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OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY, AND THE INTERNET

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

THURSDAY, SEPTEMBER 17, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY, AND THE INTERNET,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:06 a.m., in Room 2123, Rayburn House Office Building, Hon. Rick Boucher [chairman of the subcommittee] presiding.

Present: Representatives Boucher, Markey, Rush, Eshoo, Stupak, Doyle, Inslee, Weiner, Butterfield, Matsui, Christensen, Castor, Space, Welch, Dingell, Waxman (Ex Officio), Stearns, Upton, Deal, Shimkus, Shadegg, Blunt, Buyer, Walden, Terry, Rogers, Blackburn, and Barton (Ex Officio).

Staff Present: Neil Fried, Minority Counsel; and Garrett Golding, Minority Legislative Analyst.

OPENING STATEMENT OF HON. RICK BOUCHER, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF VIRGINIA

Mr. BOUCHER. Good morning to everyone. Today the subcommittee conducts its first oversight hearing of the Federal Communications Commission during the course of the 111th Congress. This hearing was postponed from the originally scheduled date in July, and one benefit of the postponement is that today we have a full complement of FCC commissioners before us. I am pleased to welcome each of you this morning. And I would note that for Chairman Julius Genachowski and Commissioners Mignon Clyburn and Meredith Baker, today marks their inaugural appearance before the House as members of the FCC. We look forward to seeing more of each of you in the months to come and to working closely with you as together we address the Nation's telecommunications needs.

Before commenting on current issues, I want to take this opportunity to commend Commissioner Copps for his leadership in helping to assure the DTV transition and serving as acting chairman with great distinction during a period of several busy months. Your commitment, Commissioner Copps, to consumer education and including the deployment of knowledgeable staff around the Nation was essential to ensuring that the vast majority of households were prepared for the transition on the transition date of June 13.

I also want to commend Commissioner McDowell for his collaboration with Commissioner Copps on that effort, and particularly thank him for his role in bringing attention to the fact that, as of last January, the FCC's call centers were inadequately staffed and badly underprepared to handle the expected high volume of calls from viewers who were seeking technical assistance.

Chairman Genachowski, from our previous discussions, I am very much aware of the priority that you are assigning to the creation of a broadband plan for the Nation which is due in mid February next year. The blueprint is urgently needed to promote universal broadband access, to achieve data rates that are substantially higher than the average speeds that users have available today, and to promote greater demand for broadband among those who have access but choose not to subscribe to it. I know that you share these goals, and we look forward to working with you very closely as you prepare this plan, and look forward to the plan that you will present in the early months of next year.

Many other matters are receiving both our attention and yours. I will comment briefly on several of them, and ask for any views you care to express this morning about these matters.

Our subcommittee has scheduled an upcoming hearing on the need for a Nationwide fully interoperable communications network for first responders, during which we will hear from first responders, from commercial wireless carriers, and from other interested parties. A variety of proposals has been put forth for how the DBLOCK of 700 megahertz spectrum should be utilized in meeting that goal. And if you have given attention to this matter and have any thoughts you would like to share with us this morning about how we can assure that our Nation has fully interoperable communications capabilities for first responders, we would welcome those views.

We are having bipartisan discussions among our subcommittee members about an appropriate statutory reform of the Federal Universal Service Fund, and I anticipate that a comprehensive reform measure, a bill, will be introduced by subcommittee members with bipartisan support in the very near future. We have introduced with bipartisan support a measure designed to inventory the radio spectrum with the goal of making available additional spectrum for commercial wireless services. And later in this Congress, we intend to put forward legislation broader needs with respect to wireless services and a measure extending a clear set of privacy rights to Internet users. I expect that each of these measures will be constructed in a bipartisan process and be introduced with bipartisan participation. Any views that you currently have on this range of matters and would care to express to us this morning, we would be very happy to hear.

Today's hearing is an opportunity for Chairman Genachowski and Commission members to tell us about their agenda for upcoming efforts to enhance our Nation's telecommunications capabilities, and we very much look forward to your testimony and thank you for your time here with us this morning.

That concludes my opening statement. I am pleased now to recognize our ranking Republican member of the subcommittee, the gentleman from Florida, Mr. Stearns.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Good morning. And thank you, Mr. Chairman. Thank you for having this very important hearing. This subcommittee's oversight of the FCC is obviously one of its primary missions. I would like to welcome Chairman Genachowski and Commissioners Clyburn and Baker who, as the chairman mentioned, are testifying to our committee for the first time. I appreciate your willingness to appear before us today so we can better understand perhaps what your priorities are and how we can all work together. I also want to take this moment to thank Commissioner Baker for her work at the NTIA to make the DTV coupon program work despite the last-minute delays by my colleagues. So I want to recognize her for her strong efforts.

Perhaps I could say I wish the Commission to adhere to the Hippocratic oath, do no harm. The communication sector has not been immune from the economic distress that has been faced by the country during the last year. The FCC's goals should be to help the communications sector to recover and, frankly, to encourage companies to invest in new facilities and equipment that will bring broadband connection faster to most Americans.

The stimulus requires the FCC to present Congress with a national broadband plan by February 17, 2010. For broadband to reach its full potential in this country and be a truly transformative factor in our economy, the Commission must not undermine the climate it has helped to create over the last few years; that is, encouraging massive private investment in broadband.

While many wring their hands over the OECD ratings and ranking, we are I think, frankly, doing well. The Pew Internet & American Life Project reports that 63 percent of U.S. households have adopted broadband as of April 2009, up from 53 percent in May 2008. By contrast, the European Commission says that only 36 percent of the European Union households have such service.

From 2001 to 2008, the FCC charted the right course for the broadband market, employing a light regulatory touch to encourage this investment. The result was the exponential growth in broadband subscribership and bandwidth consumption. But a reversal by the FCC of the current regulatory framework would greatly undermine investment at a rather inopportune time.

There has been some speculation about what the new Commission is going to do about net neutrality regulations. Everybody wants the Internet to remain open and accessible, but many of us are concerned that adopting new policies involving net neutrality could impede network operators from bringing new Internet-based products and services that consumers want. At this stage of the game, when the Internet is still evolving, government intervention in the form of net neutrality regulation is both unnecessary and anti-consumer.

Along with broadband, the Commission has opened multiple inquiries into the wireless industry. The wireless sector is a great success story and one of the real bright spots in the otherwise challenged economy today. More than 99 percent of the consumers have one or more choices in wireless carriers; more than 95 percent have three or more choices; more than 90 percent have four or more

choices; and, almost 65 percent have five or more choices today. Indeed, the U.S. wireless market is the second least concentrated of all the 26 OECD nations. So, as a result, wireless consumers today are paying less for better services. In fact, between 1993 and 2008, the average local monthly bill has dropped to $51 from $101 in constant dollars. During this same timeframe the cost per minute has dropped to 4 cents from 44 cents, and the average minutes of use has grown from 140 to 758k the most of any country.

Now, on the subject of spectrum. I hope the commissioners and members of this subcommittee will work closely to secure additional spectrum for commercial use. As recent press reports have noted, the explosive growth and the demand for bandwidth as consumers access new applications and upload user-generated content will tax the limits of carriers' capacity probably more quickly than most of us realize. While advances in technology can help solve this problem by allowing for the more efficient use of spectrum, policymakers will have to do our part by making more of this critical resource available. Many of our international trading partners are already taking steps to make additional spectrum available in their markets. If we fail to do so, we risk ceding our global leadership in wireless service and innovation.

So, for this reason, I urge my colleagues to support the bipartisan spectrum inventory legislation, which I hope we can act upon this year, Mr. Chairman.

As we can tell, the FCC will be very busy in the upcoming year and next year, so I look forward to hearing from our witnesses. Thank you.

[The prepared statement of Mr. Stearns follows:]

Communications, Technology, and the Internet Subcommittee Hearing
Oversight of the FCC
Ranking Member Cliff Stearns
September 17, 2009

Thank you Mr. Chairman for holding this very important hearing. This subcommittee's oversight of the FCC is one of its primary missions. I would like to welcome Chairman Genachowski and Commissioners Clyburn and Baker who are testifying for the first time as members of the FCC. I appreciate all of the Commissioners' willingness to appear before us today so that we can better understand the Commission's priorities and the items on which the agency intends to focus in the upcoming months.

I hope the Commission adheres to the Hippocratic oath to "do no harm." The communications sector has not been immune from the economic distress faced by our country during the past year. The FCC's goal should be to help the communications sector recover, and to encourage companies to invest in new facilities and equipment that will bring faster broadband connections to more Americans.

The stimulus requires the FCC to present Congress with a national broadband plan by Feb. 17, 2010. For broadband to reach its full potential in this country and be a truly transformative factor in our economy, the Commission must not undermine the climate it has helped to create over the last few years that is encouraging massive private investment in broadband.

While many wring their hands over the OECD rankings, we are doing quite well. The Pew Internet & American Life Project reports that 63 percent of U.S. households have adopted broadband as of April 2009, up from 53 percent in May 2008. By contrast, the European Commission says that only 36 percent of European Union households have such service.

From 2001-2008, the FCC charted the right course for the broadband market, employing a light regulatory touch to encourage investment. The result was the exponential growth in broadband subscribership and bandwidth consumption. But a reversal by the FCC of the current regulatory framework would greatly undermine investment, at a rather inopportune time.

There has been some speculation about what the new Commission is going

to do about net neutrality regulations. Everyone wants the Internet to remain open and accessible. But many of us are concerned that adopting new policies involving net neutrality could impede network operators from bringing new Internet-based products and services that consumers want. At this stage of the game, when the Internet is still evolving, government intervention in the form of net neutrality regulation is both unnecessary and anti-consumer.

Along with broadband, the Commission has opened multiple inquiries into the wireless industry. The wireless sector is a great success story and one of the real bright spots in an otherwise challenged economy. More than 99 percent of consumers have one or more choices in wireless carrier, more than 95 percent have three or more choices, more than 90 percent have four or more choices, and almost 65 percent have five or more choices. Indeed, the U.S. wireless market is the second least concentrated of all 26 OECD nations.

As a result, wireless consumers today are paying less for better service. Between 1993 and 2008, the average local monthly bill has dropped to $50.07 from $101.10 (in constant dollars). During this same timeframe, the cost per minute has dropped to 4 cents from 44 cents, while the average minutes of use has grown from 140 to 758, the most of any country.

On the subject of spectrum, I hope the commissioners and members of this Subcommittee will work closely to secure additional spectrum for commercial use. As recent press reports have noted, the explosive growth in the demand for bandwidth as consumers access new applications and upload user-generated content will tax the limits of carriers' capacity, probably more quickly than any of us expect.

While advances in technology can help solve this problem by allowing for the more efficient use of spectrum, policymakers will have to do our part too by making more of this critical resource available. Many of our international trading partners already are taking steps to make additional spectrum available in their markets. If we fail to do so, we risk ceding our global leadership in wireless service and innovation. For this reason, I urge my colleagues to support the bipartisan spectrum inventory legislation, which I hope we can act on this year.

As we can tell, the FCC will be very busy in the coming months. I look forward to hearing from all of our witnesses.

Mr. BOUCHER. Thank you very much, Mr. Stearns. The chairman of the full Energy and Commerce Committee, the gentleman from California, Mr. Waxman, is recognized for 5 minutes.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you very much, Mr. Chairman. I want to welcome the full FCC here for our very first oversight hearing, and especially the new chair, Mr. Genachowski. I would like to join you in thanking Commissioner Copps for his outstanding work as interim FCC chair. Under his able leadership, the digital television transition went well, and the Commission got back to business. Thank you for your service. And I would like to thank Commissioners McDowell and Baker for the important roles they played in the DTV transmission. We are all aware of their commendable efforts to help improve the transition.

Chairman Genachowski, you take the helm at a critical time in the Communication's policy, and I am confident that you can continue Commissioner Copps' work of getting the Commission staff organized, energized, and focused on consumers. I know that your colleagues at the Commission are enthusiastic about your collaborative leadership and your vision for the Agency.

I am pleased that the Commission has already launched a comprehensive proceeding to craft a national broadband plan. This is of immense importance to virtually every aspect of our society and how we will function in the 21st century. The success of your work will be essential to delivery of health care, education, to jobs, economic growth, to science and the arts, to journalism and the media. Indeed, your forthcoming national broadband plan is critical to America's competitiveness and leadership in the world.

Of course, any broadband plan must address issues related to wireless broadband, including spectrum availability. The committee has before it a bipartisan spectrum inventory bill that would start the critical process of making more spectrum available for broadband services. The FCC will play a critical role in this process, and I am confident that you understand the need to do so efficiently and quickly.

We also need to consider ways we might expedite the construction of the wireless facilities that are critical to broadband deployment. This is an infrastructure issue that is critical to the successful deployment of broadband services. Simply put, without additional facilities, there will be no additional broadband. And I am particularly interested to learn how broadband can help other initiatives important to this committee, including smart grid technologies and the health IT transformation.

President Obama has made ensuring an open Internet a central plank in his communications policy platform, and he has my full support. The Internet is a vital doorway to opportunity for many, whether to distribute new content, to develop a new application, or simply to search for a new job. We must ensure that the Internet remains the engine of economic growth and technological innovation that helps propel our people and our economy forward.

The fear some have professed that net neutrality rules will stifle network investment have proven unfounded over the years. Most recently, over 2,200 public and private entities applied for broadband grants and, in so doing, opted in to net neutrality rules. Industry will benefit from clarity, consistency, and predictability with regard to net neutrality. As a member who has worked hard to protect the intellectual property rights of our creative communities, I do not believe net neutrality and strong copyright protection are mutually exclusive goals. In fact, clear net neutrality rules should help broadband network operators explore innovative steps designed to stop the theft of online content.

I know that our new FCC chairman shares my perspective on the importance of achieving both goals.

For these reasons, I think that the time is right to formally establish, through legislation, if required, the rules of the road with respect to net neutrality. Accordingly, I have asked Mr. Markey to add me as a cosponsor to H.R. 3458, the Internet Freedom Preservation Act. And I will also continue to support Chairman Boucher's efforts to lead willing parties to a negotiated solution.

I also support the Commission's effort to examine the state of competition in the wireless industry. Most agree that the best protection for consumers is robust competition. And while I recognize the competitive nature of the wireless industry, I do see some warning clouds on the horizon. More specifically, I believe the FCC should act soon to resolve problems with special access services and certain roaming arrangements.

I want to thank the Commission for making public safety's need a top priority and initiating a study of the options for the DBLOCK. We must act soon to improve the state of public safety communications, and I am anxious to review your plans and to work with you to ensure we find the most effective way for the public safety community to obtain access to the spectrum it needs. And I am pleased that Chairman Boucher plans to hold a hearing on this topic in the near future.

Clearly, I have only touched on a few of the critical issues before the new FCC, but I am encouraged by the new spirit of comity and collaboration that you all espouse, and I hope that Congress will approach these important policy issues in the same manner. I look forward to your testimony and the hearing. Thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Chairman Waxman. The gentleman from Michigan, Mr. Upton, is recognized for two minutes.

Mr. UPTON. I am going to waive.

Mr. BOUCHER. The gentleman from Michigan waives his opening statement and will have 2 minutes added to his questioning time for our witnesses this morning. The gentleman from Illinois, Mr. Shimkus, is recognized for two minutes.

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. SHIMKUS. Thank you, Mr. Chairman. I will try to go quick also.

I appreciate the commissioners present and the opportunity to sit down with most of you. Some of you I have known for a while, and the new folks, and have taken that time, very, very helpful and important. Chairman Genachowski, I appreciate your meeting with me and then rapidly putting the kids.gov link up on the FCC site, something Ed Markey and I have been working on for a long time and you identified that it wasn't being promoted and you responded rapidly. And that was on your own initiative, not mine.

DBLOCK is critical. I have been in the 911 emergency communications issue, along with Anna, for many, many years now, and we just have to get this right and be prepared for the next time, before the next time happens. And you all know what I am talking about.

The Nationwide broadband deployment without having a Nationwide broadband map is it putting the cart without the horse. Southern Illinois looked at the Kentucky model, and we think that is important. And siting of towers. We have eventually got to have a time when the debate stops and we get tower site, especially in rural areas. If there is no wireless, there is no E-911. And in the end, I want to thank the coalition of more than 50 public interest groups and civil rights groups for reminding the me that the fairness doctrine is still part of the debate. Now, I went through and my staff went through the Republican staff briefing. Nothing was talked about on the fairness doctrine. But because these groups have now raised it, there may be some debate on the fairness doctrine. I think there is a congressional majority vote on the floor in opposition to reinstituting the fairness doctrine. We are ready to continue to have those debates, but it is just curious that we wouldn't have mentioned it had these groups not intervened. And I yield back the balance of my time.

Mr. BOUCHER. Thank you very much, Mr. Shimkus. The gentleman from Massachusetts, Mr. Markey, is recognized for 2 minutes.

OPENING STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF MASSACHUSETTS

Mr. MARKEY. I thank the chairman very much, and I welcome our incredible new cast, Chairman Genachowski and Commissioner Clyburn, Commissioner Baker, as well as our two veterans, Commissioner Copps and Commissioner McDowell. Welcome back.

As the author—and, by the way, someone who served our committee for 20 years, Colin Crowell, who is sitting behind you there, just sitting over their shoulder instead of mine as he has for all these years. As the author of the amendment requiring the development of a national broadband plan by next February, I am particularly interested in the Commission's progress in this area. The national broadband plan is among the most significant things the Commission will do since the implementation of the Telecom Act of 1996, and it is essential that we get it right. I would emphasize the opportunity we have given to you, and I urge you to dream big in terms of the plan you put together for our country. Give us a plan that speaks to our highest aspirations as a society, not just to promote greater broadband availability, affordability, speeds, or com-

petition, which we certainly need, but also a plan that animates technology policy with ideas for addressing opportunity, advancing better quality, and more affordable health care, and spurring greater innovation to lesser our independence on foreign oil through energy efficiency, smart grid technologies.

I will be proposing measures such as E-Rate 2.0, building upon my original conception of the E-Rate from 1994, which included community colleges and Head Start facilities in the program. This is but one of several ideas that I would be suggesting.

The same thing is true for net neutrality, as Chairman Waxman and Congresswoman Eshoo have always been focusing upon. Special access. We have to ensure that we get that issue right. I have introduced a bill on video accessibility and 21st century communications to make sure that all consumers, regardless of disability, have access to all of these new technologies. And I do believe that it's important for us to look at this handset exclusivity issue.

And one other thing I would just like to add is that nothing drives people crazier than to buy a new phone from the same company, and then you have to buy a charger for that new rather than having the old one that you have already purchased from that company work. So can we do something about that? That drives people crazy. Okay? They just hate it. So I would like to make that for you a special project, because people wind up with all these chargers over a number of years and one of them was working very well for them. Thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Markey.

The gentleman from Missouri, Mr. Blunt, is recognized for 2 minutes.

OPENING STATEMENT OF HON. ROY BLUNT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. BLUNT. Thank you, Mr. Chairman. And I want to join everyone else in welcoming the Commission here today, particularly our new commissioners. I would like to say, specifically to Commissioner Clyburn, that her dad and I were the whips together for one Congress, we talked virtually every single day of that Congress, and he is a good friend of mine and I look forward to doing what I can to be helpful to you and the other commissioners, and we are glad to have all of you here today.

This is important work. It is work that it is really hard to anticipate the changes that will occur. Talking earlier today about a telecom bill that we worked on just a few years ago, by the time we got to the end of that particular piece of legislation, it seems to me that nothing we debated at the beginning of the legislation still mattered by the time we were still 5 years beyond that debate, and that is the world that you live in and have to work with. Certainly it is a dynamic area. It is competitive. The ingenuity, the entrepreneurialism, the competitive spirit in telecommunications has made a big difference. There are a couple of issues that obviously this committee will be divided on or at least a number of issues.

One would be net neutrality. My personal view is that we have to be very careful here that any policy that deals with net neutrality, a topic that the definition constantly seems to change on

what it means, we have to be careful with net neutrality that we don't undermine both the ability of network managers to allow for efficient flow of traffic and that we don't undermine the ability of the private sector to get the funding and investment that they have grown accustomed to.

Second, I want to join Mr. Shimkus in expressing my concern about any return to the so-called fairness doctrine, and also any return to that doctrine through some sort of new definition of localism that would really have as its objective returning to that doctrine. There are lots of issues that we will be talking about today and in the future, spectrum allocation, handset explicivity, a national broadband plan, and many others. This is an incredibly important assignment for our two commissioners who continue to be on the Commission, for the three of you, including the chairman that join them, and I hope we can be helpful in your work and certainly we are going to be incredibly interested in the work that you do. And we are glad to have you here today.

[The prepared statement of Mr. Blunt follows:]

BLUNT OPENING STATEMENT FOR TELECOMMUNICATIONS SUBCOMMITTEE HEARING ON THE FCC

September 17, 2009

Mr Chairman:

Thank you for holding this hearing today and for the opportunity to hear from our distinguished Federal Communications Commission. I'd like to welcome the three newest commissioners, Chairman Genachowski, Commissioner Clyburn, and Commissioner Baker, as well as familiar faces in Commissioners Copps and McDowell. I'm looking forward to working with all of them as the Commission undertakes some important work.

As they undertake that work, it's important to remember how dynamic and competitive this industry is. The ingenuity, entrepreneurialism, and competitive spirit of the telecommunications and high tech industry have combined for tremendous growth and job creation over the past decade. This growth has occurred because Congress and federal regulators have worked to create a friendly environment for the kind of private capital investment necessary to this industry.

Obviously our work hasn't been perfect, but the results have been positive overall: millions of jobs and billions of dollars in investment in our communities and our network infrastucture. In most parts of the country, today's consumers have significant choice in both mobile and broadband

carriers. This is an industry that's had success and we need to remember why that's happened.

So as the Commission works on these critical issues, let's remember that the principles that got us to this point – competition, private investment, and harnessing the energy of our country's best and brightest entrepreneurs – have been the hallmarks of the industry's success in this field. It's been good for consumers and good for the economy.

As I listen to the members of the Commission today, I am particularly interested in hearing about a couple of critical issues that, if handled improperly, could damage that success going forward.

First, I'm concerned that efforts to undertake any policy of network neutrality will undermine both the ability of network managers to allow for efficient flow of network traffic, and undermine the kind of robust private investment to which we've grown accustomed in this industry. As networks become faster and more advanced, it would be a poor time to implement unneeded restrictions, either through statute or regulation, that prevent network operators from maintaining their networks appropriately. Similarly, as we undertake to build new and sustainable broadband technology – particularly in areas of the country that are currently unserved – private carriers depend on the ability to earn a return on their investments. The government should be careful not to upset the risk-reward balance in those investments, and that is the kind of hazard we run in implementing network neutrality or network management policies at the federal level.

Second, I remain concerned about efforts to push for a Fairness Doctrine in the broadcast industry. Since the official Fairness Doctrine was lifted by the FCC in the 1980s, the number of information sources has exploded, due both to Reagan's decision as well as emerging technologies. I don't want to imagine how our country would be changed today if a Fairness Doctrine existed in any form. To me the Fairness Doctrine was and would again be an unfair restriction on free speech. As a member of this subcommittee I'm going to closely observe the activities of the Commission for signs of a new Fairness Doctrine – whether explicit or implicit. In particular, I'm troubled by suggestions that new localism mandates could be used as a backdoor to dictate political content requirements. I believe it's in the interests of broadcasters to maintain local content, but this can't be a method of regulating on-air speech.

Obviously there are significant other issues we'll have to talk about today and over the course of this Congress involving important issues like spectrum allocation, handset exclusivity, a National Broadband Plan, and many others. Again, thanks to the Commissioners for appearing today and I look forward to hearing their testimony and working with them in the coming years.

Thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Blunt. The gentleman from Michigan, Mr. Stupak, is recognized for 2 minutes.

OPENING STATEMENT OF HON. BART STUPAK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. STUPAK. Thank you, Mr. Chairman, for convening this hearing. I want to welcome our returning witnesses, Chairman Genachowski, Commissioner Copps, and Commissioner McDowell, as well as our new witnesses, Commissioners Clyburn and Baker. Welcome.

Today's hearing represents an opportunity for a fresh start for the agency and for the telecommunications industry. Last year, after an extensive investigation by our Subcommittee on Oversight and Investigations, the committee issued a report titled Deception and Distrust detailing the mismanagement that had occurred at the FCC over the past few years. This mismanagement included the manipulation and suppression of reports and data that did not agree with the former chairman's agenda and a lack of unfettered access to expert FCC staff by the commissioners. I don't want to rehash the specifics of the report, but I encourage you, if you have not already, to read it.

The FCC has an enormous responsibility, coupled with extensive authority, to make decisions that affect the lives of millions of Americans and billions of dollars in private and public money. With so much at stake, it is your duty to ensure that the regulatory decisions you make are done in a transparent manner and are based in facts. Not everyone will be happy with what you decide, but they should at least feel that they had a fair opportunity to present their case before the Commission.

The best way the FCC can promote private investment and innovation within the vast universe telecommunications market is to provide certainty, the certainty that the FCC will consistently make regulatory decisions in a timely, thoughtful, and fair manner which benefits consumers and promotes competition. I look forward to discussing with you a number of issues, old and new, that are pending before the Commission. Thank you for being here. And thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Stupak. The gentlelady from Tennessee, Mrs. Blackburn, is recognized for 2 minutes.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you, Mr. Chairman. Welcome to all of you. We have talked about different issues that are going to come before us, and of course we are going to look forward to working with you on these. I want to highlight just a couple of these as we start our hearing today.

Net neutrality and control over the Internet is something that is important to me and to my Tennessee constituents and content producers. It is a very important issue. I think we all agree that the market is very competitive and it shows no signs of failure. So I am very weary of talk or efforts to increase regulations where there is really no compelling case to do so. And it has been very

well documented, the investment that is taking place by the technology companies into product and cutting edge technologies and services, and I fear that doing anything to thwart that investment or to disincentivize these companies would have broad repercussions. And I hope you all take that into account before you move forward with the any kind of implementation.

The other component of that is broadband, and the investment in broadband does result in jobs. And if companies are not able to control their content, then they are going to have less money to make those investments and to create new employment opportunities. And seeing investment in infrastructure remain strong has been encouraging. And I read a Brookings Institute study that showed where a 1 percentage point increase in broadband penetration in a State, that that led to a .2 or .3 percent increase in employment numbers. And I think that is worth looking at. I appreciate you all being here. I look forward to the conversation. Yield back my time.

Mr. BOUCHER. Thank you very much, Mrs. Blackburn. The gentleman from California, Mr. McNerney, is recognized for 2 minutes.

OPENING STATEMENT OF HON. JERRY MCNERNEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MCNERNEY. Thank you, Mr. Chairman, for convening today's hearing. And I want to thank Chairman Genachowski, Commissioners Copps, McDowell, Clyburn, and Baker. I am looking forward to getting a chance to know your opinions on these issues and getting to know you personally a little bit this morning.

The FCC is working on a range of important and timely issues; however, I want to focus my intention on a couple of areas. Specifically, the Commission will be offering its insights on competition in the special access market. This is of particular important to numerous stakeholders in the telecommunications industry, and the matter is now pending before your Commission. I look forward to working with the Commission with my colleagues on the committee and with the various stakeholders to find balanced policies.

I am also interested in hearing from the Commission regarding the length of comment periods in response to notices of inquiry. The FCC has an obligation to move forward quickly, but the industry stakeholders should have sufficient time to analyze the proposals, and I want to understand what your thinking is in terms of how those periods are determined.

Now, our country faces some important challenges of personal interest to me, namely, net neutrality and cybersecurity. Regarding cybersecurity, we now face some very big challenges and very great exposure, both in economics and in national security, that prompts me to urge you to move forward aggressively in that area of cybersecurity. And as we hear from the FCC on these and other issues, I am confident that we can work together to find solutions that make a lot of sense for everyone. So thank you for coming. I yield back the balance of my time.

Mr. BOUCHER. Thank you very much, Mr. McNerney. The ranking Republican member of the full Energy and Commerce Com-

mittee, the gentleman from Texas, Mr. Barton, is recognized for 5 minutes.

Mr. BARTON. Thank you, Mr. Chairman. I want to compliment you on your timing. I have been here all of 15 seconds. That is pretty good.

Mr. BOUCHER. We aim to please.

OPENING STATEMENT OF HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BARTON. Well, let's hope we keep that attitude.

I want to welcome our full Commission to the Energy and Commerce Committee. We have two veterans and three rookies. And to the veterans, I have spoken with each of you individually a number of times, and I appreciate the professionalism and the personal friendship that each of you have exhibited. And to our three new members, I have met with you and I look forward to developing that same sort of relationship.

This is an exciting time for the FCC. There are new opportunities. We have a chairman who has got a very positive relationship with the President of the United States, and that is always a positive. So I think there are some real opportunities to do some good things.

I would recommend that the Commission start by restoring transparency and public faith in the Commission. As our two veteran commissioners know, in the past the Commission has tended to operate, if not exactly in the dark, they certainly have been very opaque. And sunlight and transparency is a good thing in democracy, and it is certainly a good thing in the regulatory agencies.

The Commission in the past has failed to publish the specific text of its proposed rules, has provided little time or very little time for public comment, it has taken too long to adopt decisions, and it has sometimes taken even months to release the text of the specific item. Because of this and other reasons, Congressman Stearns and I have introduced H.R. 2183 that would address those issues. Obviously, that is not a perfect bill, and we would welcome any insights that the Commission has in terms of how to make it better.

Broadband policy is something that the new chairman has said is a personal interest of his, and my understanding is that there is a new broadband policy that is being drafted or prepared as we speak that is required by the stimulus package. Keep in mind that the state of broadband adoption in the United States is actually better, at least in my opinion, than those that allege is not for self-serving interest in terms of getting more regulation and more public dollars or whatever.

Many will cite the Organization for Economic Cooperation and Development's claim that the U.S. ranks 15th in broadband adoption. This report has been thoroughly discredited for, among other things, calculating penetration per person than per household, and it also ignores wireless connections. As we all know, the United States is one of the most wirelessly connected Nations in the world. Broadband adoption in the United States has been rapid, considering the size and geographic diversity of our country. The Pew Internet & American Life Projects reports that 63 percent of U.S.

households have adopted broadband as of April 2009, which is up from 53 percent in May of 2008.

By contrast, the European Commission says that only 36 percent of the European Union households have such service. So I think we are in better shape than we give ourselves credit for. I think that our growth has resulted from a deregulatory approach we have taken towards these advanced services. I know there may be some disagreement amongst our new commissioners, but I think the last thing that we should do is to return to an old, discredited monopoly era regulatory approach, such as forced sharing of network infrastructure and mandatory wholesaling of services. History has shown that those type of policies serve to deter investment, innovation, and competition.

Mr. Chairman, I have got about four more pages of prepared text, so I am going to introduce that for the record because my time is about to expire. Let me simply say that telecommunication policy has been one of those areas where we have had bipartisan cooperation. We just finished the DTV transmission. Commissioner Baker had something to do with that at her previous post, and Commissioner Clyburn has had an impact on that down in South Carolina, and of course our two current commissioners were very involved in that and the chairman has had quite a bit to say about it in his prior private life. So that is, I think, a success in how we can work together, and broadband policy and net neutrality are two areas that still need to be worked on, and hopefully we can have that continued bipartisan success.

With that, Mr. Chairman, I yield back.

Mr. BOUCHER. Thank you very much, Mr. Barton. And I assure you that I will read every word of that statement.

Mr. BARTON. I am sure you will, too, Mr. Chairman. It is very good.

Mr. BOUCHER. I am confident of that. The gentlelady from the Virgin Islands, Mrs. Christensen, is recognized for 2 minutes.

OPENING STATEMENT OF HON. DONNA M. CHRISTENSEN, A REPRESENTATIVE IN CONGRESS FROM THE VIRGIN ISLANDS

Mrs. CHRISTENSEN. Thank you, Chairman. Congratulations, Chairman Genachowski, and welcome. I appreciated your visit with me and my staff earlier in the year. A special welcome to our new commissioners, Mignon Clyburn and Meredith Atwell Baker. And welcome back, Commissioner McDowell. Our special thanks to Chairman Copps for your leadership during a particularly challenging time. But as all of you have said in your testimony, the challenges have just begun. I also want to acknowledge the helpfulness and responsiveness of the Congressional Affairs staff, the great examples of this staff that you have praised throughout your testimonies.

One thing that really stands out as I looked at your resumes and statements and the ones that you prepared today, that in addition to the intimate familiarity with the depth and breadth of the field of telecommunications is the diverse and dynamic experience you each bring to the task, and that will make for a very strong Commission prepared to tackle the also very dynamic and diverse challenges.

Chairman Genachowski, I commend you for your methodical, science-based, data-driven approach to these challenges and the in-depth reviews that have taken place or are underway.

Commissioner Clyburn, you spoke a lot on the need to think about the impact on the consumer. I see some of that reflected in other comments. And I look forward to the outcome of a review on minority and women ownership in the industry and the strategies developed to address the lack of diversity.

Lastly, my daughter, who took it upon herself to call one of my carriers to find out why I got a bluetooth that I had not ordered and she knew that I probably would have just kept, will thank you for the work that you do to make sure that consumers like me know what services I have and what I am paying for. So we are pleased to have you here before the committee this morning, and I look forward to your testimonies and to working with all of you.

Mr. BOUCHER. Thank you very much, Mrs. Christensen. The gentleman from Georgia, Mr. Deal, is recognized for 2 minutes.

OPENING STATEMENT OF HON. NATHAN DEAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. DEAL. Thank you. Welcome to all the commissioners here today. As you hear from these opening comments, it indicates the diversity of the issues before you, and I appreciate that fully.

I want to focus, and I will do so in my questions, on one specific area that continues to be a problem that I think is growing larger every day, and that is the issue of content exclusivity contracts coupled with the licensing that is under your jurisdiction. Now, in the broad general scope of things in the TV, video, marketplace, we all generally talk about that in terms of retransmission consent authority. I am now growing more concerned about that same problem in the radio marketplace, and my question later on to you will focus on that.

As I view what is happening in my State, more licenses are being granted for radio stations based on so-called underserved communities. The only problem is that when the license is granted there may be a tower somewhere close to that community, but the actual station itself is located in another community, in fact, in some instances where three or four separate licensed facilities are in the same building. That, coupled with the content exclusivity, I think creates a monopoly in the marketplace. And I do not know to what extent you have authority to deal with that. I don't know whether or not you even look at the issue of content exclusivity contracts when you are considering the issuance or consolidation of the licensing portion of this agenda. So I will explore that more completely with you. And I can assure you it has everything to do with Georgia football. Thank you. And I yield back my time.

Mr. BOUCHER. Thank you very much, Mr. Deal. The chairman emeritus of the full Energy and Commerce Committee, the gentleman from Michigan, Mr. Dingell, is recognized for 5 minutes.

OPENING STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. DINGELL. Mr. Chairman, I thank you. I commend you for this hearing and for the fine job you are doing as chairman of the subcommittee.

I want to express a warm welcome to our witnesses today and to you, Chairman Genachowski. It is my hope that, under this new leadership, the Federal Communications Commission will again enjoy a collegial and productive relationship with this committee. Much that falls under the purview of the FCC, including universal service reform, spectrum auctions, broadband development, wireless competition, requires the attention of this committee, and my colleagues and I will welcome the willing cooperation of the FCC in addressing these matters.

I intend to focus my questions today on several questions of great public and personal concern. First, as our witnesses know, I have a keen interest in a thing called forbearance at the FCC. I have introduced legislation, H.R. 400, the Protecting Consumers Through Proper Forbearance Procedures Act, to correct what I perceive as a defect, a serious defect, in section 10 of the Communications Act of 1934. And I will be inviting your comments, gentlemen and ladies, on that portion of your jurisdiction. And I am concerned that unwise actions are being cloaked in inaction down at the Commission.

Second, pertaining to special access, I am interested to hear what progress, if any, FCC has made in collecting adequate data to determine the state of competition for high capacity data services.

Third, I will enjoy a candid discussion with our witnesses, I hope, about the rule pending before the Commission addressing interference between Wireless Communications Services, WCS, and Satellite Digital Audio Radio Services, SDARS. As my time is limited, I may not be able to address all these questions properly, and so with the permission of the chair I will submit questions for the record. I also will be requesting that members of the Commission respond to questions with a yes or no answer in the interest of time.

So members of the Commission, Mr. Chairman, welcome to the committee this morning. I think we will have an interesting and useful discussion today, and I thank you for your presence. Thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Dingell.

The gentleman from Michigan, Mr. Rogers, is recognized for 2 minutes.

OPENING STATEMENT OF HON. MIKE ROGERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. ROGERS. Thank you, Mr. Chairman. Mr. Chairman and Commissioners, thanks for being here today, and I look forward to getting to know the newer commissioners. Welcome.

Mr. Markey challenged you to dream big. I just hope you are not dreaming big of government intrusion, and I hope that you look at each issue with a notion to encourage investment. And there are issues certainly that we are concerned about, the fairness doctrine,

broadband. I mean, there is a way that we can do this to encourage private investment like we have never seen before, and it is in your hands to do that. And I hope that is the call that you will take, and not get into the temptation for net neutrality. There has been some disturbing comments from—public comments about the FCC regulating broadcast and print media. I hope that you will resist the urge to go beyond what is a standard decorum of government involvement in the media. That is very, very concerning to me and I know many on this committee, and we will be watching awfully closely to make sure that the FCC provides a level of certainty in things like special access and a broadband plan that allows the private sector to invest. And with that certainty—and the quicker the better. With that certainty, we will have I think a very competitive broadband plan for the United States as well as a free and open media that we I think all have grown to understand and respect.

And so with that I have a statement, Mr. Chairman, for the record, and I look forward to having the opportunity to sit down individually with each of you all. And Godspeed on what I think is going to be a very exciting time through this Commission. And I yield back.

[The prepared statement of Mr. Rogers follows:]

Mike Rogers (MI) Opening Statement on FCC Oversight Hearing
9/17/09

Thank you Mr. Chairman,

I appreciate you holding this important hearing and I would like to thank Chairman Genachowski and Commissioners McDowell, Clyburn, Copps and Attwell for their testimony today. I am looking forward to working with all of you.

I understand that the issue taking up the most of the FCC's time is the national broadband plan. In doing this the FCC has an enormous responsibility to shape how American's work and communicate for years to come. I am sure that you each take this responsibility seriously, and I hope that you will each be careful to remember that what you do will have far reaching, and long-lasting consequences.

In my home state of Michigan we have seen what happens when investments go bad, and what happens when no new investments follow. Today our economy is in turmoil, and our unemployment rate is above 15%. The clear lesson here is that investments create jobs, but that only sustainable investments create lasting jobs.

This same lesson applies to the FCC's Broadband Policy. If the FCC creates a regulatory climate that encourages investment, companies will make investments and hire additional workers. If the agency adopts policies that limit the value of investments, companies will put their money elsewhere and we will lose an opportunity for job creation. The FCC needs to focus on ways it can create a climate that encourages investment to put Americans back to work.

This same principal applies beyond Broadband. The FCC should also avoid the temptation to regulate broadcast and print journalism. Some at the FCC have discussed the need to enhance localism, diversity and competition through FCC action. Some argue that deregulation is the cause of newspapers shutting down, beat reporters being laid off, and newspapers shrinking before our eyes only to be replaced by Cable news sensationalism.

I agree that localism, diversity, and competition are the cornerstones of a healthy news industry, and I believe government has a role to play here. That is why I opposed efforts by then Commissioner Powell to allow excessive media consolidations in local markets. But I do not believe that government regulation and

permanent subsidies are the only answer. Calls to subsidize newspapers and fund public television to a level where they can compete with private companies will not make the news business healthier; it will only leave it on life support, and dependent on the federal government for every decision.

The FCC has a long, and troubled history here already. The lesson we all should have learned by now is that increased government involvement means:

- Less, not more, diverse view points
- Government editing news content
- Extra costs on private broadcasters and the Commission

Let me put this a different way, anyone who believes that the FCC should take on a task as enormous as managing our nation's newspapers needs to explain to me how that argument squares with the fact that the FCC is STILL investigating what happened during a Super Bowl half-time show four years ago.

The promotion of discourse and information in America should be left to the free market of ideas and the decisions people make will

be left to the individual without influence from the State on how they come down on a candidate or issue facing their family.

I would hope that the FCC recognizes this and focus their attention on other issues.

Lastly, I would like to comment quickly on special access. The FCC should reach a conclusion and put to rest the discussion regarding point to point lines utilized for the transmission of voice or data by incumbent local exchange carriers. If more information is needed, work to obtain the necessary information, otherwise I would urge the commission to make a decision on whether or not further action to regulate special access lines is necessary.

Thank you Mr. Chairman

Mr. BOUCHER. Thank you very much, Mr. Rogers. The gentlelady from California, Ms. Matsui, is recognized for 2 minutes.

OPENING STATEMENT OF HON. DORIS O. MATSUI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. MATSUI. Thank you, Mr. Chairman. Thank you for calling today's hearing. I would also like to thank Chairman Genachowski and the Commissioners for being with us this morning.

This is a new Commission with some new members, the new chairman and Commissioners Clyburn and Baker, and I congratulate you on your recent confirmations and I look forward to working with all of you with the challenges facing us in this day and age.

It has been widely noted that over the last several years the FCC may not have been as focused on the issues that are important to consumers and the marketplace in general. Whatever the opinion, I believe that there is a need for reform, creativity, and thoughtfulness moving forward to ensure fairness and competition in the marketplace.

The FCC has a central role to play in moving our economy forward and creating jobs by expanding broadband access across the country. To help close the digital divide for millions of hard-working families we must also address the affordability of broadband services as more households have greater access to the Internet. That is why I will soon be introducing legislation to expand the universal service funds lifeline assistance program for universal broadband adoption, to help more lower-income Americans living in urban and rural areas in subscribing to affordable broadband services.

I am also particularly interested to hear how the national broadband plan will help, and this includes households, schools, libraries, health facilities, among others, in urban underserved communities achieve greater access to broadband services. I am also interested in hearing how the Commission plans to address public safety issues so that agencies, local law enforcement, and households better communicate during emergencies.

And on the issue of special access, the Commission should soon update the data needed to evaluate the level of competition in the marketplace. Spectrum availability will be key to increased competition, including public safety and to encourage new and innovative services. I am looking forward to working with my colleagues and the Commission on all of these important issues moving forward. And I thank the chairman for holding this important hearing today, and I yield back the balance of my time.

Mr. BOUCHER. Thank you very much, Ms. Matsui. The gentleman from Arizona, Mr. Shadegg, is recognized for 2 minutes.

OPENING STATEMENT OF HON. JOHN B. SHADEGG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. SHADEGG. Thank you, Mr. Chairman. And thank you for holding this hearing. I have always found the hearings you held in the past in the Energy Subcommittee to be informative and I expect nothing less here today. I want to welcome all of our witnesses

and express my appreciation for their testimony here, am anxious to hear it; therefore, I will keep my own remarks relatively brief.

The FCC has played and continues to play a vitally important role as our technology and capabilities have advanced. I look forward to learning more about the priorities of the agency and how we can work together. My particular emphasis, however, is on ensuring that the market is as competitive as humanly possible. Quite frankly, I think there is always a danger of overregulation in these areas, and that consumers benefit by regulation which sets the level of control at an ability to ensure that there is real competition, because I believe real competition benefits the consumers. And that is, after all, who I think I am here with a duty to represent.

I look forward to your discussion of each of the issues, but in particular to the issue of special access and the special access proceeding. It seems to me that that proceeding has drug on too long, that we need to get the information and get the decisions made, and we need to make sure that those decisions are made in a way that we benefit consumers so that they can have the most choice and the most options. I think it is critical that action on that proceeding occur as quickly as possible.

I join my friend, Mr. Shimkus, in noting that my staff didn't talk to me about the fairness doctrine; but since it is being discussed by those who would like to see a new fairness doctrine, I am happy to make it clear that I think that is the prerogative of the Congress, and I would not be happy to see any administrative interference in that area.

I hope this is the first of many hearings between our committee and you all on how we can improve our communication system in the Nation and make it as efficient as humanly possible.

And for my friend, who must have left, Mr. Markey, I would suggest that perhaps for telephone chargers we need a public option so that people can go somewhere and buy from the government a single charger that will charge all of their telephones.

With that, Mr. Chairman, I yield back the balance of my time and thank you for this hearing.

Mr. BOUCHER. Thank you very much, Mr. Shadegg. The gentleman from Vermont, Mr. Welch, is recognized for 2 minutes.

Mr. WELCH. Thank you very much. You know, I am thinking about what Mr. Stearns said. This committee shares a concern on a bipartisan basis to try to move the economy ahead, and telecommunications and all of the work that the Commission is doing is an oasis of progress, actually. So it is incredibly important for each and every one of us in our districts that we have the best possible telecommunications policy. I welcome the new members who have been recently appointed to the Commission, and I introduced myself as a new member of the committee. And what is tremendous is, I think, we have got terrific people on this committee who share your common goal to work together, because if we are going to build a national economy and strengthen it, we are going to have to have absolutely the best telecommunications policy in the world. So I wish you good luck, and I will enjoy working with you for the betterment of the economy here in the country. Thank you.

Mr. BOUCHER. Thank you, Mr. Welch. The gentleman from Oregon, Mr. Walden, is recognized for 2 minutes.

Mr. WALDEN. Thank you, Mr. Chairman. I am going to waive my opening statement in lieu of extra time. I do want to welcome the commissioners.

Mr. BOUCHER. Thank you very much, Mr. Walden. The gentleman from Nebraska, Mr. Terry.

Mr. TERRY. Welcome. Waive.

Mr. BOUCHER. Thank you, Mr. Terry. The most concise statement made so far. The gentlelady from Florida, Ms. Castor, is recognized for 2 minutes.

OPENING STATEMENT OF HON. KATHY CASTOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Ms. CASTOR. Well, thank you very much, Chairman Boucher. And welcome to Chairman Genachowski and all three members of the FCC. I look forward to your testimony today.

The technological innovation of just the past few years has been truly remarkable. And even last year's Presidential campaign made unprecedented use of social networks, distributed phone banking, and an unmatched grasp of limitless possibilities of information technology. And it is my sincere hope and belief that the coming years will truly foster American ingenuity and expand America's leadership in information technology. And over the past couple of months we have had an opportunity already to see how this new Commission is working since your confirmation, Chairman Genachowski. You have already begun aggressively preparing to complete the national broadband plan that Congress has asked for, and I have been encouraged by the speed with which you have acted to engage stakeholders in public hearings. And I understand later today the FCC is holding a public hearing on spectrum. I co-authored the Radio Spectrum Inventory Act that was introduced by Chairman Boucher and Ranking Member Stearns this summer, so I applaud you for that.

The FCC has a very full plate with issues like the spectrum and the broadband plan, the DBLOCK, and your work on wireless competition and transparency for consumers all require very serious decisions to be made, and I commend the Commission for its work so far. As you settle into your jobs, we are all intently interested in your plans and outlook. So I look forward to your testimony. Thank you very much.

Mr. BOUCHER. Thank you, Ms. Castor. The gentlelady from California, Ms. Eshoo, is recognized for 2 minutes.

OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. ESHOO. Thank you, Mr. Chairman. Welcome. The full FCC. This is great. I am very excited.

Chairman Genachowski, welcome. We are very proud that you are going to be leading the Commission.

To the two Commissioners that are the mainstays from the previous Commission, we thank you and salute you.

And certainly to Commissioner Copps, I think that you have just been a force of nature in terms of what you have done and what you went out all over the country to speak to the public interest, and for your magnificent work as the acting director. Thank you to you. We are all grateful to you and very, very proud of you.

Commissioner McDowell, it is always a pleasure and a privilege to work with you.

And to the two new commissioners, two women on the Commission, how proud we are of you. And what you bring to the Commission is nothing short of extraordinary.

I think, putting all of that together, we have the opportunity to have a Commission that really is going to be a 21st century Commission, and we need to seize the opportunities and really shape our collective destiny when it comes to telecommunications, and there are so many opportunities to do that. So we all want to work with you in order to accomplish that.

I think that the FCC needs to be able to anticipate change, understand and identify the changes that are going to define us as a country. We need to complete rulemakings in a timely manner that keep abreast of industry dynamics. I think the FCC needs the structure and the financing to accomplish these goals. And you need to tell us how you think and what you need in order to make this happen.

I think that you are all aware of what my guiding principles are behind my concerns about Commission policies. I want to see a competitive environment that encourages innovation and business development, not a world where big fish eat little fish. I am tired of that, most frankly, and I don't think it has gotten us very far. I want to know how you plan to nurture a healthy competitive environment. I think that you know that Congressman Markey and myself have introduced net neutrality legislation that will bring about a free and unfettered access to the Internet. A free net might as well not be a net at all if people can't receive broadband. I think it is as simple as that. So I actively support modern broadband standards that will guarantee equal access for this really highly essential resource for everyone in our country. And we need high speeds that rank with worldwide standards. We shouldn't be starting with the slowest and then working our way up. It will be the 22nd century, and there will be a longer list of countries that are ahead of us.

So welcome to the new commissioners. Thank you to the two that have really held down the fort. And to Chairman Genachowski, to each one of you, I genuinely look forward to working with you to accomplish what needs to be accomplished for our country. Thank you.

Mr. BOUCHER. Thank you very much, Ms. Eshoo. The gentleman from North Carolina, Mr. Butterfield, is recognized for 2 minutes.

OPENING STATEMENT OF HON. G.K. BUTTERFIELD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. BUTTERFIELD. Thank you very much, Mr. Chairman. I too would like to thank all five of the commissioners for coming forward today to have this conversation with us. I look forward to

working with each one of you. Today, I am looking forward to hearing about the progress of the national broadband plan that Congress required as part of the Recovery Act. It is my hope that the plan will be sufficient to ensure that areas with little or no access to the crucial service be given priority.

Many of the communities that I represent are without very basic access to broadband and are decades behind better connected areas of our country. The global economy demands access to broadband, and I stand ready to assist each one of you in expanding broadband access to underserved and unserved areas. We had a great debate in this committee about the definition of those two terms, and so we have delegated it to you and hopefully we will get a commonsense approach to this issue.

I also have a keen interest in the DTV transition. The transition has been largely successful and has freed up valuable bandwidth that will be used by first responders to better communicate with one another. However, many of my constituents in North Carolina have been adversely affected by the transition. They are unable to access very basic television programming using an over-the-air signal. Prior to the transition date, I wrote to the Commission to make them aware of the potential for a complete loss of service to certain households that receive their television signals over the air, but unfortunately nothing was done to mitigate the signal loss. The affected households require new high-powered antenna to receive the digital signal. For many families in my district, a new antenna costing several hundred dollars was not a viable option.

On June 11, I introduced the DTV Transition Assistance Act. The bill would utilize remaining money from the converter box coupon program to establish a television antenna coupon program to be used by those households that lost their signals due to the transition.

There are many other issues that I hope to discuss with the Commissioners as time goes on, including net neutrality and the other issues that we have heard mentioned today. Again, thank you for coming. I look forward to coming with you. I yield back.

Mr. BOUCHER. Thank you.

The gentleman from Illinois, Mr. Rush, is recognized for 2 minutes.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. Thank you Mr. Chairman. In biblical scripture, there is a phrase that says that weeping we may endure for a night, but joy comes in the morning. And as I look out at the many FCC commissioners, my heart is jumping for joy because we have endured 4 years of the midnight, or 8 years of the midnight, and now you are in a position to enjoy it as a new day and a dawning of the new era at the FCC. And I certainly want to commend you, each and every one of you. I think that you are very capable of leading this charge, and my friend, Commissioner Copps, I know that you feel vindicated in that you have been like a lone soldier there at the FCC fighting for those issues that are a vital concern to the American people.

Broadband is a key factor when one attempts to maintain or improve one's condition of lifestyle today. Broadband, as you know, is fundamental to information gathering and sharing with American people. Its economic importance should be obvious. It literally is the difference maker in the future of many of the families in our Nation. And that is why I consider your broadband plan, the directors at this Congress has given FCC, I consider that just second only to American's pursuits of a national health plan in terms of the impact on the American people.

I want to also just highlight one particular area that I am vitally concerned with, and that is the diversity of media ownership. Commissioner Copps, you and I have had discussions on that, and I think that is the—that would be the acid test for definition that we do indeed have a new day when we can address the issue of diversity of ownership among the media.

And at some point in time if we have not in this discussion, I want to address the issue of the Verizon-AT&T debacle, as I would term that, that really squandered an opportunity where there could be the diverse ownership, particularly as it relates to minorities in that particular sales. So that would be the test decision or the test gauge that I would look at in determining how the FCC squandered an opportunity to move this Nation forward and to have a fairness in terms media ownership.

Mr. BOUCHER. The gentleman from Ohio, Mr. Space, is recognized for 2 minutes.

OPENING STATEMENT OF HON. ZACHARY T. SPACE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. SPACE. I very much appreciate the time of our witnesses, the distinguished chairman, and commissioners of the FCC. Thank you for joining us.

The topics of today's hearing are many, but I wish to focus on the commission's work on the National Broadband Plan.

As we all know, the American Recovery and Reinvestment Act states that the FCC shall develop plans to make sure all Americans have access to broadband. That is something that I care deeply about as a representative of an area of rural Appalachian Ohio, in which many thousands of my constituents lack access to both broadband and the tremendous benefits that can be derived from it, be they of an economic nature or quality of life nature such as health care and educational opportunities that we are missing out on it now because we don't have anything close to universal access to broadband.

Last Congress, I introduced the Connect the Nation Act to provide grants to public/private partnerships selected by States to work on deploying broadband technology. Early this year, I pushed House leadership to include funds for broadband in the Recovery Act. In the spring, I worked with countless stakeholders in and around my district to develop an ambitious connecting Appalachian plan to provide broadband access to 34 counties in Ohio. Then following a release on GAO report on actions undertaken by the Federal Government to encourage broadband employment, I joined Chairman Waxman and Chairman Boucher and then-acting Chairman Copps to highlight the areas of interest, including the findings

regarding the remaining gaps in broadband coverage in rural areas.

I say all of this not to highlight my own personal accomplishments, but to point out that Ohio 18 is the face of the remaining need in this country, and we are also an example of a way forward. The decent hardworking men and women of rural Ohio cannot wait any longer for resolution of what Chairman Genachowski calls our generation's major infrastructure challenge and access to what Commissioner Copps describes as our country's greatest enabler.

Commissioners, I challenge you to implement a national broadband plan that serves those with the greatest needs, and I stand ready to work with you to accomplish this. In Ohio, we are ready to work to get this done.

Mr. BOUCHER. The gentleman from Washington State, Mr. Inslee is recognized for 2 minutes.

Mr. INSLEE. Thank you. I just look forward to this discussion. I am really impressed with some of the things the Commission is doing and look forward to discussion about our interrelated issues of wide spaces and unlicensed spectrum and how we moved the action process forward. I think we have more to do. We've got some progress but we have been waiting 5 years to complete our wide spaces issue, and I look forward to your comments on how we can move forward on these issues.

Mr. BOUCHER. The gentleman from New York, Mr. Weiner is recognized

Mr. WEINER. I, too, want to welcome the commissioners. I think we are all pulling for you. I know that we've gone through a period on the commission that was perhaps more contentious than it needed to be, and I think that having spoken to just about all of you I see that we all want to get past those things.

I want to particularly welcome the new chairman who I think comes to the job with perhaps a collection of experiences and a background that makes him more equipped than perhaps any other chairs, someone who is innovative in the private sector, someone who has worked here on Capitol Hill with a close relationship with the President and someone who had his name mispronounced seven times in the Senate confirmation hearings. I want to thank the chairman for his service, and I look forward to tackling some of the issues that this subcommittee faces, but welcome to you all.

Mr. BOUCHER. The gentleman from Pennsylvania, Mr. Doyle, is recognized for 2 minutes.

OPENING STATEMENT OF HON. MICHAEL F. DOYLE, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA

Mr. DOYLE. Thank you, Mr. Chairman. Good morning and welcome to the Commission. First, let me also thank Commissioner Copps for his outstanding service as interim chairman of the Commission and someone that I've certainly been pleased with to work with over the years.

And I also want to commend Commissioner Baker for her work at NCIA and to our new commissioner, welcome. We are happy to see you on board.

I want to associate myself with comments from Chairman Waxman and Boucher and former Chairman Markey on the critical importance on broadband and their use on wireless competition.

I heard Mr. Markey's story about cell phone chargers and you know the EU brought together all of the device makers and regulators and worked with the industry to solve this consumer complaint. They settled on a micro USB standard. I would hope that American carriers and device makers would follow that policy, and we don't need to wait for the FCC to force some action to address this consumer complaint.

I want to tell you I was delighted when the FCC came to Pittsburgh in 2007 to discuss and learn more about the future of broadband. I think we all learn more when we leave Washington, D.C. and get out in the field and talk to real people. And Chairman Genachowski, I would like to encourage your staff and those working on the broadband plan to review the record of the Pittsburgh field hearing. Several witnesses who gave real-world experience at broadband adoption in low-income urban communities and how innovators are limited from using SMX text messaging to reach young people, and how people get left further behind when they are not connected to a critical network like the Internet.

I've also noted that the FCC has hired a lot of people from inside and outside the Beltway. They've picked a lot of folks with practical real-word experience, they've been able to attract many people with important background in the private and public sector. I think that is a good thing. A number of them have testified before our subcommittee on communications and technology issues. I don't always agree with everything that they've testified to us, but I respect their intelligence, I admire their commitment in seeking facts and data that support their views, and I recognize that they are serving in advisory positions.

When it comes down to it, when decisions are made, the people who matter are the people who are sitting in front of us today, the chairman and the commissioners. That is who we should be talking to.

And I look forward, Mr. Chairman, during the question-and-answer period, to have some questions for our new commissioner.

Mr. BOUCHER. You have now heard from us, and we look forward to hearing from you.

And we are very fortunate to have before us this morning—and thank you for your attendance—the five members of the Federal Communications Commission.

Without objections, your prepared written statements will be made a part of our record. We would welcome your oral summaries and would ask that you keep those within a reasonable time frame so that we have time remaining to pose questions to you.

STATEMENTS OF JULIUS GENACHOWSKI, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; MICHAEL COPPS, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; ROBERT McDOWELL, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; MIGNON CLYBURN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; AND MEREDITH ATTWELL BAKER, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. BOUCHER. And we will be pleased to begin this morning welcoming the new chairman of the Federal Communications Commission, Mr. Julius Genachowski, and we would be very pleased to have your statement at this time.

STATEMENT OF JULIUS GENACHOWSKI

Mr. GENACHOWSKI. Thank you, Mr. Chairman, Ranking Member Stearns, members of the subcommittee. It's a particular pleasure for me to be here in the House of Representatives where 25 years ago, I started my career when a young congressman took a chance on someone fresh out of college. It is a privilege now to be chairing the Commission and to work with such an exceptional team of commissioners. I have the highest regard for each of my colleagues, Commissioner Copps, Commissioner McDowell, Commissioner Clyburn and Commissioner Baker.

I believe that some of the members have recognized the public owes a debt of gratitude to Commissioner Copps, then-acting chairman and Commissioner McDowell for their excellent work for the DTV transition.

While as we've heard issues remain, more work needs to be done. There is no question that the FCC's role to date has been a success. Both Commissioner Clyburn and Commissioner Baker bring first-rate experience to the FCC and track records of real accomplishment. It is wonderful to have a full team up and running at the FCC. I am confident that together we can make the FCC an agency that works for all Americans.

While I arrived at the FCC only a couple of months ago, I tried to hit the ground running seeking to revitalize and retool the agency. I've begun by articulating strategic principles that include fostering investment and innovation, promoting competition, protecting and empowering consumers children and families. These principles require work in a number of important areas: Developing a national broadband strategy; unleashing spectrums so the U.S. can lead the world in mobile; helping deliver state of the art public safety communications networks for our country; promoting a vibrant media landscape in the 21st century that serves the public; and reforming the FCC itself so that it can become a model for excellence in government.

I have detailed in my written remarks on these topics. Let me summarize them here. First, the national broadband plan. We have been working hard on broadband, which I believe is our generation's major infrastructure challenge. Robust, open, affordable broadband can be our platform for sustainable economic growth and opportunity for all Americans. In April, under then-acting

Chairman Copps leadership, the Commission began the efforts to develop the national broadband plan mandated by Congress.

In July as part of my first Commission meeting, we heard a work plan for meeting our February deadline, which is coming up very quickly. In developing the national broadband plan, the FCC is conducting a data driven process with unparalleled opportunity for public participation through public workshops, requests for comments on concrete questions, the use of new media and technology, including a Web site, broadband.gov, a new blog, Blogband, Idea Scale and other platforms for public participation.

We are at the very early stages of this work but thousands of Americans have already connected to the FCC, learning about the Commission's work and offering real and substantive comments which we are incorporating into the record. We are using these and other tools to reach out beyond the Beltway to all Americans, individuals and businesses, because all Americans are stakeholders in the broadband plan.

Second, the Commission, in August approved issues of notices of inquiry that addressed the key topics of innovation, investment, competition and consumers.

Our wireless innovation and investment notice of inquiry focuses on the Commission's particular responsibility for managing spectrum, a unique and scarce national resource. It recognizes the vital importance of innovators and entrepreneurs to the work of the FCC and seeks input and ideas for how the FCC can best maximize investment and innovation in the mobile industry. It asks is there anything the Commission should do that it is not doing to promote investment and innovation? Is there anything that the Commission is doing that it shouldn't do where that would better promote innovation and investment?

The goal of the wireless competition of inquiry, which we also approved, is to build a solid analytic foundation for predictable fact-based competition policy in the wireless sector. And the goal of the consumer information and disclosure NOI that we approved last month is to allow the Commission to assess whether consumers have adequate information to make informed buying decisions.

These notices reflect the importance of mobile. There's been strong innovation in the wireless sector. That is the good news. I believe the U.S. has the opportunity to lead the world in mobile. I believe we also have some real challenges in this space including those mentioned by some members of the committee were facing a real demand crunch when it comes to spectrum.

I would like to next take this opportunity to reconfirm my strong commitment to public safety. Public safety interoperability is a vitally important issue for the Commission and the Commission staff is actively evaluating proposals addressing mission critical voice communications and broadband capability for our Nation's first responders.

My first day on the job, I requested a top-to-bottom review on the Agency's state of readiness for major public emergencies. Admiral Jamie Barnett, our new leader of our Public Safety and Homeland Security bureau, led that review. We released the results of the review on September 8th and they are summarized in my written statement. The bottom line, the review confirms that the FCC

stands ready to respond to communication emergencies, but the report also reminds us that the agency must continuously strive to maximize its readiness to ensure that it is prepared to meet its vital mission in the digital age and to work toward helping our country's first responders deploy 21st century technologies in support of their operational requirements.

Along with starting work in our strategic priorities, we are also working toward the FCC becoming a model for excellence in government. One of my first acts was to appoint a universally respected senior staffer, a special counsel for FCC reform. She is working alongside our new managing director, who has 15 years of very relevant experience in the private sector, our new general counsel, and our director of strategic planning on FCC reform. They are looking at all ideas to improve the operations and processes of the FCC to achieve the goal that I have laid out: having the FCC become a model for excellence in government, a model information agency for the communications age.

Our form agenda is extensive. Highlights include a careful review of FCC properties and examination of the Commission's data collections, analysis, and dissemination, licensing comment and complaint filing systems. Modernizing our information infrastructure, and our financial operations.

Now, I will say that I have learned a few things during my brief tenure so far as chairman. For one, repeating relentlessly is sometimes necessary. Many have asked, and I state again, I do not support reinstatement of the fairness doctrine either through the front door or the back door. I believe deeply in the first amendment, and oppose any effort to censor speech based on the political viewpoint or opinion.

Now finally, while I have not had the opportunity to meet individually with all of the members of the committee yet, I hope to do so. I have had the privilege to meet with many of you. Those conversations and those meetings have been constructive. I was happy to hear Mr. Shimkus mention our action on kids.gov; from Congressman Terry, we learned about Blue Valley Meats, a terrific business in Nebraska that developed a—that used broadband to better distribute to grow its business. It is a great example of small business using broadband to grow, create jobs all over the country. And we reached out to Blue Valley Meats in connection with our broadband process.

Congressman Walden, when I met with him suggested that we do something that I thought was a great idea, that we get our media bureau staff and sit down with broadcast engineers and see what kind of ideas we can generate to better improve the processes of the FCC. That has happened, and it is resulting in some concrete actions.

I spent time with Congresswoman Eshoo at a hospital in Palo Alto where we saw some of what broadband can offer, an incredible use of technology, imaging technology, broadband around remote diagnostics that allow for diagnosing of newborns with a disease that causes blindness in a way that when you see, you think this needs to be available to all Americans. It is available in Palo Alto; it should be available everywhere. Those are the kinds of things we are thinking about in connection with our broadband plan.

Let me stop there. These are but a few of the examples. I look forward to having more conversations with each of you in the months ahead and concrete actionable ideas that we can implement in the FCC.

You can be assured that my goal for the FCC is to be a resource to this committee, to be open, fair, responsive; and as I said, to have the FCC be a model for excellence in government.

Thank you for the opportunity to appear before you today. I look forward to answering your questions.

Mr. BOUCHER. Thank you very much.

[The prepared statement of Mr. Genachowski follows:]

Written Statement of
Julius Genachowski
Chairman
Federal Communications Commission
Before the
Committee on Energy and Commerce,
Subcommittee on Communications, Technology and the Internet
U.S. House of Representatives
September 17, 2009

Mr. Chairman, Ranking Member Stearns and members of the Subcommittee, it is a pleasure to appear before you today to discuss the important issues facing the Federal Communications Commission. First, it is a privilege to Chair the Commission and to work with such an exceptional team of Commissioners. I hold the highest regard and esteem for Commissioners Copps, McDowell, Clyburn, and Baker and have every confidence that together we can make the FCC work for all Americans.

While I arrived at the FCC only a couple of months ago, I have tried to hit the ground running, seeking to revitalize and retool the agency.

First, I have begun articulating strategic priorities. I've spoken to my colleagues on the Commission and to agency staff, in groups large and small, about these priorities. They include fostering investment and innovation, promoting competition, and protecting and empowering consumers, children, and families. We have started work on all of these priorities.

National Broadband Plan

With respect to broadband, the Commission announced at its July meeting an intensive effort to develop a detailed broadband plan over the next seven months. I am especially grateful to Commissioners Copps and McDowell for their dedicated work on broadband before my arrival and look forward to working with them – and Commissioners Clyburn and Baker – on this important effort.

I believe that broadband is our generation's major infrastructure challenge. Earlier generations faced, and rose to, similar challenges, with railroads, highways, telephones, and electricity – networks that have connected Americans, served as a platform for commerce, and improved the quality of life for all Americans. The FCC's plan should ensure that our country has a broadband infrastructure appropriate to the challenges and opportunities of the 21st century.

In developing the broadband plan, the FCC is conducting a data-driven process with unparalleled opportunities for public participation. On August 6 we began an ongoing series of public workshops on a broad range of issues relating to broadband, holding over twenty workshops to date. We have launched a website – Broadband.Gov – that has helped open up the public dialogue around the broadband plan to more citizens and new

voices from around the country, including rural and inner cities, small businesses, and state and local governments. Broadband.Gov provides schedules and information about our broadband initiative and is a place for all stakeholders to give us input and comments on our progress to date.

Our Broadband team has also brought other new and innovative methods to fostering a public dialogue to the FCC. In addition to our first ever public workshops, we have helped Americans outside of Washington participate in the workshops using multimedia tools such as interactive webcasting and live panelist testimony via live tele-presence. To date, we have had over 1,100 in room attendees and over 4,600 online attendees. Other new media uses designed to increase public participation include:

- **"Blogband"** – The official blog of the national broadband plan and the FCC's first ever blog. This is where all stakeholders can hear from experts at the FCC and provide comments that will be inserted into the public record.
- **Ideascale** – The FCC recently launched this crowd-sourcing platform. Crowd-sourcing allows participants to discuss, evaluate and rank ideas, and will be especially useful in reaching stakeholders outside of Washington, DC.
- **FCC.gov/Connect** – The Commission is connecting to other forms of social media. At FCC.gov/Connect, stakeholders can find dozens of platforms to learn about the FCC and participate in FCC processes.

We are at the very early stages of this work but thousands of citizens have already connected to the FCC through the use of technology. We are using these and other tools to reach out to all Americans because all Americans are stakeholders in our work. Broadband is an agency-wide effort, involving virtually every Bureau and Office.

Commission Inquiries – Innovation, Investment, Competition and Consumers

Last month, at the August agenda meeting, the FCC addressed the key topics of innovation, investment, competition, and consumers. These values lie at the core of the FCC's mission; they are essential to ensuring that communications in the 21st century will serve as an enduring engine of economic growth for our nation and improve the lives of all Americans.

The Wireless Innovation and Investment "Notice of Inquiry" focuses on the Commission's particular responsibility for managing spectrum—a unique and scarce national resource. It recognizes the vital importance of innovators and entrepreneurs to the work of the Commission. Specifically, it requests inputs and ideas for how the FCC can best maximize investment and innovation in the mobile industry. The inquiry seeks to ascertain what actions the Commission currently undertakes that perhaps it should cease, and what new steps can be taken to fulfill strategic objectives of fostering investment and innovation for our country.

The goal of the Wireless Competition Notice of Inquiry is to build a solid, analytic foundation for predictable, fact-based competition policy in the wireless sector. This process will continue with the other competition reports the agency is responsible for preparing.

Finally, the goal of the Consumer Information and Disclosure Notice of Inquiry is to allow the Commission to assess whether consumers have adequate information to make informed buying decisions. Access to information in readily understandable formats is essential to ensuring that the competitive marketplace works and that consumers can choose communications services that will meet their needs and not lead to surprise charges.

Public Safety

Critical steps also have been taken to further another key FCC priority – public safety. This is an issue that I consider to be a top priority.

This month marks the 8th anniversary of the horrific attacks of 9/11, which dramatically changed the way we think about homeland security. Like so many others, I was in Manhattan that day, not far from the World Trade Center, and family members were even closer to Ground Zero. We also just marked the anniversary of Hurricanes Katrina and Rita and recognize that still more work needs to be done.

In fact, one of my first actions as FCC Chairman was to direct the Commission's Public Safety and Homeland Security Bureau to conduct a 30-day, top-to-bottom review of the agency's state of readiness for major public emergencies. I am fortunate that Rear Admiral (ret.) Jamie Barnett, our new Chief of the Public Safety and Homeland Security Bureau, led that review. Admiral Barnett brings to the FCC 32 years of distinguished leadership and service in the United States Navy, and he thoroughly understands the importance of collaboration, preparation, and foresight in homeland security and emergency response.

On September 8, I released the results of the 30-day review, and I am pleased to share some of its findings with this Committee. The FCC's main mission is to ensure continuous operations and reconstitution of critical communications systems and services during and following emergencies. To accomplish that mission, I want to outline briefly four key areas for improvement, as noted in the report.

The report emphasizes the importance of the FCC's outreach efforts in maintaining strong partnerships with federal, state, tribal, and local governments, the public safety community, and communications service providers. By working closely with our partners, the FCC can identify, in advance, the communications needs of law enforcement agencies, fire departments, and hospitals so that when an emergency arises, key lines of communication will remain open or be quickly restored through a variety of means.

The report recommends measures aimed at ensuring that the FCC can proactively

respond to public safety communications needs, and communicate accurate and timely information to the public, even if the Commission's internal operations are disrupted. These measures will help make sure the American public and first responders can get the emergency alerts that they need, when they need them.

Another key role for the FCC is ensuring the security of the nation's communications networks. To better fulfill that role, the Public Safety Bureau has recommended improvements in our network analysis capabilities.

And, finally, education and training. It is one thing to have an emergency response plan, but it is meaningless if you cannot execute it. We will continue to conduct meaningful training exercises for all FCC employees.

Overall, while confirming that the FCC stands ready to respond to communications emergencies, the report reminds us that the agency must continuously strive to maximize its readiness, to ensure that it is prepared to meet its vital mission in the digital age, and to work toward helping our country's first responders deploy 21st century technologies in support of their operational requirements.

We have set an aggressive schedule to implement the report's recommendations and it is important that the agency has adequate resources to meet the challenges of its critical role in public safety and homeland security. In some cases, this may require investing in additional resources and expertise at the agency.

FCC Reform

Along with starting work on our strategic priorities, we are also working towards the FCC becoming a model for excellence in government. The American people deserve an FCC that efficiently and effectively achieves the goals that Congress has set out for it; encourages and facilitates participation by all stakeholders; and is data-driven in its decision-making. We have made some good strides in the last two months.

One of my first acts as Chairman was to appoint a Special Counsel for FCC reform. My new General Counsel and Managing Director will focus on reform and efficiency as well, performing a thorough review of the FCC's existing processes and making recommendations for improvement. The reform agenda includes:

- A review of our public safety readiness;
- A review of our systems and processes for data collection, analysis and dissemination;
- Improvements in our licensing, comment and complaint filing systems;
- Modernizing our information infrastructure to ensure the agency functions effectively and efficiently;
- Moving our workforce forward by streamlining our operations, greening the agency, and providing leadership development and training;

- Improving our institutional processes by better management of workflow, and reviewing our rules and policies to reduce backlogs; and
- Reviewing our financial operations.

I am far along with a series of meetings with every Bureau and Office at the Commission, in which I have expressed my commitment to listening to employees' ideas for how to improve our work. In addition to holding these in-person discussions, I have launched an internal online forum where employees can submit their ideas for improvement and reform. On the site, employees are involved in hundreds of conversations about how to improve the agency.

I am also committed to soliciting public feedback and to upgrading our website – one of the main ways in which our agency interacts with the public. We will focus on improving navigation, search capabilities, and the accessibility of information on our site. And we will be launching a section of the site – Reboot.Fcc.Gov – where citizens can offer their ideas for FCC reform. Our goal is an inclusive process through which the public can be involved in the work of the Commission. As I mentioned earlier, our process for developing the National Broadband Plan will be the most inclusive in the agency's history.

To ensure that the FCC is data-driven in its decision-making, I have directed the FCC's Office of Strategic Planning and Policy Analysis to conduct a top-to-bottom review of the FCC's systems and processes for data collection, processing, analysis, and dissemination. As the nation's expert agency on communications, the FCC must have access to, and base its decisions on, data that are robust, reliable, and relevant. The review I have ordered will address whether any new data should be collected, whether any existing data reporting requirements should be streamlined or eliminated, and whether existing technological platforms can be modernized to make our use of data more effective and efficient. It is looking at the over 400 major data collections that OMB has approved under the Paperwork Reduction Act.

As an ancillary to our data review, we are also assessing the database and communications infrastructure of the Commission. An initial review strongly suggests that a significant upgrade will be warranted to bring the Commission into the 21st century. My experts tell me our website and database infrastructure is many years out of date. An upgrade will permit the Commission and its staff to function much more efficiently and facilitate public use of the agency's website. Moreover, we will also look at our licensing, comment and complaint filing systems to see whether they can be improved. We have launched an initiative that will combine all the functions of many of our current licensing applications, including the Universal Licensing System, Consolidated Data Base System, Cable Operations and Licensing System, International Bureau Frequency System, Experimental Licensing System, Antenna Structure Registration, Canadian Co-Channel Serial Coordination System, and Commission Registration System into a single consolidated system. The new consolidated system will give the public a consistent interface and will standardize business practices across Bureaus and Offices.

We also plan to update our Electronic Comment Filing System (ECFS), which allows consumers to submit, research, and print comments filed with the agency. The system is 10 years old and in dire need of an upgrade. The improved ECFS is easier to navigate, has greater search capabilities and allows the filing of comments into multiple proceedings with a single submission, and allows filers to learn of new comments matching criteria via RSS feeds, among other enhancements.

Finally, I have assembled an extraordinary team of individuals to help with FCC reform and with the many other challenges before us. My team includes top private-sector talent as well as individuals with many years of experience at the FCC, in other parts of government, and in non-profits. And because interdisciplinary collaboration is crucial to the FCC's success, our staff includes not only lawyers, but also individuals from many other disciplines. It is also increasingly clear that although the Commission has many experts in traditional fields, we are lacking staff in certain key disciplines, including engineers, technologists, and economists. When possible, we have also looked to experts outside the agency to challenge our thinking, beginning with partnerships with leading research institutions at major universities to conduct additional research on broadband issues.

I have also learned a few things during my brief tenure as Chairman. For one, repeating relentlessly is sometimes necessary. I do not support reinstatement of the Fairness Doctrine either through a front door or a back door. I believe deeply in the First Amendment and oppose any effort to censor or impose speech on the basis of political viewpoint or opinion.

Revitalizing and retooling the FCC will be a marathon, not a sprint. But while I cannot promise instant results, I can assure you of my commitment to institutionalizing change and to making the FCC a 21st-century agency for the information age – one that fights for consumers and families, and fosters investment and innovation, through fair, participatory, and data-driven processes.

Thank you for the opportunity to appear before you today. I will be happy to answer any questions that you may have.

Mr. BOUCHER. Commissioner Copps.

STATEMENT OF MICHAEL COPPS

Mr. COPPS. Chairman Boucher, Ranking Member Stearns, members of the subcommittee.

Let me first express my very real gratitude for your incredibly generous statements today and more specifically, for your support and guidance, particularly during those 5 months-plus that I was privileged to serve as the Commission's acting chairman earlier this year. Those were just incredibly busy and eventful months dealing with the first and foremost with the DTV transition, and also launching a truly historic proceeding growing out of the mandate from Congress for the Commission to develop a national broadband plan.

I am pleased that we were able to navigate through this period, and I am incredibly optimistic about the future of our new Commission. Chairman Genachowski brings tremendous intellect, experience and commitment to his job, and he is off to a fine start. In addition, I tremendously value my relationship with my good friend and colleague, Commissioner Rob McDowell, who made a world of difference in the success of our DTV program during those months while I was acting chair—fellow commissioners Mignon Clyburn and Meredith Baker and how on board each are with very valuable and relevant experiences and talents. So I believe we are positioned for major progress.

I also want to thank my friend and former colleague, Jonathan Adelstein, for his tremendous service as commissioner for nearly 7 years. It seems strange not having him sitting here right beside me this morning. I think Commissioner McDowell has termed us the Three Amigos. Hopefully we are already on the way to becoming the five amigos of the Commission. I know Jonathan will serve the public interests superbly of the new administrator of World Utility Service.

My biggest thanks of all go to the FCC team. I have for 8 years admired their skill, their professionalism, and dedication; but seeing it up close as acting chairman, seeing, for example, volunteers leaving their families to go across the country to help other families get ready for the DTV transition or working nights and weekends to get other items ready for consideration gave me a new appreciation for what public service means and what public service is. And giving them the room they need to accomplish their tasks is one of the things that I tried really hard to do as acting chair.

For me, our current involvement in broadband is a dream come true. For 8 years, I advocated everywhere I could for a national broadband strategy to get this essential infrastructure out to all our citizens. I see broadband as our country's great enabler. It is part of the answer to just about every challenge we confront as a Nation: lost jobs, shortfalls in education, energy dependence, environmental degradation, inadequate health care delivery, and the list goes on. This is the 21st century's great infrastructure challenge, comparable to the challenges earlier generations confronted to build enabling infrastructure like turnpikes and roads and

bridges, canals, highways, rural electricity, and then even telephone service.

Now it is broadband's turn to help build renewed prosperity by opening the doors of opportunity for all Americans, no matter who they are, no matter where they live, no matter what the particular circumstances are of their individual lives. Enable broadband, and we enable the citizens of this great country.

Just as sweet music to my years was the designation of the FCC to be the epicenter for the development of this plan. I am pleased that the Commission was able to launch a comprehensive broadband notice of inquiry this past April, and I am greatly encouraged by Chairman Genachowski's commitment to an open and transparent and data-driven broadband process, really unprecedented in the history of the Commission. And that is exactly this kind of outreach and openness that we need in everything we do.

So I hope and I believe that that broadband proceeding will serve as a model for future proceedings in the way we achieve maximum civic engagement with traditional and nontraditional stakeholders alike. That is the way we should do business all the time.

There is much more to be done on top of broadband. While the bulk of the DTV transition is behind us, there is still work to be done. With consumers and stations alike, we are doing that work. The additional time and resources provided by Congress made a world of difference in reducing the number of problems we would otherwise have encountered, and the private sector/public sector cooperation that we were able to develop here showed how productively the sectors can work together, and it is absolutely essential as we look now to develop a broadband plan to build a partnership. That is how we grew this country of ours and built it.

Lastly, I come back to, as I always do, to the country's media environment. Now is the time to pay it serious attention. We have relied, for example, so heavily on our broadcast media for so much of the news we must have for emergency and public safety information, for public affairs programming essential to our civic dialogue, and for programming that supports the health and welfare of our children that reflects the social and cultural diversity that comprises the great tapestry that is the United States of America. We have not been, in my mind, sufficiently attentive to this.

Now, with all of the new digital TV capacity at our disposal, broadcasting's capacity to develop such processing is orders of magnitude larger than it used to be. Stations can now broadcast four or five or even more program streams using the same amount of spectrum they used to transmit just one stream in analogue. What an opportunity for broadcasters whose strength is local to develop programs reflecting local issues, cultures, sports, and all of the rest. Too few of them are taking advantage of the capacity. Times are tough. We all know that. But recovery will come. Broadcasting does need to play to its strengths and its future can be truly bright, and I am convinced that its future is bright.

Our country is also awakening to the realization that there is a crisis in journalism regardless of the means of distribution: broadcast, newspaper, cable, the Internet. News gathering and news dissemination expenses are being cut to the bone. Investigative journalism is too often falling by the wayside, and these constraints are

endangering, I believe, the vibrancy of the civic dialogue on which our democracy depends.

New media is developing, more will come, but traditional media persists. We can't focus on one and neglect the other because we need solutions in both areas now.

Recently the legendary Walter Cronkite died. One of my good fortunes after I came to the Commission was to get to know this good and wise man, and we had numerous discussions about the deepening crisis in journalism and the urgent need to tackle this program. As he once said, America is the most prosperous and powerful nation in perhaps the history of the world. We can certainly afford to sustain a media system of which we can be proud. I look forward to working with the subcommittee on this issue as well.

Thank you again for inviting us here. This is, I think, perhaps the most exciting time of history to be a member of this Commission. I am enthused. And I look forward to your comments and your counsel and your questions. Thank you very much.

Mr. BOUCHER. Thank you very much, Mr. Copps.

[The prepared statement of Mr. Copps follows:]

TESTIMONY OF FCC COMMISSIONER MICHAEL J. COPPS
U.S. HOUSE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY AND THE INTERNET
"OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION"
SEPTEMBER 17, 2009

Good morning Chairman Boucher, Ranking Member Stearns, and Members of the Subcommittee. Let me first express my deep gratitude to you for your support and guidance, particularly during the five months that I was privileged to serve as the Commission's Acting Chairman earlier this year. It was an incredibly busy and eventful time, dealing with some very urgent problems—foremost the DTV Transition—and launching an historic proceeding growing out of the mandate of Congress for the Commission to develop a National Broadband Plan.

I am pleased that we were able to navigate through this period, helping to lay the groundwork for what could be among the most extraordinary actions ever in the FCC's seventy-five year history. I am optimistic. New Chairman Genachowski brings great experience, intellect and commitment to his job. I tremendously value my relationship with my good friend and colleague, Commissioner Rob McDowell, who made a world of difference in the success of our DTV program during those months while I was Acting Chairman. Fellow Commissioners Mignon Clyburn and Meredith Baker are now on-board with obvious experience and talents, so I believe we are poised for progress. I also want to thank my friend and former colleague Jonathan Adelstein for his tremendous service as Commissioner over nearly seven years. I miss him sitting by me here this morning, but I know he will serve the public interest well as the new Administrator of the Rural Utilities Service of the Department of Agriculture.

The Commission is focused now on its most visible activity for this year and next—broadband. It is hard to overstate the importance of this proceeding. Broadband is—or should

be—our country's great enabler. It is part of the answer to just about ***every*** great challenge we confront as a nation—lost jobs, shortfalls in education, energy dependence, environmental degradation, inadequate health care delivery, and the list goes on. It is the Twenty-first century's great infrastructure challenge, comparable to the challenges earlier generations confronted to build enabling infrastructures like turnpikes, roads, bridges, canals, highways, regional and then transcontinental railroads, rural electricity and even basic telephone service. Now it's broadband's turn to help restore economic well-being and open the doors of opportunity for all Americans—no matter who they are, where they live, or the particular circumstances of their individual lives. Enable broadband and we enable the citizens of this great country.

This Committee, Congress and the President have charged the FCC to develop a national broadband plan—something I have been advocating for the eight years I have been at the Commission. I am pleased that the Commission launched a comprehensive broadband Notice of Inquiry this past April. I am greatly encouraged by Chairman Genachowski's commitment to an open, transparent, and data-driven broadband process—that is precisely what we need. And, under Chairman Genachowski's lead, this Commission continues in that direction with the broadband.gov website, the many workshops, and the open docket. Indeed, I hope that our broadband proceeding will serve as a model for future FCC proceedings in the way that we achieve maximum civic engagement with traditional and non-traditional stakeholders alike. The broadband plan should be of, by, and for the American people.

I have great confidence in our FCC team to get this job done. I've long admired the skill and professionalism of our staff, but my experience as Acting Chair only heightened my appreciation of their talents. Take the DTV transition, which was, I believe, the finest team effort I've been part of in my 30-plus years of public service. Thankfully, Congress and the

President gave us the additional time and resources we needed to make a difference. And—together with our partners in the public and private sectors—I think we did. If anyone wants to know what true public service looks like, they need look no further than the hundreds of Commission staffers here in Washington and around the country who devoted themselves to making the transition work for the American people. And if anyone wants to know what a difference public-private sector partnering can make, just look at the cooperation among broadcasters, cable, satellite, equipment manufacturers and distributors, civil right organizations, consumer and advocacy organizations, labor, religious groups, civic and volunteer organizations, AmeriCorps, the fire chiefs and so many agencies of federal, state and local governments who came together to meet an urgent need.

Our DTV work continues—because the transition is not over yet. While the great majority of full-power stations—and their viewers—made it through June 12 without serious lingering problems, as with any transition of this magnitude we still have some issues to work through. Technology changes are hardly ever painless and when they don't get the attention they deserve until the last minute—as too often happened here—some level of disruption is guaranteed. I traveled the country for many months warning there would be disruptions, and there were. But our team—working with affected consumers and the stations serving them—is staying with it until these problems are resolved. I should also note that we still have hundreds of low-power television and translator stations waiting for their DTV transition in the years ahead. We will need to mobilize again, although admittedly on a lesser scale. That's one reason why it is important to learn the lessons of the experience we have just come through. As Acting Chairman, I told our folks we needed to develop a comprehensive "lessons learned" report that will capture what we went through—what went right, what could have gone better, and what we

learned about how to make future transitions and changes as painless as possible for consumers. There is so much to be mined from the DTV experience: setting up and publicizing a national call center; consumer outreach; the close coordination with the Commerce Department and other government agencies from federal to hyper-local; the unique partnerships with groups like AmeriCorps; and the way we turned a cozy little agency on the banks of the Potomac into something of a grass-roots organization in every market in the country. And I am pleased that Chairman Genachowski is committed to just such a report.

We have much to do going forward in addition to DTV and broadband. We need to focus on our media environment. Just about every member of this Committee knows this has been a passion of mine over the years. We rely on our broadcast media for so much of the news we must have, for emergency and public safety information, for public affairs programming essential to our civic dialogue, and for programming that supports the health and welfare of our children and reflects the social and cultural diversity that comprises the great tapestry that is America. We have not been sufficiently attentive to this.

We neglected it, for example, in the DTV transition I have just discussed. There we focused a lot—rightly so—on the technical aspects of the transition, from the build-out of digital broadcasting facilities to getting DTV converter boxes into consumers' homes. But we fell short in one hugely important way, because the potential public interest benefits got a little bit lost in the shuffle. We've put the American people through a lot, and we've devoted a lot of public resources (including spectrum) to bring our TV broadcasting system into the Digital Age, but no one knows, or even has a plan, for how this new spectrum will fulfill its huge potential. Stations can now broadcast four, five or even more program streams using the same amount of spectrum they used to transmit just one stream in analog. What an opportunity for broadcasters—whose

strength is local—to develop programs reflecting local issues, culture, sports and all the rest. But too few of them are taking advantage of their new capacity.

We all know, of course, that broadcast media have encountered significant challenges as a result of the economic downturn, like so many other segments of the economy. But this, too, will pass, and it might pass even faster for them if the right kind of business plans can be joined with the right kind of policy environment to encourage broadcasters to take full advantage of the strengths they have.

Finally, our country is awakening to the realization that there is a crisis in journalism, including certainly broadcast journalism. News gathering and news dissemination expenses are being cut to the bone; investigative journalism is too often falling by the way-side; and these constraints are endangering, I believe, the vibrancy of the civic dialogue on which our democracy depends. Recently, the legendary Walter Cronkite died. One of my good fortunes in serving at the FCC was to get to know this good and wise man, and we had numerous discussions about the deepening crisis in journalism and the urgent need to tackle this problem. We shared a platform at a Columbia University forum on the future of the media one time, and I will always remember his concluding remark. This is what he said: "America is the most prosperous and powerful nation in perhaps the history of the world. We can certainly afford to sustain a media system of which we can be proud." I look forward to working with this Committee on this issue, too.

There is much more for us to do going forward and to talk about today and I look forward to your comments, your counsel and your questions. Thank you again for your oversight and for your continuing support.

Mr. BOUCHER. Mr. McDowell.

STATEMENT OF ROBERT McDOWELL

Mr. MCDOWELL. Thank you, Mr. Chairman and Ranking Member Stearns and members of the committee. It is a privilege to be here before you today.

The FCC is an agency with new energy and new blood, and I am honored to be serving there for another term. I look forward to working with my new colleagues, Julius Genachowski, Mignon Clyburn and Meredith Baker, as well as my veteran amigo, Mike Copps. With these new commissioners and new leadership, we have a perfect opportunity to rebuild the FCC as we address the myriad communications and economic policy challenges facing America.

For some time now I have been calling for reform of the Commission's structures and processes to help spark discussions and progress. I wrote open letters outlining reform ideas to both acting Chairman Copps in January and Chairman Genachowski in July. And one of my letters is part of my written statement in the record.

First and foremost, the FCC should be a more open and collaborative place where all commissioners are included in the idea formulation process early on and not just 21 days before a voting deadline.

Both acting Chairman Copps and Chairman Genachowski have taken significant steps to enhance information flow and improve employee morale, and they should be commended for their efforts. A tremendous amount of FCC work remains to be done, however. I look forward to working with all of the stakeholders on this important endeavor, especially members of this subcommittee and the full committee.

As we move forward, I cannot think of a more important time to be at the FCC. Even though the American economy has been shrinking overall, our communications marketplace is vibrant, evolving, and growing. Consumers have more choices among more communications technologies, services, and providers than ever before. For instance, 157 million Americans watched more than 21 billion online videos during the month of July alone—a figure that is growing at a double-digit rate each month. Consumers are watching those videos on an increasing number of platforms as well, most notably wireless platforms.

Three years ago, the discussion of a wireless-only marketplace was just beginning. Today, nearly one in five American households is wireless only. In fact, I like to point out that my wire line legal adviser, Nick Alexander, his household is wireless only. I think that speaks volumes. And the majority of American consumers also have the choice of five wireless carriers.

At the same time, 23 percent of all businesses are expected to be wireless only by the year 2012. America's wireless broadband market is leading the world by growing more than 400 percent over the past 3 years. Additionally, America has the fastest growing fiber to the home market in the world with an annual growth rate of over 120 percent. Five years ago, less than one percent of American homes had access to fiber; today that figure stands at 13 percent.

Since the year 2000, the number of high-speed lines in America has increased more than 1,900 percent for approximately 6.8 million connections at the end of the year 2000 to almost 133 million lines nearly 9 years later.

To grow that number further, America's businesses will spend up to $80 billion on new broadband infrastructure this year alone. And I know that this is a terrible year to be investing in capital expenditures.

Certainly our communications marketplace is far from perfect and more must be done. As we prepare our congressionally mandated national broadband plan however, we should not just examine our shortcomings, but we should learn from what we have done right as well.

The information and communications technology sector is poised to lead our country out of the recession and into an era of sustained economic prosperity. Higher paying jobs and untold consumer benefits if the government does not adopt policies that inhibit economic freedom and investment.

America's year-over-year private sector investments in broadband dwarf any government broadband efforts throughout the globe. In recent years, the Commission has promised that new broadband technologies would come to fruition as a result of our actions to put into the hands of consumers the power of previously unavailable spectrums, such as the 700 megahertz band. Market players, both large and small, will need even more capital to build out the infrastructure needed to make that promise a reality.

With this fact in mind, whatever policies we adopt should help attract more private sector capital and not deter it. As the broadband plan takes shape, it is my hope that the plan will not take a heavy-handed, top-down command and control industrial approach. Instead, I hope it will be imaginative, pragmatic, flexible and the next step in an open process that will make helping unserved America its top priority.

Our policies should encourage abundance and competition to give consumers more choices, life-changing innovations, and lower prices all while obviating the need for innovation and rationing. If we are truly committed to being data driven and avoid cherry-picking data to justify a predetermined outcome, we can produce a useful template to produce a constructive public policy.

In addition to reform and the broadband plan, the Commission faces a number of other challenges. We are confronted with a skyrocketing universal service cost structure that is unsustainable. More than 1.3 million broadcast indecency complaints, some of which literally are older than my children, lie ossifying at our agency.

The Communications Act requires us to review our rules governing media ownership next year, and during that review, we must be faithful to the first amendment and defend the freedom of speech.

We still have work to do to ensure technologies that operate any unused television white spaces can come to market and into the hands of consumers as quickly as possible. Likewise, we must work with Congress to devise a solution for resolving the communication

challenges faced by our Nation's emergency response providers and the list goes on.

But in conclusion, America's ICT sector is at a critical juncture. Our technological and economic future could be brilliant if we, as policymakers, have the courage to make the right choices.

I look forward to working with Chairman Genachowski and my colleagues on important policies that will encourage job-creating investment, empower consumers, and make America stronger and more competitive.

Thank you, Mr. Chairman.

Mr. Boucher. Thank you, Mr. McDowell.

[The prepared statement of Mr. McDowell follows]

STATEMENT
of
COMMISSIONER ROBERT M. McDOWELL
FEDERAL COMMUNICATIONS COMMISSION

Before the
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY AND THE INTERNET
UNITED STATES HOUSE OF REPRESENTATIVES

September 17, 2009

Mr. Chairman, Ranking Member Stearns and Members of the Subcommittee, it is a privilege to appear before you today.

The FCC is an agency with new energy and new blood, and I am honored to be serving there for another term. I look forward to working with my new colleagues, Julius Genachowski, Mignon Clyburn and Meredith Attwell Baker, as well as my friend Mike Copps.

With these new commissioners and new leadership, we have a perfect opportunity to rebuild the FCC as we address the myriad communications and economic policy challenges facing America. For some time now, I have been calling for reform of the Commission's structures and processes. To help spark discussion and progress, I wrote open letters outlining reform ideas to both Acting Chairman Copps in January and Chairman Genachowski in July. Additionally, we have shared ideas with each other from the outset.

First and foremost, the FCC should be a more open and collaborative place where all Commissioners are included in the idea formulation process early on, rather than just 21 days before a voting deadline. Towards this goal, immediately upon becoming Acting

Chairman, Mike Copps worked to make the Commission more transparent, collegial and efficient, and I commend him for his efforts. Similarly, Chairman Genachowski has started a new process of enhancing information flow and improving employee morale. A tremendous amount of FCC reform work remains to be done, however. I look forward to working with all stakeholders on this important endeavor, especially Members of this Committee. For the sake of brevity, I have attached a copy of my open letter to Chairman Genachowski as part of my testimony and I respectfully request that it be made part of today's record.

The FCC's largest initiative of the year thus far, of course, has been the digital television transition – which continues to this day. Prior to the June 12 analog cut-off date, almost three million households were estimated to be unprepared. As of August 30, however, 1.8 million of those households were ready – leaving only about 710,000 households without access to digital signals. In other words, 99.4 percent of U.S. households are getting DTV signals in some way – over the air or through subscription services like cable or satellite TV. Nevertheless, the Commission continues to work with the private sector to help the remaining consumers connect to the digital age of television. Similarly, we are working with broadcasters to resolve a few reception issues, mostly involving the higher VHF channels. Overall, while I'm reluctant to declare victory yet, the DTV transition went better than many had feared, thanks to the hard work of an uncountable number of people, including our dedicated public servants, Mike Copps and his team.

As we move forward, I cannot think of a more important time to be at the FCC. Even though the American economy has been shrinking overall, our communications

marketplace is vibrant, evolving and growing. Consumers have more choices among more communications technologies, services and providers than ever before. For instance, 157 million Americans watched more than 21 billion online videos during the month of July alone -- a figure that is growing at a double-digit rate each month. Consumers are watching those videos on an increasing number of platforms as well. For example, nearly 15 million Americans watch video on their mobile devices, and that number is growing at 50 percent per year.

Three years ago, the discussion of a wireless-only marketplace was just beginning. Today, nearly one in five American households is wireless-only while the majority of American consumers has a choice of five wireless carriers. At the same time, 23 percent of all *businesses* are expected to be wireless-only by 2012. America's wireless broadband market is leading the world by growing more than 400 percent during the past three years.

Additionally, America has the fastest growing fiber-to-the-home market in the world – with an annual growth rate of over 120 percent. Five years ago, less than one percent of American homes had access to fiber. Today, that figure stands at 13 percent.

Since 2000, the number of high-speed lines in America has increased more than 1900 percent, from approximately 6.8 million connections at the end of 2000 to almost 133 million lines nearly nine years later. To grow that number further, American businesses will spend up to $80 billion on new broadband infrastructure this year alone. Few, if any, business sectors can make such a claim in this economy.

Certainly, our communications marketplace is far from perfect, and more must be done to help make new technologies and services available to more Americans at

affordable prices. As we prepare our congressionally mandated national broadband plan, however, we should not just examine our shortcomings, but we should learn from what we have done *right* as well. The information and communications technology ("ICT") sector is poised to lead our country out of the recession and into an era of sustained economic prosperity, higher paying jobs and untold consumer benefits *if* the government does not adopt policies that inhibit economic freedom and investment. America's year-over-year private sector investments in broadband dwarf any government-funded broadband efforts throughout the globe. In recent years, the Commission has promised that new broadband technologies would come to fruition as a result of our actions to put into the hands of consumers the power of previously unavailable spectrum, such as the 700 MHz band. Market players, both large and small, will need even more capital to build out the infrastructure needed to make that promise a reality. With this fact in mind, whatever policies we adopt should help *attract* more private sector capital, not deter it. Encouraging the flow of capital is the spark needed to restart America's economic engine.

As the broadband plan takes shape, it is my hope that the plan not take a heavy-handed, top-down, command-and-control industrial policy approach in an attempt to promote more broadband access and usage. Instead, I hope that it will be imaginative, pragmatic, flexible and the next step in an open and iterative process that will make helping *unserved* America its top priority. Our policies should encourage abundance and competition to give consumers more choices, life-changing innovations and lower prices, all while obviating the need for regulation and rationing. If we are truly committed to

being data driven, and avoid cherry picking data to justify a predetermined outcome, we can produce a useful template to produce constructive public policy.

In addition to reform and the broadband plan, the Commission faces a number of other challenges. We are confronted with a skyrocketing Universal Service cost structure that is unsustainable. We preside over an inefficient and outdated intercarrier compensation regime. We should quickly gather more granular data to better analyze the special access market. More than 1.3 million broadcast indecency complaints, some of which are older than my children, lie ossifying in our headquarters. The Communications Act requires us to review our rules governing media ownership again next year. And during that review, as with *all* of our endeavors, we must be faithful to the First Amendment and defend the freedom of speech. We still have work to do to ensure technologies that operate in the unused television "white spaces" can come to market and into the hands of consumers as quickly as possible. Likewise, we must work with Congress to devise a solution for resolving the communications challenges faced by our nation's emergency response providers. And the list goes on.

In conclusion, America's ICT sector is at a critical juncture. Our technological and economic future could be brilliant if we, as policy makers, have the courage to make the right choices. I look forward to working with Congress, Chairman Genachowski and my Commission colleagues on important new policies that will encourage job-creating investment, empower consumers and make America stronger and more competitive.

Mr. Chairman, Ranking Member Stearns and Members of the Subcommittee, thank you again for the opportunity to appear before you today. This concludes my statement, and I look forward to answering your questions.

Office of Commissioner Robert M. McDowell
Federal Communications Commission
Washington, D.C. 20554

July 20, 2009

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Dear ~~Mr. Chairman~~ Julius:

Once again, congratulations on your nomination and confirmation as Chairman. I am greatly encouraged and energized to know that you, Commissioner Copps and I will be working together on a plethora of communications policy challenges facing the economy and American consumers. Although you have only been here for three weeks, I applaud the steps you have already taken to reform the agency. Your recent statements regarding boosting employee morale, promoting greater transparency, and creating a more informed, collaborative and considerate decision-making process are heartening. Anything we could do to advance the timely and orderly resolution of Commission business would be constructive. I am confident that you will agree that the preliminary steps Mike took during his interim chairmanship have provided a sound footing upon which to build.

Accordingly, in the collaborative and transparent spirit of my January 29, 2009, letter to Mike, I offer below a number of suggestions on achieving the important public interest objectives of reforming this agency. As you and I have already discussed, these thoughts are intended as a starting point for a more public discussion that should examine a larger constellation of ideas for moving forward together to improve the public's ability to participate in our work, as well as our overall decision-making abilities. Many of these ideas have been discussed by many people for a long period of time, and if we don't care who gets the credit we can accomplish a great deal.

Operational, financial and ethics audit.

I would first recommend that we commence a thorough operational, financial and ethics audit of the Commission and its related entities, such as the Universal Service Administrative Company, the National Exchange Carrier Association and the federal advisory committees. Just as you recently articulated in your June 30 request for information on the Commission's safety preparedness, I would envision this audit as an examination akin to a due diligence review of a company as part of a proposed merger or acquisition, or after a change in top management. I would not envision the process taking a lot of time; yet, upon completion, we would be better positioned to identify and assess the current condition of the FCC and its related entities, as well as how they operate.

This undertaking would be a meaningful first step on the road to improving the agency. As with all FCC reform endeavors, I hope that all of the commissioners would be involved in this process, including its development and initiation. We should seek comment from the public and the Commission staff, and we should provide Commission employees with additional opportunities to submit comments anonymously. I also propose that we hold a series of "town hall" meetings at the FCC's Washington headquarters, at a few field offices, as well as in a few locations around the country to allow our fellow citizens to attend and voice their opinions directly to us.

As part of a financial review, it is crucially important that we examine the Commission's contracting process, as well as the processes relating to the collection and distribution of administrative and regulatory fees currently conducted exclusively by the Office of Managing Director. For instance, we should consider whether the full Commission should receive notice prior to the finalization of significant contracts or other large transactions.

In the same vein, it is time to examine the Commission's assessment of fees. Regulatory fees are the primary means by which the Commission funds its operations. You may be aware that the FCC actually makes money for the tax payers. As Mike has also noted, our methodology for collecting these fees may be imperfect. At first blush, it appears that we may have over-collected by more than $10 million for each of the last two years. Some have raised questions regarding how the fee burden is allocated. Our recent further notice of proposed rulemaking could lead to a methodology that lowers regulatory fees and levies them in a more nondiscriminatory and competitively neutral manner.

We should also work with Congress to examine Section 8 of the Act and the Commission's duty to collect administrative fees. I am hopeful that we will examine why we continue to levy a tax of sorts of allegedly $25 million or so per year on industry, after the Commission has fully funded its operations through regulatory fees. As you may know, that money goes straight to the Treasury and is not used to fund the agency. Every year, we increase those fees to stay current with the Consumer Price Index. At the same time, our regulatees pass along those costs to consumers and they are the ones who ultimately pay higher prices for telecommunications services.

Further, given the significant concerns raised about the numbers and the way the audits have been conducted, I recommend that we examine the financial management of the universal service fund. You may know that the Commission's Inspector General reported last year that the estimated erroneous payment rate for the High Cost program between July 2006 and June 2007 was 23.3 percent, with total estimated erroneous payments of $971.2 million. While I am pleased that the OIG identified this error, it is time that we get to the bottom of this matter and remedy it.

In the same spirit, an ethics audit should ensure that all of our protocols, rules and conduct are up to the highest standards of government best practices. Faith in the ethics of government officials has, in some cases, eroded over the years and we should make sure that we are doing all that we can to maintain the public's trust.

Update and republish the FCC strategic plan.

Also in connection with this review, I hope that we can work together to update and republish the Commission's strategic plan. Like me, you may find that, as we toil on day-to-day tasks, it can be easy to lose sight of our strategic direction. Completing this task would create a solid framework for future actions and demonstrate our commitment to transparency and orderliness, each of which is critical to effective decision making.

Potential restructuring of the agency.

The findings of our review, combined with our work to develop a new strategic plan, would provide us with the information and ideas necessary for considering a potential restructuring of the agency. As you know, the Commission has been reorganized over the years – for instance, the creation of the Enforcement Bureau under Chairman Kennard and the Public Safety and Homeland Security Bureau under Chairman Martin. Close coordination among the staff in pursuit of functional commonality historically has improved the Commission's effectiveness. Nonetheless, the time is coming again to reconsider this option.

I am not suggesting that we make change for the sake of change. After all, we would agree that the agency needs to be flexible and must be responsive to its myriad stakeholders, most importantly American consumers. There are, however, additional improvements we can make to increase our efficiency. As Mike emphasized, the Commission's most precious resource, really our *only* resource, are its people. Many of our most valued team members are nearing retirement age. We need to do more to recruit and retain highly-qualified professionals to fill their large shoes. I hope our next budget will give us adequate resources to address this growing challenge.

Next, I would encourage consideration of filling many of the numerous open positions with highly-qualified applicants and making more efficient use of non-attorney professionals. For example, there is no reason why we cannot use engineers to help investigate complaints and petitions that involve technical and engineering questions. This would be especially useful as we continue to consider matters pertaining to network management. Similarly, our economists could be better used to help assess the economic effects of our proposed actions.

Improve external communication.

As you and I have also discussed, we need to improve our external communications regarding FCC processes and actions. I greatly appreciate Mike's promptness in posting the Open Meeting dates covering his tenure. I am hopeful that we will swiftly establish and publish Open Meeting dates for the entire 2009 calendar year. The public, not to mention the staff, would also greatly benefit if we would provide at least six months' notice on meeting dates for 2010 and beyond.

As part of these communications improvements, I look forward providing input as to updating the Commission's IT and web systems. I applaud your commitment to this endeavor and Mike's success in securing additional funding toward this end. Clear, concise and well-organized information systems will ensure that all public information is available, easily located and understandable. I also recommend that we update the General Counsel's part of the website to include litigation calendars, as well as access to pleadings filed by all the parties. Additionally, I suspect that our customers would prefer that licenses of all stripes be housed in one database, rather than separate databases spread across the stovepipes of our several bureaus. We should seek comment on this, and other similar administrative reform matters.

In addition, I propose that we create, publish on the website and update regularly an easy-to-read matrix setting forth a listing of all pending proceedings and the status of each. This matrix would include those matters being addressed on delegated authority. The taxpayers should know what they are paying for.

Similarly, I suggest that we establish and release a schedule for the production of all statistical reports and analyses regularly conducted by the Commission, and publish annual updates of that schedule. This would include, for example: the *Wireless Competition Report*, which has traditionally been released each September; the *Video Competition Report*, which until recently, was released at the end of each year; and the *High-Speed Services Report*, which, at one point, was released biannually. Similarly, quite some time before your arrival, I went on record calling for giving the American public the opportunity to view and comment on at least a draft or outline of the National Broadband Plan. I look forward to working with you to increase public awareness regarding the status and substance of our work on this plan. The goal here would be not only to ensure that the public is fully aware of what we are working on and when, but also to give these valuable analyses to their owners – the American people – with regularity.

In the same vein, Congress, the American public and consumers, among other stakeholders – not to mention your fellow commissioners – would greatly appreciate it if notices of proposed rulemakings actually contained *proposed rules*.

Improve internal communication.

Also, we need to overhaul our internal information flow, collaboration and processes. I am eager to work with you, Mike, and our future colleagues, to identify and implement additional measures to increase coordination among the commissioner offices, between commissioner offices and the staff, as well as among the staff. It is important that we cooperate with each other to foster open and thoughtful consideration of potential actions well before jumping into the drafting process. The bottom line is simple: No commissioner should learn of official actions through the trade press.

An effective FCC would be one where, for instance, Commissioner offices would receive options memoranda and briefing materials long before votes need to be cast. For example, for all rulemakings, within 30 days of a comment period closing, perhaps all commissioners could

receive identical comment summaries. Also, within a fixed timeframe after receiving comment summaries, say 60 to 90 days, all commissioners could receive options memos complete with policy, legal, technical and economic analyses. In preparation for legislative hearings, it would be helpful if all commissioners received briefing materials, including witness lists, at least five business days prior to the hearing date. For FCC *en banc* hearings or meetings, we should aim to distribute briefing materials to all commissioners at least one week prior to the event date. The details here are less important than the upshot: all commissioners should have unfettered access to the agency's experts, and receive the benefit of their work. Again, I am grateful to Mike for his preliminary efforts in this regard.

Also along these lines, I hope that your team will reestablish the practice of regular meetings among the senior legal advisors for the purpose of discussing "big picture" policy matters, administrative issues, as well as to plan events and meetings that involve all of the offices. Given the numerous tasks we have before us, I trust you will agree that regular meetings among this group will improve our efficiencies, and go a long way toward lessening, if not eliminating, unpleasant surprises.

Just as important would be to hold regular meetings among the substantive advisors and relevant staff, including the Office of General Counsel. Having ample opportunity to review and discuss pending proceedings and the various options at the early stages of, and throughout the drafting process would allow us to capitalize on our in-house expertise early and often. Taking such precautions might also bolster the Commission's track record on appeal. Indeed, this type of close collaboration might lead to more logical, clear and concise policy outcomes that better serve the public interest.

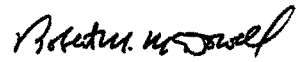
Another idea is to update and rewrite our guide to the Commission's internal procedures, currently entitled *Commissioner's Guide to the Agenda Process*. For instance, just as Mike has done with respect to the distribution of our daily press clips, I propose that we undertake a thorough review of the physical circulation process, including identifying and making changes to reduce the amount of paper unnecessarily distributed throughout the agency. Current procedures require that each office receive about eight copies of every document on circulation when one or two would suffice. I also wonder why our procedures mandate delivery of 30 paper copies of released Commission documents to our press office. The overwhelming majority of reporters who cover our agency pull the materials they need from our website. Perhaps this is another area where we could save money and help the environment all at the same time.

Coordinate with other facets of government.

Finally, on a more "macro" level, I propose that the commissioners work together to build an ongoing and meaningful rapport with other facets of government, especially in the consumer protection, homeland security, and technology areas. I am confident that close collaboration with our government colleagues with similar or overlapping responsibilities would greatly benefit the constituencies we serve.

In closing, I again extend my warmest congratulations on your new position as Chairman. You are to be commended for the steps you have taken thus far toward rebuilding this agency. I look forward to working together with you, Mike and our new colleagues upon their confirmation to do even more.

Sincerely,



Robert M. McDowell

cc: The Honorable Michael J. Copps

Committee on Energy and Commerce
U.S. House of Representatives
Witness Disclosure Requirement - "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name:		
1. Are you testifying on behalf of a Federal, State, or local Government entity?	Yes ✓	No
2. Are you testifying on behalf of an entity that is not a Government entity?	Yes	No ✓
3. Please list any Federal grants or contracts (including subgrants or subcontracts) that <u>you personally have received</u> on or after October 1, 2006: n/a		
4. Other than yourself, please list which entity or entities you are representing: Federal Communications Commission		
5. If your answer to the question in item 2 in this form is 'yes,' please list any offices or elected positions held or briefly describe your representational capacity with the entities disclosed in the question in item 4:		
6. If your answer to the question in item 2 is 'yes,' do any of the entities disclosed in item 4 have parent organizations, subsidiaries, or partnerships that you are not representing in your testimony?	Yes	No ✓
7. If the answer to the question in item 2 is 'yes,' please list any Federal grants or contracts (including subgrants or subcontracts) that were received by the entities listed under the question in item 4 on or after October 1, 2006, that exceed 10 percent of the revenue of the entities in the year received, including the source and amount of each grant or contract to be listed: n/a		

Signature: Robert M. McDowell Date: 9-14-09

Mr. BOUCHER. Ms. Clyburn.

STATEMENT OF MIGNON CLYBURN

Ms. CLYBURN. Mr. Chairman, members of the subcommittee. Good morning. It is an honor and a privilege to appear before you today alongside my esteemed colleagues to discuss our work at the Commission.

As an agency responsible for regulating the telecommunications industry, the FCC has an important role to play in our Nation's economic recovery and sustained health. From what I have witnessed in my short time at the Commission, I can assure you that we are an agency fully committed to the task at hand.

My colleagues have already touched on a number of matters facing the Commission. I would like to highlight a few issues that will be priorities for me.

First, I strongly believe that we must refocus this agency on consumers. We must be vigilant in asking ourselves how our decisions impact the marketplace. Where the market is working effectively and consumers are reaping benefits, we can take a step back and watch it flourish. Where the market is failing, however our responsibility is to craft reasonable and appropriate measures to get it back on track.

Our new inquiry concerning the information disclosed to consumers when they purchased telecom equipment and services reflects the FCC focus on consumers. There is no more essential component and purchasing processing than clear, accurate, and useful information. Without it, consumers enter into contracts they never anticipated, pay for services they never sought, and spend far more than they should for services they received. When this happens, the market has failed and a closer look is warranted.

As part of redoubling our consumers' efforts, I believe we must also increase our accessibility in transparency to the public. By fostering greater participation and awareness, we undoubtedly will yield superior results. This means making the Commission far more accessible to the general public through our Web site and other new media tools as well as finding innovative ways to open our doors beyond the Beltway.

I want to also touch on the national broadband plan. While much of to focus over the next several months inevitably will be on the core elements of broadband deployment and adoption, the plan must also account for national priorities beyond the traditional communications round.

Two such areas about which the members of this committee are intimately familiar are energy and health care.

When it comes to thinking about the intersection between broadband and energy policy, the conversation begins with a smart grid. If we take seriously the notions of energy independence and reduce greenhouse gas emissions, we must develop a grid capable of accommodating renewable power as a significant portion of our energy generation mix. Our broadband plan must account for the continued development and growth of this technology.

Broadband policy also has the potential to transform the way health care is delivered in this country. In order to develop a useful

plan that incorporates innovative mechanisms for providing quality health care, we must first understand the industry's infrastructure requirements, the current reasons for inadequate access and adoption, and ways in which we can facilitate effective and secure online access to medical records.

In bringing these and other sectors of the economy into the fold, coordination among a variety of Federal agencies and State entities is paramount. I will do everything in my power to make sure that we continue to work effectively with all stakeholders.

The final issue I would like to address this morning is the state of minority ownership. I am pleased that our chairman has already indicated that this is an issue he would like to address early on. But before we even begin to find solutions for the lack of diversity in media ownership, we need to have an accurate diagnosis. And to do that, we need credible, reliable, and complete data. We don't have that now, and in my view, we need to get the ball rolling as soon as possible to come to terms with exactly why our broadcast industry is in the state we find it in today.

I look forward to working with my fellow commissioner, Chairman Genachowski, and the subcommittee as we develop the most effective telecommunications policies possible. The American people are relying on all of us to work cooperatively to ensure that they are being provided the widest array of services at the highest quality and the best prices.

Thank you for the opportunity to appear before you today, and I look forward to answering your questions.

Mr. BOUCHER. Thank you, Ms. Clyburn.

[The prepared statement of Ms. Clyburn follows]

TESTIMONY OF COMMISSIONER MIGNON L. CLYBURN
FEDERAL COMMUNICATIONS COMMISSION

BEFORE THE SUBCOMMITTEE ON
COMMUNICATIONS, TECHNOLOGY, AND THE INTERNET
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

September 17, 2009

Thank you Mr. Chairman, Ranking Member Stearns, and members of the Subcommittee. It is an honor and a privilege to appear before you today alongside my esteemed colleagues to discuss our work at the Commission. As the agency responsible for regulating the telecommunications industry, the FCC has an important role to play in our nation's economic recovery and sustained health. From what I have witnessed in my short time at the Commission, I can assure you that we are an agency fully committed to the task at hand.

I have spent my first six weeks at the Commission listening to and learning from the staff about the wide range of issues under the Commission's jurisdiction. What has stood out most prominently during this time is our staff's enthusiasm, passion, and dedication. We have been endowed with a terrific and talented group of experts covering each aspect of the telecommunications world, and they are unwavering in their commitment to serve the American people. I appreciate and will rely upon their expertise and counsel as we navigate through the many complex communications issues in the days ahead.

My colleagues have already touched on a number of important matters facing the Commission – each crucial to the success of the agency. I want to supplement their list

by addressing just a few additional issues on which I expect to focus considerable time and effort.

First, I believe strongly that we must refocus this agency on consumers. While we have one bureau formally dedicated to consumer interests, each of our bureaus and offices, as well as each of us individually, must constantly be mindful of the impact our decisions have on consumers. In my view, this is not a passive exercise. Rather, we must be vigilant in asking ourselves how each of our decisions impact the marketplace. So, where the market is working effectively and consumers are reaping the benefits, we can take a step back and watch it flourish. Where it is failing, however, our responsibility is to craft reasonable and appropriate measures to get it back on track.

A good example of our renewed focus on consumers is the recent notice of inquiry we issued under the leadership of Chairman Genachowski concerning the information disclosed throughout the telecommunications purchasing process. Over the last several years, the Commission has received thousands of complaints from consumers who are confused about everything from how to compare service plans among providers to how to discern exactly what they are paying for when they receive their bills. Due in part to the rapid development and convergence of telecommunications technologies, many consumers are left scratching their heads when attempting to compare and manage their telecommunications plans and services.

There is no more essential component in the purchasing process than clear, accurate, and useful information. That applies across the board. Without these things, consumers enter into contracts they never anticipated, pay for services they never sought,

and spend far more than they should for the services they receive. When this happens, the market has failed, and a closer look is warranted.

This particular issue presents us with a fantastic opportunity. As the notice of inquiry suggests, the Commission will be working hand-in-hand with consumers, public interest organizations, industry, and academics to better understand what kinds of confusion exist and the best ways in which to address the problem. The Commission will rely on a broad range of input to develop the least imposing yet most effective measures necessary to ensure a robust and fair marketplace.

Moreover, as part of redoubling our consumer efforts, I believe we must also increase both our accessibility and transparency to the public. While there is no shortage of good ideas in Washington, the answers to all of our questions cannot be found solely within a 30-mile radius of this fine city. By fostering greater consumer participation and awareness, we undoubtedly will yield superior results. This means making the Commission far more accessible to the general public through our website and other new media tools as well as finding innovative ways to open our doors beyond the Beltway. For example, I am pleased that the Commission has already taken a number of steps to increase public participation through the use of new media, such as utilizing IdeaScale, a crowd-sourcing program, as well as Twitter, Facebook, and YouTube. These are just some of the ways we will increase public participation and allow for an open and transparent dialogue.

I also wanted to touch on one of the most pressing issues before the Commission, the National Broadband Plan. My fellow Commissioners and our Chairman have already

addressed a number of important concerns. I want to contribute briefly to this discussion by reviewing the significant implications of broadband on energy and healthcare.

While much of the focus over the next several months inevitably will be on the core elements of broadband deployment and adoption, it is also essential that the Commission's National Broadband Plan account for national priorities beyond the traditional communications realm. Congress itself understood this necessity when crafting the Recovery Act, assigning to us the mission of creating a roadmap that recognized broadband's power to transform a vast array of public and private services.

Two such areas about which the members of this committee are intimately familiar are energy and healthcare. When it comes to thinking about the intersection between broadband and energy policy, the conversation begins with the Smart Grid. Smart Grid technology is designed to make our electrical grid more resilient and intelligent. If we take seriously the notions of energy independence and reduced greenhouse gas emissions, we must develop a grid capable of accommodating renewable power as a significant portion of our energy generation mix. Our broadband plan must account for the continued development and growth of this technology.

Broadband policy also has the potential to transform the way healthcare is delivered in this country. Coming from South Carolina, a state with a significant rural population and where the demand for healthcare providers sometimes exceeds supply, I am well acquainted with the need for robust telehealth programs. In order to develop a useful plan that incorporates innovative mechanisms for providing quality healthcare, we first must understand the industry's infrastructure requirements, the current reasons for inadequate access and adoption, and ways in which we can facilitate efficient, effective,

and secure on-line access to medical records. In addition, the Commission can study the information gained from our experience with the Rural Health Care Pilot Program.

In bringing these and other sectors of the economy into the fold, coordination among a variety of federal agencies and state entities is paramount. We are off to a good start, and I will do everything in my power to ensure that we continue to work effectively with all stakeholders.

The final issue I wanted to address this morning is the unfortunate state of minority media ownership in the broadcasting industry. Despite making up nearly 35 percent of the U.S. population, people of color own approximately 3% of all local TV stations and 8% of all local radio stations. And while women comprise 51% of the entire U.S. population, women own only about 5% of full power broadcast stations. These numbers are shamefully low. Not only has the situation not improved, it has gotten steadily worse.

We can all agree that these numbers reflect a problem in the marketplace. But before we jump to conclusions about how to address these symptoms, we need to have an accurate diagnosis. And to do that, we need credible, reliable, and complete data. We do not have that now, and in my view, we need to get the ball rolling as soon as possible to come to terms with exactly why our broadcast industry is in the state we find it today.

For example, we must better understand issues concerning access to capital and any systematic barriers to entry in the broadcasting industry for women and minorities. By answering these and other questions, we can finally begin to address a problem that has been languishing before the Commission.

I look forward to working with my colleagues, the FCC staff, and this Committee to develop a robust and reliable study of this issue in the very near future. I do not believe we can sit idly by and let another year pass without making significant progress on this issue.

In closing, I would like to say how excited I am to be here working along with my fellow Commissioners, Chairman Genachowski and the Subcommittee as we develop the most effective telecommunications policies possible. The American people are relying on all of us to work cooperatively to ensure that they are being provided the widest array of services at the highest quality and best prices. To do this, we must balance a number of essential factors and always be mindful of the inherent challenges of regulation.

Thank you for the opportunity to appear before you today, and I look forward to answering any questions you may have.

Mr. BOUCHER. Commissioner Baker.

STATEMENT OF MEREDITH BAKER

Ms. BAKER. Good morning Chairman Boucher, Ranking Member Stearns, and all of the very distinguished Members of this committee.

It is really exciting to be here today, and I am very grateful for your kind words about my tenure at NGIA. I really hope to bring that experience to enhance all of our experience at the FCC.

So during my first 6 weeks at the Commission, I have had the opportunity to meet the various bureaus and the offices, and I have been greatly impressed by the agency and the depth and the talent and dedication of the staff as we really face unprecedented challenges of the significant issues before us.

Chairman Genachowski gave an inspirational speech to the FCC staff on his first day, and he stated that the promise of technology has never been brighter, and consequently, the obligations of the Commission have never been greater, and I share that view.

The FCC holds the keys to unleashing the power of broadband, the new media landscape and true public safety operability. This responsibility is challenging, but the rewards will truly make a difference in the life and future of every American.

According to one metric, the communications industry constitutes one-sixth of our economy and is the foundation upon which the rest of it runs. A 21st century communications infrastructure is essential for restoring sustained economic growth opportunity and prosperity.

Congress has instructed the FCC to develop and implement a national broadband plan. This directive holds great promise for our Nation, and as you have heard, we are hard at work on it.

Broadband has become critical infrastructure. The enabling technology from everything from the future of our children's education to the next generation of health care, smart energy grid development and, again, true public safety interoperability.

The FCC will play a very important role in making sure that the right regulatory environment exists to create incentives for companies to build out this infrastructure faster to reward innovation and investment and to encourage competition so that American consumers have access to and can afford the world's most advanced telecommunications services. We are gathering the data to ensure that our recommendations are well informed.

I believe that we can reap great benefits from a more efficient, transparent and flexible spectrum policy. The spectrum inventory bill introduced and cosponsored by so many of the members of this subcommittee shows important leadership and is the first step to increasing wireless broadband use in innovative ways such as secondary markets, leasing, and test beds.

As many of you know me from my previous position at NTIA I think it is critical to pursue policies that foster the efficient use of spectrum to promote the continued innovation and investment in the wireless marketplace.

We plan to take a hard look at the means and tools to maximize spectral efficiency and to optimizes the use of the country's bandwidth.

I am pleased that the first vote I cast at the Commission was to see what else we can do to promote innovation in the wireless sector. Further, this afternoon we will have a broadband workshop on spectrum. And on Monday, I will host our first field hearing for the national broadband plan, a spectrum hearing in Austin, Texas. It is imperative that we lay the foundation for wireless, the fastest growing sector of America's broadband economy who's continued to flourish.

During the past weeks I have had the pleasure of meeting with many of the members of this committee and it is a very talented and dedicated group. I want to thank you for taking the time out of your busy schedules to visit with me and share your thoughts on the communications policy and the future of the FCC. I have learned a great deal about your respective views and the range of issues that you face in your districts. I look forward to continuing our dialogue and to working together for the benefit of American consumers.

The FCC has a profound impact on what the American people see, hear, and read. Healthy competition can benefit consumers, and, in many cases, can reduce the need for affirmative Commission action. However, the regulatory mandate of the FCC will remain an important one as our society continues to experience technological advancement in the communications sector. I take this responsibility very seriously while working to promote the principles of investment, innovation, and competition for the benefit of all Americans.

In conclusion, it is a true honor to be serving at this time with my four colleagues sitting with me at the table and with the wealth of their experience and expertise. I, too, would like to add my voice to thanking acting Chairman Copps for reintroducing a collegial tone at the Commission which Chairman Genachowski has continued to build upon.

I look forward to working with them and Commissioner McDowell and Clyburn and taking actions that will have extraordinary impact on the everyday lives of the American people.

Thank you again for the opportunity to appear before you, and I look forward to answering your questions.

[The prepared statement of Ms. Baker follows]

WRITTEN STATEMENT OF COMMISSIONER
MEREDITH A. BAKER
FEDERAL COMMUNICATIONS COMMISSION
BEFORE THE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY, AND THE INTERNET
U.S. HOUSE OF REPRESENTATIVES
HEARING ON "OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION"
SEPTEMBER 17, 2009

Good morning Chairman Boucher, Ranking Member Stearns, and distinguished members of the Subcommittee. Thank you for the opportunity to appear before you today and report on all of the important matters on which we are working at the Federal Communications Commission (Commission or FCC).

During my first six weeks at the Commission, I have had the opportunity to meet with its various bureaus and offices. I have been greatly impressed by the agency and the depth, talent, and dedication of our staff as we face the unprecedented challenges of the significant issues before us.

Chairman Genachowski gave an inspirational speech to the FCC staff on his first day. He stated that the promise of technology has never been brighter and, consequently, the obligations of the Commission have never been greater. I share that view. The FCC holds the keys to unleashing the power of broadband, the new media landscape, and true public safety interoperability. That responsibility is challenging, but the rewards will truly make a difference in the life and future of every American.

According to one metric, the communications industry constitutes one-sixth of our economy and is the foundation upon which the rest of it runs. A 21st Century communications infrastructure is essential for restoring sustained economic growth, opportunity, and prosperity. Congress has instructed the FCC to develop and implement a National Broadband Plan. This directive holds great promise for our nation and, as you have heard, we are hard at work on it.

Broadband has become critical infrastructure – the enabling technology for everything from the future of our children's education, the next generation of health care, smart energy grid development, and true public safety interoperability. The FCC will play an important role in making sure that the right regulatory environment exists to create incentives for companies to build out infrastructure faster, to reward innovation and investment, and to encourage competition so that American consumers have access to, and can afford, the world's most advanced telecommunications services. We are gathering the data to ensure that our recommendations are well informed.

I believe that we can reap great benefits from a more efficient, transparent, and flexible spectrum policy. The Spectrum Inventory bill, introduced and cosponsored by so many members of this Subcommittee, shows important leadership and is a first step to increasing wireless broadband use in innovative ways, such as secondary markets, leasing, and test beds. As many of you know from my previous position at NTIA, I think it is critical that we pursue policies that foster the efficient use of spectrum to promote continued innovation and investment in the wireless marketplace.

We plan to take a hard look at the means and tools to maximize spectral efficiency and optimize the use of the country's bandwidth. I am pleased that the first vote that I cast at the Commission was to see what else we can do to promote innovation in the wireless sector. Further, this afternoon, we will have a broadband workshop on spectrum and, on Monday, I will host our first field hearing for the

National Broadband Plan – a spectrum hearing in Austin, Texas. I think it is imperative that we lay the foundation for wireless, the fastest growing sector of America's broadband economy, to continue to flourish.

During the past weeks, I have had the pleasure of meeting with many of the members of this Subcommittee. I want to thank you for taking time out of your busy schedules to meet with me and share your thoughts on communications policy and the future of the FCC. I have learned a great deal about your respective views on the range of issues that affect your districts and constituents. I look forward to continuing our dialogue and to working together for the benefit of American consumers.

The FCC has a profound impact on what the American people see, hear, and read. Healthy competition can benefit consumers and, in many cases, can reduce the need for affirmative Commission action. However, the regulatory mandate of the FCC will remain an important one as our society continues to experience technological advancement in the communications sector. I take this responsibility very seriously, while working to promote the principles of investment, innovation, and competition for the benefit of all Americans.

In conclusion, it is a true honor to be serving at this important time with my four colleagues sitting with me at this table, with their wealth of experience and expertise. I would like to thank formerly-Acting Chairman Copps for reintroducing a collegial tone at the Commission, which Chairman Genachowski has continued to build upon. I look forward to working with them and Commissioners McDowell and Clyburn in taking actions that will have an extraordinary impact on the everyday lives of the American people. Thank you again for the opportunity to appear before you, and I look forward to answering your questions.

Mr. BOUCHER. Thank you very much.

The subcommittee's thanks to each of our Commission members for your very thoughtfully prepared comments here this morning and for the time that you have taken to have this conversation with us.

I want to begin by complimenting each of you on what I perceive to be an outstanding bipartisan dialogue among you and a determination to work effectively together in order to advance telecommunications policy. And my personal view is that is the way the best policy is made. And it is a practice that we continually intend to pursue here on this subcommittee as well.

Chairman Genachowski, as you begin to draft your broadband plan, I want to draw your attention to two areas with regard to which I hope you will provide a particular focus.

And the first of these is the need for extraordinarily high bandwidth extending to libraries and communities across the United States. Presumably, we would have fiber optic connections to every library in this country once your plan has been fully implemented. Libraries are an intellectual hub, they are a social hub in many communities across our country. They typically offer computers with broadband and free Internet access. And hundreds of people in a typical community will receive their free Internet access by virtue of that offering at the local public library.

They also offer their own content through their Web sites, and many of those areas of content involve full-motion video which, of course, requires large bandwidth in order to deliver. And when you have a broadband line extending into a library, a very high capacity line, that line can be a jumping-off point for last mile applications for residents and businesses located between the library and the central switching office where that fiber connection terminates.

So there are really a range of community benefits when they are advanced when we have truly high capacity broadband access extending into the public library. I hope you will have due regard for that as your plan is developed.

I am going to ask for your comments on that one other issue related to broadband, and I will ask for your comments on both of these at once.

As our colleague, Mr. Butterfield, indicated, you are going to be devising definitions for many unserved areas and underserved areas across the country. And I hope you will be extraordinarily careful, particularly in the definition of what is unserved. We have some experience with the existing Community Connect Program that is administered by the Rural Utility Service at the U.S. Department of Agriculture, and it is a very small program. It is effective where it is deployed, but it is very small and perhaps because of its small size, there is some necessity to be quite conservative in the definitions of the areas that will qualify.

But one of their definitions is so conservative as to disqualify areas that, in my personal opinion, are really worthy of service. They define "unserved" as an area that has absolutely no broadband access to anyone in the community. So if a single resident of the community has broadbands extending into that extending into that home, the entire community is deemed to be served even though no one else in the community has access to broadband.

That is an unusually, and I think, far too severe restriction. And I would hope that you would keep that example in mind as you are defining what "unserved" means.

If there are parts of the community that lack broadband, those parts should be deemed to be unserved in whatever definition you craft.

I want to comment on the notion of underserved also. In my view, if there is a single provider in a community and the benefit of competition is not provided in that community, that community should be deemed to be underserved. If the data rates are unusually slow in that community, if it is perhaps less than a megabit per second for a download speed, that, in my view, would be another indicia of that community being underserved.

If you have competition and high data rates but prices are very high for whatever reason above the national average perhaps, that might be another indicia of a community that is underserved.

And so I would offer those suggestions to you as you undertake these critical definitions in structuring your plan.

And Chairman Genachowski, if you would like to take a few minutes to respond, I would be happy to hear your answer.

Mr. GENACHOWSKI. The first thing I would tell you is that all of those thoughts will be taken into account as we develop the broadband strategy.

The structure of our work, the way we have organized the staff, the workshops, the issues that we are jumping into follow from what is in the statute. We were asked in connection with the national broadband strategy to look at one, deployment; two, adoption and affordability; three, national purposes in the way that broadband can help address so many of our national problems, health care, education, energy, etc.

As I have been in this job for a little while and as we have done the work on broadband, we realize that these issues are incredibly complex. When I met with Congressman Doyle—I don't know if he's here now—there are real issues in Pittsburgh that you wouldn't expect that, as I talked to Congressman Doyle, sound a lot like issues that I hear about I talk to rural members.

The overriding goal of the national broadband strategy, as I understand it, is the goal of broadband access for all Americans. There are many challenges to address, many problems to solve, and the kinds of issues that you have raised up—some of which have come up in the context of the near term broadband grants—are issues that we must get our arms around with connection of the longer-term national broadband strategy.

With respect to libraries, a couple of thoughts.

One of Congress' great successes and one of the Commission's successes over time has been the ERAY program which reflects a strategy adopted on a bipartisan basis to look at different institutions from the one you mentioned in schools, although libraries are also in the program, and to say we see enormous benefits from connecting schools before we get to broadband.

And I think this is reflected in the statute that we have been asked to look at in connection with the broadband strategy. Libraries have all of the benefits that you spoke about; schools, health care facilities, these all have both direct benefits because if these

local institutions can be connected to broadband, there are obvious benefits to each library, schools, hospitals; and they also have these extra benefits that you mentioned that driving high-speed Internet to these institutions help solve the last mile problem and other problems in the community through both wire and wireless options.

We have heard the phrase in our workshop so far as strategic institutions, encouraging us as we develop a national broadband strategy to think in part about what we can do to help ensure that strategic institutions in the U.S. have access to a robust pipe for exactly these reasons. And I think you will see that discussion network continue.

Mr. BOUCHER. Thank you very much, Mr. Chairman.

The gentleman from Florida, Mr. Stearns, is recognized for 5 minutes.

Mr. STEARNS. Thank you, Mr. Chairman.

And I appreciate your comments about the FCC. It is very refreshing to hear how they are working in a bipartisan fashion, and of course I attribute your leadership, too, because you are working in the same capacity here in this subcommittee.

I think we heard from our ranking member on this side, Mr. Barton, he and I drafted a bill, 2183. Mr. Chairman, this bill probably can be enacted by you without passing this bill, and I am not sure, since we are in the minority, we will have any chance.

But I think the question for you is over the years, I think both sides, both Republican and Democrat, think there has been a lack of transparency on the basis of the FCC's commission. Perhaps, as Mr. Barton said, it has become opaque. So we would like to see published a specific text of proposed rules in a timely fashion, allow the public at least 30 days to file comments, 30 days to file replies, establish deadlines, and public decisions within 30 days after adoption. I would like your assurance that you will perhaps implement these and make the FCC more transparent.

And I will ask Commissioner Copps and McDowell right down the line to get your opinion.

Mr. GENACHOWSKI. I think these FCC processing issues are very important. They do relate to better decision making. At the FCC, as I mentioned one of the first things I did was appoint a very-well respected special counsel for reform who was leading this process. And I have asked her and the team that is working on it to take all of these ideas into account, and we will.

Transparency is incredibly important. We have taken some steps, as I have mentioned already. Probably the most important is the way we have run our broadband process. Through open workshops, publishing a schedule of workshops encouraging broad participation, each of the workshops are in public. You see staff rolling up their sleeves with a mixed group of people.

Mr. STEARNS. This place is packed by a lot of people, and these people are probably saying tell us what the procedures are so we can follow and we can have them in place so we have the transparency so we can compete. Commissioner Copps, I guess the question is do you agree, perhaps, in that there needs to be more transparency?

Mr. COPPS. I do agree with that. I tried to foster that kind of transparency when I was chairman. I am sure under Chairman Genachowski that we are going to have that.

I would like to ask you for some help to make our Commission run better, and I have talked about this before, and I know some members of the committee—I remember a dialogue with the Mr. Barton last time and he was supportive of this.

We are talking about the sense of camaraderie we have here with the openness in the discussion, yet more than two of us can never get together to talk. We have this incredible array of talents and experiences.

Just putting myself in your place, if you could only talk to one other of your colleagues and nobody else, you would be in one hell of a fix. And I think we are in a fix that way, too. I think we need to do something.

Mr. STEARNS. Thank you.

Mr. McDowell.

Mr. MCDOWELL. I support the spirit of your bill. I agree with Commissioner Copps' Sunshine Act reform among some other statutory reforms would be helpful. I have been speaking out about FCC reform for a couple of years but most vocally this year. I have attached that letter as part of my written testimony to Chairman Genachowski in July. There is a lot more work to be done.

I think we do have the building blocks to do a lot of the FCC reform already. So we do have the building blocks to make it a good, effective, transparent agency.

Mr. STEARNS. Commissioner Clyburn, I think with your experience you would think transparency is key. In fact, I want to comment, you were the only one that was right on time within the 5 minutes.

I was impressed.

Ms. CLYBURN. And I appreciate it.

One of the things that we are considering doing inside of the agency to promote greater transparency is revising our own ex parte rules and—to make sure that the public knows how we are dealing with outside parties and what is being communicated. So we are taking internal efforts, making internal efforts towards that, also.

Mr. STEARNS. I am going to start with my next question for Commissioner Baker.

Just recently, the D.C. Circuit threw out the FCC's cable ownership cap because the FCC had failed to account for all the video competition to cable that comes from satellite and phone companies. I guess will you commit not to support regulatory and interagency in today's competitive market and just allow innovation and without making detailed showing of both market power and market failure? And so perhaps you might comment on that.

Ms. BAKER. Yes, I will commit to that. Absolutely.

I think we have a new media landscape. I think that is what the new D.C. Court told us. I think that we need to continue to foster innovation. I think, generally, as a principle I start with markets work better than regulation, and we need to make sure that we add all the incentives that we can to the marketplace.

Mr. STEARNS. Mr. Chairman, I would just like comment on the D.C. Circuit's actions.

Mr. GENACHOWSKI. Well, when the market works and there is sufficient competition, then the FCC has no need to act. When the market isn't working and consumers could benefit from policies to promote competition, then the Commission must act. And I think we have seen over time that both are true, and it depends on particular circumstances.

Mr. STEARNS. Thank you.

My last question, if I could, Mr. Chairman, is dealing with more of a local parochial issue. I have a community called Palm Cay in my congressional district, and they have a cable company called Cablevision of Marion County, and the problem is they can't terminate their cable service. We have written to the FCC about this, and it seems unfair and a potential violation of the FCC report and order 17-089 declaring exclusive contracts to be null and void. And I am just wondering if you could give us an update on my letter to you dealing on behalf of the Palm Cay community and what can be resolved ultimately and how quickly.

Mr. GENACHOWSKI. It is a fair issue to raise. We had a chance to speak about it, and after our meeting I spoke with the media bureau and told them this proceeding has been open since 2007. That is about long enough. So they are hard at work at resolving it. I can't give you a specific date, but we will work to resolve it and generally work to close out open proceedings like this.

Mr. STEARNS. Certainly before the end of the year?

Mr. GENACHOWSKI. Yes.

Mr. STEARNS. Thank you.

Mr. BOUCHER. Thank you very much, Mr. Stearns.

The gentlelady from the Virgin Islands, Mrs. Christensen, is recognized for 5 minutes.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman; and thank you all for your testimonies.

I have a parochial question, also. The FCC previously ruled in favor of interim cap on universal fund high payments to competitive eligible carriers in the Virgin Islands. We just had one. So we really lag behind the rest of the country in terms of competitive entry. Do you think that the interim cap in any way creates barriers for competitive entry in poor areas? And would the FCC consider exemptions for areas like mine that just had one carrier and now the universal high fund payments are closed off to any other carrier?

Mr. GENACHOWSKI. I had a little bit of a hard time hearing the question, but I think I understood it.

Tackling the challenges of universal service is very important for the Commission. On one hand, it has been an extraordinary success for the country, helping deliver telephone service to all Americans everywhere, as Commissioner Copps said, without regard to who they are or where they live. At the same time, it is very clear that the system is under pressure for a series of reasons relating to changes in the marketplace. There are broad global issues that have be addressed with the USF, and then there are a series of the sort you mentioned that come up in particular markets that we have to address. Last, it relates in an important way to broadband,

because we do need to move USF to a program that supports broadband.

I wish it were easy, and we could flash cut and move over. It will be difficult. It is an area where the Commission will be working on it. As Chairman Boucher said, he is working on a bill. We will be a resource for the Commission, and I hope this is something that we can all solve together. It is an important challenge for the country.

Mrs. CHRISTENSEN. Thank you.

And I will just direct this out. Anyone can answer it.

As I read the testimonies, and we had NTIA and RES here last week, most of the outreach is done through the Internet. And we still have a digital divide in this country, and there are many people that are not getting the information. Someone said somewhere last weekend—I don't remember who it was—that in our communities, the disadvantaged communities, we don't even know what we don't know. So how do you plan to reach out to those people who are still not connected? And we still have an issue of increasing demand for broadband as we proceed to build up. So are we able to reach people who don't have Internet connectivity to get their input as we move forward?

Mr. GENACHOWSKI. We have to. It is incredibly important. It is one of the reasons that we are doing the open workshops where people can come in and participate. They can participate online. They can come in. And it is why we are starting field hearings, as Commissioner Baker mentioned.

There is such an important, challenging—I don't know if it is a Catch-22 or a virtual circle, depending on how you look at it. If the government wants to communicate with my 17-year-old, they had better use the Internet. If the government wants to communicate with my parents, don't try. And this is a real challenge for government, because we do have to reach people in a variety of ways when it comes to services in the ways that people actually communicate.

One of the big benefits of pursuing universal broadband is that—and this won't happen quickly, but when it happens, there are tremendous potential cost savings for government. Because instead of communicating with people and providing services as we have to do both online and offline, we can begin to provide more and better services online. We can't do that until we have really achieved universal broadband because of the real challenges that you mentioned. We can't leave people with an inability to participate and to benefit from the services and information that the government supplies.

Mr. Copps, did you want to—

Mr. COPPS. Well, I very much agree with that. But I also would just add that until we get to that day when we have that capacity, we have all of these nontraditional stakeholders who don't know what is going on at the FCC and don't have the resources to hire a lobbyist or a law firm in Washington, D.C. Yet they are impacted daily by the decisions we make.

So I think—and Chairman Genachowski is doing a sterling job of this. We are going to have hearings. We are going to be reaching out to minority groups. We are going to go to the inner city as well

as to rural America. We are going to talk with the disabilities communities. I have already been to Indian country, because the problems there are so glaring.

So we really have to use every technology, every device, old-fashioned, new-fashioned, or whatever, to get the word out and get the participation of everybody in this broadband plan. Because, in the final analysis, the broadband plan ought to be of, by, and for the American people.

Mrs. CHRISTENSEN. I have about 10 seconds, if you would like to add.

Ms. CLYBURN. He is allowing me to go out of order of seniority.

One of the things that I am excited about is it was mentioned about the field hearings. I am planning a field hearing for October 6 in Charleston, South Carolina. And one of the things that I am keenly tuned in on is I am trying to do it from a two-fold perspective, meaning doing some work in the city where you have some problems of maybe underserved challenges and going out into rural areas where there are unserved challenges and speaking with some friends and church members who—some of whom are friends, also. I don't want to say that I am excluding. And librarians. My mother was a librarian. All of these groups that you mentioned. All of these persons need to be engaged in these conversations, and then and only then can we maybe get the ground swell that we need to promote this broadband universe in which we know the public can benefit.

Mr. BOUCHER. Thank you very much, Mrs. Christensen.

We are expecting a series of recorded votes on the floor starting potentially within the next 10 minutes, and Mr. Stearns and I were talking about a way that we might be able to facilitate the questioning of witnesses in the hope that perhaps we could finish our work here before these votes begin. We have a large number of them pending, and it may be an hour or more before the votes are completed, and we were thinking that perhaps we could ask members if they would be willing just to ask one question each. Would that be satisfactory? If anybody seriously objects to that, this might not—Mr. Barton.

Mr. BARTON. Reserving the right to object.

Mr. BOUCHER. Please, Mr. Barton.

Mr. BARTON. I am not aware, what is the availability of the Commission? Do they have to leave at a time certain?

Mr. BOUCHER. I am not aware that they do. We could have them go to lunch and then come back. My concern is that I think many members may have flights scheduled for the early afternoon in anticipation of the House adjourning for the week, which we are going to be doing by about 1:30 or so.

Mr. BARTON. Continuing my right to reserve, Mr. Chairman, I will do whatever you and Mr. Stearns have agreed to. But I think it is so rare that we get the entire Commission here. If members self-select not to question, then that is their decision to self-select and, in my case, go to Texas as opposed to stay here and be intellectually stimulated. But I would encourage the chairman and the subcommittee ranking member to allow those members who wish to fully participate past the departure time of the Congress or the adjournment time to do so, because we don't get the entire Com-

mission very often. And there are some new ideas. I listened in my office to all the statements of the Commissioners, and I would—again, if you and Cliff have made a decision, I am not going to object.

Mr. BOUCHER. Would the gentleman yield to me?

Mr. BARTON. Sure.

Mr. BOUCHER. We haven't made a decision. We decided we would ask the members what they wanted.

Mr. BARTON. My preference would be to let each member ask at least 5 minutes. That is a preference.

Mr. BOUCHER. And I agree with what the gentleman's saying about the unusual importance of this hearing as compared perhaps to some others. We will proceed in regular order. I think we have now consumed most of the time we have remaining anyway.

The gentleman from Texas, Mr. Barton——

Mr. BARTON. This happens to be my time.

Mr. BOUCHER [continuing]. Is recognized for 5 minutes.

Mr. BARTON. I am not going to try to use all 5 minutes.

I am going to list the things I want to talk about and then let the Commissioners, primarily the chairman—I want to talk about transparency. I will just say that I heard what Commissioner Copps said. I agree with him. I would be happy to work with the Commission to put together an amendment or a draft bill to try to get the subcommittee and full committee—I think you all should be able to communicate without having to go into formal session. So however we can facilitate that, I support that.

As I said in my opening statement, I think we need to have more transparency in the Commission, and Mr. Stearns and I have introduced a bill to that effect, and we would ask the Commission to comment on that bill to see if it needs to be improved.

My first question is to the new chairman on the spectrum auctions. We don't have much new spectrum in the pipeline. We have a bill in on it that is a bipartisan bill on the spectrum inventory. Do you have any thoughts that you would share with the committee on what conditions, if any, if we try to reauction the D Block that has already failed once?

Mr. GENACHOWSKI. Two points quickly, Mr. Barton. One, on transparency and FCC reform, I look forward to working with you as part of our process to make sure that we have an FCC that is open, transparent, fair, data driven, and that really is the expert agency that benefits the entire country.

On spectrum quickly, second, there is a demand crunch coming. We need to put more spectrum in the marketplace, and the pipeline is not what it needs to be. And so I would welcome passage of the inventory bill, and our role in that and the NTIA's role in that I think will be very important.

Third, with respect to the D Block, that is a spectrum that we can get on the market soon. The challenge of the public safety component of it is real. I am focused on making sure that we get it right. I don't want to rush into a failed auction, but I also think we need to move quickly to address the issues Commissioner Copps as acting chairman caused the agency to begin work on.

The agency has jumped into it. The D Block, of course, comes up often in connection with our broadband plan. So we don't have any-

thing now in terms of what we will be looking at, but the staff is hard at work.

Mr. BARTON. Do you have a time frame to put some proposals out there for the D Block?

Mr. GENACHOWSKI. It is something that is being actively looked at, and I think no later than in connection with the broadband plan we will have an option.

Mr. BARTON. Are you talking about February? Is that because the broadband plan I think is——

Mr. GENACHOWSKI. Yes. No later than February we will have real options that we are looking at and considering, because of the nature of the spectrum and its relationship to a national broadband strategy.

Mr. BARTON. My last question deals with universal service reform. I don't think it is any surprise to anybody who has followed this committee that I am a big proponent of that. The universal service fund continues to grow. The costs continue to go up. Do you have any—again, this is to you, Mr. Chairman. Do you have any thoughts on reform measures with regards to the universal service fund? And, do you have a timetable for the Commission considering those?

Mr. GENACHOWSKI. The timetable will be similar. No later than February in connection with the national broadband strategy will we have options to look at and policies to consider. Because USF and broadband will be an important part of the discussion. Many people are raising it, including many on the committee.

As I said before, there are real opportunities and challenges both with the universal service fund. I don't think I need to repeat them. You know them extremely well. It is a complex challenge on which there are some areas in which there is beginning to be some consensus, but more work needs to be done to have universal service reform that works well for the country. I know the committee is looking at this as well, and we will continue to be a resource for the committee as it does its work.

Mr. BARTON. My next question, if you don't want to answer this, you don't have to. Do you have a frequent conversation with the President? I mean, are you and he in communications so that we know that the FCC has got a direct line to the White House? Which we haven't had with some other chairmen in the past.

Mr. GENACHOWSKI. I don't think anyone speaks with the President as frequently as they might have in the past.

Mr. BARTON. All right. I yield back, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Barton.

The gentlelady from Florida, Ms. Castor, is recognized for 5 minutes.

Ms. CASTOR. Thank you, Mr. Chairman.

Chairman Genachowski, I appreciate your words on the spectrum; and I would like to hear from the other members concerning the spectrum, what your thoughts are, what your concerns are as we look at greater availability for new and innovative services.

Mr. COPPS. Well, I certainly share the thought of several of my colleagues, that we are in dire need of a spectrum inventory. I think as of 12:20 this afternoon on the 17th of the month, there is nobody in the United States who has the foggiest idea of how much

spectrum is being used and utilized and if it is being utilized 24 hours a day or 10 seconds a day. So we really need to get a handle on this.

We need to make sure our auction system is working properly and is inviting the participation of small as well as large competitors. We need to make sure that spectrum is being used and utilized; and, if it is not, I think we ought to be looking at some alternatives for other uses of that spectrum that may have been licensed.

So these are a few of the things that I think we need to be concerned about. But what I am hearing from all of the folks testifying on the broadband workshops is that, in many ways, this comes down to a question of is there spectrum to do what we need to do.

Mr. MCDOWELL. I would welcome an inventory on spectrum, absolutely. We need to be careful what our expectations are once we get that inventory. Given any particular point on the map, it is very difficult to determine who is using what spectrum for what purpose, and I want to make sure I am briefed so I can allow time for Commissioner Baker, who is the true expert in government use of the spectrum, since she managed that as acting head of NTIA. But we have a lot of spectrum that is not on line yet, from our AWS 1 auction in 2006. That is not yet built out. We have the 700 megahertz auction. Remember, the DTV transition just happened. We just had that auction last year. That is not built out. We have a lot of work to do in the television white spaces.

All of this is fabulous spectrum. The propagation characteristics there are that signals can travel a long distance and penetrate buildings; and it can be a fabulous asset, a great arrow in our quiver to resolve the broadband problem in unserved America.

But let's be careful of what we want to do. Let's make sure we are flexible. Let's not try to micromanage the use of that spectrum. Let's make sure we require it to be used. But by the time we implement a government-mandated business plan, sometimes the market moves past that, as we have found in several instances. So we need to be careful.

Also, to be mindful that our spectral efficiency in this country doubles every two and a half years, sort of tied to Moore's law of computing. So that since Marconi's first transmission by radio or invention of the radio, we are now two trillion times more spectrally efficient. So keep that in mind.

Ms. CLYBURN. I agree with my colleagues that we need to understand what is out there and how it is being used. It is critical. It is really critical that we have detailed data so we can allocate more effective—allocate spectrum and allocate it effectively.

Ms. BAKER. I will agree with all my colleagues. But where we need to go is we need to have a more efficient, we need to have a more transparent and a more flexible spectrum policy.

And I think there is an awful lot of things we can do and an awful lot of ways we can work with our government partners as well. I think the government often hears government is inefficient, but DARPA spends more money on R&D in this area than probably anyone else. They have come up with a bunch of things like dynamic spectrum access and multi-antenna signal processing that are going to help us make more efficient use of what we have.

But I agree with Commissioner McDowell. We have a lot that is in the pipeline. We have the 700 megahertz. We have the AWS. We have the BRS spectrum. That is all coming up that is not fully built out. But we need to lay the plans for the step after that, and so I am committed to and look forward to working with you on that plan.

Ms. CASTOR. Thank you very much, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Ms. Castor.

The gentleman from Michigan, Mr. Upton, is recognized for 5 minutes.

Mr. UPTON. Thank you, and I will be very quick. Two brief questions and a comment.

First of all, I want to make sure that you all know that I believe, on the wireless side, that folks are very satisfied.

We will deal with Mr. Markey's adaptor. I will make sure that he has got plenty, both in Massachusetts and here and both when he is in the car as well as in his office. But we don't want to fix what is broken. I don't believe that there is an effort that we need to pursue to regulate.

My two questions are these: Regardless of which position one might take on the issue of special access market, all sides now seem to be asking the Commission to collect data on the market, and it seems to me that it is time to get the facts on the table, especially before you begin to work on the broadband plan.

So, Mr. Chairman, do you plan to collect special access data from the carriers and interested parties? And, if so, when? That is question number one, in the interest of time.

Just as we deal with the challenges of the transition to digital, we have a couple of areas, I would presume, around the country, certainly in my district where it seems like those challenges are a little bit high, of if we are able to accommodate perhaps a burst of additional power on the digital signal so that folks can get from WGN or some of our local channels that may be at the very edge would be helpful.

I look forward to hearing from you in terms of how you are dealing with those special, hopefully unique, cases; and I yield to you to respond.

Mr. GENACHOWSKI. On special access, it is something that we are hearing a lot about from multiple parties. The staff at the FCC has been working on the data issue for at least as long as I have been there. We haven't decided whether we will need more data in order to reach a decision on special access, so the next step that you will hear from us is our view on whether we have enough data to make a decision.

On digital television, I have instructed the media bureau to work diligently, closely with every broadcaster in the country that has specific issues. The first challenge that Acting Chairman Copps at the time and Commissioner McDowell led so well was the overall challenge for the country. Now it is a lot of case-by-case problems that come up. The staff of the media bureau is showing up every day working with broadcasters to try to address specific issues, and we will work with you.

Mr. UPTON. Thank you.

Yield back.

Mr. BOUCHER. Thank you, Mr. Upton.

The gentleman from Massachusetts, Mr. Markey, is recognized for 5 minutes.

Mr. MARKEY. Thank you, Mr. Chairman, very much; and thank you, Commissioner Genachowski, and, again, thank you for your brilliant decision in hiring Colin.

Mr. GENACHOWSKI. Thank you for your gift.

Mr. MARKEY. You know, we talk enough about public option, but I would like to talk about the portability option, which is this charger issue. You know, if you buy a new TV, guess what, when you plug it in, you don't need anything else. It works just like the old TV. If you buy a new radio, you plug it in. You don't need anything else. It works just like the old. You buy a new car, guess what? They don't change the way you put gasoline into the car. It all is the same. It is kind of a standard—you don't have to buy some new adapter to put the gasoline in your brand-new car, just like the old car.

So here you have this thing where tens of millions of these devices have to be purchased and then thrown away within like a year and a half or so as you get your new device. That is a pretty huge environmental problem across the country to dispose of all this stuff, plus it is just a pain, just a pain to have to go through it.

So my hope is that the Commission could look at this. My intention is to introduce legislation on it. I am going to work with Mr. Doyle and work with other members to kind of track down this issue and just to make it easier for people so they don't have to fork over this extra dough. So if I could work with the Commissioners, would you be willing to work with me on that?

Mr. GENACHOWSKI. We would be happy to work on it. I think simply raising the issue has done the first step, which is challenging our great technology industry to come up with a solution. I am glad that you have raised it. I have raised it with some technology companies. There is a desire to solve this; and looking at what, if anything, the FCC can do to incentivize some innovation to reduce the number of chargers would be something we would be happy to work on.

Mr. MARKEY. As the chairman of the Environment Subcommittee here, it is just becoming a huge environmental issue that is unnecessary. There has got to be some little fix that we can put in that makes the old adapter still usable. It doesn't seem that complicated.

And, second, you know, I am developing legislation to create an E-Rate 2.0 for broadband; and I noted that the Commission held a workshop on August 20 to identify new issues. Can you share your thoughts on updating and refining the E-Rate program to capitalize on broadband?

Mr. GENACHOWSKI. We are looking, as part of the broadband strategy, in part because Congress told us to, not only at employment and adoption but also what the statute called national purposes, how to make sure broadband serves health care, education, and energy. The E-Rate has been such an extraordinary success, let's lead the world in education, libraries, hospitals when it comes

to broadband; and we would be more than happy to be a resource to you in thinking through the best way to make that happen.

Mr. MARKEY. That would help me a lot, Mr. Chairman.

The thought that I had back in January and February of this year was, here is this great stimulus package. There is a broadband component to it. Why don't we just have a plan for the Nation? And so that is why I added that amendment into the bill, so that we could all step back, put together this plan, affect the whole country; and it goes everything from schools to hospitals but every aspect of our life.

Let's be honest. The only reason we have a smart grid is that we had a Telecommunications Act of 1996. Because, without broadband deployed across the whole country, you can't manage the wind and the solar coming in from the prairies and the desert. You can't manage it coming in from the ocean. You can't manage it coming off of people's roofs. You need the broadband telecommunications network to manage it.

So we need a vision here, you know? That is challenging the American people to accomplish it.

I thank you for the great work you are doing and all the other members. I know other members want to ask questions, so I will yield back the balance of my time.

Mr. BOUCHER. Thank you, Mr. Markey.

The gentleman from Illinois, Mr. Shimkus, is recognized for 5 minutes.

Mr. SHIMKUS. And I will be real brief, too, Mr. Chairman. Thank you for the time again. Thank you for the Commission's presence here. And I think we have got a lot of optimism going into the future.

For my friend, Mr. Markey, I will help him create a new Federal agency, and maybe we can move some stimulus dollars for this adapter program. This is most ridiculous thing I have heard of. Handsets are lighter, more efficient. We can't have an adapter based upon 15 years ago when the cell phones were like bricks, and that is what will happen if we direct a solution to this. We have got to let the market do that.

But I do agree with Ed on the broadband deployment and the mapping issue. And I am always angry when we compare apples to oranges and we talk about the OECD. In comparing European countries, which are small, I always talk about being stationed in Germany and being able to drive across the entire country in like 3 hours; and I can't get from one part of my congressional district to another in 3 hours. Compare our ability to deploy with the European miles.

So, please, when we move forward, let's get off this Europe is this, Europe is that. Let's get like, we say in the health care debate, a unique American experience that meets our needs and not compare us to other places in the world.

And I am just going to end with that, and I don't have a question, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Shimkus.

The gentleman from Pennsylvania, Mr. Doyle, is recognized for 5 minutes.

Mr. DOYLE. Thank you, Mr. Chairman.

Mr. Chairman, in 2003, and again in 2007, the FCC, on a unanimous bipartisan basis, voted to recommend to Congress that statutory limitations on low-power FM radio stations are contrary to the public interest and should be repealed. I have introduced legislation, H.R. 1147, the Local Community Radio Act, that will do just that. We have already had a hearing, and it is my hope that our esteemed chairman will allow us to proceed to a markup and pass this legislation soon.

I know that from the vote in 2007 Commissioner Copps and McDowell voted in the affirmative, but we have three new Commissioners. So just a simple yes or no from our three new Commissioners. Do you also recommend that Congress lift the restrictions on LP/FM stations to so-called third adjacent protections?

Mr. GENACHOWSKI. Based on what I know, yes.

Mr. DOYLE. Commissioner Clyburn?

Ms. CLYBURN. Yes.

Ms. BAKER. Yes.

Mr. DOYLE. Okay. It is unanimous, Mr. Chairman. Thank you very much.

One other quick question, because I know we are being pushed.

In 2007, many of us have communicated an interest in convening a special access proceeding, and I can remember a letter that Chairman Markey sent back in the spring of 2007 urging action on that proceeding. Since then, the issue has laid dormant.

Commissioner Copps, I know you were supportive of learning more; and I know, Commissioner McDowell, back in June of 2007 you wrote a letter back to the chairman saying that you wanted a fresh record. My question is, now that both sides have been willing to provide the right data—and this question is to all the Commissioners—will you support finishing that inquiry that has been sitting there since 2007 sometime before we all die, preferably by the end of the year?

Mr. MARKEY. Will the gentleman yield?

Mr. DOYLE. Yes.

Mr. MARKEY. Thank you. And I am closer to that point in time than you are, so thank you. A well-raised question.

Mr. GENACHOWSKI. Yes. It is an important topic that has been raised with us by so many people that special access is a key part. It is an important part of the communications ecosystem, and we do need to make sure that it is competitive. So it is something that the staff is actively working on and we will be addressing soon.

Mr. COPPS. I remember signing a letter to then subcommittee Chairman Markey that September, 2007, would suit me just fine for deciding special access; and I remain of that opinion.

Mr. MCDOWELL. I think we should resolve the issue. It is very important to broadband. I think what we need, though, and I have been asking this for 2 years and it could have been done by now, a long time ago, is a very granular analysis of data gathering. Not just both sides. There are more than two sides on this. There are multiple sides with new entrants as well. So a cell site by cell site—I will say it again. A cell site by cell site, building by building data of who is providing special access where and at what cost is the exact same information that the Department of Justice had in

the bill. I see mergers of many, many years ago. It is completely doable.

I have been talking to our new head of Office of Strategic Planning, Paul de Sa, about this. And I think that is the only way that, if the Commission does anything in the future, that is sustainable on appeal. So I am saying it again.

Ms. CLYBURN. This is a complicated issue that I look forward to working on with speedy resolution involving all stakeholders and what I know will be a data-driven process.

Ms. BAKER. Sheis right. Especially as a new Commissioner, it is complex, it is contentious, but we need to solve it. We need to solve it as rapidly as we can. Because it is an input to an array of the competitive services, including wireless. So I think we all are committed to better data and making a decision quickly.

Mr. DOYLE. Great. And just very finally and quickly, I want to put a plug in for asking the Commission to please take a look at wireless microphones in the 700 megahertz. This has been brought up as a key public safety and public interest to the community. And I hope that we will address that soon, too.

Mr. Chairman, I thank you. I yield back.

Mr. BOUCHER. Thank you very much, Mr. Doyle.

We now have less than 5 minutes remaining to cast votes on the floor. Mr. Deal, do you want to ask your questions?

Mr. DEAL. I would like very much to.

Mr. BOUCHER. Mr. Deal.

Mr. DEAL. Georgia football hangs in the balance.

Recently, the Georgia Athletic Association entered into a 10-year contract with an interscholastic organization for all exclusive rights to their broadcast and to their paraphernalia, et cetera. That company, in turn, entered into a contract with Cox Communications, the sister—the primary station being in Atlanta, Georgia. They have also now apparently refused to enter into contract agreements with traditional radio stations that have, for as long as 60 years in some cases, been able to broadcast Georgia football.

Now, the result of that is, is that the FCC has approved the location and sale of radio stations from one small community into others. For example, now Cox Communications owns five radio stations in Athens, Georgia, the home of the University of Georgia. They have located towers as a result of those consolidations and ownerships of these other stations within 65 miles of the existing broadcast stations' reach; and, as a result of that 65-mile limitation, which is in the content owners' contract, the effect is that these historically broadcast stations have now been deprived of this ability to broadcast Georgia football games.

Now, my question is, does the FCC take into account any of these so-called contractual obligations that will infringe on existing broadcasters when you approve of a new license or a transfer of a license? Do you in fact look at what the effect of it is? And, in many instances, it is only the town that is supposed to be the basis of the license. The only time that they have any relevance is when, every hour, they announce their call letters and they use that town's name, because there is nothing located in that town whatsoever.

That is my first question: Do you have the ability to look at those kind of tying agreements in broadcast content when you approve the location of stations?

And the second one is, is there any jurisdiction in the FCC to look at what might be considered unfair trade practices that might monopolize the public air waves? Or is this something that is within the Federal Trade Commission's jurisdiction?

Mr. GENACHOWSKI. If I could, let me pledge to get back to you on the answers to some of the technical questions about FCC jurisdiction. At a higher level, you are raising issues about a changing media landscape, competition in this new environment, the importance of local broadcasting, and the real interests of consumers and viewers.

One of the things that I am trying to make sure we do is to make sure that we have an FCC that is smart about the marketplace, smart about the consumer needs, smart about viewer needs. So let me—I understand that this is an important issue, and we will follow up with you to understand it better and answer your questions about jurisdiction.

Mr. DEAL. Mr. Chairman, could we be allowed to formalize these into formal questions to submit to the panel?

Mr. BOUCHER. Without objection, the record of this hearing will remain open for a period of 2 weeks, during which time members can submit written questions to our witnesses.

Mr. DEAL. Thank you.

I yield back.

Mr. BOUCHER. Thank you, Mr. Deal.

Mr. Buyer, we have got about a minute left on the floor.

Mr. BUYER. I am going to be really quick so I can let all of you go.

We are going down the line, yes or no: Do you support exclusive handset arrangements? Yes or no?

Mr. GENACHOWSKI. It doesn't lend itself to a yes or no. I apologize.

Mr. BUYER. Keep going.

Mr. COPPS. I would give the same answer.

Mr. BUYER. That is a nonanswer. Keep going.

Mr. MCDOWELL. Yes.

Ms. CLYBURN. The same answer as the Chair.

Mr. BUYER. I have got three nonanswers and a yes.

Ms. BAKER. Yes.

Mr. BUYER. Two yeses and three nonanswers.

All right. On the issue that was brought up with regard to spectrum auction, you had mentioned that the 06 has not been a buildout. Hereis the question: I have a real problem, i.e., the Federal Government. Fidelity I think is a tremendous—it is a value of the virtue of integrity. And if the Federal Government—if we are not going to have fidelity and uphold our commitments to companies that actually give us money and we don't free up that spectrum, should we consider a government penalty?

Right down the line. Should we consider a government penalty, in other words, pay interest to these companies for the use of their money?

Mr. GENACHOWSKI. I am not sure I understand the question. If companies don't comply with FCC rules, they should——

Mr. BUYER. How about, we are anxious to penalize companies, And when it comes to auction, we will take their money, but we are not freeing up spectrum. We are not—agencies are standing in the way. DOD, for example. So should we be paying interest on the use of this money when they pay it in?

I am curious. Right down the line, yes or no.

Mr. GENACHOWSKI. I would like the chance to speak with you further about it, because——

Mr. BUYER. A nonanswer. Go down the line.

Mr. COPPS. Nonanswer.

Mr. MCDOWELL. Yes.

Ms. CLYBURN. Nonanswer.

Ms. BAKER. Yes.

Mr. BUYER. Wow. Interesting.

The other is, Ms. Clyburn, I spent a couple days with your parents not long ago, a couple years ago, and you have probably heard this before. You look like your mom, you sound like your mom, and that is a compliment.

Ms. CLYBURN. Thank you.

Mr. BUYER. Everybody thinks it is your dad, but it is your mom. That is what I learned quickly by spending a couple days with her.

When you go to Charleston and you do this little hearing, and I want you to think about the unserved, whether it is on Johns Island, Edisto, Walhalla. So when you are thinking about the underserved, think in your mind we do not want to bring shame into the system. Shame is, is when you—if you are at a buffet and 80 percent of the people have already eaten but 20 percent haven't had a chance to eat, you don't go get seconds and get in line before people who haven't eaten. Right? That is shameful conduct in America.

So as you make these decisions about the difference between unserved and underserved, let's make sure that we are fair and equitable and we don't embrace shameful conduct and behavior by us.

Ms. CLYBURN. Absolutely.

Mr. BUYER. The last thing is, in a market-based approach, please do this for me when you think about these judgments. Focus on consumer demand, and let supply and price work itself out. Okay?

Ms. CLYBURN. I appreciate your guidance.

Mr. BUYER. And I see the power of South Carolina on this Commission, so I will be keeping my eye on it. Thank you.

Mr. BOUCHER. Thank you very much, Mr. Buyer; And thanks to all the members for being expeditious. We, unfortunately, do have at least one other member who wants to propound questions. We now must recess the subcommittee. I would suggest that each of you have a marvelous lunch, and please return here at about a quarter to 2:00, and at that point in time well continue our hearing. It should not take very long after that.

The hearing stands in recess.

[Recess.]

Mr. BOUCHER. The subcommittee will come to order.

I want to thank the members of the FCC for their patience. I am sorry that we were delayed a little bit longer than I had predicted.

That is usually the case. But you have been very patient. I hope you enjoyed lunch, and welcome back.

The gentleman from Oregon, Mr. Walden, is next to be recognized, and he is recognized for 5 minutes.

Mr. WALDEN. I want to thank the Commissioners. I have enjoyed getting to know some of you over the years, and I look forward to spending more time with you. And I appreciate the cordiality that we are seeing on display today, your willingness to work together and talk together; and I realize, with many new members and leadership, it is a new FCC.

I had not planned to get into this issue today, but the letter that has come forward from interest groups prompted me to do some research in the last 24 hours.

It is troubling what I have been reading regarding a gentleman who has now been given a special position at the Commission, head of diversity and special counsel position, Mr. Lloyd. And I was just reading a document from the Center for American Progress where he outlines his various views, an article of July 24, 2007. And, you know, I think I have shared with some of you that my wife and I were in small market radio ownership for nearly 22 years. My father helped put stations on the air back in the 1930s and believed very strongly in the responsibility of licensees to serve their communities.

So when I read that this gentleman says that commercial signal broadcasters want to be trustees of public property but without responsibility, I gotta tell you, I take offense to that. I don't think I am taking that out of context. It is written right here.

And some of the other comments that have recently been made available to me show me that you have got a person in there who I don't recall over the years the FCC having that strongly opinionated a person in a position like that. The FCC to me has always been a very professional organization that didn't go down this path. So I find this very offensive.

Chairman, you and I had a very good conversation about fairness doctrine. You know my feelings on that. I received your comments, and I understand you are for not putting it back in, and I am not for putting it back in. It didn't work when it was there. I happen to believe it is probably unconstitutional.

The information from Mr. Lloyd would indicate he is not for putting fairness doctrine back in. He is just for a whole different scheme that gets to the same outcome. And his appointment occurred after our conversation. This is all bubbling up right now.

But you want to talk about czars, I hope we don't have a government speech czar in place. It is going to drive a whole different mechanism through the rule making and challenging the licensees.

I am just trying to figure out what his position is, what his responsibilities are. Will we have an opportunity to ask him questions about these issues? I have got to tell you, I am out of the business now, but I am deeply offended by what I read here and troubled. And I open it up to any of you to comment.

Mr. GENACHOWSKI. First, I did enjoy our meeting. I mentioned when you were out of the room earlier it led to some constructive follow-up. We took your idea around—I happened to have the media bureau staff meet with broadcast engineers that actually

produced some concrete suggestions. It relates to some of what the goals are with the staff of the FCC.

In my opinion, an expert agency needs to have a broad range of people with different backgrounds, different expertise; and we talked about some of those people when we got together, people from the business community, a vibrant exchange of ideas internally.

I understand some of the concerns you have, and I can say a couple of things.

One is, to the extent there is a concern that the Commission would engage in any censorship of broadcasters or anyone in the media on the basis of political views and opinions, The answer is, we won't. The first amendment prohibits it. It won't happen.

To the extent that there are concerns—you have indicated about the Commission not being aware of the economic conditions and challenges that broadcasters face. I can assure you that anything the Commission does would take that into account. The Commission needs to understand what is going on with broadcasters.

Similarly, I appreciate your point about broadcasters and special responsibilities; and I know so many broadcasters take that seriously, provide very valuable services to the community. Americans value it, local news and information or emergency alerts, other emergency information, traffic, weather. So I actually think there is a lot of agreement around core principles.

Diversity is another area where for a very long time there has been—I think there still is—a bipartisan consensus that it is an important objective of the communications policies and the FCC. The diversity goals are mentioned in hundreds of FCC decisions. They are explicitly in the Communications Act. The Supreme Court has acknowledged that it is a role, and the idea of having diversity as an objective to the FCC and having staff focused on it seem to be a natural extension.

Mr. WALDEN. I do not take exception to that. I just begin to read what he said. There are video comments about Hugo Chavez. I mean, there are some pretty outrageous things being said, having been written in the past, and that troubles me, that somebody that is that opinionated to the extreme element that he is, from my perspective, it is not going to bring balance to that diversity position that you created.

Mr. GENACHOWSKI. A couple of points, if I could.

One is, the policy of the Commission is made by the Chairman and the Commissioners. Staff have many different ideas all over the map.

Mr. WALDEN. Having been a licensee, we don't talk to the Commissioners. We talk to the staff. You know what I am saying? They have extraordinary power in any agency to tilt the rules, to interpret them, to interact with different publics. And this just seems to be a very biased person. We all have our biases, but this one just seems to be out there.

Mr. GENACHOWSKI. The other thing that I wanted to make sure that you knew is, as I said before, Mark Lloyd is not working on these issues. He is not working on fairness doctrine issues, censorship issues. He is not working on these issues. He is working on opportunity issues primarily now around broadband adoption, fo-

cusing on making sure that broadband is available to all Americans.

Mr. WALDEN. So he is not going to be working on the license issues, none of those things?

Mr. GENACHOWSKI. He is not working on those issues. No.

He is someone who is well-known to many people in the communications industry for a long time. He has been involved in these issues. He is known to virtually all of us here on the panel. He has taught at MIT. And, as I said, he is someone who, of course, we would make available to you or anyone to speak with if you have any concerns, as we would any staffer at the FCC.

Mr. WALDEN. Mr. Copps?

Mr. COPPS. I would just encourage you to take advantage of that offer to get to know him a little bit better. Every human being is a totality with a lot of different experiences and a lot of different ideas.

We have worked very closely with Mr. Lloyd when he was at the Leadership Conference on Civil Rights—an incredible organization that is—under the leadership of Wade Henderson. He was of great help during the DTV transition with helping mobilize a lot of nontraditional stakeholders and helping get the word out on DTV.

So he has a very distinguished record. Chairman Genachowski said nothing that I would disagree with. I would agree with everything that he said. We will be—the Commissioners will be making the decisions.

But we want a place of intellectual ferment and different ideas. We have an organization of 1,800 people. I don't think everybody is going to go in lockstep. And then we rely on the judgment of the organization and the people at the top of the organization to make intelligent decisions about where we are going.

But as for the personal characteristics of this particular individual, I think they are of the highest; and I, for one, am pleased that he is at the FCC.

Mr. WALDEN. Could I hear from the other Commissioners, sir?

Mr. BOUCHER. Well, you are going on 9 minutes now, Mr. Walden. But if others want to comment very briefly, that would be good.

Mr. McDowell, if you have a comment.

Mr. MCDOWELL. Well, first are of all, I have met Mr. Lloyd in the context of my work at the FCC and in the work of the digital TV transition, so that is the only real context that I know him. He did, with the general counsel, have the courtesy to come to me last week. We had a very nice meeting. We talked about what his mission, what his portfolio would be at the Commission, and it was as the Chairman had outlined.

I share your concern with the substance of his writings and what he has been reported as saying. I hope that does not become Commission policy. I certainly will be very vigilant in defending the first amendment and the rights of broadcasters and those who speak over the airwaves in that regard.

At the same time, I do think that the Chairman and CEO of the FCC does have the prerogative to hire folks he wants to.

At the same time, to your point, the career staff or staff below the Commissioner level can have great influence without us know-

ing sometimes; and that should be maybe part of FCC reform, to make sure it is as transparent an agency as possible and take the Chairman at his word that he will work in that direction. He has certainly taken some steps in that regard. But we will all be watching and mindful, and sometimes just shining a spotlight on an issue or concern can be very curative and very positive.

Thank you.

Mr. BOUCHER. Thank you very much, Mr. Walden.

Well, I think we have answered this question.

I want to say thank you to each of the Commissioners for your attendance here today and for the testimony that you provided. And I can say that I have tremendous confidence in your ability to undertake the difficult challenges before you and make outstanding decisions, and we all on this subcommittee look forward to our coordination with you as together we seek to advance American telecommunications policy.

We will be having other hearings. We will invite your attendance from time to time and be in formal conversation with you between those hearings.

So with the thanks of this subcommittee for your appearance today, your outstanding testimony, this hearing stands adjourned.

[Whereupon, at 2:30 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Federal Communications Commission
Washington, D.C. 20554

October 30, 2009

The Honorable Henry A. Waxman
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Waxman:

Enclosed please find my responses to the written questions for the record from my appearance before the Subcommittee on Communications, Technology and the Internet on September 17, 2009. I appreciate the opportunity to provide this additional information to the Committee members.

Please let me know if I can be of further assistance.

Sincerely,

Julius Genachowski
Chairman

Enclosure

The Honorable Henry Waxman and the Honorable Bobby Rush

It has come to our attention that certain voice over Internet Protocol (VoIP) providers are able to reduce dramatically the per-minute cost of inmates calls by allowing inmate's families to obtain a phone number that is local to the correctional facility and have the inmate place their calls to that local number instead of having to make a long distance call. According to some, these VoIP providers can offer this reduced cost service without restricting the ability of prison payphone systems to track, monitor, block, or record the conversations of inmates.

In response to this low cost alternative, certain prison phone providers have started blocking outgoing VoIP calls. The VoIP providers allege that the call blocking is contrary to section 201 of the Communications Act and Commission precedent that protects VoIP providers from having their calls blocked. They allege that the blocking has resulted in a decline in their customer base and could result in them discontinuing service. One such company, Millicorp, has a petition pending for the Commission to investigate their allegation of call-blocking by certain inmate phone service providers.

1. What decisions has the Commission made concerning call blocking and VoIP providers?

2. Are VoIP providers covered by section 201?

3. What temporary or interim steps can the Commission take to prevent the blocking of phone calls during the pendency of its decision making process?

RESPONSE TO QUESTIONS 1 - 3: Currently, the Commission has pending before it a Petition for Declaratory Ruling by Securus Technologies, Inc. (Securus) which is an inmate calling service (ICS) provider. Securus has asked the Commission to rule that services like those offered by Millicorp constitute call diversion schemes, which Securus claims it may block pursuant to Commission precedent. *See Policies and Rules Concerning Operator Service Providers*, CC Docket No. 90-313, Report and Order, 6 FCC Rcd 2744 (1991). Specifically, as described by Millicorp, the service assigns phone numbers to a subscriber (the inmate's family in most cases) that are local to the prison facilities where the inmate is incarcerated. Once an ICS call is placed to that local number, Millicorp states that it uses VoIP technology to route the call to the carrier that ultimately delivers the call to the subscriber. Securus argues that the Millicorp service is a form of dial-around calling and that there are security concerns with allowing such arrangements because neither the ICS provider nor the prison officials know where the call is being terminated. The comment period on this petition recently closed and Commission staff is analyzing the arguments and evidence that has been presented.

The Commission's general policy is to discourage the blocking of calls, pursuant to, among other things, section 201 of the Act. *See, e.g., Establishing Just and Reasonable Rates for Local Exchange Carriers; Call Blocking by Carriers*, WC Docket No. 07-135, Declaratory Ruling and Order, 22 F.C.C.R. 11629, 11631, para. 5 (Wireline Comp. Bur. 2007). And while the Commission has not addressed the applicability of section 201 to all types of VoIP providers in all contexts, it has found section 201 relevant in several particular contexts. *See, e.g., IP-Enabled Services; E911 Requirements For IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-169, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10269, para. 40 (2005) ("We expect and strongly encourage all parties involved to work together to develop and deploy VoIP E911 solutions and we point out that incumbent LECs, as common carriers, are subject to sections 201 and 202 of the Act."); *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457, 7460, 7461, 7465-66, paras. 4 n.16, 6, 12-13 (2004) (finding that certain "IP-in-the-middle" services were

telecommunications services, which are subject to the requirements of Title II of the Act, including section 201); *Madison River LLC and Affiliated Companies*, File No. EB-05-IH-0110, Order, 20 FCC Rcd 4295 (Enf. Bur. 2005) (adopting a consent decree terminating an investigation into Madison River's compliance with section 201(b) regarding the blocking of ports used for VoIP applications). The Commission also has recognized, however, that inmate calling services differ from traditional payphone services because of security concerns inherent in inmate calling services, and has recognized that "inmate calling services employ numerous blocking mechanisms" in particular contexts, including "to prevent inmates from making direct-dialed calls, access code calls, 800/900 calls, or calls to certain individuals like judges or witnesses." *Implementation of the Pay Telephone Reclassification And Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Remand & Notice of Proposed Rulemaking, 17 FCC Rcd 3248, 3252, para. 9 (2002).

In addition, Millicorp recently has filed a letter with the Enforcement Bureau questioning the call blocking by Securus. Staff is reviewing the claims to determine what actions if any might be appropriate.

The Honorable John D. Dingell

I. Forbearance
I am pleased by the Commission's move under Acting Chairman Copps to institute changes to its forbearance procedures. While I appreciate these modifications, section 10(c) of the Communications Act of 1934 still permits a petition for forbearance to be granted, should FCC not deny it within one year of its submission. My legislation, H.R. 400, would amend section 10(c) to require that the Commission grant such a petition within one year of its receipt, unless it determines an extension is necessary.

1. This in mind, is it the opinion of the Commission that a petition for forbearance should be granted by reason of inaction by the Commission? Yes or no.

   RESPONSE: No. I should clarify however, that this represents my own view and is not an official position of the full Commission.

2. Further, does the Commission believe that granting petitions in this manner (i. *e.*, "deemed granted" by reason of Commission inaction) is a transparent method of governance and also in the public interest? Yes or no.

   RESPONSE: No. I have stated that the Commission's decision-making should be open and transparent. Allowing statutory provisions or Commission rules to become inapplicable by default does not produce transparency. A government agency should provide a well-reasoned and documented explanation for its decisions and the Commission should be no exception. As above, I should clarify that this represents my own view and is not an official position of the full Commission.

3. Even under its new forbearance procedures, does the Commission believe it can act, on every forbearance petition, so as to avoid any such petition's being granted by Commission inaction? Yes or no.

   RESPONSE: No. I should clarify that while I am Chairman, I will take every step within my power to comply with the existing statute—but it is still possible that, for a variety of reasons, the full Commission will not act within the existing statutory deadline and that a petition will be granted by inaction. As above, I should clarify that this represents my own view and is not an official position of the full Commission.

4. Therefore, does the Commission support the revision to section 10(c) of the Communications Act of 1934, as contained in H.R. 400? Yes or no.

   RESPONSE: Yes. Again, this is my own view and not an official view of the full Commission.

II. Special Access
On July 9, 2009, Chairman Boucher and I sent a letter to the Commission urging it "to collect the data necessary to make an informed determination concerning the state of competition for special access and other high-capacity data services as it contemplates revisions to its pricing flexibility order."

5. Has the Commission issued a formal request for such data, and if not, when will it do so?

   RESPONSE: See below.

6. Is it the intention of the Commission to use the special access data it collects as a part of a "data-driven process" to amend its pricing flexibility order? Yes or no.

RESPONSE TO QUESTION 5 & QUESTION 6: My proposed course of action for a review of special access issues is as follows. I should clarify that this is my own view and not an official position of the full Commission.

These issues have been pending for several years and I appreciate the understandable frustration of many parties regarding the Commission's lack of progress in addressing special access issues. Specifically, I want to advise you that I expect the Commission's Wireline Competition Bureau to issue a Public Notice by November 5, 2009 seeking comments on the appropriate analytical framework for examining the various issues that have been raised in the pending *Special Access* proceeding. The comments received in response to the Public Notice will assist the Commission in identifying the appropriate types of data necessary to conduct our analysis and will enable us to move forward in a timely manner. By way of background, the Commission released a *Notice of Proposed Rulemaking* in 2005, requesting information necessary to assess the competitiveness of the special access market and the functioning of the Commission's existing regulations in that market, and sought updated information in 2007. Some parties have argued that the Commission has adequate information to immediately issue an Order resolving that proceeding. Other parties have identified specific data not currently in the record that they contend are necessary to evaluate the state of the special access marketplace, although parties disagree about what data are required. Underlying many of these different views are fundamental disagreements about the analytical framework the Commission should use in evaluating the state of the special access marketplace and the associated data the Commission would need, given a proposed analytical framework. Thus, as a threshold matter, I have proposed to seek focused comment on the analytic framework that the Commission should use in analyzing the markets for special access services. After determining the appropriate framework, the Commission then can undertake the steps to collect the necessary data and conduct its evaluation of the special access marketplace. In addition, as you know, the Commission also is in the process of developing a National Broadband Plan, to be issued by February 17, 2010. The role of special access services and "middle mile" facilities in broadband deployment has been raised both in the comments filed in that proceeding and in the broadband staff workshops. As a result, the National Broadband Plan is expected to address issues that will inform the Commission's analysis of special access services.

III. Wireless Communications Services (WCS) and Satellite Digital Audio Radio Services (SDARS)

7. Last year, former Chairman Martin drafted rules that would allow the use of mobile devices immediately adjacent to satellite radio receivers. Test results have been submitted that show significant interference under the draft rules, and it is my understanding that the parties and FCC engineers conducted additional tests this past summer. In light of these test results, how has FCC modified the draft rules to ensure that no interference will result to existing consumers? Given the highly technical nature of these issues, I expect that you will allow the public opportunity to comment on any proposed rules. Is this so? If not, please explain why. Further, when does FCC anticipate completing this rulemaking?

   RESPONSE: I share your concerns that any technical rules the Commission develops enabling the provision of mobile broadband service in the WCS band protect the interests of current SDARS customers. In light of conflicting data regarding the interference potential between WCS and SDARS systems, Sirius XM and the WCS Coalition each conducted tests in July 2009 in Ashburn, Virginia to demonstrate the potential for interference under various technical conditions. The tests were attended by FCC engineers and other interested parties. The test participants separately placed in the record their test results and findings, including proposed rule changes, and all interested parties have had, and continue to have, full and fair opportunity to comment on these filings. The Commission staff is

currently reviewing the test results as well as the participants' conclusions and proposals in order to determine the appropriate balance of technical parameters that will enable WCS licensees to offer new mobile broadband services while preserving high quality SDARS service to the public.

I appreciate the interest in the timely and satisfactory resolution of this proceeding in light of the benefits to the public offered by these services. As you are aware, the Commission has been charged by Congress and the President to develop, by February 17, 2010, a national strategy to ensure access to high-speed broadband to all Americans. As part of this effort, the Commission will consider how best to make advanced services – including wireless broadband services – a part of this national broadband strategy. My goals are to resolve the WCS/SDARS proceeding as expeditiously as possible while ensuring that any rules adopted are consistent with our legislative mandate to develop a comprehensive broadband policy.

The Honorable Edward J. Markey

Based on the number of applicants seeking BTOP and BIP stimulus grants and loans during the first round of stimulus funding, there appears to be great interest in rolling out advanced broadband services to unserved and underserved areas. Many of the applicants seeking stimulus funds from NTIA and RUS want to deploy broadband services with Wireless Communications Services (WCS) spectrum. As you know, the FCC first must release final technical rules addressing WCS and Satellite Digital Audio Radio Services (SDARS) before WCS spectrum can be deployed.

As I noted in a July 15, 2008 letter to then-FCC Chairman Kevin Martin, the WCS spectrum holds great promise for the deployment of advanced broadband services. Completion of the pending rulemaking quickly to mitigate interference issues will assist in realizing the potential of this allocation.

Do you expect the Commission to release these rules before the end of this year? If not, when do you anticipate the release of these rules?

RESPONSE: I, too, am hopeful that the WCS spectrum can be used successfully to support the rollout of advanced broadband services to under- and unserved areas of the nation. As you are aware, the Commission has been charged by Congress and the President to develop, by February 17, 2010, a national strategy to ensure access to high-speed broadband to all Americans. As part of this effort, the Commission will consider how best to make advanced services—including wireless broadband services—a part of this national broadband strategy. Although the Commission's rules offer a path to the provision of certain wireless services, we are currently determining how best to revise our rules to enable the development and provision of new and innovative mobile broadband services in the WCS band, while also protecting the public's ability to receive satellite radio services. Addressing these issues is an important Commission priority, and my goal is to resolve the WCS/SDARS proceeding as quickly as possible while also ensuring that the policies established are a coherent part of the overall national broadband strategy to be developed by the Commission.

The Honorable Bobby L. Rush

1. What are the Commissioner's views on how to best go about ensuring diversity of ownership and voices with respect to FCC-licensed broadcasting facilities and with respect to FCC-competitively bid or divested spectrum, notwithstanding Croson and Adarand precedent calling for strict scrutiny of race-based programs?

    a. Does the Commission have plans to update its Adarand study, which was commenced during the tenure of former Chairman William E. Kennard, and if so, when would it commence this process?

    RESPONSE: Diversity, including ownership diversity, is a longstanding communications policy goal established by Congress in the Communications Act. In December 2007, the Commission adopted a Diversity Order that sought to promote new and expanded entry into broadcasting by "eligible entities," including businesses owned by minorities and women. The Commission defined "eligible entities" as those that qualify as small businesses under the SBA's definition and also meet Commission-defined control criteria. It adopted various initiatives to promote investment in eligible entities and to enhance their ability to obtain financing and spectrum, including: (1) modifying the Commission's attribution rules to permit greater investment in eligible entities by firms that already own media outlets; (2) awarding priority for applications to own two television stations in a local market to broadcasters that finance or incubate an eligible entity; (3) allowing eligible entities that acquire expiring broadcast construction permits additional time to construct (the time remaining in the original construction permit or 18 months, whichever is greater); (4) expanding the class of beneficiaries of the distress sale policy so that it is available to all eligible entities; (5) considering requests to extend divestiture deadlines in mergers in which applicants have actively solicited bids for divested properties from eligible entities; (6) barring discrimination on the basis of race or gender in broadcast transactions; and (7) prohibiting no urban/no Spanish dictates in advertising by requiring broadcast renewal applicants to certify that their advertising sales contracts do not discriminate.

    The Commission also held an Access to Capital Conference in New York City in July 2008. The purpose of the conference was to enhance the knowledge of the Commission and attendees about: (i) the state of capital markets as those markets impact ownership diversity in the media and telecom industries and, particularly, the success of minorities and women entrepreneurs; (ii) how financing is secured for new, diverse, resource limited ventures, focusing on actual problems encountered by women and minorities attempting to secure financing for media and telecom deals; and (iii) potential ways the Commission can help facilitate financing opportunities for minorities and women.

    In adopting the Diversity Order, the Commission declined to adopt a more targeted definition of the benefited category because of the potential constitutional difficulties in using a race- and gender-conscious definition to identify the class of intended beneficiaries. The Commission currently does not possess reliable data on the precise status of minority and female ownership. This is data that we will need to establish and maintain effective policies and that the courts will insist on if the Commission chooses to pursue race- or gender-based approaches. As you may know, targeted measures to promote minority ownership are subject to judicial strict scrutiny, a rigorous standard requiring a compelling state interest and a showing that the measures taken are narrowly tailored to promote that interest. Targeted measures to promote female ownership are subject to intermediate scrutiny, a higher standard

than the ordinary rational basis test that applies to agency action, but a somewhat lower standard than strict scrutiny.

An advantage of using a small business definition is that it is a straightforward, revenue-based definition that allows minority- and women-owned small businesses to qualify. However, the Commission has an obligation to continue to explore ways to help minority- and women-owned media businesses of all sizes participate in the media marketplace. To that end, we currently are reviewing what options may be available that would be constitutionally sustainable. We also are considering whether there are any race- and gender-neutral approaches that could be taken in the interim period while a record is developed. The Commission's re-chartered Diversity Advisory Committee recently recommended that the Commission undertake new empirically sound peer-reviewed studies to update the diversity studies undertaken under previous Chairman Kennard. We are exploring options for undertaking such studies. We plan to sponsor new research to gather additional evidence consistent with constitutional requirements.

On April 8, 2009, the Commission took a step toward gathering relevant data with respect to minority and female ownership. The Commission adopted a Report and Order to revise the ownership report form, FCC Form 323, which full-power commercial radio and television licensees must file biennially. The Commission's revisions will enable it to obtain information about minority and female broadcast ownership. The Commission also addressed problems of data comprehensiveness by extending the biennial filing requirement to include additional categories of licensees, including LPTV stations, Class A television stations, and broadcast licensees owned by individuals or partnerships of natural persons. The Commission adopted a uniform filing date to enable snapshots to be taken periodically of the state of minority and female ownership. OMB approved the revised FCC Form 323 on October 19, 2009. Commission staff is taking the necessary steps for the revised form to become effective.

b. Does the Commission have plans to reconsider media ownership and cross-ownership limits and caps, or to propose legislation repealing or significantly modifying laws that permit increased aggregation of ownership within a market?

RESPONSE: Section 202(h) of the Telecommunications Act of 1996 requires the Commission to review its ownership rules every four years and "determine whether any of such rules are necessary in the public interest as the result of competition." Under Section 202(h), the Commission "shall repeal or modify any regulation it determines to be no longer in the public interest." Our statutorily required periodic review encompasses five ownership rules: (1) the newspaper/broadcast cross-ownership rule, (2) the radio/television cross-ownership rule, (3) the local television ownership rule, (4) the local radio ownership rule, and (5) the dual network rule. The Commission is statutorily required to commence the next quadrennial review proceeding in 2010.

The Commission already has begun its media ownership review process. In this regard, the Commission's Media Bureau has announced that on November 2, 3, and 4, 2009, it will hold its first workshops to prepare for the *2010 quadrennial review* of the media ownership rules. The workshops will explore the scope and methodology of the proceeding and the analytical framework the Commission should use for conducting its review. The three half-day sessions will include: (1) a panel of policy scholars, (2) a panel of public interest groups, and (3) a panel of broadcasters and media trade associations. The Public Notice also invites comment from the public on questions that the workshops will consider. During the workshops, and in

the rulemakings the Commission will commence in its quadrennial review, the Commission will ask fundamental questions, including questions in regard to its competition, localism, and diversity goals. My goal is that our review process in this proceeding will be thorough, transparent, and timely. We must undertake a rigorous review, going back to first principles, of the role of the media ownership rules in the current media marketplace, taking into account the Commission's longstanding and important diversity, localism, and competition goals, as well as other relevant issues. In addition, we intend to commission and conduct empirical studies so that our policy decisions are supported by a sound evidentiary foundation. My goal is to conclude this process with rules that pass court review and also fully promote our important goals in this changing marketplace.

2. In 1996, the Commission determined that inmate calling services must be deregulated. Currently, there is a proceeding pending at the Commission relating to rates paid to prison phone service providers for interstate telephone service. In many States, these rates appear to exceed the actual cost to originate and terminate a call between inmates and their called parties. Accordingly, the prices for these calls are excessive and apparently are not cost-based.

   What is the status of this proceeding (Wright Petition CC-96-128), and when is it likely to be decided?

   RESPONSE: As you indicate, the Commission currently has a pending proceeding evaluating rates for inmate calling services (ICS). The first Wright Petition in this proceeding, filed in 2003, requested that the Commission take action to prohibit exclusive ICS agreements and collect call-only restrictions at privately-administered prisons and to permit multiple long distance carriers to interconnect with prison telephone systems. More recently, in 2007, a revised Wright Petition was filed, which asks the Commission to establish benchmark rates for all interstate, interexchange inmate calling services, for all types of correctional facilities. The 2007 Wright Petition suggests a benchmark rate for domestic interstate, interexchange inmate debit calling service of $0.20 per minute and a benchmark rate for domestic interstate, interexchange inmate collect calling service of $0.25 per minute, with no set-up or other per-call charge. In 2008, a group of ICS providers filed data they had complied, and suggested a different rate structure and rate levels than those proposed in the 2007 Wright Petition. Staff is analyzing the record that has been compiled and continues to meet with interested parties to obtain a better understanding of the information that has been submitted to the Commission. This analysis will allow the Commission to make a reasoned determination on how best to proceed based on the facts presented.

3. Our subcommittee heard testimony about PEG Access approximately 18 months ago. At that time, I queried AT&T about the inability of viewers to channel surf to PEG channels or to effectuate a simple DVR recording independently or with the assistance of AT&T's program guides.

   What is the status of the Petitions before the FCC regarding discriminatory treatment of these public channels and when can we expect a decision? (See, e.g., ACM et al Petition, CSR-8126)

   RESPONSE: Public, educational, and government ("PEG") channels are an important source of local programming and the Commission should ensure that the channels receive equitable treatment consistent with the Commission's rules. The Alliance for Community Media and the cities of Dearborn and Lansing, Michigan filed Petitions for Declaratory Ruling in December 2008 and January 2009 seeking Commission guidance on several issues related to the carriage of PEG channels. On February 6, 2009, the Commission issued a *Public Notice* establishing a period for comment on the issues presented in the Petitions. The comment period in the proceeding closed on April 1, 2009. The Commission staff is evaluating the record developed in the proceeding, and I hope

that the Commission will be in a position to address the issues raised in the Petitions in the near future.

The Honorable Anna G. Eshoo

1. Last month you announced your Notice of Inquiry for Wireless Innovation and Investment. I am relieved that there will be a comprehensive focus on Wireless competition, but I am concerned that a NOI and then a rulemaking might take a significant period of time for completion. Please provide an explanation of your timeline and a narrative of how you plan to expedite these important wireless issues.

   RESPONSE: The two *Notices of Inquiry* released on August 27, 2009 – one on mobile wireless competition and the other on wireless innovation and investment – give all stakeholders an opportunity to have their views heard at the Commission and the Commission an opportunity to enhance its understanding of the mobile wireless market. This is an important step in the process of laying a solid foundation for predictable, fact-based competition policy in the wireless sector. Increasing innovation and investment, empowering consumers, and promoting competition are core components of the FCC's mission. These *Notices of Inquiry*, in conjunction with workshops and hearings on the National Broadband Plan, will provide the record we need to make the right decisions and make America the leader in mobile wireless broadband.

   The Wireless Innovation and Investment Notice of Inquiry is a broad inquiry into the state of innovation and investment in the wireless ecosystem and the role of the Commission in fostering and encouraging such innovation and investment. Once the complete record has been submitted on November 5, we will make an assessment of the ideas proposed in the comments. There may be ideas worth taking into consideration that do not require a new rulemaking. Some ideas may be relevant to the resolution of rulemaking proceedings that have already been initiated by the Commission, so a new rulemaking would not be necessary, nor will the resolution of those proceedings be delayed by the review of the new record. Alternatively, we may find proposals in the record that can be implemented without any rulemaking -- for example, ideas that require only a Commission waiver. Our approach to such proposals will depend on the specific issue raised and the state of the record. Finally, if there are good ideas that do require commencing a new rulemaking, we would expect to initiate expeditiously proceedings on any such ideas.

2. Because of pressure from Congress and a possible DOJ investigation, I believe Verizon has offered to open its exclusive handset contracts. I've looked at the details of this deal and I'm unimpressed. It only applies to carriers with fewer than 500,000 customers which really only benefits 5% of all wireless customers. This issue is really a symptom of a larger problem that we've seen spread into special access, data roaming, customer service, and onerous contract terms and conditions. Do you expect your wireless inquiry will address most of these issues?

   RESPONSE: Verizon's proposal to shorten the duration of its exclusive handset contracts for carriers with fewer than 500,000 customers was submitted in the context of a petition for rulemaking on exclusive handset arrangements filed by the Rural Cellular Association (RCA) which the Commission has for public comment (RM-11497). Commission staff has been actively reviewing the record received regarding this petition and meeting with interested parties. I am interested in the effects of exclusive arrangements on consumers and the wireless marketplace and have encouraged public discourse on the issue. I am also firmly committed to engaging the public and the wireless industry in an open and transparent dialog to resolve issues surrounding special access, data roaming, customer service, and the terms and conditions set forth in service contracts.

3. I am interested in other matters that have been dormant or pushed back TEN YEARS ago, the FCC issued the Price Flexibility Order on special access to increase competition in the market. We have seen special access issues drag out since that time – from a Notice of Proposed Rulemaking in 2005, to a GAO Report telling the Commission to get busy in 2006, right up to a few months ago when we reminded the FCC to focus on this matter. Do you really need more data or could you just issue an order in the 2005 Special Access Proceeding? Please provide me with an expected timeline for completion of this proceeding.

RESPONSE: My proposed course of action for a review of special access issues is as follows. I should clarify that this is my own view and not an official position of the full Commission.

These issues have been pending for several years and I appreciate the understandable frustration of many parties regarding the Commission's lack of progress in addressing special access issues. Specifically, I want to advise you that I expect the Commission's Wireline Competition Bureau to issue a Public Notice by November 5, 2009 seeking comments on the appropriate analytical framework for examining the various issues that have been raised in the pending *Special Access* proceeding. The comments received in response to the Public Notice will assist the Commission in identifying the appropriate types of data necessary to conduct our analysis and will enable us to move forward in a timely manner. By way of background, the Commission released a *Notice of Proposed Rulemaking* in 2005, requesting information necessary to assess the competitiveness of the special access market and the functioning of the Commission's existing regulations in that market, and sought updated information in 2007. Some parties have argued that the Commission has adequate information to immediately issue an Order resolving that proceeding. Other parties have identified specific data not currently in the record that they contend are necessary to evaluate the state of the special access marketplace, although parties disagree about what data are required. Underlying many of these different views are fundamental disagreements about the analytical framework the Commission should use in evaluating the state of the special access marketplace and the associated data the Commission would need, given a proposed analytical framework. Thus, as a threshold matter, I have proposed to seek focused comment on the analytic framework that the Commission should use in analyzing the markets for special access services. After determining the appropriate framework, the Commission then can undertake the steps to collect the necessary data and conduct its evaluation of the special access marketplace. In addition, as you know, the Commission also is in the process of developing a National Broadband Plan, to be issued by February 17, 2010. The role of special access services and "middle mile" facilities in broadband deployment has been raised both in the comments filed in that proceeding and in the broadband staff workshops. As a result, the National Broadband Plan is expected to address issues that will inform the Commission's analysis of special access services.

4. The AWS proceeding (2155 - 2175 MHz band) is yet another delayed matter that keeps dragging on. It seems like the information was in place to issue an order on Dec 18 of this past year, so there shouldn't be a problem in opening up that spectrum. Please provide a timeline and explanation of how soon you expect to complete this matter. Also, will you focus on public interest issues as the primary basis for the distribution of this important spectrum?

RESPONSE: In September 2007, the Commission released a *Notice of Proposed Rulemaking* seeking comment on service rules for the 2155-2175 MHz band. At that time, the Commission committed to issuing an order establishing service rules by August 14, 2008. In June 2008, the Commission released a *Further Notice of Proposed Rulemaking* (Further Notice), seeking public comment on specific proposed service rules for the 2155-2180 MHz band. In October 2008, the FCC's Office of Engineering and Technology released *Advanced Wireless Service Interference Tests*

Results and Analysis, which analyzed the raw data from earlier laboratory bench tests performed by FCC staff together with interested parties.

Like you, I recognize the significance of this spectrum and believe that the Commission must resolve this important rulemaking in a timely and transparent fashion. I also recognize that mobile broadband is central to our mission. No sector of the communications industry holds greater potential to enhance America's economic competitiveness, spur job creation, and improve the quality of our lives. At the direction of Congress and the President, the Commission is working in coordination with the National Telecommunications and Information Administration to implement the communications-related portions of The American Recovery and Reinvestment Act of 2009. The Commission is charged to develop, by February 17, 2010, a national strategy to ensure access to high-speed broadband to all Americans. As part of this effort, in these next months, the Commission will consider how best to make broadband available—including wireless broadband services—as part of this national broadband strategy.

I want to assure you that establishing service rules for the AWS-3 spectrum remains an important Commission priority. Such rules should aim to put AWS-3 to use as expeditiously as feasible, while ensuring that those rules are consistent with our legislative mandate to develop a comprehensive broadband policy for our nation.

5. D Block is yet another episode where much-needed spectrum has been held up instead of distributed for essential use by public service entities. Do you feel confident that the Commission will be able to finalize this matter, or would you require legislative action to alter the parameters to allow for a different distribution method?

   RESPONSE: Resolving the issues surrounding the D Block and the adjacent 700 MHz public safety broadband spectrum is a key priority for the Commission. We are carefully examining all options for achieving deployment of a public safety broadband network or networks that would support nationwide interoperability. We are also aware that some parties have proposed that Congress take legislative action that could affect the available options. Whether or not Congress acts on these proposals, it is our intent to move forward as quickly as possible to bring these matters to resolution. In this regard, we are proactively seeking information from the commercial and public safety communities, including at the local, state, and Federal levels, in order to ensure that our decisions are data-driven. We have also sought comment on the waiver requests from certain local, state and regional public safety agencies seeking to deploy 700 MHz broadband networks prior to resolution of the overall rulemaking proceeding. We are looking to develop recommendations with respect to these requests, in parallel with recommendations relating to public safety broadband issues being developed for the National Broadband Plan due to Congress in February 2010.

6. Do you believe copper line infrastructure will have a role in the National Broadband Plan? And if so, can you expound on its role and how you envision the use of this existing infrastructure?

   RESPONSE: Getting broadband to all Americans will require the use of many technologies – wireline and wireless. There is little question that many American households and thousands of small businesses today enjoy the fruits of broadband connectivity over copper wire infrastructure. I also understand that ongoing innovation in digital compression techniques will allow bandwidth speeds utilizing such infrastructure to continue to improve. As we develop our National Broadband Plan, the Commission will engage in an open and data-driven process of examining the value of the tools at our disposal to achieve our broadband goals. Accordingly, we will evaluate existing copper line infrastructure. We will also examine policies as broadband providers overlay fiber optic transmission lines and seek to "retire" copper lines. While we seek to create incentives for the continued

deployment of advanced fiber optic infrastructure throughout the country, we must also keep in mind the value that remains in the existing infrastructure that can enable significant competition and service. I should clarify that this is my own view and not an official position of the full Commission.

7. What do you propose to do in order to accelerate deployment of E911 Phase II, and to fulfill the Commission's leadership and coordination responsibilities Under the 911 Act (P.L. 106-81) and the ENHANCE 911 Act (P.L. 108-494)?

   RESPONSE: The Commission works with a number of Federal partners, including the National 911 Coordination Office administered by the National Highway Traffic Safety Administration (NHTSA) and the National Telecommunications and Information Administration (NTIA), to help Public Safety Answering Points (PSAPs) achieve E911 Phase II readiness. In addition, the Commission has exercised its regulatory and enforcement authority to require timely response by wireless carriers to PSAP requests for such carriers to support E911 Phase II service. These initiatives have contributed to a significant increase in Phase II deployment in the past few years, with reports indicating that over 96 percent of the U.S. population now has some access to Phase II service. Pursuant to the ENHANCE 911 Act, the Commission has also granted limited waiver relief to some Tier III wireless carriers in the implementation of Phase II, but all Tier III wireless carriers are now in compliance with the E911 Phase II handset penetration requirements that were the subject of the ENHANCE 911 Act waiver standard. The Commission is also considering ways to improve E911 service through the development of more accurate Phase II location accuracy standards, and imposed such requirements in 2008 as a condition of approval of two major transactions that involved Sprint Nextel and Verizon Wireless. Finally, the Commission is working with its Federal and state partners, as well as national public safety organizations, to promote development and deployment of Next Generation 911 technologies. The Commission also intends to provide recommendations specific to Next Generation 911 as part of the National Broadband Plan due in February 2010.

8. Is the FCC considering increasing the cap on the E-rate fund so that libraries and schools can continue their level of service to the community?

   RESPONSE: As part of the Commission's efforts to develop a National Broadband Plan, we are examining ways to improve the universal service schools and libraries support mechanism (the E-rate program) to meet the instructional and informational needs of schools and libraries. We are currently seeking public comment on whether the $2.25 billion annual E-rate funding cap limits the abilities of schools and libraries to utilize advanced broadband technology for educational purposes, and whether an increase to the cap, including indexing the cap to inflation, would improve the program's ability to meet needs for which Congress established the program, and what the financial effect of any such increase would be on universal service funding mechanisms.

9. During the last Congress I sponsored the *Broadcast Licensing in the Public Interest Act* to promote localism and educational programming by ensuring that the FCC conducts serious reviews of licensee behavior during the renewal process. Will you consider re-examining this issue on your own, without legislative intervention?

   RESPONSE: Under the previous administration, the Commission released a *Report on Broadcast Localism and Notice of Proposed Rulemaking* that, among other things, addressed several issues relating to the broadcast license renewal process. The Commission stated that in order to increase public involvement in the renewal process it would direct the Media Bureau to update "The Public and Broadcasting" and identify Bureau points of contact to better inform the public about license renewal procedures. The Media Bureau has taken these steps. The NPRM also sought comment on a proposal to reintroduce specific procedural guidelines for the processing of renewal applications. The

localism proceeding discusses a host of important policy issues, and the staff continues to is review the record to develop recommendations for the Commission's consideration.

10. I am interested in your decision to seek comments on the MusicFirst Coalition's petition which alleges that the broadcaster campaign against the performance rights legislation may violate the public interest standard. I am concerned by allegations that broadcasters have used their market power to block opposing viewpoints where the broadcasters maintain a financial stake in the issue at hand. Please provide me with a timeline for completion of this matter.

    RESPONSE: On August 7, 2009, the Media Bureau issued a *Public Notice* establishing a period for comment on the issues presented in the MusicFIRST petition. The public comment period closed on September 23, 2009, and the Media Bureau currently is evaluating the record developed in the proceeding in order to determine how to proceed.

The Honorable Bart Stupak

1. Will the FCC explore the option of how public funding can address the cost factor of a national public safety interoperable network?

   RESPONSE: Resolving the issues surrounding the D Block and the adjacent 700 MHz public safety broadband spectrum is a key priority for the Commission. We are carefully examining all options for achieving deployment of a public safety broadband network or networks that would support nationwide interoperability. Our exploration of these options includes consideration of factors such as potential network construction and operating costs and the degree to which such costs can be addressed through a public-private partnership, through local or State authorities, or by public funding made available at the Federal level.

2. What is your timeframe for proceeding on the D-block auction?

   RESPONSE: As noted above, resolving the 700 MHz broadband issues is a key priority, and it is our intent to move forward as quickly as possible to bring these matters to resolution. In addition, the Commission has sought comment on waiver requests from certain local, state and regional public safety agencies to deploy 700 MHz broadband networks prior to resolution of the overall rulemaking proceeding. The Commission has also sought comment on certain issues relating to the public safety broadband component of the National Broadband Plan. Comments on these issues are due in mid-November, and we are looking to have some of our recommendations for the Commission's consideration be part of the National Broadband Plan due to Congress in February 2010.

3. There are a number of waivers pending at the FCC from states and municipalities. I am concerned, should these waivers be granted, how we can keep everyone on the same track if we start in pieces before the FCC takes a comprehensive action. While the petitioners state they can work independently but ultimately become interoperable, how would the FCC monitor and ensure that is the result?

   RESPONSE: In August 2009, the Commission issued a Public Notice seeking comment on the waiver requests filed by a number of public safety agencies seeking waivers to deploy 700 MHz broadband networks in advance of the Commission completing the 700 MHz rulemaking proceeding. In the Public Notice, the Commission specifically asked whether it could address the waiver requests in a manner that would avoid prejudgment of pending issues in the rulemaking proceeding and that would preserve the Commission's primary goal of achieving a nationwide, interoperable public safety broadband network. In this regard, the Commission sought comment specifically on whether it should adopt conditions relating to interoperability as an element of any relief granted, including how to achieve interoperability with future national or regional networks. Furthermore, the Commission asked how it should monitor or enforce adherence to any adopted conditions. These questions remain pending and will be the subject of further analysis once the comment period closes in mid-November.

The Honorable Diana DeGette

Over the summer the Iowa Utilities Board made a decision in a traffic pumping case involving numerous companies including Qwest, which as you know is located in my district. AT&T, Sprint Nextel, and Qwest, called into question the actions of multiple local exchange carriers who were gaming the system and using the fees they charge to connect long distance and wireless calls to the customers in their network ,in order to provide services they marketed as being "free." The problem for Qwest and others is that these services are anything but free, from their point of view. These local phone companies can provide these services at no cost because they are abusing their role in recouping costs from the larger companies for connecting these calls. The Iowa Utilities Board said this practice is unreasonable.

1. I understand the FCC has a number of related cases pending. Do you intend on taking any action on this issue? What has the FCC been doing recently on the traffic pumping issue?

   RESPONSE: By way of background, in June 2007, AT&T, Qwest, Sprint Nextel and Verizon filed petitions to suspend the tariffs of local exchange carriers (LECs) exiting the NECA pool in the July 1, 2007 annual access filing. The carriers alleged that certain LECs with high access rates were taking actions to increase significantly their access traffic demand by, for example, entering into agreements with third parties to establish businesses, such as conference call services and chat lines that would generate large volumes of terminating access traffic, and that the consequence of these actions was significant over-earning by certain rate-of-return LECs. On June 28, 2007, the Wireline Competition Bureau released an Order suspending the tariffs of 39 LECs and initiating an investigation of those tariffs. On August 24, 2007, the Bureau released an Order designating issues for investigation in the tariff proceeding. This Order included two safe harbor provisions that would allow the affected carriers to avoid the investigation if they rejoined the NECA tariff pool, or if they added language to their tariffs to deter access stimulation activity. On November 30, 2007, the Commission terminated the tariff investigation based on the fact that all 39 carriers whose tariffs were subject to investigation took advantage of the safe harbors. Following these Commission actions, interexchange carriers (IXCs) have noted that large volumes of allegedly "stimulated" access traffic are shifting away from termination to incumbent LECs, and are now being terminated to competitive LECs (CLECs). On May 20, 2009, three CLECs (All American Telephone, *et al.*) filed a petition for declaratory ruling as an answer to an informal complaint filed by AT&T. The CLECs ask the Commission to find that their revenue sharing agreements with conference calling service providers are legal. This petition was placed in the access stimulation NPRM docket. On August 14, 2009, Great Lakes, *et al.*, filed a petition for declaratory ruling asking the Commission to find that it has exclusive jurisdiction to regulate interstate service or to "contingently preempt" the then unissued decision of the Iowa Utilities Board. The Commission continues to consider the data and arguments presented in this proceeding to determine what action would be appropriate. In addition, the Commission's Enforcement Bureau is addressing access stimulation in a number of proceedings. For example, the Commissioners have before them an order for their consideration and vote that would resolve a petition for reconsideration filed by Qwest Communications of the Commission's October 2007 order resolving its complaint against Farmers and Merchants Telephone Company.

The Honorable Baron Hill

1. When do you expect to issue the final order on reconsideration in the Farmers & Merchants case that has been pending for more than two years?

   RESPONSE: On October 2, 2007, the Commission issued a Memorandum Opinion and Order ("Order") which granted in part Qwest's complaint against Farmers and Merchants Mutual Telephone Company, finding that Farmers entered into a number of commercial agreements with conference calling companies as a means to artificially increase its interstate switched access traffic and revenues. On November 1, 2007, Qwest filed a Petition for Reconsideration of the Order and a Motion to Compel, alleging that Farmers withheld critical facts concerning its relationship with the conference calling providers. On January 29, 2008, the Commission granted in part the Petition for Reconsideration, and granted the Motion to Compel. The Commission ordered Farmers to produce discovery, and granted Qwest leave to supplement its Petition. After discovery closed, Qwest filed a Supplemental Petition for Reconsideration on May 29, 2008. A draft order resolving Qwest's Supplemental Petition was circulated to the full Commission on September 23, 2009. We anticipate action in the near term.

The Honorable Zachary T. Space

1. Chairman Genachowski and the FCC are committed to providing broadband options for all Americans. Areas of my district are un-served or under-served in terms of having access to broadband, and mobile wireless broadband is an important option for us. I understand that the 2.3 GHz band could be used to deliver mobile wireless broadband to more consumers, and that approval of final technical rules has been delayed. What is the FCC's plan to take up this issue? When can we expect FCC action?

   RESPONSE: While the Commission's policies relating to the 2.3 GHz band currently enable WCS licensees to provide certain wireless services, for example, fixed wireless services, we are reviewing our technical rules to enable the provision of innovative mobile broadband offerings to the public, including those living in unserved and underserved areas of the nation. One of my priorities is the development of technical rules for the 2.3 GHz band that will facilitate the deployment of high-speed mobile services that are consistent with the national broadband strategy that the Commission is committed to develop by February of next year.

The Honorable Cliff Stearns

1. Chairman Genachowski, in June Mr. Barton and I wrote a letter to then-Acting Chairman Copps asking about allegations that some of the DTV walk-in centers that received stimulus money did not even exist. Commissioner Copps said in his response that "the Commission has terminated or issued orders to stop work on four contracts after [its] oversight identified significant performance issues. '" An additional four contracts were cancelled at the request of the vendors." What were the "significant performance issues?" How many other contracts have been cancelled or subjected to stop-work orders?

   RESPONSE: There have been no additional contracts cancelled or subjected to stop-work orders other than the contracts mentioned in your question above. The FCC took action on the four contracts in question because it believed that the contractors were not performing their tasks in accordance with the terms of the contracts. Corrective action is still underway to remedy the issues that arose in three of these contracts, and we have settled the pending claim with one of the vendors. When the FCC has found indications of fraud in reviewing contract matters, it has referred those matters to the Office of Inspector General.

2. Ranking Member Barton and I have introduced H.R. 2183 to reform FCC process. Among other things, the bill would require the FCC to publish the specific text of proposed rules, to provide the public at least 30 days to file comments and 30 days to file replies, to provide commissioners adequate time to consider draft language before being asked to vote on an item, to establish deadlines for all its various types of proceedings, and to publish its decisions within 30 days of adoption. You have the discretion to implement these procedural reforms without waiting for the bill to pass, however. Will you commit to adopting each of the reforms in the bill?

   RESPONSE: As part of my reform agenda, I have asked a team of senior leaders here at the agency to review our operational process, with the goal of improving transparency and timeliness. I have directed this review because I am committed to implementing standard operating procedures that include clear notice of the Commission's intended action, a sufficient comment and reply comment period, and the timely publication of decisions. In addition, we have established a team of representatives in each bureau to reduce backlogs and another to examine whether our current delegations of authority result in the most efficient decision making. I will consider the conclusions of these teams very carefully. I look forward to working with you on these important matters and any recommendations for legislative changes that will assist us in our reform agenda. I also note that on October 28 we held a public workshop to examine our *ex parte* rules and whether they need to be amended to provide for more timely and meaningful disclosure, and our recent *Preserving the Open Internet NPRM* contained specific draft text of proposed rules, provided for comment and reply periods of approximately 75 and 50 days, and was circulated to all Commissioners three weeks before voting.

3. At the first broadband workshop, Chairman Genachowski said that the national broadband plan would be "the most data driven ever at the FCC." That's wise, not only because it leads to better policy decisions, but because the D.C. Circuit has made clear it expects the FCC to justify its actions with rigorous factual and economic analysis. Just recently, for example, the D.C. Circuit threw out the FCC's cable ownership cap because the FCC had failed to account for all the video competition to cable that comes from satellite and phone companies. Will you commit not to support regulatory intervention in today's competitive, vibrant, and innovative communications market without first making a detailed showing of both market power and a market failure?

   WCB RESPONSE: I intend to make open and data-driven processes a hallmark of Commission decisions, and the Commission will produce or rely on appropriate legal, factual, and economic support in order to make policy decisions consistent with the public interest.

4. While the OECD rank's the U.S. 15th in broadband adoption, the OECD report has been criticized for, among other things, calculating penetration per capita rather than per household and ignoring wireless connections. Dr. George Ford has also demonstrated that under the OECD methodology, if every OECD country were to reach 100 percent broadband adoption, the United States would drop in rank to 20th. In reality, adoption in the United States has been quite rapid, especially considering the size and geographic diversity of the country. The Pew Internet & American Life Project reports that 63 percent of U.S. households have adopted broadband as of April 2009, up from 53 percent in May 2008. By contrast, the European Commission says that only 36 percent of European Union households have such service. The OECD has now also released a report claiming that U.S. consumers pay the most for wireless service when the exact opposite is true. Between 1993 and 2008, the cost per minute in the U.S. has dropped to 4 cents from 44 cents, while the average minutes of use has grown from 140 to 758, the most of any country. The flaw in the OECD analysis was that it picked unrealistic "baskets" of services as its basis for comparison. The average U.S. calling profile is nearly three times greater than the OECD's "high usage" basket and nearly six times greater than the OECD's "average" usage basket. If we compare based on price-per-minute, rather than based on the OECD's nonrepresentative baskets, we find that the U.S. has the lowest rates among OECD countries. Do you promise to keep all this in mind as you work on the broadband plan, and not to rely on the OECD statistics?

   RESPONSE: Yes. The Commission is developing the National Broadband Plan through an open, transparent, and data-driven decision-making process. Accordingly, the Commission will review countless sources of data and information and we will carefully consider the value of each source in developing our National Broadband Plan. For example, in the development of the National Broadband Plan, Commission staff plan to examine 22 countries with national broadband strategies, conducting in-depth case studies on at least ten, examining best practices and effective strategies.

5. While there are certain remote areas that may be lacking broadband, estimates of U.S. household broadband access range in the neighborhood of 90 percent. Among the households that don't have broadband, 63 percent say it is because they are not interested or because they feel the Internet is too difficult to use, according to the Pew Internet study. Only 17 percent say it's because oflack of availability and only 19 percent say it is because of price. Doesn't this suggest that focusing on education and consumer demand, rather than supply or price, would have the greatest impact on broadband adoption?

   RESPONSE: I agree that addressing education and consumer demand is crucial to spurring broadband adoption, and to ensuring that Americans are able to take advantage of the broadband infrastructure already in place. The Recovery Act, however, requires that we address other issues as well. The Commission was tasked with developing a National Broadband Plan "to ensure that all

people of the United States have access to broadband capability." Thus, the Commission must formulate a plan to make broadband capability available to those Americans who do not have access to it. Further, the Commission is required by the statute to provide a detailed strategy to address affordability of broadband and the needs of those consumers who indicate that price is a barrier to adoption. Finally, we intend to evaluate in the development of our plan whether the marketplace will evolve to deploy broadband services to consumers in a manner that keeps pace with innovation. I should clarify that these are my own views and not the official position of the full Commission.

6. While an important goal, increasing broadband deployment can't possibly be justified without some regard to cost. At some point the dollars are better spent on other national priorities. Will you commit to setting concrete broadband goals, to creating performance measures to assess' the country's progress toward those goals, and to employing a cost-benefit analysis in determining how to move toward them?

   RESPONSE: The Commission will establish as part of the National Broadband Plan concrete goals as well as benchmarks to measure the nation's progress toward those goals. As required by the American Recovery and Reinvestment Act, the Commission will also provide "an analysis of the most effective and efficient mechanisms for ensuring broadband access" in order to ensure that decisions take cost and efficiency into account.

7. Even though we have near 100 percent household telephone penetration, the universal service fund continues to grow out of control and now costs consumers more than $7 billion per year. If subsidies for the saturated voice market are still costing us this much, wouldn't the price of using subsidies to get to 100 percent broadband adoption from today's 63 percent be astronomical?

   RESPONSE: As you note, the universal service fund has been successful in ensuring that a very high percentage of all American households have access to telephone service. Congress has tasked the Commission with promulgating a plan to ensure that American households similarly have access to broadband service. The Commission is examining the role that the universal service fund may play in helping to achieve this broadband goal. I am mindful, however, of the fact that consumers bear the cost of the fund, and that we must carefully weigh the benefits and costs of proposals to reform universal service support mechanisms as well as the benefits any increase in the size of the fund achieves against the additional burden it would place on those who contribute to the fund.

8. The wireless industry is incredibly competitive and innovative. As a result, the demand for wireless broadband services is growing rapidly. Unfortunately, little spectrum is in the pipeline. That's why Mr. Barton, Mr. Waxman, Mr. Boucher and I introduced H.R. 3125, which would require the FCC and the NTIA to conduct a spectrum inventory. You need not wait for that legislation to conduct an inventory, however. Do you support conducting a spectrum inventory?

   RESPONSE: I believe this is a very important issue and commend the efforts to gain an understanding of how spectrum is being utilized today and in the future. The public's airwaves are a critical commodity, and making spectrum available, in particular for future mobile telecommunications services, will be a significant undertaking. Also, ensuring the efficient use of Government spectrum, especially for public safety purposes, is an extremely important matter to take into consideration. We will continue to monitor the legislation currently pending in Congress and provide the technical expertise the FCC possesses to foster the best understanding of spectrum use now and in the future. As to the steps the Commission can take, we currently maintain records of spectrum allocations and radio licenses, and we are working on improving public access to this information.

9. While not a lot, there is some spectrum in the pipeline, such as the 20 MHz of spectrum in AWS-3 block and the two paired 10 MHz AWS-2 H and J blocks. Shouldn't we be preparing an unencumbered auction of that spectrum as well as working on an inventory?

   RESPONSE: Establishing service rules for this spectrum is an important Commission priority. Such rules should aim to put this AWS spectrum to use as expeditiously as feasible, while ensuring that those rules are consistent with our legislative mandate to develop a synergistic and comprehensive broadband policy for our nation.

10. President Obama has asked Congress to eliminate earmarks in the appropriations process. Do you believe that the FCC should refrain from earmarking spectrum for a particular user or a particular *use?* Do you believe that an FCC decision to incorporate elements of a business plan into spectrum service rules would violate the spirit of Section 309(j) of the Communications Act of 1934?

    RESPONSE: In carrying out its spectrum management responsibilities, the Commission must advance the pro-competitive goals of the Communications Act of 1934 and the Telecommunications Act of 1996, while at the same time ensuring that other public interest goals are met, including the objectives established in Section 309 of the Act for assigning licenses to use the spectrum. The Commission has used several mechanisms to make spectrum markets more efficient, including flexible service rules and innovative assignment mechanisms such as auctions.

    I agree that generally, flexible use policies can sometimes result in more efficient and dynamic use of the scarce spectrum resource and, for that reason, flexible use in general remains one of the key tools the Commission possesses when assigning licenses. While in the majority of cases, granting licensees the freedom to determine the specific services to be offered will provide the flexibility that could lead to utilization of the spectrum for the highest value end use, I also recognize that there may be some situations where a flexible approach might interfere with achievement of other important public interest goals.

    In granting the Commission authority to auction spectrum licenses, Congress, in Section 309(j)(3), identified several objectives in identifying classes of licenses to be assigned by auction, specifying eligibility and other characteristics of such licenses, and designing methodologies to be used in auctioning the licenses. The Commission must consider and balance all of the objectives of Section 309(j)(3), including "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas" and "efficient and intensive use of the electromagnetic spectrum." Section 309(j)(3) provides the Commission with the flexibility to weigh these competing objectives in different situations and balance them differently in each case, such that a given decision may serve one of these objectives more than another. In establishing service rules for specific spectrum bands subject to auction, the Commission will continue to carefully consider how it can best promote all of the statutory objectives in Section 309(j) and will continue to balance these objectives in the way that will best serve the needs of the American public.

The Honorable Nathan Deal

1. Does the FCC take into account contractual obligations that will infringe on existing broadcasters when the FCC approves a new license, a transferable license, or the location of a station?

   RESPONSE: The Commission has no rule or policy which prohibits radio program syndication agreements which limit the distribution of programming in or near to a market. This includes agreements which provide "territorial exclusivity" for programming. Thus, the Commission would not currently review "tying" agreements in determining whether to grant an application for a new radio station, to sell a radio station, or to modify the community of license of a radio station. It may be the case that an exclusive programming arrangement constitutes a breach of contract with another station which had previously obtained – and continues to retain – the contractual rights to certain programming. In this situation, a local court, rather than the Commission, is the appropriate forum for the harmed station to obtain injunctive relief or monetary damages.

2. Does the FCC have jurisdiction over unfair trade practices that might monopolize the public airwaves, or is this under the jurisdiction of the Federal Trade Commission?

   RESPONSE: As you know, the Federal Trade Commission ("FTC"), the Department of Justice ("DOJ"), and the Commission each have independent authority to take action to preserve or enhance competition. In general, the DOJ and FTC analyze markets with an eye toward conduct that may not be consistent with federal antitrust and competition laws. In addition to analyzing the state of competition, the Commission also examines proposed transfers of Commission authorizations or licenses to determine whether the proposed transaction will more broadly serve the public interest, convenience, and necessity.

   The Commission also has established broadcast ownership rules which are designed to promote the Commission's core policies of competition, diversity, and localism. The Commission's ownership rules are intended to prevent domination of the airwaves by limiting the number of broadcast stations that a single entity may own or control in a particular market.

The Honorable John Shadegg

1. I am not a fan of regulation, but I am concerned about the state of competition in the special access marketplace. I have heard from many companies who tell me about onerous contract terms and rising prices with little or no competition in the market for dedicated access lines. As mobile devices have become as important as our desktop computers, these dedicated access lines are the lifeblood for providing us with these valuable tools. What is your timeline for reviewing and addressing the special access market?

   RESPONSE: My proposed course of action for a review of special access issues is as follows. I should clarify that this is my own view and not an official position of the full Commission.

   These issues have been pending for several years and I appreciate the understandable frustration of many parties regarding the Commission's lack of progress in addressing special access issues. Specifically, I want to advise you that I expect the Commission's Wireline Competition Bureau to issue a Public Notice by November 5, 2009 seeking comments on the appropriate analytical framework for examining the various issues that have been raised in the pending *Special Access* proceeding. The comments received in response to the Public Notice will assist the Commission in identifying the appropriate types of data necessary to conduct our analysis and will enable us to move forward in a timely manner. By way of background, the Commission released a *Notice of Proposed Rulemaking* in 2005, requesting information necessary to assess the competitiveness of the special access market and the functioning of the Commission's existing regulations in that market, and sought updated information in 2007. Some parties have argued that the Commission has adequate information to immediately issue an Order resolving that proceeding. Other parties have identified specific data not currently in the record that they contend are necessary to evaluate the state of the special access marketplace, although parties disagree about what data are required. Underlying many of these different views are fundamental disagreements about the analytical framework the Commission should use in evaluating the state of the special access marketplace and the associated data the Commission would need, given a proposed analytical framework. Thus, as a threshold matter, I have proposed to seek focused comment on the analytic framework that the Commission should use in analyzing the markets for special access services. After determining the appropriate framework, the Commission then can undertake the steps to collect the necessary data and conduct its evaluation of the special access marketplace. In addition, as you know, the Commission also is in the process of developing a National Broadband Plan, to be issued by February 17, 2010. The role of special access services and "middle mile" facilities in broadband deployment has been raised both in the comments filed in that proceeding and in the broadband staff workshops. As a result, the National Broadband Plan is expected to address issues that will inform the Commission's analysis of special access services.

The Honorable George Radanovich

1. When can we expect the FCC to act on the wireless industry's petition to streamline the tower siting process? Don't you think more towers will enable faster wireless broadband deployment?

   RESPONSE: I have placed an order acting upon CTIA's Petition for Declaratory Ruling related to tower siting on the agenda for the Commission's next open meeting, currently scheduled for November 18, 2009. The draft order I have circulated to my fellow Commissioners is designed to speed the process, while taking into account the legitimate concerns of local authorities.

The Honorable Mary Bono Mack

1. Over a year ago, the MPAA filed a waiver request for rules prohibiting the use of Selectable Output Control. I have been informed that consumers could enjoy more in-home entertainment options if the Commission were to grant this waiver. Can you share with the Committee your sense of timing for when the Commission will act on this?

   RESPONSE: In June 2008, the Media Bureau released a Public Notice seeking comment on MPAA's waiver request. Comments on the request were due on July 21, 2008 and reply comments were due on July 31, 2008. The Bureau currently is evaluating the record developed in response to MPAA's waiver request, and interested parties continue to file *ex parte* material in support of their respective positions. The proceeding raises difficult and contentious issues, but I hope we will be in a position to act on MPAA's request in the near future.

2. Last June the GAO submitted testimony to the Senate (Commerce Committee) that 84% of American wireless consumers are very or somewhat satisfied. In January, Consumer Reports stated, "cell phone service has become significantly better, contract terms are less onerous and there are fewer problems with call quality [and] that appears to be a substantial improvement over *2001'* s [survey results]."

   a. Do you have any substantive reason to doubt the GAO's and Consumer Reports findings?

      RESPONSE: We have no reason to doubt the survey methodologies or findings of GAO or Consumer Reports. Consumer surveys are useful tools for evaluating customer satisfaction or dissatisfaction with particular mobile wireless service providers, billing and contract issues, unexpected taxes or charges, spam issues, customer service, etc. The GAO report even surveyed consumers about the quality of the FCC's consumer complaints process. A breakdown of the GAO survey revealed that "about a third of users responsible for paying their bills had problems understanding their bills or had unexpected charges at least some of the time," and an estimated 42% of "users who wanted to switch services but did not" had a problem with fees for the early termination of a contract. We find it significant that the GAO report noted that both wireless carriers and the FCC are reacting to the GAO survey in ways that will improve the experience of America's mobile wireless consumers. The Commission strives to assess a broad range of factors, information, and data. However, no single factor serves as a litmus test for the overall state of competition and investment in the mobile wireless market.

   b. In light of the many issues the FCC is presently facing, why have you chosen to launch this inquiry into the wireless industry?

      RESPONSE: The two *Notices of Inquiry* released on August 27, 2009 – one on mobile wireless competition and the other on wireless innovation and investment – give all stakeholders an opportunity to have their views heard at the Commission and the Commission an opportunity to enhance its understanding of the mobile wireless market. This is an important step in the process of laying a solid foundation for predictable, fact-based competition policy in the wireless sector. Increasing innovation and investment, empowering consumers, and promoting competition are core components of the FCC's mission. These *Notices of Inquiry*, in conjunction with workshops and hearings on the National Broadband Plan, will provide the record we need to make the right decisions and make America the leader in mobile wireless broadband. This will support many of the great ideas, technologies, and applications of tomorrow.

The Honorable Mike Rogers

1. In 2004, just five years ago, 20% of U.S. households subscribed to broadband. Now it is more than 70%. At the same time policymakers in Congress and the FCC made a conscious decision not to place significant regulatory burdens on broadband. Considering this significant progress, why should Congress or the FCC now suddenly jump in and regulate broadband?

   RESPONSE: The *Preserving the Open Internet Notice of Proposed Rulemaking* that the Commission adopted last week is the next, logical step in a longstanding effort at the Commission to advance policies to preserve and promote the open Internet. The Commission has considered the question of how to safeguard the open Internet in more than 10 different proceedings during the past several years, building a record of over 100,000 pages of comments, submitted by approximately 40,000 companies, organizations, and members of the public. In 2005, a unanimous Commission issued the Internet Policy Statement, affirming the agency's "duty to preserve and promote the vibrant and open character of the Internet." In the intervening years, the Commission has enforced the statutory policies underlying these principles, adopted openness conditions in a number of significant mergers, and placed openness requirements on certain spectrum licenses. Two years ago, the Commission issued a broad-ranging Notice of Inquiry that sought comment on many of the issues addressed in last week's Notice of Proposed Rulemaking, including the topics of nondiscrimination and transparency. That record and the Commission's experience with open Internet policies show that there are challenges to the Internet's historical openness and that the Commission's existing policy framework could be improved to provide greater predictability for all marketplace participants regarding our approach to preserving the open Internet. Accordingly, the Commission has decided to begin a transparent, fact-based process to seek public input on draft, high-level rules of the road to ensure that broadband providers—who control the on-ramps to the Internet—do not start restricting what consumers and content and application providers do online. By providing greater predictability and ensuring that the open Internet remains an unparalleled platform for innovation, investment, competition, and the advancement of consumers' interests, these draft rules seek to promote continued build-out of broadband Internet to all Americans.

2. What is the percentage of U.S. households and businesses that have a choice of broadband providers?

   RESPONSE: The Commission does not collect information about broadband availability at the household or business level. However, the Commission collects information about broadband subscribership in its Form 477. Form 477 collects data on the number of subscribers each service provider has in a given census tract, but not on the extent of availability of their service within the tract. Since tracts can be fairly large, the 477 data will tend to over-state the availability of wireline service. The data presented here include only wireline providers, not wireless. Wireline providers are those offering DSL, cable, or fiber-to-the-home broadband service. Form 477 includes data on whether mobile wireless providers offer service in a given census tract, but it does not provide data on the number of subscribers in that tract. Further, Form 477 data cannot accurately estimate the percent of businesses with a choice of broadband providers, so estimates below are for households only. With these limits in mind, the Form 477 data allow us to estimate that:

   - 4.6% of households are located in census tracts served by 3 wireline providers.
   - 85.1% of households are located in census tracts served by 2 wireline providers.
   - 10.0% of households are located in census tracts served by only one wireline provider.
   - And 0.3% of households are located in census tracts served by no wireline providers.

These percentages include large providers and known competitive overbuilders in each census tract, but may exclude smaller providers with very small share of subscribers in a given tract. These numbers are not comparable with other FCC provider counts, which are calculated differently, but rather reflect an attempt to answer the question at hand.

An important indication of the magnitude of the inaccuracy (for this purpose) of the current Form 477 data is that we know, from other sources, that between 2-5% of households are not served by any wireline broadband service today. Thus, the Form 477 data seems to overstate availability by several percentage points in un-served areas, and perhaps by more in other areas.

3. How much money have broadband providers, both wireline and wireless, been investing in their networks?

RESPONSE: Capital expense can go toward many parts of a business, including network, software systems (billing, customer care, provisioning, network management), product development, hardware systems, and numerous other areas. In their public reports and filings, providers typically do not disaggregate capital expense into these categories, so we are unable to estimate the amount invested in the network itself. Further, we are unable to say what percentage of this investment goes toward broadband, as opposed to non-broadband parts of their business. But aggregate capital expense data for leading telecommunications companies is available. The Commission currently does not collect this data directly. However, third-parties do collect such data, which we consolidate here.

Mobile wireless networks. In the Commission's *Twelfth Annual CMRS Competition Report*, we stated that one analyst estimated that wireless operators spent approximately $24.7 billion in each of 2006 and 2005 and approximately $21.4 billion in 2004. *Twelfth Report*, 23 FCC Rcd 2241, 2307 ¶ 154 (2008). In our *Thirteenth Annual CMRS Competition Report*, we stated that CTIA reports that the wireless industry spent $9.71 billion in capital expenditures in the first six months of 2007. *Thirteenth Report*, 24 FCC Rcd 6185, 6260 ¶ 155 (2009). CTIA estimates that capital expenditures for operating systems by U.S. wireless carriers were $21.14 billion in 2007 and $20.17 billion in 2008. *See* CTIA's Wireless Industry Indices Semi-Annual Data Survey Results: A Comprehensive Report from CTIA Analyzing the U.S. Wireless Industry, Year-End 2008 Results (rel. May 2009).

Wireline and cable operators: In the same August 2009 report, Goldman Sachs estimated that wireline telecom providers spent $28.2 billion in capital expense in 2008, and cable operators spent $13.7 billion in the same year.

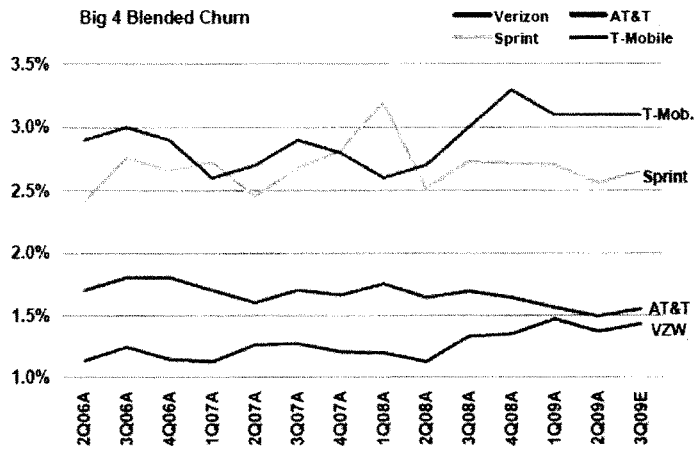
4. How many customers move from one provider to another? What is the amount of churn in this market?

RESPONSE: The Commission currently does not collect these data. However, third-parties do collect some information on churn for wireless, wireline and cable providers. Churn is generally driven by customers moving (especially wireline and cable), dissatisfaction with a current provider, interest in a new provider or new product, pricing, customer service, network quality in a home area (for wireless), failure to pay bills, and a variety of other factors.

Wireless providers: Wireless churn is reported as a monthly number, typically defined as the number of customers who cancel their subscription, divided by the average number of subscribers that the provider served that month. The major US wireless providers report total monthly churn, pre-paid and post-paid, as follows (all data from the 2nd quarter of 2009):

Verizon Wireless:	1.4%
AT&T:	1.5%
Sprint:	2.7%
T-Mobile:	3.1%
US Cellular:	2.0%
Leap:	4.4%
MetroPCS:	5.8%

The table below captures historical monthly churn, averaged on a quarterly basis, since 2006 for the four biggest wireless carriers in the US:



Source: Company data, Morgan Stanley Research. Note Verizon proforma for Alltel since1Q08.

Wireline providers (for voice service): Wireline operators do not publicly report churn for their subscribers.

Cable television providers (for video service): Cable operators do not publicly report churn for their subscribers, but estimates are that churn is roughly 2-4% per month on average. It is estimated that ~30% of this churn is due to people moving out of a service area, and another ~30% is due to non-payment.

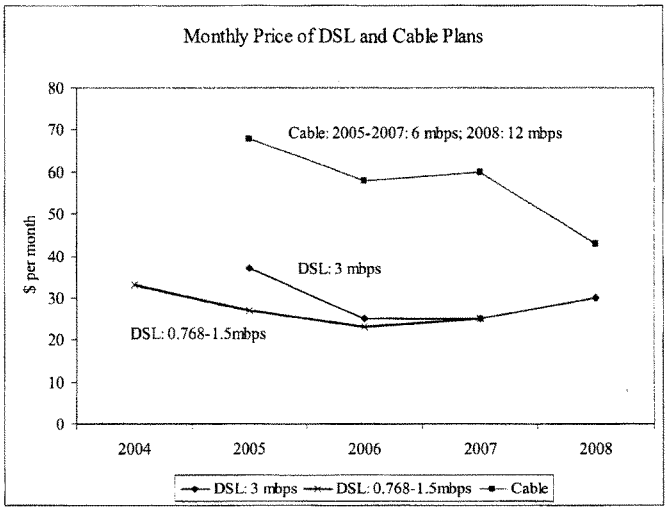
None of the major broadband providers report churn for their broadband, or high-speed data, product on a stand-alone basis. Anecdotally, we believe it is in the range of 2-4% per month, but have not been able to confirm this as of this date. Churn levels for bundled services are at the low end of the range while stand-alone voice, data or video churn tends to be closer to the high end. A 2006 study by Bernstein Research (Cable and Satellite Basic Subscriber Trends: Inching Towards Equilibrium, March 2006) pegged blended monthly cable churn at 2.4%.

5. What is the average price a consumer with 1.5 megabit service pays today versus what-they were paying five years ago?

RESPONSE: The Commission does not currently collect data on prices. Different data sources suggest somewhat different trends.

The first figure below shows information from the OECD, which reports information on AT&T and Comcast prices, and from US Telecom. This figure suggests that prices of particular speed tiers decreased from 2004 until 2006 or 2007 and then increased slightly, while cable prices declined 2005-2007. The second figure, which shows an analysis of data collected by the research firm PointTopic, suggests that prices for a given speed tier have remained relatively constant from 2004 through the end of 2008. Each figure is discussed in more detail below.

Data from the OECD and US Telecom



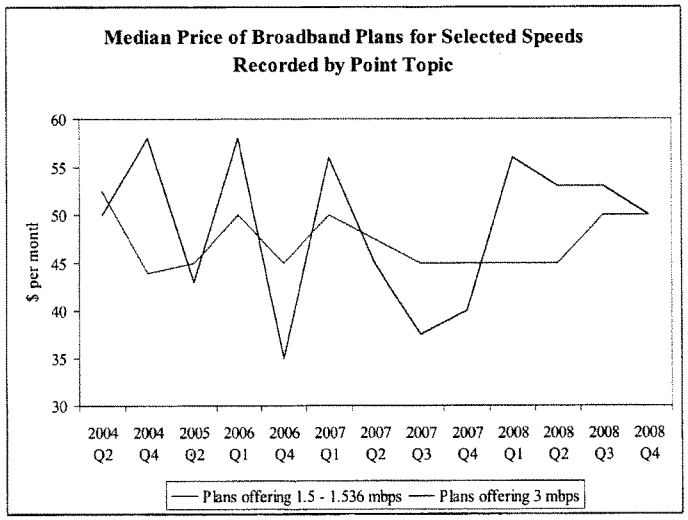
Sources:
Cable and DSL 3 mbps from OECD (2009). OECD states prices are for AT&T (DSL) and Comcast (Cable). DSL 0.768-1.5mpbs from US Telecom (2008), which claims the prices are the "maximum advertised price by downstream speed tier"

DSL prices show a downward trend until about 2007, when prices began to increase. Data on DSL prices in the 0.768-1.5mbps speed tier from 2004 – 2007 come from US Telecom, which claims the prices are "the maximum average price" in that downstream speed tier. Data on DSL 3 mbps from 2005 – 2008 come from the OECD, which is reporting prices it obtained from AT&T.

Cable prices come from the OECD, which is reporting prices it obtained from Comcast for a 6 mbps plan from 2005-2007 and a 12 mbps plan in 2008. These prices show a steady decline.

Three caveats. First, the OECD data are stand-alone, not bundled prices. US Telecom does not identify whether the prices are for stand-alone or for bundled service. Second, US Telecom notes only that the prices are "weighted average monthly prices for Top 5 ILEC Wireline broadband services," but does not say what the weights are. Third, the OECD data are based on what they were told by AT&T and Comcast, but we have no information how representative or widely available those prices were.

Data from Point Topic



This figure shows the median price of all plans offering the given speed identified by Point Topic in each time period. In order to be included the plan must have been offered at least two years. This filtering method helps ensure that the plan was commercially viable and not simply a one-time promotion.

At least two caveats are in order. First, the data are not weighted by the number of subscribers. Second, these are stand-alone prices, and prices for bundled services are likely to differ.

6. What do you consider indications of a competitive broadband market to be?

RESPONSE: The greater the number of providers, and the more actively they compete in the rates, terms, and conditions of their broadband service offerings for a particular customer, the more competitive that market is.

7. The FCC's *Internet Policy Statement* of August 5, 2005 (FCC 05-151) states in paragraph 4 that the reason for establishing its Four Principles is that" ... the Commission has jurisdiction necessary to ensure that providers of telecommunications for Internet access *or Internet Protocol (IP-enabled) services* are operated in a neutral manner." Principle Four and paragraph 5 of the *Internet Policy Statement* both use either the term *"application"* or the term *"applications."*

   - Does the *Internet Policy Statement* apply to web based software applications?

     RESPONSE: The principles announced by the *Internet Policy Statement* were originally conceived and have been consistently interpreted by the Commission as applying only to broadband Internet access service providers. The *Internet Policy Statement* was issued to provide assurance that consumers would remain protected from potentially problematic conduct by broadband Internet access service providers as the Commission classified various broadband Internet access services as information services, rather than telecommunications services that are subject to common carriage principles. Consistent with this view, the *Preserving the Open Internet NPRM* proposed draft rules that would apply only to broadband Internet access service providers. However, the *Notice* acknowledges one commenter's suggestion that we should read the *Internet Policy Statement* as embodying obligations binding on content, applications, and service providers in addition to broadband Internet access service providers. In light of that suggestion, the *Notice* seeks comment on the pros and cons of phrasing one or more of the draft rules that would codify the *Internet Policy Statement* principles as obligations of other entities, in addition to providers of broadband Internet access service. *See Preserving the Open Internet NPRM*, paras. 100-01.

   - Some web based companies contends that the Internet Policy Statement applies "only to the behavior of broadband carriers"- – Is the *Internet Policy Statement* applicable only to broadband carriers?

     RESPONSE: See previous response.

   - Does the *Internet Policy Statement* apply to information services?

     RESPONSE: Yes. The *Internet Policy Statement* applies to broadband Internet access services, and those services are classified as information services pursuant to several Commission decisions.

   - Should web based applications be considered an information service pursuant to Commission precedents that address the legal status of "Internet applications" such as the February 12, 2004 *Declaratory Ruling* regarding pulver.com's Free World Dial Up?

     RESPONSE: Internet-based applications should be considered information services to the extent they satisfy the definition of "information service" under the Communications Act and the Commission's precedent. The Communications Act defines an information service to be "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." The 2004 Declaratory Ruling mentioned in the question found pulver.com's Free World Dial Up service to be an information service under the Communications Act.

8. No company that offers "Voice over Internet Protocol" (VoIP) have had their product specifically classified by the Commission as telecommunications services subject to common carrier requirements. Does this mean that the companies that own this web based application may block calls to certain local exchange carriers?

   RESPONSE: The Commission has an open rulemaking proceeding in which it is considering the classification of VoIP services. Thus far, the Commission has expressly addressed only two situations. On one hand, the Commission classified as an "information service" Pulver.com's free service that did not provide transmission and offers a number of computing capabilities. *Petition for Declaratory Ruling that Pulver.com's Free World Dialup is Neither Telecommunications nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Order and Opinion, 19 FCC Rcd 3307 (2004) (*Pulver Order*). On the other hand, the Commission found that certain "IP-in-the-middle" services were "telecommunications services" where they: (1) use ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originate and terminate on the public switched telephone network (PSTN); and (3) undergo no net protocol conversion and provide no enhanced functionality to end users due to the provider's use of IP technology. *See, e.g.*, *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457 (2004) (*IP-in-the-Middle Order*).

   The Commission has not expressly addressed whether, as a general matter, VoIP calls to certain carriers may be blocked. Staff is reviewing existing claims of this conduct to determine what actions, if any, might be appropriate.

9. Some companies that own "Voice over Internet Protocol" (VoIP) contend that the FCC does not have jurisdiction over how software applications function.

   - Is it accurate that the FCC has no jurisdiction over these types of web based applications?

     RESPONSE: It would not be accurate to state that the Commission has no jurisdiction over any Internet-based applications. For example, in 2004, the Commission determined that pulver.com's "Free World Dialup" (FWD) service is an information service subject to federal jurisdiction. The Commission's holding was based on a finding that FWD is an Internet application through which pulver.com provides users with information necessary to establish peer-to-peer connections over the Internet.

   - Does "Voice over Internet Protocol" (VoIP) not constitute "wire communications" or even possibly "radio communications" within the meaning of the *Communications Act*?

     RESPONSE: As the Commission found in the *VoIP 911 Order*, interconnected VoIP services are covered by the statutory definitions of "wire communication" and/or "radio communication" because they involve "transmission of [voice] by aid of wire, cable, or other like connection" and/or "transmission by radio" of voice. Section 9.3 of the Commission's rules defines an interconnected VoIP service as a service that: (1) Enables real-time, two-way voice communications; (2) Requires a broadband connection from the user's location; (3) Requires Internet protocol-compatible customer premises equipment (CPE); and (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network. The Commission has found that "IP-in-the-middle"-type VoIP services, as well as the pulver.com Free World Dialup service, are subject to Commission jurisdiction.

- Has not the FCC already determined that "Internet applications" are subject to its jurisdiction such as in the February 12, 2004 matter concerning Pulver.com' s Free World Dialup?

  RESPONSE: In the *Pulver Order*, the Commission concluded that pulver.com's FWD service is an information service subject to federal jurisdiction. Specifically, the Commission concluded that that FWD is an information service because it offers "a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications."

- Does the FCC conclude that "Voice over Inter Protocol" (VoIP) is a "phone to phone" service that is subject to common carrier service?

  RESPONSE: The Commission has an open rulemaking proceeding in which it is considering the regulatory classification of VoIP services. To date, the Commission has not concluded that VoIP services generally are "phone to phone" services that are subject to common carrier obligations. Rather, as noted above, the Commission has expressly addressed only two situations with respect to the statutory classification of VoIP services, in the *Pulver Order* and the *IP-in-the-Middle Order*.

  Nevertheless, the Commission has extended a number of consumer protection and public safety requirements to providers of interconnected VoIP service (defined in Rule 9.3, as described above)), which mirror certain regulatory requirements that apply to telecommunications carriers under the Communications Act and the Commission's implementing rules.

  For example, in 2005, the Commission asserted its ancillary jurisdiction under Title I of the Act, and its authority under section 251(e), to require interconnected VoIP providers to supply 911 emergency calling capabilities to their customers. In 2006, in the *2006 Interim Contribution Methodology Order*, the Commission established universal service contribution obligations for interconnected VoIP providers based on the permissive authority of section 254(d) and its ancillary jurisdiction under Title I of the Act. In 2007, the Commission extended the customer privacy requirements of section 222 to interconnected VoIP providers using Title I authority. Also in 2007, the Commission used its Title I authority to extend the section 255 disability access obligations to providers of interconnected VoIP services and to manufacturers of specially designed equipment used to provide these services. The Commission also extended the Telecommunications Relay Services (TRS) requirements to providers of interconnected VoIP services, pursuant to section 225(b)(1) of the Act and its Title I jurisdiction, thus requiring interconnected VoIP providers to contribute to the Interstate TRS Fund under the Commission's existing contribution rules, and to offer 711 abbreviated dialing for access to relay services. Additionally in 2007, the Commission extended local number portability (LNP) obligations and numbering administration support obligations to interconnected VoIP providers and their numbering partners pursuant to sections 251(e) and 251(b)(2) of the Act and Title I authority. In 2009, the Commission took steps to protect consumers of interconnected VoIP service from the abrupt discontinuance, reduction, or impairment of their service without notice. Specifically, the Commission extends to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under section 214 of the Communications Act. Finally, and more generally, the Commission has stated that it "will not hesitate to adopt any non-economic regulatory obligations that are necessary to ensure consumer protection and network security and reliability in this dynamically changing broadband era."

10. Do certain Internet protocol based services or applications require higher levels of security or priority to ensure their quality of services? If so, how can these services or applications be identified? Once identified under what circumstances would prioritization be permitted under a non-discrimination principle if such a principle were added to the Internet Policy Statement?

    RESPONSE: The *Preserving the Open Internet NPRM* seeks comment on all these questions. The *NPRM* also notes that "reasonable network management would provide broadband Internet access service providers substantial flexibility to take reasonable measures to manage their networks, including but not limited to measures to address and mitigate the effects of congestion on their networks or to address quality-of-service needs, and to provide a safe and secure Internet experience for their users." Alternatively, it may be appropriate to consider some services or applications that require enhanced quality-of-service or security offerings to function properly as "managed" or "specialized" services, and the *NPRM* seeks comment on that topic as well.

11. You proposed in your September 21, 2009 speech to The Brookings Institution that Commission adopt the existing four Principles in the *Internet Policy Statement* as rules and add two additional rules dealing with non-discrimination and transparency.

    - On September 21, 2009, the same day as your speech, the FCC filed its Brief for Respondents in the case of *Comcast v. FCC* in which it took the position that it had both jurisdiction and authority over Comcast's blocking practices. If so, why are rules necessary?

      RESPONSE: The draft rules proposed in the *Preserving the Open Internet NPRM* seek to provide greater clarity and predictability regarding the Commission's policies with respect to Internet access designed to protect and foster an open Internet. In addition to providing draft rules codifying the four existing *Internet Policy Statement* principles, the *NPRM* proposes definitions for key terms, including "reasonable network management" and "broadband Internet access service"; offers draft rules for the two additional principles of nondiscrimination and transparency; and provides clear exceptions for emergency communications and the needs of law enforcement, public safety, and homeland and national security. By providing draft rules for public input and refinement through a notice-and-comment rulemaking, the Commission seeks to formulate policies that will best achieve its overarching goal of preserving the open Internet while at the same time providing greater predictability to Internet users, broadband providers, and the many companies and entities that depend on the Internet

    - Is the call that you made in your speech of September 21, 2009 for promulgation of the rules indicate that you believe that the FCC did not have enforceable rules when it took action against Comcast last year?

      RESPONSE: The *Internet Policy Statement* explicated four aspects of the federal Internet policy that Congress established by statute. Comcast is arguing in the pending litigation that the Commission could not apply the *Internet Policy Statement* to Comcast's blocking practices. Comcast points out that the *Policy Statement* did not establish formal rules. The Commission, however, could enforce Congress's underlying statutory policy for the Internet, and it could choose to proceed either by rulemaking or by adjudicatory enforcement proceedings. The agency therefore properly relied on the principles of the *Internet Policy Statement* in enforcing the underlying statutory policies though an adjudicatory proceeding.

    - If Comcast had not informed the FCC prior to the adoption of its August 1, 2008 Order, that it was discontinuing the practices that were the subject of the formal complaint, do you believe that

the FCC would have had the clear and unambiguous authority to order the cessation of the practices that were the subject of the complaint? If so, please identify that authority.

RESPONSE: Yes. In the *Comcast Order*, the Commission determined that Comcast had violated federal Internet policy established by Congress in the Communications Act and it therefore had the authority to take any necessary remedial action. The Commission had jurisdiction over Comcast's blocking practice pursuant to Congress's broad grant of authority over "all interstate and foreign communication by wire or radio," 47 U.S.C. § 152(a), and the legislature's concomitant grants of power to "execute and enforce the provisions of" the Communications Act, 47 U.S.C. § 151, and to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this [Act], as may be necessary in the execution of its functions," 47 U.S.C. § 154(i). The Commission properly exercised that jurisdiction over Comcast's cable modem practices because doing so was reasonably ancillary to the Commission's execution of its responsibilities under section 230(b) of the Communications Act (setting forth "the policy of the United States" to "promote the continued development of the Internet," "to preserve the vibrant and competitive free market that presently exists for the Internet," and to "maximize user control over what information is received by individuals, families, and schools who use the Internet.") and section 706(a) of the Telecommunications Act of 1996 (charging the FCC with "encourag[ing] the deployment on a reasonable and timely basis of advanced telecommunications capability [*i.e.*, broadband access] to all Americans."). Comcast's practices presented a "risk to the open nature of the Internet" that violated all of those statutory policies. Comcast's behavior also presented a "danger of network management practices being used to further anticompetitive ends" in various markets including voice, data, and video services, contrary to the Commission's regulatory mandates.

12. In your speech of September 21, 2009 to the Brookings Institute you indicated that the non-discrimination principle that you plan to propose: " ... will not prevent broadband providers' from reasonably managing their networks. During periods of network congestion, for example, it may be appropriate for providers to ensure that very heavy users do not crowd out everyone also."

    - Is there already congestion on the Internet today? If so, how is it managed? Is this congestion being effectively managed?

      RESPONSE: As the volume of Internet traffic continues to grow rapidly, congestion is an increasing concern. However, in the absence of transparency regarding broadband Internet access service providers' network management practices, it is unclear how congestion is being managed and when that management is or is not effective. The *Preserving the Open Internet NPRM* proposes a draft transparency rule that states: "Subject to reasonable network management, a provider of broadband Internet access service must disclose such information concerning network management and other practices as is reasonably required for users and content, application, and service providers to enjoy the protections specified in this part." This disclosure would benefit policymakers, including Congress and the Commission, by providing a stronger empirical foundation for evaluating and refining Internet policies.

    - How do you reconcile the statement in your speech that "broadband providers cannot discriminate against particular Internet content or application" with the network managing discussion in the next paragraph of your speech?

      RESPONSE: Reasonable network management is an essential complement to all six Internet policy principles that the *Preserving the Open Internet NPRM* proposes to codify. As the *NPRM* explains, "our goals in this proceeding are to encourage investment and innovation, promote

competition, and protect the rights of users, including promoting speech and democratic participation. While the six rules proposed above are derived from and designed to support these goals, there may be times when strict application of those rules would be in tension with these goals. For example, the general usefulness of the Internet could suffer if spam floods the inboxes of users, if viruses affect their computers, or if network congestion impairs their access to the Internet. Other critical governmental interests such as law enforcement, national security, and public safety may require that Internet access service providers discriminate with regard to particular traffic. For example, a failure to prioritize certain types of traffic in the case of an emergency could impair the efforts of first responders. Consequently, we must ensure that our framework provides a way to balance potentially competing interests while helping to ensure an open, safe, and secure Internet. We propose that all six proposed rules should be subject to (1) reasonable network management, (2) the needs of law enforcement, and (3) the needs of public safety and homeland and national security."

When you indicated in your speech that "broadband providers cannot discriminate against particular Internet content or applications," did you contemplate circumstances involving health care, law enforcement, National Defense and Homeland Security?

RESPONSE: Yes, for the reasons explained in greater detail in my previous answer. With respect to health care, the *Preserving the Open Internet NPRM* seeks comment on how a category of "managed" or "specialized" services can be encompassed as part of larger broadband policy. Health care-related offerings may be one type of such managed or specialized services. Moreover, as I noted in my remarks at the Brookings Institution, "Congress and the President have charged the FCC with developing a National Broadband Plan to ensure that every American has access to open and robust broadband. The fact is that we face great challenges as a nation right now, including health care, education, energy, and public safety. While the Internet alone will not provide a complete solution to any of them, it can and must play a critical role in solving each one." We will continue to gather comment in this area to ensure that the critical needs of Americans are being met.

The Honorable Marsha Blackburn

1. Given how quickly technology changes today, the Commission should ensure that content creators, working with ISPs, have the flexibility to utilize the most effective tools that are capable for both combating piracy while ensuring a smooth experience online for consumers. Given the need for this balance, what measures or considerations are being taken to address piracy and other mechanisms for illegal delivery of content online and does the Commission have the necessary authority to make recommendations in this area in the National Broadband Plan?

   RESPONSE: As the Commission recently took a step toward the consideration of rules to preserve the open Internet, the Commission was careful to propose that the draft rules would not prohibit broadband Internet access service providers from taking reasonable action to prevent the transfer of unlawful content, or the unlawful transfer of content (such as the unlawful distribution of copyrighted works). Separately, the Commission continues to seek the input of content creators as we develop a National Broadband Plan. For example, Commission staff held a public workshop on September 17th regarding the role of content in the broadband ecosystem, during which the Commission heard a variety of view points, including those of content producers, movie studios, consumers, and academics. We will continue to ensure that the development of a National Broadband Plan remains an open, transparent, and data-driven process.

2. I noticed that your very own FCC wireless competition report found that nearly every American has a choice of at least 3 different wireless providers, and 9 in 10 Americans can choose from among at least 5 carriers. Wouldn't you agree that this proves the wireless market is competitive?

   RESPONSE: Safeguarding competition in the wireless industry is one of the Commission's highest priorities. In the *Thirteenth Annual CMRS Competition Report* ("*Thirteenth Report*"), released on January 16, 2009, we estimated that 95.5% of Americans can choose from 3 or more providers, 9 in 10 Americans can choose from 4 or more providers, and 64.9% can choose from 5 or more providers. *Thirteenth Report*, 24 FCC Rcd 6185, 6210 (Table 1) (2009).

   In determining whether there is "effective competition" in the wireless services market, we generally evaluate and analyze a number of factors, including for example market structure, conduct, and performance metrics. Our analysis recognized that differences in the industry can occur across geographic markets, primarily due to variations in population density.

   On May 14, 2009, the Commission released a *Public Notice* requesting comment on the *Fourteenth Annual CMRS Competition Report* and incorporated questions on several new issues, including the criteria the Commission should use for determining "effective competition," the ability of the Commission to use Form 477 data to examine mobile broadband deployment, and the usefulness of profitability measures in assessing the performance of the CMRS industry. On August 27, 2009, the Commission released a *Notice of Inquiry* on mobile wireless competition that builds on the May 14, 2009 *Public Notice* by seeking input on new issues and topics. The Commission is seeking to enhance its understanding of the mobile wireless industry in three main ways. First, the FCC is inquiring about how to improve its analytic framework and data sources. Second, it is proposing to enhance the Report's coverage of input and downstream market segments, such as spectrum and devices. Third, it is inquiring about how vertical relationships between providers and other market segments affect competition. We are currently evaluating the record that has been submitted to date in response to our *Notice of Inquiry*, and we are collecting information and data from other sources. As in past reports, the *Fourteenth Report* will conduct a thorough analysis that follows accepted economic methodology and principles.

3. When can we expect the FCC to act on the wireless industry's petition to streamline the tower siting process? Don't you think: more towers will enable faster wireless broadband deployment?

   RESPONSE: I have placed an order acting upon CTIA's Petition for Declaratory Ruling related to tower siting on the agenda for the Commission's next open meeting, currently scheduled for November 18, 2009. The draft order I have circulated to my fellow Commissioners is designed to speed the process, while taking into account the legitimate concerns of local authorities.

4. Many of our colleagues have expressed concern regarding new broadcast localism rules that might have the effect of reducing a broadcaster's freedom of expression - and nearly 130 members of congress last year sent the commission a letter to that effect. Do you fear that a localism order modeled after the draft order circulated last year at the Commission might have the affect of reimplementing the Fairness Doctrine without calling it by name?

   RESPONSE: Under the previous administration, the Commission released a *Report on Broadcast Localism and Notice of Proposed Rulemaking.* I am aware that some have suggested that the Commission's consideration of measures intended to encourage localism and diversity – which are important objectives established by Congress in the Communications Act - are actually attempts to impose the Fairness Doctrine under another name. As I testified at my nomination hearing before the Committee on Commerce, Science, and Transportation, "I do not support reinstatement of the Fairness Doctrine," and I will not support any regulatory efforts in the name of localism or diversity that would reimpose the Fairness Doctrine or censor content on the basis of political speech or opinion.

5. Chairman Genachowski, do you intend to address the issue of Inter-Carrier Compensation? Will it be a component of the Broadband strategy and do you believe Congress needs to establish a statutory deadline so that resolution does not continue to be elusive and prolonged?

   RESPONSE: I recognize the need for intercarrier compensation reform and the importance of moving forward on this complex issue in a timely manner. A number of interested parties have commented that resolution of intercarrier compensation issues should be a component of the National Broadband Plan. While it is too early to identify particular elements of the National Broadband Plan, the role that intercarrier compensation issues may have in the Plan is certainly being discussed to the extent that it is inextricably linked to universal service support mechanisms and suggestions for reform of universal service. Further, whether intercarrier compensation is part of the Plan or not, the Commission will continue to assess what actions would be appropriate to take in its rulemaking proceeding on this issue. I believe that the Commission can finish its examination and work on this issue in a timely manner without the need for imposing a statutory deadline.

6. In July, the Commission reported to Congress that 12 states are or may be using funds collected for 911 or E911 to fund programs other than 911, E911, or enhancements to those services. The NET 911 Act said that these fees can be prohibited if they are not obligated for the "support or implementation of 9-1-1 or enhanced 9-1-1 services, or enhancements of such services." Now that the Commission has identified instances in which fee diversion is occurring, do you plan to step in and protect consumers by prohibiting the collection of these fees until the diversion of these funds for purposes other than those delineated by the NET 911 Act ceases?

   RESPONSE: The NET 911 Act requires the Commission to submit an annual report to Congress regarding the collection and use of state 911 and E911 fees. As you note, the Commission submitted the first such report to Congress in July 2009. Based on data provided to the Commission by the states, the report noted that some states had used funds derived from 911/E911 fees for purposes other

than support of 911/E911 programs. However, based on our review of the relevant law, Congress does not appear to have conferred power on the Commission to take action against states that divert 911/E911 funds. As a general matter, the FCC lacks jurisdiction over state and local 911 fees. In the ENHANCE 911 Act, Congress addressed state use of 911 fees by mandating that states that divert 911 fees for non E911/911 purposes must return any grant funds. Some also have interpreted the NET 911 Act as barring state and local governments from diverting 911 fees to non-911 purposes. However, neither statute confers regulatory or enforcement authority on the FCC in this area. Indeed, until the NET 911 Act was enacted, the Commission lacked authority even to collect information regarding 911/E911 fees from the states. The Commission nevertheless continues to review its options in this area, and will continue to report annually to Congress on state 911/E911 fee collection and usage as required by the statute.

Michael J. Copps
Commissioner

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

October 30, 2009

The Honorable Henry A. Waxman
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Waxman:

Attached please find my responses to the written questions for the record following my appearance at the September 17, 2009 hearing of the Energy & Commerce Subcommittee on Communications, Technology and the Internet entitled "Oversight of the Federal Communications Commission."

Sincerely,

Michael J. Copps

Enclosure

Questions for the Record from the Honorable Henry Waxman and the Honorable Bobby Rush

It has come to our attention that certain voice over Internet protocol (VoIP) providers are able to reduce dramatically the per-minute cost of inmates calls by allowing inmates' families to obtain a phone number that is local to the correctional facility and have the inmates place their calls to that local number instead of having to make a long distance call. According to some, these VoIP providers can offer this reduced cost service without restricting the ability of prison payphone systems to track, monitor, block, or record the conversations of inmates.

In response to this low cost alternative, certain prison phone providers have started blocking outgoing VoIP calls. The VoIP providers allege that the call blocking is contrary to Section 201 of the Communications Act and Commission precedent that protects VoIP providers from having their calls blocked. They allege that the blocking has resulted in a decline in their customer base and could result in them discontinuing service. One such company, Millicorp, has a petition pending for the Commission to investigate their allegation of call-blocking by certain inmate phone service providers.

1. What decisions has the Commission made concerning call blocking and VoIP providers?

Regarding inmate calls, the Commission has pending a Petition for Declaratory Ruling by Securus Technologies, Inc., an inmate calling service provider. Securus argues that services such as Millicorp's are diversion schemes, akin to dial-around calling, which may be blocked pursuant to Commission precedent. Securus also states that there are security concerns with allowing such calling arrangements because neither Securus nor prison officials know where the call is going. The Commission put this petition out for comment, and I look forward to reviewing all comments raised and addressing this important matter.

2. Are VoIP providers covered by Section 201?

The Commission has not addressed directly the applicability of Section 201 to VoIP providers. Furthermore, the Commission has not yet classified interconnected VoIP services as telecommunications services or information services. However, the FCC has asserted jurisdiction over VoIP as part of the *IP-Enabled Services* proceeding by extending a number of consumer protection and public safety requirements to interconnected VoIP service. In 2005, the Commission asserted its ancillary jurisdiction under Title I of the Act, and its authority under Section 251(e), to require interconnected VoIP providers to supply 911 emergency calling capabilities to their customers. In 2006, the Commission established universal service contribution obligations for interconnected VoIP providers based on the permissive authority of Section 254(d) and its ancillary jurisdiction under Title I of the Act. In 2007, the Commission extended the customer privacy requirements of Section 222 to interconnected VoIP providers using Title I authority. Also in 2007, the Commission used its Title I authority to extend the Section 255 disability access obligations to providers of interconnected VoIP services and to

manufacturers of specially designed equipment used to provide these services. The Commission also extended the Telecommunications Relay Services (TRS) requirements to providers of interconnected VoIP services, pursuant to Section 225(b)(1) of the Act and its Title I jurisdiction, thus requiring interconnected VoIP providers to contribute to the Interstate TRS Fund under the Commission's existing contribution rules, and to offer 711 abbreviated dialing for access to relay services. Additionally in 2007, the Commission extended local number portability (LNP) obligations and numbering administration support obligations to interconnected VoIP providers and their numbering partners pursuant to Sections 251(e) and 251(b)(2) of the Act and Title I authority. Most recently, in May 2009, the Commission extended to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers.

3. What temporary or interim steps can the Commission take to prevent the blocking of phone calls during the pendency of its decision making process?

This is a very important issue—one that is before us now—and I do hope that this Commission will be able to address it in the near future. Inmates are generally limited to the single telephone provider that provides service within the prison, and the rates charged by such providers can often be disproportionately higher than non-inmate calls. Telephone calls may be the only connection that inmates have to family and attorneys—the very support groups and counsel they may need for rehabilitation.

Questions for the Record from the Honorable John D. Dingell

I. Forbearance
I am pleased by the Commission's move under Acting Chairman Copps to institute changes to its forbearance procedures. While I appreciate these modifications, Section 10(c) of the Communications Act of 1934 still permits a petition for forbearance to be granted, should FCC not deny it within one year of its submission. My legislation, H.R. 400, would amend Section 10(c) to require the Commission grant such a petition within one year of its receipt, unless it determines an extension is necessary.

1. **This in mind, is it the opinion of the Commission that a petition for forbearance should be granted by reason of inaction by the Commission? Yes or no.**

No, I do not believe a petition for forbearance should be granted by reason of inaction by the Commission. As you point out, I have long-standing concerns about the existing forbearance process. If the Commission fails to act on a forbearance petition within the statutory time frame, it effectively hands the petitioning party the pen and permits it to rewrite the law. I believe Congress trusted the FCC to implement the law, but it did not tell us to delegate far-reaching policy changes to the companies that fall under our jurisdiction.

2. **Further, does the Commission believe that granting petitions in this manner (i.e., "deemed granted" by reasons of Commission inaction) is a transparent method of governance and also in the public interest? Yes or no.**

No, I do not believe that the grant of a forbearance petition by the FCC as a result of inaction is a transparent method of governance. Quite the contrary is true. If the Commission fails to act on a forbearance petition, a decision is made without consideration and explanation that is usually provided in an order granting or denying the petition.

3. **Even under its new forbearance procedures, does the Commission believe it can act on every forbearance petition, so as to avoid any such petitions being granted by Commission inaction? Yes or no.**

No, I continue to have concerns about the existing forbearance process. The Commission could still fail to act on a forbearance petition within the statutory time frame for lack of sufficient votes or due to a tie in votes.

4. **Therefore, does the Commission support the revision to Section 10(c) of the Communications Act of 1934, as contained in H.R. 400? Yes or no.**

Speaking as a Commissioner, I am in favor of the revision to Section 10(c) of the Communications Act of 1934, as contained in H.R. 400.

II. Special Access
On July 9, 2009, Chairman Boucher and I sent a letter to the Commission urging it "to collect the data necessary to make an informed determination concerning the state of

competition for special access and other high-capacity data services as it contemplates revisions to its pricing flexibility order."

5. Has the Commission issued a formal request for such data, and if not, when will it do so?

The Commission has not yet issued a formal request for such data. I support moving forward and taking action expeditiously on the issue of special access.

6. Is it the intention of the Commission to use the special access data it collects as a part of a "data-driven process" to amend its pricing flexibility order? Yes or no.

It is my understanding that, upon review of the special access data collected, the Commission will determine whether it is appropriate to amend the pricing flexibility order. I support moving forward on all special access matters before the Commission. Furthermore, I support completely Chairman Genachowski's mission to ensure that the rulemaking process is fact-based and data-driven.

III. Wireless Communications Services (WCS) and Satellite Digital Audio Radio Services (SDARS)

7. Last year, former Commissioner Martin drafted rules that would allow the use of mobile devices immediately adjacent to satellite radio receivers. Test results have been submitted that show significant interference under the draft rules, and it is my understanding that the parties and FCC engineers conducted additional tests this past summer. In light of these test results, how has FCC modified the draft rules to ensure that no interference will result to existing consumers? Given the highly technical nature of these issues, I expect that you will allow the public opportunity to comment on any proposed rules. Is this so? If not, please explain why. Further, when does FCC anticipate completing this rulemaking?

The proceeding to establish rules to govern the use of mobile Wireless Communications Service (WCS) devices operating adjacent to satellite radio receivers has been pending for far too long. As a supplement to the extensive record that has developed during that time, I am pleased that we were finally able to conduct field testing—in partnership with the WCS and satellite radio stakeholders—over the summer. We need to unleash the mobile broadband potential of the WCS spectrum. At the same time, we must safeguard the interests of the millions of consumers who subscribe to satellite radio as well as users of other adjacent services. FCC engineers now have real-world, empirical data to use in determining appropriate interference protection criteria, and I look forward to receiving their recommendations.

Questions for the Record from the Honorable Bobby Rush

1. **What are the Commissioner's views on how to best go about ensuring diversity of ownership and voices with respect to FCC-licensed broadcasting facilities and with respect to FCC-competitively bid or divested spectrum, notwithstanding Croson and Adarand precedent calling for strict scrutiny of race-based programs?**

Now is the time to change the Commission's abysmal record when it comes to increasing ownership and voice diversity in our nation's broadcast media. This has been a priority of mine since coming to the FCC. The minor steps the Commission has taken in recent years, while not innocuous, fall far short of what needs to be done. Statistics indicate that this country is at least one-third minority and one-half female, yet the levels of minority and female ownership are woefully low.

During my tenure as Acting Chairman, I reconstituted the Commission's Diversity Advisory Committee and charged it to promptly submit recommendations on charting a way forward on the both the stalled *Adarand* Studies and on a full file review process which could provide near-term stimulus to minority ownership even as the Commission develops a comprehensive and long-range program to reverse the inattention this subject has received. I am pleased to report that the Advisory Committee has recently submitted those recommendations. I will work with Chairman Genachowski and my colleagues to consider those recommendations as expeditiously as possible.

a. **Does the Commission have plans to update its *Adarand* Study, which was commenced during the tenure of former Chairman William E. Kennard, and if so, when would it commence this process?**

As I indicated above, the Commission has new recommendations regarding the *Adarand* Studies from its Diversity Advisory Committee. As a result, we now have an opportunity to take a fresh look at the *Adarand* Studies, which were initially done in 2000. The Committee's recommendations, which are available on the FCC's website, include updating several of the studies and incorporating a new study on broadband. I am grateful for the hard work of the Advisory Committee. Now, with their recommendations in hand, I hope that we can give thorough consideration to these proposals—and, where feasible, adopt them. Our challenge is to complete these studies as quickly as we can, cognizant of the need for good and accurate data, but in this area "justice delayed is justice denied."

b. **Does the Commission have plans to reconsider media ownership and cross-ownership limits and caps, or to propose legislation repealing or significantly modifying laws that permit increased aggregation of ownership within a market?**

The Commission will issue a review of its newspaper/broadcast cross-ownership, local TV, local radio, radio/television and dual network rules next year in its quadrennial media review. As you know, I dissented to the Commission's modification of its newspaper/broadcast cross-ownership rule during the 2006 quadrennial review—as I was concerned that the changes would encourage further media consolidation, leading to less competition, less diversity and less local

content. Fortunately, that rule modification has been stayed by the Third Circuit Court of Appeals.

As part of our next quadrennial review process, the Commission has recently announced that it will convene a series of workshops in early November to receive public input on the appropriate scope and methodology of the proceeding and to help build an analytical and empirical foundation for a Commission decision. I support this approach, confident that the process will encourage the participation of a diverse group of stakeholders and interested parties. The open, data-driven process will help create a framework upon which to evaluate what modifications are needed to ensure that our ownership rules support our core goals of competition, diversity and local content.

2. **In 1996, the Commission determined that inmate calling services must be deregulated. Currently, there is a proceeding pending at the Commission relating to rates paid to prison phone service providers for interstate telephone service. In many States, these rates appear to exceed the actual cost to originate and terminate a call between inmates and their called parties. Accordingly, the prices for these calls are excessive and apparently are not cost-based.**

   What is the status of this proceeding (Wright Petition CC-96-128), and when is it likely to be decided?

The Wright Petition was put out for public comment in 2007 and the Commission has taken no action since that time. I do hope that this Commission will be able to address the issue in the near future. Inmates are generally limited to the single telephone provider that provides service within the prison, and the rates charged by such providers can often be disproportionately higher than non-inmate calls. Telephone calls may be the only connection that inmates have to family and attorneys—the very support groups and counsel they may need for rehabilitation.

3. **Our subcommittee heard testimony about PEG Access approximately 18 months ago. At that time, I queried AT&T about the inability of viewers to channel surf to PEG channels or to effectuate a simple DVR recording independently or with the assistance of AT&T's program guides.**

   What is the status of the Petitions before the FCC regarding discriminatory treatment of these public channels and when can we expect a decision? (*See, e.g.*, ACM et al Petition, CSR-8126)

I believe that PEG channels are an important tool for citizens to engage and monitor the activities of their local city councils, school boards and other institutions. During my tenure as Acting Chairman, I asked the Media Bureau to release for public comment the Petition for Declaratory Ruling filed by Alliance for Community Media (ACM), as well as other related petitions regarding PEG service. We have received comments and reply comments, and the record closed earlier this year. I hope soon to receive recommendations from the Media Bureau. In addition, I understand that AT&T has made some changes to its PEG programming system in response to the concerns raised by ACM. While I am encouraged by those measures, and hope

that the dialogue among the interested parties will continue, I emphasize the seriousness of the problem and the urgent necessity of resolving it as quickly as feasible.

Questions for the Record from the Honorable Baron Hill

1. **When do you expect to issue the final order on reconsideration in the Farmers & Merchants case that has been pending for more than two years?**

My office is currently reviewing a draft order on reconsideration and we are prepared to act on it soon. Qwest v. Farmers and Merchants is a closed proceeding under consideration by the Commission. As such, I am constrained from offering further comment on this matter.

Questions for the Record from the Honorable Zachary T. Space

1. **Chairman Genachowski and the FCC are committed to providing broadband options for all Americans. Areas of my district are un-served and under-served in terms of having access to broadband, and mobile wireless broadband is an important option for us. I understand that the 2.3 GHz band could be used to deliver mobile wireless broadband to more consumers, and that approval of final technical rules has been delayed. What is the FCC's plan to take up this issue? When can we expect FCC action?**

The proceeding to establish rules to govern the use of mobile Wireless Communications Service (WCS) devices operating adjacent to satellite radio receivers has been pending here for too long. As a supplement to the extensive record that has been developed, I am pleased that we were finally able to conduct field testing—in partnership with the WCS and satellite radio stakeholders—over the summer. We need to unleash the mobile broadband potential of the WCS spectrum. At the same time, we must safeguard the interests of the millions of consumers who subscribe to satellite radio as well as users of other adjacent services. FCC engineers now have real-world, empirical data to use in determining appropriate interference protection criteria, and I look forward to getting their recommendations.

Questions for the Record from the Honorable Cliff Stearns

1. **Ranking Member Barton and I have introduced H.R. 2183 to reform FCC process. Among other things, the bill would require the FCC to publish the specific text of proposed rules, to provide the public at least 30 days to file comments and 30 days to file replies, to provide commissioners with adequate time to consider draft language before being asked to vote on an item, to establish deadlines for all its various types of proceedings, and to publish its decisions within 30 days of adoption. You have the discretion to implement these procedural reforms without waiting for the bill to pass, however. Will you commit to adopting each of the reforms in the bill?**

I agree with Chairman Genachowski's mission to ensure that the rulemaking process will be fair, transparent, fact-based, and data-driven. The Chairman is proceeding with that goal in mind with the Commission's latest Notice of Proposed Rulemaking (NPRM) considering codification of the Internet principles. The Commission adopted the NPRM on October 22, 2009; the item includes proposed rules; and interested parties have an extensive period—far more than 30 days—to file comments and reply comments. This strikes me as an improved way for the Commission to conduct this aspect of its business, and I support this kind of approach.

2. **At the first broadband workshop, Chairman Genachowski said that the national broadband plan would be "the most data driven ever at the FCC." That's wise, not only because it leads to better policy decisions, but because the D.C. Circuit has made clear it expects the FCC to justify its actions with rigorous factual and economic analysis. Just recently, for example, the D.C. Circuit threw out the FCC's cable ownership cap because the FCC had failed to account for all the video competition to cable that comes from satellite and phone companies. Will you commit not to support regulatory intervention in today's competitive, vibrant, and innovative communications market without first making a detailed showing of both market power and market failure?**

I completely agree with and support Chairman Genachowski's statement – it is vitally important that good data drive the process of developing a national broadband plan. Furthermore, I support Chairman Genachowski's mission to make the Federal Communications Commission a data-driven agency. As I have repeatedly stated, I believe that the Commission's role, as the expert agency, is to collect and evaluate data and trends and use them as the basis for developing sound public policy.

3. **While the OECD ranks the U.S. 15th in broadband adoption, the OECD report has been criticized for, among other things, calculating penetration per capita rather than per household and ignoring wireless connections. Dr. George Ford has also demonstrated that under the OECD methodology, if every OECD country were to reach 100 percent broadband adoption, the United States would drop in rank to 20th. In reality, adopting in the United States has been quire rapid, especially considering the size and geographic diversity of the country. The Pew Internet & American Life Project reports that 63 percent of U.S. households have adopted broadband as of April 2009, up from 53 percent in May 2008. By contrast, the European Commission says that only 36 percent**

of European Union households have such service. The OECD has now also released a report claiming that U.S. consumers pay the most for wireless service when the exact opposite is true. Between 1993 and 2008, the cost per minute in the U.S. has dropped to 4 cents from 44 cents, while the average minutes of use has grown from 140 to 758, the most of any country. The flaw in the OECD analysis was that it picked unrealistic "baskets" of services as its basis for comparison. The average U.S. calling profile is nearly three times greater than the OECD's "average" usage basket. If we compare based on price-per-minute, rather than based on the OECD's non-representative baskets, we find that the U.S. has the lowest rates among OECD countries. Do you promise to keep all this in mind as you work on the broadband plan, and not to rely on the OECD statistics?

I will certainly keep all of the above comments in mind as I work on the National Broadband Plan. While some have raised questions regarding the methodology employed in the OECD report, the actions of the FCC already demonstrate that we will be considering input, information and data that goes far beyond OECD rankings. As Chairman Genachowski has stated—and I agree—developing a national broadband plan must be an inclusive process at the FCC. We seek private sector and public sector input. We ask the tough questions that must be answered if we are to succeed. We search out a myriad of traditional and non-traditional stakeholders that deserve to be heard, with special emphasis on folks who don't have that corporate lobbyist working for them in Washington. A broadband policy for the American people should be, to the maximum extent possible, a broadband policy of and by the American people. This process will continue to be open, public and transparent.

As a more general comment, while there may be some disagreement over certain elements of the OECD analysis, most expert reports show the United States far distant from the top in international penetration rankings. We can and must do better.

4. **While there are certain remote areas that may be lacking broadband, estimates of U.S. household broadband access range in the neighborhood of 90 percent. Among the households that don't have broadband, 63 percent say it is because they are not interested or because they feel the Internet is too difficult to use, according to the Pew Internet study. Only 17 percent say it's because of lack of availability and only 19 percent say it is because of price. Doesn't this suggest that focusing on education and consumer demand, rather than supply or price, would have the greatest impact on broadband adoption?**

I agree that significant effort and funding must be devoted to broadband adoption. You are correct that education is critically important to the success of any national broadband plan. But we must not ignore that there is a lack of truly value-laden, high speed broadband. Not enough people in this country have significant broadband access with the capacity and speeds to address their individual, and our country's national, needs.

5. **While an important goal, increasing broadband deployment can't possibly be justified without some regard to cost. At some point the dollars are better spent on other national priorities. Will you commit to setting concrete broadband goals, to creating**

performance measures to assess the country's progress toward those goals, and to employing a cost-benefit analysis in determining how to move forward?

I agree that the National Broadband Plan should include benchmarks and goals. As this country implements a broadband plan, the Commission should constantly monitor progress to make sure that we reach those benchmarks and goals. It will be essential that the Commission have the ability to collect such data, which in some instances may require legislative action.

6. **Even though we have near 100 percent household telephone penetration, the universal service fund continues to grow out of control and now costs consumers more than $7 billion per year. If subsidies for the saturated voice market are still costing us this much, wouldn't the price of using subsidies to get 100 percent broadband adoption from today's 63 percent be astronomical?**

I have stated many times that the Universal Service Fund is in need of comprehensive reform, and I support efforts to achieve true reform. At the same time, I have never argued that USF alone should be responsible for the ubiquitous broadband build-out envisioned in the American Recovery and Reinvestment Act.

7. **The wireless industry is incredibly competitive and innovative. As a result, the demand for wireless broadband services is growing rapidly. Unfortunately, little spectrum is in the pipeline. That's why Mr. Barton, Mr. Waxman, Mr. Boucher and I introduced H.R. 3125, which would require the FCC and the NTIA to conduct a spectrum inventory. You need not wait for that legislation to conduct an inventory, however. Do you support conducting a spectrum inventory?**

Yes, I strongly support conducting a thorough inventory of the spectrum already licensed – examining how, why and where it is used, and identifying distinct geographic areas where service has not been deployed or where the spectrum is being used inefficiently. Because it can take years to get new spectrum into the pipeline and put to use, we need to work together, and with all stakeholders, to identify spectrum that can be reinvested to promote deployment of value-laden, high-speed wireless broadband.

8. **While not a lot, there is some spectrum in the pipeline, such as the 20 MHz of spectrum in AWS-3 block and the two paired 10 MHz AWS-2 H and J blocks. Shouldn't we be preparing an unencumbered auction of that spectrum as well as working on an inventory?**

One of Chairman Genachowski's highest priorities is to close the spectrum gap. I support his efforts to promote efficient use of spectrum and to unleash additional spectrum for wireless broadband. As we work to deliver a National Broadband Plan to Congress, we need to move forward with addressing the various technical issues related to the Advanced Wireless Service (AWS) spectrum so it may be put to use.

9. **President Obama has asked Congress to eliminate earmarks in the appropriations process. Do you believe that the FCC should refrain from earmarking spectrum for a**

particular user or a particular use? Do you believe that an FCC decision to incorporate elements of a business plan into spectrum service rules would violate the spirit of Section 309(j) of the Communications Act of 1934?

I believe that we must promote the most efficient spectrum use, consistent with the public interest. I think it is apparent to most observers that we have not yet begun even to approach the most efficient use of our spectrum resources. We need to strive to make additional spectrum available for wireless broadband, to address the needs of American consumers and to foster innovation and competition, consistent with the various objectives set forth in Section 309(j) related to competitive bidding. The Commission should work closely with Congress to fully understand what opportunities and constraints limit our attainment of maximally efficient spectrum usage. As for incorporating specific business plans into our spectrum rules, I think the emphasis ought to be to ensure rules that are both consumer-friendly and conducive to innovation and economic growth.

Questions for the Record from the Honorable George Radanovich

1. **When can we expect the FCC to act on the wireless industry's petition to streamline the tower siting process? Don't you think more towers will enable faster wireless broadband deployment?**

I agree with Chairman Genachowski that we should remove unnecessary obstacles to the deployment of wireless networks, including taking action on a "shot-clock" proposal to speed the tower-siting process—while taking into account the legitimate concerns of local governments. Expanding our nation's wireless networks is critical to ensuring that American consumers receive the benefits of wireless broadband deployment. The Chairman recently circulated a draft order addressing this matter, and the Commission is scheduled to act on the item at the next Agenda Meeting, on November 18, 2009. I look forward to working with my fellow Commissioners to help resolve tower-siting process concerns.

Questions for the Record from the Honorable Mike Rogers

1. **In 2004, just five years ago, 20% of U.S. households subscribed to broadband. Now it is more than 70%. At the same time policymakers in Congress and the FCC made a conscious decision not to place significant regulatory burdens on broadband. Considering this significant progress, why should Congress or the FCC now suddenly jump in and regulate broadband?**

I agree that we have seen increased broadband deployment and adoption in this country over the past five years. No doubt, access to broadband and the Internet has already fundamentally changed the way Americans go about their daily lives. Many of us have become at least familiar with the potential of broadband to communicate with family and friends, to telework and bank, to interact with government, to get news and information, and many other applications.

That being said, we have far to go to realize the goals Congress enunciated for us in the American Recovery and Reinvestment Act. The country has much to do to make high-speed, high-value broadband ubiquitously available to our citizens. The undoubted progress we have seen is only a prologue to what this technology is going to do to change our lives in the years ahead. Ubiquitous, value-laden, high-speed broadband will allow us to tackle a host of urgent problems—by creating jobs, providing more and better health care, tackling our crippling energy dependence, slowing the degradation of our environment, enhancing the education of our children and, indeed, all of us; and opening the doors of opportunity for all. The successful resolution of each and every one of these challenges has a broadband component to it. Finally, while we have made progress, other nations have out-paced what we have done. That, too, is cause for serious concern.

2. **What is the percentage of U.S. household and businesses that have a choice of broadband providers?**

The most recent FCC broadband reports collected data based on an absurdly dated definition of broadband speed and a 5-digit ZIP code methodology that do not accurately reflect real-world broadband deployment. Those reports, which defined broadband at a speed of 200 kbps and determined the extent of broadband deployment based on whether there was a single recipient of broadband in a ZIP code, found that over 90% of U.S. ZIP codes have access to four or more broadband providers.

I have long advocated that the FCC gather more granular data, reported by carriers, on the range of broadband speeds and prices that consumers in urban, suburban, exurban, rural and tribal areas currently face. Happily, as of March 2009, the Commission began collecting far more granular broadband data on the revised FCC Form 477. With that data and the information provided in a fully-developed record for the National Broadband Plan proceeding, we will better understand the realities of the state of broadband deployment and penetration in the United States and have a basis for charting a strategy for the ubiquitous deployment and penetration of truly competitive high-speed broadband.

3. **How much money have broadband providers, both wireline and wireless, been investing in their networks?**

The Commission does not customarily collect this information. However, there is no doubt that investment in infrastructure is critical to broadband deployment, and we want to make sure that FCC policy properly considers the investment needs for critical broadband deployment.

4. **How many customers move from one provider to another? What is the amount of churn in the market?**

The FCC does not collect information on customer churn for broadband service. However, I would support efforts to obtain more specific and granular information about the choices consumers may or may not have regarding broadband service.

5. **What is the average price a consumer with 1.5 megabit service pays today versus what they were paying five years ago?**

Broadband providers do not provide the FCC with information on rates. However, I support efforts to obtain more specific and granular information about broadband speeds and rates and I look forward to the incorporation of such data into the upcoming national broadband plan.

6. **What do you consider indications of a competitive broadband market to be?**

The National Broadband Plan is about ensuring that high-speed, value-laden broadband access is available to everyone in the United States at affordable prices and with choice in innovation. A competitive broadband market should be able to sustain such services.

7. **The FCC's *Internet Policy Statement* of August 5, 2005 (FCC 05-151) states in paragraph 4 that the reason for establishing its Four Principles is that "... the Commission has jurisdiction necessary to ensure that providers of telecommunications for Internet access *or Internet Protocol (IP-enabled) services* are operated in a neutral manner." Principle Four and paragraph 5 of the *Internet Policy Statement* both use either the term "*application*" or the term "*applications.*"**

   - **Does the Internet Policy Statement apply to web based software applications?**

The Commission's *Internet Policy Statement* adopted in 2005 states that consumers are entitled to (1) access content; (2) run applications and services; (3) connect devices to the network; and (4) enjoy competition among network providers, application and service providers, and content providers. On October 22, 2009, the Commission adopted a *Notice of Proposed Rulemaking* (NPRM) to consider codification of the open Internet principles. The NPRM seeks comment on this matter, and I look forward to reviewing all responses from interested parties.

   - **Some web based companies contend that the Internet Polity Statement applies "only to the behavior of broadband carriers" – Is the Internet Policy Statement applicable only to broadband carriers?**

The Commission's *Internet Policy Statement* adopted in 2005 states that consumers are entitled to (1) access content; (2) run applications and services; (3) connect devices to the network; and (4) enjoy competition among network providers, application and service providers, and content providers. On October 22, 2009, the Commission adopted a *Notice of Proposed Rulemaking* considering codification of the open Internet principles, including raising the question you mention. I look forward to reviewing the responsive comments from the record.

- **Does the Internet Policy Statement apply to information services?**

The Commission's *Internet Policy Statement* adopted in 2005 states that consumers are entitled to (1) access content; (2) run applications and services; (3) connect devices to the network; and (4) enjoy competition among network providers, application and service providers, and content providers. On October 22, 2009, the Commission adopted a *Notice of Proposed Rulemaking* (NPRM) considering codification of the open Internet principles. The NPRM seeks comment on this matter, and I look forward to reviewing all responses from interested parties.

- **Should web based applications be considered an information service pursuant to Commission precedent that address the legal status of "Internet applications" such as the February 12, 2004 Declaratory Ruling regarding pulver.com's Free World Dial Up?**

The Commission seeks comment on this matter in its recent *Notice of Proposed Rulemaking* considering codification of the open Internet principles, adopted on October 22, 2009. I look forward to reviewing the comments filed in that proceeding.

8. **No company that offers "Voice over Internet Protocol" (VoIP) has had its product specifically classified by the Commission as telecommunications services subject to common carrier requirements. Does this mean that the companies that own this web based application may block calls to certain local exchange carriers?**

It is an important question. I support the Commission's Wireline Competition Bureau's October 9, 2009 letter raising this question as it pertains to Google Voice service, and look forward to the Wireline Competition Bureau's evaluation and recommendations on this matter.

9. **Some companies that own "Voice over Internet Protocol" (VoIP) contend that the FCC does not have jurisdiction over how software applications function.**

- **Is it accurate that the FCC has no jurisdiction over these types of web based applications?**

The FCC has asserted jurisdiction over VoIP as part of the *IP-Enabled Services* proceeding by extending a number of consumer protection and public safety requirements to interconnected VoIP service. In 2005, the Commission asserted its ancillary jurisdiction under Title I of the Act, and its authority under Section 251(e), to require interconnected VoIP providers to supply 911 emergency calling capabilities to their customers. In 2006, the Commission established

universal service contribution obligations for interconnected VoIP providers based on the permissive authority of Section 254(d) and its ancillary jurisdiction under Title I of the Act. In 2007, the Commission extended the customer privacy requirements of Section 222 to interconnected VoIP providers using Title I authority. Also in 2007, the Commission used its Title I authority to extend the Section 255 disability access obligations to providers of interconnected VoIP services and to manufacturers of specially designed equipment used to provide these services. The Commission extended the Telecommunications Relay Services (TRS) requirements to providers of interconnected VoIP services, pursuant to Section 225(b)(1) of the Act and its Title I jurisdiction, thus requiring interconnected VoIP providers to contribute to the Interstate TRS Fund under the Commission's existing contribution rules, and to offer 711 abbreviated dialing for access to relay services. Additionally in 2007, the Commission extended local number portability (LNP) obligations and numbering administration support obligations to interconnected VoIP providers and their numbering partners pursuant to Sections 251(e) and 251(b)(2) of the Act and Title I authority. Most recently, in May 2009, the Commission extended to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers.

- **Does "Voice over Internet Protocol" (VoIP) not constitute "wire communications" or even possibly "radio communications" within the meaning of the Communications Act.**

The FCC has asserted jurisdiction over VoIP as part of the *IP-Enabled Services* proceeding by extending a number of consumer protection and public safety requirements to interconnected VoIP service. The FCC has not classified VoIP as a telecommunications service or an information service.

- **Has not the FCC already determined that "Internet applications" are subject to its jurisdiction such as in the February 12, 2004 matter concerning Pulver.com's Free World Dialup?**

In March 2004 in the *IP-Enabled Services Notice*, the Commission sought comment on whether to extend certain consumer protection obligations to any class of IP-enabled service provider. The Commission has applied some consumer protection obligations to interconnected VoIP providers on a case-by-case basis.

- **Does the FCC conclude that "Voice over Internet Protocol" (VoIP) is a "phone to phone" services that is subject to common carrier service?**

The FCC has not classified VoIP as a telecommunications service or an information service. However, the Commission has found that consumers increasingly use interconnected VoIP service as a replacement for traditional voice service, and as interconnected VoIP service improves and proliferates, consumers' expectations for this type of service trend toward their expectations for other telephone services. Thus, the Commission has extended to providers of interconnected VoIP service certain regulations and obligations that apply to telecommunications carriers.

10. Do certain Internet protocol based services or applications require higher levels of security or priority to ensure their quality of services? If so, how can these services or applications be identified? Once identified, under what circumstances would prioritization be permitted under a non-discrimination principle if such a principle were to be added to the Internet Policy Statement?

Pursuant to the Commission's *Internet Policy Statement*, adopted in 2005, the principles established to safeguard and promote the open Internet are subject to reasonable network management. The Commission seeks comment on this matter in its recent *Notice of Proposed Rulemaking* considering codification of the open Internet principles, adopted on October 22, 2009. I look forward to reviewing comments filed in that proceeding.

Questions for the Record from the Honorable Marsha Blackburn

1. **Given how quickly technology changes today, the Commission should ensure that content creators, working with ISPs, have the flexibility to utilize the most effective tools that are capable for both combating piracy while ensuring a smooth experience online for consumers. Given the need for this balance, what measures or considerations are being taken to address piracy and other mechanisms for illegal delivery of content online and does the Commission have the necessary authority to make recommendations in this area in the National Broadband Plan?**

I appreciate your raising this important issue and will work to make sure it is considered as part of our national broadband plan deliberations. I note that the *Notice of Proposed Rulemaking* adopted on October 22, 2009, considering codification of the open Internet principles ensures that broadband Internet access service providers are able to take action to prevent the transfer of unlawful content, such as the unlawful distribution of copyrighted works.

2. **I noticed that your very own FCC wireless competition report found that nearly every American has a choice of at least 3 different wireless providers, and 9 in 10 Americans can choose from among at least 5 carriers. Wouldn't you agree that this provides the wireless market is competitive?**

For years I have advocated the benefits of a more granular, data-driven understanding of the current mobile wireless marketplace. In particular, I have been concerned that the Commission has not yet developed a clearer, more analytically sound standard for evaluating the state of competition that the Commission's annual *CMRS Competition Report* is supposed to address. In a recent *Notice of Inquiry*, the Commission has committed to improving the agency's annual *CMRS Competition Report* to Congress by expanding the scope of the report. In the meantime, my office continues to receive frequent consumer calls from individuals displeased with their wireless services.

As a general statement, I believe that many of the wireless competition policies adopted by the Commission in recent years Commission have encouraged consolidation at the expense of competition.

3. **When can we expect the FCC to act on the wireless industry's petition to streamline the tower siting process? Don't you think more towers will enable faster wireless broadband deployment?**

I agree with Chairman Genachowski that we should remove unnecessary obstacles to the deployment of wireless networks, including taking action on a "shot-clock" proposal to speed the tower-siting process—while taking into account the legitimate concerns of local governments. Expanding our nation's wireless networks is critical to ensuring that American consumers receive the benefits of wireless broadband deployment. The Chairman recently circulated a draft order addressing this matter, and the Commission is scheduled to act on the item at the next Agenda Meeting, on November 18, 2009. I look forward to working with my fellow Commissioners to help resolve tower-siting process concerns.

4. Many of our colleagues have expressed concern regarding new broadcast localism rules that might have the effect of reducing a broadcaster's freedom of expression – and nearly 130 Members of Congress last year sent the Commission a letter to that effect. Do you fear that a localism order modeled after the draft order circulated last year at the Commission might have the affect of reimplementing the Fairness Doctrine without calling it by name?

No, I do not. Nor do I believe that the terms "localism" and "Fairness Doctrine" should be equated. While I am unaware of any major movement to re-impose the Fairness Doctrine, I would note that there is a statutory requirement that allotments for broadcast stations be distributed on the basis of proposed service to a local community. Title III of the Communications Act of 1934 generally instructs the Commission to regulate broadcasting as the public interest requires, and Section 307(b) explicitly requires the Commission to "make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." Hence, localism has long been recognized as one of the Commission's bedrock goals.

In August 2003, the Commission initiated a proceeding to review and enhance localism practices among broadcasters. The Commission received over 83,000 written submissions from a wide range of commenters, including broadcasters, industry organizations, public interest groups and members of the public. We sought comment on nine general localism areas of inquiry: (1) communication between licensees and their stations' communities; (2) nature and amount of community-responsive programming; (3) political programming; (4) underserved audiences; (5) disaster warnings; (6) network affiliation rules; (7) payola/sponsorship identification; (8) license renewal procedures; and (9) additional spectrum allocations. I emphasize that the Commission did not then and has not since sought comment on the "Fairness Doctrine."

The record revealed that many broadcasters actively strive to identify the needs and interests of members of their communities of license, and thereafter to formulate and air programs to meet those local needs. Conversely, many commenters raised concerns about the need for better efforts by other broadcasters to identify the needs and interests of their communities of license. The FCC concurred that improvements were needed, and initiated a proceeding to foster enhanced dialogue between stations and members of the public. As a part of that effort, the Commission continues work to develop a standardized form (that will be made available on station websites) to allow broadcasters to provide information on how they serve the public interest. Going forward, I look forward to working with my colleagues to ensure that the public airwaves are fully serving the needs of local communities.

5. In July, the Commission reported to Congress that 12 states are or may be using funds collected for 911 or E911 to fund programs other than 911, E911, or enhancements to those services. The NET 911 Act said that these fees can be prohibited if they are not obligated for the "support or implementation of 9-1-1 or enhanced 9-1-1 services, or enhancements of such services." Now that the Commission has identified instances in

which fee diversion is occurring, do you plan to step in and protect consumers by prohibiting the collection of these fees until the diversion of these funds for purposes other than those delineated by the NET 911 Act ceases?

I agree that states should use 911/E911 fees for desperately needed and woefully underfunded state 911/E911 programs. The Commission's first NET 911 report to Congress earlier this year does indicate that some states have not used funds from such fees solely for purposes of 911/E911 programs. However, it is not clear that Congress has provided the Commission with regulatory or enforcement authority to take action against states that divert 911/E911 funds. The FCC generally lacks jurisdiction over state and local 911 fees and only recently gained authority through the NET 911 Act to collect information regarding 911/E911 fees from the states. I do find the situation troubling and hope the Commission will continue to monitor it as part of its annual statutory report.

The Honorable Henry Waxman and the Honorable Bobby Rush

It has come to our attention that certain voice over Internet Protocol (VoIP) providers are able to reduce dramatically the per-minute cost of inmates calls by allowing inmate's families to obtain a phone number that is local to the correctional facility and have the inmate place their calls to that local number instead of having to make a long distance call. According to some, these VoIP providers can offer this reduced cost service without restricting the ability of prison payphone systems to track, monitor, block, or record the conversations of inmates.

In response to this low cost alternative, certain prison phone providers have started blocking outgoing VoIP calls. The VoIP providers allege that the call blocking is contrary to section 201 of the Communications Act and Commission precedent that protects VoIP providers from having their calls blocked. They allege that the blocking has resulted in a decline in their customer base and could result in them discontinuing service. One such company, Millicorp, has a petition pending for the Commission to investigate their allegation of call-blocking by certain inmate phone service providers.

1. What decisions has the Commission made concerning call blocking and VoIP providers?

While the Commission has not dealt directly with this issue, it has made certain initial efforts to address how VoIP should be addressed. One Commission item that is related to the issue you raise was a declaratory ruling issued by the Wireline Competition Bureau (WCB) in 2007. That declaratory ruling stated that wholesale telecommunications carriers should be entitled to obtain interconnection with incumbent local exchange carriers (LECs) to provide wholesale telecommunications services to other service providers, *including VoIP-based providers*. The petitioner who sought the ruling, Time Warner Cable, was providing telephone service using VoIP technology, and it was purchasing its wholesale telecommunications services from MCI and Sprint in order to connect its VoIP service customers with the public switched telephone network. It alleged in its petition that MCI and Sprint were not able to provide wholesale telecommunications services to it in certain areas of the country because several state public service commissions had decided rural incumbent LECs were not obligated to enter into interconnection agreements with the competitive service providers (such as MCI and Sprint) in instances where those providers were operating as wholesale service providers. The WCB granted the petition and reasoned that its decision supported the development of wholesale telecommunication and facilities-based VoIP competition. The WCB, however, did not address the statutory classification of VoIP providers. *See Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55 (March 1, 2007).

2. Are VoIP providers covered by section 201?

The Commission has not yet squarely answered the question as to whether VOIP providers provide information services or telecommunications services.

3. What temporary or interim steps can the Commission take to prevent the blocking of phone calls during the pendency of its decision making process?

The Commission has a number of tools it can use to address this situation. For example, the Chairman could open an investigation, assess the facts surrounding the situation and then initiate an enforcement action, or he could initiate a rulemaking process.

The Honorable John D. Dingell

I. **Forbearance**
I am pleased by the Commission's move under Acting Chairman Copps to institute changes to its forbearance procedures. While I appreciate these modifications, section 10(c) of the Communications Act of 1934 still permits a petition for forbearance to be granted, should FCC not deny it within one year of its submission. My legislation, H.R. 400, would amend section 10(c) to require that the Commission grant such a petition within one year of its receipt, unless it determines an extension is necessary.

1. This in mind, is it the opinion of the Commission that a petition for forbearance should be granted by reason of inaction by the Commission? Yes or no.

No. I have stated repeatedly that the forbearance petition process is flawed and should be improved. Only Congress can amend Section 10, which is simple and clear in its mandate, but the statute allows the Commission to take steps to improve its implementation. I was pleased that earlier this year the Commission took steps to institute changes to the forbearance procedures. We clarified that a petitioning party has the burden of proving its case, but made clear that the totality of the record, including evidence introduced by third parties, must be taken into consideration when determining if that burden has been met. We also placed restrictions on a petitioner's ability to withdraw or significantly narrow a petition, but only after a petitioner has had a reasonable opportunity to review the record developed during the pleading cycle.

2. Further, does the Commission believe that granting petitions in this manner (*i.e.*, "deemed granted" by reason of Commission inaction) is a transparent method of governance and also in the public interest? Yes or no.

No. I do not believe that granting petitions by reason of inaction is a transparent method of governance or in the public interest.

3. Even under its new forbearance procedures, does the Commission believe it can act on every forbearance petition, so as to avoid any such petition's being granted by Commission inaction? Yes or no.

Yes. I will be prepared to vote on forbearance petitions so as to avoid being the cause for a petition being granted by Commission inaction.

4. Therefore, does the Commission support the revision to section 10(c) of the Communications Act of 1934, as contained in H.R. 400? Yes or no.

Yes. I would support such a change in the law.

II. **Special Access**
On July 9, 2009, Chairman Boucher and I sent a letter to the Commission urging it "to collect the data necessary to make an informed determination concerning the state of

competition for special access and other high-capacity data services as it contemplates revisions to its pricing flexibility order."

5. Has the Commission issued a formal request for such data, and if not, when will it do so?

As you know, Congressman, I have called for the Commission to seek detailed and up-to-date special access data for nearly three years but, to date, the Commission has not issued a formal request for such data. However, Chairman Genachowski recently indicated that within the next thirty days, the Commission will issue a public notice seeking focused comments on what could be an appropriate analytical framework that the Commission should use when addressing special access issues. As that process moves forward, I look forward to working with the Chairman and my other colleagues to ensure that the Commission then moves forward with the next step – collecting the data on a granular basis to include building-by-building and cell-site-by-cell-cite specificity of every provider of special access, including incumbents and new entrants, and evidence of each provider's rates, terms and conditions. Should we change our special access rules, having such detailed information to support our decision would help sustain our case on appeal.

6. Is it the intention of the Commission to use the special access data it collects as a part of a "data-driven process" to amend its pricing flexibility order? Yes or no.

I look forward to receiving and reviewing the data. At that point, I will see how the data shapes the issues before the Commission and will be able to make an informed decision as to how I believe the Commission should proceed.

III. **Wireless Communications Services (WCS) and Satellite Digital Audio Radio Services (SDARS)**

7. Last year, former Chairman Martin drafted rules that would allow the use of mobile devices immediately adjacent to satellite radio receivers. Test results have been submitted that show significant interference under the draft rules, and it is my understanding that the parties and FCC engineers conducted additional tests this past summer. In light of these test results, how has FCC modified the draft rules to ensure that no interference will result to existing consumers? Given the highly technical nature of these issues, I expect that you will allow the public opportunity to comment on any proposed rules. Is this so? If not, please explain why. Further, when does FCC anticipate completing this rulemaking?

I understand that our Office of Engineering and Technology (OET) is working closely with the parties to devise a technical solution to this longstanding challenge. To my knowledge, the Commission has not released draft technical rules in this proceeding; however, I agree that doing so may be a prudent step. I expect that Chairman Genachowski and the OET staff are working hard to wrap up work in this proceeding as soon as possible this fall.

The Honorable Bobby L. Rush

1. What are the Commissioner's views on how to best go about ensuring diversity of ownership and voices with respect to FCC-licensed broadcasting facilities and with respect to FCC-competitively bid or divested spectrum, notwithstanding Croson and Adarand precedent calling for strict scrutiny of race-based programs?

I am concerned about the decline in female and minority owners of broadcast properties. In our 2007 Diversity Order – which I supported – the Commission adopted a series of rules designed to foster diversity of ownership. One of those measures bars broadcasters from accepting advertising that comes to them as part of a "no urban/no Spanish" media-buying campaign. I have actively worked to encourage compliance with the ban by meeting with advertising agencies on Madison Avenue to discuss the rule and monitoring the industry's ongoing efforts to resolve problems when they arise.

Other rules adopted in the Diversity Order center on helping "eligible entities" enter and succeed in broadcasting, such as easing rules to encourage greater investment in such licensees. The definition of the term is based on Small Business Administration standards for small businesses. Although not as comprehensive as some would have liked, the definition is legally sustainable under the Supreme Court's *Adarand* decision based on the record before us at that time. More recently, the Commission's Advisory Committee for Diversity in the Digital Age ("Diversity Committee") has recommended that the Commission take a two-step approach to improve upon our existing regulations. First, the Diversity Committee recommends that the Commission adapt for FCC purposes a race-neutral "full file review" concept as used in some college admissions procedures, which the Supreme Court upheld in *Grutter v. Bollinger*. Second, the Diversity Committee recommends that the Commission initiate new empirical studies designed to meet the rigorous *Adarand* standard for legally sustainable race-conscious measures. I already have reached out to the leaders of the Diversity Committee to explore the legal and practical implications of their recommendations. I agree with the Committee that focusing up front on the long-term viability of any new rules is the correct approach.

Finally, for some time now I have expressed my interest in working with Congress to explore the details of a new, legally sustainable tax certificate program to promote broadcast ownership. Should lawmakers seek assistance in crafting such a program, I would be pleased to engage in that effort.

a. Does the Commission have plans to update its Adarand study, which was commenced during the tenure of former Chairman William E. Kennard, and if so, when would it commence this process?

The Diversity Committee on October 5, 2009 formally delivered a set of recommendations to Chairman Genachowski that included a call for new research studies designed to address the empirical standards established in *Adarand*. The recommendation calls upon the Commission to update the six *Adarand* studies produced

in 2000, and to undertake a seventh, wholly new study concerning barriers to entry in the broadband marketplace. I defer to the Chairman with respect to timing.

b. Does the Commission have plans to reconsider media ownership and cross-ownership limits and caps, or to propose legislation repealing or significantly modifying laws that permit increased aggregation of ownership within a market?

The Commission by statute is required to reconsider its media ownership rules, including the newspaper/broadcast cross-ownership restriction, every four years. The next review must begin by 2010, but the Commission's Media Bureau has announced plans to initiate the process by hosting a series of workshops starting on November 2, 2009. I expect that the upcoming quadrennial review also will address issues raised by the U.S. Court of Appeals for the Third Circuit, which has been handling the court challenges to the FCC's media ownership decisions in 2002-03 and 2006-07.

2. In 1996, the Commission determined that inmate calling services must be deregulated. Currently, there is a proceeding pending at the Commission relating to rates paid to prison phone service providers for interstate telephone service. In many States, these rates appear to exceed the actual cost to originate and terminate a call between inmates and their called parties. Accordingly, the prices for these calls are excessive and apparently are not cost-based.

   What is the status of this proceeding (Wright Petition CC-96-128), and when is it likely to be decided?

The petitions remain pending before the Commission. I am reviewing the comments and look forward to conferring with my colleagues on how the Commission should proceed. I defer to the Chairman with respect to timing.

3. Our subcommittee heard testimony about PEG Access approximately 18 months ago. At that time, I queried AT&T about the inability of viewers to channel surf to PEG channels or to effectuate a simple DVR recording independently or with the assistance of AT&T's program guides.

   What is the status of the Petitions before the FCC regarding discriminatory treatment of these public channels and when can we expect a decision? (See, e.g., ACM et al Petition, CSR-8126)

The petitions remain pending before the Commission. I am reviewing the comments and look forward to conferring with my colleagues on how the Commission should proceed. I defer to the Chairman with respect to timing.

The Honorable Baron Hill

1. When do you expect to issue the final order on reconsideration in the Farmers & Merchants case that has been pending for more than two years?

The order regarding the second reconsideration petition in *Qwest Communications Corporation v. Farmers and Merchants Mutual Telephone Company*, has recently been circulated by the Chairman. I look forward to reviewing it and working with my colleagues to finalize our work in a timely manner.

The Honorable Zachary T. Space

1. Chairman Genachowski and the FCC are committed to providing broadband options for all Americans. Areas of my district are un-served or under-served in terms of having access to broadband, and mobile wireless broadband is an important option for us. I understand that the 2.3 GHz band could be used to deliver mobile wireless broadband to more consumers, and that approval of final technical rules has been delayed. What is the FCC's plan to take up this issue? When can we expect FCC action?

I understand that our Office of Engineering and Technology (OET) is working closely with the parties to devise a technical solution to this longstanding challenge. I expect that Chairman Genachowski and the OET staff are working hard to wrap up work in this proceeding as soon as possible this fall. I look forward to reviewing the draft order when I receive it and am hopeful that we will complete our work expeditiously.

The Honorable Cliff Stearns

1. Ranking Member Barton and I have introduced H.R. 2183 to reform FCC process. Among other things, the bill would require the FCC to publish the specific text of proposed rules, to provide the public at least 30 days to file comments and 30 days to file replies, to provide commissioners adequate time to consider draft language before being asked to vote on an item, to establish deadlines for all its various types of proceedings, and to publish its decisions within 30 days of adoption. You have the discretion to implement these procedural reforms without waiting for the bill to pass, however. Will you commit to adopting each of the reforms in the bill?

I agree that the procedures at the Commission are in dire need of reform, and I have been consistently calling for reform of the Commission's structures and processes. In that vein, I wrote open letters outlining reform ideas to both Acting Chairman Copps in January and Chairman Genachowski in July. *See* attached letters.

You are correct, Congressman, that the Commission can implement the reforms that are outlined in H.R. 1283, and it is my hope that Chairman Genachowski will continue to work with the other Commissioners' office to implement these reforms that you have highlighted in your bill. In particular, I agree that the FCC should be a more open and collaborative place where all Commissioners are included in the idea formulation process early on, rather than just twenty-one days before a voting deadline.

2. At the first broadband workshop, Chairman Genachowski said that the national broadband plan would be "the most data driven ever at the FCC." That's wise, not only because it leads to better policy decisions, but because the D.C. Circuit has made clear it expects the FCC to justify its actions with rigorous factual and economic analysis. Just recently, for example, the D.C. Circuit threw out the FCC's cable ownership cap because the FCC had failed to account for all the video competition to cable that comes from satellite and phone companies. Will you commit not to support regulatory intervention in today's competitive, vibrant, and innovative communications market without first making a detailed showing of both market power and a market failure?

Yes. Throughout my tenure at the Commission, I have emphasized the need for the government to be modest about its ability to predict the future direction of the communications marketplace and, therefore, to intervene only when we have a reliable evidentiary basis for doing so. The fate of the Commission's 2007 cable ownership decision, from which I dissented – and which was overturned in court - starkly illustrates the problems that arise when the Commission veers away from a scrupulously fact-driven approach to regulatory analysis and action.

3. While the OECD rank's the U.S. 15th in broadband adoption, the OECD report has been criticized for, among other things, calculating penetration per capita rather than per household and ignoring wireless connections. Dr. George Ford has also demonstrated that under the OECD methodology, if every OECD country were to

reach 100 percent broadband adoption, the United States would drop in rank to 20th. In reality, adoption in the United States has been quite rapid, especially considering the size and geographic diversity of the country. The Pew Internet & American Life Project reports that 63 percent of U.S. households have adopted broadband as of April 2009, up from 53 percent in May 2008. By contrast, the European Commission says that only 36 percent of European Union households have such service. The OECD has now also released a report claiming that U.S. consumers pay the most for wireless service when the exact opposite is true. Between 1993 and 2008, the cost per minute in the U.S. has dropped to 4 cents from 44 cents, while the average minutes of use has grown from 140 to 758, the most of any country. The flaw in the OECD analysis was that it picked unrealistic "baskets" of services as its basis for comparison. The average U.S. calling profile is nearly three times greater than the OECD's "high usage" basket and nearly six times greater than the OECD's "average" usage basket. If we compare based on price-per-minute, rather than based on the OECD's non-representative baskets, we find that the U.S. has the lowest rates among OECD countries. Do you promise to keep all this in mind as you work on the broadband plan, and not to rely on the OECD statistics?

Yes, I agree that the Commission should rely on more than just the OECD statistics, and I promise that I will do so as we work on the broadband plan. As I have said for quite a while now, the OECD's statistical methodology is flawed. For example, the OECD's broadband rankings do not take into account a country's geographic size and its relation to population density. Comparing broadband deployment in the US to, say, Iceland, is not exactly apples to apples.

It should be noted that this nation has made great strides in developing and deploying broadband infrastructure. The Commission's own data shows that since 2000, the number of high speed lines has increased more than 1600 percent, from approximately 6.8 million lines in December 2000 to over 121 million lines in December 2007, the most recent period for which we have data. In what might be a better measure of "broadband" deployment, FCC data shows the number of lines with transmission speeds greater than or equal to 2.5 megabits per second grew from December 2005 to December 2007 by 70 percent, from approximately 27 million lines to over 45 million lines.

Although more can, and should, be done to improve on our broadband competitiveness, the Commission should recognize what has gone right at least as much as we analyze any shortcomings. Some estimates regarding private investment in domestic broadband infrastructure in this year alone exceed $80 billion – and that is during a time when private capital is extremely scarce at best. Few, if any, industries can make such claims. The point is that even in light of imperfections, the American broadband market has positive momentum in a time when other sectors are struggling.

4. While there are certain remote areas that may be lacking broadband, estimates of U.S. household broadband access range in the neighborhood of 90 percent. Among the households that don't have broadband, 63 percent say it is because they are not

interested or because they feel the Internet is too difficult to use, according to the Pew Internet study. Only 17 percent say it's because of lack of availability and only 19 percent say it is because of price. Doesn't this suggest that focusing on education and consumer demand, rather than supply or price, would have the greatest impact on broadband adoption?

Yes, I agree that the Pew Internet study suggests that a focus on education and consumer demand is an important component that should be considered by the Commission when it considers ways to encourage broadband adoption in our country. This is certainly something that the Commission should take into account as we move forward on preparing the National Broadband Plan.

5. While an important goal, increasing broadband deployment can't possibly be justified without some regard to cost. At some point the dollars are better spent on other national priorities. Will you commit to setting concrete broadband goals, to creating performance measures to assess the country's progress toward those goals, and to employing a cost-benefit analysis in determining how to move toward them?

As part of the Commission's September open meeting, the broadband task force reported that our nation's universal broadband deployment costs are estimated to be between $20 and 350 billion. These numbers (and the range of the numbers) certainly attracted a lot of attention and have raised more questions than answers. Therefore, it will be important for the Commission to include a cost-benefit analysis as part of our National Broadband Plan.

6. Even though we have near 100 percent household telephone penetration, the universal service fund continues to grow out of control and now costs consumers more than $7 billion per year. If subsidies for the saturated voice market are still costing us this much, wouldn't the price of using subsidies to get to 100 percent broadband adoption from today's 63 percent be astronomical?

I have consistently stated that, while the Universal Service system has been instrumental in keeping Americans connected and has improved their quality of life, the system is in dire need of comprehensive reform. Universal Service funds have provided a way for Americans to be connected via voice, and now the question has now been raised as to whether broadband should also be subsidized with Universal Service funds. It is important that the Commission answer this question in the context of comprehensive reform, and I look forward to working with both Congressional members and my colleagues at the Commission as we explore creative ways to reform the system.

7. The wireless industry is incredibly competitive and innovative. As a result, the demand for wireless broadband services is growing rapidly. Unfortunately, little spectrum is in the pipeline. That's why Mr. Barton, Mr. Waxman, Mr. Boucher and I introduced H.R. 3125, which would require the FCC and the NTIA to conduct a spectrum inventory. You need not wait for that legislation to conduct an inventory, however. Do you support conducting a spectrum inventory?

Given the need for the United States to preserve and expand our international competitiveness, all policymakers have an ongoing obligation to identify potential new spectrum resources. Conceptually, a spectrum inventory would be a beneficial exercise. If undertaken in a thoughtful, pragmatic and deliberate manner, an inventory would be a significant step toward making additional spectrum available for new advanced wireless services. I look forward to partnering with the NTIA, as well as closely coordinating with Congress and my Commission colleagues to develop and refine this idea.

8. While not a lot, there is some spectrum in the pipeline, such as the 20 MHz of spectrum in AWS-3 block and the two paired 10 MHz AWS-2 H and J blocks. Shouldn't we be preparing an unencumbered auction of that spectrum as well as working on an inventory?

   Yes.

9. President Obama has asked Congress to eliminate earmarks in the appropriations process. Do you believe that the FCC should refrain from earmarking spectrum for a particular user or a particular use? Do you believe that an FCC decision to incorporate elements of a business plan into spectrum service rules would violate the spirit of Section 309(j) of the Communications Act of 1934?

Yes, the Commission should refrain from earmarking spectrum for a particular user or use. Moreover, the Commission should not incorporate elements of any particular business plan into spectrum service rules.

The Honorable George Radanovich

1. When can we expect the FCC to act on the wireless industry's petition to streamline the tower siting process? Don't you think more towers will enable faster wireless broadband deployment?

I was pleased to hear from Chairman Genachowski recently that the Commission will move forward on this petition this fall. Yes, an easier process for new siting towers and other facilities will enable service providers to deliver advanced services to consumers more expeditiously.

The Honorable Mike Rogers

Congressman, I respectfully defer to the Chairman on these questions.

1. In 2004, just five years ago, 20% of U.S. households subscribed to broadband. Now it is more than 70%. At the same time policymakers in Congress and the FCC made a conscious decision not to place significant regulatory burdens on broadband. Considering this significant progress, why should Congress or the FCC now suddenly jump in and regulate broadband?

2. What is the percentage of U.S. households and businesses that have a choice of broadband providers?

3. How much money have broadband providers, both wireline and wireless, been investing in their networks?

4. How many customers move from one provider to another? What is the amount of churn in this market?

5. What is the average price a consumer with 1.5 megabit service pays today versus what they were paying five years ago?

6. What do you consider indications of a competitive broadband market to be?

7. The FCC's *Internet Policy Statement* of August 5, 2005 (FCC 05-151) states in paragraph 4 that the reason for establishing its Four Principles is that "... the Commission has jurisdiction necessary to ensure that providers of telecommunications for Internet access ***or Internet Protocol (IP-enabled) services*** are operated in a neutral manner." Principle Four and paragraph 5 of the *Internet Policy Statement* both use either the term "***application***" or the term "***applications***."

    - Does the *Internet Policy Statement* apply to web based software applications?
    - Some web based companies contends that the Internet Policy Statement applies "only to the behavior of broadband carriers"— Is the *Internet Policy Statement* applicable only to broadband carriers?

    - Does the *Internet Policy Statement* apply to information services?

    - Should web based applications be considered an information service pursuant to Commission precedents that address the legal status of "Internet applications" such as the February 12, 2004 *Declaratory Ruling* regarding pulver.com's Free World Dial Up.?

8. No company that offers "Voice over Internet Protocol" (VoIP) have had their product specifically classified by the Commission as telecommunications services subject to common carrier requirements. Does this mean that the companies that own this web based application may block calls to certain local exchange carriers?

9. Some companies that own "Voice over Internet Protocol" (VoIP) contend that the FCC does not have jurisdiction over how software applications function.

    - Is it accurate that the FCC has no jurisdiction over these types of web based applications?

    - Does "Voice over Internet Protocol" (VoIP) not constitute "wire communications" or even possibly "radio communications" within the meaning of the *Communications Act*?

    - Has not the FCC already determined that "Internet applications" are subject to its jurisdiction such as in the February 12, 2004 matter concerning Pulver.com's Free World Dialup?

    - Does the FCC conclude that "Voice over Inter Protocol" (VoIP) is a "phone to phone" service that is subject to common carrier service?

10. Do certain Internet protocol based services or applications require higher levels of security or priority to ensure their quality of services? If so, how can these services or applications be identified? Once identified under what circumstances would prioritization be permitted under a non-discrimination principle if such a principle were added to the Internet Policy Statement?

The Honorable Marsha Blackburn

1. Given how quickly technology changes today, the Commission should ensure that content creators, working with ISPs, have the flexibility to utilize the most effective tools that are capable for both combating piracy while ensuring a smooth experience online for consumers. Given the need for this balance, what measures or considerations are being taken to address piracy and other mechanisms for illegal delivery of content online and does the Commission have the necessary authority to make recommendations in this area in the National Broadband Plan?

I share your concerns regarding the increased use of the Internet to unlawfully obtain content and to obtain unlawful content. The Net Neutrality Notice of Proposed Rulemaking includes language clarifying that nothing in the proposed rules prohibit the providers from taking reasonable measures to prevent the transfer of unlawful content. As such, there will be an opportunity for comment in that process. Also, language in the Stimulus bill tasked the Commission with formulating a National Broadband Plan, and it did not foreclose the Commission from including recommendations to other agencies or from including recommendations to Congress on legislation that may be necessary due to lack of jurisdiction. As the Commission formulates its National Broadband Plan, it should explore the negative impacts of piracy and include recommendations as to ways that the government can prevent online piracy from continuing.

2. I noticed that your very own FCC wireless competition report found that nearly every American has a choice of at least 3 different wireless providers, and 9 in 10 Americans can choose from among at least 5 carriers. Wouldn't you agree that this proves the wireless market is competitive?

Yes. I am pleased that the Commission has documented and is showcasing the real and tangible consumer benefits that continue to flow from America's robustly competitive wireless industry. FCC policies should always promote competition, including in what has historically been a bottleneck: the last mile. During my time at the Commission, I have tried to promote more competition in the last mile by: supporting initiatives to make it easier for new entrants to compete in the video marketplace and, therefore, build new last-mile infrastructure; fighting for 700 MHz auction rules that would promote competition through the crafting of a wide variety of unencumbered market and spectrum block sizes; and taking steps to open up the use of the television "white spaces," including for possible limited uses of this spectrum for point-to-point backhaul in rural areas as a substitute for special access, among others. America's technological future could be brilliant if we, as policymakers, make the right choices. You have my continued commitment to support policies that will promote, not stifle, freedom, competition, innovation and more choices. I believe that if we adopt such policies, we will create boundless opportunities for American consumers and entrepreneurs alike.

3. When can we expect the FCC to act on the wireless industry's petition to streamline the tower siting process? Don't you think more towers will enable faster wireless broadband deployment?

I was pleased to hear from Chairman Genachowski recently that the Commission will move forward on this petition this fall. Yes, an easier process for new siting towers and other facilities will enable service providers to deliver advanced services to consumers more expeditiously.

4. Many of our colleagues have expressed concern regarding new broadcast localism rules that might have the effect of reducing a broadcaster's freedom of expression - and nearly 130 members of congress last year sent the commission a letter to that effect. Do you fear that a localism order modeled after the draft order circulated last year at the Commission might have the affect of reimplementing the Fairness Doctrine without calling it by name?

The Obama Administration and Chairman Genachowski have on several occasions stated that they are not interested in reviving the Fairness Doctrine. I have been pleased by those statements, but I remain concerned that a series of potential new broadcast regulations, operating in tandem, could achieve the old Doctrine's "viewpoint balancing" objective through a different route. If, for instance, the Commission were to require stations to fill out content-prescriptive disclosure forms that hinted at the government's programming preferences, then coupled that action with shorter license terms and mandated community advisory boards empowered to shape programming decisions, the combination of rules could allow future government officials to tacitly threaten "uncooperative" broadcasters with the loss of their license. I will oppose any direct or indirect regulatory regime that could facilitate such a result.

5. Chairman Genachowski, do you intend to address the issue of Inter-Carrier Compensation? Will it be a component of the Broadband strategy and do you believe Congress needs to establish a statutory deadline so that resolution does not continue to be elusive and prolonged?

I respectfully defer to Chairman Genachowski, to whom this question is addressed.

6. In July, the Commission reported to Congress that 12 states are or may be using funds collected for 911 or E911 to fund programs other than 911, E911, or enhancements to those services. The NET 911 Act said that these fees can be prohibited if they are not obligated for the "support or implementation of 9-1-1 or enhanced 9-1-1 services, or enhancements of such services." Now that the Commission has identified instances in which fee diversion is occurring, do you plan to step in and protect consumers by prohibiting the collection of these fees until the diversion of these funds for purposes other than those delineated by the NET 911 Act ceases?

Although I share your concern regarding fee diversion and the resulting consumer harm, I would be reluctant to commit to FCC action in this instance. I would like to first learn more about Congress's intent regarding enforcement, as well as the FCC's jurisdiction, if any, over E911 fee collections by state and local jurisdictions.

FEDERAL COMMUNICATIONS COMMISSION

Mignon L. Clyburn
Commissioner

October 30, 2009

The Honorable Henry Waxman
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Waxman:

Please find enclosed my written responses to questions from certain Members of the Committee regarding the hearing held September 17, 2009, before the Subcommittee on Communications, Technology, and the Internet entitled "Oversight of the Federal Communications Commission."

Please contact me at (202) 418-2100 if you have any questions.

Sincerely,

Mignon L. Clyburn
Commissioner

Enclosure

The Honorable Henry Waxman and the Honorable Bobby Rush

It has come to our attention that certain voice over Internet Protocol (VoIP) providers are able to reduce dramatically the per-minute cost of inmates calls by allowing inmate's families to obtain a phone number that is local to the correctional facility and have the inmate place their calls to that local number instead of having to make a long distance call. According to some, these VoIP providers can offer this reduced cost service without restricting the ability of prison payphone systems to track, monitor, block, or record the conversations of inmates.

In response to this low cost alternative, certain prison phone providers have started blocking outgoing VoIP calls. The VoIP providers allege that the call blocking is contrary to section 201 of the Communications Act and Commission precedent that protects VoIP providers from having their calls blocked. They allege that the blocking has resulted in a decline in their customer base and could result in them discontinuing service. One such company, Millicorp, has a petition pending for the Commission to investigate their allegation of call-blocking by certain inmate phone service providers.

1. **What decisions has the Commission made concerning call blocking and VoIP providers?**

2. **Are VoIP providers covered by section 201?**

3. **What temporary or interim steps can the Commission take to prevent the blocking of phone calls during the pendency of its decision making process?**

   Answer: To my knowledge, the Commission has not considered whether VoIP calls can be blocked in the context of inmate calling services; nor has it directly addressed the applicability of section 201 to VoIP providers. I look forward to working with my colleagues and Commission staff to assess what temporary or interim steps might be necessary or appropriate regarding the blocking of such phone calls.

The Honorable John D. Dingell

I. Forbearance

I am pleased by the Commission's move under Acting Chairman Copps to institute changes to its forbearance procedures. While I appreciate these modifications, section 10(c) of the Communications Act of 1934 still permits a petition for forbearance to be granted, should FCC not deny it within one year of its submission. My legislation, H.R. 400, would amend section 10(c) to require that the Commission grant such a petition within one year of its receipt, unless it determines an extension is necessary.

1. **This in mind, is it the opinion of the Commission that a petition for forbearance should be granted by reason of inaction by the Commission? Yes or no.**

Answer: No – it does not serve the public interest for policy to be made through Commission inaction. I believe that the Commission must act on all forbearance petitions within one year in order to avoid this consequence.

2. **Further, does the Commission believe that granting petitions in this manner (i.e., "deemed granted" by reason of Commission inaction) is a transparent method of governance and also in the public interest? Yes or no.**

Answer: No – please refer to my previous answer.

3. **Even under its new forbearance procedures, does the Commission believe it can act on every forbearance petition, so as to avoid any such petition's being granted by Commission inaction? Yes or no.**

Answer: As a new member of the Commission, I cannot fully assess the ability of staff to process such petitions within the stated timeframe.

4. **Therefore, does the Commission support the revision to section 10(c) of the Communications Act of 1934, as contained in H.R. 400? Yes or no.**

Answer: Yes – I fully support the revision that H.R. 400 would make to section 10(c).

II. Special Access

On July 9, 2009, Chairman Boucher and I sent a letter to the Commission urging it "to collect the data necessary to make an informed determination concerning the state of competition for special access and other high-capacity data services as it contemplates revisions to its pricing flexibility order."

5. Has the Commission issued a formal request for such data, and if not, when will it do so?

Answer: The Commission has not yet issued a formal request for special access data. The Wireline Competition Bureau plans to issue a public notice in the near future, seeking public comment in order to hone the data request that we will eventually issue. I expect that a data request will follow the public notice in fairly short order, and I fully support speedy Commission action on this issue.

6. Is it the intention of the Commission to use the special access data it collects as a part of a "data-driven process" to amend its pricing flexibility order? Yes or no.

Answer: I will have a better sense of the appropriate next steps once I see what the data request produces. I do agree that any action we take should be data driven.

III. Wireless Communications Services (WCS) and Satellite Digital Audio Radio Services (SDARS)

7. Last year, former Chairman Martin drafted rules that would allow the use of mobile devices immediately adjacent to satellite radio receivers. Test results have been submitted that show significant interference under the draft rules, and it is my understanding that the parties and FCC engineers conducted additional tests this past summer. In light of these test results, how has FCC modified the draft rules to ensure that no interference will result to existing consumers? Given the highly technical nature of these issues, I expect that you will allow the public opportunity to comment on any proposed rules. Is this so? If not, please explain why. Further, when does FCC anticipate completing this rulemaking?

Answer: It is my understanding that the relevant Bureaus and Offices in the Commission are currently reviewing the information received from demonstration tests conducted by both the WCS Coalition as well as Sirius XM. While a recommendation is not yet forthcoming, there is a draft Notice of Proposed Rulemaking that is currently on circulation that could be modified as appropriate to reflect recent testing and addressing any and all interference concerns. I look forward to resolving the issues in this proceeding promptly as I recognize that this issue has languished for some time at the Commission.

The Honorable Bobby L. Rush

1. **What are the Commissioner's views on how to best go about ensuring diversity of ownership and voices with respect to FCC-licensed broadcasting facilities and with respect to FCC-competitively bid or divested spectrum, notwithstanding Croson and Adarand precedent calling for strict scrutiny of race-based programs?**

Answer: One of my top priorities as an FCC Commissioner is to work with all stakeholders to find innovative ways to ensure that ownership opportunities in the communications world are available to people of all backgrounds. There is no question that women and minorities are woefully underrepresented among the ranks of media owners, and this is a problem that must be addressed immediately. The first step is to expeditiously gather the data necessary to understand the current state of ownership with respect to FCC-licensed broadcasting facilities and FCC-competitively bid or divested spectrum and the source(s) of any barriers for women and minorities in these arenas.

a. **Does the Commission have plans to update its Adarand study, which was commenced during the tenure of former Chairman William E. Kennard, and if so, when would it commence this process?**

   Answer: The FCC's Diversity Committee recently made some important recommendations concerning future ownership studies, and I believe that we must take some action on these recommendations in the near future. We simply cannot afford to wait to take these essential first steps to achieving the widely shared goal of ownership diversity.

b. **Does the Commission have plans to reconsider media ownership and cross-ownership limits and caps, or to propose legislation repealing or significantly modifying laws that permit increased aggregation of ownership within a market?**

   Answer: As you are aware, the Commission is undertaking its quadrennial review of the state of media ownership. For a variety of reasons, it is essential that we get this review right. Our process must be data-driven and must involve the public. We must also recognize that the media landscape has changed dramatically over the last few years, and must account for the rise of Internet journalism and the current state of newspaper journalism. I look forward to working closely with my colleagues to have a robust proceeding so that we can better understand what we are working with, and so that we can, if necessary, develop appropriate rules to ensure that the industry is serving the public interest.

2. **In 1996, the Commission determined that inmate calling services must be deregulated. Currently, there is a proceeding pending at the Commission relating to rates paid to prison phone service providers for interstate telephone service. In many States, these rates appear to exceed the actual cost to originate and terminate a call between inmates and their called parties. Accordingly, the prices for these calls are excessive and apparently are not cost-based.**

   What is the status of this proceeding (Wright Petition CC-96-128), and when is it likely to be decided?

Answer: The Wright petition was put out for public comment in 2007. To my knowledge, there has been no Commission action since then. But there are important issues at stake in that proceeding, and I look forward to working with my colleagues to address them.

3. **Our subcommittee heard testimony about PEG Access approximately 18 months ago. At that time, I queried AT&T about the inability of viewers to channel surf to PEG channels or to effectuate a simple DVR recording independently or with the assistance of AT&T's program guides.**

   What is the status of the Petitions before the FCC regarding discriminatory treatment of these public channels and when can we expect a decision? (See, e.g., ACM et al Petition, CSR-8126)

   Answer: I am a strong supporter of PEG channels. They provide much-needed local content in communities across the country as well as opportunities for people, young and old, to get involved in broadcasting. PEG channels should be no less accessible or manipulable than traditional channels. I look forward to working with the Chairman's office and the Media Bureau to see that we have a speedy resolution to this issue.

The Honorable Baron Hill

1. **When do you expect to issue the final order on reconsideration in the Farmers & Merchants case that has been pending for more than two years?**

Answer: Chairman Genachowski circulated a draft order on September 23. My office is currently reviewing the draft, and we are prepared to act on it promptly.

The Honorable Zachary T. Space

Chairman Genachowski and the FCC are committed to providing broadband options for all Americans. Areas of my district are un-served or under-served in terms of having access to broadband, and mobile wireless broadband is an important option for us. I understand that the 2.3 GHz band could be used to deliver mobile wireless broadband to more consumers, and that approval of final technical rules has been delayed. What is the FCC's plan to take up this issue? When can we expect FCC action?

Answer: Bringing broadband access opportunities to under and un-served communities like your district is critical and a top priority. There are exciting opportunities for bringing wireless broadband services to these areas via the 2.3 GHz spectrum. It is my understanding that the relevant Bureaus and Offices in the Commission are currently reviewing the technical information regarding the offering of these new services in this spectrum and I look forward to resolving the issues in this proceeding promptly as I recognize that this issue has languished for some time at the Commission.

The Honorable Cliff Stearns

1. **Ranking Member Barton and I have introduced H.R. 2183 to reform FCC process. Among other things, the bill would require the FCC to publish the specific text of proposed rules, to provide the public at least 30 days to file comments and 30 days to file replies, to provide commissioners adequate time to consider draft language before being asked to vote on an item, to establish deadlines for all its various types of proceedings, and to publish its decisions within 30 days of adoption. You have the discretion to implement these procedural reforms without waiting for the bill to pass, however. Will you commit to adopting each of the reforms in the bill?**

Answer: Coming to the FCC from a state public service commission has given me a unique perspective on the way our agency runs. The Commission undoubtedly can improve its processes. We need to have more meaningful public input, be more transparent, and resolve pressing matters expeditiously. I am pleased that the Chairman has made one of his highest priorities a top-to-bottom review of the agency. He has appointed a very skilled and experienced point person for the task and I have little doubt that the agency will make some significant procedural improvements in the not-too-distant future.

2. **At the first broadband workshop, Chairman Genachowski said that the national broadband plan would be "the most data driven ever at the FCC." That's wise, not only because it leads to better policy decisions, but because the D.C. Circuit has made clear it expects the FCC to justify its actions with rigorous factual and economic analysis. Just recently, for example, the D.C. Circuit threw out the FCC's cable ownership cap because the FCC had failed to account for all the video competition to cable that comes from satellite and phone companies. Will you commit not to support regulatory intervention in today's competitive, vibrant, and innovative communications market without first making a detailed showing of both market power and a market failure?**

Answer: I am committed to ensuring that the communications marketplace is competitive and vibrant and that it fosters innovation. Competition is an essential driver behind better services and prices for consumers. I believe we must be vigilant in helping to ensure competitive markets and to monitor them through data-driven inquiries. When the markets are competitive and vibrant, our role is to step back and allow them to flourish to the benefit of American consumers. When there is market failure – where competition is lacking and consumers suffer – we must craft careful rules to help us get back on track.

3. **While the OECD rank's the U.S. 15th in broadband adoption, the OECD report has been criticized for, among other things, calculating penetration per capita rather than per household and ignoring wireless connections. Dr. George Ford has also demonstrated that under the OECD methodology, if every OECD country were to reach 100 percent broadband adoption, the United States would drop in rank to 20th. In reality, adoption in the United States has been quite rapid, especially considering the size and geographic diversity of the country. The Pew Internet & American Life Project reports that 63 percent of U.S. households have adopted broadband as of April 2009, up from 53 percent in May 2008. By contrast, the European Commission says that only 36 percent of European Union households**

have such service. The OECD has now also released a report claiming that U.S. consumers pay the most for wireless service when the exact opposite is true. Between 1993 and 2008, the cost per minute in the U.S. has dropped to 4 cents from 44 cents, while the average minutes of use has grown from 140 to 758, the most of any country. The flaw in the OECD analysis was that it picked unrealistic "baskets" of services as its basis for comparison. The average U.S. calling profile is nearly three times greater than the OECD's "high usage" basket and nearly six times greater than the OECD's "average" usage basket. If we compare based on price-per-minute, rather than based on the OECD's non-representative baskets, we find that the U.S. has the lowest rates among OECD countries. Do you promise to keep all this in mind as you work on the broadband plan, and not to rely on the OECD statistics?

Answer: I think international comparisons have their place, but our primary focus should be to do as well as we can as a nation. Even if we were leading the world in a given category, we should still strive to do better. So while I believe international rankings have some merit, I am primarily concerned with our nation doing as well as it can regardless of our standing at any particular time.

4. **While there are certain remote areas that may be lacking broadband, estimates of U.S. household broadband access range in the neighborhood of 90 percent. Among the households that don't have broadband, 63 percent say it is because they are not interested or because they feel the Internet is too difficult to use, according to the Pew Internet study. Only 17 percent say it's because of lack of availability and only 19 percent say it is because of price. Doesn't this suggest that focusing on education and consumer demand, rather than supply or price, would have the greatest impact on broadband adoption?**

Answer: I agree that consumer education must be a key element of the National Broadband Plan, for the reasons that you cite. However, it is also important to look at the smaller demographic categories in the Pew study. For groups whose adoption rate is substantially lower than the national average, price and availability tend to be much larger factors in non-adoption. For example, in rural communities, fully 58 percent of non-users cite price or availability as the reason why they do not subscribe to broadband Internet access service. I strongly believe that we must focus on broadband adoption, specifically on those who could subscribe to broadband but choose not to. But the Pew figures suggest that if we focus *only* on education and demand, we risk leaving the most vulnerable Americans even farther behind.

5. **While an important goal, increasing broadband deployment can't possibly be justified without some regard to cost. At some point the dollars are better spent on other national priorities. Will you commit to setting concrete broadband goals, to creating performance measures to assess the country's progress toward those goals, and to employing a cost-benefit analysis in determining how to move toward them?**

Answer: Cost is indeed a key factor that the Commission must consider as we develop the National Broadband Plan. In its internal briefings and public presentations, our broadband team has made it clear that cost concerns will be addressed in the National Broadband Plan, and that the Plan will include benchmarks to help us measure progress and cost-effectiveness.

6. **Even though we have near 100 percent household telephone penetration, the universal service fund continues to grow out of control and now costs consumers more than $7 billion per year. If subsidies for the saturated voice market are still costing us this much, wouldn't the price of using subsidies to get to 100 percent broadband adoption from today's 63 percent be astronomical?**

Answer: I believe that as we develop the National Broadband Plan and think about ways to increase broadband penetration, all options must be on the table, including universal service support. As you point out, there are many challenges involved in determining whether and how to increase universal service support for broadband. Thinking about those challenges is part of our job, though, and I look forward to working with my fellow Commissioners and Commission staff to figure out the best solutions.

7. **The wireless industry is incredibly competitive and innovative. As a result, the demand for wireless broadband services is growing rapidly. Unfortunately, little spectrum is in the pipeline. That's why Mr. Barton, Mr. Waxman, Mr. Boucher and I introduced H.R. 3125, which would require the FCC and the NTIA to conduct a spectrum inventory. You need not wait for that legislation to conduct an inventory, however. Do you support conducting a spectrum inventory?**

Answer: I support conducting a spectrum inventory. It is very important that we evaluate current spectrum uses, both underutilized and fallow. It is also necessary that we have granular data on more efficient spectrum allocation methods, spectrum efficiency technologies as well as the means to determine what barriers currently exist to entry for spectrum access. I look forward to working with my colleagues on this important issue, and I'm pleased that the Wireless Innovation Notice of Inquiry we have adopted moves us forward with this objective.

8. **While not a lot, there is some spectrum in the pipeline, such as the 20 MHz of spectrum in AWS-3 block and the two paired 10 MHz AWS-2 H and J blocks. Shouldn't we be preparing an unencumbered auction of that spectrum as well as working on an inventory?**

Answer: I support conducting a spectrum inventory assessment in order to evaluate the status of potentially available spectrum. As the FCC's current Notice of Inquiry on innovation in the wireless arena correctly recognizes, spectrum availability for new

services and applications is an ongoing challenge and a handicap on wireless innovation. I believe it is useful to review these issues in a comprehensive fashion to fully evaluate available spectrum for its most efficient and best use with consideration of the public's interest.

9. **President Obama has asked Congress to eliminate earmarks in the appropriations process. Do you believe that the FCC should refrain from earmarking spectrum for a particular user or a particular use? Do you believe that an FCC decision to incorporate elements of a business plan into spectrum service rules would violate the spirit of Section 309(j) of the Communications Act of 1934?**

Answer: It is clear from the initial spectrum specific data provided by the Commission as part of its ongoing review in development of a national broadband plan that spectrum is an "enabler" for bringing broadband services across many demographics. This review, in conjunction with our current Notice of Inquiry into wireless innovation is a useful and comprehensive method for assessing the best and most efficient use of spectrum that is consistent with the public's interest and consistent with Section 309(j) of the Communications Act of 1934. I look forward to working with my colleagues to ensure that our policies going forward reflect the comprehensive and national perspective of our nation's broadband initiatives while reflecting what is in the best interests of consumers.

The Honorable George Radanovich

1. When can we expect the FCC to act on the wireless industry's petition to streamline the tower siting process? Don't you think more towers will enable faster wireless broadband deployment?

Answer: Chairman Genachowski has announced that an order addressing this issue will be on the Commission's November meeting agenda. Aiding infrastructure development is key to bringing the critical services consumers want, and I look forward to reviewing this issue.

The Honorable Mike Rogers

1. **In 2004, just five years ago, 20% of U.S. households subscribed to broadband. Now it is more than 70%. At the same time policymakers in Congress and the FCC made a conscious decision not to place significant regulatory burdens on broadband. Considering this significant progress, why should Congress or the FCC now suddenly jump in and regulate broadband?**

Answer: As the Commission explained in the Open Internet Notice of Proposed Rulemaking that we released last week, our decision to propose rules to preserve a free and open Internet is fully consistent with the development of Internet policy over the past decade. I believe that the Commission is moving forward in a deliberate, transparent and comprehensive fashion.

2. **What is the percentage of U.S. households and businesses that have a choice of broadband providers?**

Answer: The Commission does not collect information about broadband availability at the household or business level. However, the Commission collects information about broadband subscribership through its Form 477. Form 477 solicits data on the number of subscribers each service provider has in a given census tract, but not on the extent of availability of their service within the tract. Since tracts can be fairly large, the 477 data will tend to overstate the availability of wireline service. With that caveat in mind, the most recent 477 data suggest that:

- 4.6% of households are located in census tracts served by three providers.
- 85.1% of households are located in census tracts served by two providers.
- 10.0% of households are located in census tracts served by one provider.
- 0.3% of households are located in census tracts served by no providers.

These figures do not include providers of wireless broadband service, only providers offering DSL, cable, or fiber-to-the-home broadband service. Form 477 includes data on whether mobile wireless providers have subscribers in a given census tract, but it does not in general provide data on the number of subscribers. Also, Form 477 data cannot accurately estimate the percent of businesses with a choice of broadband providers, so these figures are for households only.

3. How much money have broadband providers, both wireline and wireless, been investing in their networks?

Answer: It is my understanding that the Commission does not collect this data directly. But Commission staff have put together the following data based on data collection by third parties:

Mobile wireless networks. In the Commission's *Twelfth Annual CMRS Competition Report*, we stated that one analyst estimated that wireless operators spent approximately $24.7 billion in each of 2006 and 2005 and approximately $21.4 billion in 2004. *Twelfth Report*, 23 FCC Rcd 2241, 2307 ¶ 154 (2008). In our *Thirteenth Annual CMRS Competition Report*, we stated that CTIA reports that the wireless industry spent $9.71 billion in capital expenditures in the first six months of 2007. *Thirteenth Report*, 24 FCC Rcd 6185, 6260 ¶ 155 (2009). CTIA estimates that capital expenditures for operating systems by U.S. wireless carriers were $21.14 billion in 2007 and $20.17 billion in 2008. *See* CTIA's Wireless Industry Indices Semi-Annual Data Survey Results: A Comprehensive Report from CTIA Analyzing the U.S. Wireless Industry, Year-End 2008 Results (rel. May 2009).

Wireline and cable operators: In an August 2009 report, Goldman Sachs estimated that wireline telecom providers spent $28.2 billion in capital expense in 2008, and cable operators spent $13.7 billion in the same year.

4. How many customers move from one provider to another? What is the amount of churn in this market?

Answer: It is my understanding that the Commission does not collect this data directly. But Commission staff have put together the following data based on data collection by third parties:

Wireless providers: Wireless churn is reported as a monthly number, typically defined as the number of customers who cancel their subscription, divided by the average number of subscribers that the provider served that month. The major US wireless providers report total monthly churn, pre-paid and post-paid, as follows (all data from the 2nd quarter of 2009):

Verizon Wireless:	1.4%
AT&T:	1.5%
Sprint:	2.7%
T-Mobile:	3.1%
US Cellular:	2.0%
Leap:	4.4%
MetroPCS:	5.8%

Wireline providers (for voice service): Wireline operators do not publicly report churn for their subscribers.

Cable television providers (for video service): Cable operators do not publicly report churn for their subscribers, but estimates are that churn is roughly 2-4% per month on average. It is estimated that ~30% of this churn is due to people moving out of a service area, and another ~30% is due to non-payment.

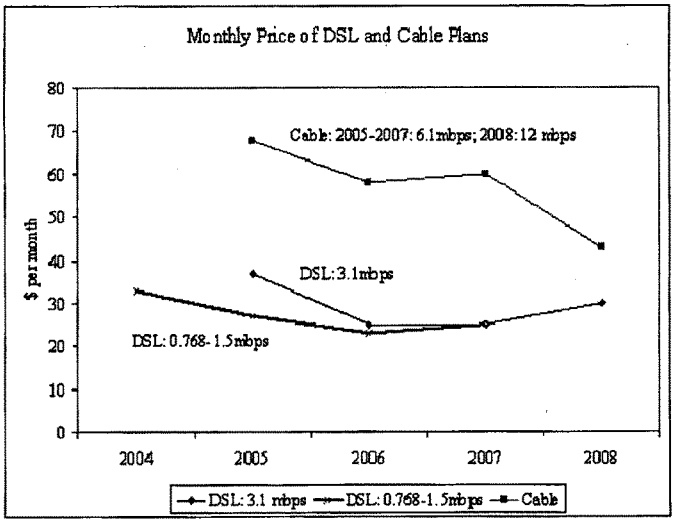
None of the major broadband providers report churn for their broadband, or high-speed data, product on a stand-alone basis. Anecdotally, we believe it is in the range of 2-4% per month, but have not been able to confirm this as of this date. Churn levels for bundled services are at the low end of the range while stand-alone voice, data or video churn tends to be closer to the high end. A 2006 study by Bernstein Research (Cable and Satellite Basic Subscriber Trends: Inching Towards Equilibrium, March 2006) pegged blended monthly cable churn at 2.4%.

5. What is the average price a consumer with 1.5 megabit service pays today versus what they were paying five years ago?

Answer: It is my understanding that the Commission does not collect this data directly. But Commission staff have put together the following data based on data collection by third parties:

The first figure below shows information from the OECD, which reports information on AT&T and Comcast prices, and from US Telecom. This figure suggests that prices of particular speed tiers decreased from 2004 until 2006 or 2007 and then increased slightly, while cable prices declined 2005-2007. The second figure, which shows an analysis of data collected by the research firm PointTopic, suggests that prices for a given speed tier have remained relatively constant from 2004 through the end of 2008. Each figure is discussed in more detail below.

Data from the OECD and US Telecom

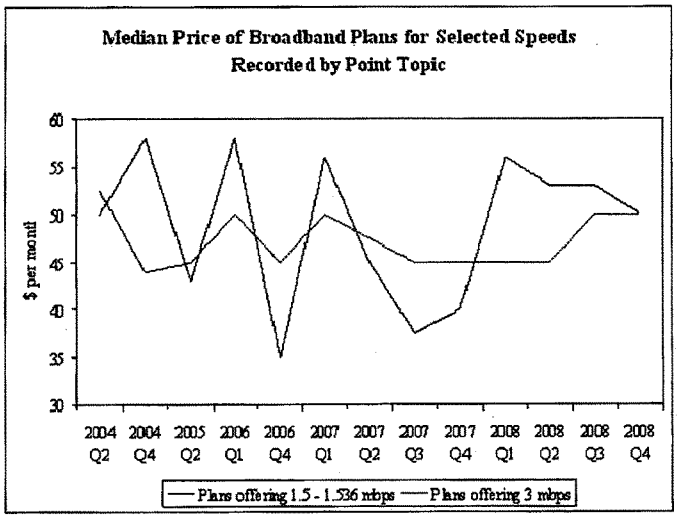


DSL prices show a downward trend until about 2007, when prices began to increase. Data on DSL prices in the 0.768-1.5mbps speed tier from 2004 – 2007 come from US Telecom, which claims the prices are "the maximum average price" in that downstream speed tier. Data on DSL 3.1 mbps from 2005 – 2008 come from the OECD, which is reporting prices it obtained from ATT.

Cable prices come from the OECD, which is reporting prices it obtained from Comcast for a 6.1 mbps plan from 2005-2007 and a 12 mbps plan in 2008. These prices show a steady decline.

Three caveats. First, the OECD data are stand-alone, not bundled prices. US Telecom does not identify whether the prices are for stand-alone or for bundled service. Second, US Telecom notes only that the prices are "weighted average monthly prices for Top 5 ILEC Wireline broadband services," but does not say what the weights are. Third, the OECD data are based on what they were told by AT&T and Comcast, but we have no information how representative or widely available those prices were.

Data from Point Topic



This figure shows the median price of all plans offering the given speed identified by Point Topic in each time period. In order to be included the plan must have been offered at least two years. This filtering method helps ensure that the plan was commercially viable and not simply a one-time promotion.

At least two caveats are in order. First, the data are not weighted by the number of subscribers. Second, these are stand-alone prices, and prices for bundled services are likely to differ.

6. What do you consider indications of a competitive broadband market to be?

Answer: In my view, a competitive broadband market would be one in which consumers have real choice among broadband Internet access service providers: enough choice to keep prices competitive and consumers satisfied with the service they receive.

7. ***The FCC's Internet Policy Statement* of August 5, 2005 (FCC 05-151) states in paragraph 4 that the reason for establishing its Four Principles is that "... the Commission has jurisdiction necessary to ensure that providers of telecommunications for Internet access *or Internet Protocol (IP-enabled) services* are operated in a neutral manner." Principle Four and paragraph 5 of the *Internet Policy Statement* both use either the term *"application"* or the term *"applications"***

   - **Does the *Internet Policy Statement* apply to web based software applications?**

Answer: The Internet Policy Statement was written to ensure that consumer protections remained clear as the Commission classified various broadband Internet access services as information services, rather than telecommunications services that are subject to common carriage principles. To date, the Commission has enforced the federal Internet policy only against a broadband Internet access service provider that used software to block a particular type of web based application.

   - **Some web based companies contend that the Internet Policy Statement applies "only to the behavior of broadband carriers." Is the *Internet Policy Statement* applicable only to broadband carriers?**

Answer: The Internet Policy Statement articulates principles that are needed to help preserve the Internet as a platform for innovation generally. The Commission has proposed applying rules only to broadband Internet service providers.

   - **Does the *Internet Policy Statement* apply to information services?**

Answer: Yes. Pursuant to several Commission decisions, many broadband Internet access services are classified as information services.

   - **Should web based applications be considered an information service pursuant to Commission precedents that address the legal status of "Internet applications" such as the February 12, 2004 *Declaratory Ruling* regarding Pulver.com's Free World Dial Up.?**

Answer: Web based applications should be considered information services to the extent they satisfy the definition of "information service" under the Communications Act

and the Commission's precedent. The Communications Act defines an information service to mean "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." The 2004 Declaratory Ruling mentioned in the question found Pulver.com's Free World Dial Up service to be an information service under the Communications Act.

8. No company that offers "Voice over Internet Protocol" (VoIP) has had their product specifically classified by the Commission as telecommunications services subject to common carrier requirements. Does this mean that the companies that own this web based application may block calls to certain local exchange carriers?

Answer: The Commission has not specifically addressed this question, but Commission staff are currently investigating certain claims of this type of conduct.

9. Some companies that own "Voice over Internet Protocol" (VoIP) contend that the FCC does not have jurisdiction over how software applications function.

- **Is it accurate that the FCC has no jurisdiction over these types of web based applications?**

Answer: It is my understanding that the Commission has determined that it has jurisdiction over at least one web-based application: Pulver.com's "Free World Dialup" (FWD) service, which the Commission identified in a 2004 order as an information service subject to federal jurisdiction.

- **Does "Voice over Internet Protocol" (VoIP) not constitute "wire communications" or even possible "radio communications" within the meaning of the *Communications Act*?**

Answer: In 2005, the Commission determined that interconnected VoIP services (a subset of VoIP services) are covered by the statutory definitions of "wire communication" and/or "radio communication" because they involve "transmission of [voice] by aid of wire, cable, or other like connection" and/or "transmission by radio" of voice.

- **Has not the FCC already determined that "Internet applications" are subject to its jurisdiction such as in the February 12, 2004 matter concerning Pulver.com's Free World Dialup?**

Answer: As I noted above, in 2004 the Commission concluded that Pulver.com's FWD service is an information service subject to federal jurisdiction.

- **Does the FCC conclude that "Voice over Internet Protocol" (VoIP) is a "phone to phone" service that is subject to common carrier service?**

Answer: The Commission has not determined that VoIP services are subject to common carrier regulations. The regulatory classification of VoIP services is an open question in a pending rulemaking.

10. Do certain Internet protocol-based services or applications require higher levels of security or priority to ensure their quality of services? If so, how can these services or applications be identified? Once identified under what circumstances would prioritization be permitted under a non-discrimination principle if such a principle were added to the Internet Policy Statement?

Answer: In our Open Internet NPRM, we sought comment on whether a broadband provider would need to protect the quality of service for certain applications by implementing a network management practice of prioritizing classes of latency-sensitive traffic over classes of latency-insensitive traffic (such as prioritizing all VoIP, gaming, and streaming media traffic). The resulting record should give us a better understanding of what types of services may require higher levels of security or priority to ensure their quality of services. Our proposed rules would permit prioritization as part of reasonable network management.

The Honorable Marsha Blackburn

1. **Given how quickly technology changes today, the Commission should ensure that content creators, working with ISPs, have the flexibility to utilize the most effective tools that are capable for both combating piracy while ensuring a smooth experience online for consumers. Given the need for this balance, what measures or considerations are being taken to address piracy and other mechanisms for illegal delivery of content online and does the Commission have the necessary authority to make recommendations in this area in the National Broadband Plan?**

Answer: Many Americans spend long hours working to develop creative and exciting content for consumers, and the FCC should play its part in helping to ensure that the use of such content is lawful. I am confident that we will keep piracy concerns top-of-mind throughout all of our proceedings that have implications for the unlawful use of protected content. In terms of the National Broadband Plan specifically, the FCC has already held one workshop that addressed these specific issues. I am confident that the agency will take account of these important considerations as we continue to build this important plan.

2. **I noticed that your very own FCC wireless competition report found that nearly every American has a choice of at least 3 different wireless providers, and 9 in 10 Americans can choose from among at least 5 carriers. Wouldn't you agree that this proves the wireless market is competitive?**

Answer: In an open and ongoing look at competition in the wireless market, the Commission is expanding and enhancing its prior analysis of current competitive conditions. The expectation is that we might gain a more granular level of data that should form the basis for sound policy choices for competitive wireless mobile services. I look forward to hearing back from all segments of the market on this analysis which will provide us with better insight into the competitiveness of the market and in turn, better inform our policymaking.

3. **When can we expect the FCC to act on the wireless industry's petition to streamline the tower siting process? Don't you think more towers will enable faster wireless broadband deployment?**

Answer Chairman Genachowski has announced that an order addressing this issue will be on the Commission's November meeting agenda. Aiding infrastructure development is key to bringing the critical services consumers want and I look forward to reviewing this issue.

4. **Many of our colleagues have expressed concern regarding new broadcast localism rules that might have the effect of reducing a broadcaster's freedom of expression – and nearly 130 members of Congress last year sent the commission a letter to that effect. Do you fear that a localism order modeled after the draft order circulated last year at the Commission might have the affect of re-implementing the Fairness Doctrine without calling it by name?**

Answer: I am confident that the Commission will not attempt, in any way, shape, or form, try to reinstate the fairness doctrine. I have stated on the record many times that I do not believe in censoring speech base on its political content.

5. **Chairman Genachowski, do you intend to address the issue of Intercarrier Compensation? Will it be a component of the Broadband strategy and do you believe Congress needs to establish a statutory deadline so that resolution does not continue to be elusive and prolonged?**

Answer: Although this question is addressed to the Chairman, I would like to note that I look forward to engaging with my colleagues on this very important issue and working cooperatively to address the issue.

6. **In July, the Commission reported to Congress that 12 states are or may be using funds collected for 911 or E911 to fund programs other than 911, E911, or enhancements to those services. The NET 911 Act said that these fees can be prohibited if they are not obligated for the "support or implementation of 9-1-1 or enhanced 9-1-1 services, or enhancements of such services." Now that the Commission has identified instances in which fee diversion is occurring, do you plan to step in and protect consumers by prohibiting the collection of these fees until the diversion of these funds for purposes other than those delineated by the NET 911 Act ceases?**

Answer: I share your concern that some states are using 911 fees for purposes other than supporting and improving 911 services. I do not believe that doing so is in the public interest. I hope that the Commission's July report, and its future annual reports, will encourage states to use 911 funds exclusively for the support and enhancement of 911 services.

Responses to

QUESTIONS FOR THE RECORD

From

COMMISSIONER MEREDITH A. BAKER
FEDERAL COMMUNICATIONS COMMISSION

to the

COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

October 30, 2009

The Honorable Henry Waxman and the Honorable Bobby Rush

It has come to our attention that certain voice over Internet Protocol (VoIP) providers are able to reduce dramatically the per-minute cost of inmates calls by allowing inmate's families to obtain a phone number that is local to the correctional facility and have the inmate place their calls to that local number instead of having to make a long distance call. According to some, these VoIP providers can offer this reduced cost service without restricting the ability of prison payphone systems to track, monitor, block, or record the conversations of inmates.

In response to this low cost alternative, certain prison phone providers have started blocking outgoing VoIP calls. The VoIP providers allege that the call blocking is contrary to section 201 of the Communications Act and Commission precedent that protects VoIP providers from having their calls blocked. They allege that the blocking has resulted in a decline in their customer base and could result in them discontinuing service. One such company, Millicorp, has a petition pending for the Commission to investigate their allegation of call-blocking by certain inmate phone service providers.

1. What decisions has the Commission made concerning call blocking and VoIP providers?

   Answer: Although I am unaware of any Commission orders concerning call blocking in the inmate context, long-standing Commission policy has generally disfavored self-help in the form of call blocking to resolve disputes based on well-founded concerns that call blocking may degrade the reliability of the nation's telecommunications network. Commission policy generally has considered inmate calling services somewhat differently from non-inmate payphone services due to security concerns associated with prisons. My staff has met with Millicorp to discuss the pending matters related to its concerns, and I will work with my Commission colleagues to consider this matter expeditiously when it comes before me for decision.

2. Are VoIP providers covered by section 201?

   Answer: In 2004, the Commission initiated the *IP-Enabled Services* proceeding to seek comment on, among other things, whether voice over Internet Protocol (VoIP) services should be classified as "telecommunications services" or "information services" under the definitions in the Act. Although a number of important issues raised in the Notice have been addressed by the Commission, the regulatory classification of most VoIP services remains an outstanding issue. Because the Commission has not classified these services, the extent to which Title II, including section 201, applies remains an open question.

3. What temporary or interim steps can the Commission take to prevent the blocking of phone calls during the pendency of its decision making process?

   Answer: Petitioners have a number of options for seeking relief, including filing a complaint for violations of the Communications Act or Commission rules, petitioning for a declaratory ruling, or petitioning for a rulemaking. The Commission may also initiate

an investigation on its on motion based on information that it believes may substantiate allegations of violations. Under certain circumstances, the staff may act on delegated authority before the full Commission takes action on a matter.

The Honorable John D. Dingell

I. Forbearance

I am pleased by the Commission's move under Acting Chairman Copps to institute changes to its forbearance procedures. While I appreciate these modifications, section 10(c) of the Communications Act of 1934 still permits a petition for forbearance to be granted, should FCC not deny it within one year of its submission. My legislation, H.R. 400, would amend section 10(c) to require that the Commission grant such a petition within one year of its receipt, unless it determines an extension is necessary.

1. This in mind, is it the opinion of the Commission that a petition for forbearance should be granted by reason of inaction by the Commission? Yes or no.

   Answer: No. In my view, it is always sound policy for the Commission to issue a decision in a timely manner on a forbearance petition under section 10 with a written explanation of the decision. Although I have not yet voted on a forbearance petition, I understand that the forbearance process has been implemented successfully in the overwhelming number of forbearance cases that have come before the Commission to reach a voted, written order. I also note that under Acting Chairman Copps's leadership, the Commission adopted procedural reforms for forbearance proceedings that were within the Commission's authority and will significantly improve the process going forward.

2. Further, does the Commission believe that granting petitions in this manner (*i.e.*, "deemed granted" by reason of Commission inaction) is a transparent method of governance and also in the public interest? Yes or no.

   Answer: No. As we gain experience with the procedural reforms to the forbearance process adopted by the Commission this year, I hope that we will see significant improvement in the forbearance process for all stakeholders, including increased transparency in the Commission's decision making regarding these petitions.

3. Even under its new forbearance procedures, does the Commission believe it can act on every forbearance petition, so as to avoid any such petition's being granted by Commission inaction? Yes or no.

   Answer: I believe it is always sound policy for the Commission to issue a decision in a timely manner on a forbearance petition under section 10 with a written explanation of the decision. I commit to working with my colleagues to reach a resolution on every section 10 forbearance petition that comes before us.

4. Therefore, does the Commission support the revision to section 10(c) of the Communications Act of 1934, as contained in H.R. 400? Yes or no.

Answer: It is within Congress's authority to amend provisions of the Act. If amended, I will work with my colleagues to faithfully implement the intent of Congress. In the meantime, we expect the reforms already adopted by the Commission to improve the process for all stakeholders.

II. Special Access

On July 9, 2009, Chairman Boucher and I sent a letter to the Commission urging it "to collect the data necessary to make an informed determination concerning the state of competition for special access and other high-capacity data services as it contemplates revisions to its pricing flexibility order."

5. Has the Commission issued a formal request for such data, and if not, when will it do so?

   Answer: The Commission has not issued a formal request for special access data at this time. Chairman Genachowski has stated that he expects "the Commission's Wireline Competition Bureau to issue a Public Notice [in the near term] seeking comments on the appropriate analytical framework for examining the various issues that have been raised in the pending *Special Access* proceeding. The comments received in response to the Public Notice will assist [the Commission] in identifying the appropriate types of data necessary to conduct our analysis and will enable the Commission to move forward on an expedited basis."

6. Is it the intention of the Commission to use the special access data it collects as a part of a "data-driven process" to amend its pricing flexibility order? Yes or no.

   Answer: I will work with my Commission colleagues, following comment on the analytical framework and any subsequent data request, to evaluate the state of the special access market and need for regulatory changes based on the competitive data developed in the record evidence of the proceeding.

III. Wireless Communications Services (WCS) and Satellite Digital Audio Radio Services (SDARS)

7. Last year, former Chairman Martin drafted rules that would allow the use of mobile devices immediately adjacent to satellite radio receivers. Test results have been submitted that show significant interference under the draft rules, and it is my understanding that the parties and FCC engineers conducted additional tests this past summer. In light of these test results, how has FCC modified the draft rules to ensure that no interference will result to existing consumers? Given the highly technical nature of these issues, I expect that you will allow the public opportunity to comment on any proposed rules. Is this so? If not, please explain why. Further, when does FCC anticipate completing this rulemaking?

   Answer: I believe that it is of utmost importance that spectrum license holders have the ability to use their spectrum without interference. As I have said, I believe that we face a looming spectrum crisis and that as a consequence we need to maximize the utility of all spectrum allocations. We also need to make more spectrum available for commercial

use. That said, we must do so in a way that recognizes the legitimate rights and interests of users of spectrum users in adjacent bands. I understand that the WCS Coalition and Sirius XM each conducted demonstration tests in late July and subsequently submitted reports summarizing the tests and implications for potential interference. I know that Commission staff in the Office of Engineering and Technology and in the Wireless and International Bureaus are analyzing these results and developing recommendations for consideration by the Commission. I know we are also considering how actions with respect to this spectrum may relate to the Commission's analysis of spectrum issues in the context of developing the National Broadband Strategy. I recognize that this matter has been pending for some time and all parties deserve and answer. Consequently, I look forward to having an opportunity to consider the results of the work of the Commission staff and will act promptly as soon as a draft item is available.

The Honorable Bobby L. Rush

1. What are the Commissioner's views on how to best go about ensuring diversity of ownership and voices with respect to FCC-licensed broadcasting facilities and with respect to FCC-competitively bid or divested spectrum, notwithstanding *Croson* and *Adarand* precedent calling for strict scrutiny of race-based programs?

   Answer: Last month, the Commission's Advisory Committee on Diversity for Communications in the Digital Age provided the Commission with a number of recommendations of how the Commission can facilitate an increase in diversity in broadcasting and other services. It is my hope and expectation that we will take a close look at each of those recommendations.

   a. Does the Commission have plans to update its *Adarand* study, which was commenced during the tenure of former Chairman William E. Kennard, and if so, when would it commence this process?

   Answer: Among the Diversity Committee's recommendations is that the Commission undertake new, peer reviewed *Adarand* studies to explore the current status of ownership disparities in FCC-regulated fields and the reasons behind those disparities. The Media Bureau is in the process of identifying the studies that it will commission in preparation for our Quadrennial Review of the media ownership rules, although I do not know if it will include the *Adarand* studies recommended by the Diversity Committee.

   b. Does the Commission have plans to reconsider media ownership and cross-ownership limits and caps, or to propose legislation repealing or significantly modifying laws that permit increased aggregation of ownership within a market?

   Answer: Every four years, the Commission is required by Section 202(h) of the Telecommunications Act of 1996 to review each of its media ownership rules (with the exception of the national television ownership cap, which is imposed by statute) to determine whether each rule is "necessary in the public interest as a result of competition." The next such review will occur in 2010. In preparation for that review, last month, the Media Bureau announced its intention to conduct a series of public workshops that will explore a wide variety of topics that the Commission anticipates it will consider in its review of the rules, seeking the views of a broad range of interested parties. On October 21, the Bureau announced that the first three workshops will take place on November 2, 3 and 4, 2009.

2. In 1996, the Commission determined that inmate calling services must be deregulated. Currently, there is a proceeding pending at the Commission relating to rates paid to prison phone service providers for interstate telephone service. In many States, these rates appear to exceed the actual cost to originate and terminate a call between inmates and their called parties. Accordingly, the prices for these calls are excessive and apparently are not cost-based.

What is the status of this proceeding (Wright Petition CC-96-128), and when is it likely to be decided?

Answer: My understanding is that the Commission received comment in 2004 on the Wright Petition, which requested that the Commission prohibit exclusive inmate calling service agreements and, among other things, permit multiple long distance carriers to interconnect with prison telephone systems. Further, I understand that in 2007, the petitioners submitted an alternative inmate payphone proposal suggesting that benchmark rates for long distance prison inmate calling services be established as an alternative to the proposal in the earlier-filed Wright Petition. I will work with my Commission colleagues to consider this matter expeditiously when it comes before me for decision.

3. Our subcommittee heard testimony about PEG Access approximately 18 months ago. At that time, I queried AT&T about the inability of viewers to channel surf to PEG channels or to effectuate a simple DVR recording independently or with the assistance of AT&T's program guides.

   What is the status of the Petitions before the FCC regarding discriminatory treatment of these public channels and when can we expect a decision? (See, e.g., ACM *et al.* Petition, CSR-8126)

   Answer: On February 6, 2009, the Commission issued a Public Notice calling for comments on the PEG access issues raised by the Petition of the Alliance for Community Media ("ACM") and other similar filings, and the comment period has closed. My understanding from the Commission's Media Bureau, which is handling the matter, is that its staff is evaluating the comments filed in response to the Public Notice and will provide its recommendations. I hope that the Commission will be in a position to address these issues in the near future. My staff has met on this matter with representatives of a number of interested parties, including ACM, AT&T and the Cities of Dearborn and Warren and the Charter Township of Bloomfield, Michigan.

The Honorable Baron Hill

1. When do you expect to issue the final order on reconsideration in the Farmers & Merchants case that has been pending for more than two years?

   Answer: The *Qwest Communications Corporation v. Farmers and Merchants Mutual Telephone Company*, Second Order on Reconsideration, is currently on circulation for vote by the Commission. I am actively considering the matter at this time. I look forward to working with my fellow Commissioners to resolve this issue in an expeditious manner.

The Honorable Zachary T. Space

1. Chairman Genachowski and the FCC are committed to providing broadband options for all Americans. Areas of my district are un-served or under-served in terms of having access to broadband, and mobile wireless broadband is an important option for us. I understand that the 2.3 GHz band could be used to deliver mobile wireless broadband to more consumers, and that approval of final technical rules has been delayed. What is the FCC's plan to take up this issue? When can we expect FCC action?

   Answer: As I have said, I believe that we face a looming spectrum crisis and that as a consequence we need to make more spectrum available for commercial use. I also believe that wireless solutions could play an important role in providing broadband services to unserved and underserved areas and that additional spectrum allocations in rural areas could be helpful to this end. That said, we must allocate new spectrum in a way that recognizes the legitimate rights and interests of users of spectrum users in adjacent bands. I understand that the WCS Coalition and Sirius XM, the adjacent incumbents in the 2.3GHz band, each conducted demonstration tests in late July and subsequently submitted reports summarizing the tests and implications for potential interference. I know that Commission staff in the Office of Engineering and Technology and in the Wireless and International Bureaus are analyzing these results and developing recommendations for consideration by the Commission. I know we are also considering how actions with respect to this spectrum may relate to the Commission's analysis of spectrum issues in the context of developing the National Broadband Strategy. I recognize that this matter has been pending for some time and all parties deserve an answer. Consequently, I look forward to having an opportunity to consider the results of the work of the Commission staff and will act promptly as soon as a draft item is available.

The Honorable Cliff Stearns

1. Ranking Member Barton and I have introduced H.R. 2183 to reform FCC process. Among other things, the bill would require the FCC to publish the specific text of proposed rules, to provide the public at least 30 days to file comments and 30 days to file replies, to provide commissioners adequate time to consider draft language before being asked to vote on an item, to establish deadlines for all its various types of proceedings, and to publish its decisions within 30 days of adoption. You have the discretion to implement these procedural reforms without waiting for the bill to pass, however. Will you commit to adopting each of the reforms in the bill?

   Answer: I am strongly in favor of increasing the transparency by which the Commission does its business and encouraging public participation in our proceedings. To that end, the Commission's Special Counsel for Reform, its Managing Director and its General Counsel are engaged in an extensive project reviewing our internal and external communications processes, including our comment, and complaint filing systems and will release a report of their findings and recommendations. I look forward to working with the Chairman and my colleagues to implement changes that will facilitate the Commission's handling of the matters before it.

2. At the first broadband workshop, Chairman Genachowski said that the national broadband plan would be "the most data driven ever at the FCC." That's wise, not only because it leads to better policy decisions, but because the D.C. Circuit has made clear it expects the FCC to justify its actions with rigorous factual and economic analysis. Just recently, for example, the D.C. Circuit threw out the FCC's cable ownership cap because the FCC had failed to account for all the video competition to cable that comes from satellite and phone companies. Will you commit not to support regulatory intervention in today's competitive, vibrant, and innovative communications market without first making a detailed showing of both market power and a market failure?

   Answer: Yes. In my view, detailed competitive analysis of markets is essential for sound economic regulatory policymaking. I start with an assumption that markets work better than government intervention and that competition regulates market behavior more efficiently than regulators can. Where competition thrives, consumers can best decide what services and pricing structures fit them best.

3. While the OECD ranks the U.S. 15th in broadband adoption, the OECD report has been criticized for, among other things, calculating penetration per capita rather than per household and ignoring wireless connections. Dr. George Ford has also demonstrated that under the OECD methodology, if every OECD country were to reach 100 percent broadband adoption, the United States would drop in rank to 20th. In reality, adoption in the United States has been quite rapid, especially considering the size and geographic diversity of the country. The Pew Internet & American Life Project reports that 63 percent of U.S. households have adopted broadband as of April 2009, up from 53 percent in May 2008. By contrast, the European Commission says that only 36 percent of European Union households have such service. The OECD has now also released a report claiming that U.S. consumers pay the most

for wireless service when the exact opposite is true. Between 1993 and 2008, the cost per minute in the U.S. has dropped to 4 cents from 44 cents, while the average minutes of use has grown from 140 to 758, the most of any country. The flaw in the OECD analysis was that it picked unrealistic "baskets" of services as its basis for comparison. The average U.S. calling profile is nearly three times greater than the OECD's "high usage" basket and nearly six times greater than the OECD's "average" usage basket. If we compare based on price-per-minute, rather than based on the OECD's non-representative baskets, we find that the U.S. has the lowest rates among OECD countries. Do you promise to keep all this in mind as you work on the broadband plan, and not to rely on the OECD statistics?

Answer: Yes. I recognize that as we move forward with the National Broadband Plan that we will rely on the record developed in the proceeding. The National Broadband Plan that Congress has charged the Commission to complete by February of next year is an important and strategic opportunity to ensure that the proper environment exists so that broadband can continue to flourish. Chairman Genachowski and the broadband team have come up with innovative approaches to gain greater, and more substantive, public participation in our proceedings. We expect that these approaches, along with our traditional procedures for public comment, will elicit needed information, often from parties who are new to our proceedings. A data-driven record with rigorous analysis should be the basis for our decisions in this proceeding, and all of the Commission's policymaking.

4. While there are certain remote areas that may be lacking broadband, estimates of U.S. household broadband access range in the neighborhood of 90 percent. Among the households that don't have broadband, 63 percent say it is because they are not interested or because they feel the Internet is too difficult to use, according to the Pew Internet study. Only 17 percent say it's because of lack of availability and only 19 percent say it is because of price. Doesn't this suggest that focusing on education and consumer demand, rather than supply or price, would have the greatest impact on broadband adoption?

   Answer: I look forward to closely collaborating with Congress and my Commission colleagues to identify and implement an array of methods to educate consumers on the benefits of broadband. In particular, I believe that efforts to target particular audiences and more individualized educational approaches could be particularly helpful. I am aware of a number of examples where broadband education and adoption approaches tailored to the needs of specific communities have been very successful, both in urban and rural settings and with people of diverse backgrounds.

5. While an important goal, increasing broadband deployment can't possibly be justified without some regard to cost. At some point the dollars are better spent on other national priorities. Will you commit to setting concrete broadband goals, to creating performance measures to assess the country's progress toward those goals, and to employing a cost-benefit analysis in determining how to move toward them?

   Answer: Yes. The Government Accountability Office recently highlighted the need for improved performance measures for broadband policy. As we move forward with the

National Broadband Plan, we will be addressing the goals laid out by Congress in the American Recovery and Reinvestment Act of 2009 and developing appropriate methods to measure our progress as we implement the Plan. I approach all policymaking, including my consideration of the National Broadband Plan, mindful of the need to weigh the benefits and costs of policy choices, and carefully consider potential unintended consequences of our actions.

6. Even though we have near 100 percent household telephone penetration, the universal service fund continues to grow out of control and now costs consumers more than $7 billion per year. If subsidies for the saturated voice market are still costing us this much, wouldn't the price of using subsidies to get to 100 percent broadband adoption from today's 63 percent be astronomical?

   Answer: In a recent presentation to the Commission, the broadband team presented preliminary estimates of the cost of universal broadband availability ranging from $20 billion to $350 billion. The record of this proceeding remains open, and our final assessment of costs for the National Broadband Plan will be based on the record evidence resulting from the data-driven process and information gleaned from the innovative methods employed to build a solid record for decision. But what seems clear to me now is that private capital will need to be the primary driver to achieve these goals.

   The National Broadband Plan that Congress has charged the Commission to complete by February is an important and strategic opportunity to ensure that the proper environment exists so that broadband can continue to flourish. I hope this Plan will include economic incentives to build out infrastructure faster, at higher speeds, and set a regulatory climate that rewards innovation, creates incentives for private investment, and encourages competition.

7. The wireless industry is incredibly competitive and innovative. As a result, the demand for wireless broadband services is growing rapidly. Unfortunately, little spectrum is in the pipeline. That's why Mr. Barton, Mr. Waxman, Mr. Boucher and I introduced H.R. 3125, which would require the FCC and the NTIA to conduct a spectrum inventory. You need not wait for that legislation to conduct an inventory, however. Do you support conducting a spectrum inventory?

   Answer: I agree with those who believe that we face a looming spectrum crisis and that we need a concerted effort to make more spectrum available for commercial use. A vital first step would be knowing more about current spectrum use. I support taking steps as we can towards this end.

8. While not a lot, there is some spectrum in the pipeline, such as the 20 MHz of spectrum in AWS-3 block and the two paired 10 MHz AWS-2 H and J blocks. Shouldn't we be preparing an unencumbered auction of that spectrum as well as working on an inventory?

Answer: I believe that we need to make as much spectrum as possible available for commercial use to address what I believe to be a looming spectrum crisis. I will encourage the Chairman and my fellow commissioners to consider all possibilities in the AWS bands to ensure that they are configured in a way that promotes maximum value and usefulness for consumers.

9. President Obama has asked Congress to eliminate earmarks in the appropriations process. Do you believe that the FCC should refrain from earmarking spectrum for a particular user or a particular use? Do you believe that an FCC decision to incorporate elements of a business plan into spectrum service rules would violate the spirit of Section 309(j) of the Communications Act of 1934?

   Answer: I believe that spectrum should be put to its highest and best use as determined by market forces and consistent with the statute and that our rules must be flexible enough to accommodate innovation both with respect to technological advances and the evolution of business models. Spectrum auctions have in the past demonstrated that they are an effective way to allow market forces to work in the context of spectrum use.

The Honorable George Radanovich

1. When can we expect the FCC to act on the wireless industry's petition to streamline the tower siting process? Don't you think more towers will enable faster wireless broadband deployment?

   Answer: Chairman Genachowski has recently announced his intention to move forward on the tower siting issue and I look forward to working with the Chairman and my fellow commissioners to craft a policy consistent with the statute and with advancing deployment of new and improved wireless broadband services. I believe that resolving the tower siting issue in a way that is respectful of the interests and concerns of local communities and that acknowledges the need to move forward more quickly would be a good development that could help with the deployment of broadband networks, foster increased investment in broadband networks, create additional jobs. In addition, it will help promote more efficient spectrum use and will help lay the groundwork for a more robust wireless broadband infrastructure across the country.

The Honorable Mike Rogers

1. In 2004, just five years ago, 20% of U.S. households subscribed to broadband. Now it is more than 70%. At the same time policymakers in Congress and the FCC made a conscious decision not to place significant regulatory burdens on broadband. Considering this significant progress, why should Congress or the FCC now suddenly jump in and regulate broadband?

   Answer: As you are aware, on October 22, 2009, the Commission adopted a Notice of Proposed Rulemaking entitled "Preserving the Open Internet." In this proceeding, I dissented in part because, as a threshold matter, I am not convinced that there is a sufficient record to establish that a problem exists with broadband in this context that should be addressed by Commission rules. As I have said previously, we should not adopt regulations to address anecdotes where there is no fact-based evidence that persuasively demonstrates the presence of a problem. I also believe that we must never cease to find ways to create incentives for investment across the Internet, an economic engine that is just beginning to demonstrate its power to transform the way we live, to energize our economy, and to solidify our leadership internationally. Before imposing new rules, we need to carefully think through all potential unintended consequences that could harm consumers by increasing prices, impeding innovation, eliminating choices, and/or reducing quality of service. While I remain skeptical about the need for regulation here, I also remain open to new ideas and look forward to reviewing the record to be developed here.

2. What is the percentage of U.S. households and businesses that have a choice of broadband providers?

   Answer: The Commission does not collect information about broadband availability at the household or business level. However, the Commission collects information about broadband subscribership in its Form 477. Although the Commission's data collection has some limitations, according to the analysis of the Omnibus Broadband Initiative team, the Form 477 data allow us to estimate that:

   - 4.6% of households are located in census tracts served by 3 wireline providers.
   - 85.1% of households are located in census tracts served by 2 wireline providers.
   - 10.0% of households are located in census tracts served by only one wireline provider.
   - And 0.3% of households are located in census tracts served by no wireline providers.

   An important indication of the magnitude of the inaccuracy (for this purpose) of the current Form 477 data is that we know, from other sources, that between 2-5 percent of households are not served by any wireline broadband service today.

3. How much money have broadband providers, both wireline and wireless, been investing in their networks?

Answer: Capital expense can go toward many parts of a business, including network, software systems (billing, customer care, provisioning, network management), product development, hardware systems, and numerous other areas. According to the analysis of the Omnibus Broadband Initiative team, in their public reports and filings, providers typically do not disaggregate capital expense into these categories, so we are unable to estimate the amount invested in the network itself. Further, we are unable to say what percentage of this investment goes toward broadband, as opposed to non-broadband parts of their business. But aggregate capital expense data for leading telecommunications companies is available. The Commission currently does not collect this data directly. However, third-parties do collect such data, which we consolidate here.

Mobile wireless networks. In the Commission's Twelfth Annual CMRS Competition Report, we stated that one analyst estimated that wireless operators spent approximately $24.7 billion in each of 2006 and 2005 and approximately $21.4 billion in 2004. Twelfth Report, 23 FCC Rcd 2241, 2307 ¶ 154 (2008). In our Thirteenth Annual CMRS Competition Report, we stated that CTIA reports that the wireless industry spent $9.71 billion in capital expenditures in the first six months of 2007. Thirteenth Report, 24 FCC Rcd 6185, 6260 ¶ 155 (2009). CTIA estimates that capital expenditures for operating systems by U.S. wireless carriers were $21.14 billion in 2007 and $20.17 billion in 2008. *See* CTIA's Wireless Industry Indices Semi-Annual Data Survey Results: A Comprehensive Report from CTIA Analyzing the U.S. Wireless Industry, Year-End 2008 Results (rel. May 2009).

Wireline and cable operators: In the same August 2009 report, Goldman Sachs estimated that wireline telecom providers spent $28.2 billion in capital expense in 2008, and cable operators spent $13.7 billion in the same year.

4. How many customers move from one provider to another? What is the amount of churn in this market?

Answer: According to the analysis of the Omnibus Broadband Initiative team, the Commission currently does not collect these data. However, third parties do collect some information on churn for wireless, wireline and cable providers.

Wireless providers: Wireless churn is reported as a monthly number, typically defined as the number of customers who cancel their subscription, divided by the average number of subscribers that the provider served that month. The major US wireless providers report total monthly churn, pre-paid and post-paid, as follows (all data from the 2nd quarter of 2009):

Verizon Wireless	1.4%
AT&T	1.5%

Sprint	2.7%
T-Mobile	3.1%
US Cellular	2.0%
Leap	4.4%
MetroPCS	5.8%

Wireline providers (for voice service): Wireline operators do not publicly report churn for their subscribers.

Cable television providers (for video service): Cable operators do not publicly report churn for their subscribers, but estimates are that churn is roughly 2-4% per month on average. It is estimated that ~30% of this churn is due to people moving out of a service area, and another ~30% is due to non-payment.

Broadband providers: None of the major broadband providers report churn for their broadband, or high-speed data, product on a stand-alone basis. Anecdotally, we believe it is in the range of 2-4% per month, but have not been able to confirm this as of this date. Churn levels for bundled services are at the low end of the range while stand-alone voice, data or video churn tends to be closer to the high end. A 2006 study by Bernstein Research (Cable and Satellite Basic Subscriber Trends: Inching Towards Equilibrium, March 2006) pegged blended monthly cable churn at 2.4%.

5. What is the average price a consumer with 1.5 megabit service pays today versus what they were paying five years ago?

   Answer: According to the analysis of the Omnibus Broadband Initiative team, the Commission does not currently collect data on prices. Different data sources suggest somewhat different trends. Information from the OECD on AT&T and Comcast prices, and from US Telecom suggests that prices of particular speed tiers decreased from 2004 until 2006 or 2007 and then increased slightly, while cable prices declined 2005-2007. An analysis of data collected by the research firm PointTopic suggests that prices for a given speed tier have remained relatively constant from 2004 through the end of 2008.

6. What do you consider indications of a competitive broadband market to be?

   Answer: In my view, the primary indications of a competitive marketplace are decreasing prices, increasing innovation, and improving quality of service. Competitive choices in the market drive these effects, which in turn improve consumer welfare.

7. The FCC's *Internet Policy Statement* of August 5, 2005 (FCC 05-151) states in paragraph 4 that the reason for establishing its Four Principles is that "... the Commission has jurisdiction necessary to ensure that providers of telecommunications for Internet access ***or Internet Protocol (IP-enabled) services*** are operated in a neutral manner." Principle Four and

paragraph 5 of the *Internet Policy Statement* both use either the term ***"application"*** or the term ***"applications."***

- Does the *Internet Policy Statement* apply to web based software applications?

Answer: As you know, on October 22, 2009, the Commission adopted a Notice of Proposed Rulemaking entitled "Preserving the Open Internet," which among other things, proposes to codify a version of the four *Internet Policy Statement* principles previously adopted by the Commission. In that Notice, the Commission notes that at least one commenter in this proceeding has suggested that we should read the *Internet Policy Statement* as embodying obligations binding on content, applications, and service providers, in addition to broadband Internet access service providers. The Notice seeks comment on "the pros and cons of phrasing one or more of the Internet openness principles as obligations of other entities . . .", in addition to providers of broadband Internet access service. As I said in my statement, I think that important questions are outstanding about our legal authority that we need to explore in this proceeding. I look forward to reviewing the record of the proceeding to understand better the contours of our authority before taking action to adopt rules.

- Some web based companies contend that the *Internet Policy Statement* applies "only to the behavior of broadband carriers"— Is the *Internet Policy Statement* applicable only to broadband carriers?

Answer: As discussed above, the Commission recently adopted a Notice of Proposed Rulemaking that, among other things, proposes to codify a version of the four *Internet Policy Statement* principles previously adopted by the Commission. The Notice proposes to apply the new rules to broadband Internet access service providers exclusively, but seeks comment on whether one or more rules should be phrased as obligations on other entities as well. I look forward to reviewing the record on this issue before the Commission moves forward with binding rules.

- Does the *Internet Policy Statement* apply to information services?

Answer: As discussed above, the Commission recently adopted a Notice of Proposed Rulemaking that, among other things, proposes to codify a version of the four *Internet Policy Statement* principles to apply to broadband Internet access service providers exclusively, but seeks comment on whether "one or more rules should be phrased as obligations on other entities as well. . ." The new rules, if adopted as proposed, would apply to one category of information services—broadband Internet access service. In a series of decisions dating from 2002, the Commission has classified broadband Internet access service, whether provided over cable, wireline, wireless, or power line facilities, as an information service.

- Should web based applications be considered an information service pursuant to Commission precedents that address the legal status of "Internet applications" such as the February 12, 2004 *Declaratory Ruling* regarding Pulver.com's Free World Dial Up?

Answer: Under section 2 of the Communications Act of 1934, as amended (Act), the Commission has general jurisdiction over "all interstate and foreign communication by wire and radio." In 2004, the Commission granted a petition filed by pulver.com (Pulver) regarding its "Free World Dialup" (FWD), an Internet application that provided users with information necessary to establish peer-to-peer connections over the Internet. In resolving the Pulver petition, the Commission determined that FWD was an unregulated information service, as defined by the Act, subject to the Commission's jurisdiction. In considering the regulatory classification of and jurisdiction over any web-based applications, the Commission would look to all relevant statutory provisions, Commission orders (including the *Pulver Order*), and court precedent to reach a finding on a particular application or category of applications.

8. No company that offers "Voice over Internet Protocol" (VoIP) have had their product specifically classified by the Commission as telecommunications services subject to common carrier requirements. Does this mean that the companies that own this web based application may block calls to certain local exchange carriers?

   Answer: In 2004, the Commission initiated the *IP-Enabled Services* proceeding to seek comment on, among other things, whether voice over Internet Protocol (VoIP) services should be classified as "telecommunications services" or "information services" under the definitions in the Act. Many issues in this proceeding remain pending and, as you note, no company that offers VoIP services to end users has had its service classified by the Commission as a telecommunications service.

   Long-standing Commission policy has generally disfavored self-help in the form of call blocking to resolve disputes based on well-founded concerns that call blocking may degrade the reliability of the nation's telecommunications network. On October 9, 2009, the Chief of the Commission's Wireline Competition Bureau initiated an information request to Google in response to recent reports indicating that Google's Google Voice service restricts calling from consumers to certain rural communities. Google's response was filed on October 28, 2009, and I look forward to reviewing its response on these important issues.

9. Some companies that own "Voice over Internet Protocol" (VoIP) contend that the FCC does not have jurisdiction over how software applications function.

   - Is it accurate that the FCC has no jurisdiction over these types of web based applications?

   Answer: Under section 2 of the Communications Act of 1934, as amended (Act), the Commission has general jurisdiction over "all interstate and foreign communication by wire and radio." To the extent that an application provider provides interstate and foreign communication by wire and radio, it is subject to Commission jurisdiction. For example, in 2004, the Commission granted a petition filed by pulver.com (Pulver) regarding its "Free World Dialup" (FWD), an Internet application that provided users with information necessary to establish peer-to-peer connections over the Internet. In resolving the Pulver petition, the Commission determined that FWD was an unregulated information service, as defined by the Act, subject to the Commission's jurisdiction. In addition, in a series of rulemaking orders, the Commission has concluded that it has general jurisdiction over interconnected VoIP providers because they provide interstate and foreign communication by wire and radio.

   - Does "Voice over Internet Protocol" (VoIP) not constitute "wire communications" or even possibly "radio communications" within the meaning of the *Communications Act?*

Answer: In a number of instances, the Commission has determined that VoIP offerings constitute communications by wire or radio. For example, in 2004, the Commission granted a petition filed by pulver.com (Pulver) regarding its "Free World Dialup" (FWD), as discussed above. In resolving the Pulver petition, the Commission determined that FWD was an unregulated information service, as defined by the Act, subject to the Commission's jurisdiction. In addition, in a series of rulemaking orders, the Commission has concluded that it has general jurisdiction over interconnected VoIP providers because they provide interstate and foreign communication by wire and radio.

- Has not the FCC already determined that "Internet applications" are subject to its jurisdiction such as in the February 12, 2004 matter concerning Pulver.com's Free World Dialup?

Answer: As discussed above, the Commission has general jurisdiction over "all interstate and foreign communication by wire and radio." To the extent that an Internet application provider provides interstate and foreign communication by wire and radio, it is subject to Commission jurisdiction. In 2004, the Commission granted a petition filed by pulver.com (Pulver) regarding its "Free World Dialup" (FWD), an Internet application, as discussed in more detail above. In resolving the Pulver petition, the Commission determined that FWD was an unregulated information service, as defined by the Act, subject to the Commission's jurisdiction.

- Does the FCC conclude that "Voice over Inter Protocol" (VoIP) is a "phone to phone" service that is subject to common carrier service?

Answer: Under the 1996 amendments to the Act, a "telecommunications carrier" is a provider of telecommunications services and shall be treated as a common carrier. In 2004, the Commission initiated the *IP-Enabled Services* proceeding to seek comment on, among other things, whether voice over Internet Protocol (VoIP) services should be classified as "telecommunications services" or "information services" under the definitions in the Act. Although a number of important issues raised in the Notice have been addressed by the Commission, the regulatory classification of most VoIP services remains an outstanding issue. As you note above, no company that offers VoIP services to end users has had its service classified by the Commission as a telecommunications service subject to common carrier regulation.

10. Do certain Internet protocol based services or applications require higher levels of security or priority to ensure their quality of services? If so, how can these services or applications be identified? Once identified under what circumstances would prioritization be permitted under a non-discrimination principle if such a principle were added to the *Internet Policy Statement*?

Answer: As you are aware, on October 22, 2009, the Commission adopted a Notice of Proposed Rulemaking entitled "Preserving the Open Internet," which among other

things, proposes to codify a "fifth principle"—a nondiscrimination requirement on broadband Internet access service providers, including mobile wireless broadband providers. The record so far on these issues demonstrates that there are a number of legitimate reasons for prioritization of Internet Protocol services, including, but not limited to, managing network congestion, providing innovative services, assisting law enforcement and homeland security authorities, preventing cyber security breaches, and preventing transmission of unlawful content.

As a result, the Notice seeks comment on exceptions for reasonable network management, law enforcement, public safety, and homeland and national security. It also seeks comment on how the Commission should address "managed" or "specialized" services, which are Internet-Protocol-based offerings provided over the same networks used for broadband Internet access services.

As mentioned above, I dissented in part from this Notice because, as a threshold matter, I am not convinced that there is a sufficient record to establish that a problem exists that should be addressed by Commission rules. While I remain skeptical about the need for regulation here, I will carefully review the record with regard to the issues you raise here, and I look forward to working with my colleagues to ensure that we make policy that makes sense from legal, economic, and engineering perspectives.

The Honorable Marsha Blackburn

1. Given how quickly technology changes today, the Commission should ensure that content creators, working with ISPs, have the flexibility to utilize the most effective tools that are capable for both combating piracy while ensuring a smooth experience online for consumers. Given the need for this balance, what measures or considerations are being taken to address piracy and other mechanisms for illegal delivery of content online and does the Commission have the necessary authority to make recommendations in this area in the National Broadband Plan?

   Answer: It is reported that global copyright theft costs US workers more than $16 billion in lost wages and 373,000 jobs each year. Illegal copyright infringement is a threat to our economy, our creativity and our global competitiveness. Unless something is done to curb piracy, studios and other holders of rights to the video material most desirable to Americans will withhold it from the Internet. We must create an environment in which the holders of such rights know that their copyrights will be protected and that they will be compensated for their work. On the other hand, because all policymakers have an interest in ensuring the free flow of lawful content over the Internet, I am concerned about any regulatory action that would have the potential to lead to unintended harmful consequences such as impairing a network owner's ability to protect against unlawful content and activities, such as piracy, spam, denial of service attacks or child pornography. The Commission has conducted a workshop on the subject of broadband content and heard from a variety of organizations on the subject of piracy. It is my expectation that our National Broadband Plan will include balanced recommendations that will ensure that the content available to all Americans will be as rich and diverse as possible. I look forward to engaging with my FCC colleagues, Congress and interested parties to ensure that the FCC proceeds in a transparent, prudent and thoughtful manner.

2. I noticed that your very own FCC wireless competition report found that nearly every American has a choice of at least 3 different wireless providers, and 9 in 10 Americans can choose from among at least 5 carriers. Wouldn't you agree that this proves the wireless market is competitive?

   Answer: I would agree that in general we have a highly competitive wireless marketplace. It shows the value of a light touch regulatory approach that is market-based and characterized by minimal, cautious regulatory intervention when necessary to correct imbalances in the marketplace. Nonetheless, to ensure that the best interests of consumers continue to be served, we must remain vigilant to make certain that there is real competition in the marketplace. That is why I support the current inquiries that we are conducting into the wireless industry as it enters the era of mobile data. They should provide additional facts upon which we can base our record with regard to this and other points.

3. When can we expect the FCC to act on the wireless industry's petition to streamline the tower siting process? Don't you think more towers will enable faster wireless broadband deployment?

   Answer: Chairman Genachowski has recently announced his intention to move forward on the tower siting issue and I look forward to moving forward. I believe that resolving the tower siting issue in a way that is respectful of the interests and concerns of local communities and that acknowledges the need to move forward in some instances more quickly would be a good development that could help with the deployment of broadband networks.

4. Many of our colleagues have expressed concern regarding new broadcast localism rules that might have the effect of reducing a broadcaster's freedom of expression - and nearly 130 members of congress last year sent the commission a letter to that effect. Do you fear that a localism order modeled after the draft order circulated last year at the Commission might have the affect of re-implementing the Fairness Doctrine without calling it by name?

   Answer: I strongly believe in the First Amendment and would oppose any regulation that imposes programming requirements based on political considerations. Our democracy best thrives with the free, unfettered flow of information. For these reasons, I am opposed to any reimplementation of the Fairness Doctrine or any similar regulation or policy that would mandate broadcast programming content or otherwise curtail the discretion traditionally afforded to the judgment of broadcasters of how to program their stations to serve community needs.

5. Chairman Genachowski, do you intend to address the issue of Inter-Carrier Compensation? Will it be a component of the Broadband strategy and do you believe Congress needs to establish a statutory deadline so that resolution does not continue to be elusive and prolonged?

   Answer: I hope that during my term, the Commission will consider comprehensive intercarrier compensation reform, along with comprehensive universal service reform. Both are necessary pieces of the puzzle for getting telecommunications policy right and finally resolving these issues may be critical to promoting universal broadband going forward. Intercarrier compensation, as well as universal service, are immensely complicated issues, but I look forward to working on them with Congress and my Commission colleagues in the months ahead.

6. In July, the Commission reported to Congress that 12 states are or may be using funds collected for 911 or E911 to fund programs other than 911, E911, or enhancements to those services. The NET 911 Act said that these fees can be prohibited if they are not obligated for the "support or implementation of 9-1-1 or enhanced 9-1-1 services, or enhancements of such services." Now that the Commission has identified instances in which fee diversion is occurring, do you plan to step in and protect consumers by prohibiting the collection of these fees until the diversion of these funds for purposes other than those delineated by the NET 911 Act ceases?

Answer: As you know, the NET 911 Act requires the Commission to submit an annual report to Congress regarding the collection and use of state 911 and E911 fees and the Commission submitted the first such report to Congress in July 2009. The report noted that some states had used funds derived from 911/E911 fees for purposes other than support of 911/E911 programs. However, it appears that neither the ENHANCE 911 Act nor the NET 911 Act confers enforcement authority on the FCC in this area. Indeed, until the NET 911 Act was enacted, the Commission lacked authority even to collect information regarding 911/E911 fees from the states. That said, if the Chairman were to decide to bring an enforcement action before the Commissioners, I would review it very carefully in consultation with the Office of General Counsel. I will also support the Commission's continuing to review its options in this area, and know that the Commission will continue to report annually to Congress on state 911/E911 fee collection and usage as required by the statute.

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