Rulemaking fails to identify and address the minority ownership proposals remanded by the Third Circuit Court of Appeals in *Prometheus Radio Project* v. *FCC*. As you know, further remands from the Court will just enhance uncertainty. In light of this, are you planning on at least one comprehensive, independent study on minority ownership and possible reform measures to promote ownership diversity in the public airwaves?

Answer. Yes, we are planning to have a comprehensive, independent study conducted on the levels of minority ownership of media. The study also will investigate potential barriers to entry for minority owners.

Question 4. Minority and female ownership of broadcast licenses is extremely low when compared to the strides these groups have made in business ownership in other areas of the economy (*e.g.,* health care and finance). Why do you think that is? Do you think that is problematic, given the objectives outlined in the Communications Act? What does the FCC plan to do about it?

Answer. Diversity in broadcast and media is an important concern. The Commission has taken steps to further minority and female ownership of broadcast licensees such as the creation of a new entrant bidding credit. These credits are intended to facilitate the ability of minority-owned companies to enter the broadcast business. The Commission has used these credits in every broadcast auction conducted since 1999. Since 1999, we have held 11 broadcast auctions in which applicants successfully bid on 651 construction permits. A total of 197 bidders eligible for a new entrant bidding credit in at least one market won 358, or 55 percent, of the construction permits.

We are seeking to identify ways in which to further promote minority ownership. The Commission also is actively considering the proposals for advancing minority and disadvantaged businesses and for promoting diversity in broadcasting submitted by the Minority Media and Telecommunications Council and the recommendations on these issues developed by the Federal Advisory Committee on Diversity in the Digital Age.

Question 4a. What are your personal views?

Answer. I think that minority and female ownership is low because most broadcast licenses were given away decades ago, when minorities and women had even less access to capital and opportunities than they do today. As the Commission's Advisory Committee on Diversity for Communications in the Digital Age has stated: "From the birth of broadcast radio in 1909 through 1978, minorities had almost no opportunities to acquire broadcast facilities. Thus, non-minorities enjoyed a 70-year head start." See FM Radio White Paper, available on the Diversity Committee's website at *p://www.fcc.gov/DiversityFAC/docs/FMRadioWhitePaper.doc.*

I do believe the fact that Minority and female ownership of broadcast licenses is extremely low is problematic. Diversity in broadcasting and the media generally is very important. That is why we are in the process of seeking comment on recommendations to improve the situation, are commissioning independent studies on the issue, and are making sure this issue is discussed at our public hearings around the country.

Specifically, with respect to broadcasting, the Commission has taken steps to further minority and female ownership of broadcast licensees with the creation of a new entrant bidding credit. These credits are intended to facilitate the ability of minority-owned companies to enter the broadcast business. The Commission has used these credits in every broadcast auction conducted since 1999. Since 1999, we have held 11 broadcast auctions in which applicants successfully bid on 651 construction permits. A total of 197 bidders eligible for a new entrant bidding credit in at least one market won 358, or 55 percent, of the construction permits.

In addition, in 2000, the Commission established the Low Power FM service in order to create a class of radio stations designed to serve very localized communities or underrepresented groups within communities. To date, the Commission has issued construction permits for well over 1000 LPFM stations. The Commission continues to work to ensure the success of the LPFM service.

Question 5. How does the FCC use the data it collects in its Form 323 to inform its policies regarding minority media ownership?

Answer. The ownership reports filed on FCC Form 323 ask for only voluntary information on the gender, ethnicity, and race of parties holding an attributable interest in a station licensee.

Question 6. Name one barrier to entry that you believe the FCC could eliminate to improve minority broadcast ownership?

Answer. The Commission could allow additional time for construction of broadcast facilities licensed to certain designated entities.

Question 6a. Why just "certain" designated entities?

Answer. There is no need for the "certain" qualifier. "Designated Entity" is a defined term. All DEs could be allowed additional time.

Question 7. It is my understanding that currently the FCC does not give a "pioneer preference" when granting broadcast licenses. I am familiar with small radio broadcasters that have gone through the time and expense of locating unused broadcast radio spectrum and that petition the FCC for a license for such spectrum. Unfortunately, when the license is auctioned, the small radio broadcaster often cannot compete monetarily with larger broadcasters, who bid successfully on the licensed frequency. This acts as a disincentive for small and minority-owned broadcasters to enter the broadcasting market. Do you believe that awarding "pioneer preferences" (or some sort of appropriate bidding credit under these circumstances) could improve representation of small and minority-owned businesses in the broadcast arena?

Answer. Between 1991 and 1997, the Commission did have a pioneer's preference program designed to give preferential treatment in the licensing process to parties that demonstrated their responsibility for developing new spectrum-using communications services and technologies. In the Balanced Budget Act of 1997, Congress terminated the Commission's authority to provide pioneer's preferences.

The Commission has taken steps to further minority and female ownership of broadcast licensees such as the creation of a new entrant bidding credit. These credits are intended to facilitate the ability of minority-owned companies to enter the broadcast business. The Commission has used these credits in every broadcast auction conducted since 1999. Since 1999, we have held 11 broadcast auctions in which applicants successfully bid on 651 construction permits. A total of 197 bidders eligible for a new entrant bidding credit in at least one market won 358, or 55 percent, of the construction permits.

Question 8. Like you, I want to stimulate broadband deployment and competition. For the last several years, you have reported to us that the residential broadband market is increasingly competitive. We have heard from you that wireless, broadband-over-powerline, and satellite technologies were capturing a large customer base and bringing vigorous competition to American communities. Yet, by my reading, the FCC's own studies indicate that is not the case. Over the last few years, the market share of every technology aside from DSL and cable modem has declined. Cable modem and DSL now have a 98 percent market share. How do you explain this seeming inconsistency between what you have told us and the agency's own statistics? How has the FCC acted to encourage competition beyond DSL and cable modem?

Answer. Encouraging the deployment of broadband infrastructure is one of my top priorities. High-speed connections to the Internet have grown over 400 percent since I became a Commissioner in July 2001. Specifically, in the first half of 2001, there were less than 10 million high-speed connections to the Internet and, as of the end of 2005, there were more than 50 million.

The residential broadband market has become increasingly competitive. According to a Pew study, in March 2003, 67 percent of home broadband users logged onto the Internet using cable modems and only 28 percent used DSL. As of March 2006, DSL connections constitute half (50 percent) of all home broadband connections and cable modems have a 41 percent share.

As you state, the FCC recently reported that 98 percent of residential broadband connections at the end of 2005 were ADSL or cable modem, and that 90 percent of all broadband connections reported to the FCC were ADSL or cable modem. Significantly, however, during 2005, the total number of satellite and terrestrial wireless connections increased by 3.3 million.

With respect to how the Commission has sought to encourage competition by platforms other than DSL and cable modem, the Commission has taken a number of actions. For example, in the wireless arena, the Commission has increased the availability of spectrum that can be used in the provision of broadband services while allowing maximum technical and regulatory flexibility for entities seeking to provide wireless broadband Internet access service.

In the satellite arena, the Commission has granted a number of applications that propose to provide satellite-delivered, high-speed Internet service offerings to consumers using frequencies in both the Ka-band and Ku-band. We have also initiated rulemakings to consider other alternatives that could increase the ability of satellite operators to provide competitive broadband Internet access services.

The Commission also has adopted rules to facilitate deployment of broadband over power line (BPL) technology while protecting existing spectrum users from harmful interference. Indeed, last month, the Commission built upon its prior efforts to promote BPL deployment by finalizing its technical rules governing operation of BPL systems, including those providing Internet access services.

Question 8a. What does the Chairman think about the combined 98 percent market share between cable modem and DSL service providers?

Answer. Competition has increased between cable and DSL in the broadband market and that is positive for consumers. As you state, however, the FCC recently reported that 98 percent of residential broadband connections at the end of 2005 were ADSL or cable modem, and that 90 percent of all broadband connections reported to the FCC were ADSL or cable modem. It would be better if there were more competitors in the broadband market and if those competitors had a greater share of the market. Cable modem and DSL currently have the greatest combined market share given their historical presence in the market. More specifically, cable companies were the first to aggressively enter the residential broadband market as they deployed and began to offer cable modem service, beginning in the late 1990s. Incumbent LECs soon followed by offering competing DSL service. Because these entrants had the advantage of already having networks with lines reaching the vast majority of households within their service territories, they had a head start in building a customer base and had more time to expand the geographic reach of their service offerings. Newer technologies, such as BPL and broadband wireless entered later and, accordingly, have not built out their networks as extensively as cable companies and incumbent LECs. Consequently, they can reach fewer households than the first two entrants, and their *nationwide* market share accordingly will be smaller relative to the earlier entrants. Nevertheless, these new technologies are currently expanding the geographic reach of their networks and are increasingly competing against cable modem and DSL providers. And, as these new technologies reach a greater proportion of total, nationwide households, we would expect that their *nationwide* percentage share of residential high-speed customers will also start increasing.

Question 9. In May 2006, the Government Accountability Office (GAO) released a report that criticized the way that the FCC measures broadband penetration in the United States. The GAO wrote, "For its zip-code level data, FCC collects data based on where subscribers are served, not where providers have deployed broadband infrastructure." The GAO study points out that FCC officials never intended the zip code reports to be treated as a measure of broadband penetration. The GAO noted that according to the FCC, the median number of providers of broadband enjoyed by American households is eight. However, the GAO found that the real number was two providers. That is a startling difference. How do you address the GAO's concerns, and what, if anything, has the FCC done to correct any problems?

Answer. The Commission is committed to obtaining the best information possible about the availability and deployment of broadband services nationwide, particularly in rural and other hard-to-serve areas. GAO is correct that the zip code information alone (*i.e.*, how many broadband providers serve at least some homes or businesses in a particular zip code) does not indicate how extensively those providers have deployed broadband infrastructure within any particular zip code.

In order to gain an even better picture of the extent of broadband deployment, I have circulated a NPRM to the Commission that asks questions about how we can obtain more specific information about the availability of broadband in specific geographic areas and how we can combine our data with those collected at the state level or by other public sources. Significantly, as a result of a prior revision to our data collection form, just this year, we began reporting information regarding different speeds of broadband connections (*e.g.,* about services offered at speeds in excess of 200 kps). I have also circulated our fifth inquiry under section 706 of the Telecommunications Act of 1996 into "whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion." In this Notice, we seek comment on all aspects of broadband availability, including price and bandwidth speeds. Between these two proceedings, it is my hope that the Commission will solicit the information necessary to better assess the competitive progress in the broadband market.

Question 10. As you may be aware, I introduced an amendment (with Senator DeMint) that was unanimously adopted into the Senate Commerce Committee's telecommunications reform bill (H.R. 5252) a few months ago. This amendment would require the FCC to collect the kinds of data that are needed to adequately assess competitive progress in the broadband market. The Senate Commerce Committee would like to see information on a much more narrowly focused geographic area, including information on price and speed, so that we can assess not just availability, but quality of service. How would you carry out such a mandate?

Answer. As I stated above, the Commission is committed to obtaining the best information possible about the availability and deployment of broadband services nationwide, particularly in rural and other hard-to-serve areas. Accordingly, in order to gain an even better picture of the extent of broadband deployment, I have circulated a NPRM to the Commission that asks questions about how we can obtain more specific information about the availability of broadband in specific geographic areas and how we can combine our data with those collected at the state level or by other public sources. Significantly, as a result of a prior revision to our data collection form, just this year, we began reporting information regarding different speeds of broadband connections (*e.g.,* about services offered at speeds in excess of 200 kps). I have also circulated our fifth inquiry under section 706 of the Telecommunications Act of 1996 into "whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion." 47 U.S.C. § 157 nt. In this Notice, we seek comment on all aspects of broadband availability, including price and bandwidth speeds. Between these two proceedings, it is my hope that the Commission will solicit the information necessary to better assess the competitive progress in the broadband market.

Question 11. At what stage do you believe that the broadband communications market is "competitive" within a given geographic area? In other words, how many broadband competitors must offer retail services in a market area before you would deem that area to be "competitive," both for residential customers and for business customers?

Answer. The Commission recognizes that increasing the number of competitors should benefit consumers, and, for this reason, the Commission has supported policies that encourage multiple broadband competitors, including the current AWS auction. Because telephone companies and cable companies are trying to acquire new customers, they are actively competing in the broadband market today. These providers are competing aggressively against each other to win customers by offering price promotions, improved customer service, and new services. The increase in broadband speeds is just one reflection of this intense competition. According to a recent Pew study, the price of broadband service has also dropped in the past 2 years.

With respect to broadband services offered to business customers, the Commission observed in the recent SBC/AT&T and Verizon/MCI merger orders, that there are generally a greater number of providers competing to serve these customers. It further noted that many of these business customers are sophisticated, high-volume customers that can negotiate aggressively with providers.

Question 11a. What is the Chairman's view on the appropriate number of competitors that are needed in a competitive market?

Answer. There is no simple answer to the question of what is the minimum number of firms necessary for a market to be deemed competitive. In fact, economists have debated what it means for a market to be "competitive" or "workably competitive" or "effectively competitive." In addition, economists have recognized that the competitiveness of a market depends not only on the number of firms in the market, but also on a number of other factors or characteristics of the market, such as whether demand is stable or growing or whether products are differentiated.

The answer to the question of what is the minimum number of firms necessary for a market to be deemed competitive, depends heavily on the characteristics of the market. These characteristics can include, but are not limited to, the degree of substitutability between products, cost of entry for new firms, and costs borne by consumers of switching from one product to another.

The degree of substitutability between products offered by different firms is one of the most important market characteristics. The more consumers view products offered by different firms as identical, the fewer the number of firms are required to achieve competitive pricing. For example, if two firms are offering goods that consumers see as perfect substitutes for one another, then a perfectly competitive equilibrium can, under certain conditions, theoretically arise with only two firms in the market. Tirole (1988)

Bork (1979) and DeHoog (1984) give theoretical examples where two competitors may be enough for "adequate competition." Further, empirical studies looking at different industries suggest that competitive behavior can at times be achieved with entry of a second firm. For example, Bresnahan and Reiss (1991) show empirically that within the five retail and professional industries that they study, "In markets with five or fewer incumbents, almost all variation in competitive conduct occurs with the entry of the second or third firm." Further, ". . . once the market has between three and five firms, the next entrant has little effect on competitive conduct."

Depending on the circumstances, even in markets with only two competitors, those competitors may compete aggressively against each other. For example, in the case of broadband access services offered to residential customers, a number of factors suggest that, even where only DSL and cable modem service are currently available, the DSL and cable modem service providers are behaving competitively against each other. Numerous DSL providers are offering reduced prices and steep promotional discounts. Cable modem service provider are responding with their own promotional discounts, particularly through the use of discounted bundles. Moreover, the ratio of price to maximum download speed has been dropping rapidly. In addition, both DSL and cable providers are competing in non-price terms. They are offering faster speeds, improved security and better customer service. At the same time, the Commission has made efforts to encourage the development and deployment of new broadband technologies, such as wireless and BPL technologies to facilitate multiple competitors in each market.

Question 12. In March 2006, the FCC allowed a petition for forbearance to go into effect that resulted in a sweeping revision of the way the Communications Act applies to key services provided by a large incumbent carrier. By allowing this petition to take effect, the FCC erased decades of communications policy in a single stroke. Policies that may have been un-done have implications from homeland security to universal service contributions to the privacy protections guaranteed under Section 222 of the Act. By allowing this petition to take effect, the FCC's inaction also raises questions about continued carrier obligations to ensure disability access and interconnection in rural America. By dismissing all of these policies that were enacted by Congress, the FCC's inaction effectively rewrites existing laws. Do you believe such a large revision of the laws through agency inaction is a proper exercise of the FCC's duties?

Answer. Section 10 of the Act sets forth a robust standard by which the Commission must evaluate petitions for forbearance. Section 10 also establishes a process by which petitions under this section "shall be deemed granted if the Commission does not deny the petition" within a maximum of 15 months. More than 3 weeks prior to the March 19th deadline, I shared with my fellow Commissioners a draft order addressing the merits of the Verizon Forbearance Petition, measured against the statutory criteria set forth in section 10 of the Act. The Commission was engaged on this issue and, by a recorded 2–2 vote, neither granted nor denied Verizon's Forbearance Petition. Without a majority of the Commission supporting either a grant or denial of Verizon's petition, the petition was "deemed granted" on March 19th. On March 20th, the Commission issued a news release memorializing the effect of its decision. At that time, all of the Commissioners took the opportunity to issue a statement explaining their reasoning. There is still no majority view on the appropriate outcome of Verizon's petition. And, the grant of Verizon's petition by operation of law is currently on appeal before the United States Court of Appeals for the District of Columbia Circuit, which will decide the legality of the grant.

I believe that it would have been preferable for the Commission to have reached a majority view on Verizon's petition and issued a decision affirmatively granting or denying it. It is better for such official action to follow from a written decision issued by a majority of Commissioners. It is only because there was not (and is not today) a majority view here at the Commission that we were unable to take the preferred course of issuing an official written decision.

Question 13. As you are aware, this Congress has been busy for some time on the issue of video choice. In Florida and nationally, new entrants are trying hard to enter the video market and provide consumers with another choice for cable services. We have heard considerable testimony in this Committee that such competition almost always leads to lower prices for consumers. We have also heard that one of the barriers to speeding such competition is the need to obtain agreements with each local franchise authority. This is not a criticism on the local franchising authorities, which have been doing a good job for many years in protecting consumers and making sure that local needs are met. At the same time, there are just so many local franchises in Florida and nationally that, even in the best of circumstances,

that is a big order for new entrants. That is why I have been a staunch advocate of Congress taking action to streamline the local franchise process. Unfortunately, it appears that video choice may not become law during this Congress. If that's the case, what plans do you have for the FCC to act as a "backstop"—to take actions, consistent with the Federal statute, to speed up competition in the video market?

Answer. Section 621(a)(1) states that "a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise." Last November, the Commission opened a proceeding designed to solicit comment on implementation of Section 621(a)(1)'s directive that LFAs not unreasonably refuse to award competitive franchises, and whether the franchising process unreasonably impedes the achievement of the interrelated Federal goals of enhanced cable competition and accelerated broadband deployment and, if so, how the Commission should act to address the problem. Thus, Section 621 empowers the Commission to ensure that the local franchising process does not unreasonably interfere with the ability of any potential new entrant to provide video programming to consumers. If Congress does not act, we are working to move from this notice of proposed rulemaking to an order by the end of the year.

Question 14. As part of the FCC's recent DSL Order, the regional Bell companies were relieved of their requirement to pay into the Universal Service Fund for revenues generated from their DSL service. However, smaller carriers were not relieved of this requirement under the FCC Order. Please explain why two telecommunications carriers offering identical DSL service are treated differently for the purposes of USF contributions?

Answer. Last August, in the Wireline Broadband Internet Access Order, the Commission leveled the regulatory playing field between different broadband platform providers. Specifically, the Commission removed outdated tariffing regulations that applied to wireline providers of Internet access services but not to other broadband providers. The Commission found that facilities-based wireline broadband Internet access services, like cable modem services, were information services. At the same time, it permitted all wireline carriers, large and small incumbent LECs, to offer the underlying transmission input for these services on a common carrier or non-common carrier basis.

We actually adopted this approach in response to the specific requests from some smaller incumbent LECs who stated that they wanted the option to continue providing the transmission portion of this service on a common carrier basis to preserve their ability to continue to receive the benefits of participating in the NECA pooling system. To the extent that any incumbent LEC voluntarily chooses to provide this underlying transmission component on a common carrier basis then it is providing a telecommunications service and is subject to the Title II obligations under the Communications Act, including the obligation in section 254(d) to pay into universal service on the interstate portion of their revenues derived from these services. If, on the other hand, an incumbent LEC chooses to provide the underlying transmission component on a non-common carrier basis, section 254(d) would not require contributions into the universal service fund.

As the Commission stated in the order, "neither the statute nor relevant precedent mandates that the broadband transmission be a telecommunications service when provided to an ISP, but the provider may choose to offer it as such." *In the Matter of the Appropriate Framework for Broadband Internet Access to the Internet over Wireline Facilities,* 20 FCC Rcd, 14853 at para. 103 (2005).

Question 15. The issue of "phantom traffic" has been pending at the FCC for almost 1 year. Most stakeholders agree that any intercarrier compensation plan must have rules to ensure that all communications traffic is properly labeled so that all carriers can accurately identify network traffic. It is assumed that the comprehensive intercarrier compensation plan—referred to as the "Missoula Plan"—would take a considerable amount of time to approve and implement. Do you favor adopting an interim solution to address phantom traffic?

Answer. The growing problem of "phantom traffic"—that is, traffic containing insufficient data to permit proper identification and billing—is an important one. As you mention, the NARUC Task Force on Intercarrier Compensation has been working to find a comprehensive solution to intercarrier compensation issues. As part of their "Missoula Plan" proposal, they suggest dealing with phantom traffic prior to adopting general reform. I understand that this group will be filing a specific proposal for handling phantom traffic later this month. This proposal will be given careful consideration as the Commission works toward resolution of these issues.

Question 16. Since 2002, the FCC has been considering a proposal to change the contribution methodology for funding the Universal Service Fund (USF) and to impose a fee of $1.00 or more per month on each telephone number or connection. Ap-

parently, under this proposal, a residential consumer who makes few, if any, long distance calls during the month would pay the same fee per line as a large business customer that may make thousands of dollars in interstate calls per month. Has the FCC considered the potential impact of the fee on low-volume and low-income consumers, and if so, what steps are being taken to ensure that these customers do not end up paying a disproportionate share of the USF funding burden?

Answer. Preserving the stability of the universal service contribution system is one of the Commission's most important responsibilities. Changes in technology and increases in the number of carriers who are receiving universal service support have placed significant pressure on the stability of the fund. I have suggested a numbers-based approach as a possible solution because it is technology and competitively neutral. Specifically, such an approach would help maintain the stability of the fund by assessing all technologies used to make a phone call on a similar basis. Nevertheless, as the Commission reviews the various proposals to reform the current assessment system, it will carefully weigh the record and examine the potential impact of any course of action on all consumers, including low-volume and low-income consumers. The Commission recognizes the importance of ensuring that whatever contribution method is used does not disproportionately increase the costs of telecommunications services to low-volume and low-income users.

Question 17. There has been a decline in the last few years in the percentage of households that have local landline telephone service. At the same time, USF spending has increased significantly. What are the FCC's plans to control USF spending and make sure that more Americans have access to affordable service?

Answer. In the ongoing *Rural Review Proceeding,* the Federal-State Joint Board on Universal Service (Joint Board) is considering proposals to reduce excessive growth in the fund and distribute funds more efficiently, ensuring that more Americans have access to affordable service. For example, the Joint Board has sought comment on the methodology for calculating support for Eligible Telecommunications Carriers (ETCs) in competitive study areas. Specifically, it asked whether, if multiple carriers are supported, the competitive ETC should receive support based on its own costs, the incumbent's costs, the less of its own or the incumbent's costs, or some other estimate of costs. The Joint Board also sought comment on how costs should be determined to the extent that support is based on a competitive ETCs own costs.

More recently, the Joint Board sought comment on the merits of using reverse auctions to distribute universal service support. Such an approach is designed to promote efficient investment by encouraging the carriers with the most cost effective networks to enter high-cost areas. Once the Joint Board makes a recommendation in that proceeding, the Commission will carefully consider the record and weigh any alternatives to the current methodology. In addition, the Commission will be mindful that any changes in universal service high-cost support should be implemented over time to minimize impact on consumers and carriers alike.

Question 18. Almost 1 year ago, just days before Hurricane Katrina made landfall, several Senators sent you a letter asking you not to order that service be cutoff to VoIP subscribers (many of which already had E–911 service) because the subscriber had not acknowledged that a power failure or network failure could limit his communication in an emergency. I want to thank you for agreeing with us. It turns out that while network and power failures had widespread impacts on communications, nomadic VoIP turned out to be a life saver, connecting President Bush, FEMA, the Red Cross, and those relocated to relief centers. Now as hurricane season is once again upon us, many small businesses in Florida are subscribing to VoIP because they can maintain continuity of service in the event of a network failure—using the phone from any working broadband connection. But there are many locations in Florida where consumers and business cannot take advantage of these benefits because those areas may have 911 capabilities but still lack full E–911—much like wireless.

What have you done since January 2006 to clear away the roadblocks and accelerate E–911 solutions for VoIP?

Answer. Public safety obligations like 911 are critical to consumers and public safety alike. The 911 system is quite literally one of life or death. It is critical to our Nation's ability to respond to a host of crises and the Commission has been working hard to minimize the situations where users are unable to access it. The Commission is committed to making sure that, during an emergency, a person can always pick up the phone, dial 911, and access local emergency officials.

Since January 2006, Commission staff have conducted numerous meetings and attended conferences with public safety officials, interconnected VoIP providers, carriers, and third-party vendors in order to answer questions, promote coordination

and encourage cooperation. Although VoIP providers reported specific difficulties in accessing the 911 network of two incumbents LECs, the Commission contacted the parties and these two instances were resolved quickly. Currently, we are unaware of any other ongoing difficulties accessing the 911 network of an incumbent LEC, and no complaints have been filed.

Question 19. Have you ordered that network owners give VoIP providers direct access to the 911 network.

Answer. *The VoIP 911 Order* specifically states that incumbent LECs are required to provide access to their E–911 networks to any requesting telecommunications carrier, including trunks, selective routers and E–911 databases. Interconnected VoIP providers may try to negotiate interconnection directly with the incumbent LEC's E–911 network or purchase guaranteed access to this network from competitive carriers and other third-party providers.

When VoIP providers reported specific difficulties in accessing the 911 network of two incumbents LECs, the Commission contacted the parties and these two instances were resolved quickly. Currently, we are unaware of any other ongoing difficulties assessing the 911 network of an incumbent LEC, and no complaints have been filed.

Question 20. Have you provided equivalent liability relief for public safety answering points (PSAPs) and others?

Answer. Congress, via the 911 Act, granted wireless carriers providing 911 service liability protection equal to that available to wireline carriers for 911 calls. To date, there is no equivalent Federal requirement for providers of interconnected VoIP service or for the PSAPs receiving 911 calls from them.

Question 21. 38 PSAPs failed during Hurricane Katrina. Have you done anything to accelerate the transition to an IP-enabled emergency network for PSAPs to strengthen the 911 system and prevent this from happening again?

Answer. In January 2006, the Commission established an Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (Independent Panel). The Independent Panel, composed of public safety and communications industry representatives, was tasked with making recommendations to the Commission regarding ways to improve disaster preparedness, network reliability, and communications among first responders. The Independent Panel's recommendations, released in June 2006, included recommendations intended to ensure a more robust 911 and E–911 service. The Commission currently is seeking public comment on these recommendations via a June 2006 Notice of Proposed Rulemaking, and will take such action as is necessary to strengthen the 911 system.

Question 22. Have you provided necessary tools so VoIP services can reach all Americans—even in the most rural and remote regions of America?

Answer. Spurring broadband deployment is perhaps the most important way to ensure that VoIP services can reach all Americans. I have made broadband deployment one of my highest priorities at the Commission. During my tenure as Chairman, the Commission has worked hard to create a regulatory environment that promotes broadband deployment in all areas of the United States. The Commission has removed legacy regulations, like tariffs and price controls, that discourage carriers from investing in their broadband networks, and has worked to create a regulatory level playing-field among broadband platforms. As a recent Pew study found, there is evidence of significant and widespread increases in broadband adoption across the nation.

Question 22a. What else can be done to spur the spread of VoIP services?

Answer. The other way to ensure that all consumers have their choice of competitive provider, including VoIP provider, is to make sure that new technologies, such as VoIP, are subject to a uniform national policy. To this end, I supported the Commission's two key orders promoting VoIP deployment. First, I supported the Commission's *pulver.com Order,* which declared that pulver.com's peer-to-peer VoIP service was an information service and could operate free from legacy telephone regulation by the states consistent with our longstanding policies for other information services. Second, I supported the *Vonage Order,* in which the Commission preempted a state's attempt to impose legacy telephone regulation on Vonage. The *Vonage Order* makes clear that the same preemption would apply to any state's attempt to impose similar regulations on providers of service comparable to Vonage's service, including VoIP services provided by cable operators. These two orders have kept VoIP providers largely free of unnecessary state economic regulation, including pricing regulation, and have thus accelerated their deployment dramatically.

Moreover, the Commission has sufficient authority to take, and has taken, action against entities that attempt to discriminate against VoIP providers. Specifically,

the Commission, through its Enforcement Bureau, entered into a consent decree with Madison River after it had attempted to block VoIP traffic.

Finally, during my Chairmanship the Commission adopted an Internet Policy Statement, the principles of which all benefit VoIP providers. We stated that consumers are entitled to access the lawful Internet content of their choice; to run applications and use services of their choice, subject to the needs of law enforcement; to connect their choice of legal devices that do not harm the network; and to competition among network providers, application and service providers, and content providers. The Commission is committed to monitoring these issues and is prepared to step in as necessary to ensure that new technologies, such as VoIP, are capable of being deployed to all Americans.

Question 23. Have you appointed a "p-ANI" administrator, as many stakeholders and Members of Congress have requested?

Answer. Yes. Recently, I appointed a new Chairman of the NANC. Upon the appointment of the new chair, Neustar (a neutral third-party numbering administrator) was instructed to act as the Interim p-ANI administrator, as requested by the NANC. We have also asked the NANC to report back to the Commission, by October 10, 2006, with a timeline for resolving the p-ANI issue on a permanent basis.

Question 24. There are currently numerous issues and open proceedings related to 911 at the FCC. These include: (1) the VoIP E–911 Order and subsequent filings, petitions, and waiver requests; (2) major wireless carrier handset deadlines and waiver requests; and (3) requests from the deaf and hard of hearing community to complete open proceedings affecting their access to 911. Where do these issues stand at the FCC?

Answer. When I became Chairman, I identified public safety and emergency preparedness as critical issues. We have been working hard to make sure that all consumers have access to 911 emergency services. Public safety obligations like 911 are critical to consumers and public safety alike. The 911 system is quite literally one of life or death. It is critical to our Nation's ability to respond to a host of crises and the Commission has been working hard to minimize the situations where users are unable to access it. The Commission is committed to making sure that, during an emergency, a person can always pick up the phone, dial 911, and access local emergency officials.

With respect to VoIP, we are working with the VoIP community to implement our 911 rules. The Commission staff have conducted numerous meetings and attended conferences with public safety officials, interconnected VoIP providers, carriers, and third-party vendors in order to answer questions, promote coordination and encourage cooperation to accelerate 911 solutions.

With respect to wireless, the Commission has been working to ensure that all major wireless carriers have reached 95 percent penetration among their subscribers for a handset-based 911 solution. The Commission has received several waiver requests and we expect that they will be resolved soon. And, the Commission has adopted 22 orders, pursuant to the ENHANCE 911 Act, addressing petitions for relief filed by 52 Tier III carriers of the 95 percent handset penetration requirement.

Finally, with respect to Internet-based forms of Telecommunications Relay Services, such as Video Relay Service and Internet Protocol Relay Service, the Commission opened a proceeding late last year seeking comment on how it could reform its rules to ensure that the deaf and hard of hearing community has equivalent access to emergency services as all other consumers. As part of this proceeding, this November we will hold a Disabilities E–911 Summit where we intend to bring together leaders from the disabilities community, the E–911 community, partner agencies, and industry to identify the access that people with hearing or speech disabilities need; the technologies, services, and applications through which access should be offered; and the technological, policy, and commercial issues involved in providing the needed access to persons with hearing and speech disabilities.

Question 24a. What is the current status of the VoIP waiver petitions?

Answer. In regard to the pending VoIP waiver petitions specifically, thirty interconnected VoIP providers and one VoIP 911 service provider (Telefinity Corporation—Dash 911) filed petitions for waiver of the Commission's VoIP 911 rules.

Of the twenty eight currently pending petitions for waiver filed by interconnected VoIP providers, half of these are now moot in that the petitioners requested waivers for time periods that expired on or before September 16, 2006. Specifically, these petitions were filed by: ACN Digital Phone Service LLC; Constant Touch Communications, LLC; Cypress Communications, Inc.; deltathree, Inc.; Flint Telecom, Inc.; ICG Telecom Group, Inc.; Insight Midwest Holdings, LLC; Lingo, Inc.; Midwest Wireless Holdings L.L.C.; Primus Telecommunications; Shared Data Networks,

LLC; Voiceglo Holdings, Inc.; Vonage America, Inc.; and Vox Communications Corporation. Similarly, the waiver filed by Telefinity Corporation—Dash 911, a provider of VoIP 911 services, is also moot in that it only sought a waiver through December 19, 2005. The remaining waivers are under consideration.

Question 25. In March 2006, the FCC adopted a plan to establish a Public Safety and Homeland Security Bureau. Six months later, what is the status of that bureau and will that bureau be charged with addressing all or some of the ongoing 911 issues at the FCC, or will some 911 issues remain in existing bureaus?

Answer. In March, the Commission adopted a plan to consolidate its public safety, homeland security, and disaster management activities into a single Public Safety and Homeland Security Bureau. Since then, we have been working with the Commission staff and the National Treasury Employees Union on the implementation plan. We also submitted to the Appropriations Committees of the U.S. Senate and U.S House of Representatives detailed financial information. We received final Congressional approval on September 11, 2006, and we plan to announce the opening of the Public Safety and Homeland Security Bureau on September 26, 2006.

The Public Safety and Homeland Security Bureau will be charged with addressing all of the on-going 911 issues at the Commission. The Public Safety and Homeland Security Bureau will coordinate closely with the existing bureaus that have traditionally worked on 911 issues, including the Wireline Competition Bureau and the Wireless Telecommunications Bureau.

Question 26. What is your view on the role that states should play in protecting consumers?

Answer. In many areas, the FCC and state commissions work together in a Federal-state partnership to bring consumers more choice, better services, and lower prices. State commissions, however, have a special role because they are on the front lines dealing with consumers. Because states are closer to consumers than the FCC, they are particularly well-equipped to handle a variety of matters, such as consumer complaints. Indeed, the Federal-State Board on Universal Service acknowledged that "states are in a better position than the Federal Government to target the needs of their own consumers." Recommended Decision, FCC 03J–02, para. 25 (re. Apr. 2, 2003). On the other hand, it is also critical that, in keeping with the Commission's charge under section 706 of the Act, there is a uniform national communications policy that fosters the development of new technologies.

Last summer, the Commission initiated a notice of proposed rulemaking to examine how to develop a framework for consumer protection in the "broadband age." This proceeding recognizes that we must work together with our state partners to ensure that consumer protection needs are met by *all* providers of new technologies. Notably, in the Commission's *Vonage Order,* which preempted Minnesota's entry regulation of Vonage's VoIP service, the Commission expressly noted that its order does not affect Minnesota's general laws governing entities that conduct business within the state, such as laws concerning taxation fraud, marketing, advertising, or general commercial dealings. Similarly, in the Commission's VoIP 911 proceeding, we recognized the historic and important role of states and localities in public safety matters and sought comment on the role that states should play in implementing our VoIP 911 rules. We specifically asked how the Commission and the states can work together to ensure the public's safety.

There are, of course, numerous areas in which we are already working closely with our state counterparts. For instance, we have delegated significant authority to them to administer phone numbers. Another area where we work closely with our state counterparts is in the area of slamming, where the Commission has concluded that the states have primary responsibility for administering the rules. Moreover, we recently created joint Federal/state task forces and working groups in the areas of Lifeline/Linkup and VoIP, and we are actively working with our state colleagues in these very important areas.

Question 26a. Specifically, should the Commission write all the rules and the state commissions administer and enforce those rules?

Answer. There are certain contexts where it is appropriate for the Commission to adopt the governing regulatory framework and for the state commissions to enforce the rules adopted in that framework. For example, in the numbering arena, the Commission has delegated authority to the state commissions to administer and enforce some aspects of our numbering rules. Still another example is in the slamming context where states have the primary responsibility for administering and enforcing our slamming rules.

There are other contexts, however, where it is not appropriate for the Commission to delegate authority to the state commissions. One example of this is in the section 251 unbundling context. In this area, the United States Court of Appeals for the

D.C. Circuit, vacated our rules delegating implementation of our unbundling rules to the states holding that we may not "subdelegate to outside entities—private or sovereign—absent affirmative evidence of authority to do so." *USTA* vs. *FCC,* 359 F.3d 554, 566 (D.C. Cir. 2004).

Question 27. What percentage of consumer complaints lodged with the FCC results in enforcement actions taken against communications companies? Does the FCC have the necessary resources to bring an appropriate number of enforcement actions, in order to fully protect consumers?

Answer. The Commission takes its mission to protect consumers very seriously. The Commission has two bureaus whose core responsibilities include addressing complaints from consumers. Specifically, the Consumer and Governmental Affairs Bureau collects and responds to consumer inquiries and informal complaints. The Enforcement Bureau uses this consumer complaint information, as well as information it receives from communications companies, to vigilantly enforce the Act and the Commission's rules.

In its enforcement actions, the Commission seeks to protect the public at large. Although all complaints are useful to the Commission in taking enforcement action, the number of complaints resolved by an investigation varies. Some investigations are triggered by a single complaint filed by a consumer, such as certain complaints against wireline carriers. Other investigations seek to address broader rule violations, such as in the indecency, junk fax or spamming contexts, and a single investigation will resolve significant numbers of complaints. For the past two fiscal years, for example, we have conducted over 800 investigations relating to issues raised by consumers, carriers, and on our own motion.

Consumers can file informal complaints with the Commission in many ways, including by phone, postal mail, fax, electronic mail and through the Commission's website. The Commission receives approximately 120,000 informal complaints per year, which all come through the Commission's Consumer Center. These informal complaints are each addressed in a variety of ways, including through mediation, referrals to other Federal or state agencies, or through coordination with other bureaus, including the Enforcement Bureau. In 2005, as a result of Commission involvement, $4.1 million was returned to consumers.

With regard to necessary resources, the Commission is committed to making the best use of all resources that Congress has appropriated, or sees fit to appropriate in the future, for the bringing of enforcement actions to resolve consumer complaints.

Question 27a. Could you provide more detail on the number of complaints that result in enforcement actions against communications companies?

Answer. The Commission takes its mission to protect consumers very seriously. The Commission has two bureaus whose core responsibilities include addressing complaints from consumers. Specifically, the Consumer and Governmental Affairs Bureau (CGB) collects and responds to consumer inquiries and informal complaints. The Enforcement Bureau (EB) uses this consumer complaint information, as well as information it receives from communications companies, to vigilantly enforce the Act and the Commission's rules.

Consumers can file informal complaints with the Commission by any reasonable means, including by phone, postal mail, fax, electronic mail and through the Commission's website. The Commission receives approximately 120,000 informal complaints per year, which all come through the CGB's Consumer Center. CGB addresses each of these complaints in a variety of ways depending on its subject matter and content. For example, complaints alleging wrongdoing by common carrier entities are routinely forwarded to the named carrier or carriers with instructions to the carrier(s) to satisfy or respond to the complaint within a time prescribed by the Commission, generally 30 days. The time for responding to a complaint may be shortened in certain instances, for example, if a public safety or health issue is indicated. In 2005, approximately $4.1 million dollars was returned to consumers by common carrier entities in response to informal complaints filed with the Commission.

In all cases, informal complaints are processed with the goal of facilitating a satisfactory resolution or response for the consumer. For example, the Commission receives many complaints that are more properly filed with another state or Federal agency in the first instance. In these cases, CGB works cooperatively with the relevant state or Federal agency to ensure that the consumer has accurate information about where and how to file the complaint. In many instances, CGB will forward the complaint to the appropriate state or Federal agency on behalf of the consumer.

CGB works in close coordination with EB to ensure that matters raised by consumers that warrant possible enforcement action receive the appropriate attention

by the two Bureaus. For example, even in cases where the common carrier has issued a credit or refund to a consumer, the facts underlying the complaint may indicate an underlying compliance problem requiring additional scrutiny or enforcement action.

EB largely handles major investigations aimed at protecting the public at large from prohibited practices or rule violations. The investigations often seek to address wide-spread practices that have the potential to impact thousands of consumers simultaneously, and may well go beyond the scope of consumer complaints filed with the Commission. Thus, for example, the Enforcement Bureau's investigation into whether carriers are adequately protecting their subscribers' personal phone records was triggered by a handful of consumer complaints, yet impacts virtually all consumers of telecommunications services.

The Commission does not currently separately track enforcement actions taken solely against regulated communications companies versus non-communications companies. The parameters of an EB investigation as well as its ultimate targets are often defined by the aggregated complaints of consumers on a particular issue. As such, the enforcement actions taken by EB in a typical year will address untold thousands of complaints.

For example, in 2005 an investigation begun in EB based on problems described in over 200 consumer complaints resulted in a $4,000,000 consent decree with Sprint.

In addition, since July of 2005, EB has issued 95 citations against entities involved in sending junk faxes as described in 6,336 consumer complaints.

In yet another example, based on approximately 1,064 do-not-call complaints filed both at the Commission and the Federal Trade Commission, EB launched an investigation of T-Mobile's do-not-call policies resulting in a recent consent decree with T-Mobile.

And, in the indecency context, over 500,000 complaints were resolved by the Commission's enforcement action against various television licensees concerning their broadcast of the Super Bowl XXXVIII Halftime Show.

Finally, in the slamming context, in the first quarter of 2006, approximately 50 percent of consumer complaints related to slamming were resolved through orders issued by CGB. The remainder of these complaints were either re-categorized as a non-slamming complaint, closed pending further information from the complainant, or forwarded to the appropriate state agency which had "opted-in" to administer our slamming rules.

Finally, with respect to public safety, interference, and field-related cases, in Fiscal Year 2005, the Commission resolved all 3,866 such public safety, interference and field-related complaints that it received.

Question 28. In recent months, the media helped expose the pernicious practice of pretexting, whereby thieves pose as legitimate actors in order to obtain consumers' private telephone records. Several of my colleagues and I have introduced bills to make pretexting a criminal offense, and I expect that Congress will pass these bills very soon. I know that under your leadership, the FCC has taken actions to crack down on this pretexting. Can you please update me on what steps you have taken and plan to take to protect consumers from pretexting?

Answer. The Commission is concerned about the disclosure and sale of consumers' personal telephone records and seeks to protect consumers against pretexting. We are investigating data brokers to determine how they are obtaining consumers' confidential calling records. The Commission's Enforcement Bureau (EB) has issued over 30 subpoenas to data brokers ordering the production of documents and evidence regarding these entities' sales of call records. We have also issued citations to those companies that failed to respond adequately, referred a case to the DOJ for enforcement, and issued a notice of apparent liability (NAL) for the maximum monetary forfeiture against a data broker—LocateCell.com—for its continued failure to respond to our subpoena.

Further, in support of these investigations, we have made undercover purchases of phone records from various data brokers. This information has assisted us in targeting additional requests for information and in determining the exact method by which consumer phone record data is being disclosed. As a result of our investigations and those of other law enforcement agencies, most of the online operators that we originally identified no longer state that they can provide calling records.

We are also investigating the telecommunications carriers to determine whether they have implemented appropriate safeguards to secure the privacy of consumers' confidential calling records. We must ensure that the telecommunications carriers are fully meeting their obligations under the Act and our rules to protect customer phone records. To this end, we have issued letters of inquiry to approximately 20 of the largest wireline and wireless carriers. These letters required the carriers to

document their customer data security procedures and practices, identify security and disclosure problems, and address any changes they have made in response to the data broker issue.

In addition, under the Commission's rules, a telecommunications carrier "must have an officer, as an agent of the carrier, sign a compliance certificate on an annual basis stating that the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance" with the Commission's rules. In January, we issued a public notice requiring all telecommunications carriers to submit their most recent certification with us. As a result of our investigation into this issue, we issued three NAL to carriers for their failure to certify compliance with these very important rules. We have reached consent decrees, on this and other CPNI-related issues, with two of these carriers totaling $650,000.

During the course of the Commission's investigations, several carriers have taken a number of steps to further protect the privacy of consumer account information. These steps include, among other things: using better security and authentication measures with respect to setting up online accounts; notifying customers of password or account changes (*i.e.*, wireless carriers will send a text message); and greater monitoring of employee activities to detect breaches in internal corporate policies.

Finally, in February, the Commission initiated a proceeding to determine what additional rules the Commission should adopt to further protect consumers' sensitive telephone record data from unauthorized disclosure. Specifically, in a Notice of Proposed Rulemaking (NPRM), the Commission sought comment on five specific proposals to address the unlawful and fraudulent release of CPNI: (1) consumer-set passwords; (2) audit trails; (3) encryption; (4) limiting data retention; and (5) notice procedures to the customer on release of CPNI data. In addition to these proposals, the NPRM also seeks comment on whether carriers should be required to report the release of CPNI. The NPRM tentatively concludes that the Commission should require all telecommunications carriers to certify on a date certain each year that they have established operating procedures adequate to ensure compliance with the Commission's rules and file these certifications with the Commission. The record closed in June and I have directed the staff to prepare an order for the Commission to consider this Fall.

Question 29. In recent months, the media has helped expose the practice of "caller ID spoofing," whereby a calling party alters the way that his telephone number appears on a recipient's caller identification system. Caller ID spoofing leads to identity theft, threats to public safety, and other undesirable outcomes. Senator Snowe and I introduced a bipartisan bill several months ago to help stamp out this fraudulent activity. Can you please update me on what steps you have taken and plan to take to protect consumers from caller ID spoofing?

Answer. It is important that services like caller ID, which are so useful to consumers, not be used as tools to perpetuate fraud or deception to consumers. Specifically, the Commission's Enforcement Bureau has initiated several investigations against alleged spoofers by issuing letters of inquiry and/or subpoenas to entities apparently engaged in marketing and selling caller ID spoofing services to customers. These inquiries are aimed at learning how these companies operate and determining whether there are any violations of the Communications Act or the Commission's rules or orders. In addition, the Enforcement Bureau is coordinating with the Federal Trade Commission in addressing this important issue.

Section 64.1601 of the Commission's rules establishes the delivery requirements for a calling party's caller ID information for two specific categories of users—common carriers and telemarketers. It requires common carriers to transmit the caller ID associated with an interstate call to all interconnecting carriers. It also requires telemarketers and any person or entity engaged in telemarketing to transmit accurate caller ID information.

Although we are continuing to investigate these matters, this practice may present challenges to the Commission's enforcement authority. On April 5, 2006, I responded to a question from Speaker Hastert in which I indicated that the Commission may not have sufficient authority to fully address this issue. Thus, the passage of legislation that clarified the Commission's authority in this area would be helpful.

Question 30. With the transition date for the digital TV transition rapidly approaching, what are the areas in which the FCC should play a major role (*e.g.,* consumer education)?

Answer. Our most important role is to finalize the rules that will govern broadcasters and cable operators in a digital-only age. This process includes finalizing the DTV Table of Allotments, completing the remaining technical and operation rules,

and finalizing the technical carriage requirements. The Commission also will continue its work to educate consumers about DTV. The Commission has pursued several avenues for providing DTV information to consumers: publications, the Internet, participation at public exhibits and community and consumer-oriented events, and the media. We will work cooperatively with the National Telecommunications and Information Administration on consumer education efforts and to assist in implementation and administration of the coupon program for digital-to-analog converter boxes.

Question 31. Recently published articles have cited sources that claim that the FCC's performance has suffered under your leadership. Among various criticisms, these sources have claimed that your office demands outcome-determinative results from FCC staff, instead of allowing objective facts to guide decision-making; that your office does not value the expert opinions of senior staff, which has caused large-scale senior staff turnover; that you have failed to fill several permanent positions, including bureau chief positions; and that staff morale is the worst that has been seen in years. I wanted to give you an opportunity to respond to these criticisms. How would you respond?

Answer. I am proud of the fact that during my tenure as Chairman, the Commission had been able to achieve a balanced approach to policy—eliminating economic regulations while protecting consumers and preserving broader social goals—in a bipartisan, collegial manner.

The Commission has successfully met significant management challenges including responding to Hurricane Katrina. The Commission stayed open late every day, 7 days a week, for 3 weeks following that storm in order to assist in the restoration of service for the residents in the affected areas. For example, we granted more than 90 requests for Special Temporary Authority and more than 100 temporary frequency authorizations for emergency workers, organizations, and companies to provide wireless and broadcast services in the affected areas and shelters around the country. In most cases, these requests were granted within 4 hours, with all requests approved within 24 hours.

Additionally, the Commission will soon complete the first auction of Advanced Wireless Services (AWS). It is expected to be the biggest most successful auction in Commission history—licensing the largest amount of the spectrum capable of being used for wireless broadband services and raising nearly $14 billion for the U.S. Treasury. The AWS–1 auction was the result of the hard work done by the Commission to improve our auctions processes so that spectrum, an invaluable public resource, is efficiently managed and distributed.

Finally, I would note that numerous vacancies existed for Bureau and Office Chief positions when I took over as Chairman. In addition, several senior staff had already announced that they had planned to leave the Commission before I had become Chairman. In all there were at least six Bureau and Office Chief vacancies that I needed to fill in my first few weeks as Chairman. This shift in agency leadership is not uncommon when there is a change in administration. I placed long-time agency experts and veterans in many key positions. I am extremely proud of the individuals I have asked to become Bureau and Office Chiefs; these dedicated public servants have worked hard and are doing an excellent job in serving the Commission and the American public.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO KEVIN J. MARTIN

Question 1. As you know, state and local public safety agencies, private, and commercial enterprises operating radio systems in the 800 MHz band in the U.S. are in the process of re-banding. In June 2005, the re-banding process began in regions that do not have common borders with Canada and Mexico.

Is the 36-month timetable to complete the re-banding in any danger of slippage?

What delays in the implementation schedule or other missed milestones would raise concerns in your mind that there is a problem with the re-banding process that rises to the level requiring the Chairman's office to take a more hands-on role to ensure that the process is on track?

Successfully completing the 800 MHz re-banding in Border States in a timely manner will require modification of existing band plans and spectrum sharing treaties with Canada and Mexico. Under the current re-banding plan, Washington State-Canadian border issues affect the vast majority of my state's public safety 800 MHz radio communications systems. Currently, is the Commission working with National Public Safety Planning Advisory Committee (NPSPAC) Regional 43 (cov-

ering Washington State), the State Department, Sprint Nextel, and the Commission's Canadian counterparts, to address this critical public safety issue?

Answer. In 2004, the Commission adopted technical and procedural measures designed to address the ongoing and growing problem of interference to public safety communications in the 800 MHz band. Specifically, the Commission adopted a new band plan for the 800 MHz band and established a transition mechanism for licensees in the band to relocate to their new spectrum assignments (*i.e.*, rebanding).

The first phase of the band reconfiguration process, which entails relocation of licensees on Channels 1–120 in the 800 MHz band, has generally proceeded in accordance with the timetable established by the 800 MHz Transition Administrator (TA). In particular, the negotiation and mediation process established by the Commission and administered by the TA appears to have been largely successful in resolving disputes between Channel 1–120 licensees and Sprint Nextel. Hundreds of frequency relocation agreements have now been negotiated, and disputed issues have been referred to the Commission in only a handful of cases. In addition, 800 MHz stakeholders (including Sprint Nextel, the public safety community, other 800 MHz licensees, and equipment vendors) have worked with the TA and with one another to establish and refine procedures to expedite negotiations and the provision of relocation funding.

While there has been good progress in rebanding to date, significant work still lies ahead over the next 22 months. The second phase of the timetable has now begun, which concerns relocation of licensees in the NPSPAC band from their current spectrum to the spectrum vacated by Channel 1–120 licensees. Timely completion of this phase will require diligence, commitment, and cooperation among all licensees, and will require sufficient resources to ensure that systems are successfully rebanded once negotiations are complete. We have directed the TA to take an active role in monitoring the progress of individual negotiations and establishing milestones for the rebanding process as a whole, and to report to us on a regular basis. In addition, the Commission has stated that it will not hesitate to take any additional steps that may prove necessary to prevent delays in negotiations or other aspects of the rebanding process.

I am committed to ensuring that the Commission does everything possible to see that the process is completed as soon as possible. My staff and I are already involved. We have met and coordinated with the relevant stakeholders about the importance of meeting the schedule. Moreover, we have specifically asked all stakeholders for recommendations concerning any Commission actions that may be necessary to facilitate meeting this deadline.

The Commission's orders require Sprint Nextel to meet an 18-month benchmark on December 27, 2006 by completing relocation of Channels 1–120 licensees in the first 20 regions on the TA's schedule. In addition, the TA's phased negotiation timetable provides for the remaining waves of licensee negotiations to occur at specified intervals between October 2006 and July 2007. The Commission, and particularly my staff, will monitor the parties' progress against these milestones to determine whether additional Commission involvement in the rebanding process is needed.

As you have noted, completing 800 MHz rebanding in the border areas in a timely manner will require amendments to existing agreements with Canada and Mexico. We have been working with all relevant parties to facilitate a timely and seamless transition along the Canadian border. To this end, in conjunction with the State Department, we have had discussions with Canada over the last 2 years to facilitate the transition.

While Canada has not expressed any need to reconfigure its 800 MHz services, the channel allocations under our current agreements with Canada provide the United States with some flexibility to reband licensees on our side of the border without significant impact on Canadian allocations. However, a provision may be needed to facilitate cross-border mutual aid channels. FCC staff, along with the State Department, will continue to negotiate an arrangement with Canada to cover this critical public safety issue next month during bilateral discussions with Canada. We are optimistic that we can reach an arrangement with Canada that will allow the transition of stations along the Canadian border in a timely manner.

Question 2. KMIH is a Class D station operated for over 35 years by the Mercer Island School District on Mercer Island, WA. It has a pending minor change application at the Commission to change its frequency of operation to the NCE band. During the summer, the Commission issued an Order to Show Cause (Reference 1800B3–RDH) regarding KMIH's application. Neither of the two affected stations objected to the proposed application, but requested the Commission place non-interference conditions on KMIH's application. If KMIH and KASB, a second station changing its frequency as an accommodation to KMIH, accepts these conditions, what steps remain prior to the Commission granting approval to KMIH's petition?

KYRS is a low power FM (LPFM) station operating in Spokane, WA. Out of necessity, the station has filed a minor change application to change its frequency of operation to the NCE band. The application requires waiver of Commission rules regarding second adjacent channel and TV Channel 6 protections. The application includes letters from the affected parties (the NCE FM station and TV Channel 6), each stating that it does not object to KYRS's proposed change in frequency. The application has been accepted for filing on August 10th. In the intervening month, there is no record of any party filing an objection to the application. My staff has been informed by Commission staff, though, that the application violates statute. Which part of what statute does the KYRS application to change its frequency of operation to the NCE band violate?

Answer. If KMIH and KASB accept those conditions, the Commission could issue a decision immediately.

The KYRS application does not comply with the mandatory distance separation requirements for LPFM stations that Congress enacted in 2000.

Question 3. In speeches and in testimony before Congress, you have stated that fundamental priorities of the Commission include encouraging broadband deployment and enhancing spectral efficiency. One pending NPRM that has the potential of advancing these two priorities is the so-called "white space" NPRM (ET Docket No. 04–186). As you know, Title VI of the H.R. 5252 Senate substitute instructs the FCC to adopt technical and device rules to facilitate use of certified unlicensed devices within 270 days after enactment. If the Title VI provisions do not become law, there still remains a need for the Commission to complete the "white space" proceeding expeditiously.

In your 2003 statement regarding the earlier related ET Docket No. 02–380, you said, "I strongly support making more spectrum available for unlicensed devices . . . I am concerned that opening this inquiry into the TV broadcast bands at this time may create additional uncertainty and potentially delay the digital transition".

Much has changed between the time when you made your initial statement and today. The Nation is already on a path to complete the transition to digital television. Congress has set the "hard date" for February 18, 2009. The vast majority of television broadcasters are transmitting digital over-the-air digital signals. The Commission has made considerable progress in finalizing the table of allotments for all broadcasters' digital channel selection. As a result of the Commission's digital tuner mandate, the U.S. installed base of digital televisions is going to increase rapidly. And advances have been made in cognitive radio and complementary technologies such as smart antennas.

With these positive developments, have your views on the use of "white spaces" evolved since your 2003 statement?

When should Congress expect the Commission to complete ET Docket No. 04–186?

Answer. I continue to support making more spectrum available for unlicensed devices and recognize that the DTV white spaces could provide an efficient and effective use of the TV spectrum. The Commission must also do all it can to speed the digital television transition while promoting innovative types of broadband products and services.

In the past, I have expressed concern that allowing the use of these devices immediately could impede the progress of the DTV transition. The TV bands have been generally congested during the transition with TV stations operating on two channels each—an analog and a digital channel. Moreover, the final DTV channel election and assignment process was still ongoing, which made it difficult to assess the amount of white space that might ultimately be available.

I agree that broadcasters' progress in transitioning to digital signals and the establishment of a hard date by Congress have been positive developments since I expressed my previous concerns. Given these developments, the Commission's Office of Engineering and Technology recently released a projected timeline for resolving the DTV white spaces proceeding. The projected schedule proposes that the Commission consider a report and order and further notice of proposed rulemaking in October 2006, report the results of testing by the Commission's laboratory in spring and summer of 2007, and consider final technical rules in October 2007. I believe this proposed schedule provides sufficient time to develop appropriate technical standards to prevent interference to TV broadcasting and other services, as well as sufficient lead time for industry to design, test, and produce new unlicensed products that would be available for sale to the public at the completion of the DTV transition.

Question 4. As you are aware, a number of colleagues on the Commerce Committee and I are extremely interested in the Commission's Further Notice of Pro-

posed Rule Making on media ownership and intend to follow its progress closely. I was pleased to learn the Commission intends to hold public hearings on media ownership around the country and I once again extend an invitation for the Commission to conduct a public hearing in Washington State.

Do you intend for the Commission to conduct its quadrennial review of each of its media ownership rules sequentially and release individual rulemakings, or do you intend to review all of the Commission's existing rules in concert and release a single rulemaking?

Will the Commission commit to issuing a Further Notice of Proposed Rulemaking that specifically describes to the public the proposed changes to its media ownership rules and allows them to comment on the proposed rules prior to the Commission voting to make any changes?

The Commission has a long-standing policy to promote localism, diversity, and competition in its media ownership rules—in order to protect the public interest. The Telecom Act requires the Commission to conduct a quadrennial review of its media ownership rules, and allows repeal or modification of rules if the Commission determines they are no longer in the public interest. How does the Commission plan to consider changes to its media ownership rules without first completing its still-open proceeding on localism?

I have serious concerns about lifting the Commission's existing ban on newspaper-broadcast cross-ownership in the same market. In 2003, you supported lifting this ban. At the time the new rules were released, you stated that ". . . we recognize that newspaper/broadcast combinations may result in the significant increase in the production of local news and current affairs, as well as an improvement the quality of programming provided to their communities." What in the record collected by the Commission on media ownership prompted that statement? Do you still hold those views today?

Answer. The Commission just started its review of the Commission's media ownership rules. We have not yet received comments, conducted the full series of public hearings or received the results of independent studies. We intend to consider all the rules in concert as we conduct hearings and independent studies. It is too early to determine whether the record will support one order or separate orders. It is also too soon to determine what actions—if any—we will take with respect to any particular rule. We are committed to ensuring that the public is fully informed and has the opportunity to comment and actively participate in this proceeding.

The Commission is incorporating into its media ownership proceeding the comments submitted in our open localism proceeding. The Media Bureau is preparing a summary of the comments submitted in the localism proceeding that will be released to the public. The Media Bureau also is preparing a summary of the testimony taken at the localism hearings. All of this information will be fully incorporated into the media ownership proceeding. Localism will be the focus of independent studies and among the topics covered at public hearings as the Commission moves forward with its review of the media ownership rules.

During the Commission's last review of its media ownership rules, the Commission conducted a number of studies, including one entitled "The Measurement of Local Television News and Public Affairs Programs." That study found that newspaper-owned affiliated stations provide almost 50 percent more news and public affairs programming than other network-affiliated stations. In addition, the study found that the average number of hours of local news and public affairs programming provided by the same-market cross-owned television-newspaper combinations was 25.6 hours per week, compared to 16.3 hours per week for the sample of television stations owned by a newspaper that is not in the same market as the station.

The Commission explicitly found that, "[n]ot only do newspaper-owned stations provide more news and public affairs programming, they also appear to provide higher-quality programming, on average, at least as measured by ratings and industry awards." The study also found that the ratings for newspaper-owned stations' 5:30 and 6 pm newscasts during the November 2000 sweeps period averaged 8 compared to an average rating of 6.2 for non-newspaper-affiliated stations. Further, newspaper-owned stations received 319 percent of the national average per station Radio and Television News Directors Association (RTNDA) awards, and 200 percent of the national average A.I. DuPont Awards in 2000–2001. During that same period, non-newspaper-owned stations received RTNDA Awards at a rate of only 22 percent of the national average. They received DuPont Awards at a rate of 39 percent of the national average per station.

The Commission also found that a second study, performed by the Project for Excellence in Journalism (PEJ), supported the findings of the study discussed above. In its study, PEJ analyzed 5 years of data on ownership and news quality. PEJ con-

cluded that cross-owned stations in the same Nielsen Designated Market Area were more than twice as likely to receive an "A" grade as were other stations.

Finally, I would note that even the Third Circuit concluded that reform of the newspaper/broadcast cross-ownership rule was needed. The Third Circuit agreed with the Commission, finding that "[t]he Commission's decision not to retain a ban on newspaper/broadcast cross-ownership [was] justified under § 202(h) and [was] supported by record evidence." However, we are just beginning this process and the Commission will be looking to the record developed in our review of the media ownership rules to determine what action is now appropriate.

Question 5. VoIP is an application that has the potential to drive consumer uptake of broadband and provide significant savings. While the percentage growth in VoIP use has been phenomenal over the past few years, the 4.2 million VoIP subscribers at the end of 2005 remains a small number when compared to the over 100 million landlines and over 200 million wireless phones in use. VoIP has been a case where the technology is outpacing regulation. There remains uncertainty and inconsistency in the regulatory treatment of VoIP.

Do you believe that interconnected VoIP service is telecommunications service or an information service?

When should Congress, industry, and the public expect the Commission to determine the statutory classification of interconnected VoIP under the definition of the Telecom Act?

Do you expect the deployment rate of interconnected VoIP to slow as a result of the recent Commission decision to establish the 64.9 percent (safe harbor) universal service obligations (on an interim basis) for interconnected VoIP services? Why or why not?

What regulatory obligations should one-way VoIP communications such as "click-to-call" have?

Answer. The Commission has not yet classified interconnected VoIP services as "telecommunications services" or "information services" as those terms are defined in the Communications Act. While this issue is being considered, it is important to note that no economic or entry regulation has been imposed on VoIP services. For example, the Commission, in the *Vonage Order,* preempted Minnesota's entry regulation of Vonage's VoIP service. At the same time, however, the Commission has required interconnected VoIP providers to comply with various social and public safety obligations such as 911 emergency access, CALEA, and universal service. These apply irrespective of whether VoIP services are ultimately classified as information or telecommunications services.

These issues are presently under consideration. In the meantime, the Commission has removed economic regulation and clarified what social and public safety obligations apply to interconnected VoIP services.

When the Commission made interim modifications to the assessment methodology for contributions to the Federal Universal Service Fund, it recognized that VoIP service was increasingly being used as a substitute for traditional telephone service—in particular, as a substitute for traditional long-distance calling. While standalone interstate long-distance revenues have been declining, interconnected VoIP revenues, which typically include bundled long distance service, have been growing dramatically. Although the Commission established a safe harbor for interconnected VoIP services, it also pointed out that "to the extent that this safe harbor is higher than some providers' actual interstate use, providers may instead contribute to the fund based on actual revenue allocations or by conducting a traffic study." *In the Matter of Universal Service Contribution Methodology,* at para. 54. Moreover, under the Commission's rules, a provider of interstate and international telecommunications whose annual universal service contribution is expected to be less than $10,000 is not required to contribute to the Universal Service Fund. Interconnected VoIP providers that satisfy this *de minimis* exemption need not contribute to the Fund, thus limiting the contribution obligation to those interconnected VoIP service providers that should be able to afford to make such contributions.

The number of VoIP subscribers has grown dramatically from approximately 150,000 subscribers in 2003 to 1.2 million subscribers in 2004, and to 4.2 million subscribers at the end of 2005. The Commission has stated that it expects this trend to continue.

To date, the Commission has only imposed obligations on providers of "interconnected VoIP" services. Our rules define these services as those that "(1) enable[s] real-time, two-way voice communications; (2) require[s] a broadband connection from the user's location; (3) require[s] Internet protocol-compatible customer premises equipment (CPE); and (4) permit[s] users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public

switched telephone network." 47 C.F.R. §9.3. Thus, one-way VoIP communications are not covered under this definition.

The Commission has a pending rulemaking proceeding in which it is considering the extent to which certain regulatory obligations should apply to VoIP services that could be characterized as "one-way VoIP communications." In that proceeding, the Commission tentatively concluded that "a provider of a VoIP service offering that permits users generally to receive calls that originate on the PSTN and separately makes available a different offering that permits users generally to terminate calls to the PSTN should be subject to the rules we adopt in today's Order if a user can combine those separate offerings or can use them simultaneously or in immediate succession." *In the Matter of IP-Enabled Services,* at para. 58.

Question 6. Last year, to ensure that broadband networks are widely deployed, open, affordable, and accessible to all consumers, the Commission adopted four, so-called "net neutrality" principles. Are these net neutrality principles broadly enforceable by the Commission? If so, under what authority will the Commission enforce these principles?

As you know, in 2005, the Commission approved the transfer of control of MCI to Verizon Communications Inc. and that of AT&T to SBC with certain conditions. As conditions of both mergers, effective on the merger closing date and continuing for 2 years thereafter, the merged companies will "conduct business in a manner that comports with the principles set forth in the FCC's Policy Statement, issued September 23, 2005 (FCC 05–151)," which describes the Commission's net neutrality principles. Do these companies have any legal obligation to abide by the Commission's net neutrality principles beyond 2 years after their respective merger closing dates?

Do you believe that Internet end-users should be entitled to receive service from each broadband access provider in a manner that does not discriminate in the carriage and treatment of Internet traffic based on the source, destination, or ownership of such traffic?

Answer. The Commission, under Title I of the Communications Act, has the ability to adopt and enforce the net neutrality principles it announced in the Internet Policy Statement. The Supreme Court reaffirmed last year that the Commission "has jurisdiction to impose additional regulatory obligations under its Title I ancillary jurisdiction to regulate interstate and foreign communications." *National Cable & Telecomm. Ass'n* v. *Brand X Internet Services,* 125 S. Ct. 2688, 2696 (2005) (*Brand X*). Indeed, the Supreme Court specifically recognized the Commission's ancillary jurisdiction to impose regulatory obligations on broadband Internet access providers. *Brand X,* 125 S. Ct. at 2708 ("[T]he Commission remains free to impose special regulatory duties on facilities-based ISPs under its Title I ancillary jurisdiction. In fact, it has invited comment on whether it can and should do so.").

The Commission may exercise ancillary jurisdiction under Title I when: (1) Title I confers subject matter jurisdiction over the service to be regulated: and (2) the assertion of jurisdiction is reasonably ancillary to the effective performance of the Commission's responsibilities. *United States* v. *Southwestern Cable Co.,* 392 U.S. 157, 177–78 (1968). Both of these conditions are met with respect to the four principles of the Commission's 2005 Policy Statement. Indeed, the Commision found "that both of the predicates for ancillary jurisdiction are likely satisfied for any consumer protection, network reliability, or national security obligation that we may subsequently decide to impose on wireline broadband Internet access service providers." *Wireless Broadband Internet Access Order,* 20 FCC Rcd 14853, 14914, para. 109.

First, as the Commission stated, broadband services are "wire communications" or "radio communications," as defined in sections 3(52) and 3(33) of the Act, and section 2(a) of the Communications Act gives the Commission subject matter jurisdiction over "all interstate and foreign communications by wire or radio."

Second, section 1 of the Communications Act confers responsibility on the Commission "to make available . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." This responsibility is guided by the "policy of the United States . . . (1) to promote the continued development of the Internet"; "(2) to preserve the vibrant and competitive free market that presently exists for the Internet"; and "(3) to encourage the deployment of technologies which maximize user control over what information is received by . . . [users of] the Internet." 47 U.S.C. §230. See also 47 U.S.C. §157 nt (Advanced Telecommunications Incentives). The Commission's net neutrality principles facilitate these responsibilities.

The merger conditions adopted by the Commission only apply for 2 years. Specifically, they read, "[e]ffective on the Merger Closing Date, and continuing for 2 years thereafter, [the merged entities] will conduct business in a manner that comports

with the principles set forth in the FCC's Policy Statement, issued September 23, 2005 (FCC 05–151)." *See, e.g., SBC/AT&T Merger Order,* Appendix F.

Although the Commission did not adopt net neutrality rules, the Commission has the ability to take appropriate steps where needed. For example, when we learned that a particular phone company was blocking access to a competing VoIP provider, we opened an investigation and negotiated a consent decree that made the company cease discriminating and pay a fine.

As I have said in the past, network providers should have the ability to offer consumers different speeds of service and plans with different quality of service guarantees. Some consumers are willing to pay more for a faster speed or higher quality of service. I should also note that traffic prioritization already occurs today. For example, voice is prioritized over data traffic, and video is prioritized over other data traffic.

Question 7. During the 1990s, an unintended consequence of the introduction and adoption of new technologies (wireless phones pagers, fax lines, dial up Internet, etc.) was a dramatic increase in the number of area codes splits and overlays. In the past, you have spoken of the importance of number conservation and how some of your predecessors and colleagues may have initially underestimated the impact that area code changes have on local businesses and consumers. The projected growth in VoIP subscribers, who can select area codes different than that of where they reside, will likely present a new challenge to state regulators. In order to prevent the premature depletion of numbering resources, what steps should the Commission take specifically with respect to VoIP service providers?

In the event that Part 52 rules were to not apply to VoIP carriers, would it be appropriate for such carriers to continue to go through CLECs for numbers so that numbering request, utilization and forecast data and other important information would continue to be filed with regulators?

Answer. The Commission's rules require that carriers provide, as part of their applications for initial numbering resources, evidence that they are licensed and/or certified to provide service in the area in which they seek numbering resources as well as evidence that their facilities are in place or will be in place to provide service within 60 days of the numbering resources activation date. These requirements apply equally to carriers requesting an initial NXX code and those requesting an initial thousands-block pursuant to the pooling requirements the Commission has established. The Commission works closely with the numbering administrators to enforce these requirements. In addition, we have granted authority for several states to implement mandatory thousands-block number pooling as a conservation measure in certain area codes and are examining extending that authority to more states.

Under the Commission's rules, only telecommunications carriers may access telephone numbers. Accordingly, our current Part 52 rules apply only to telecommunications carriers. Today, VoIP providers secure numbering resources via partnering relationships with CLECs. The Commission receives numbering request, utilization, and forecast data through the CLECs.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO KEVIN J. MARTIN

Question 1. New Jersey has just one commercial VHF station—WWOR Channel 9. The FCC has stated in the past that this New Jersey licensee has special obligations to serve New Jersey. To me, this means a majority of resources, staff, and coverage for New Jersey news and events. However, the FCC needs to clarify WWOR's obligation. Will the FCC further clarify WWOR's special obligations to New Jersey as part of the station's 2007 license renewal?

Answer. The Commission is aware of the unique circumstances relating to the provision of broadcast television service to residents of New Jersey. As you may know, in 1976, the Commission imposed a special service requirement on commercial VHF television stations licensed to New York and Philadelphia, including WOR which is now WWOR. Pursuant to this requirement, VHF stations licensed to New York and Philadelphia were required to establish and maintain a physical presence in New Jersey in order to facilitate the coverage of issues of interest to the residents of New Jersey. To assist the Commission's review of their performance for New Jersey, the stations also were required to supplement their license renewal applications with reports concerning the service provided to New Jersey.

In 1982, Congress amended the Communications Act to require the Commission to issue a license to any existing VHF commercial television station licensee that volunteered to move to an unserved state. Pursuant to this legislative direction and

at the request of WWOR's licensee, the Commission reallocated Channel 9 from New York City to Secaucus, New Jersey and issued a license to WWOR reflecting that change. At that time, the Commission informed the station's licensee that its service to Northern New Jersey, which the Commission viewed as broader than the community of Secaucus, would be reviewed during proceedings to renew WWOR's license.

WWOR and other New Jersey television stations must file their renewal applications with the Commission by February 1, 2007. As we review WWOR's renewal application, we will review its service obligations to Northern New Jersey.

Question 2. Both WWOR Channel 9, a commercial station and WNET Channel 13, a public station, are licensed in New Jersey cities. Yet they advertise and market themselves as New York stations. I think this is deceptive and not true to their licenses. Are licensees permitted to advertise and market their stations with no mention of the city or even the state of license?

Answer. Pursuant to the Commission's rules, commercial and noncommercial educational radio and television stations are required to identify themselves at the start and finish of each broadcast day and hourly throughout the day. That identification must include broadcast of their call signs, followed by the station's community of license. No Commission rule regulates how stations advertise and market themselves with respect to mentioning the city or even the state of license.

Question 3. Must a licensee maintain facilities in the state in which it is licensed?

Answer. The Commission is aware of the unique circumstances relating to the provision of broadcast television service to residents of New Jersey. As you may know, in 1976, the Commission imposed a special service requirement on commercial VHF television stations licensed to New York and Philadelphia, including WOR which is now WWOR. Pursuant to this requirement, VHF stations licensed to New York and Philadelphia were required to establish and maintain a physical presence in New Jersey in order to facilitate the coverage of issues of interest to the residents of New Jersey. To assist the Commission's review of their performance for New Jersey, the stations also were required to supplement their license renewal applications with reports concerning the service provided to New Jersey.

Commission rules do not explicitly require that either a station's technical facilities or its main studio be located in the same state as the station's community of license. However, facility location is limited by the requirement that a station put a principal community contour over the community of license. In certain special circumstances such as with respect to WWOR–TV, the Commission expected the station to move its former New York City studios and offices to an unserved state, in this case New Jersey.

Question 4. In January 2005, FCC Chairman Powell announced that the FCC was investigating the Armstrong Williams scandal. More than a year and a half has gone by, yet I'm only told that the matter is "pending" with no known timeline and no assurance that the FCC will even issue a final report. What is the status of this investigation, and does this kind of journalism-for-hire concern you as much as it concerns me?

Answer. These issues do concern me and the entire Commission. Last year, less than 1 month after I became Chairman, the Commission issued a public notice reminding broadcasters of their obligations under sections 317 and 507 of the Communications Act of 1934, and sections 73.1212 and 76.1615 of the Commission's rules. These provisions generally require that, when payment has been received or promised to a broadcast licensee or cable operator for the airing of program material, at the time of the airing, the station or cable system must disclose that fact and identify who paid or promised to provide the consideration. The Commission also sought comment on video news releases and their use by broadcast licensees and cable operators. We have several investigations that are ongoing that relate to potential violations of these rules.

In addition, subsequent to our release of this public notice, the Commission received a complaint from Free Press and the Center for Media and Democracy, which alleged that a number of broadcasters had violated the Commission's sponsorship identification rules. We sent letters of inquiry to all of the stations identified in that complaint, asking them to respond to allegations that they have violated the sponsorship identification rules.

The sponsorship identification rules serve an important purpose. They ensure that the listening public knows when someone is seeking to influence them.

Question 5. New Jersey has passed a statewide video franchise law to allow phone companies to offer television through one contract as opposed to going town by town. But it also has "buildout" requirements so a new entrant will serve the 60 most densely populated towns within 3 years. Is it good policy for Federal legislation to take away those buildout requirements already agreed to in states?

Answer. It is important to have both policies that encourage new entry and competition in the video marketplace and policies that ensure everyone receives the benefits of such competition and that prohibit discrimination. In achieving such a balanced approach, it is important that such requirements not create such a high threshold that they deter competitive entry.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CONRAD BURNS TO KEVIN J. MARTIN

Question 1. There are currently numerous issues and open proceedings related to 9-1-1 at the Commission. The VoIP E–911 Order and subsequent filings, petitions and waiver requests; major wireless carrier handset deadlines and waiver requests; and requests from the deaf and hard of hearing community to complete open proceedings affecting their access to 9-1-1; to name a few. Where do these issues stand at the FCC?

Answer. When I became Chairman, I identified public safety and emergency preparedness as critical issues. We have been working hard to make sure that all consumers have access to 911 emergency services. Public safety obligations like 911 are critical to consumers and public safety alike. The 911 system is quite literally one of life or death. It is critical to our Nation's ability to respond to a host of crises and the Commission has been working hard to minimize the situations where users are unable to access it. The Commission is committed to making sure that, during an emergency, a person can always pick up the phone, dial 911, and access local emergency officials.

With respect to VoIP, we are working with the VoIP community to implement our 911 rules. The Commission staff have conducted numerous meetings and attended conferences with public safety officials, interconnected VoIP providers, carriers, and third-party vendors in order to answer questions, promote coordination and encourage cooperation to accelerate 911 solutions.

With respect to wireless, the Commission has been working to ensure that all major wireless carriers have reached 95 percent penetration among their subscribers for a handset-based 911 solution. The Commission has received several waiver requests and we expect that they will be resolved soon. The Commission has also adopted 22 orders, pursuant to the ENHANCE 911 Act, addressing petitions for relief filed by 52 Tier III carriers of the 95 percent handset penetration requirement.

Finally, with respect to Internet-based forms of Telecommunications Relay Services, such as Video Relay Service and Internet Protocol Relay Service, the Commission opened a proceeding late last year seeking comment on how it could reform its rules to ensure that the deaf and hard-of-hearing community has equivalent access to emergency services as all other consumers. As part of this proceeding, this November we will hold a Disabilities E–911 Summit where we intend to bring together leaders from the disabilities community, the E–911 community, partner agencies, and industry to identify the access that people with hearing or speech disabilities need; the technologies, services, and applications through which access should be offered; and the technological, policy, and commercial issues involved in providing the needed access to persons with hearing and speech disabilities.

Question 2. In March of this year the FCC adopted a plan to establish a Public Safety and Homeland Security Bureau. Six months later, what is the status of that bureau and will that bureau be charged with addressing all or some of the ongoing 9-1-1 issues at the Commission or will some 9-1-1 issues remain in existing bureaus?

Answer. In March, the Commission adopted a plan to consolidate its public safety, homeland security, and disaster management activities into a single Public Safety and Homeland Security Bureau. Since then, we have been working with the Commission staff and the National Treasury Employees Union on the implementation plan. We also submitted to the Appropriations Committees of the U.S. Senate and U.S. House of Representatives detailed financial information. We received final Congressional approval on September 11, 2006, and we plan to announce the opening of the Public Safety and Homeland Security Bureau on September 26, 2006.

The Public Safety and Homeland Security Bureau will be charged with addressing all of the on-going 911 issues at the Commission. The Public Safety and Homeland Security Bureau will coordinate closely with the existing bureaus that have traditionally worked on 911 issues, including the Wireline Competition Bureau and the Wireless Telecommunications Bureau.

Question 3. In the FCC's proceeding examining local franchising requests by would-be competitive cable service providers, the Commission solicited public comment on whether build-out requirements create unreasonable barriers to entry.

The U.S. Department of Justice responded, stating:

> "In light of the significant entry-deterring effects of mandated build-out requirements, the Department believes that LFAs should not be allowed to impose any such requirements except where necessary to prevent income discrimination, which the statute prohibits."

The Department supported this conclusion by pointing out that:

> "Build-out requirements that impose on an entrant the obligation to serve a geographic area that the entrant had concluded would be uneconomical to reach can lead to the entrant abandoning its plans for the entire area or, if the entrant agrees to the condition, result in competition being less vibrant or efficient. When the entrant agrees to such a build-out requirement, prices may be higher than they would be otherwise, due in part to the entrant's increased construction costs or inability to make optimal technology choices, or because the area actually cannot economically support another competitor."

In other words, buildout mandates stifle competition. When faced with a build-out requirement as a condition for receiving a franchise, a competitor may not enter the market. Or, if the new entrant agrees to the build-out requirement, it may have to charge higher rates.

Chairman Martin, do you find the Department's comments about the counter-productive impacts of a new entrant build-out requirement credible?

Answer. I agree that unreasonable build-out requirements and timeframes could discourage new entrants and stifle competition. The points that the Department of Justice makes are echoed in the comments of a wide range of commenters, including new entrants to the video marketplace like incumbent local exchange carriers and broadband service providers, equipment manufacturers, and advocacy groups. Some provided specific examples of this. For instance, one telephone company indicated that it has withdrawn more than 25 percent of the requests it has made for cable franchises due to build-out requirements. In each case, the company withdrew its request after determining that compliance with the build out requirement would not be economically feasible.

Question 4. Further, isn't it true that competitive local exchange carriers (CLECs), who in some places are cable companies, have been allowed to enter local telephone markets without the economic burden of a build-out requirement?

Answer. Yes, CLECs, including cable companies, do not have to comply with any build-out requirements when they seek to provide local telephone service.

Question 5. According to the National Emergency Number Association, today nearly 50 percent of counties in this country do not contain a Public Safety Answering Point (PSAP) that can accept Phase II wireless E–911 calls, meaning the call taker does not know the location of the call. Additionally, 25 percent of counties can not accept Phase I E–911 calls, meaning they have no location or callback number if the call gets disconnected. There are still 300 counties that do not have E–911 for wireline service, over 100 of which lack even basic 9-1-1. And of course the VoIP deployment is still ongoing. Progress is being made but these numbers are troubling. Beyond issuing mandates that directly affect communications providers, what do you see as the proper role for the FCC, NTIA and the Federal Government generally in providing leadership and management to ensure that all areas of this country are E–911 enabled for all technologies and moving toward the next generation of technology?

Answer. Although the FCC plays a significant role in establishing 911 rules for telecommunications providers, the funding of PSAPs has traditionally fallen under state or local jurisdiction. The Federal Government does, however, play a role in encouraging and supporting state efforts to upgrade their PSAPs. The ENHANCE 911 Act of 2004 required NTIA/DOT to establish a joint program to facilitate coordination and communication between Federal, state, and local emergency communications systems, emergency personnel, public safety organizations, telecommunications carriers, and telecommunications equipment manufacturers and vendors involved in the implementation of E–911 services and create an E–911 Implementation Coordination Office. Aside from ensuring that telecommunications providers within its jurisdiction are E–911 capable, the FCC's primary role has been to serve as a resource for PSAPs in their efforts to become E–911 enabled. In this capacity, the Commission has provided technical assistance and objective evaluation concerning available E–911 technologies, and information on the regulatory requirements imposed on

service providers. The Commission has also engaged in outreach efforts with all stakeholders, including individual PSAPs, state PSAP coordinators, related public safety organizations (such as NENA), consumers, and technology vendors to increase awareness of the resources available at the FCC and facilitate to the maximum extent possible further E–911 deployment. For example, in November, we will hold a Disabilities E–911 Summit where we intend to bring together leaders from the disabilities community, the E–911 community, partner agencies, and industry to identify the access that people with hearing or speech disabilities need; the technologies, services, and applications through which access should be offered; and the technological, policy, and commercial issues involved in providing the needed access to persons with hearing and speech disabilities.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JIM DEMINT TO KEVIN J. MARTIN

Question. Chairman Martin, Spectrum is a valuable, scarce public resource and spectrum auctions benefit American taxpayers. Over the past 13 years, auctions have deposited $20 billion into the U.S. Treasury. In fact, we have an auction occurring over at the FCC where the current gross is $13.8 billion and companies are still bidding. Fiscally responsible programs like auctions are critical to ensure the best possible management of taxpayer resources.

Auctions are the fastest way to bring technology to market. According to the FCC, the period of time from application to license grant is now less than 1 year. Assurance that spectrum will be available quickly increases bidder certainty and presents the licensee with a strong incentive to deploy innovative systems to consumers as quickly as possible. Faster deployment means keeping the U.S. competitive with other countries and benefiting consumers who want access to more technology at lower prices.

Chairman Martin, the FCC is successfully utilizing a market allocation model right now in the Advanced Wireless Service spectrum and later when it auctions the DTV spectrum in 2009. Can you give a compelling reason that the "beachfront" spectrum—the TV broadcast spectrum "white space"—should be allocated any differently?

Answer. I agree that auctions and the licensed market allocation model have been extraordinarily successful in most instances. In general, the auctioning of licensed spectrum efficiently distributes a scarce resource to those who will put it to its highest and best use. The Commission has tried to strike a balance between the licensed model and the unlicensed model, determining which model to use based on all of the relevant circumstances. The licensed model is more efficient in many cases, and tends to work best when spectrum rights are (1) clearly defined, (2) exclusive, (3) flexible, and (4) transferable. When spectrum rights lack these attributes, potential licensees face uncertainty and may lack incentive to invest in a license or offer service. In those circumstances, the unlicensed model may better optimize spectrum access and utilization.

The Advanced Wireless Service spectrum currently being auctioned and the recovered analog television broadcast spectrum both fit well within the licensed model. Licensees of this spectrum will have clearly defined, flexible rights to use the spectrum on an exclusive basis, and will be able to transfer those rights to third parties. Both bands allow licensees to operate wide-area, wideband systems at relatively high power and will protect licensees from interference from other spectrum users. And these services allow for flexible use—a licensee will be able to provide fixed or commercial mobile radio services. Spectrum with this combination of rights is relatively scarce, which tends to make it particularly valuable.

The Commission has not determined whether spectrum in the digital television white spaces is better suited for use on a licensed or unlicensed basis. Any user, whether licensed or unlicensed, would need to protect the rights of incumbent licensees and therefore would not be allowed to cause harmful radiofrequency interference to existing licensees. As a result, white space users will have secondary rights only and likely will be limited in the power levels at which their devices are able to operate. Some have argued that such encumbered spectrum would be made available most efficiently on an unlicensed basis. However, the limitations that would need to be placed on this spectrum could be written into the licenses and therefore would not prevent the spectrum being made available on a licensed basis. Licensing the spectrum has the benefit of enabling policymakers and those in the affected industry to determine the source of any harmful interference.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JOHN E. SUNUNU TO KEVIN J. MARTIN

Question. A long-term problem facing law enforcement agencies, fire departments, and other members of the first responder community in the northern parts of New Hampshire—those above Line A—is the ability to obtain new radio frequencies and channels. The current approval process averages one to 3 years, and many applications are simply rejected due to objections by the Canadian government. The affected agencies make a compelling case that this is unintentionally putting personnel and American citizens in harms way.

Please outline the current process for considering and approving applications for public safety licenses for use above Line A. Historically, has the Canadian government raised objections been within the bounds of reasonable spectrum management? When was the last time this process was reviewed or revised? What steps can the FCC take to revise the application and appeals process for new radio frequencies for those communities above Line A, and how soon could these steps be implemented?

Answer. I agree that it is critical that first responders above Line A have the ability to obtain new radio frequencies and channels when needed.

The United States' relationship with Canada on public safety radio systems is currently governed by a series of binding bilateral legal agreements and protocols that were negotiated by the Department of State. The existing agreements specify the process for coordination of public safety license applications for use above Line A. Pursuant to these agreements, the U.S. sends Canada public safety license applications for review. Canada approves those applications that, based on their interference analysis, will not cause harmful radiofrequency interference to their existing facilities and denies those that will cause interference. If Canada denies an application, the U.S. may submit its own supplemental interference analysis or the U.S. licensee may amend its application to change its frequency, move its location, or lower its power so as to avoid interference to Canadian operations. The same process takes place in reverse—with Canada submitting its public safety license applications to the United States for review, and the United States having an opportunity to reject Canadian applications.

When Canada rejects an application, the Commission works with the applicant and Canada to find an alternative frequency or uses other mechanisms for resolving the interference concern. This process has not been revised in several years. I share your concern that these applications be processed on a more timely basis, and will work with the Department of State and our Canadian counterparts to examine whether there are possible improvements that could be made to the existing bilateral agreements.

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