

OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

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OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

THURSDAY, DECEMBER 12, 2013

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

The subcommittee met, pursuant to call, at 10:10 a.m., in room 2123 of the Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Members present: Representatives Walden, Latta, Shimkus, Terry, Rogers, Blackburn, Lance, Guthrie, Gardner, Kinzinger, Long, Ellmers, Barton, Upton (ex officio), Eshoo, Matsui, Lujan, Dingell, DeGette, Matheson, and Waxman (ex officio).

Staff present: Gary Andres, Staff Director; Ray Baum, Senior Policy Advisor/Director of Coalitions; Sean Bonyun, Communications Director; Matt Bravo, Professional Staff Member; Andy Duberstein, Deputy Press Secretary; Gene Fullano, Detailee, Telecom; Kelsey Guyselman, Counsel, Telecom; Grace Koh, Counsel, Telecom; David Redl, Counsel, Telecom; Charlotte Savercool, Legislative Coordinator; Tom Wilbur, Digital Media Advisor; Jessica Wilkerson, Staff Assistant; Shawn Chang, Democratic Chief Counsel for Communications and Technology Subcommittee; Margaret McCarthy, Democratic Professional Staff Member; Kara van Stralen, Democratic Policy Analyst; and Patrick Donovan, Democratic FCC Detailee.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. I will call to order the subcommittee on Communications and Technology, and it is a delight to welcome all five members of the Federal Communications Commission, fully installed, and bright and shiny faces and ready to go today. We welcome you. And, Chairmen Wheeler and Commissioner O'Rielly, we especially welcome you and look forward to working with you to set the communications agenda for the United States.

The Federal Communications Commission is the arm of our government tasked with fostering some of the most important parts of our national economy, and among them, the telecommunications industry, the video distribution industries, and the Internet.

Given the economic significance of these industries, the changes from Congress—the charge from Congress to encourage competition, license our national spectrum assets, and facilitate technological advances, is one that must be discharged with transparency,

accountability, and a long view of the technological landscape. It is with this in mind that this subcommittee has worked over the last 3 years on efforts to improve the Commission's processes. As the subcommittee with jurisdiction over the Federal Communications Commission, we take this task very seriously and with great care to ensure the Commission not only remains a vital institution, but one that can serve as an example for other federal agencies of accountability and efficiency. A bipartisan majority of this subcommittee is deeply committed to this cause, and is proud to have reported out a bipartisan FCC process reform bill to the full House of Representatives yesterday.

Chairman Wheeler, it is clear you want to improve the Agency. I have appreciated our conversations and your comments, and I would like to commend you for turning your attention to this task as one of your first roles as Chairman by asking one of your top advisors to review the FCC process, and submit recommendations for improvement by early 2014.

While there are a number of large proceedings currently pending at the Commission, many of this we will talk about today, I am particularly concerned with returning the Commission to addressing some of its long-overdue responsibilities. For example, despite multiple unsuccessful trips to the Third Circuit Court of Appeals, the Commission's responsibility to address the Media Ownership proceeding remains unfulfilled. Additionally, licensing, one of the original reasons for the creation of the Commission, has fallen woefully behind. Of particular note is the tragic pace of processing of applications in the Commission's Media Bureau.

Now, the AM Radio industry has been clamoring for the ability to use FM translators to give new life to that classic medium, and I certainly appreciate what Commissioner Pai has done taking on this issue, and it is very good work, and as a former licensee, I actually know firsthand the Commission has been in no rush to address translator applications. In fact, my own application sat unresolved at the Commission for 10 years. To put this in context, while the Commission considered my application, my wife and I actually sold our radio stations, our son went off and graduated from college, and every full-power television station in the country converted from analog to digital broadcasting.

Look, the Commission can do better than that. The Commission should do better than that, and I am hopeful that our shared commitment will lead to improvement in that bureau.

As the only one on the panel with the unique experience of having been a licensee of commercial broadcast, and still under your jurisdiction with my amateur radio license, which I am set to renew for March, and hopefully it will get approved within 10 years, I would like to offer two pieces of advice for you as you move forward with your change. First, where Congress has spoken, I urge you to heed the words in statute, and reject calls to act in ways contrary to congressional intent. For example, in the Incentive Auction proceedings, some were calling on the Commission to exclude bidders from participating in the auction. Others still are calling for excessive guard bands in the attempt to end run requirements to license reclaim TV band spectrum. I am just saying both are bad ideas.

Second, I urge you to bear in mind that even seemingly small changes in your rules can have significant impact on the market. The Commission's recent decision to apply yet incomplete rules to its UHF discount has effectively frozen many plans for broadcast mergers and acquisitions. The problem here isn't that the Commission wants to update, or needs to update the UHF discount rule; the problem is that, absent a decision how and importantly when the Commission will move forward, it has pressed pause for an indefinite period of time. We all know that markets do not react favorably to this kind of open-ended uncertainty.

On the other hand, I applaud the recent announcement on the schedule for the Spectrum Incentive Auctions. Both the broadcast and wireless industries are waiting with baited breath to see how the FCC addresses this first-of-a-kind auction, to say nothing of the public safety agencies that are counting on the auction fund to fund FirstNet. The certainty of a timetable is good for both stakeholders and for the Commission.

Finally, turning to those large proceedings the Commission has on its plate. We are looking forward to working with you to tackle the tough issues like the IP transition, universal service reform and media ownership. Chairman Upton and I recently launched a large proceeding of our own; an initiative to update the Communications Act. Each of you brings a unique perspective to your work on the Commission; industry lobbyists, newspaper publisher, a couple of lawyers, even some former legislative Hill staffers. That experience combined with your expertise on the Federal Communications Commission staff and your own work on the Commission will be valuable in our efforts as we work together to update and modernize the Communications Act.

So Congress—or, Chairman Wheeler, we wouldn't want to demote you to the level of Congressman, Chairman Wheeler—yes, our numbers aren't that great. Commissioner O'Rielly, we especially welcome you aboard the FCC. And Commissioners Clyburn, Rosenworcel, and Pai, welcome back, not only to the Commission, but before our committee. We thank you all for joining us today. We look forward to working together in this very critical sector of America's economy to spur further innovation of technology growth and jobs.

And with that, I will now yield to the ranking member of the subcommittee, my friend, Ms. Eshoo, from California.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

I am pleased to welcome the full complement of FCC Commissioners and its new chairman to our subcommittee today. Chairman Wheeler and Commissioner O'Rielly, we welcome you and look forward to working with you to set the communications agenda for our nation.

The Federal Communications Commission is the arm of our government tasked with fostering some of the most important parts of our national economy. Among them, the telecommunications industry, the video distribution industries, and the Internet. Given the economic significance of these industries, the charge from Congress to encourage competition, license our national spectrum assets, and facilitate technological advances is one that must be discharged with transparency, accountability, and a long view of the technological landscape.

It is with this in mind that this subcommittee has worked over the last 3 years to improve the commission's process. As the subcommittee with jurisdiction over the

FCC, we take great care to ensure that the commission not only remains a vital institution, but one that can serve as an example for other federal agencies of accountability and efficiency. A bipartisan majority of this subcommittee is deeply committed to this cause and is proud to have reported a bipartisan FCC process reform bill to the full House yesterday. Chairman Wheeler, it's clear you want to improve the agency, and I'd like to commend you for turning your attention to this task by assigning one of your top advisors to review FCC processes and submit recommendations for improvement by early January 2014.

While there are a number of large proceedings currently pending at the commission, many of which we will talk about today, I am particularly concerned with returning the commission to addressing some of its long overdue responsibilities. For example, despite multiple unsuccessful trips to the Third Circuit Court of Appeals, the commission's responsibility to address the media ownership proceeding remains unfulfilled. Additionally, licensing—one of the original reasons for the creation of the commission—has fallen woefully behind. Of particular note is the tragic pace of processing of applications in the commission's Media Bureau. The AM radio industry has been clamoring for the ability to use FM translators to give new life to a classic medium. I appreciate Commissioner Pai's good work in this regard. And, as a former licensee, I know first hand that the commission has been in no rush to address translator applications. My own application sat unresolved at the commission for ten years. To put this in context, while the commission considered my application my wife and I sold our stations, our son went off to and graduated college, and every full-power television station in the country converted from analog to digital broadcasting. The commission can and should do better and I am hopeful that our shared commitment will lead to improvement.

As the only one on this panel with the unique experience of having been a licensee of the commission as well as a policymaker, I would like to offer two pieces of advice for you as you move forward with your charge. First, where Congress has spoken, I urge you to heed the words in statute and reject calls to act in ways contrary to congressional intent. For example, in the incentive auction proceeding some are calling on the commission to exclude bidders from participating in the auction. Others still are calling for excessive guard bands in an attempt to end-run requirements to license reclaimed TV band spectrum. Both are bad ideas.

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Chairman Wheeler, Commissioner O'Rielly, welcome. Commissioners Clyburn, Rosenworcel, and Pai, welcome back. We thank you for joining us today and look forward to working together to foster this critical sector of the economy.

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

Ms. ESHOO. Thank you, Mr. Chairman, for holding this hearing. It is wonderful to see a full Federal Communications Commission before us. Welcome to each one of you. A special welcome to the new Chairman. I think that you start out with 100 percent goodwill with everyone that is on this committee, I think our full committee, in fact, I think the Congress.

There have been many months where we didn't have a full Commission. I want to once again thank Commission Clyburn for her exceptional leadership during that period of time. Welcome to each one of the Commissioners, and, of course, to the newest Commissioner, Mike O'Rielly, who served on the other side of that table. When I first came to the committee, he was here when we began the Telecom Act, and now, guess what, you get to trudge through that all over again, according to the Chairman. So I guess there are some things that we just never finish with.

As Chairman Wheeler announced last week, the Commission has made the upcoming Incentive Auction of broadcast television spectrum the top priority of the Commission, and I agree. This is a rare opportunity to auction beachfront spectrum under 1 gigahertz, and the FCC has to structure rules to promote a competitive wireless landscape, and ensure carriers of all sizes, both regional and national, have an opportunity to bid competitively for licensed spectrum, and it has to be done right. It is the first time in the history of the world that an auction has been structured this way, and I appreciate, Mr. Chairman, and all the Commissioners, your understanding the delicacy of this needing to be done right, well, and successfully.

Similarly, recognizing the enormous economic and societal benefits of an unlicensed spectrum, which is tucked away in one corner of my Telecom heart, the FCC has an opportunity to structure a band plan that ensures a nationwide block of spectrum under 1 gigahertz dedicated for unlicensed innovation. With unlicensed spectrum being a critical tool to bring broadband to unserved areas, including rural America, this opportunity really must be seized.

In addition to the important role the FCC has in freeing up more spectrum for mobile broadband, I would like to highlight four issues that the Commission make a top priority in 2014, and I think you are going to.

First, during the 3 months since I released draft legislation, the message from individuals, communications companies and consumer groups has been abundantly clear. Our video laws are in need of reform. They are broken. Independent of such legislation, the Commission does have an important responsibility to promote competition, consumer choice, and localism across the video marketplace.

Second, I hope the Commission will continue its focus on modernizing the e-Write Program to support the 21st century digital needs

of our schools and libraries. In June, together with Commissioner Rosenworcel, we called for such an update, and I am pleased that the Whitehouse and the FCC agree with us and have made this issue a key priority. We have to stay on it. We have to move, and we have to make it much better. It has got to be a 21st century plan.

Third, the Commission should uphold, I think, the goals of Section 629, and ensure a vibrant, competitive retail Set-Top Box market. The successor to the current cable card regime, whether by FCC rule or, more preferably, a voluntary industry agreement, will usher in a new generation of technologies that will give consumers greater choice and ensure that innovation flourishes.

Finally, I am pleased that the Commission has made the transition to next-generation 911, as well as improving the indoor location accuracy of 911 calls a key priority. In fact, later today, it is my understanding that the Commission will vote on an Order to improve the reliability of 911, and I look forward to continued updates as the Commission proceeds with the implementation of Next Gen 911.

Mr. Chairman, thank you for holding this morning's hearing. I look forward to the important testimony of Chairman Wheeler and each of the Commissioners. Most importantly, I pledge to work with each of you to make America's communications sector the most effective and the most admired in the world.

And with that, I yield back.

Mr. WALDEN. Gentlelady yields back.

The Chair now recognizes the chairman of the full committee, Mr. Upton, from Michigan, I believe.

Mr. UPTON. Great State of Michigan.

Mr. WALDEN. Not Ohio.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Thank you, Mr. Chairman.

Now, today we welcome a fully-constituted FCC back to the Energy and Commerce Committee. The last time that we heard from the full Commission was in July of 2012. So the FCC has regulatory authority over a sector of our economy that is critical to innovation, jobs and our Nation's global leadership in technology. The communications sector is also an integral part of our daily lives, connecting us to loved ones, alerting us to natural disasters, and entertaining and educating us every single day.

As the regulatory agency of these industries, the FCC has the immensely-important task of promoting growth and competition. Our hearing today will examine actions that the FCC has taken since the last Commission last appeared and set expectations for the Agency's future. As the oversight authority for the Commission, our committee works hard to ensure that the FCC functions for the benefit of American consumers as well as companies. And we also want to make sure that this Agency functions efficiently and transparently as all government agencies should.

I am glad to say that this is not a partisan concern. Bipartisan majority on a voice vote of the full committee reported an FCC Process Reform Bill yesterday that will help the FCC operate more

openly and effectively, and we expect it to be on the House floor in the not-too-distant future. And the bill is needed. There are several stalled proceedings and ambiguous projects at the Commission that caused concern to me and other members of the committee. We have sent a number of letters in the past months regarding media ownership proceedings. Subcommittee Vice Chair Latta has gone to the extent of drafting a bill to end the Cable Set-Top Box Integration Ban, a bill that seems to make a lot of sense, and which perhaps the FCC should have considered doing a while ago. My concern and hope is that we can start a productive dialogue today with our esteemed witnesses on these and the many other important issues pending at the Commission.

Commissioner O’Rielly, I would like to welcome you back to the Energy and Commerce Committee, a committee you know well, having once served here as staff. And, Chairman Wheeler, though you are from Ohio, this is often known as the Big House, now the Dingell Room. Hope you appreciate the green-and-white decor. And, yes, we were for Sparty. Welcome back.

And I yield to other members—Republican members.

[The prepared statement of Mr. Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON

Today we welcome a fully constituted FCC back to the Energy and Commerce Committee. The last time we heard from the full commission was July 2012. The FCC has regulatory authority over a sector of our economy that is critical to innovation, jobs, and our nation’s global leadership in technology. The communications sector is also an integral part of our daily lives, connecting us to loved ones, alerting us to natural disasters, and entertaining and educating us every day. As the regulatory agency of these industries, the Federal Communications Commission has the immensely important task of promoting growth and competition.

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And the bill is needed. There are several stalled proceedings and ambiguous projects at the commission that cause concern to me and other members of this committee. We have sent several letters in the past months regarding media ownership proceedings. Subcommittee Vice Chairman Latta has even gone to the extent of drafting a bill to end the cable set-top box integration ban, a bill that seems to make a lot of sense and which, perhaps the FCC should have considered doing a while ago. My sincere hope is to start a productive dialogue today with our esteemed witnesses on these and the many other important issues pending at the commission.

Commissioner O’Rielly, I’d like to welcome you back to Energy and Commerce, a committee you know well, having once served on the staff here. Chairman Wheeler, we welcome you and look forward to working together during your tenure as chairman.

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Mr. WALDEN. The Chairman now recognizes the vice chair on subcommittee communications, Mr. Latta, from Ohio, home of the Speaker of the House. More importantly, number two.

Mr. LATTA. Thank you very much for yielding, Mr. Chairman, and thank you very much to our Commissioners for being with us

today, and welcome to our newest members of the Commission. I really appreciate having you here with us today.

The communications and technology industry has been a consistent bright spot in the U.S. economy. It has created millions of American jobs, spurred significant investment and innovation, and most importantly, empowered consumers, who are the driving force behind robust competition in the communications marketplace.

As U.S.-based businesses lead the world in technological advances, we have a responsibility to ensure the FCC fosters continued growth and development in the communications sector. This can be achieved by the FCC incorporating more transparency and accountability in its processes; operating within the bounds of the statutory authority; and acting upon legislation according to Congressional intent.

I look forward to continuing working with Chairman Upton and the members of this committee, and also Congressman Green, on my bill, H.R. 3196, which is the legislation to eliminate the integration ban on Set-Top Boxes, and allow the marketplace to get to the next generation of innovation without the regulatory barriers being put in front of it.

I look forward to the hearing and hearing the testimony today. And, Mr. Chairman, I yield back.

Mr. WALDEN. Thank you.

Chair recognizes the gentlelady from Tennessee, the vice chair of the full committee, for the remaining 40 seconds, if she wants.

Mrs. BLACKBURN. And I thank the Chairman. I want to welcome all of our Commissioners, and publicly commend Commissioner Clyburn for the wonderful work that she did when she served as the Acting Chair. We appreciate that leadership. And, Chairman Wheeler, we look forward to having you continue and to work in a collaborative manner to find results for the private sector. We would hope that the Commission will be proactive, not get beyond its mission, but to stay focused on your core mission. Pay attention to economic analysis, look at cost-benefit analysis, and make certain that you don't suffer mission creep, which is casting a shadow over the private sector.

With that, I yield back.

Mr. WALDEN. The gentlelady yields back.

Chair recognizes the ranking member of the full committee, Mr. Waxman.

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 members of the Commission, Chairman Wheeler and all the Commissioners, and I also want to join in commending Commissioner Clyburn for the incredible job she did as Acting Chairwoman from the industry agreement on interoperability, to long-overdue reforms on prison phone rates. Your brief chairmanship will be remembered for the remarkable amount you accomplished.

Let me welcome Chairman Wheeler and Commissioner O'Rielly. I congratulate you on your appointment and confirmation, and we

are pleased to have you here. You join the FCC at a time when our country is undergoing dramatic and perhaps fundamental transformations in communications, networks and technologies, and the decisions you make at the Commission will no doubt have lasting impact on our nation's communications landscape.

At the top of the FCC agenda is the spectrum auctions authorized by the Public Safety and Spectrum Auction Act last year, and I am pleased to see that the FCC is moving ahead to conduct the H Block Auction in January, in addition to allocating new wireless spectrum to address our nation's spectrum shortage. This auction will provide significant down-payment for the nationwide Interoperable Public Safety Network.

I also support, Chairman Wheeler, your recently-announced timetable for the Incentive Auction. This auction has many layers of complexity, and I applaud your commitment to getting the technical issues right.

Congress gave the FCC the tools to unleash the economic opportunities for both licensed and unlicensed spectrum, revolutionized public safety communications, ensure a vibrant and competitive wireless market, all the while protecting consumer access to free, over-the-air television. And I think the FCC must remain faithful to these goals as you implement the law.

You also must bear in mind the principles undergirding the Communications Act as we consider the next evolution in our nation's wireless networks. Our values do not change with each successive generation of technology. Whether the infrastructure is copper or fiber optics, the Commission's charge is to protect and promote the longstanding goals of competition, universal access and consumer protection.

Chairmen Upton and Walden recently called for a multi-year examination of possible updates to the Communications Act, and I welcome the opportunity for a bipartisan consideration of these issues, and I hope the Commission will be a partner in this endeavor.

In 2010, the Commission and this committee spent many hours working to preserve the principle of an open Internet. That process led to a sensible set of rules governing the broadband market that was supported by a diverse group of stakeholders, and provided the foundation for the FCC's Open Internet Order. I believe the Open Internet Order will be upheld in the court, but whatever the outcome, I will be looking to you to ensure that the Internet remains an open platform for innovation and economic growth.

I want to, at this point, yield the balance of my time to my fellow Californian and good friend, Congresswoman Matsui.

Ms. MATSUI. Thank you very much, Ranking Member Waxman, for yielding me time. It is wonderful to see the full complement of the Commission here today. I want to join in welcoming Chairman Wheeler and—who brings a wealth of knowledge and experience to the FCC, and I would also like to congratulate and welcome Commissioner O'Rielly, and I also would like to commend Commissioner Clyburn for her leadership during the interim period. Thank you very much.

Mr. Chairman, the subcommittee is working diligently to find bipartisan solutions for smart and sound spectrum policy for our na-

tion. We work to create a path for DOD to reallocate the 7055 to 7080 megahertz band. DOD and the broadcasters should be applauded for their leadership on a landmark sharing agreement. Moreover, I joined with Representative Guthrie to introduce H.R. 3674, the Federal Spectrum Incentive Act, which passed this committee yesterday in a bipartisan manner. The bill is first of its kind that offers a fresh approach that would create a Federal Spectrum Incentive Auction.

I look forward to working closely with my colleagues and the Administration in moving this bill to the floor.

There are tough decisions ahead, and I want to encourage also the FCC to move it forward with the USF reform efforts. Modernizing the USF for broadband, particularly the Lifeline Program, will provide a path toward universal broadband adoption in this country.

And with that, I yield back the balance of my time.

Mr. WALDEN. The gentlelady yields back the balance of her time.

All time has been consumed. We will now go to our witnesses, and again, we thank you very much for being here today, and the public service work you are all undertaking.

And, Mr. Wheeler, as Chairman of the FCC, we are going to lead off with you. So pull that microphone close, turn on the button, and you are good to go, sir.

STATEMENTS OF THE HONORABLE TOM WHEELER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; THE HONORABLE MIGNON CLYBURN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; THE HONORABLE JESSICA ROSENWORCEL, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; THE HONORABLE AJIT PAI, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; AND THE HONORABLE MICHAEL O'RIELLY, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

STATEMENT OF TOM WHEELER

Mr. WHEELER. Thank you very much, Mr. Chairman, Ms. Eshoo, other members of the committee. It is a privilege to be before you today, and a privilege to be joining my colleagues here, the full component of the Commission. I think we will make a great team, and I know that all of us are honored to be able to work with the quality men and women that make up the FCC.

Today is my 39th day on the job, and I have enjoyed the informal discussions that I have been able to have with many of you in the interim. I look forward to today having even more complete discussions and to working with you afterwards.

As I think everybody in their statements has indicated, we are in a very exciting time—in the midst of a great network revolution. The lesson of history is that revolutions like that come chock full of challenges, and we are going to have to work together on how we address those challenges.

We have tended to look at those challenges through three prisms, if you will. First of all, how do we make sure that what policies we adopt promote economic growth and maintain national leadership?

Clearly, at the root of those are issues such as competition and maintaining the necessary assets, such as spectrum.

The second prism is what we have begun to call “the network compact.” For a century, there has been a developed set of values that represent the relationship between those who operate networks and those who use networks. Those values must be preserved regardless of the type of the technology used in the network.

And third is the goal that networks work for everyone. It is not just the delivery of broadband, but it is what broadband enables that is important. If we don’t have 21st century education capabilities, if we don’t make sure that Americans with disabilities have access to the capabilities of the new technology network, if we don’t make sure that the Tribal Americans have opportunities to use the new networks, then we have failed in our goal.

So those three things—economic growth, the network compact and what networks enable—are the three pillars of policy, but at the heart of them is competition. It has become a joke, at least in my office that I keep saying competition, competition, competition, but that is very much what we believe.

Let me do a quick look at the three areas where the Commission is keeping pace with innovation—that innovative economy. First is process reform. The committee’s bipartisan effort yesterday is significant and is noted and appreciated. On my second day, Mr. Chairman, as you noted, I began a process that will produce a report in 60 days. We are going to look at how to enhance accountability through deadlines and tracking systems; how to expedite the licensing process like you referenced, and how to shorten the processing time of applications for review. Commissioner Pai has an interesting idea in that regard, how to streamline consumer complaint collection and a searchable database, which Commissioner Rosenworcel has been a champion of, and how to attack the backlog, as Commissioner Clyburn did when she was Chairwoman. We also want to weed out outdated regulations and incorporate performance measures.

The second focus is going to be, as you have all appropriately said, the spectrum auctions, especially the Incentive Auction. This committee, working with NTIA and DOD, has provided great leadership on the 1755 to 1780 MHz band, and we look forward to moving forward on that and moving that to auction. The Guthrie-Matsui Bill, which you all moved yesterday and has been referenced, takes the Incentive Auction idea and applies it to federal agencies, which is a great step forward. Speaking of incentives, we have the Incentive Auction coming up. We have established a schedule now. We are going to have policy recommendations in January; we are going to have consideration and discussion of that until spring when we will be making a decision; and we will have an auction in mid-2015.

But while we are discussing spectrum and regulatory process, I would be remiss if I didn’t bring up an item we will be considering today—a proposal to ask for comments on a rule to reflect the realities of new onboard aircraft technology. There have been lots of misconceptions about that, and let me just see if I can address these right up front. One, we are proposing to consider to continue the ban on mobile devices that can interfere with terrestrial net-

works, but where there is new onboard technology that eliminates that potential for interference, then there is no need for an interference rule. This is the responsible thing to do. Where the rationale for a rule doesn't exist, the rule shouldn't exist. We are the expert technical agency, and new technology removes the technical justification of this rule. In that regard, I should mention that I have spoken with Transportation Secretary Fox this morning, and he has told me that, yes, the FCC is the technical agency, and that the Department of Transportation is the aviation agency, and that they will be moving on a rule to address voice calls on airplanes. I am the last person in the world who wants to listen to somebody talking while I fly across the country, but we are the technical agency, and we will make the technical rules that reflect the way the new technology works.

Finally, item three, you have all talked about the IP transitions, I should say because it is not just one transition, it is a multifaceted process. At today's meeting, we are going to hear a report from the Technology Transitions Policy Taskforce, which will lay out a schedule including a plan for a January order that will invite experiments in the field, real-life experiments, recommend data collection, and create a framework for policy decisions.

So we have a full agenda, as you have all said. It is a privilege to be here, to be able to work with all of you, and I look forward to doing that in the time coming.

[The prepared statement of Mr. Wheeler follows:]

**Testimony of
Thomas Wheeler
Chairman
Federal Communications Commission**

**Before the
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives**

“Oversight of the Federal Communications Commission”

**10:00 a.m.
2123 Rayburn
Thursday, December 12, 2013**

Chairman Walden, Ranking Member Eshoo and Members of the Subcommittee, I appreciate this opportunity to testify before you today concerning the oversight of the Federal Communications Commission.

I am particularly pleased to appear here with a full panel of FCC Commissioners. As I said on my first day on the job, it will be – and it already has been – an honor to work with my fellow Commissioners. I believe that we will make a great team. We may not always agree but, having spent time with each of my colleagues, I believe we will always seek the public interest.

I am equally honored to be working with the men and women of the Federal Communications Commission. It is the hard-working and dedicated professionals of the Commission who are

responsible for what happens at the FCC. Our activities rely mainly on the expertise and dedication of these fine people.

Now, on my 39th day in office, I am pleased to be here to testify before you. I have appreciated the informal conversations that I have had with various Members of this Subcommittee. And I view hearings like this as critically important in building the working relationship that I hope will typify my tenure as Chairman.

In my first few days in office, I have put forth a set of principles that I believe should guide the Commission as it makes its decisions. I have described myself as a “network guy” and that is who I am. More importantly, that is who America is – a nation leading the world in the creation of new networks and a place where the new networks and the new economy are synonymous.

We are living in the midst of a great network revolution – the marriage of computing and connectivity known as the Internet. Like other network technological revolutions that preceded it, our new network revolution is redirecting both our commerce and our culture. Any such change comes with an ample supply of challenges.

It is from the history of these network revolutions – their struggles, their successes and their lessons – that we derive three overriding principles that I believe should guide our work at the Commission:

- **Promoting Economic Growth and National Leadership** – technological innovation, growth and national economic leadership have always been determined by our networks.

Competition drives the benefits of those networks, and we have a responsibility to see to the expansion of those networks, including the appropriate allocation of adequate amounts of spectrum.

- **Guaranteeing the Network Compact** – a change in technology may occasion a review of the rules, but it does not change the rights of users or the responsibilities of network providers. This civil bond between network providers and users has always had three components: access, interconnection, and the encouragement and enablement of the public-purpose benefits of our networks (including public safety and national security). The Commission must protect the Network Compact. For example, the right of access also means the ability of users to access all lawful content on a network. That is why the FCC adopted – and I support – the Open Internet Order.
- **Making Networks Work for Everyone** – it isn't just that high-speed expands, but also what it enables. How networks enable a 21st century educational system, enable the expansion of capabilities for Americans with disabilities; and assure diversity, localism and speech are basic underpinnings of our responsibility.

At the core of our networks is competition. My time in the private sector has left me an unabashed supporter of competition.

Competition is a power unto itself that must be encouraged. Competitive markets produce better outcomes than regulated or uncompetitive markets. Where we are fortunate enough to have workable competition, we should protect it. Where there may not be fulsome competition, we

should promote it. Congress has given us tools to accomplish this goal. We will use these tools in a fact-based, data-driven manner.

In today's world, businesses are moving fast, innovation is moving fast, and technology is moving fast. The FCC must move quickly as well. So before we take your questions, let me note three areas where the Commission is taking action to better keep pace with today's innovation economy while maintaining our commitment to sound and effective decision-making and the public interest.

First, is Process Reform.

One of my top priorities is improving the efficiency of the FCC, especially the timeliness of FCC decision-making. I know this Subcommittee has been focusing on this issue. Yesterday, you moved legislation related to this goal. We have indicated our goal is to manage the FCC in the best possible manner with the most transparency. We will work with Congress to have the best functioning FCC.

On my second day on the job I announced that I had requested a senior member of my staff to attack the process reform topic and provide me with a report on process reform recommendations within 60 days. For example, I have instructed staff to consider actions that would:

- Enhance the accountability of the decision-making process at the FCC, by establishing smart internal deadlines, and updating our tracking systems to better monitor and report on the status of open items;
- Expedite the licensing process and reduce the amount of information applicants need to file, with the aim of speeding the process;
- Shorten the processing time of applications for review through an “automatic” affirmation process, as Commissioner Pai has suggested;
- Streamline the consumer complaint process and create a searchable database that would enable us to analyze the data received more effectively, as Commissioner Rosenworcel has proposed;
- Take aim at backlogged matters and initiate aggressive plans for getting these matters decided, as Commissioner Clyburn did during her tenure as Chairwoman; and, of course;
- Weed out regulations that are outdated, and incorporate performance measures for the most significant activities being proposed by the FCC.

No one has a monopoly on good ideas. That is why we have used a crowd-sourcing mechanism to solicit input from the FCC staff on reform suggestions, receiving close to 300 excellent ideas. Their suggestions – and those of external parties – will make a difference.

In putting forward these suggestions, I am eager to work on a bipartisan basis, both within the Commission and with Congress. For example, I heartedly subscribe to Commissioner Pai’s statement that, “[i]f we make it easier for others to hold us accountable for our performance, I’m

confident that we would act with more dispatch.” On this, and other, items, I believe we can find common ground.

I also have urged staff not to wait to pursue streamlining initiatives, but rather to take whatever steps they can to speed decision making immediately. I believe the recent action to approve the very large – but non-controversial – Verizon/Vodafone transaction via a Bureau-level Public Notice rather than a lengthy order is a good example of this kind of common-sense approach.

Second are the spectrum auctions and especially the incentive auction.

The availability and efficient use of spectrum for all purposes is, as it should be, a very high Commission priority. I am very pleased about the recent progress toward making additional spectrum available for wireless broadband – something for which this Subcommittee, NTIA and the Department of Defense deserve to take substantial credit. I am committed to working to ensure the Commission meets the statutory deadlines established by Congress, including permitting the pairing of the long-sought 2155-2180 MHz and 1755-1780 MHz bands. This Subcommittee – on a bipartisan basis – has played a critical role in this effort. The Guthrie-Matsui legislation marked up yesterday is a timely example of your commitment to this goal.

Of course, the incentive auction, which Congress instructed us to conduct, represents both a great opportunity and a great challenge. The opportunity to rely upon a voluntary, market-oriented approach to determine the highest and best use of spectrum is self-evident. Delivering on those instructions is a non-trivial undertaking. There is no single topic on which I have spent more

time over the last 39 days. These meetings have given me an appreciation of the very complex nature of the undertaking. I am confident that this project is in the hands of very skilled professionals and I am committed to augmenting their number as required. I believe that conducting auctions in the middle of 2015 will substantially enhance their success; to that end, we are scheduled to consider adopting a Report and Order in the spring of next year.

And while we are talking about spectrum and weeding out regulations that are outdated, the issue of what to do with spectrum while on an airplane has garnered a great deal of attention and been widely misunderstood.

The FAA is the expert agency on determining which devices can be used on airplanes.

The FCC is the expert agency when it comes to technical communications issues. For over 20 years, the FCC banned the use of mobile devices on airplanes because of their potential to interfere with networks on the ground below.

At the FCC's Open Meeting later today, the Commission will consider an item that seeks public comment on a proposal to update this outdated rule. There are two parts to the proposal:

- Part 1: Maintaining the existing prohibition and, in fact, expanding it to prohibit transmission on all mobile frequencies.
- Part 2: If the airline elects to install new on-board technology to provide a mobile signal to passengers within its planes and control its transmission, the airline would be allowed to do so. This technology has been operational in many of the world's major airlines

since 2008 and has been demonstrated to resolve the interference problems on which the FCC rule is based.

If the basis for the rule is no longer valid, then the rule is no longer valid. This is a simple proposition, as applicable to the rules about the telegraph (which we still have on the books and should be eliminated), and the rules about on-board interference which technology has made unnecessary.

I understand the consternation caused by the thought of your onboard seatmate disturbing the flight making phone calls. I do not want the person in the seat next to me yapping at 35,000 feet any more than anyone else. But we are not the Federal Courtesy Commission. Our mandate from Congress is to oversee how networks function. Technology has produced a new network reality recognized by governments and airlines around the world. Our responsibility is to recognize that new reality's impact on our old rules.

I have placed calls to the CEOs of major airlines to deliver a simple message: we are not requiring them to do anything and that, absent new systems on their planes, the ban on mobile devices continues. I am reminding them that if they choose to install the new technology, it permits the airline to disable the ability to make calls while still allowing for text messaging, emails and web surfing.

I am painfully aware of the emotional response this proposal has triggered. Yet, I firmly believe that if we are serious about eliminating regulations which serve no purpose, the decision is clear.

A vote not to proceed on seeking comments on this issue is a vote against regulatory reform.

The third area of focus is the Internet Protocol (IP) transitions.

That's with an "s" – transitions – because there are more than one. What some call the "IP transition" is really a series of transitions; a multi-faceted revolution that advances as the packets of IP-based communication replaces the digital stream of bits and analog frequency waves. The impacts on networks have already begun and will be profound. Fiber networks are expanding. Bonding technology is showing interesting possibilities with regard to the nation's traditional copper infrastructure. Communications protocols are moving from circuit-switched Time-division Multiplexing (or TDM) to IP. And IP-based wireless data services are increasingly prevalent with IP voice not far behind.

At our Open Meeting this afternoon, we will hear a status report from our Technology Transitions Policy Task Force. This report will lay out the schedule, including plans for an Order for consideration at our January Open Meeting. That Order will recommend to the Commission how best to: (i) obtain comment on and begin a diverse set of experiments that will allow the Commission and the public to observe the impact on consumers and businesses of such transitions (including consideration of AT&T's proposed trials); (ii) collect data that will supplement the lessons learned from the experiments, and (iii) initiate a process for Commission consideration of legal, policy, and technical issues that would not neatly fit within the experiments, with a game plan for efficiently managing the various adjudications and rulemakings that, together, will constitute our IP transition agenda.

Let me finish with a phrase I have used a lot in my first month. I believe we are the “Optimism Agency” of the Federal government. The 21st Century flows through the FCC. I am an optimist about the benefits the new 21st Century network can bring to the American people. But I am optimist without illusions. Network change is always accompanied by new challenges. And in addressing these challenges, we – the Congress and the Commission – are stewards of the public interest. I look forward to working with this Subcommittee as we exercise our joint responsibilities.

Thank you. I look forward to answering your questions.

Mr. WALDEN. Chairman Wheeler, thank you for your public service, and thank you for recognizing our concerns on the subcommittee and full committee.

And now we will switch to, I guess once a Chairman, always a Chairman, right? Highest title. Former Chairwoman Clyburn. We are delighted to have you back before the committee. Thanks for your work publicly and please go ahead with your opening statement.

STATEMENT MIGNON CLYBURN

Ms. CLYBURN. Thank you, Chairman Walden, Ranking Member Eshoo and members of the committee. Thank you again for allowing me to appear before you today.

Since our last visit, I have had an incredible opportunity to serve as Acting Chair, and I am glad to note that with the support of my colleagues and the assistance of a skilled and dedicated staff, we were able to move a number of important items which clearly advanced the public interest.

This hearing comes at a critical stage in our communications policy continuum. We are experiencing tremendous technological change that affects every aspect of our lives. And as we look ahead to the challenges of tomorrow, I believe it is important to understand the terrain over which we have traveled. We have reached a voluntary interoperability industry solution and the lower 700 megahertz ban to address an issue that, for years, had been impeding the deployment of valuable spectrum. We launched a proceeding to modernize the FCC's schools and libraries program, known E-Rate, to ensure that our children have the resources and connectivity they need to support digital learning and become the leaders of tomorrow. We adopted an Order to address rule completion because it is unacceptable in today's world that calls to non-urban areas are not being completed. We adopted an Order to reform inmate calling services to finally provide relief to millions of families who have been paying unreasonably-high rates to stay connected with loved ones. We enabled the H Block Spectrum Auction, and the AWS-3 Proposal to take major steps forward on government and commercial spectrum sharing, and we have made ongoing reforms to Lifeline, and proposed significant forfeitures to companies not following the FCC's rules.

With Chairman Wheeler and my fellow Commissioners, I look forward to building on the progress we have made. As Chairman Wheeler has made clear, the voluntary incentive auction proceeding continues to be a top Commission priority. For those broadcast television licensees who want to continue to use their spectrum, the Act mandates that the Commission make all reasonable efforts to preserve the coverage area and population served. The Act also has clear directives for the proceeds from the Forward Auction, which includes much-earned contributions to the Public Safety Trust Fund and the national deficit.

Congress also gave the Commission authority to propose a ban plan with an appropriate balance of unlicensed and licensed spectrum. Unlicensed spectrum plays a critical role in advancing more efficient use of spectrum, and commercial wireless carriers are increasingly using unlicensed Wi-Fi services to offload their

smartphone traffic. In addition to spectrum, Chairman Wheeler has also announced that the Commission will consider an Order next month to launch trials regarding the ongoing technology transitions.

I do believe that trials, instructed properly, can produce helpful insights into how best to approach reform, and I will be keeping a keen eye on how the trials and future reforms affect all consumers. Process reform is where we have an opportunity to develop an even more efficient Agency.

Yesterday, the committee passed a Federal Communications Commission Process Reform Act of 2013. I am pleased that the proposed modifications to The Sunshine Act would facilitate federal commissioners' participation on the Federal State Joint Boards and the Joint Conference.

I would also encourage you to review the Paperwork Reduction Act and how it can be improved. For example, the FCC is using its Web site to better inform consumers and industry, yet, to obtain voluntary feedback on our Web site, the PRA requires OMB approval. As a result, the Commission cannot be as responsive to users without engaging in a lengthy OMB approval process.

So as you can see, Mr. Chairman, and distinguished members of the committee, we have both challenges and opportunities ahead. I look forward to working with each of you to address our evolving communications landscape.

I appreciate your attention this morning, and would be glad to answers any questions you may have.

[The prepared statement of Ms. Clyburn follows:]

**Testimony of
Mignon L. Clyburn
Commissioner
Federal Communications Commission**

**U.S. House of Representatives
Committee on Energy & Commerce
Subcommittee on Communications & Technology**

Oversight of the Federal Communications Commission

December 12, 2013

Chairman Walden, Ranking Member Eshoo, and Members of the Committee, thank you for the opportunity to share my comments and perspective with you today.

Since the last time I appeared before this body, I had the incredible opportunity to serve just over five months as Acting Chairwoman of the FCC. During that time, we had several challenges facing us, but I am glad to note that with the support of my colleagues and the assistance of a skilled and dedicated staff, we were able to move a number of important items, which we believe clearly advance the public interest and inure to the benefit of consumers.

We kept the essential, but often overlooked, day-to-day functions of the FCC in operation until our distinguished Chairman, Tom Wheeler, could take the reins

of the Agency. And for that opportunity, and for the support from Members of this Committee, I remain grateful.

This hearing comes at a critical stage in our communications policy continuum. We are experiencing tremendous technological change that affects every aspect of our lives, and the quality of our lives as well. Just a few days ago, I had the opportunity to participate in the FCC's inaugural MobileHealth Expo, where two dozen companies – both large and small – displayed communications systems, equipment and applications devoted to helping Americans use communications technology to improve personal health outcomes.

I was particularly impressed by the high level of technological innovation and harmonization with existing wireless, online and wire line applications. Also noteworthy was the support many of these companies have received from average consumers, who are seamlessly adopting these technologies to meet their critical day-to-day needs.

As we look ahead to the challenges of tomorrow, I believe it is important to understand the terrain over which we travelled yesterday to arrive at where we are today.

Mr. Chairman, Members of the Committee, with your indulgence, I would like to point out a few highlights of what our agency accomplished during the transition, all of which we can be proud.

- We reached a voluntary interoperability industry solution in the lower 700MHz band to address an issue that, for years, had been impeding the deployment of valuable spectrum;
- We launched a proceeding to modernize the FCC's schools and libraries program, known as E-rate, to ensure that our children have the resources and connectivity they need to support digital learning and become the leaders of tomorrow;
- We adopted an Order to address rural call completion, because it is unacceptable in today's world that calls to non-urban areas are not being completed;
- We adopted an Order to reform inmate calling services to finally provide relief to millions of families and 2.7 million children who have been paying unreasonably high rates to stay connected with incarcerated loved ones;
- We adopted a declaratory ruling on Consumer Proprietary Network Information (CPNI) data to better protect consumer data on mobile devices;
- We improved the service for those with speech disabilities to communicate through telephone networks and empowered those with disabilities by implementing the 21st Century Communications and Video Accessibility Act (CVAA);
- We enabled the H Block spectrum auction and the AWS-3 proposal to take major steps forward on government and commercial spectrum sharing, and moved forward on the special access data collection;
- We adopted reforms to the FCC's Form 477, which will streamline the broadband data collection initiated by NTIA to populate the National Broadband Map;
- We approved the Softbank-Sprint-Clearwire merger;
- We took significant steps with the Connect American Fund to extend broadband to all Americans with the second round of CAF Phase I, which

will bring broadband to consumers in 44 states and Puerto Rico, and made progress with the cost model and implementation of Phase II;

- We adopted procedures and set the date for Tribal Mobility Fund I;
- We made ongoing reforms to Lifeline and proposed significant forfeitures to companies not following the FCC's rules,
- And not insignificantly, we adopted and released over 2500 items, many of which were under the radar.

I look forward to my continued work with Chairman Wheeler, and my fellow Commissioners, to build on the progress we have made thus far.

As the Chairman has made clear, the voluntary incentive auction proceeding will continue to be a top Commission priority. Congress directed that the incentive auction of broadcast television spectrum should have three major pieces: (1) a "reverse auction" in which broadcast television licensees submit bids to voluntarily relinquish spectrum usage rights in exchange for payments; (2) a reorganization, or "repacking" of the broadcast television bands to free up a portion of the ultra-high frequency (UHF) band for other uses, and (3) a "forward auction" of initial licenses for flexible use of the newly available spectrum.

For those broadcast TV licensees who want to continue to use their spectrum to provide those services, the Act mandates that the Commission make all reasonable efforts to preserve the coverage area and population served of each broadcast television licensee.

The Act also had clear directives for the proceeds from the forward auction. It requires that the incentive auction results in proceeds that are greater than the sum of the following: (1) the compensation the Commission must pay successful bidders in the reverse auction; (2) the cost of administering the incentive auction, and (3) the estimated amount of the relocation cost reimbursements.

The first \$1.75 billion of the proceeds would go into a fund to repay costs that broadcast TV licensees reasonably incurred pursuant to the need to change frequencies as a result of the repack process. The rest of the proceeds would be deposited in the Public Safety Trust Fund to fund a national first responder network, state and local public safety grants, public safety research, and national deficit reduction.

I believe the public safety goals of the Act are important. When Congress created the FCC in 1934, it made one of the Commission's foundational obligations "the promotion of safety of life and property through the use of wire and radio communications." We may not be able to prevent natural disasters, but we can, and we must, improve our nation's ability to respond to these events. Doing our best to make First Net successful would go a long way toward enhancing our responses to these crises.

Congress also gave the Commission authority to promote the use of unlicensed spectrum. The Act allows the Commission to implement guard bands

that are technically reasonable to prevent harmful interference between licensed services outside the guard bands. The statute also permits the use of such guard bands for unlicensed use. I believe it was important for the NPRM to propose a band plan with an appropriate balance of unlicensed and licensed spectrum. Unlicensed spectrum plays a critical role in advancing more efficient use of spectrum, and commercial wireless carriers are increasingly using unlicensed Wi-Fi services and small cell architecture to offload their smartphone traffic.

I expect that the Commission will keep moving carefully, but expeditiously, to comply with both the spirit and plain language of all the mandates in the Act. I also appreciate that the Commission staff has been proactive in seeking the engagement of the public and all stakeholders.

They began conducting webinars and workshops even before Congress passed the Spectrum Act, and they plan to hold several more such events throughout this proceeding. In addition, FCC staff members have been trying to implement these statutory directives with the same bipartisan approach that resulted in Congress passing the Act.

In September 2012, the Commission unanimously adopted a Notice of Proposed Rulemaking which sought comment on the full range of procedural and technical rules that the Commission would have to adopt to conduct the voluntary incentive auctions.

In addition to spectrum, Chairman Wheeler has announced that the Commission will consider an Order at the January 2014 Commission meeting to launch trials regarding the ongoing technology transitions. Technology transitions hold tremendous promise to deliver innovative new services and opportunities to consumers, and will allow the Commission to evaluate how best to modernize our policies.

I do believe that trials, if structured properly, can produce helpful insights into how best to approach reform, and I will be keeping a keen eye on how the trials and future reforms affect all consumers.

As has been noted earlier, the process of reform is where we have the opportunity to develop an even more efficient agency — one which is better equipped to respond to the expanding needs of consumers and industry.

Thus, with regard to our much-maligned Sunshine rules, I have a particular interest in potential tailor-made revisions to the way in which we interact. As the Committee considers the Federal Communications Commission Process Reform Act of 2013 (H.R. 3675), I am pleased that the proposed modifications to the Sunshine Act would facilitate federal Commissioners' participation on the federal-state Joint Boards and the Joint Conference. This is something that the National Association of Regulatory Utility Commissioners (NARUC) —the national body representing state commissioners, and I previously have endorsed.

The Joint Boards and Joint Conference have federal and state representation, and each is involved in the Commission's policymaking process with respect to their subject matter focus in the areas of universal service, jurisdictional separations and advanced services. Under current law, three or more Commissioners may not participate in a Joint Board or Joint Conference meeting unless it is open to the public and has been properly noticed. Currently, federal Commissioners must take turns participating in our in-person and conference call meetings making it difficult for constructive and efficient deliberations when it comes to Joint Board Recommended Decisions.

I appreciate the fact that H.R. 3675 has included language to extend the proposed Sunshine Act exemption to cover these situations.

As you consider FCC process reform, I would also encourage you to consider looking at the Paperwork Reduction Act (PRA), and how it could be improved to take into account how agencies now engage with citizens. Like so many consumers today, agencies are also taking advantage of the technological revolution.

For example, the FCC is using its website to inform consumers and industry of our proceedings, and is providing facts on communications issues and tips on how consumers can resolve any problems they may encounter. Yet, to obtain voluntary feedback on our website, its usefulness, and how it should be improved,

the PRA requires OMB approval to do so. As a result, the Commission cannot be as nimble and responsive to users without engaging in a lengthy OMB approval process.

As you can see, Mr. Chairman and distinguished Members of the Committee, we have both challenges and opportunities ahead, and I look forward to working with each of you to address our evolving communications landscape.

I appreciate your attention, and would be glad to answer any questions you might have.

Mr. WALDEN. Thank you for your work, your testimony, your recommendations.

And we will now go to Commissioner Rosenworcel. Thank you for being here this morning. We are delighted to have you back, and please go ahead.

STATEMENT OF JESSICA ROSENWORCEL

Ms. ROSENWORCEL. It is good to be back.

Good morning, Chairman Walden, Ranking Member Eshoo, and members of the subcommittee. It is an honor to appear before you today in the company of my colleagues, new and old, at the FCC.

By some measures, communications technologies account for as much as $\frac{1}{6}$ of our economy. No wonder. These are the networks that carry all aspects of our modern, commercial and civic life. They are changing at a breathtaking pace. Keeping up requires taking a fresh look at our policies. Informed by the policies of the past, we have to think boldly about the future.

Now, in the weeks ahead we will do this as we wrestle with the upcoming transition to Internet protocol, and think about Spectrum Auctions, including Incentive Auctions, but I think we make a mistake if we focus only on networks themselves. After all, there is great beauty and power in what we can do with them.

Our new networks can change the ways we connect, create and conduct commerce. They can change the ways we learn and seek security. So in my brief time before you today, this is what I want to talk about; how the broadband beneath us and the airwaves all around us can improve education and improve public safety.

First, I want to talk about the E-Rate Program. E-Rate helps connect schools and libraries across the country to the Internet. It is a byproduct of the Telecommunications Act of 1996. Remember 1996? Probably everyone in this room called the Internet the Information Super Highway. It was a long time ago.

In 1996, only 14 percent of public schools were connected to the Internet. Today, thanks to the E-Rate, that number is north of 95 percent, which sounds good. It sounds like the job is done, but nothing could be further from the truth, because the challenge today is not connection, it is capacity. Too many of our E-Rate schools access the Internet at speeds as low as 3 megabits. That is too slow for high-definition video, it is not fast enough for the most innovative teaching tools, and it is definitely not fast enough to prepare the next generation with the STEM skills that are so essential to compete.

Contrast this with efforts underway in some of our world neighbors. In South Korea, 100 percent of schools are connected to high-speed broadband, and all schools are converting to digital textbooks by 2016. Ireland will have all schools connected to 100 megabits next year. Finland will have all schools connected to 100 megabits the year after that. Meanwhile, in both Turkey and Thailand, the government is seeking a vendor to supply tablet computers to millions of students for a new era of broadband-enabled digital learning.

Now, we can wait and see where the status quo takes us and let other nations lead the way, or we can choose a future where all American students have the access to the broadband they need to

compete, no matter who they are, where they live or where they go to school. I think it is time to compete. I think it is time for E-Rate 2.0. The FCC has a rulemaking proceeding underway to reboot and recharge the E-Rate Program. I think we need to make it a high priority. I think we need to find ways to bring 100 megabits to all schools in the near-term, and 1 gigabit to all schools in the long-term. While we are at it, we must find ways to reduce the bureaucracy of this program, and make it easier for small and rural schools to participate.

Second, I want to talk about a number all of us know by heart but none of us ever hopes to use. I want to talk about 911.

In my time at the FCC, I have visited 911 call centers all across the country. I am always struck by the steely calm of those who answer the phones and help ensure that help is on the way. I am also struck by how many emergency calls now come in from wireless phones. In fact, nationwide, more than 70 percent of calls made to 911 are made from wireless phones. That is more than 400,000 calls per day.

Now, if you use your wireless phone to call 911 from outdoors, your location is reported, sometimes to within 50 meters, under FCC location accuracy standards. But if you use your wireless phone to call 911 from indoors, you had better cross your fingers because no FCC location accuracy standards apply. I think this is an unacceptable gap in public safety communications. It deserves your attention and ours, because no matter where you are when you call 911, you want first responders to find you.

Moreover, as our networks evolve and the ways we use them change, we must make sure our public safety policies keep pace. In fact, our approaches to networks, both wired and wireless, need to evolve as markets evolve, but in our efforts, we must not lose sight of why networks matter because they can do more than connect us, they can strengthen, education and enhance our security, and, of course, grow our economy in new and exciting ways.

Thank you. I look forward to answering any questions you might have.

[The prepared statement of Ms. Rosenworcel follows:]

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL
BEFORE THE
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES
DECEMBER 12, 2013**

Good morning, Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee. It is an honor to appear before you today in the company of my colleagues—new and old—at the Federal Communications Commission.

By some measures, communications technologies account for one-sixth of the economy. No wonder. These are the networks that carry all aspects of our modern commercial and civic life. They are changing at a breathtaking pace. Keeping up requires taking a fresh look at our policies. Informed by the values of the past, we must think boldly about the future.

In the weeks ahead we will do this as we wrestle with the transition to Internet Protocol and lay the groundwork for upcoming spectrum auctions, including incentive auctions.

But I think we make a mistake if we focus only on networks themselves. After all, there is great beauty and power in what we can do with them. Our new networks can change the ways we connect, create, and conduct commerce. They can change the ways we learn and the ways we seek security.

In my brief time before you today, this is what I want to talk about—how the broadband beneath us and the airwaves all around us can improve education and improve public safety.

First, I want to talk about the E-Rate program. E-Rate helps connect schools and libraries across the country to the Internet. It is a byproduct of the Telecommunications Act of 1996. Remember 1996? All of us here probably called the Internet the “information superhighway.” It was a long time ago.

In 1996, only 14 percent of public schools were connected to the Internet. Today, that number is north of 95 percent. That sounds good. It sounds like the job is done. But nothing could be further from the truth. Because the challenge today is not connection—it is capacity.

Too many of our E-Rate schools access the Internet at speeds as low as 3 Megabits. That is too slow for streaming high-definition video. It is not fast enough for the most innovative teaching tools. It is not fast enough to prepare the next generation with the science, technology, engineering, and math—or STEM—skills that are so essential to compete.

Contrast this with efforts underway in some of our world neighbors. In South Korea, 100 percent of schools are connected to high-speed broadband and all schools are converting to digital textbooks by 2016. Ireland will have all schools connected to 100 Megabits next year. Finland will have all schools connected to 100 Megabits the year after that. Meanwhile, in both

Turkey and Thailand the government is seeking a vendor to supply tablet computers to millions of students for a new era of digital learning.

We can wait and see where the status quo takes us and let other nations lead the way. Or we can choose a future where all American students have the access to broadband they need to compete, no matter who they are, where they live, or where they go to school.

I think it is time to compete. I think it is time for E-Rate 2.0. The FCC has a rulemaking proceeding underway to reboot and recharge the E-Rate program. I think we need to make this a priority. I think we need to find ways to bring 100 Megabits to all schools in the near term and 1 Gigabit to all schools in the long term. While we are at it, we must find ways to reduce the bureaucracy of this program—and make it easier for small and rural schools to participate.

Second, I want to talk about a number all of us know by heart, but none of us ever hopes to use. I want to talk about 9-1-1. In my time at the FCC, I have visited 9-1-1 call centers across the country. I am always struck by the steely calm of those who answer the phones and help ensure that help is on the way.

I am also struck by how many emergency calls now come in from wireless phones. In fact, nationwide more than 70 percent of all calls to 9-1-1 are made from wireless phones. That is over 400,000 calls per day.

If you use your wireless phone to call 9-1-1 from outdoors, your location is reported, sometimes to within 50 meters under FCC location accuracy standards.

But if you use your wireless phone to call 9-1-1 from indoors, you should cross your fingers, because no FCC location accuracy standards apply.

This is an unacceptable gap in our communications. It deserves your attention—and ours. Because no matter where you are when you call 9-1-1, you want first responders to find you. Moreover, as our networks evolve, and the ways we use them change, we must make sure our public safety policies keep pace.

In fact, our approaches to networks—both wired and wireless—need to evolve as markets evolve. But in our efforts, we must not lose sight of why networks matter. Because they can do more than connect us, they can strengthen education and enhance our security—and of course, grow our economy in new and exciting ways.

Thank you. I look forward to answering any questions you might have.

Mr. WALDEN. Ms. Rosenworcel, thank you for your work and your testimony and your suggestions.

We go now to Commissioner Pai. Thank you for being here, and thank you for all the work you have been doing, and please go ahead with your opening statement.

STATEMENT OF AJIT PAI

Mr. PAI. Thank you, Mr. Chairman. Chairman Walden, Ranking Member Eshoo, Members of the Subcommittee. Thank you for holding this hearing.

It has been exactly one year since I last appeared before you, and much has happened in the time since. Most notably, we have lost two colleagues, and we have gained two new ones. Chairman Wheeler and Commissioner O'Rielly have gotten off to strong starts, and I am pleased that we are finally back at full strength.

Over the past year, we have made progress in a number of different areas, but there is much more to be done. This morning, I will touch on two of the issues that I find most pressing: the Incentive Auction and E-Rate reform. A fuller list of FCC priorities, from cable forbearance to AM radio, is detailed in my written testimony.

First, the Incentive Auction. Perhaps the most daunting challenge the Commission faces is the looming spectrum crunch. To meet this challenge, we are focused on implementing the responsibilities that Congress gave us in the Spectrum Act, especially with respect to the Broadcast Incentive Auction.

The Incentive Auction is the Commission's best chance to push a large amount of spectrum, well suited for mobile broadband, into the commercial marketplace. I support Chairman Wheeler's recent announcement, setting the middle of 2015 as our new target. It is more important to get the Incentive Auction done right than it is to get it done right now. If, for example, any part of our software were to fail during the Incentive Auction, like another government Web site that shall not be named, the Commission, by law, would not get a second bite at the apple.

My greatest worry about the Incentive Auction, however, is not with technology; it is about participation. In order for the Incentive Auction to be successful, we will need robust participation by both broadcasters and wireless carriers. So the Commission must avoid choices that will deter participation in both the Reverse Auction and the Forward Auction.

For the Reverse Auction, prices paid to broadcasters should be determined by the market, not set by administrative fiat. Any attempt to restrict payments to broadcasters, including a complicated scoring scheme, will deter broadcasters' participation and risk causing the Incentive Auction to fail.

For the Forward Auction, the Commission should not limit carriers' ability to participate, such as by setting a spectrum cap or narrowing the spectrum screen. This would result in less spectrum for mobile broadband, less revenue to fund national priorities that this Committee has identified, and a greater chance for a failed auction.

Another issue that will impact participation in the Forward Auction is the size of the geographic licenses to be offered. Our NPRM proposed using Economic Areas, but some argue that this would

make it too difficult for smaller carriers to participate in the auction. Our goal should be to allow as many carriers as possible to bid, whether they be nationwide, regional, or rural. So I am pleased to see alternative proposals for license sizes, such as the newly-coined "Partial Economic Areas." If technically feasible, these proposals deserve serious consideration.

Aside from the Incentive Auction, there are many other opportunities when it comes to spectrum, from the H Block Auction next month to the possible clearing of AWS-3 to greater unlicensed use in the 5 gigahertz band. Consistent with my all-of-the-above approach, I hope we seize all of these opportunities in the near-term.

The second issue I will discuss is the Universal Service Fund's Schools and Libraries Program, better known as E-Rate.

In many ways, E-Rate has been a success, as my colleague has pointed out. But it also has had difficulties. The funding process can stretch for years. Many schools and libraries feel compelled to hire outside consultants to handle all the complexities. Others don't bother applying at all. Services like paging are prioritized over services like connecting classrooms, and there is no meaningful transparency into either the amount or the impact of E-Rate spending.

To solve these problems, I proposed a Student-Centered E-Rate Program. This means an upfront allocation of funding and a matching requirement so that applicants know how much money they can spend, and have greater incentives to spend that money wisely. This means simplifying the application process. This means targeting funding and next-generation technologies, while still letting local schools set their own priorities. And this means making all funding and spending decisions accessible on a central Web site that everyone can see.

In its first year, a student-centered approach would provide an extra \$1 billion for next-generation services, all without collecting an extra dime from the American people. Accordingly, I believe it would be premature to increase the program's budget. And under no circumstances should we do so without finding corresponding savings in other parts of the Universal Service Fund. We cannot ask Americans to pay even more in their monthly phone bills, especially when median household income in this country is now lower than it was in 2007.

Thank you once again to Chairman Walden and Ranking Member Eshoo for holding this hearing. I look forward to answering your questions, and to continuing to work with you and my colleagues in the months to come.

[The prepared statement of Mr. Pai follows:]

STATEMENT OF AJIT PAI
COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION
HEARING BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY
OF THE UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY
AND COMMERCE
“OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION”
DECEMBER 12, 2013

Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee, it is a privilege to appear before you this morning. It was exactly one year ago—December 12, 2012—that I last testified in front of this Subcommittee. Much has happened since then. Most notably, we have lost two colleagues and gained two new ones. Chairman Wheeler and Commissioner O’Rielly have already gotten off to a strong start, and I am pleased that we once again have a full complement of Commissioners to tackle the wide range of challenges in front of us.

From making more spectrum available for mobile broadband to facilitating the nation’s transition to an all-IP future, from modernizing our media regulations to ensuring that our universal service reforms hasten rather than impede broadband deployment in rural America, our work is critical to our nation’s economic future and our people’s quality of life. And we have no time to waste. That is why the Commission must reform its processes and become more nimble. We should be an ally rather than an obstacle to the innovators who are transforming our economy and our society at an ever-increasing rate.

Over the course of the past year, we have made progress in many areas. But there is much more work to be done. In my testimony this morning, I will touch on some of the issues I find most pressing.

I. Spectrum

Perhaps the most important and daunting challenge the Commission faces is the looming spectrum crunch. We therefore continue to concentrate on implementing the responsibilities that Congress entrusted to us in the Middle Class Tax Relief and Job Creation Act of 2012, often called the Spectrum Act. There, Congress tasked the Commission with, among other things, getting more spectrum into the commercial marketplace and facilitating the establishment of a nationwide, interoperable public safety broadband network.

Incentive Auction.—The incentive auction is the Commission’s best opportunity to push a large amount of spectrum well-suited for mobile broadband into the commercial marketplace. And as the Commission moves forward on incentive auctions, I believe that five principles should guide our work. *First*, we must be faithful to the statute. It is our job to implement this legislation, not to rewrite it to conform to our policy preferences. *Second*, we must respect the laws of physics. Our band plan and approach to repacking must work from an engineering perspective. *Third*, we must be fair to all stakeholders. This is especially important because the incentive auction will fail unless both broadcasters and wireless carriers choose to participate. *Fourth*, we must keep our rules as simple as possible. The broadcast incentive auction is inherently complicated; unnecessary complexities are likely to deter participation. And *fifth*, we need to complete this proceeding in a reasonable timeframe. Prolonged uncertainty is not good for broadcasters or wireless carriers.

Speaking of that last point, I am disappointed that there was not a clear path to holding a successful incentive auction by the end of 2014. I accordingly support Chairman Wheeler’s announcement setting the middle of 2015 as our new target and applaud him for issuing a schedule to meet that goal. It is more important to get the auction done right than to get it done right now. The Chairman’s measured approach is particularly appropriate given that we only have one shot. If, for

example, any part of our software were to fail during the incentive auction—like another government website that shall not be named—the Commission, by law, wouldn’t get a second bite at the apple. That is why we must take the time and the steps necessary to subject our software to rigorous testing.

My greatest worry about the incentive auction, however, is not with the technology. It is about participation. In order for the incentive auction to be successful, we will need robust participation by broadcasters and wireless carriers. But right now, I am concerned that the Commission will make unwise policy choices that will deter participation in both the reverse and forward auctions.

On the reverse auction, the Commission should not deter broadcaster participation through a complicated “scoring” scheme. My position on this is simple. Prices paid to broadcasters should be determined by the market. The Commission should not set them by administrative fiat. Any attempt to restrict payments to broadcasters will prove to be penny-wise and pound-foolish. Indeed, without sufficient broadcaster participation, the entire incentive auction will fail.

And on the forward auction, the Commission should not limit carriers’ ability to participate, such as by setting a spectrum cap or narrowing the spectrum screen despite the significant competition that exists in the wireless market. The inevitable effect of such a policy would be less spectrum reallocated for mobile broadband, less funding for national priorities, and an increased chance of a failed auction.

Another issue that will impact participation in the forward auction is the size of the geographic licenses to be offered. While our NPRM proposed using Economic Areas (or EAs), I am worried that staying this course would make it too difficult for many small carriers to participate in the auction, and our goal should be for as many carriers as possible to bid in the auction, whether they be nationwide, regional, or rural. I am therefore pleased to see that parties are coming forward with alternative proposals for license sizes, such as the newly coined “partial economic areas.” Should these proposals prove to be technically feasible, I believe that they deserve serious consideration.

Of course, it is important to remember why it is so vital to hold a successful incentive auction. It’s not just about making more spectrum available for mobile broadband, critical as that objective is. A successful incentive auction will also provide money for key national priorities, such as the First Responder Network Authority’s (FirstNet’s) build out of a nationwide, interoperable public safety broadband network; Next Generation 911 implementation; public safety research; and deficit reduction.

As we move forward in this proceeding, I look forward to continuing to receive feedback from Congress, particularly Members of this Subcommittee. Given your key role in crafting this legislation, it is vital that the Commission keep open the lines of communication with you. It is also important for us to coordinate closely with Canada and Mexico to address issues involving border areas. Absent such coordination, we will have neither a timely nor successful auction.

H Block.—In January, the Commission will hold its first major spectrum auction in nearly six years when we auction the H Block, 10 MHz of long-fallow spectrum (1915–1920 MHz and 1995–2000 MHz) identified by Congress in the Spectrum Act. I am pleased that we did not saddle this spectrum with burdensome and unnecessary conditions. Instead, we outlined straightforward and flexible rules for H Block licensees. I hope that this approach will serve as a model for future auctions. If we are able to garner at least \$1.56 billion for this spectrum, which used to be viewed as almost worthless, I believe that the auction will be an important success. It will make available 10 MHz of additional spectrum for mobile broadband. It will provide a substantial down payment to FirstNet for construction of a nationwide, interoperable public safety broadband network. And it will demonstrate to the marketplace that the Commission still has both the will and ability to hold a successful auction.

AWS-3.—The Spectrum Act also directs the Commission to auction off 25 MHz of spectrum adjacent to AWS-1, 2155–2180 MHz. This spectrum ideally should be paired with another 25 MHz block adjacent to AWS-1, 1755–1780 MHz, which is currently occupied by the federal government. These bands are already internationally harmonized for commercial use, which means deployment will be

swifter and cheaper than other options. A successful auction of this spectrum would make additional spectrum available for mobile broadband and provide additional funding for the important national priorities I have described above.

I am pleased that the federal government appears to be making progress on a plan to move operations out of this spectrum and into other bands. For example, the Department of Defense and the National Association of Broadcasters recently agreed on a proposal to share broadcast auxiliary service spectrum at 2025–2110 MHz, thus allowing for certain Department of Defense operations to be relocated from the 1755–1780 MHz band.

As we go forward, I believe that our goal should be to clear the 1755–1780 MHz band. If our goal is to incentivize investment in wireless networks, nothing beats clearing. That’s one reason that the Spectrum Act puts a thumb on the scale for clearing and allows sharing only if clearing is “not feasible because of technical or cost constraints.”

5 GHz.—Just as licensed spectrum is important to a successful spectrum strategy, so too is unlicensed. And that brings me to one last piece of spectrum I’m excited to discuss: the 5 GHz band. I thank the Subcommittee for its leadership in identifying and drawing attention to this important spectrum.

As I testified before the Subcommittee last December, the 5 GHz band is “tailor made” for the next generation of Wi-Fi. Its propagation characteristics minimize interference in the band and the wide, contiguous blocks of 5 GHz spectrum allow for extremely fast connections, with throughput reaching 1 gigabit per second. The technical standard to accomplish this, 802.11ac, already exists, and devices implementing it are already being built. All of this means we can rapidly realize these benefits: more robust and ubiquitous wireless coverage for consumers; more manageable networks for providers; a new test bed for innovative application developers; and other benefits we can’t even conceive today.

Following the instructions set forth by Congress in the Spectrum Act, the Commission launched a rulemaking earlier this year to make available up to 195 MHz of additional spectrum in the 5 GHz band for unlicensed use. We also made proposals to allow for greater utilization of those segments of the 5 GHz band already available for unlicensed use.

Now is the time for us to move from offering proposals to taking action. This past summer, I urged the FCC to move forward with its 5 GHz proceeding in stages, and I reiterate that call today. For example, the Commission should move promptly to modify the service rules for the U-NII-1 band. By raising the power limits on the U-NII-1 band and allowing for outdoor use, we can make this band attractive for commercial Wi-Fi while safeguarding incumbent users. Likewise, we should act quickly to add 25 MHz to the U-NII-3 band. Among other things, this measure would reduce certification costs for companies manufacturing devices in this band. Given the growing congestion in the 2.4 GHz band (which consumers commonly rely upon for Wi-Fi access), we should not let a few difficult issues involving the 5 GHz band delay us from making progress on the easier ones.

II. Wireless Infrastructure

Removing regulatory barriers to the deployment of wireless infrastructure is another priority for the Commission. Building next-generation wireless broadband networks can present business and technical challenges. But complying with the numerous federal, state, and municipal regulations covering a wide range of physical infrastructure, from towers to small cells, can make deployment difficult or even prohibitive. To be sure, some oversight is necessary to ensure sound engineering and safety. But many procedures simply frustrate, rather than facilitate, deployment. Making the permitting process expensive and unnecessarily burdensome ultimately harms consumers who are denied better and cheaper wireless services.

I am therefore pleased that the Commission moved forward in September with a Notice of Proposed Rulemaking seeking comment on a variety of ideas for reducing regulatory barriers to the

construction of wireless infrastructure. In particular, I'd like to highlight three of them in my testimony this morning.

First, we should make clear that local moratoria on the approval of new wireless infrastructure violate section 332 of the Communications Act. The FCC has already put in place a shot clock for localities to address tower siting permits and other building applications. Prohibiting moratoria would address the tactic some localities have used to evade those deadlines by adopting an indefinite "time out" on the approval of wireless infrastructure.

Second, we should modernize our rules to exempt distributed antenna systems (DAS) and small cells from our environmental processing requirements, except for rules involving radiofrequency emissions. Given their small size and appearance, there is no reason to subject DAS and small cells to the same environmental review as a 200-foot tower. We should similarly update our historic preservation rules, which add yet more regulatory requirements, in order to facilitate the deployment of DAS and small cells. It bears noting that the greater the deployment of wireless infrastructure like this, the less reliance carriers (and hence consumers) must place on larger, "macro" cell sites and the less power networks and devices consume.

Third, we should address what happens when a local government doesn't comply with our shot clock. Currently, if a city does not process an application within 150 days, the only remedy is to file a lawsuit. This increases delay and diverts investments away from networks. To fix this problem, we should supplement our shot clocks with a backstop: If a locality doesn't act on a wireless facilities application by the end of the time limit, the application should be deemed granted. (As a legal matter, I believe the FCC has this authority following the Supreme Court's decision this past May in *City of Arlington, Texas v. FCC.*)

There are also other steps that the Commission can take to hasten the deployment of wireless infrastructure. For example, we have sought comment on clarifying the scope and meaning of section 6409(a) of the Spectrum Act, which prohibits state and local governments from denying certain collocation requests, and I hope that we make appropriate clarifications in the near term. Also, we are looking for ways to expedite the deployment of infrastructure to implement positive train control, as required by the Rail Safety Improvement Act of 2008.

III. The IP Transition

Today, almost every segment of the communications industry is competing to offer newer, faster, and better broadband services. Telecommunications carriers are upgrading DSL with IP-based technology and fiber. Cable operators have deployed DOCSIS 3.0 to increase bandwidth tenfold. Satellite providers are offering 12 megabit packages in parts of the country that never dreamed of such speeds. And millions of Americans—many of whom don't subscribe to fixed broadband service at home—now have access to the Internet on the go using the mobile spectrum the Commission auctioned back in 2006 and 2008. Indeed, according to the State Broadband Initiative of the National Telecommunications and Information Administration, 98.8 percent of Americans had access to high-speed broadband as of December 2012. The common thread knitting all of these changes together is the Internet Protocol (IP), a near-universal way to route and transmit data.

What are the results of all this competition? More choices for consumers, and major challenges to old business models. Thirty years ago, American consumers had access to one network largely run by one carrier, Ma Bell. Today, Americans are fleeing the copper network. 33.6 million Americans dropped their copper landlines over the past four years. About one in seven households with plain old telephone service over the public-switched telephone network (PSTN) dropped their service last year alone. And competition is rampant: 99.6 percent of Americans can choose from at least three wireline competitors, and 92 percent can choose from *10 or more*. The evidence also shows that consumers are in fact

exercising that choice: Interconnected VoIP providers added 14.6 million subscriptions over the last four years. Essentially, voice is becoming just another application riding over the Internet.

Yet the Communications Act was last amended when the Internet was still in its commercial infancy. And the Act still places telephone carriers in one silo, wireless providers in another, satellite operators in a third, and cable companies in a fourth. With the advent of IP, these legacy divisions no longer reflect the state of technology nor the dynamic competition that's now occurring from these unexpected corners. Indeed, the Commission did not seriously start begin looking at over-the-top competitors until seven years after Congress passed the 1996 Act—and although then-Chairman Powell opened the door, we still haven't walked through it.

None of this is news to the Subcommittee. Just last week, Committee Chairman Upton and Subcommittee Chairman Walden announced the launch of a multi-year effort to examine how to modernize the Communications Act to reflect the realities of a 21st century marketplace. Chairman Upton called for laws that “make sense for today but are also ready for the innovations of tomorrow,” and Chairman Walden stated the “goal is to make sure this critical sector of our economy thrives because of the laws around it, not in spite of them.” I welcome the Committee's decision to reexamine and update the Act, and I stand ready to assist in whatever way I can.

I hope that the Committee's recognition of the changing marketplace will encourage the FCC to take action even sooner on the IP Transition. The American people are ahead of Washington on this issue—they are choosing IP-enabled services at an amazing rate. Whatever policymakers do, our country's transition to an all-IP future *will* happen. But what we at the Commission do will have a dramatic impact on the speed and success of that transition.

There are signs that we've already started off on the right foot. Two years ago, the FCC's Technological Advisory Council under now-Chairman Wheeler's leadership recommended that we sunset the public switched telephone network in 2018. In July 2012, I called on the FCC to create an IP Transition Task Force that would help us take a holistic approach to the IP Transition and focus our deliberations on a task that so desperately needs to be done. Last December, Chairman Genachowski created such a task force. Its labors will begin to bear fruit just next month when we consider an order with recommendations from the task force on how to conduct a diverse set of experiments.

The most important experiment to start with, in my view, is an All-IP Pilot Program. Such a program would allow companies to choose a discrete set of wire centers where they could turn off their old time-division-multiplexed electronics and migrate customers to an all-IP platform. Moving forward with an All-IP Pilot Program would send a powerful message to the private sector that we intend to embrace the IP Transition through a data-driven process. We would signal that we won't force carriers to invest in both old and new networks forever. We would move closer to the day when carriers will be able to focus exclusively on investing in the networks of tomorrow rather than maintaining the networks of yesterday.

An All-IP Pilot Program is important because predictions are no substitute for hard facts. A process conducted on paper isn't as data-driven as a real-live experiment. To quote Blair Levin, the father of the National Broadband Plan, an All-IP trial would be “worth a thousand pleadings.”

And conducting a trial run before implementing big changes is nothing new for the FCC. Before we turned off analog broadcasting, then-Commissioner Copps had the good idea of testing the concept. That experiment, which was held in Wilmington, North Carolina, provided valuable feedback and helped make the nationwide DTV transition a success. Similarly, the FCC launched a rural healthcare pilot program in 2007. The success of that pilot led to the creation of the Healthcare Connect Fund this past year. Other examples abound, ranging from spectrum sharing to VoIP numbering.

What is more, the All-IP Pilot Program isn't an issue that divides the left from the right, Republicans from Democrats, or urban America from rural America. Endorsements range from AT&T to

the National Cable and Telecommunications Association, from Bandwidth.com to Alcatel-Lucent. Organizations like the NAACP, the National Urban League, the Rainbow PUSH Coalition, the National Grange, and the National Farmers Union also want a pilot program. So do advocacy groups like the Minority Media and Telecommunications Council, the Asian American Federation, the League of United Latin American Citizens, Women Impacting Public Policy, the U.S. Chamber of Commerce, and the American Consumer Institute.

So how should we structure this experiment? Let's start with some basic principles. *One*, carrier participation in the All-IP Pilot Program should be voluntary, and pilot sites should be located in states that are ready and willing to embrace the IP Transition. *Two*, tests should ideally be conducted in a variety of places that represent our country's diverse geography and population. We'll learn the most from the pilot program if there are sites in urban, suburban, and rural communities. And we have to make sure that low-income and minority communities are included, because the IP Transition will bring benefits to everyone. *Three*, no one should be left behind, so residential customers with fixed telephone service today should continue to have voice service available to them even when that service is based on IP. And business customers should know in advance what IP-based services will replace what they currently have. And *four*, we must be able to evaluate the All-IP Pilot Program in order to figure out what worked and what didn't. This will help us make the broader IP Transition. With empirical data in hand, we can reject the rhetoric in favor of reason.

Of course, preparing for the IP Transition does not end with conducting an All-IP Pilot Program. We also need to take a hard look at our regulations in light of the coming transition, if for no other reason than that the private sector needs flexibility to make investment decisions based on consumer demand, not outdated regulatory mandates. Accordingly, I believe four principles should shape our approach to the transition.

First, we must ensure that vital consumer protections remain in place. When consumers dial 911, they need to reach emergency personnel; it shouldn't matter whether they are using the PSTN, a VoIP application, or a wireless phone. The same goes for consumer privacy protections and antifraud measures like our slamming rules. *Second*, we must not import the broken, burdensome economic regulations of the PSTN into an all-IP world. No tariffs. No arcane cost studies. And no hidden subsidies that distort competition to benefit companies, not consumers. We must also repeal the old-world regulations such as retail tariffing that no longer make sense in a competitive all-IP world. While they remain on the books, wholesale expansion to IP may just be too tempting. *Third*, we must retain the ability to combat discrete market failures and protect consumers from anticompetitive harm. *Fourth*, we must respect the metes and bounds of the Communications Act and not overstep our authority.

In truth, the work of the Committee to review the Communications Act underscores the importance of the FCC embracing the IP Transition. Over the next two years, if we conduct an All-IP Pilot Program and take stock of the rules that should stay and those that should go in an all-IP world, we will be able to inform Congress where we can improve our regulations ourselves and where we may need legislative direction.

IV. The Universal Service Fund

Although the Communications Act of 1934 is not perfect, it does make an important promise in its very first sentence: Congress created the Federal Communications Commission to "make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."

We at the FCC need to take this promise seriously. We must recognize that broadband operators in rural America today face unique challenges. Unlike the urban environment, rural carriers must carefully plan their infrastructure over a ten- or twenty-year time scale if they are to recover their costs.

Congress recognized this in section 254 of the Act, embedding the statutory command that universal service support be “predictable.”

We can argue over the proper size of the Universal Service Fund, but all of us should be able to agree that given its size, it should be distributed consistent with the law and common sense. For example, a constant stream of reforms every year or two cannot give businesses and investors much certainty. Instead, the Commission needs a long-term strategy and must sometimes be patient before demanding more from the industry.

QRA Benchmarks.—Take the quantile regression analysis (QRA) benchmarks created by the Commission in the 2011 *Universal Service Transformation Order* and implemented by the Wireline Competition Bureau in the 2012 *Benchmarks Order*. The QRA benchmarks are supposed to create “structural incentives for rate-of-return companies to operate more efficiently and make prudent expenditures.” But reality has not caught up with theory. Instead, the QRA benchmarks have resulted in unpredictability and uncertainty, chilling the investment climate and impeding the deployment of next-generation technologies and broadband services to rural Americans. As the Obama Administration’s Department of Agriculture told the Commission earlier this year, “demand for [Rural Utility Service] loan funds dropped to roughly 37% of the total amount of loan funds appropriated by Congress in [fiscal year] 2012.”

Now, I am pleased that the FCC was able to implement some reforms to the QRA in February in a decision with the punchy nickname of the “*Sixth Recon Order*.” That order let carriers balance their capital investments against their operating expenses (rather than analyzing each—and possibly penalizing carriers for either—separately). And the Wireline Competition Bureau recently recognized that implementing a whole new regression model in 2014 would be infeasible given our slow progress in collecting accurate maps of each carrier’s study area.

But I still have my doubts about the utility of the QRA benchmarks as implemented. It is important to remember that they do not save money for the Universal Service Fund, but merely redistribute support from one set of carriers to another. The 2014 benchmarks are likely to impact significantly more carriers than the 2013 benchmarks, all of which are based on flawed data and inaccurate maps. And rural carriers still cannot know whether they will be able to recover investments made today since the relevant benchmarks for those investments won’t be known until 2015. Indeed, if a rural carrier below the cap chooses to reinvest any additional support it receives in broadband, it risks pushing itself over the cap in future years, thus mitigating any benefit from that additional support. In short, the Commission needs to think long and hard about the QRA benchmarks.

Connect America Fund.—Aside from the benchmarks, there is much work still to be done to follow up the *Universal Service Transformation Order*. For example, that order reoriented the Fund to support broadband, rather than just telephone service. And yet, the Fund still only supports telephone service in areas served by rate-of-return carriers. It’s time for the Commission to start moving forward with a Connect America Fund for rate-of-return carriers. This step would recognize that line loss in rural America is real and that direct support for broadband-capable facilities, within the existing budget, is critical.

We’re in a better position to address the needs of rural America in areas served by price-cap carriers. The Wireline Competition Bureau, for example, has been doing yeoman’s work in modelling the costs of deploying a next-generation network. But there’s still more to do. The FCC decided that reverse auctions for universal service support should occur in areas where price-cap carriers decline to accept Connect America Fund support, but the Commission has not yet moved forward on that front since adopting the *Universal Service Transformation Order*. I hope we do so soon. No part of rural America should miss the broadband revolution while waiting for the regulatory dust to settle.

E-Rate.—I am also hopeful that in the next few months, we will reform the Fund’s schools and libraries program, better known as E-Rate. Established at the direction of Congress 16 years ago, the E-Rate program is intended to bring advanced services to schools and libraries across America. In many ways, the program has been a success. Internet access in public schools has almost tripled, and speeds have grown alongside availability. Indeed, a 2010 FCC survey showed that 22 percent of respondents were “completely” satisfied and another 58 percent were “mostly” satisfied with the bandwidth they’re getting.

But like all federal programs, E-Rate has had its share of difficulties. For applicants, the funding process from start to finish can stretch for years. Additionally, to navigate arcane steps like Form 470 competitive bidding, Form 471 Program Integrity Assurance review, and the Form 500 commitment adjustment process, schools must enlist specialized E-Rate consultants, draining scarce dollars away from students and technology. For parents, the process is so opaque that they cannot know ahead of time how much funding their school might receive and cannot track whether it is actually spent on enriching the education of their kids. For school boards, the priority system (under which things like paging and Blackberry services for administrators get prioritized over connecting a classroom to the Internet) distorts their spending decisions since some services are discounted by up to 90 percent while others may or may not receive any discount in a given funding year. And for everyone with a phone line, and who hence contributes to the program, it’s hard to tell what bang we’re getting for our universal service buck—there is no meaningful transparency with respect to E-Rate spending and no real information on the impact of that spending.

There is a better way—one which would focus the E-Rate program on children. To create a student-centered E-Rate program, we need to fundamentally rethink how we structure the program. That means starting each school and library with an upfront allocation of funding so they know how much they can spend. That means cutting the red tape so that the initial application is just one page and there’s only one other form needed before funds are disbursed. That means targeting funding at next-generation technologies like broadband and Wi-Fi while still letting local schools set their own priorities. And that means publishing all funding and spending decisions on an easily accessible, central website so that every parent, every journalist, every government watchdog, every American can see just how E-Rate funds are being spent.

The student-centered E-Rate program I have outlined would fulfill E-Rate’s statutory mission of bringing advanced services to schools and libraries across the country. It would reduce waste, fraud, and abuse in the program and increase transparency and accountability. And it would free an extra \$1 billion for next-generation services in its first year (\$600 million of which is currently spent each year on basic telephone service and other outdated technologies), all without collecting an extra dime from the American people. Given the potential savings at hand, it would be premature to increase the program’s budget at this time—and under no circumstances should we do so without finding corresponding new savings elsewhere in the Universal Service Fund. We cannot ask Americans to pay even more in their monthly phone bills, especially when median household income in this country is lower than it was in 2007.

V. Media

The media landscape has undergone revolutionary change in the last few decades. But the FCC’s rules have not kept pace with the realities of the marketplace. That is why, since joining the Commission, I have advocated updating our regulations on a variety of fronts while at the same time preserving the Commission’s commitment to the core values of competition, diversity, and localism.

Cable Forbearance.—The video market has changed dramatically since the Cable Act became law in 1992. Back then, cable incumbents dominated the multichannel video programming distributor (MVPD) market with a 95 percent market share. The vast majority of Americans could not choose

among competing MVPDs. There were only about 70 cable programming networks. And over-the-top video providers like Netflix did not exist.

Fast forward (a term whose origins betray its age) to today. Due to the entry of satellite and telecommunications companies into the video market, almost all Americans now have a choice of three MVPD providers. Over one-third of Americans can choose among four. The market share of incumbent cable operators has dropped below 55 percent of video subscribers. There are now over 500 cable and satellite programming networks. And over-the-top video providers have entered the market and are transforming the way that Americans consume content. Right now, for example, Netflix has more customers than Comcast, the largest cable operator in the country, and more than every other cable operator in the country combined. Indeed, due to the prevalence of over-the-top video, more Americans are starting to forego video bundles offered by MVPDs altogether and instead just rely on a broadband connection and a broadcast antenna.

Despite this revolutionary change, the FCC's regulatory approach to cable too often remains mired in the past, and we could use some help from Congress to remedy the situation. Currently, section 10 of the Communications Act allows the FCC to "forbear from applying any regulation or provision of the [Communications] Act to a telecommunications carrier or telecommunications service, or a class of telecommunications carriers or services." Over the years, forbearance has allowed the FCC to remove outdated regulatory burdens from telecommunications carriers. This, in turn, has encouraged infrastructure investment and broadband deployment. That's great, but we currently can't take these same steps with respect to laws and regulations aimed at MVPDs.

As one who believes in regulatory parity, this does not make sense. The video industry is undergoing the same transformation that we are witnessing in the telecommunications sector. Technology is turning voice and video into applications transmitted over the Internet. Former monopoly providers are facing intense competition as we move to an all-IP world. So I believe that the FCC should have the same authority to relieve MVPDs from obsolete rules as we currently have for carriers.

Congress, of course, would need to determine how best to structure cable forbearance. Would such forbearance authority extend any provision of the Communications Act or just those found in the Cable Act? Would any particular provisions of the Act be exempted from such forbearance authority until certain conditions are met, as is done in Section 10(d) with respect to telecommunications forbearance? These are questions that I would encourage you to consider as this Committee reexamines the Communications Act.

AM Radio.—More than one year ago, I proposed that the Commission launch an AM Radio Revitalization Initiative. This past October, it became a reality. It's been over two decades since we last comprehensively reviewed our AM radio rules. Over that time, the AM band has struggled. Interference problems, declining listenership, financial challenges for minority-owned broadcasters, and other factors have brought the band low. But millions of Americans—myself included—still rely on and believe in AM radio. So this initiative is close to my heart.

The Commission's NPRM embraced a sensible two-stage strategy for improving AM radio service. First, we proposed several ways to give AM broadcasters relief in the short term. For instance, we suggested eliminating the "ratchet rule," which effectively prevents AM broadcasters from improving their facilities. We teed up modifications to the daytime and nighttime community coverage rules for existing AM stations to better help them reach their listeners. Perhaps most importantly, we sought public input on letting AM stations apply for new FM translators. I'm the first to acknowledge that these and other proposals will not be an immediate panacea for the difficulties confronting the AM band. But based on the conversations I have had with AM broadcasters across the country during the past year, I am convinced that they can make a substantial, positive difference to numerous AM stations. Second, we also invited the American public and stakeholders to share their proposals for the long-term future of the

AM band. What steps can the Commission take so that there will be a vibrant AM radio service ten or fifteen years from now?

I am optimistic that broadcasters, engineers, and anyone else with an interest in AM radio will participate in our Revitalization Initiative and submit creative ideas to the Commission. Then, after the comment cycle closes in February, I hope that the Commission will act quickly to implement an initial set of reforms to help the AM band.

Quadrennial Review.—The Commission is required by law to review its media ownership regulations every four years. This cycle's review began in September of 2009 as we announced a series of workshops to begin gathering information from various stakeholders. Now, more than four years later, our review is still not complete. The time has come for us to launch our next review, but we have not yet finished the last one. This is unacceptable.

I hope that we will move forward quickly to bring the current quadrennial review to a close and make sensible reforms to our rules so that they reflect the marketplace realities of 2013 rather than those of 1975. For example, I supported former Chairman Genachowski's proposal to eliminate the newspaper-radio and radio-television rule. I also believe that the time has come to eliminate the newspaper-television cross-ownership rule. In this day and age, if you want to operate a newspaper, we should be thanking you, not placing regulatory barriers in your path. I am a realist and understand that whatever reforms we end up implementing will not go as far as I might prefer. But I do believe that we should be able to find common ground and move forward with some sensible reforms.

I continue to have serious concerns, however, about proposals that are under discussion to make Joint Sales Agreements (JSAs) and/or Shared Services Agreements (SSAs) attributable under our local television ownership rule. As broadcasters' share of the advertising market has shrunk in the digital age, television stations must be able to enter into innovative, pro-competitive arrangements in order to operate efficiently. JSAs and SSAs allow stations to save costs and to provide the services that we should want television broadcasters to offer.

In my home state, for example, a JSA between two Wichita stations enabled the Entravision station, a Univision affiliate, to introduce the only Spanish-language local news in Kansas. Across the border in Joplin, Missouri, a JSA between Nexstar and Mission Broadcasting not only led to expanded news programming in that market but also nearly \$3.5 million in capital investment. Some of that money was spent upgrading the stations' Doppler Radio system, which probably saved lives when a devastating tornado destroyed much of Joplin in 2011.

For stations in smaller markets like Wichita and Joplin, the choice isn't between JSAs or having both television stations operate independent news departments. Rather, the real choice is between JSAs and having at most one television station continue to provide news programming while the other does not. If the FCC effectively prohibits these agreements, fewer stations in small-town America will offer news programming, and they will invest less in newsgathering. And the economics suggest that there likely will be fewer television stations, period.

UHF Discount.—Speaking of our media ownership rules, the Commission moved forward in September with an NPRM proposing to eliminate the UHF discount portion of our national television ownership rule. Given the transition from analog to digital television, there is a strong case for ending the UHF discount; UHF signals are not inferior to VHF signals in the digital world. Unfortunately, the Commission's NPRM went about it the wrong way.

We should not modify the UHF discount without simultaneously reviewing the national audience cap, which currently stands at 39 percent. The NPRM recognized the interdependent relationship between the national audience cap and the UHF discount, acknowledging that "elimination of the UHF discount would impact the calculation of nationwide audience reach for broadcast station groups with UHF stations." Or, to put the matter succinctly, eliminating the UHF discount would substantially tighten

the national ownership limit. For example, one company that is now more than 19 percentage points under the cap would be only three points below the cap if the UHF discount were eliminated.

I was therefore disappointed that we proposed to end the UHF discount without asking whether it is time to raise the 39 percent cap. Indeed, this step is long overdue, notwithstanding *any* change to the UHF discount. The Commission has not formally addressed the appropriate level of the national audience cap since its 2002 Biennial Review Order, and it has been about a decade since the 39 percent cap was established. As I mentioned earlier, the media landscape is dramatically different today than it was then. I've spoken a lot about the importance of reviewing our rules to keep pace with changes in technology and the marketplace, and I wish that the NPRM had addressed the national television rule in a comprehensive manner.

I also had serious concerns about how the NPRM addressed grandfathering. While I was pleased that the item at least proposed to grandfather existing combinations that would exceed the 39 percent cap if the UHF discount were eliminated as well as combinations that would exceed such a cap because of an application that was currently pending with the Commission, this did not go far enough. In my view, any combination that is in existence or pending with the Commission as of the date the UHF discount rule is eliminated should be grandfathered. Rules should not be effective before they are effective.

Unfortunately, the Commission lost sight of what the NPRM actually did. It only proposed to eliminate the UHF discount. It did not actually end the UHF discount. The UHF discount is still law of the land today and will be every day after until the Commission votes to repeal it. Through its grandfathering proposal, however, the NPRM effectively told the private marketplace to behave as if the UHF discount had already been eliminated, thus treating the rest of the rulemaking process as an empty formality. The practical results of this "sentence first, verdict afterward" approach will be to dampen the market for broadcast transactions and depress station values.

Foreign Investment.—And finally, over a year ago, I called upon the Commission to modernize its approach to foreign investment in broadcasting. And the declaratory ruling we issued at our November meeting takes a solid step in that direction. While I wished we had gone further, by revising our interpretation of Section 310(b)(4) of the Communications Act to eliminate the obsolete *de facto* ban on foreign investment of more than 25 percent in U.S. broadcast holding companies, and inviting broadcasters to submit information for case-by-case reviews of potential ownership structures, the declaratory ruling should invigorate American broadcasting and increase minority ownership.

The Commission recognized earlier this year in its *Second Report and Order* addressing foreign ownership of common carriers that foreign investment can be an "important source of financing . . . innovation, economic growth and job creation" in the telecommunications sector. The same is true for broadcasters. And since joining the Commission, I have heard the same message over and over again when it comes to ownership diversity: The biggest obstacle to minority ownership in the broadcast industry is the lack of access to capital. That is why the Minority Media and Telecommunications Council and 30 other national minority and civil rights organizations told us that permitting additional foreign investment in the broadcasting industry would be "one of the most significant steps the Commission could take" "[t]o reverse the decline in minority broadcast ownership." With an expanded ability to access capital from abroad, minority entrepreneurs will have a better chance of being able to enter into the broadcast industry or expand existing businesses. Indeed, this issue demonstrates how regulation can serve as a barrier to minority ownership and how modernizing our rules can promote diversity.

VI. Modernizing FCC Processes

Before concluding, I would like to touch on a subject that affects all areas of the Commission's work: process reform. This Subcommittee has been a leader on this issue, and I commend your efforts. The Federal Communications Commission Consolidated Reporting Act, for example, would modernize

the Commission's reporting obligations and free up Commission resources to work on other important projects. It passed the House of Representatives unanimously this year, and I hope that it is soon enacted into law. And just this week the bipartisan leadership of the Subcommittee introduced reforms that would set aright the FCC's procedures and improve our long-term performance.

The FCC, however, should not and need not sit still waiting for Congress to act. We should do what we can on our own to improve our internal processes. Our goal should be clear: The FCC should be as nimble as the industry that we oversee. All too often, proceedings at the Commission needlessly drag on for many years. In an oversight hearing last year before this Subcommittee, for example, two Members—one Republican and one Democrat—asked about proceedings that had been pending at the Commission for about a decade. While I am pleased that the agency finally did take action in those two proceedings in the months following the hearing, it shouldn't take inquiries from Congress for the Commission to complete its work. And consumers shouldn't have to wait for years for their complaints to be answered.

The good news is that we are making progress on this front. Commissioners are voting on items more quickly after they are placed on circulation. The time between the adoption and the release of items has decreased, and we have reduced the FCC's backlog. And yet, we still have much room for improvement.

Since taking office, I have proposed a variety of reforms to improve the Commission's performance. We should streamline our internal processes where possible. For example, let's adopt a procedure akin to the U.S. Supreme Court's *certiorari* process for handling applications for review. Let's speed up our processing of smaller transactions. Let's establish more internal deadlines, such as a nine-month deadline for ruling on applications for review and petitions for reconsideration along with a six-month deadline for handling waiver requests. And when we adopt industry-wide rules, let's more frequently use sunset clauses that require us to eventually revisit the wisdom of (and, if necessary, revise or repeal) those rules.

Beyond reforming our rules, we should become more accountable to the public and to Congress about how long it takes the Commission to do its work. One way to do this would be by creating an FCC Dashboard on our website that collects in one place key performance metrics. Let's keep track of how many petitions for reconsideration, applications for review, waiver requests, license renewal applications, and consumer complaints are pending at the Commission at any given time. And let's compare the current statistics in all these categories against those from a year ago, from five years ago, so everyone can see if we are headed in the right direction. If we make it easier for others to hold us accountable for our performance, I'm confident that we would act with more dispatch.

I am pleased that Chairman Wheeler has made process reform a priority. He has asked experienced counsel Diane Cornell to focus specifically on this issue, and I look forward to working with her over the coming months and years. My emphasis on acting promptly is not just about good government. It is also about the impact that the FCC's decisions (or lack thereof) have on our economy. As the pace of technological change accelerates, so too must the pace at the Commission. We can't let regulatory inertia frustrate technological progress or deter innovation.

* * *

As you can see, we have a lot of issues on our plate right now, and the stakes are high. But with a full Commission in place, and by consulting with Congress, I'm confident that we can discharge our responsibilities in a way that will serve the public interest. Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee, thank you once again for holding this hearing and allowing me the opportunity to share my perspective with you. I look forward to answering your questions and continuing to work with you and your staff in the future.

Mr. WALDEN. Thank you, Commissioner Pai. We appreciate your thoughtful testimony and your recommendations.

We will now go to Commissioner O’Rielly. Welcome aboard the Federal Communications Commission. Welcome back before this committee. And you know how the rules work, so please go ahead, and again, thank you for being here today.

STATEMENT OF MICHAEL O’RIELLY

Mr. O’RIELLY. Thank you to the Chairman and ranking member, and members of the subcommittee.

In respect of the time of the subcommittee members, I would like to make five points and then move on to answer your questions.

Point 1. I am truly honored to be before the subcommittee. I had the pleasure of working in front of the full committee staff for 8 years, and it was one of the greatest jobs I will ever have. The breadth of knowledge and command of the diverse policy issues by the members of this committee are of the highest quality.

Point 2. The FCC is an independent agency, not part of the Executive Branch. It was created by Congress and serves to implement the statutes enacted by Congress. I firmly believe that our role is to follow the statute as written, and not substitute our thoughts for your work. The Commission has no right or authority to ignore the statute or statutory deadlines. Thankfully, I have worked on most communications policy statutes over the last 20 years, and have firsthand knowledge of the intent behind many key provisions.

Point 3. The Commission has difficult but exciting work ahead. If done correctly, it can have a significant positive impact on U.S. gross domestic product and on national productivity. Our communications companies are extremely important to the U.S. economy, and we must allow them to flourish in the world marketplace. The Commission’s overall focus, however, must remain on the consumer.

Point 4. In terms of specific items, my particular focus and attention will be on the immediate work before the Commission. In the big picture, the FCC must finish rules for the Incentive Auctions, continue USF reform, proceed with the IP transition trials, and complete our media ownership proceeding.

Point 5. Part of the role of the Commission is to conduct outreach and provide information to the public. I take this function seriously, and it is why I am choosing to spend some time on the issue of distracted driving caused by wireless device users. Drivers need to put away their wireless phones and focus their “eyes on the drive.” Let me be clear. My view is the wireless industry is doing yeoman’s work to get out the message. They are aware of the problem, they are dedicating considerable resources to finding solutions and education, and they are working hard to prevent the horrible tragedies caused by texting, viewing, emailing, tweeting, mapping, posting, among others, while driving. It does not appear that more government regulation will be helpful in this space. Instead, I am talking to my colleagues to find ways to use our voice in non-regulatory, non-costly ways to educate the public and prevent senseless accidents.

Thank you.

[The prepared statement of Mr. O’Rielly follows:]

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
FEDERAL COMMUNICATIONS COMMISSION**

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

"OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION"

DECEMBER 12, 2013

Thank you Subcommittee Chairman Walden, Ranking Member Eshoo, Full Committee Chairman Upton Ranking Member Waxman, and Members of the Subcommittee.

It is a distinct honor to be before this Subcommittee. I have great reverence for this body and its Members. As a staff member to the Committee for eight years, I spent many days and nights in this very room working with colleagues on both sides of the aisle to resolve difficult policy issues. My time here taught me valuable lessons that I took with me to the U.S. Senate and helped prepare me for my current role at the Federal Communications Commission.

I want to extend my appreciation to my fellow colleagues and the staff of the Commission. It has truly been a smooth transition and the FCC family has been incredibly welcoming. As I have previously stated, I look forward to following Chairman Wheeler's leadership as best I can while staying consistent with my principles. Communications policy has not been, and should not be, overly partisan, and I do not intend to make it so. When my colleagues and I do disagree, I hope to do so quickly, respectfully, and with the intent of collaborating on the next item.

My overall goal while at the Commission is to work with the Chairman and my fellow Commissioners to make the necessary decisions – decisions that will help all communications participants, especially

consumers, by bringing greater certainty to the marketplace. To do this, I am digging into the substance, asking questions, requesting meeting participants to provide facts and figures, providing feedback early in the process, and making myself available to vote expeditiously as items are presented. By making prompt decisions, we also allow entities who disagree to seek reconsideration at the Commission or through the court system.

I start my time at the Commission with the same fundamental principle that I had as a staff member: the Commission was created by Congress, the true people's representatives, to implement its laws consistent with the U.S. Constitution. The Commission does not have the authority to ignore the statute, statutory deadlines, or to pick and choose which parts it prefers to implement and enforce. In instances where a statute may be less than perfectly clear or where Congress has delegated specific authority, the Commission is obligated to adhere to the intent of the statute and not substitute its viewpoints for those of the men and women of the United States Congress. If the Commission is lacking authority it would like to exercise, it should seek out the Members of this Committee to change the statute. In other words, I was sincere when swearing an oath to "faithfully discharge the duties of the office" as a Commissioner.

I would like to take this opportunity to briefly provide my views on a number of select topics that may dominate the Commission's time and attention in the coming months and, therefore, deserve special mention:

Spectrum Incentive Auctions – The Commission has the large task of implementing the Middle Class Tax Relief and Job Creation Act of 2012. Contained within that legislation is the framework and authority for the Commission to proceed with the most complex spectrum auction ever attempted. I helped shape and craft the text of the incentive auction statute, in partnership with the able Republican and Democratic staff from the House and Senate. It is by no means perfect law and represents a reasonable compromise on most parts. The Commission's task is to entice enough broadcasters to participate, reasonably protect

those broadcasters that choose otherwise, and convince wireless companies to bid on the spectrum made available. And we must get the process right: a failed auction helps no one. Therefore, my guiding principle with regard to the incentive auction is to conduct it as soon as practicable but to focus on success.

IP Transition – In my opinion, the phrases “IP transition” and “IP migration” are misnomers because they imply that communications is moving orderly from old technologies to IP-based systems. That is simply incorrect. We are in the middle of an IP technical revolution and it is mostly happening notwithstanding the FCC. To illustrate: the Commission’s recent local competition report revealed that, as of December 31, 2012, 43.5 percent of residential wireline voice connections were VoIP.¹ In response to the call by outside parties, Chairman Wheeler has proposed a rough outline on how to proceed with trials of certain aspects of IP technology in order to understand the impact of moving to IP-based systems. I am very supportive of these efforts, as long as the Commission does not allow the trials to lead to delay or inaction.

Universal Service – The Commission is entrusted by statute with overseeing effective and efficient universal service programs. During my Hill tenure, I worked for a number of House and Senate Members who represented considerable rural and high-cost areas, and so I am extremely familiar with the difficulties faced by providers trying to offer services and rates that are reasonably comparable to those offered in urban areas. On the other side of the equation, it is important to remember that funding for these programs comes from American ratepayers, and thus, the Commission is a steward for their generosity; they pay higher rates so other Americans can get better services at lower rates. In 2011, the Commission completed a multi-year effort to reform and transform the high-cost universal service program, now called Connect America Fund. While I was not at the Commission at the time, I am

¹ Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of December 31, 2012*, at 14 (Nov. 2013), http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1126/DOC-324413A1.pdf.

supportive of many provisions contained in that decision. That said, I have heard from a number of entities regarding concerns about how the Commission's order has been implemented through follow-up orders. I am in the process of obtaining the facts and figures to form an accurate assessment of the concerns and complaints, which may be valid. In general, I believe that if there are errors in models, assumptions, or data, the Commission must make the necessary corrections, and do so promptly, but the general tenants of the universal service reform effort are strong and must be maintained.

Media Ownership – The Commission has failed to comply with the obligations required by the Telecommunications Act of 1996, which were subsequently amended by Congress, to review and repeal or modify any of its media ownership rules that are no longer in the public interest as a result of competition. In fact, I was involved in the decision to extend the time for review under section 202(h), based on a claim made by the Commission and some outside parties that the original two-year review process was too short and prevented thoughtful inquiries. Sadly, we did not know then that a quadrennial review requirement would lead to near-complete paralysis, allowing proponents of a static market to win by default. This is unacceptable; the Commission needs to complete its 2010 review and vote. As stated above, the Commission has no authority to ignore the statute.

FCC Process Reform – Over my years working on this Committee and in the Senate, I have worked on a number of legislative efforts to reform the Commission's operations and structure. I will defer to the Congress on legislative changes to alter the workings of the Commission, but I support the general thrust of the efforts to make the Commission more effective and efficient and to save taxpayer dollars. Chairman Wheeler and I – as the new kids on the block, as he likes to say – have had discussions on ways to improve the overall efficiency of the Commission, and I am very open to considering ones that can be executed without legislation. I also look forward to completion of the Chairman's review on process reform. In the meantime, I offer myself up as a resource to Members of the Committee on technical or policy proposals to improve the Commission's functions.

Distracted Driving – Part of the role of a Federal Communications Commissioner is to conduct outreach and provide information to the public. I take this function seriously, and it is why I am choosing to spend some time on the issue of distracted driving caused by wireless device users. Drivers need to put their wireless phones down and focus their Eyes On The Drive. Let me be clear, my view is that the wireless industry is doing yeoman's work to get out the message: they are aware of the problem, they are dedicating considerable resources to finding solutions and education, and they are working hard to prevent the horrible tragedies caused by texting, viewing, emailing, tweeting, mapping, posting, among others while driving. It does not appear that more government regulation would be helpful in this space. Instead, I am talking with my other Commissioners to find ways to use our voice in non-regulatory, non-costly ways to educate the public and prevent senseless accidents.

I look forward to answering the questions from the Members of this distinguished institution.

Mr. WALDEN. You win the prize. Two minutes and 37 seconds return. No, we want to thank you all—

Mr. O'RIELLY. I'm familiar with this committee very well.

Mr. WALDEN. Yes, that is right. Yes indeed. Some will learn along the way. We appreciate all your testimony and your recommendations, and it is just good to have all five Commissioners in place, or four Commissioners and Chair in place. As Commissioner Pai said, it has been a year to the day, I think, since we had the Commissioners here, so welcome aboard.

I know we all have a lot of questions. I am going to—I have learned at the heels of the former Chairman, Mr. Dingell, about trying to get answers at a relatively rapid rate, so I am going to try and pose some of these, not as skillfully as he does, in a yes-or-no format, but the extent to which you can address them rapidly, and that would be good.

And I want to start, Mr. Wheeler, with you as Chairman. I know you all are voting on this NPRM today. I do want to stress, it would be helpful if the public got to see that. As far as I know, you and your staff are the only ones who see it in advance. That is one of the process issues I hope you will break through, and this maybe will be the last NPRM that is not public first. But the Commission—I want to follow up and figure out how you are going to permit, as your testimony indicates, airlines to choose whether to allow voice calls, and here is why I ask it. Is the Commission planning to waive either the common carrier obligation to complete calls, or the net neutrality rules on blocking VoIP packets? Both would seem to be necessary in order to prevent voice calling from aircraft.

Mr. WHEELER. So thank you, Mr. Chairman.

So first to your point that the NPRM that we are considering today will be complete in listing the rule—the words of the rule—

Mr. WALDEN. Right.

Mr. WHEELER [continuing]. That we are considering. In light of the philosophy that—

Mr. WALDEN. Right.

Mr. WHEELER [continuing]. You and I share, which is let us get it out there so people can see it.

Mr. WALDEN. Right.

Mr. WHEELER. The purpose of this is to do just that; to put the language out so people can see it and give us their comments on it.

Now, to your specific question, the Open Internet Order specifically provides what is called the premises exemption, and that means that coffee shops, bookstores, and airlines mentioned by name, are exempted from the Order in that, under the definition of reasonable network management, which is one of the tools that are allowed for premises owners, which include airlines, there is the ability to pick and choose exactly what comes over.

Mr. WALDEN. All right. We will follow up more on the other piece that you might have to deal with as well.

I want to ask you about Title II. You have a—you haven't, but there has been a proceeding open at the Commission for a long time that would—the reclassification docket. Are you planning to keep that open or are you planning to close it?

Mr. WHEELER. So I think we are in a situation right now where we are waiting for a court opinion on exactly what our authorities are on a broad sense, and that there is no rush between now and then to make a decision on Title II. I will note, however, that, as you mentioned, this docket has been open for a long time, and it has not had the threatened chilling effect that some had worried about on investment in wireless and broadband infrastructure. This is an issue that clearly is going to have to be dealt with—

Mr. WALDEN. Right.

Mr. WHEELER [continuing]. And we will start with the court decision.

Mr. WALDEN. Sorry, I have about three more questions I want to try and get in here.

We understand the FCC has launched a study, a multimarket study, of critical information needs. Apparently the study includes a qualitative media analysis which would require interviewing reporters and editors to figure out how the media decide what news stories to run. Are these the kinds of questions that government entities should be asking of the news media? And with somebody with a journalism degree, I do get a little chill up my spine thinking about the government asking how these decisions are made. Doesn't it have an effect on the media that the regulatory body is even asking these questions, and how does it help you fulfill your Section 257 mandate fund which is predicated?

Mr. WHEELER. So I think this goes back to the root of the discussion you and I were having a moment ago about making sure that the public understands what is going on. The 257 requirement mandates lowering barriers to access to media for minorities, women, small business and other identified groups.

In order to make that kind of a judgment, you have to have facts. In order to have facts, you do studies. And what we did was, there is a study that has been proposed by a consulting firm that we were working with, and we put that out for public notice to exactly get the kind of input—

Mr. WALDEN. All right.

Mr. WHEELER [continuing]. That you are suggesting—

Mr. WALDEN. All right, I—

Mr. WHEELER [continuing]. But it is not, and this is not an effort to influence the media.

Mr. WALDEN. Well, I am going to interrupt you just a second because when you are spending somewhere between \$209,918, and some of the questions of the media personnel include what is the news philosophy of the station, who decides what stories are covered, what are the demographics of news management staff, have you ever suggested coverage of what you consider to be a story with critical information or consider its use, what was the reason given for the decision, these seem like really internal journalistic issues.

Now, I need to move on to one other because I am actually over, but it is a very important question. The quantile regression analysis, QRA, approach to provide universal support for world companies, that was part of the Commission's USF reform efforts, has had a negative impact, negative impact, on investment and the deployment of broadband services in rural America. Commissioner Pai, you have been an advocate for the need to address this prob-

lem, to ensure that rural Americans are not left behind. What do you recommend, Commissioner Pai, needs to be done with regard to the application of the QRA?

Mr. PAI. Well, thank you for the question, Mr. Chairman.

I have seen the problems on paper. The Obama Administration's Department of Agriculture, for example, reported earlier this year that some 37 percent of funds from RUS are sitting on the table because there is so much uncertainty among rural carriers. And I have seen it in person from my home state of Kansas to carriers in rural Alaska. Because they are uncertain about what the future portends, because of the QRA, they are not making additional investments in terms of broadband, and that creates a digital divide that we won't be able to bridge.

Mr. WALDEN. So, Chairman Wheeler, if I might, given the negative impact of the QRA that it is having on broadband development, especially in rural America, do you intend to reconsider its application?

Mr. WHEELER. Yes. As a matter of fact, I have asked the Bureau to draft an Order that I could share with my colleagues to eliminate the QRA and to return to the high-cost loop support model.

Mr. WALDEN. I appreciate that. I have got other issues obviously with the FM translators for AM, and delay in the rulemaking, dealing with cable operators and the groups utilized by them, and so maybe we can follow up afterwards, but the committee has been kind to let me overextend my questioning, but we are usually fairly flexible on that here.

So I will now turn it over to the ranking member from California, Ms. Eshoo.

Ms. ESHOO. That is great. So I have 7 minutes, right, Mr. Chairman?

Mr. Chairman, you said that it is your 39th day. What I would like to add to that is that I think your adult lifetime of work has brought you to this. So it is not just really the 39th day—

Mr. WHEELER. It has been a long lifetime I think.

Ms. ESHOO [continuing]. It is a wonderful path that has prepared you for this position.

I have a whole list of niche issues, which is really the way we deal with all of these things.

First of all, do you think you are going to get a deal on cell phone unlocking by the end of this year?

Mr. WHEELER. We will be presenting to the Commission today, the voluntary agreement that has been reached with the wireless industry. And so the answer to your question is strongly yes.

Ms. ESHOO. That is just terrific. My second question to you, Mr. Chairman, is last week, as you know, I joined with my colleagues, Representatives Doyle and Matsui, to ask you to take action to prevent AT&T from implementing a significant rate hike for their special access customers. I appreciate what you have done in terms of the suspension, but I think that there is much more than needs to be done on special access reform.

Can we expect further action on special—

Mr. WHEELER. I—

Ms. ESHOO [continuing]. Access reform?

Mr. WHEELER. I apologize, Ms. Eshoo, but I am currently recused from that—

Ms. ESHOO. OK.

Mr. WHEELER [continuing]. Proceeding, and so—

Ms. ESHOO. I see. So how will it happen?

Mr. WHEELER. It moves ahead with the other members of the Commission.

Ms. ESHOO. I see. Well, I am just going to assume that they are going to—that this area is going to be examined because we really have to have reasonable rates for this important service.

Commissioner Rosenworcel, thank you for your testimony. I love the way you present things. It is so clear. You can feel the sense of urgency and why it is urgent.

How are you going to pursue getting this done at the Commission? The whole issue of E-Rate, everything that is attached to it, you have presented an eloquent case, and I think that you gave a fantastic speech last week on 911 and the problems that we have between indoor and outdoor. So on both that and the E-Rate, maybe I should be asking the Chairman what he plans to do on E-Rate. I know what you want to do, but maybe we should just switch over to Chairman Wheeler.

Mr. WHEELER. Well, I think on E-Rate, that there is a leader in this Commission, and that Commissioner—

Ms. ESHOO. We only need five.

Mr. WHEELER. What?

Ms. ESHOO. We only need five.

Mr. WHEELER. I would like to associate myself with the remarks of—

Ms. ESHOO. Good. Good.

Mr. WHEELER [continuing]. Ms. Rosenworcel.

Ms. ESHOO. Well, we will look forward to you joining her in that effort, and maybe the next time the Commission comes before us, you can tell us the steps that you are going to take.

Mr. WHEELER. We are going to put out a schedule, just like we have for the Incentive Auction and the IP transition, to address this issue.

Ms. ESHOO. That is terrific. On the challenge of the indoor versus outdoor and wireless and 911, what is your plan to address this?

Ms. ROSENWORCEL. Well, as the old saying goes, you may only make one 911 call in your life, but it will be the most important call—

Ms. ESHOO. Right.

Ms. ROSENWORCEL [continuing]. You will ever make.

Ms. ESHOO. Yes.

Ms. ROSENWORCEL. And right now, if you make that call from your wire line phone, your first responder knows exactly where you are.

Ms. ESHOO. Right.

Ms. ROSENWORCEL. If you make that call outdoors, in a field, using your wireless phone, we have location accuracy standards so that first responder—

Ms. ESHOO. Well, I am asking—

Ms. ROSENWORCEL [continuing]. Can find you.

Ms. ESHOO [continuing]. What you want to do about where the challenge lies.

Ms. ROSENWORCEL. So—

Ms. ESHOO. We know what is working.

Ms. ROSENWORCEL [continuing]. Indoors—

Ms. ESHOO. Yes.

Ms. ROSENWORCEL [continuing]. Is the problem. We have no standards. And increasingly, household are cutting the cord. More than $\frac{1}{3}$ of households rely exclusively on their wireless phones. So I don't think it is acceptable that when people make emergency calls, first responders can't find them.

Ms. ESHOO. Yes.

Ms. ROSENWORCEL. I have recommended in that speech that you mentioned that we start a rulemaking to address this, because we have heard both from carriers—

Ms. ESHOO. Yes.

Ms. ROSENWORCEL [continuing]. And from public safety officials on the frontline that this is an issue that—

Ms. ESHOO. Well, good for you for identifying this and taking it up, because I think one of the things that I taught my children from their earliest memory was 911, and putting their little fingers on the keypad so that they would understand that, and I think—

Ms. ROSENWORCEL. Me too.

Ms. ESHOO [continuing]. You are absolutely right. Commissioner Pai, you made a wonderful comment, something about not one dime more on phone bills. I want to raise something with the Chairman, going back to it, about below-the-line fees. Representatives Doyle, Lujan, Matheson, myself, we wrote to our Nation's leading wireless and wire line providers and we asked them about their practice of applying below-the-line fees on monthly bills. I agree with Commissioner Pai. That is why we wrote. We have a concern about what people are paying. These things are hidden. They think that they are—they think everything on their bill is a tax. And I have to tell you, I brought my bills in. I couldn't tell what the heck they were. Who was doing what to whom and what it was for. So tell me what you think the Agency, or if you have—I know there is a long list of big challenges, but these are still important issues for consumers. What steps can the Agency take under existing statute to ensure that consumers know exactly how much they are paying each month, especially prior to signing up for their service, and this whole issue of below-the-line fees?

Mr. WHEELER. Yes. Ms. Eshoo, this is a very legitimate concern. The specific one I believe you are referencing is a re-transmission consent—

Ms. ESHOO. That too.

Mr. WHEELER [continuing]. The charge—

Ms. ESHOO. Yes.

Mr. WHEELER [continuing]. That cable operators have just begun putting on—

Ms. ESHOO. Right.

Mr. WHEELER [continuing]. The bill.

Ms. ESHOO. Right.

Mr. WHEELER. And I say just begun, and I am trying to get our arms around that and figure out just exactly what our authorities

are to answer your question. It does, however, strike me that it fits right in, the broader issue that the Chairman and Mr. Upton and others have talked about in terms of the kinds of issues that need to be addressed in a Telecom Act rewrite here, is just what is going on. If they are——

Ms. ESHOO. Yes, but that will be like 7 years from now.

Mr. WHEELER. Well, no, but I——

Mr. WALDEN. Oh, no.

Ms. ESHOO. Well, yes.

Mr. WHEELER. I won't speak——

Ms. ESHOO. Let us see.

Mr. WALDEN. I won't get crosswise between you and the Chairman.

Ms. ESHOO. OK. Yes, no. Thank you. Thank you, Mr. Chairman, and thank you Chairman Walden.

Mr. WHEELER. Thank you.

Ms. ESHOO. And thank you to the entire Commission. I want to say also a welcome to the whole new team that has come in, and we wish you well, we really do. And the Chairman and the Commission will operate at a higher level because of the high level of people that have come in to support the work. So congratulations to each one of you.

Mr. WALDEN. We will now move on to the vice chair of the full—of the subcommittee, Mr. Latta, from Ohio from 5 minutes.

Mr. LATTA. Thank you very much, Mr. Chairman. Again, thanks very much for our Commission members for being with us today.

And this is a question I would like to ask all of you, and this question is, the Incentive Auction legislation prohibits the FCC from excluding qualified bidders from the auction. And fortunately, while the Incentive Auction process works its way up to the Commission, it appears that the Wireless Bureau is simultaneously working on the "spectrum aggregation" docket to achieve—de facto spectrum caps. Will you commit to allowing any interested bidder that complies with the statutory requirements to participate fully in the auction? And, Chairman, if I can start with you, because I notice in your testimony on page 6 that you talk about the Incentive Auction, you had said that you are looking at a voluntary market oriented approach, so if I could start with you.

Mr. WHEELER. The statute is quite explicit in that regard that the Commission may not exclude somebody from participating.

Mr. LATTA. And also, what about aggregating, would it be wide open for everyone to be involved in that?

Mr. WHEELER. Well, it is interesting with the—what has been developing here. I mean the CEO of AT&T recently came out with a statement saying, wait a minute, I think I would like to have rules to make sure that not one party can run away with all the spectrum. So I think there is—in between those positions is where reality exists, but the statute, I agree, is quite clear. The statute says that you will not exclude anybody, and the statute also says that the Commission will design an auction so as to promote economic opportunity and competition and consumer choice to sustain a healthy wireless marketplace, and we will do both.

Mr. LATTA. Madam Clyburn.

Ms. CLYBURN. Yes, Section 6404 is clear that any party that abides or obeys the rules, that they are qualified to participate. It also makes clear that the Commission has the authority to enforce and introduce rules of general applicability that will allow for spectrum aggregation in order to promote competition. So again, my colleague mentioned that part of the reason for, I think for some of the robust participation and the type of ideas that we are seeing is because we took a dual path on the same day we released the rules, or released the notice of opposed rulemaking on Incentive Auction, we also released a notice of proposed rulemaking on trying to glean information about this dual path. So I think that this, in the long run, will help and improve our information and information dissemination and our acquisition and rulemaking once we decide on a clear path forward.

Mr. LATTA. Thank you. Commissioner?

Ms. ROSENWORCEL. The Middle-Class Tax Relief and Job Creation Act says that we can have rules of general applicability, but we cannot exclude anyone from participation in the auction. I think it is easy and simple; we just have to follow the law.

Mr. LATTA. Commissioner Pai?

Mr. PAI. I would agree with my colleague, and I would also point out that if you look at the end goal which is to have a successful auction that pushes out a lot of spectrum, yields sufficient revenue to fund national priorities, and provides fairness to all parties involved, then we should not preemptively deter participation from wireless carriers by adopting unduly strict spectrum policies.

Mr. LATTA. Commissioner O'Rielly?

Mr. O'RIELLY. I want to thank my colleagues for stating that the statute is clear because, as one of many people who worked on it, it was an effort to give the Commission some authority in this space when members couldn't come to agreement. I am extremely hesitant to impose limitations on spectrum holdings because we have certain other obligations under the statute. In a nice way, I mean the money from the auctions has already been spent. We have already spent the money from the Spectrum Act, and so we have obligations to provide \$7 billion for FirstNet, and we have deficit reduction numbers that have already gone out the door. So I am worried about anything that would depress auction revenues. I am certainly aware of the statute and I want to remain open-minded, but I am hesitant at this time to impose any type of limitation.

Mr. LATTA. Thank you. And many of you know that rural call completion has been an ongoing issue in my district, and I commend the FCC for producing the November 8 Order and Further Notice of Proposed Rulemaking to improve the Commission's ability to monitor the delivery of calls to rural areas by mandating certain recording, retention and reporting requirements from carriers. And, Commissioner Pai, do you believe the November 8 Order will resolve the call completion problem or does more need to be done?

Mr. PAI. Congressman, I certainly hope that it will. Whether it is Toledo or Topeka, we need to figure out where the kink in the system is, whether it is intermediate providers, whether it is last-mile, what point in the network is failing. And if it is a technical problem, then we can take steps to fix that technical problem, but

if it is something else, then the FCC needs to be empowered to take corrective action. So I certainly support taking the appropriate actions sooner rather than later on that issue.

Mr. LATTA. Thank you very much.

Mr. Chairman, I see my time has expired and I yield back.

Mr. WALDEN. Thank the gentleman.

We now turn to the ranking member of the full committee, Mr. Waxman, for 5 minutes.

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

I just want to indicate that under the Act, the FCC may not single out a specific provider for exclusion from a system of competitive bidding. At the same time, the FCC is permitted to adopt and enforce rules of general applicability that promote competition. Even AT&T recently acknowledged they would support rules that limit the amount of spectrum any one company could acquire as long as the rules applied evenly to all auction participants.

Chairman Wheeler, as you know, I am a strong supporter of the FCC's open Internet rules because I believe the Internet must remain an open platform for innovation and commerce. You have emphasized the importance of the Open Internet Order. At the same time, you recently made comments suggesting that an Internet service provider could charge a content provider, such as Netflix, a fee in order to guarantee the best available transmission speed. Do you see these type of business arrangements as consistent with the FCC's open Internet rules that you support?

Mr. WHEELER. Thank you, Mr. Waxman, for raising that issue because it gives me an opportunity to get more specific than I was in Ohio.

I am a strong supporter of the open Internet rules, full stop. The rules were written in such a way as to envision opportunities for innovation and experimentation, and to impose on them a balance between protecting the open Internet, protecting consumers and stimulating innovation. New ideas under the Open Internet Order, new ideas such as those you have referenced, in a wireless environment particularly, are not prohibited, but there is a clear responsibility for the Commission to make sure that what takes place does not interfere with Internet access, is not anticompetitive, and does not provide preferential treatment, and we will enforce that. We will maintain the balance between innovation and assuring there is an open Internet.

Mr. WAXMAN. I appreciate your expanding on that issue. While network infrastructure and technology have changed since the passage of the 1996 Telecommunications Act, the values embedded in the Act have not. And, Mr. Chairman, I know that the Commission will soon begin a process to collect real-world information and data on the IP transitions. How will the Commission continue to advance the longstanding goals of competition, universal access and consumer protection throughout this transition process?

Mr. WHEELER. You know, Mr. Waxman, there are many people who have described the IP trials as a technology trial. I don't think they are a technology trial. We know how to build IP networks. They are exactly what you just phrased. They are a values trial. They are how do we make sure that the values that, for 100 years, Americans have come to expect from their networks continue even

after the way in which that network operates changes. And that is what we are going to be looking for in these trials. It is not whether the guzintas and the guzouttas wash. We know that can get taken care of. It is how do you preserve the values in the new technological environment?

Mr. WAXMAN. Commissioner Rosenworcel, do you want to add anything to that?

Ms. ROSENWORCEL. I think there are so many exciting things that can come with new networks, and I think we should embrace the future rather than reject it. So I think experimenting in these kind of trials is a smart way to go, but as we move into the future, what we do has to be informed by the values that have always been a part of communications policy. And I see four: public safety, universal access, competition and consumer protection.

Mr. WAXMAN. OK. Commissioner O'Rielly—

Mr. O'RIELLY. Yes, sir.

Mr. WAXMAN [continuing]. I appreciate your appeal to bipartisanship in your testimony, and I know you played an important role in helping us get bipartisan legislation in the passage of the Public Safety and Spectrum Act last year, because you helped negotiate the provisions and the availability of unlicensed spectrum in the Broadcast Incentive Auction.

What is your perspective on unlicensed spectrum generally, and do you think the Commission is on the right track in balancing the availability of unlicensed and licensed bands?

Mr. O'RIELLY. Yes, I am a strong proponent of unlicensed spectrum. I am always amazed what the innovators and the experimenters can do with unlicensed spectrum. I think there is great opportunity in 600 MHz for more unlicensed spectrum. The NPRM that was put out on this matter proposed a number of different ideas where unlicensed could fit. The Commission proposed Channel 37, the guard bands, if there are going to be guard bands, depending on what our band plan looks like. We talked about wireless microphones. There's still going to be white space at least in 500 MHz, maybe in 600 MHz as well. And then there are going to be residual conversions depending if you are talking about converting from 6 megahertz broadcast channels to 5 megahertz wireless channels. So there should be opportunities in the Incentive Auction proceeding after our rules are complete for unlicensed spectrum, and I am strongly supportive of those.

Mr. WAXMAN. Thank you.

Mr. O'RIELLY. The only difficulty is figuring out how big those guard bands should be.

Mr. WAXMAN. OK, thank you. And my last question is to Commissioner Pai. You stated in your testimony that 92 percent of Americans now can choose from 10 or more wireline competitors. If that number is accurate, doesn't it demonstrate that the procompetitive policies of the '96 Telecom Act are working, and don't you believe we should continue to support a marketplace that gives non-incumbents a fair chance to compete?

Mr. PAI. Congressman Waxman, thank you for the question. I think what the multiplicity of choices that consumers enjoy today demonstrates is that in the IP environment where you have convergence, something that we only dreamed about during the '96 Act—

where you have telephone companies competing with cable companies competing with wireless companies and others to provide the same services that we can now rely in a way we could not in 1996 on the marketplace and technological innovation to drive consumer choice. And so to the extent that there are values of competition embedded in the 1996 Act, I, of course, embrace those, but I think we also need to be mindful of the fact that technology can quite often outpace where laws and regulations are, and that appears to be where we are with respect to the IP transition.

Mr. WAXMAN. Yes, but do you think we should support a marketplace that gives non-incumbents a fair chance to compete?

Mr. PAI. Absolutely. I think the marketplace should give every competitor a fair chance to compete.

Mr. WAXMAN. Thank you. Thank you, Mr. Chairman.

Mr. WALDEN. Now turn to the gentleman from Michigan, Mr. Rogers.

Mr. ROGERS. Thank you very much, and as the representative of Michigan State University, I want to say thank you for giving me a great weekend. I appreciate that. I do find it suspicious, however, that my phone has not worked since the game.

Mr. WHEELER. Yes.

Mr. ROGERS. I wonder if you might be looking into that for me, Mr. Chairman.

The FCC's recent Communications Security Reliability and Interoperability Council meeting—

Mr. WHEELER. Right.

Mr. ROGERS [continuing]. I understand you talked about the need to apply metrics and evaluate cyber security. Can you elaborate on that for me?

Mr. WHEELER. The CSRIC, which is the shorthand for the group you are talking about, has done a terrific job in using the multi-stakeholder process to come up with rules on botnets, on DNSSEC, on router security, important kinds of network security issues, but it is not enough just to say, OK, here are the rules, and then walk away. The question is, are the rules working. And so what I had asked CSRIC to do, not for us to impose but in the multi-stakeholder process, is to say how do you establish metrics to know if this is working, because that is the trust-but-verify kind of a situation.

Mr. ROGERS. Well, how do you find those—how are you working through that process to define metrics in threats that change literally by the hour?

Mr. WHEELER. So on those 3 issues, for instance, on botnets, for instance, how can you track the movement of where botnets are going, they seem to have moved into data centers, for instance, and what do we know about that and what might that suggest, and what are we seeing in terms of results of the implementation of the kinds of things that CSRIC has suggested. That is what we need to know.

Mr. ROGERS. All right, and if you find that out, and you find that you are in some disagreement with industry on meeting those standards, do you foresee a regulatory scheme?

Mr. WHEELER. Well, I wouldn't want to presume a hypothetical. I would hope that we would be working with industry to identify

what needs to be done, and much like we are going to announce today on cell phone unlocking when we sat with industry and said, here is a problem, it has to be solved, and by the way we will have metrics on that. I think that is the preferable first approach, and that is the approach that we are taking with CSRIC.

Mr. ROGERS. But when you say that, does that mean—if I hear you correctly, that means you are at least contemplating a regulatory scheme of some sort, beyond just the voluntary here is our metrics, try to—

Mr. WHEELER. Yes, that is—

Mr. ROGERS [continuing]. Meet those metrics.

Mr. WHEELER [continuing]. That is the right question but it is not—the key word is contemplating. I have talked repeatedly about what I call the seesaw, the regulatory seesaw. You do this, we don't need to do this. And so what CSRIC is doing is saying, OK, here are the kinds of things that need to be done. Saying let us measure them, make sure that is going because the result is that we don't. If the seesaw has to tip, it has to tip, but it only tips on the basis of need, not the basis of theory.

Mr. ROGERS. If I understood your answer, there is a possibility you could regulate.

Mr. WHEELER. There is always the possibility, sure.

Mr. ROGERS. Yes, OK, we should have lots of conversations on that. I worry that by the time you have processed your regulatory framework, you are too late, you have missed the boat, the threat changes—

Mr. WHEELER. I—

Mr. ROGERS [continuing]. They have moved down the—OK.

Mr. WHEELER. I could not agree more. The challenge of networks and the reason why the multi-stakeholder process is preferred—

Mr. ROGERS. Yes.

Mr. WHEELER [continuing]. Is because it is much more dynamic, much more flexible, moves much quicker than a regulatory process can, and then can stay flexible.

Mr. ROGERS. OK.

Mr. WHEELER. And that is why I am trying to say, yes, this is the preferred process to deal with.

Mr. ROGERS. So you are not going to move away from the council?

Mr. WHEELER. I am sorry?

Mr. ROGERS. You are not going to move away from the council model for regulation, you are going to continue to try to use that.

Mr. WHEELER. The multi-stakeholder process—

Mr. ROGERS. Yes.

Mr. WHEELER [continuing]. On this is the right way to go.

Mr. ROGERS. Perfect. Can you talk about Team Telecom? It is an important compliment to the CFIUS process—

Mr. WHEELER. Right.

Mr. ROGERS [continuing]. In terms of preventing investments or IT equipment purchases to prevent, certainly, a threat to our national security interests, like Chinese attempts to gain control of IT and telecommunication notes in the United States. Can you walk us through where you are at on that to give us some idea where you are—what you are thinking?

Mr. WHEELER. Well, when issues come before the Commission relative to mergers, acquisitions, whatever the case may be, the input from Team Telecom is always sought and taken into account, and is crucially important.

Mr. ROGERS. Yes. Do you see an improvement to that process? Can we do something different? You have a limited set of—once that report comes back, you have a limited set of decisions you can make. You are either in, you are out—

Mr. WHEELER. Correct.

Mr. ROGERS [continuing]. Or you disagree with the decision. Is there something better we should be doing there, providing some authority for you all to be, given again, the nature of the changing technology and how fast the changes—

Mr. WHEELER. I have not had to live through one of these yet, so I am probably not qualified to opine here on the fly. I would love to look into this and to have a discussion with you about it.

Mr. ROGERS. We are looking at some reforms to CFIUS to try to make sure we are keeping up, and I look forward to that dialog.

Mr. WHEELER. Great. I will look forward to that.

Mr. ROGERS. Thank you very much for being here.

Mr. WALDEN. Thank you, gentlemen.

We will now turn to committee chairman emeritus, Mr. Dingell, for—also from Michigan, I believe, for 5 minutes. Go ahead, Mr. Dingell.

Mr. DINGELL. Mr. Chairman, I commend you for this very important hearing, and I have no comments on football or other matters.

I want to welcome my old friend, Chairman Wheeler, to the committee. We look forward to great things from you. I am satisfied you will serve with distinction. I want to also welcome Commissioner O’Rielly, and I want to commend Commissioner Clyburn for her fine service as Acting Chairwoman. Quite frankly, your daddy would be very proud.

My questions this morning are going to be directed solely at Chairman Wheeler, and will elicit, as you not be surprised to hear, yes or no responses.

Chairman, I would like to start with the Reverse Auction of Broadcast Frequencies, authorized by the Middle Class Tax Relief and Job Creation Act. I note you recently announced that the Commission will not conduct such auctions until 2015. That gives you an extra year. In the meantime, do you expect to complete negotiations concerning the relocation of broadcast frequencies with Canada, Mexico and our border areas, yes or no?

Mr. WHEELER. No, but, am very hopeful that we will be able to move it forward, and as DTV showed, you don’t have to have the signature on the page.

Mr. DINGELL. And you know that that can cause an awful lot of viewers to lose service, and an awful lot of screens to go dark in our part of the country. Chairman Wheeler, similarly, paragraph 15 of the Commission’s notice of proposed rulemaking for the Incentive Auction states, “the Commission expects interested parties will have an opportunity for meaningful comment on all specific repackaging methodologies it is considering before it makes a decision.” Does the Commission publicly commit to sharing with the public the broadcast frequency repackaging methodology it adopts,

as well as the variables and other inputs it may use to predict repackaging results, yes or no?

Mr. WHEELER. I will go beyond yes and say absolutely.

Mr. DINGELL. Now, Mr. Chairman, let us move on to the Forward Auction of Broadcast Frequencies. Section 6403(C) of the Middle Class Tax Relief and Job Creation Act provides the Commission may not grant licenses through Forward Auction, reassigned or reallocated broadcast frequencies, or revoke spectrum usage right unless it proceeds—unless the proceeds of the Forward Auction are greater than the following 3 factors combined. First, the total amount of compensation the Commission must pay successful bidders in the Reverse Auction, the costs of conducting a Forward Auction, and the estimated costs for the Commission to pay for broadcaster reallocations. In addition, it is in the public interests that the Commission ensure the auction raises a significant amount of money in order to help build out of the FirstNet. Together, these constitute a significant pressure on the Commission to raise sufficient revenues to accomplish these objectives. Do they not, yes or no?

Mr. WHEELER. Yes.

Mr. DINGELL. Now, Mr. Chairman, at the end, will the Commission adopt transparent and simple rules to encourage participation by the broadest group of wireless providers in the Forward Auction, yes or no?

Mr. WHEELER. Yes.

Mr. DINGELL. Mr. Chairman, it is—let us focus our attention on intelligent transportation systems. This is of considerable importance to my part of the country and our principle industries, and the 5 gigahertz band. Given that the Commission licensed ITS almost 15 years ago, is it reasonable to say that it would be premature for the Commission to authorize unlicensed use of the 5850–5925 megahertz band before the studies are completed, that confirm such use would not cause harmful interference with ITS services and other incumbent users, yes or no?

Mr. WHEELER. Yes, and let me go further. We will not authorize if there is harmful interference.

Mr. DINGELL. I am very comforted that you are here this morning, Mr. Chairman. Now, Chairman Wheeler, do you believe that the Commission should approve unlicensed use of the 5850–5925 megahertz band before definitively establishing no risk of harmful interference with ITS systems or practical strategies to mitigate such risk, yes—

Mr. WHEELER. No, and I repeat, will do nothing that causes harmful interference.

Mr. DINGELL. Now, Mr. Chairman, alternately, is the Commission considering moving forward with rulemaking opening up only the 5350 megahertz band for unlicensed use, yes or no?

Mr. WHEELER. So this is where I need to just ask a question, sir. The answer is yes, if it is are we considering. The answer is no, if we have decided.

Mr. DINGELL. Now, Mr. Chairman, I would like to commend you for your work in advancing the transition to IT-based networks. Will the Commission consider an Order in January 2014 that will

address geographic trials, as well as how to protect in the best way consumers using IT-based networks, yes or no?

Mr. WHEELER. Yes.

Mr. DINGELL. Mr. Chairman, you have been most gracious to me, and I thank you for this.

Mr. Chairman, your comments have been most enlightening and helpful. I want to thank you and the members of the Commission for your presence and assistance throughout this morning. Thank you, Mr. Chairman.

Mr. WALDEN. Thank you very much. The gentleman yields back, and the Chair now recognizes for 5 minutes Mr. Guthrie.

Mr. GUTHRIE. Thank you, Mr. Chairman. I appreciate that.

Chairman Wheeler, and welcome to the FCC also, Mr. O'Rielly.

Mr. WHEELER. Thank you, sir.

Mr. GUTHRIE. I appreciate having you here. And, Commissioner Clyburn, again, I echo the good work that you did in your time as Chairwoman.

But there seems to have been a lot of progress being made, this is to Chairman Wheeler, a lot of progress been made to free-up the 1755 to 1780 hertz band for commercial use, megahertz band, and I know the FCC has already sought comment on how this band should be used for commercial purposes. Is the FCC on track to auction the 1755 to 1780 band paired with the 2155, 2180 band, and if so, when will it occur?

Mr. WHEELER. So the answer is yes, we are on track. There are some issues that still have to be worked out with NTI and DOD and some—

Mr. GUTHRIE. Are there some impediments—

Mr. WHEELER [continuing]. Details, but I think—I am sorry, what?

Mr. GUTHRIE. Are there some impediments that you can identify that are—that you are on track, but you say there are some impediments?

Mr. WHEELER. Yes, I think these are just implementational kinds of things in their agreement, but to be specific to your question, we would hope that we could do it in the September time frame.

Mr. GUTHRIE. September time frame, great. And then you spent some time in the wireless industry I know, and have seen firsthand how spectrum demand has grown exponentially. I realize that a lot of our short-term focus is on the Incentive Auction on the 1755 to 1780 megahertz, but looking forward, what is the FCC doing to plan for future spectrum demand, and how can the FCC ensure that there continues to be a pipeline on new spectrum to satisfy what consumers—an insatiable demand for bandwidth anywhere, any time. So to look at again, how do you plan for future spectrum demand beyond this? What kind of thoughts do you have—

Mr. WHEELER. Sure.

Mr. GUTHRIE [continuing]. Beyond this—

Mr. WHEELER. Sure.

Mr. GUTHRIE [continuing]. Forward Auction?

Mr. WHEELER. Well, first we say yay and verily to what you and Ms. Matsui have done. Applying the Incentive Auction concepts to government spectrum, I am a believer that by the time that you peel everything away, it comes down to economics no matter who

you are. Right? And the economics of an agency where they can get cash to help them fulfill their mission is an important kind of decision they should make. And you have created—with Ms. Matsui, have created a structure where this can happen.

Mr. GUTHRIE. Well, we looked at that in our working group, and it is a lot of work for these agencies to do that. It is not something you can just wish away, as I learned more and more about it. And I always say I didn't run around Kentucky saying, send me to Washington and I will deliver you spectrum. And so you learn things when you get elected that you never thought you would deal with, and I have found this fascinating because, as I said, my constituents demand it. They want the fast bandwidth. So—

Mr. WHEELER. But it is also—

Mr. GUTHRIE [continuing]. But it is—

Mr. WHEELER. It is interesting—

Mr. GUTHRIE [continuing]. But it is true that we have to—if we were looking at it just by law say, by Fiat say, you have to release spectrum, I mean you could get numbers, well, it is going to cost this, it is going to cost that, and so it does give them a reason to go in and make this happen.

Mr. WHEELER. And the interesting thing is, I was involved in the negotiation for AWS-1 back in the year 2000, and the first negotiation with the Department of Defense, and we kept saying to them, but you are going to get money, and they kept saying, but we can't spend it because it goes to the General Treasury.

Mr. GUTHRIE. Right.

Mr. WHEELER. And so what you have done is set up a structure to help compensate people. The beauty of it is that what it does is that it creates a cash flow for them to be able to meet their new needs, and to be able to upgrade their equipment, and so it is a winning situation all around.

Mr. GUTHRIE. That is like, Ms. Matsui, she said—I think yesterday you said, win, win, win, I think is what it does for the consumers, for the agencies and for the taxpayers. So beyond—so in the future, what are you kind of looking at, do you think should happen, just for bandwidth and more spectrum as we all move into the future?

Mr. WHEELER. I am sorry, sir?

Mr. GUTHRIE. Well, I must just as we move on into the—beyond the immediate auctions and things, what other things do you think we can do to free spectrum?

Mr. WHEELER. So first of all, we are constantly looking at how you get the most efficient use out of the spectrum. One of the interesting things that we are going to be running is a test on what do you do with spectrum sharing, because there is probably not—there is, in a digital world, the opportunity to share spectrum, but our spectrum allocations were set up with analog assumptions.

Mr. GUTHRIE. Yes.

Mr. WHEELER. And so if we can share it, reuse it, it is a great opportunity and we need to be pursuing that as well.

Mr. GUTHRIE. Yes, a great metaphor of that I always thought was you don't have a lane on a highway dedicated just for emergency vehicles, but when emergency vehicles come down the highway, people get out of the way.

Mr. WHEELER. Good point.

Mr. GUTHRIE. And I think that is a great metaphor for that.

Well, Mr. Chairman, I will yield back 15 seconds.

Mr. WALDEN. Chair recognizes the gentlelady from California for 5 minutes.

Ms. MATSUI. Well, thank you very much, and let me just follow up on my partner's questions here.

I know back in the day, you were looking at the use of federal spectrum, and I think it is a concept now that has finally come to the point where we can actually do something about it. And I believe that this is a way to really encourage the federal agencies to relinquish a non-critical spectrum, and as Congressman Guthrie says, it is not easy to do, but we worked with DOD and we made a lot of progress.

Now, I am also looking at what Commissioner Rosenworcel has also always said about using the carrot-and-stick approach regarding the federal spectrum holders, and having them relinquish their spectrum. Now, in your view, and I also want Chairman Wheeler to comment on this too, are the financial incentives identified in the bill adequate to encourage federal agencies to relinquish non-critical spectrum? And I think I will go to you first, Chairman Wheeler.

Mr. WHEELER. I don't know the answer to that because I haven't market-tested it, and I think that "is this enough incentive?" is a market-test question. So I am going to, with all due respect, punt. What is important is the concept that has been developed, and it would seem to me that once that concept is codified, that making sure that incentives are adequate is frankly the easier lift on the whole exercise.

Ms. MATSUI. All right, thank you. Commissioner Rosenworcel?

Ms. ROSENWORCEL. Thank you for the question. I think first of all that the legislation that you and Congressman Guthrie have introduced is terrific. The demand on our airwaves is going up and the supply of unencumbered spectrum is going down. It is time to be creative. This legislation is creative. As far as the incentives go, I think it is a good starting point for conversation because right now, federal agencies, by some measures, have veto control over about 60 percent of our airwaves. They use their spectrum, their mission focus, to protect our national defense, to keep our planes in the sky, to tell us what weather patterns are coming, but they don't have structural incentives to be efficient with it. Your bill is a start of a conversation about how we should apply those incentives, and once we get them right, we will have a catalyst for a lot more spectrum from new mobile broadband uses, which would be a terrific thing for the economy.

Ms. MATSUI. Great. Thank you very much.

Chairman Wheeler, you have emphasized how important it is for you to lead the FCC in fact-based decision-making. In the 5 gigahertz proceeding, for example, this committee is looking to the FCC's engineering expertise to determine the conditions under which Wi-Fi can use a band in a way that protects the missions of federal systems and commercial systems. How are you and your staff planning on responding to the challenge, and is this proceeding a priority for the Commission?

Mr. WHEELER. So as Commissioner O'Rielly said, I would associate myself with his comment that he is a strong supporter of unlicensed. The key, of course, is to make sure that there is no harmful interference, as I have discussed with Mr. Dingell, but I believe that if you take a look at the 5 gigahertz, and you look at block 1, NII-1, that we should be moving to a rulemaking on that, which is something that Commissioner Pai has often suggested. Also when you look at band 2 which is DOD, and band 4 which is ITS, that we have to address the questions that I was addressing with Mr. Dingell, and that is to make sure there is no harmful interference, and there is nothing in the record that really gets to that at this point in time, but we need to build that record.

Ms. MATSUI. OK, fine, thank you very much. And I have to ask a broadband-adoption question here. The FCC has, Chairman Wheeler, implemented broadband adoption as part of the Lifeline reform measures. Can you explain what the FCC plans to do here—

Mr. WHEELER. Yes.

Ms. MATSUI [continuing]. And what is the goal of these pilot projects?

Mr. WHEELER. So there are 14 projects that are taking place around the country that we are funding with some of the savings that we have had in other parts of the program, and we are going to be looking at, for instance, what is the impact of a Lifeline-like subsidy on broadband adoption, and we are going to be looking at what are the kinds of training issues to help people understand what broadband can do for them, and the kinds of things that they can do once they get on the Internet, because those seem to go part and parcel. It is not just that you can access it, but also that you can use it and you understand why you ought to be using it.

Ms. MATSUI. So are you going to use this information to develop a responsible permanent broadband adoption program?

Mr. WHEELER. That is the goal. These are trials to inform our future actions, and wireless broadband and broadband adoption are kind of the sine qua non of what the Agency does.

Ms. MATSUI. OK. I want to thank you.

I yield back my time.

Mr. WALDEN. The gentlelady yields back her time.

And the Chair recognizes the gentleman from Texas for 5 minutes.

Mr. BARTON. Thank you, Mr. Chairman, and I want to make a comment on the audience. This one is a lot bigger than the one upstairs with the joint hearing, and they seem to be more interested too. So I guess that is a credit to the subcommittee and the FCC Commissioners. We have the NRCC—not NRC, NRC.

Mr. WALDEN. I think you need to be clear on that one.

Mr. BARTON. That would be news, wouldn't it, if Greg Walden was testifying upstairs? Anyway, I just have one question.

The Middle Class Tax Relief and Job Creation Act requires repackaging and auctioning of the 65 megahertz of spectrum, and the low-powered TV stations, of which there are hundreds if not thousands, are not guaranteed continued existence, but Chairman Walden, this subcommittee, myself, have a bill that we hope to introduce very soon. While it doesn't guarantee them any additional

rights, it does create, I hope, a pathway so that they may continue to exist. As the new Chairman of the Commission, Mr. Wheeler, do you have any thoughts on what might be done to give our low-powered TV industry a chance to continue to exist?

Mr. WHEELER. Thank you, Mr. Barton. Yes, and that would probably fall in three buckets. One, there has been a lot of talk following the statute, and as you point out, the statute says that LPTV translators are secondary surfaces and that is what the statute says. Second is we have actually opened a public notice on the delivery of the content of LPTV's. How do we make sure that the content, and this ends up being more of a digital technology question than anything else, and how do you use digital technology to get the content out, because that is the consumer protection issue here, to make sure the consumer gets the content. And then the third point here is that there may be a safeguard in the reality that rural areas don't have that great a demand for spectrum for wireless services to begin with, and so they may be operating in areas where there will be less pressure to get spectrum, but we will find out as we go through this process.

Mr. BARTON. OK. Commissioner O'Rielly, you are the new kid on the block, so to speak. You haven't had a chance publicly to comment on this issue. Do you have any thoughts about low-powered TV and what might be done to help them continue to exist?

Mr. O'RIELLY. Well, the Chairman is right in the sense that you have the right to introduce legislation. Working for the members on the Spectrum Act, there was a decision made by those members to not protect low-power and translators, and you have legislation. I would defer to your legislation to whether that may resolve that. I know you and I had a chance to talk. I know some of the low-power representatives have argued it may be beneficial financially to the government for low-power television stations to participate. I am not sure, and I don't know if it is accurate, but we have heard that argument as well, and it is probably something we have to explore.

Mr. BARTON. OK.

That is my only question, Mr. Chairman. With that, I yield back.

Mr. LATTA. The gentleman yields back the balance of his time.

The Chair now recognizes the gentleman from Utah for 5 minutes.

Mr. MATHESON. Thank you, Mr. Chairman. I appreciate all the Commissioners taking the time to be here today. I think this is a very informative hearing.

First, Chairman Wheeler, in my city, Utah, we have over 750 active translators that relay signals to many rural communities that rely on broadcast television to obtain their newscast, their public service announcements, their entertainment. Now, with the increased reliance on mobile data, there is no doubt that we need to take steps to move forward with making more spectrum available—I've heard concerns that the spectrum repackaging that could result from the Incentive Auctions could have a negative impact on those rural communities that tend to be more dependent on broadcast television.

What steps is the FCC taking to protect these viewers from possible negative impacts?

Mr. WHEELER. Well, Congressman, the first issue is how threatened should they feel, and the fact that they are living in rural areas where there is less of a demand for mobile spectrum may end up being a de facto shield for them.

Mr. MATHESON. All right.

Mr. WHEELER. Secondly is, as the statute says, this is a secondary surface, it does not have protection. So the question is how do you protect consumers, as you are suggesting, who rely on it, and that is why we have had a public notice and are seeking comments on the question of how do you get what the translator or LPTV station does in terms of content out, and how does new technology fit into that, such as digital use of the airwaves or whatever the case may be. But this is clearly an issue where we need to be focusing on what is the effect on the consumer—

Mr. MATHESON. Right.

Mr. WHEELER [continuing]. Rather than what is the effect on the transmission media, because you have told us how we should look at that transition media.

Mr. MATHESON. Right. I appreciate that response. There has been a lot of back-and-forth on how the Incentive Auction should be structured, and I think most would agree it is imperative we maximize participation, both in the Reverse Auctions and the Forward Auctions, but, Chairman Wheeler, I was wondering, what do you see is the best way for us to maximize participation and also revenue for the federal government in both of these auctions?

Mr. WHEELER. Before I took this job, I was in the business of doing business deals—

Mr. MATHESON. Yes.

Mr. WHEELER [continuing]. And I think that is what we are talking about here.

Mr. MATHESON. Right.

Mr. WHEELER. This is a business transaction that someone who has a license needs to make a business decision about, and how do you do that. Well, I—and what is our role. First of all, we need to make sure that we are getting relevant information on a timely basis into the hands of those parties to make that decision, and that is why we have scheduled the auction plan. We are saying in January, we are going to begin laying out exactly what that kind of information needs to be. Secondly, I think it is incumbent on us to have an outreach program—

Mr. MATHESON. Yes.

Mr. WHEELER [continuing]. In which we make sure that small and large broadcasters understand how the program is going to work, what the economics could be, and maybe even begin to think in terms of what economic models might look like, because at the end of the day, what we are really doing is we are saying we want the marketplace to make a decision as to what is the highest and best use of spectrum, and the marketplace can't make that kind of decision until it is informed. So it is incumbent upon us to make sure that that kind of information is in a timely manner available to those, and to help them with that process.

Mr. MATHESON. Commissioner Rosenworcel, I have a question for you about the ConnectED Program you mentioned briefly in your opening testimony. You also mentioned that the current E-Rate

program had some bureaucratic inefficiencies built into it right now. What can the Commission do to maximize efficiency to get more bang for the buck, what can you do with your existing authority, or what do you need for Congress to do to change it to also increase those efficiencies?

Ms. ROSENWORCEL. Thank you very much for the question. I think this program is really important, and reinvigorating it is really important for education, infrastructure and the economy. I think we can do more with this program just as it is. As my colleague, Commissioner Pai, noted, we do subsidize a whole bunch of old-fashioned services right now. We should phase those out over time and focus instead on capacity and band width. And like you mentioned, we need to reduce bureaucracy. Bureaucracy gets in the way of small and often rural schools from participating in this program. I would like to see us encourage greater use of consortia to improve bulk buying power, and also have multiyear applications to reduce the administrative burden on schools that do participate.

Mr. MATHESON. I appreciate that.

Mr. Chairman, I yield back.

Mr. LATTA. The gentleman yields back.

And the Chair now recognizes for 5 minutes the gentleman from Nebraska.

Mr. TERRY. Thank you, Mr. Chairman. And let me begin with by thanking former Acting Chair Clyburn, and during your tenure as Acting Chair, you finished the low-power FM, and you guys did a wonderful job on it, you really did, and I want to thank all of you for that.

But Acting Chair—former Acting Chair, just now Member Clyburn—

Ms. CLYBURN. The Commissioner—

Mr. TERRY. Commissioner, yes.

Ms. CLYBURN [continuing]. Formerly known as.

Mr. TERRY. Yes, that works, and you can have a sign for your name now, but you were extremely communicative. I love the way you reach out to us and, frankly, you are so extraordinary that I think every Chairman, including the new one, should model themselves after that. We don't—it is very rare that we see that level of communication, so I just want to thank all of you. This really is a great Board. You guys are really serious about the real issues, and I like how you filter out the politics that surrounds all of this. Keep it up.

I know that the quantile regression analysis has already been discussed to some point, but I just want to let you know that has been a long-time concern for me. I think some of the concerns that we had that it could actually displace or retard capital investment in rural America, when this is all about getting cheap resources and capital into rural America because of its high cost. And so it really needs to be reviewed, and, Chairman Wheeler, I appreciate your comments on the record here today is that you understand this problem. I will invite you and all of the Commissioners out to rural Nebraska. You land in my district, then we go there. But it really is becoming a problem. There is one provider in Diller, Nebraska, that we have used as the model for responsible rural telecom, because there are businesses there that now have high

speed, and they are using it to monetize their businesses there, where they truly are a worldwide business, not just the two blocks at Diller, Nebraska. But there is a wind farm that they are having trouble. The wind farm that wants to go there, that needs a broadband hookup, and they are saying, with our cap, we don't have the money. We aren't allowed to use that money in that way. So it is having serious effects. It is just not that one house that is 30 miles aback and, you know, line in and out, it is really hurting rural economic development.

So I want to go ahead. And then in my 2 minutes left, I want to ask the real question and to Chairman Wheeler, and either of the Commissioners wish to step in, but I want to ask about a rule that concerns the video market. Many of us are concerned that the price of cable subscriptions, and I will tell you that is an often and frequent call to my congressional office. And the current market for video is seeing an expansion in the scope of current law wasn't necessarily intended to address. That is the FCC has defined buying group of MVPD's for the purpose of program access rules in a way that excludes the NCTC, essentially the only buying group out there. So are there plans by the Commission to look into this, to maybe change it, do you think that the NCTC should be excluded from this process, Chairman Wheeler?

Mr. WHEELER. Thank you, Mr. Terry. I have just become aware of the issues that have been raised about this, and want to get all over it and would ask that we be able to get back to you, but the answer is we are now aware and will be dealing with it.

Mr. TERRY. Any of the Commissioners have concerns about the NCTC being excluded from this rule? Hearing none, Mr. Pai, you actually had an expression.

Mr. PAI. No good expression goes unpunished.

Mr. TERRY. Yes.

Mr. PAI. I supported the notice that teed-up a lot of the questions—and we teed-up a lot of different questions, as you know, paragraphs 84 to 100 of that Order listed all the issues under consideration—and I look forward to working with Chairman Wheeler and my colleagues to ensure that the FCC takes the appropriate action to ensure that buying groups or other—

Mr. TERRY. Great.

Mr. PAI [continuing]. Entities are able to compete.

Mr. TERRY. And others nodded.

Mr. O'RIELLY. Right.

Mr. TERRY. Mr. O'Rielly?

Mr. O'RIELLY. I am sorry, I didn't express a facial—

Mr. TERRY. Also known as the new guy.

Mr. O'RIELLY. The new guy, yes. I would have to agree with Chairman Wheeler. I don't have as much information on this, and I look to get up-to-speed on it, so I apologize that I don't.

Mr. TERRY. Yield back.

Mr. LATTI. The gentleman yields back the balance of his time.

And the Chair now recognizes the gentleman from New Mexico for 5 minutes.

Mr. LUJAN. Mr. Chairman, thank you very much. And, Chairman Wheeler, welcome today. To all the Commissioners, welcome. Again, as we are announcing former positions in post, Commis-

sioner Clyburn, I know that you are very welcome here today. It is great to hear the recognition from my colleagues with your leadership and your work, and I don't want to speak for former Public Utility Commissioner Ray Baum either, but I am going to invoke his name a bit. It is good to have another fellow Utility Commissioner here and a leader. For those of you that aren't aware, myself and Ray served at the same time on Utility Commissions as Commissioner Clyburn. We had a chance to do some great things together, and it is great to have you again in that leadership capacity, Commissioner Clyburn.

Chairman Wheeler, I appreciate very much the conversation about quantile regression analysis. I think you will see that there are many rural members of Congress, or members that represent rural parts of America, that are on this committee. As we look at this encouraging investment in rural America, I hope that, through all these deliberations and rulemaking, that we don't lose sight of the fact that if we can make a mobile call from an airplane, that we should be able to make it anywhere in rural America. And if technology is allowing for that to occur, I don't want to hear that we are not able to anymore. So thank you again for looking at this and making sure that rural America will not be left out, Mr. Chairman.

With that being said, I would also encourage and was encouraged by the fact that, in a recent report, there was some conversation about the Tribal—and would encourage that that is critically important as we roll out the re-evaluation of the QRA. And lastly, I want to let you know that I am planning on introducing a piece of legislation to include the elevation of the National Tribal Recognition of ONAP as a permanent office, and I would hope that we might be able to work with our colleagues to elevate that—reports directly to the Chairman, especially with the evolution of what we are seeing with the extension of utilities across rural America, including tribal lands.

Mr. Chairman, I am intrigued very much by the conversation around the IP transition. I think Chairman Rogers, Chairman of the Intelligence Committee, was asking about the importance of security in networks, that we not lose sight of the fact of the importance of protection of consumers and network security. As we are looking forward into future technologies, sometimes things that we have read about in fiction or we have seen in television, there has been a lot of concern recently about security of networks, about the infringement on individuals, peering eyes, if you will, sometimes into consumer information, and I am intrigued by your direction to move onward with real-world experiments that will be coming forward. I would like your thoughts on anything that you are aware of, or that the FCC may be looking at with laser-based quantum encryption, point-to-point work that is happening right now with our national labs, it has been written about, I know it makes some people nervous but it seems to me that as we are looking to protect consumer information and intellectual property, that the more advanced that we can make our networks with technology that is currently available that we may take to the commercial marketplaces, something that I would like to encourage and see and just like to get your thoughts on that.

Mr. WHEELER. I just learned quantile regression analysis, and now you want me to know laser-based quantum encryption.

Mr. LUJAN. Yes, sir.

Mr. WHEELER. I look forward to learning a lot about that. I don't mean to be light, but let me be specific on what I can comment on. Our networks need to be secure, period. What I was trying to say to Mr. Rogers is that the best way for attacking that is through the multi-stakeholder process and moving with dispatch, because the bad guys sure figure out a way to get around things so we need to make sure that our responses are flexible. We are working, obviously, with the President's Executive Order and the various steps that he is taking, or the Executive agencies are taking, in that regard. I happen to believe that 2 challenges of the IP transition is going to be the security of the networks and the privacy of the information. If you go back to the comment that I was making, I believe, to Mr. Waxman about the trials need to be about measuring values, then we need to be addressing both of those issues inside that trial, and I look forward to learning more about how laser quantum can help that.

Mr. LUJAN. I appreciate it, Chairman. And if I may, Mr. Chairman, you know, it wasn't too long ago that when the same idea was presented, that we may be able to move data over lights and lasers—

Mr. WHEELER. Right, exactly.

Mr. LUJAN [continuing]. There were a lot of discouraging thoughts that were associated with that, but as we are moving now away from copper as a new medium where even the ability to move data on fiber can't keep up with our processing speeds. If laser-based quantum encryption is good enough to keep national security secrets preserved, I would certainly hope that we find a way to extend these protections to consumers as well. And again, with the real threats that are taking place with theft, with intellectual property, right now we know that it works point-to-point, but there are ways to make this work with—what we have available. This is a serious area that I have tried to take up with the Intelligence Committee. They were very cautious with their conversations with me until I presented with them with publications that have talked about this in open source and an unclassified way. So I am hoping that we might be able to look into this more, and have a serious attempt to incorporate this into our day-to-day lives.

Thanks again, Mr. Chairman, for that latitude.

Mr. LATTA. The gentleman yields back.

And the Chair now recognizes the gentleman from Colorado for 5 minutes.

Mr. GARDNER. Thank you, Mr. Chairman. And I want to commend all the Commissioners for being here today, and congratulations on your new role and your newly-retired-from role. Thank you for your service. And, Commissioner Pai, I want to thank you for your work on the quantile regression analysis, and the comments that you made at the beginning of your testimony was—the question of Chairman Walden, I guess, was something that I have dealt with each and every day in a district bigger than the State of South Carolina. I have a number of rural telecom, rural utilities that continue to face the uncertainty as you have mentioned about

the QRA, and I appreciate it. And so, Chairman Wheeler, thank you very much for your comments on that as well, and I look forward to following up with you as those conversations and decisions move forward.

I wanted to ask a quick question to Commissioner Pai about the issue of ConnectED and the E-Rate Program. Who is responsible for policing to make sure the E-Rate Program is being used as it—as appropriately, making sure there is no abuse of the program?

Mr. PAI. Congressman, thanks for the question. In theory, the Universal Service Administrative Company, overseen by us, monitors it, but in practice, given the limited resources that USAC has and given the limited resources the FCC has to oversee USAC, there is not a great deal of transparency and accountability in the system.

Mr. GARDNER. A question I had with that is twofold. Number 1, how do we ensure that there is no overlap of private sector service with E-Rate funding and programs to make sure that we are not adding to government competition of the private sector, but number two, if USAC has identified a problem with an E-Rate contract or recipient, is there a way to police or perhaps are there bar—you know, disbarment issues that you can talk about, because I know one of the issues in Colorado is that there has been a company that is involved, and has been morphed into a new company, that has had significant issues with E-Rate violations and is now involved in another company in Colorado that is providing services to schools.

Mr. PAI. Yes. USAC has taken actions such as the type you have indicated, and as well the Department of Justice in appropriate cases can take action where it suspects that something fraudulent has occurred. And I am quite sure I speak for my colleagues when I say that the FCC has no interest in doing anything but enforcing the rules against people who abuse the E-Rate system. With respect to the first part of your question, I think it is critical as we think about reforming the E-Rate Program, in addition to restructuring the basic planks of it, that we ensure that at the end of day we don't supply E-Rate funds to supplant or add to the problems of competitors who have taken the risk and invested private capital in deploying networks.

Mr. GARDNER. And, Commissioner Rosenworcel, I know you talked about this as well. I don't know if you have anything to add.

Ms. ROSENWORCEL. You know, I would echo largely the sentiment of my colleague. I—we wouldn't want government funds to displace private sector funds. We want to be efficient with the limited dollars we have, and make sure we reach as many schools, at as high speed as possible, including in rural Colorado. And with respect to oversight, we could always benefit from more oversight. When we find bad actors in a program, we have to take efforts to get them out.

Mr. GARDNER. Great. Thank you. And Commissioner—or, Chairman Wheeler, a question I have, and this may be something that you need to get back to me on, are you familiar with a report on next-generation 911 that is being put together by the National Highway Traffic Safety Administration in connection with a Blue Ribbon Panel that was convened by, let me get the name here, the

FCC's Communications Security Reliability and Interoperability Council?

Mr. WHEELER. Right. That is CSRIC, yes.

Mr. GARDNER. Yes, CSRIC. Are you familiar with a report that is about to come out in January?

Mr. WHEELER. I am not familiar with a report that is about to come out.

Mr. GARDNER. There was the Blue Ribbon Panel that was put together at—

Mr. WHEELER. Right, I know that, right. Yes.

Mr. GARDNER. Right, CSRIC. Apparently, there is a Blue Ribbon Panel—the report is coming out in January, and there are some questionable findings in this report, and I would hope that perhaps the FCC, because I believe some of the findings are not in-line with FCC ideas at all. If you could take a look at that report before it is issued and public to make sure that when we issue a report that has the stamped seal of approval of the federal government, that it is in-line with the FCC directives, and believes that—

Mr. WHEELER. You can consider that done.

Mr. GARDNER. Thank you very much. And a final question in my time, regarding the IP transition issues, heading in a good direction but—and there are significant strides being made to transition to IP but, talking about rural America again, how do we further encourage this transition in a way that ensures consumers remain served in the long-run and particularly in rural America?

Mr. WHEELER. I am sorry, that consumers would be served in the long-run?

Mr. GARDNER. In the long-run, particularly in rural America.

Mr. WHEELER. Yes, it is going to be very important that we have trials in rural areas to begin to answer those kind of questions. I mean you can't go to New York City or some place like this and run a trial and say that it applies in cities in your district. That is going to be one of the criteria that we are looking at.

Mr. GARDNER. Thank you.

Yield back my time.

Mr. WALDEN. Thank you. The gentleman yields back.

And the Chair recognizes the gentleman from Missouri for 5 minutes.

Mr. LONG. Thank you, Mr. Chairman. And, Chairman Wheeler, I came to Congress with a 30-year background in the auction business, so that was my profession for 30 years before I got here, so I have a great interest, and any time that we try to conduct an auction for anything, and it is certain to me about this Reverse Auction thing, because I am not sure exactly how that is supposed to work, but can you provide us with a timeline of actions that need to occur before the Incentive Auctions would begin?

Mr. WHEELER. Yes, sir. In next month's open meeting, we are going to have a presentation that is going to lay out both the timeline and the policy issues that need to be decided, and some recommendations on those. Then in the spring, we are going to be voting on a Report and Order that solicits offers to do trials, sets up a measurement scheme for them, and begins to address the kinds of policy issues that will be tangential to all of that, and then we will go forth with trials.

Mr. LONG. Can you also tell me what the FCC is doing to ensure that the maximum amount of revenue will be generated through these auctions, which was always a concern of mine as an auctioneer?

Mr. WHEELER. Believe me, one of ours as well because we have the responsibility not only to fund FirstNet and the auction activities themselves, but also to contribute to pay down the federal deficit. And I think the key to how you can maximize revenue comes down to multiple things. One is, we have got to be able to attract broadcasters. We have got to have something, as I was saying previously, that are rules that are understandable, are rules that we are actually being aggressive and helping people understand the economic impact of them, because there is, as you know, you are only going to bid to the point that your spreadsheets say it is going to be making sense. So that is the first thing, that we have to attract broadcasters. We also have a challenge here in that we have to be freeing up spectrum.

Mr. LONG. Have to be what?

Mr. WHEELER. Freeing up spectrum.

Mr. LONG. Which requires people to put spectrum—

Mr. WHEELER. Which—there is the—

Mr. LONG [continuing]. End of the auction.

Mr. WHEELER. There is the key. So you have to provide the appropriate incentive to get them to free up—

Mr. LONG. And do you foresee that happening? From what I have talked to, and people I have talked to, I don't know if that is going to happen in as large a way as what we—

Mr. WHEELER. So the Congress told us to make it happen, and we are going to do our damndest to deliver on those instructions, and I believe that we will be able to fulfill the challenge that we have been given. And in no way, shape or form do I underestimate the magnitude of it. I have spent more time on this issue in the last 39 days than any other issue. And I know my colleagues all feel the same way on this. We understand that we are biting off a huge chunk here.

Mr. LONG. And there is an article where you were speaking in Ohio, and to quote out of the article, "the protection of competition Mr. Wheeler said would apply to the coming auctions of additional airwaves or spectrum for mobile broadband. In April, the Justice Department told the FCC that it could help to protect competition by ensuring that the two largest companies, AT&T and Verizon, were not allowed to use their financial might to buy up all the available spectrum being auctioned, shutting out smaller carriers." So how do you balance that? How do you decide I want to get the most money for my product over here, but I want to limit my bidders over here, how does that—

Mr. WHEELER. I also think that the more people that get to the auction, presumably, the better result. And so we want to make sure that we are creating an auction marketplace that will attract as many people as possible, not just the giants. As a former entrepreneur, we want to make sure that we have smaller wireless companies, and that there are entrepreneurial opportunities in here. That is one of the things that is most interesting about what we recently put out for public notice, the proposal from the Competi-

tive Carriers Association, the Rural Carriers Association and the NTCA, the Rural Wireline Association, on talking about smaller economic areas so that they could bid for a smaller piece of geography, rather than a humungous piece, because four entrepreneurs, four smaller carriers, they can target their activities, they can take something that is a consumable bite, rather than be forced to go out and not compete.

Mr. LONG. But they also have to put together a patchwork quilt of—to make their system work, correct, but they can buy through the auction, they have to be able to—

Mr. WHEELER. So they can buy their areas, they can buy other smaller areas, rather than having to buy and this is not a decision, I just want to be clear, this is what we have put out for comment, but it is certainly a very interesting idea—

Mr. LONG. But if they made A, B and C, and they get A and B but then they can't get C, then A and B weren't worth anything.

Mr. WHEELER. But that is kind of the history of the wireless industry. We are about to conduct our 96th auction, and I have been in them from the outset, and traditionally, that kind of situation has occurred, and then an aftermarket develops in which various players say, "OK, how can I reorganize for the most efficiency?"

Mr. LONG. OK. I am beyond my time by quite a little bit, so if I had any time, I would yield it back.

Mr. WALDEN. The gentleman's time has expired.

And the Chair now recognizes the gentlelady from North Carolina for 5 minutes.

Mrs. ELLMERS. Thank you, Mr. Chairman. And thank you to the Commissioners for being here today.

Commissioner Clyburn, I am going to direct my questions to you. I have an issue that has been raised from my sheriffs back home in North Carolina. It has to do with one of the points that you made in your opening testimony, and I will just read from your opening statement. "We adopted an Order to reform inmate calling services to finally provide relief to millions of families and 2.7 million children who have been paying unreasonably-high rates to stay connected with incarcerated loved ones." My sheriffs back home do have some concerns on this issue, and they would like me to pose some questions to you in regard to security measures that they will now be putting in place. Certainly, they want to be able to provide access and information and the ability to communicate with family members, but they are concerned that this regulation is saying that their ability to put forward call blocking through the prison, is that an issue. Is that looked upon as something that we want to veer away from?

Ms. CLYBURN. So let me start again. Thank you, and it is a pleasure meeting a Carolinian.

Mrs. ELLMERS. Absolutely, yes.

Ms. CLYBURN. Right. We might argue a bit about which—

Mrs. ELLMERS. Yes.

Ms. CLYBURN. Right.

Mrs. ELLMERS. That is OK though. We are brothers, cousins, sisters.

Ms. CLYBURN. Absolutely.

Mrs. ELLMERS. That is right.

Ms. CLYBURN. So let me start with the latter in terms of the call blocking concerns that some of the sheriffs and persons who run jail facilities have mentioned. So as it relates to that particular item, I want to assure you that nothing within anything that we have delivered in this Order prevents any type of security in—security needed type of a blocking. So if it is a judge or a witness or something—

Mrs. ELLMERS. Yes.

Ms. CLYBURN [continuing]. You know, is potentially at risk—

Mrs. ELLMERS. Yes.

Ms. CLYBURN [continuing]. Then yes, these providers can block calls. The call blocking comes into play when there is not a business relationship with—if someone is doing business with somebody else, and then the supplier—

Mrs. ELLMERS. Yes.

Ms. CLYBURN [continuing]. Is blocking them, that is when we have some disconnects with our rules, but when it comes to security protocols, that is in place. So you mentioned what is at the epicenter of our reasoning for reform—

Mrs. ELLMERS. Yes.

Ms. CLYBURN [continuing]. That family members, those who represent those who are incarcerated, not everybody incarcerated is guilty—

Mrs. ELLMERS. Yes.

Ms. CLYBURN [continuing]. And those who are trying to help rehabilitate those inmates have complained to us for a number of years, for well over 10 years, that the ability to communicate was just financially outrageous, that it was an unaffordable regime. So what we did, after 10 long years, was act.

Mrs. ELLMERS. Yes.

Ms. CLYBURN. And we looked at, and reminded ourselves with the Communications Act in terms of universal service principles put forward—

Mrs. ELLMERS. Yes.

Ms. CLYBURN [continuing]. That is the providing of just and reasonable rates for all. And so we put in a mechanism that will provide that, and what we also did, not only providing a means for just and reasonable rates for those families and others who use the phone service, but providing the means for a just and reasonable rate of return—

Mrs. ELLMERS. Yes.

Ms. CLYBURN [continuing]. For those carriers. At the same time, built in those—that just and reasonable rate of return for carriers—

Mrs. ELLMERS. Yes.

Ms. CLYBURN [continuing]. Is the amount of money needed to provide state-of-the-art security protocols.

Mrs. ELLMERS. Yes.

Ms. CLYBURN. So nothing within the framework in terms of what we put forth in terms of the Order and the further Order that will deal with intrastate rates, will compromise security protocols, but it will bring more certainty and more, I guess, I would—again, just affordability for those—

Mrs. ELLMERS. Yes.

Ms. CLYBURN [continuing]. Who are making calls to the incarcerated.

Mrs. ELLMERS. There are also concerns about the cost involved. Can you give some guidance in anticipation of the costs that they will have to incur as a result of wanting to make sure that everyone is protected?

Ms. CLYBURN. Right.

Mrs. ELLMERS [continuing]. And the security is there. Also would you consider exempting local jails until they can come up with a plan of action?

Ms. CLYBURN. So one of the things that we have put forth in this engagement is the capacity for any provider that is under distress—

Mrs. ELLMERS. Yes.

Ms. CLYBURN [continuing]. They can apply for a waiver process for a full waiver. And so that capacity is within means, and so they do have the ability to do so, but one of the things that I wanted to emphasize is when we came up with this particular rate structure, we looked at a number of cost studies—

Mrs. ELLMERS. Yes.

Ms. CLYBURN [continuing]. And cost models that included a wide array of facilities, and came up actually with a cost structure that was much higher than some of the petitioners wanted us to—

Mrs. ELLMERS. Yes. Yes.

Ms. CLYBURN [continuing]. But we thought that we needed to take into account facilities, large and small, in order to come up with a rate structure that we think it strikes the right balance.

Mrs. ELLMERS. Well, thank you very much. And I look forward to working with the Commission on this issue and the subcommittee and my law enforcement back home, so thank you so much. I look forward to that.

Ms. CLYBURN. Thank you, ma'am.

Mrs. ELLMERS. And I yield back the remainder of my time.

Mr. LATTA [presiding]. The gentlelady yields back. And seeing no other members to ask questions, I want to thank the Commission for being with us today, and I know that Chairman Walden does the same, and I also want to thank the Commission for changing your time today for your meeting to be able to be here, and I understand your meeting is at 2 o'clock, so we appreciate you accommodating the committee to appear before us today.

And seeing no further business to come before the committee, the committee stands adjourned.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
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February 11, 2014

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Wheeler:

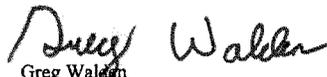
Thank you for appearing before the Subcommittee on Communications and Technology on December 12, 2013, to testify at the hearing entitled "Oversight of the Federal Communications Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on February 25, 2014. Your responses should be e-mailed to the Legislative Clerk in Word format at Charlotte.Savercool@mail.house.gov and mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

February 27, 2014.

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

Dear Chairman Walden:

Thank you for the opportunity to testify before the Subcommittee on December 12, 2013, at the hearing entitled, "Oversight of the Federal Communications Commission." Following up on that testimony, and in response to your letter of February 12, 2014, please find attached my responses to additional questions for the record.

If you have further questions, please feel free to contact me or Sara Morris, Director, Office of Legislative Affairs, at (202) 418-0095.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Wheeler".

Tom Wheeler

Enclosure

cc: The Honorable Anna Eshoo, Ranking Member
Subcommittee on Communications and Technology

Responses from Chairman Tom Wheeler to Questions for the Record

The Honorable Greg Walden

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

Response:

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

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

Response:

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

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

Response:

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

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

Response:

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

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

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

The Honorable Bob Latta

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

Response:

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

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

Response:

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

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

Response:

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

The Honorable Brett Guthrie

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

Response:

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

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

Response:

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

The Honorable Mike Pompeo

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

Response:

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

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

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

Response:

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

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

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

Response:

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

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

The Honorable Henry Waxman

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

Response:

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

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

Response:

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

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

Response:

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

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

The Honorable John Dingell

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

Response:

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

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

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

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

Response:

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

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

3. On December 11, 2013, the Commission's Wireless Bureau released a public notice seeking comment on a Partial Economic Areas (PEAs) licensing scheme for the 600 Megahertz band. Does the Commission support licensing the 600 Megahertz band in this fashion (as opposed to using the Economic Areas approach outlined in the *Broadcast Television Incentive Auction NPRM* (GN Docket No. 12-268)? Does the Commission believe a PEA licensing scheme for the 600 Megahertz band will result in participation by the greatest possible number of wireless providers in the incentive auction? Similarly, does the Commission believe a PEA licensing scheme for the 600 Megahertz band will generate the greatest possible amount of revenue from such auction? Please explain your answer.

Response:

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

The Honorable Doris Matsui

1. The FCC, NTIA, and federal agencies have all made real progress in advancing a roadmap that would move a significant portion of the federal users out of the 1755-1780 MHz band so that it can be re-purposed and paired in an auction with the AWS-3 band.

My understanding is that the Commission must now take action on this proposal. Can you update the committee on the FCC's upcoming plan regarding re-purposing the 1755-1780 MHz band and the timing of the next steps by the commission and the target date for auction?

Response:

Commission staff has appreciated the opportunity to meet with the Committee and its staff regarding this subject. The Commission remains committed to meeting the statutory deadlines set forth in the Middle Class Tax Relief and Job Creation Act for auctioning and licensing the 2155-2180 MHz band, which could be paired with the 1780-1855 MHz band.

I plan to circulate an Order to my fellow Commissioners for their consideration at the March Open Meeting that would set the framework for the AWS-3 auction. We anticipate that we will auction AWS-3 spectrum as early as September 2014.

The Honorable Ben Ray Lujan

1. Commissioners, I appreciate your work to extend new communications networks across the digital divide to rural and difficult-to-connect regions of our country. As many of you are aware, my district in New Mexico is home to many Native Americans. Tribal lands are amongst the most underserved—with only about 10% of all homes connected to broadband and some of the lowest rates of wireless communications in the country. The Commission’s recent reforms of the Universal Service Fund acknowledged this need by including a “tribal coefficient” to increase capital expenditures and operating expenses on tribal lands. I plan on introducing legislation to make the FCC’s Office of Native Affairs and Policy, which provided invaluable advocacy in the adoption of the tribal coefficient, into a permanent agency and ensure that it reports directly to the Chairman instead of to another office or Bureau. My legislation has the support of the National Tribal Telecommunications Association, which is comprised of eleven Tribally-owned communications companies from around the country. Do you believe that the telecommunications needs of Native Americans are being adequately addressed by the FCC’s current structure? How do you believe that ONAP could be better empowered to advocate on behalf of Tribal Americans?

Response:

I agree that it is essential to provide resources to ensure that the FCC is able to address the telecommunications needs of Tribal Nations and Native Communities. Prior to three years ago, ONAP was not an individual office within the Consumer and Governmental Affairs Bureau. Liaison with Tribal Governments was then part of the responsibilities of the Office of Intergovernmental Affairs. The decision to create ONAP and reorganize internally, as well as commit specialized personnel, has had an important, positive impact on our work in this area. You have my commitment to follow this important path as we continue to address the telecommunications needs of all Americans.

ONAP, however, benefits greatly by its position within the Consumer and Governmental Affairs Bureau – which is well-situated to continue to facilitate cross-agency coordination and provide administrative oversight and leadership. We take seriously the need to encourage bureau efficiencies and reduce or pool administrative costs. Providing this administrative structure also frees up the specialized ONAP staff to participate directly in tribal consultations instead of day-to-day management and planning sessions that occupy our Bureau and Office Chiefs and their deputies.

2. While I appreciate the Commission’s efforts to include the Tribal Coefficient in its calculation of USF funds, I believe that more is needed in order to connect our tribal lands to modern communications networks. This coefficient must be properly calculated to recognize the full cost impact of providing service on Tribal lands. In fact, the coefficient’s impact is substantially less than a similar coefficient that is provided to measure the cost of providing service on National Park Service lands. Do you believe that the Coefficient is adequate to connect Tribal lands?

Response:

One of the core components of the Network Compact is universal access, and, consistent with that value, the deployment of voice and broadband infrastructure on Tribal lands is a high priority for the Commission. Throughout the process to reform the legacy high-cost universal service mechanisms, the Commission has recognized that the unique circumstances and challenges of providing service on Tribal lands require special consideration.

I am a firm believer in the importance of universal service, and the Commission must make timely decisions in order to provide regulatory certainty and create incentives to further efficient investment in broadband networks. We must also be open to modifications to the reforms if it is clear that particular rules are not serving their intended purpose. To that point, as I stated during the Subcommittee's hearing, I have directed the Wireline Competition Bureau to prepare an item for the Commission's consideration that would eliminate the Quantile Regression Analysis (QRA) benchmarks for rate of return carriers. I look forward to continuing the work of reforming and modernizing the Universal Service Fund high-cost program – as well as other components of the Fund – and to working with stakeholders, including Tribes and carriers serving Tribal lands, to ensure that all Americans have access to robust voice and broadband services.

3. The Navajo Nation, which is partially in my district, has some of the highest rates of poverty and lowest rates of wireless broadband access in the United States. NTUA Wireless, LLC, which is majority owned by the Navajo Nation, has been seeking an ETC designation in order to access universal service fund support to help make telecommunications service available to more residents of the Navajo Nation. This designation would enable NTUA to make additional investments into infrastructure, which would in turn spur job growth and economic development. NTUA Wireless initially petitioned the FCC for an ETC designation on March 3, 2011, and I have repeatedly joined with New Mexico's Senators to support this petition and urge its resolution. To date, I am not aware of a single filing in opposition to this application, yet the FCC has not acted upon it. What is the current status of the NTUA application and when should the Navajo Nation expect the matter to be resolved?

Response:

On February 18, 2014, the Wireline Competition Bureau and the Wireless Telecommunications Bureau conditionally designated NTUA Wireless as an eligible telecommunications carrier (ETC) for those areas on the Navajo Nation in which NTUA Wireless becomes authorized to receive support in Tribal Mobility Fund Phase I. In areas in which NTUA Wireless's designation becomes effective pursuant to the Tribal Mobility Fund, NTUA Wireless will be required to provide Lifeline services and satisfy other ETC obligations. Otherwise NTUA Wireless is designated as a limited ETC, eligible to receive Lifeline-only support on the Navajo Nation in areas where NTUA Wireless does not receive support in the Tribal Mobility Fund Phase I.

4. The FCC was given significant responsibilities in meeting the challenges of Positive Train Control deployment. Nevertheless, it is my understanding that the FCC was just notified this past May that railroads will need to install over 20,000 new antennas along their tracks. I'm shocked that the railroads would wait 5 years after passage of the Rail Safety Improvement Act of 2008 to notify the FCC of this fact. As I'm sure you're aware, railroads in New Mexico cross Tribal lands and have the potential to affect a number of religious and cultural sites in my home state. Could you please explain the steps that the Commission is taking to not only expedite the deployment of positive train control, but also ensure that the needs of Tribal Nations are met?

Response:

It is a top priority of the Commission to work with all parties to help them fulfill their various legal obligations and responsibilities and advance the deployment of Positive Train Control (PTC) within the timeframe prescribed by the Railroad Safety Improvement Act of 2008 (RSIA).

Until early 2013, the Commission had been informed by the railroads that positive train control (PTC) would be deployed largely on existing infrastructure. However, in the spring of 2013, the railroads disclosed to the Commission plans to deploy PTC using more than 20,000 new wayside poles.

The National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) require environmental and historical review of the construction of facilities that use licensed spectrum. Consistent with statutory requirements, since May 2013, Commission staff has been working with all stakeholders to modify our current process under Section 106 of the NHPA to handle our review of PTC deployments more efficiently. Steps taken in this regard include:

- (1) Meetings with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO);
- (2) Listening and consultation sessions with Tribal Nations, including presentations by the Class 1 freight railroads and sessions with railroad representatives in attendance, as well as government-to-government consultation sessions; and
- (3) Release of scoping documents and a draft Program Comment for stakeholder and public comment to modify our Section 106 process.

As a result of these efforts, on January 8, 2014, FCC staff made available to the Class 1 freight railroads a Beta test batching format to submit some of their proposed wayside facilities for Tribal and State historic preservation review. The Commission intends to submit the Program Comment to ACHP by the end of February, allowing for adoption by ACHP by mid-April under ACHP's rules.

The Commission is also in regular communication with the Department of Transportation, the Federal Railway Administration, and the National Transportation Safety Board regarding PTC issues.

5. As you know, Section 254 of the Communications Act includes a statutory and laudable goal of providing low-income families access to telecommunications services. As part of this mandate, the FCC has managed the Lifeline program that provides discounted mobile telephone service to eligible consumers. The FCC has recently taken action to strengthen and preserve the Lifeline program by working to confirm that consumers may only receive one phone per household, certify that they are eligible for the service and agree to recertify their eligibility each year. To date these steps have proven fruitful, saving an estimated \$2 billion to the program and resulting in the collection of \$90 million in fines from enforcement actions over the past 3 months. How would you evaluate the effectiveness of the recent FCC reforms to the Lifeline program? What work remains to be done to ensure that it continues supporting the low income Americans who depend upon it?

Response:

Lifeline has been an essential program – for jobs, safety and security, and access to government services – for millions of Americans who otherwise could not afford phone service. While the Commission’s comprehensive 2012 Lifeline reforms have made significant progress to address concerns about the program, our work is not complete.

The Commission is continuing to monitor the impact of its reforms, and actively enforcing its rules. In addition, the Commission is evaluating additional potential steps to ensure the integrity of the Lifeline program based on proposals contained in a *Further Notice of Proposed Rulemaking* that accompanied the 2012 *Lifeline Reform Order*, as well as proposals contained in two petitions for rulemaking that were put out for comment. The Commission is actively reviewing the record in response to the proposals in the *Further Notice* and the petitions, in light of developments in the Lifeline market.

6. As required by provisions in the Middle Class Tax Relief Act of 2012, the Commission has an open Notice of Proposed Rule-making (NPRM) to allow greater Wi-Fi use in the 5 GHz band. Finalizing this rule could greatly benefit consumers by providing the spectrum necessary for tremendously faster Wi-Fi connection speeds, with greater capacity and a host of new Wi-Fi applications. Given it is a secondary use, Wi-Fi provides tremendous value to the American public and is frequently used to offer free access in public spaces. It is a great example of maximizing the use of this scarce resource. The President’s June 2013 memorandum – *Expanding America’s Leadership in Wireless Innovation* – calls for the FCC, in consultation with NTIA, to “promulgate and enforce rules for licensed services to provide strong incentives for licensees to put spectrum to use and avoid spectrum warehousing. Such rules may include build-out requirements or other licensing conditions as appropriate for the particular circumstance” Despite having been allocated this spectrum in 1999, there is still only one DSRC test deployment in the entire United States. Furthermore, the Department of Transportation has stated pilot deployments will not begin until 2015 or 2016. It seems that if we are going to require strict build-out requirements for companies that pay significant sums for spectrum, we should, at a minimum, require incumbents who have spectrum and are not fully utilizing it to work with entities that want to use that spectrum on a secondary basis, in this case the Wi-Fi industry. It only makes sense to maximize the use of that spectrum. Do you think that is a fair requirement?

Response:

Yes. The Commission is committed to advancing the tremendous promise the 5 GHz band offers for unlicensed use. As part of an ongoing rulemaking process in this matter, our staff has been working with all of the stakeholders to resolve the technical challenges associated with increasing the utility of this spectrum, while also protecting incumbent, licensed users.

7. The President's June 2013 memorandum – Expanding America's Leadership in Wireless Innovation – also calls for the FCC in consultation with NTIA, to: "identify spectrum allocated for nonfederal uses that can be made available for licensed and unlicensed wireless broadband services and devices, and other innovative and flexible uses of spectrum, while fairly accommodating the rights and reasonable expectations of incumbent users" I, along with several of my colleagues, recently wrote to you regarding the importance of looking for all sharing solutions in the 5850-5925 block. The 5850-5925 block is a key component of maximizing use of the 5 GHz band, but I understand the incumbent in that spectrum, the Intelligent Transportation System of America, has continually raised concerns and objections to sharing despite any final conclusions about the possibilities for successful sharing. That approach seems inconsistent with the President's call for "reasonable expectations." Can you explain how you interpret this from the Commission's perspective, and in this particular case, would you agree "reasonable expectations" for ITS require at least a full dialogue looking for sharing with the respective agencies and stakeholders? If it were necessary, would you view small adjustments to the DSRC standards to facilitate shared use at this nascent point in its development, given it is only deployed in 2,800 vehicles in a pilot program, as a reasonable expectation?

Response:

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

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

8. I appreciated Mr. Pai's comments on 5 GHz. He hits the nail on the head talking about the benefits that can come from maximizing unlicensed use in those bands, and the opportunities it presents consumers. It's important that a technically sound outcome on whether sharing can be achieved with DSCR and Wi-Fi is reached. Is it your understanding that all parties with interest in that band are working together to explore all sharing opportunities and reach a consensus based on technical findings? Is there more the Commission can be doing to facilitate that work?

Response:

The Commission is working collaboratively with the stakeholders and the IEEE Tiger Team to identify potential technical methods for addressing these issues, and staff will continue to monitor this situation and work toward a successful completion of the rulemaking process.

The Honorable Bobby Rush

1. Section 257 of the Communications Act requires the Commission to promote diverse ownership of the airwaves, particularly ownership by entrepreneurs and small businesses (including those owned by women and minorities) by taking regulatory action to *identify and eliminate* market entry barriers in the provision and ownership of telecommunications and information services, or in the provision of parts or services to providers of telecommunications or information services. Under the statute, the Commission is also directed to *eliminate* statutory barriers to market entry by those entities, consistent with the public interest, convenience, and necessity. These efforts are to be memorialized by the Commission in a report that it is to prepare and submit to Congress every three years.

Recently, under Chairman Wheeler's direction the FCC decided to hold off on adopting and to reassess certain broadcast-ownership NPRM proposals that could foreseeably undermine Section 257 and decrease already-anemic and abysmally low levels of diversity in ownership of communications licenses and facilities.

What steps should the Commission take going forward to ensure that the statutory goals of Section 257 are met and to increase already-abysmally low levels of female and minority ownership?

Response:

As you note, Section 257 of the Communications Act requires the FCC to examine and eliminate market entry barriers for entrepreneurs and other small businesses in the provision of telecommunications services. In addition to the on-going work on the current Section 257 review, the Commission's Office of Business Opportunities (OCBO) has taken steps to address some of these issues. For example, OCBO hosts annual conferences on access to capital and supplier diversity. Its most recent access to capital conference focused on angel investment strategies for small businesses. OCBO also works closely with the Advisory Committee on Diversity in the Digital Age to develop diversity related initiatives for the Commission. The current Diversity Committee is focusing on economic opportunities in the area of unlicensed devices, second tier opportunities in wireless, and diversity related employment best practices in the broadcasting industry. Additionally, in 2013, the Media Bureau released a Declaratory Ruling clarifying the process regarding license transfer applications that involve more than 25% foreign investment. Such clarification was requested in the hopes that additional revenue streams would potentially be available to help existing or new entrants in the broadcasting industry – including minority and female station owners.

- **In light of existing market trends and forces attendant to upcoming spectrum auctions, is it reasonable to anticipate further diminution in diverse ownership of broadcasting licenses and cable systems?**
 - **If so, what should the Commission be doing to offset that diminution in ownership share?**

Response:

It is difficult to predict the exact impact of upcoming spectrum auctions on the diversity of ownership given the voluntary nature of the incentive auction, but we continue to carefully consider this issue. It is possible that the channel sharing and other opportunities presented in the incentive auction could bolster existing minority and female owners economically, while allowing them to continue broadcasting over the air. In addition, diversity issues also are being examined as part of the Commission's ongoing broadcast ownership rule review.

- **When will the Commission be prepared to release its next Section 257 Report?**

Response:

The Commission anticipates that it will release its next Section 257 Report by this coming summer.

2. In prior testimony before our subcommittee, it has been stated that added regulations on broadcasters "stem from what some have characterized as a 'social contract' between the government and the broadcasting industry: broadcasters use licensed spectrum to serve the public interest and offer their service free to American consumers." (see Testimony of Edward L. Munson, Jr., C&T Subcommittee Hearing, *Innovation versus Regulation in the Video Marketplace 1*)(9/11/2013)

Many of these American broadcast TV consumers and watchers are minorities. In the 2013 Ownership Survey and Trend Report, it was cited that 22 percent of all African-American households and 25 percent of Hispanic households are broadcast-only homes. Additionally, minorities comprise 41 percent of all broadcast-only homes.

Notwithstanding these considerable percentages, minority and female ownership of television stations and cable systems has shrunk dramatically over the years.

- **Do you concur or disagree with the proposition that minority TV broadcast and cable system owners can be just as if not more responsive to the needs of their minority viewers and audiences?**
- **Other than, or in addition to the reinstatement of minority tax certificates what measures can Congress take so that more programming and news meeting the critical needs of minority viewers and consumers gets carried over the public airwaves?**

Response:

Generally, broadcast licensees are expected to serve the public interest by providing programming responsive to the needs of their respective communities. Beyond that, due to First Amendment concerns, the Commission cannot dictate what programming a station must provide to its viewers. However, the impact of diversity of ownership and diversity of viewpoint as they relate to the individual ownership restrictions are considerations under the quadrennial broadcast ownership review. The Commission

continues its work on the current Section 257 report with the specific goal of identifying and eliminating the barriers that currently exist for new entrants into telecommunications – including the broadcast industry. Completion of the report to Congress could provide additional recommendations for action. As you note, access to capital appears to be one of the major hurdles for small businesses, and tax certificates could be one way Congress could act to help increase the total of minority and women owned stations.

3. Federal law mandates that railroads install a safety technology known as positive train control by December 2015. This technology will require the installation of more than 20,000 antenna poles to ensure communication among railroad locomotives, computer servers and GPS devices.

- **Is it necessary to submit these short antenna poles to the same level of agency scrutiny and tribal review under the National Historic Preservation Act, as, for instance, much taller cell towers?**
- **Would you agree many of these smaller poles located on railroad rights-of-way where the property has been disturbed for many decades (or longer) could be exempted from the review process?**

Response:

It is a top priority of the Commission to work with all parties to help them fulfill their various legal obligations and responsibilities and advance the deployment of Positive Train Control (PTC) within the timeframe prescribed by the Railroad Safety Improvement Act of 2008 (RSIA).

The National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) require environmental and historical review of the construction of facilities that use licensed spectrum. The construction of any infrastructure that will be used in connection with a license granted by the Federal Communications Commission is subject to FCC review under NHPA Section 106. It is the fact of the FCC license, rather than the size of the infrastructure, that requires the review.

Railroad rights-of-way are not currently exempt from Section 106 review. Under applicable statutes and regulations, a wholesale exemption of PTC infrastructure from NHPA review would require negotiation and consultation with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO), as well as government-to-government consultation with Tribal Nations and a full notice-and comment rulemaking. Even if the record would ultimately support broad exclusions, this process would take far longer than the December 31, 2015, statutory deadline to complete.

Until early 2013, the Commission had been informed by the railroads that PTC would be deployed largely on existing infrastructure. However, in the spring of 2013, the railroads disclosed to the Commission plans to deploy PTC using more than 20,000 new wayside poles.

Consistent with statutory requirements, since May 2013, Commission staff has been working with all stakeholders to modify our current process under Section 106 of the NHPA to handle our review of PTC deployments more efficiently. Steps taken in this regard include:

- (1) Meetings with the ACHP and the NCSHPO;
- (2) Listening and consultation sessions with Tribal Nations, including presentations by the Class 1 freight railroads and sessions with railroad representatives in attendance, as well as government-to-government consultation sessions; and
- (3) Release of scoping documents and a draft Program Comment for stakeholder and public comment to modify our Section 106 process.

As a result of these efforts, on January 8, 2014, FCC staff made available to the Class 1 freight railroads a Beta test batching format to submit some of their proposed wayside facilities for Tribal and State historic preservation review. The Commission intends to submit the Program Comment to ACHP by the end of February, allowing for adoption by ACHP by mid-April under ACHP's rules.

The Commission is also in regular communication with the Department of Transportation, the Federal Railway Administration, and the National Transportation Safety Board regarding PTC issues.

The Honorable G.K. Butterfield

1. The FCC has launched a proceeding to modernize the highly successful E-rate program. I have heard from my school districts that their websites are becoming more and more essential to their educational mission. For example, today schools use their websites for emergency communications, parental engagement and digital learning. Today this service is supported through the E-rate program through the webhosting category. There is some concern that this funding may be eliminated or phased out. Given the emphasis on digital learning and the critical function a school's website plays in delivering digital learning do you have a perspective on continued funding for webhosting?

Response:

The E-rate Modernization *Notice of Proposed Rulemaking* sought comment on phasing out support for supplemental or "ride-over" services that are not directly related to connectivity, such as webhosting and e-mail service. Specifically, the Commission sought comment on whether E-rate funds should continue to be used to support services such as webhosting and email at costly monthly rates when many such services are offered at lower prices or for free to other users, and particularly in light of the fact that there are many schools which do not receive any E-rate support for critical connectivity needs. The Commission will take all views on this issue into full consideration as we move forward with modernization of the E-rate program.

2. Schools in my Congressional District are following the FCC's E-rate Modernization efforts very closely. I understand that many school districts around the country have weighed in with comments to the FCC. I hope the FCC will give serious consideration to the concerns of school districts on issues like streamlining the application process and revisions to the current list of eligible services. Can you give me a sense of how you are going to approach the modernization generally and what steps is the FCC taking to ensure that school districts have input into the final decisions?

Response:

Last summer, the Commission began a process to collect input on the modernization of the E-rate program. The Commission specifically sought comment on streamlining the application process, increasing transparency, and providing more assistance to schools and libraries to help them lower the prices they pay. Over 1,400 comments have been received to date, and hundreds of meetings have been held with interested parties. Let me assure you that the Commission will continue to seek public comment on E-rate reform issues from all stakeholders, including schools and libraries, and will take their views into full consideration.

Prioritizing E-rate program resources to focus on high-speed broadband and making administrative improvements to the program can significantly expand the amount that goes to high-speed broadband without additional spending, and ensures that funds intended for schools and libraries get to them faster and go farther. Other steps to improve the management of the program, such as resolving a substantial appeals backlog, will free up additional reserved funds.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
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Majority (202) 225-2827
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February 11, 2014

The Honorable Mignon Clyburn
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Commissioner Clyburn:

Thank you for appearing before the Subcommittee on Communications and Technology on December 12, 2013, to testify at the hearing entitled "Oversight of the Federal Communications Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on February 25, 2014. Your responses should be e-mailed to the Legislative Clerk in Word format at Charlotte.Savercool@mail.house.gov and mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

FEDERAL COMMUNICATIONS COMMISSION



Mignon L. Clyburn
Commissioner

February 25, 2014

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Representative Walden:

It was a pleasure to appear before the Subcommittee on Communications and Technology on December 12, 2013, to provide testimony relating to oversight of the Federal Communications Commission.

I appreciate the opportunity to answer the additional questions for the record posed by you and your colleagues, Representatives Latta; Waxman; Matsui; Lujan, and Rush. The responses are attached to this letter, and will be e-mailed to the Legislative Clerk. A hard copy will be mailed to the Clerk of the Committee on Energy and Commerce as directed.

Please feel free to contact me if you have any further questions.

Sincerely,

Mignon L. Clyburn

The Honorable Greg Walden

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

Response:

The Commission sought comment on the UHF discount in the current Notice of Proposed Rulemaking (NPRM). This proceeding is pending, and there is not a final decision at this point.

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

Response:

As required by Congress, the Commission is poised to review the current broadcast ownership rules. Given changes in the consumer market, and new developments in the media industry, a fresh look is warranted. I support a new examination of the suite of ownership rules, with a view toward making adjustments, as necessary, and as consistent with judicial precedent.

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

Response:

It is especially appropriate for the Commission to review the newspaper / broadcast ownership rules in light of changed market conditions. I support a fresh review of each rule to ensure that we are continuing to act in the public interest.

The Honorable Bob Latta

1. Commissioner Clyburn, one of the FCC's accomplishments you noted in your testimony before the subcommittee is the adoption of an Order to reform inmate calling services (ICS). During the hearing when asked about the costs that local jails will incur as a result of these rates changes for interstate calling services, you mentioned that providers in distress can apply for a waiver from those rates. Does this waiver exist for correctional facilities that have relied on funds generated by inmate use of ICS to implement standard security features into their calling systems, and that now, as a result of the rate change, allege that they do not have the means to afford sufficient security measures into their systems to ensure public safety? If so, please outline the waiver application process. If not, how would you propose that correctional facilities balance their unique public safety and facility security needs and budgetary constraints with these uniform interstate calling rates?

Response:

I appreciate the fact that, after 10 long years, the Commission finally responded to a petition filed by a courageous grandmother to address unreasonably high rates for families and friends to make telephone calls to a loved one in prison. The Commission took long overdue steps to provide relief to the millions of Americans who have borne the financial burden of unjust and unreasonable interstate inmate phone rates. The Commission's Order adopted interim rate caps for interstate calls of \$0.21 a minute for debit calls and \$0.25 a minute for collect calls. These rates apply to interstate inmate calling services between the inmate calling provider and the consumers -- not the correctional facilities.

The Commission has a statutory duty to ensure that all carriers' interstate rates are just and reasonable.¹ It also has an obligation to ensure that payphone rates, which include payphones in correctional institutions, are fair.² I prefer for the marketplace to ensure that rates are just and reasonable wherever possible. In the context of inmate calling services (ICS), however, the Commission found that "the marketplace alone has not ensured that interstate ICS rates are just and reasonable and they are fair to consumers, as well as providers."³ The Commission concluded "that the rate reforms we begin in this Order are necessary to ensure [interstate ICS rates] are just and reasonable"⁴ and "necessary to implement section 276(b)(1)'s 'fair compensation' directive."⁵ The Order focuses on ensuring that the rates the carriers charge consumers comply with the statute –

¹ See 47 U.S.C. § 201(b).

² See 47 U.S.C. § 276(b). "The Commission has previously found the term 'fairly compensated' permits a range of compensation rates that could be considered fair, but that the interests of both the payphone service providers and the parties paying the compensation must be taken into account." *Inmate Calling Report and Order and FNPRM*, 28 FCC Rcd at 14115, para. 14; see also *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand and Notice of Proposed Rulemaking, CC Docket No. 96-128, 17 FCC Rcd 3248, 3257-58, para. 23 (2002) (*Inmate Calling Order on Remand and NPRM*).

³ *Inmate Calling Report and Order and FNPRM*, 28 FCC Rcd at 14131, para. 45.

⁴ *Id.* at 14131, para. 45.

⁵ *Id.* at 14131-32, para. 46.

it does not regulate the arrangements between inmate calling providers and correctional institutions.

As you note, the Commission provided the opportunity for a waiver to address any unique circumstances. It is important to recognize that the Commission's jurisdiction and rules apply to the carriers – not the correctional institutions. So, the entities that may seek a waiver are the inmate calling services providers. The standard for a waiver, as with all waivers of Commission rules, is “good cause.”⁶ The Commission stated that “the petitioner bears the burden of proof to show good cause exists to support the request” and identified factors to be considered in reviewing a waiver request.⁷ It further stated that inmate calling services providers “will have opportunities to seek waivers to the extent the framework adopted in this Order does not adequately address their legitimate costs of providing ICS.”⁸ The Commission noted that “petitions for waiver of the interim rate caps would account for extraordinary circumstances.”⁹ It delegated authority to the Wireline Competition Bureau to “request additional information necessary for its evaluation of waiver requests and to approve or deny all or part of requests for waiver of the interim rate caps adopted herein.”¹⁰

On February 11, 2014, the Wireline Competition Bureau granted a limited waiver of the interim rate cap to PayTel, an inmate calling provider that provides services to jails. The Bureau found that there was good cause to allow PayTel to charge up to \$0.46 per-minute for interstate call. As the PayTel examples highlights, if there are unique circumstances, the Commission will modify the rules as appropriate.

The Honorable Henry Waxman

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

Response:

While these stations are licensed as television stations, they are functioning as radio stations. One of the key issues raised by their operation is the potential for

⁶ “Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.” 47 C.F.R. § 1.3.

⁷ *Inmate Calling Report and Order and FNPRM*, 28 FCC Rcd at 14153, para. 82.

⁸ *Id.* at 14164, para. 105. The factors are “costs directly related to the provision of interstate ICS and ancillary services; demand levels and trends; a reasonable allocation of common costs shared with the providers’ non-inmate calling services; and general and administrative cost data.” *Id.* at 14153, para. 82.

⁹ *Id.* at 14153, para. 83.

¹⁰ *Id.* at 14154, para. 84.

interference with public broadcast stations. At least one of these broadcasters has proposed a novel alternative, which warrants our careful consideration.

The Honorable Doris Matsui

1. You have worked tirelessly to help bridge the nation's digital divide. An estimated 100 million Americans do not subscribe to broadband at home due to a variety of reasons, including the cost of internet services.

Can you share with us some of your recommendations that Congress and the Administration can consider moving forward?

Response:

Broadband is no longer a luxury, but essential for employment, education, health care, civic engagement and to remain connected to family and friends. I am deeply concerned that approximately 100 million Americans do not subscribe to broadband today with affordability being a significant challenge for too many of these consumers. I support the Broadband Adoption Act of 2013 legislation you introduced to close the digital divide by expanding the Commission's Lifeline program to support broadband in the home. The Act also proposes measures to eliminate waste, fraud and abuse and I applaud your leadership on this issue. The FCC has been conducting pilot programs for supporting broadband with Lifeline. I hope the Commission will learn lessons from these pilots that will help craft permanent rules to provide a means for low-income families to get connected via the Lifeline program.

The Honorable Ben Ray Lujan

1. Commissioners, I appreciate your work to extend new communications networks across the digital divide to rural and difficult-to-connect regions of our country. As many of you are aware, my district in New Mexico is home to many Native Americans. Tribal lands are amongst the most underserved—with only about 10% of all homes connected to broadband and some of the lowest rates of wireless communications in the country. The Commission's recent reforms of the Universal Service Fund acknowledged this need by including a "tribal coefficient" to increase capital expenditures and operating expenses on tribal lands. I plan on introducing legislation to make the FCC's Office of Native Affairs and Policy, which provided invaluable advocacy in the adoption of the tribal coefficient, into a permanent agency and ensure that it reports directly to the Chairman instead of to another office or Bureau. My legislation has the support of the National Tribal Telecommunications Association, which is comprised of eleven Tribally-owned communications companies from around the country. Do you believe that the telecommunications needs of Native Americans are being adequately addressed by the FCC's current structure? How do you believe that ONAP could be better empowered to advocate on behalf of Tribal Americans?

Response:

The FCC's Office of Native Affairs and Policy (ONAP) has been an important voice both inside and outside of the agency that focuses on the unique needs of Tribal areas. One consequence of the sequester was a reduction in travel for the entire agency, including ONAP. I believe that travel is necessary for our agency, generally, and ONAP in particular, to be successful. While Acting Chairwoman, I testified before the Senate Appropriations Committee and advocated for increased funding for the agency so that ONAP could travel for mission-critical events.

I also agree that it is important to connect all Americans, including those on Tribal lands, to modern communications networks capable of providing broadband-enabled services. In previous Commission Orders, including universal service reform, I advocated for a stronger Tribal engagement, as I have seen first-hand the challenges of providing service on Tribal lands. The Commission adopted a separate Tribal Mobility Fund to account for these unique needs. The Tribal Mobility Fund auction is scheduled to occur on Tuesday, February 25, 2014, and I hope that it is successful and provides an infusion of support to build infrastructure on Tribal lands.

In addition to reforms to support infrastructure deployment on Tribal lands, I have been a proponent of reforming the FCC's Lifeline program to support broadband. Low-income consumers living on Tribal lands may not be able to afford broadband even where the service is available. This is one reason why I advocated for a Lifeline broadband pilot program to include at least one Tribal area. I look forward to the results of these efforts and will continue to advocate that the FCC permanently reform Lifeline to support broadband.

2. While I appreciate the Commission's efforts to include the Tribal Coefficient in its calculation of USF funds, I believe that more is needed in order to connect our tribal lands to modern communications networks. This coefficient must be properly calculated to recognize the full cost impact of providing service on Tribal lands. In fact, the coefficient's impact is substantially less than a similar coefficient that is provided to measure the cost of providing service on National Park Service lands. Do you believe that the Coefficient is adequate to connect Tribal lands?

Response:

The Chairman has announced plans to eliminate the existing regressions and benchmarks for FCC's high cost loop support (HCLS) universal service support. As we await the details, I expect the plan will address concerns about the Tribal Coefficient as well as other coefficients with the HCLS benchmarks. It is important to connect all Americans, including those on Tribal lands, to modern communications networks capable of providing broadband-enabled services. I

believe that the FCC has a duty to close the digital divide and ensure that all Americans are connected to broadband.

3. The Navajo Nation, which is partially in my district, has some of the highest rates of poverty and lowest rates of wireless broadband access in the United States. NTUA Wireless, LLC, which is majority owned by the Navajo Nation, has been seeking an ETC designation in order to access universal service fund support to help make telecommunications service available to more residents of the Navajo Nation. This designation would enable NTUA to make additional investments into infrastructure, which would in turn spur job growth and economic development. NTUA Wireless initially petitioned the FCC for an ETC designation on March 3, 2011 and I have repeatedly joined with New Mexico's Senators to support this petition and urge its resolution. To date, I am not aware of a single filing in opposition to this application, yet the FCC has not acted upon it. What is the current status of the NTUA application and when should the Navajo Nation expect the matter to be resolved?

Response:

On February 18, 2014, the Wireline Competition Bureau and the Wireless Telecommunications Bureau released an order that conditionally designated NTUA Wireless as an eligible telecommunications carrier (ETC) for those areas on the Navajo Nation. I am pleased that the Order was approved as it was something I encouraged the staff to prioritize while I was serving as Acting Chairwoman.

4. The FCC was given significant responsibilities in meeting the challenges of Positive Train Control deployment. Nevertheless, it is my understanding that the FCC was just notified this past May that railroads will need to install over 20,000 new antennas along their tracks. I'm shocked that the railroads would wait 5 years after passage of the Rail Safety Improvement Act of 2008 to notify the FCC of this fact. As I'm sure you're aware, railroads in New Mexico cross Tribal lands and have the potential to affect a number of religious and cultural sites in my home state. Could you please explain the steps that the Commission is taking to not only expedite the deployment of positive train control, but also ensure that the needs of Tribal Nations are met?

Response:

Section 106 of the National Historic Preservation Act (NHPA) requires review of antenna structures to be used in conjunction with a Federal Communications Commission license. The Commission staff intends to comply with statutory and regulatory obligations with regard to the proper review of these antenna structures. That review process requires consultation with Tribal governments. As Acting Chairwoman, I directed the staff to work towards the development of a draft program comment. This is not an exemption from the Section 106 process.

A draft program comment could, however, expedite review of these poles on railroad rights of way. On January 29, 2014, the Wireless Telecommunications Bureau released the program comment to seek input from the public. The ACHP will then have 45 days to issue a Program Comment, unless it requests additional documentation, declines to comment, or obtains the Commission's consent to extend this period of time.

5. As you know, Section 254 of the Communications Act includes a statutory and laudable goal of providing low-income families access to telecommunications services. As part of this mandate, the FCC has managed the Lifeline program that provides discounted mobile telephone service to eligible consumers. The FCC has recently taken action to strengthen and preserve the Lifeline program by working to confirm that consumers may only receive one phone per household, certify that they are eligible for the service and agree to recertify their eligibility each year. To date these steps have proven fruitful, saving an estimated \$2 billion to the program and resulting in the collection of \$90 million in fines from enforcement actions over the past 3 months. How would you evaluate the effectiveness of the recent FCC reforms to the Lifeline program? What work remains to be done to ensure that it continues supporting the low income Americans who depend upon it?

Response:

The FCC's Lifeline program is a true lifeline for millions of low-income Americans. Staying connected is essential for employment, emergencies and being able to reach friends and family. As you note, the Commission took corrective action once it became clear that sufficient protections were not in place in the Lifeline program. The tough, comprehensive reforms unanimously adopted by the Commission last year to combat waste, fraud and abuse already have resulted in hundreds of millions of dollars in savings to the Universal Service Fund. The Lifeline program is currently on track to save approximately \$2 billion by the end of 2014. The Commission also remains vigilant on enforcement and, as you recognize, has proposed \$90 million in fines for violations of the Lifeline rules. The first decisive enforcement action against Lifeline providers occurred while I was Acting Chairwoman.

While the Commission's 2012 reforms to the Lifeline program have made significant progress, we recognize that our work is not complete. I am continuing to monitor the impact of its reforms and look forward to working with the Chairman and my colleagues to evaluate what additional measures are appropriate to ensure the integrity of the Lifeline program. To preserve this vital program, the Commission must ensure that it meets the highest standards of integrity. I continue to advocate that the FCC's Lifeline program should be reformed to support broadband. The FCC has reformed the high cost universal service program to support broadband, has revamped the rural health care program and is in the process of modernizing the schools and library or E-rate program. The

Lifeline program also needs to be reformed to reflect the modern era of broadband and I look forward to working with Chairman Wheeler to do so.

6. As required by provisions in the Middle Class Tax Relief Act of 2012, the Commission has an open Notice of Proposed Rule-making (NPRM) to allow greater Wi-Fi use in the 5 GHz band. Finalizing this rule could greatly benefit consumers by providing the spectrum necessary for tremendously faster Wi-Fi connection speeds, with greater capacity and a host of new Wi-Fi applications. Given it is a secondary use, Wi-Fi provides tremendous value to the American public and is frequently used to offer free access in public spaces. It is a great example of maximizing the use of this scarce resource. The President's June 2013 memorandum — Expanding America's Leadership in Wireless Innovation — calls for the FCC, in consultation with NTIA, to "promulgate and enforce rules for licensed services to provide strong incentives for licensees to put spectrum to use and avoid spectrum warehousing. Such rules may include build-out requirements or other licensing conditions as appropriate for the particular circumstance."

Despite having been allocated this spectrum in 1999, there is still only one DSRC test deployment in the entire United States. Furthermore, the Department of Transportation has stated pilot deployments will not begin until 2015 or 2016. It seems that if we are going to require strict build-out requirements for companies that pay significant sums for spectrum, we should, at a minimum, require incumbents who have spectrum and are not fully utilizing it to work with entities that want to use that spectrum on a secondary basis, in this case the Wi-Fi industry. It only makes sense to maximize the use of that spectrum. Do you think that is a fair requirement?

Response:

In recent years, consumer demand for mobile broadband services has skyrocketed. In order to meet this demand, our Nation should explore spectrum management policies that could promote more efficient use of spectrum by all relevant stakeholders.

7. The President's June 2013 memorandum — Expanding America's Leadership in Wireless Innovation — also calls for the FCC in consultation with NTIA, to: "identify spectrum allocated for nonfederal uses that can be made available for licensed and unlicensed wireless broadband services and devices, and other innovative and flexible uses of spectrum, while fairly accommodating the rights and reasonable expectations of incumbent users." I, along with several of my colleagues, recently wrote to you regarding the importance of looking for all sharing solutions in the 5850-5925 block. The 5850-5925 block is a key component of maximizing use of the 5 GHz band, but I understand the incumbent in that spectrum, the Intelligent Transportation System of America, has continually raised concerns and objections to sharing despite any final conclusions about the possibilities for successful sharing. That approach seems inconsistent with the President's call for "reasonable expectations." Can you explain how you interpret this from the Commission's

perspective, and in this particular case, would you agree “reasonable expectations” for ITS require at least a full dialogue looking for sharing with the respective agencies and stakeholders? If it were necessary, would you view small adjustments to the DSRC standards to facilitate shared use at this nascent point in its development, given it is only deployed in 2,800 vehicles in a pilot program, as a reasonable expectation?

Response:

Intelligent Transportation Systems, such as the Dedicated Short Range Communications Systems (DSRC) for vehicle-to-vehicle technology, hold licenses in 5850-5925 MHz band. That band also includes Department of Defense radars and Amateur Radio Service. We understand that an extensive amount of research and investment has gone into developing the DSRC, and in evaluating the 5 GHz band for viable sharing scenarios. A considerable amount of work remains to examine the compatibility between unlicensed devices and these incumbent uses of this band. We are hopeful that all parties will work together to find technical solutions that will permit unlicensed operations in this band to coexist with DSRC and other systems.

8. I appreciated Mr. Pai’s comments on 5 Ghz. He hits the nail on the head talking about the benefits that can come from maximizing unlicensed use in those bands, and the opportunities it presents consumers. It’s important that a technically sound outcome on whether sharing can be achieved with DSCR and Wi-Fi is reached. Is it your understanding that all parties with interest in that band are working together to explore all sharing opportunities and reach a consensus based on technical findings? Is there more the Commission can be doing to facilitate that work?

Response:

The Nation’s demand for unlicensed services continues to increase dramatically, and we need more spectrum to support these services. The 2.4 GHz band, which has been so critical to the success of Wi-Fi and other unlicensed technologies, is increasingly congested particularly in major cities. Densely populated centers are the most expensive geographic areas to deploy licensed networks. For that reason, earlier this year the Commission issued a Notice of Proposed Rulemaking that proposes to make up to an additional 195 megahertz of spectrum in the 5 GHz Band available for unlicensed services. A number of technical issues must be resolved, which requires coordination with NTIA to examine the impact these proposed rules may have on federal users in the 5 GHz band, before final rules can be adopted. The Commission staff is moving quickly to resolve these issue. The sooner we solve these issues, the sooner American innovation can show leadership in developing the 5 GHz band for unlicensed services.

The Honorable Bobby Rush

1. Section 257 of the Communications Act requires the Commission to promote diverse ownership of the airwaves, particularly ownership by entrepreneurs and small businesses (including those owned by women and minorities) by taking regulatory action to *identify and eliminate* market entry barriers in the provision and ownership of telecommunications and information services, or in the provision of parts or services to providers of telecommunications or information services. Under the statute, the Commission is also directed to *eliminate* statutory barriers to market entry by those entities, consistent with the public interest, convenience, and necessity. These efforts are to be memorialized by the Commission in a report that it is to prepare and submit to Congress every three years.

Recently, under Chairman Wheeler's direction the FCC decided to hold off on adopting and to reassess certain broadcast-ownership NPRM proposals that could foreseeably undermine Section 257 and decrease already-anemic and abysmally low levels of diversity in ownership of communications licenses and facilities.

What steps should the Commission take going forward to ensure that the statutory goals of Section 257 are met and to increase already-abysmally low levels of female and minority ownership?

Response:

The Commission is required to examine and eliminate market barriers to entry for entrepreneurs and other small business entities. This remains a perennial challenge, yet the Office of Communications Business Opportunities (OCBO) supports a number of activities to address this mandate. Among other things, OCBO conducts a series of conferences, workshops and meetings designed to provide information to relevant stakeholders on a range of strategies to assist small businesses to participate more fully in the communications sector. The Commission also is guided by an Advisory Committee on Diversity in the Digital Age, which has put forth recommendations on economic opportunities and diversity initiatives in the wireless and broadcast industries. The Commission's Declaratory Ruling clarifying foreign investment in license transfers conceivably clears the way for increased capital for minority and women entrepreneurs in the broadcast space.

- **In light of existing market trends and forces attendant to upcoming spectrum auctions, is it reasonable to anticipate further diminution in diverse ownership of broadcasting licenses and cable systems?**
 - **If so, what should the Commission be doing to offset that diminution in ownership share?**

Response:

It is difficult to predict the exact impact of upcoming spectrum auctions on the diversity of ownership given the voluntary nature of the incentive auction, but it is an issue that must be kept at the forefront. It is possible that the channel sharing and other opportunities presented in the incentive auction could help bolster existing minority and female owners economically, while allowing them to continue broadcasting over the air. In addition, diversity issues also are being examined as part of the Commission's ongoing broadcast ownership rule review.

- **When will the Commission be prepared to release its next Section 257 Report?**

Response:

I am sure the Commission is making plans to release the next Section 257 Report sometime during 2014.

2. In prior testimony before our subcommittee, it has been stated that added regulations on broadcasters “stem from what some have characterized as a ‘social contract’ between the government and the broadcasting industry: broadcasters use licensed spectrum to serve the public interest and offer their service free to American consumers.” (see Testimony of Edward L. Munson, Jr., C&T Subcommittee Hearing, *Innovation versus Regulation in the Video Marketplace* 1)(9/11/2013)

Many of these American broadcast TV consumers and watchers are minorities. In the 2013 Ownership Survey and Trend Report, it was cited that 22 percent of all African-American households and 25 percent of Hispanic households are broadcast-only homes. Additionally, minorities comprise 41 percent of all broadcast-only homes.

Notwithstanding these considerable percentages, minority and female ownership of television stations and cable systems has shrunk dramatically over the years.

- **Do you concur or disagree with the proposition that minority TV broadcast and cable system owners can be just as if not more responsive to the needs of their minority viewers and audiences?**
- **Other than, or in addition to the reinstatement of minority tax certificates what measures can Congress take so that more programming and news meeting the critical needs of minority viewers and consumers gets carried over the public airwaves?**

Response:

I agree that minority TV broadcast and cable system owners can be just as responsive to the needs of their minority viewers and audiences as others. All broadcasters are required to meet certain public interest obligations by providing programming that is responsive to the needs of their communities.

Congress has a unique role to play with respect to establishing programs and opportunities for all Americans to receive information and news relevant to their communities. We stand ready to implement the legislative mandates which would achieve these goals.

3. Federal law mandates that railroads install a safety technology known as positive train control by December 2015. This technology will require the installation of more than 20,000 antenna poles to ensure communication among railroad locomotives, computer servers and GPS devices.

- **Is it necessary to submit these short antenna poles to the same level of agency scrutiny and tribal review under the National Historic Preservation Act, as, for instance, much taller cell towers?**
- **Would you agree many of these smaller poles located on railroad rights-of-way where the property has been disturbed for many decades (or longer) could be exempted from the review process?**

Response:

Section 106 of the National Historic Preservation Act (NHPA) requires review of antenna structures to be used in conjunction with a Federal Communications Commission license. Railroad rights-of-way are not currently exempt from Section 106 review. A wholesale exemption of PTC infrastructure from NHPA review would require a lengthy process involving negotiation and consultation with the Advisory Council on Historic Preservation (ACHP), the National Conference of State Historic Preservation Officers, and government-to-government consultation with Tribal Nations.

During my tenure as Acting Chairwoman, I directed the staff to work towards the development of a draft program comment. This is not an exemption from the Section 106 process. A draft program comment could, however, expedite review of these poles on railroad rights of way. On January 29, 2014, the Wireless Telecommunications Bureau released the program comment to seek input from the public. The ACHP will then have 45 days to issue a Program Comment, unless it requests additional documentation, declines to comment, or obtains the Commission's consent to extend this period of time.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
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February 11, 2014

The Honorable Jessica Rosenworcel
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Commissioner Rosenworcel:

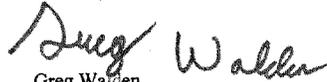
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To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on February 25, 2014. Your responses should be e-mailed to the Legislative Clerk in Word format at Charlotte.Savercool@mail.house.gov and mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

February 28, 2014

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

Dear Chairman Walden:

Thank you for the opportunity to testify before the Subcommittee on Communications and Technology on December 12, 2013, at the hearing entitled, "Oversight of the Federal Communications Commission". In response to your letter on February 12, 2014, please find attached my responses to additional questions for the record. If you have further questions, please don't hesitate to contact our office at (202)418-2401.

Sincerely,

Jessica Rosenworcel

Attachment—Additional Questions for the RecordThe Honorable Greg Walden

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

The FCC is required by law to determine whether or not its media ownership rules are “necessary in the public interest as the result of competition.” Furthermore, the agency is required to repeal or modify any rules it determines are “no longer in the public interest.” As a general matter, I believe this review must be driven factually. In addition, I believe our next review must respond to the issues raised in the last court remand involving prior FCC action on this issue, *Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011). Based on public statements from Chairman Wheeler, I anticipate that the FCC will take up this review in the near future. I also anticipate that in the record that develops in response to this review there will be a robust discussion regarding a wide range of issues—including the current state of the newspaper/broadcast cross-ownership rule.

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

Under the law, the FCC must review its media ownership rules on a periodic basis. I am committed to making decisions on the basis of the factual record that develops in our upcoming review.

The Honorable Henry Waxman

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

Low power television stations operating on Channel 6 are licensed by the FCC as television stations, not radio stations. As a result, a hybrid digital video signal and analog audio signal may pose some legal complexities, as our existing allocation and licensing systems are

designed so that low power television stations provide video services. More importantly, the combination of these two services may result in interference. When the FCC last reviewed an application from a low power television station seeking to provide a hybrid analog-digital signal in 2012, the agency's Media Bureau dismissed the application, concluding that it did not comply with existing rules regarding transmission standards and therefore could cause impermissible interference. However, should another entity submit another application regarding this kind of hybrid service, the agency should review any new proposal on its own terms.

The Honorable Ben Ray Luian

1. Commissioners, I appreciate your work to extend new communications networks across the digital divide to rural and difficult-to-connect regions of our country. As many of you are aware, my district in New Mexico is home to many Native Americans. Tribal lands are amongst the most underserved—with only about 10% of all homes connected to broadband and some of the lowest rates of wireless communications in the country. The Commission's recent reforms of the Universal Service Fund acknowledged this need by including a "tribal coefficient" to increase capital expenditures and operating expenses on tribal lands. I plan on introducing legislation to make the FCC's Office of Native Affairs and Policy, which provided invaluable advocacy in the adoption of the tribal coefficient, into a permanent agency and ensure that it reports directly to the Chairman instead of to another office or Bureau. My legislation has the support of the National Tribal Telecommunications Association, which is comprised of eleven Tribally-owned communications companies from around the country. Do you believe that the telecommunications needs of Native Americans are being adequately addressed by the FCC's current structure? How do you believe that ONAP could be better empowered to advocate on behalf of Tribal Americans?

Telecommunications deployment in Indian country for both basic and advanced services lags behind the rest of the country. This is a troubling and persistent problem that requires attention. The FCC's Office of Native Affairs and Policy has been an invaluable resource to the agency in its efforts to expand broadband access to all Americans. I fully support the efforts of this office. I also would support changes to strengthen the office. I would note in particular that traveling to Indian country is costly—but essential. I hope that if there is pressure on the FCC's travel budget we do not lose sight of the value of direct contact—outside of Washington—with our colleagues from tribal communities.

2. While I appreciate the Commission's efforts to include the Tribal Coefficient in its calculation of USF funds, I believe that more is needed in order to connect our tribal lands to modern communications networks. This coefficient must be properly calculated to recognize the full cost impact of providing service on Tribal lands. In fact, the coefficient's impact is substantially less than a similar coefficient that is provided to measure the cost of providing service on National Park Service lands. Do you believe that the Coefficient is adequate to connect Tribal lands?

More than two years ago, the FCC took historic steps to update its high-cost universal service fund. Though this predated my arrival at the agency, I appreciate the work that went into this process, including efforts to bridge the digital divide on Tribal lands. This series of reforms

included the “Tribal Coefficient,” which attempts to account for the exceptionally high costs of serving Tribal lands. The FCC also put in place a Tribal Mobility Fund, which used a reverse auction mechanism to award additional support for the deployment of mobile services. These are good first steps. But going forward, I believe we need to continue to evaluate the effectiveness of these reforms and make adjustments to improve service, as needed.

3. The Navajo Nation, which is partially in my district, has some of the highest rates of poverty and lowest rates of wireless broadband access in the United States. NTUA Wireless, LLC, which is majority owned by the Navajo Nation, has been seeking an ETC designation in order to access universal service fund support to help make telecommunications service available to more residents of the Navajo Nation. This designation would enable NTUA to make additional investments into infrastructure, which would in turn spur job growth and economic development. NTUA Wireless initially petitioned the FCC for an ETC designation on March 3, 2011 and I have repeatedly joined with New Mexico’s Senators to support this petition and urge its resolution. To date, I am not aware of a single filing in opposition to this application, yet the FCC has not acted upon it. What is the current status of the NTUA application and when should the Navajo Nation expect the matter to be resolved?

On February 18, 2014, the FCC released a decision from the Wireline Competition Bureau (DA 14-200) that conditionally designates NTUA Wireless as an eligible telecommunications carrier (ETC).

4. The FCC was given significant responsibilities in meeting the challenges of Positive Train Control deployment. Nevertheless, it is my understanding that the FCC was just notified this past May that railroads will need to install over 20,000 new antennas along their tracks. I’m shocked that the railroads would wait 5 years after passage of the Rail Safety Improvement Act of 2008 to notify the FCC of this fact. As I’m sure you’re aware, railroads in New Mexico cross Tribal lands and have the potential to affect a number of religious and cultural sites in my home state. Could you please explain the steps that the Commission is taking to not only expedite the deployment of positive train control, but also ensure that the needs of Tribal Nations are met?

The Rail Safety Improvement Act of 2008 requires the deployment of Positive Train Control systems on major freight, passenger, and commuter rail systems by the end of 2015. To meet this deadline—and improve rail safety—Positive Train Control technology requires the deployment of tens of thousands of new wireless towers. As you know, the National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) require environmental and historical review of federal undertakings, including construction of facilities that use licensed spectrum.

The staff of the FCC has been working on developing a review process tailored to Positive Train Control construction that modifies how the agency handles tower construction notification. Typically, this process operates on a tower-by-tower basis. However, the agency staff has begun to make changes to our Program Comment process under Section 106 of the NHPA, in order to handle Positive Train Control wayside antenna construction in a batched format. Ideally, this will expedite review. To further speed this process, I understand that the

agency staff has met with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO) to discuss this effort. In addition, the agency staff has held listening sessions with Tribal nations. The staff intends to submit the Program Comment to ACHP by the end of this month, with the goal of having the ACHP adopt this process by mid-April.

For my part, I have supported reviewing tower applications in batches—so that we treat similar deployments the same and we process them fast. That way, the knottiest applications do not hold up broader deployment. I also recommended that we find ways to prioritize our review of towers so that we can enable early testing. Finally, to the extent that deployments impact sites of significance to Tribal Nations, all of these efforts must proceed in a way that honors the principles of sovereignty and federal trust responsibility.

5. As you know, Section 254 of the Communications Act includes a statutory and laudable goal of providing low-income families access to telecommunications services. As part of this mandate, the FCC has managed the Lifeline program that provides discounted mobile telephone service to eligible consumers. The FCC has recently taken action to strengthen and preserve the Lifeline program by working to confirm that consumers may only receive one phone per household, certify that they are eligible for the service and agree to recertify their eligibility each year. To date these steps have proven fruitful, saving an estimated \$2 billion to the program and resulting in the collection of \$90 million in fines from enforcement actions over the past 3 months. How would you evaluate the effectiveness of the recent FCC reforms to the Lifeline program? What work remains to be done to ensure that it continues supporting the low income Americans who depend upon it?

The Lifeline program is an important part of keeping everyone in this country connected. After all, having access to telephone service is essential for calling emergency services, being able to secure a job, take care of loved ones, and manage routine interactions with government and with healthcare providers. However, across the board, all of our universal service programs—and Lifeline included—merit regular review, attention, and care.

In 2012, the FCC took steps to reform the Lifeline program. Among other things, the agency strengthened enrollment and certification requirements and imposed new auditing obligations on carriers. These efforts, coupled with the agency's recent enforcement efforts, have already led to a significant reduction of waste, fraud, and abuse in the program. But our work is not done. The agency must continuously evaluate the Lifeline program to ensure that it is meeting its intended purpose under Section 254(b) of the Communications Act—helping ensure that quality services are available at affordable rates for low-income consumers throughout the nation.

6. As required by provisions in the Middle Class Tax Relief Act of 2012, the Commission has an open Notice of Proposed Rule-making (NPRM) to allow greater Wi-Fi use in the 5 GHz band. Finalizing this rule could greatly benefit consumers by providing the spectrum necessary for tremendously faster Wi-Fi connection speeds, with greater capacity and a host of new Wi-Fi applications. Given it is a secondary use, Wi-Fi provides tremendous value to the American public and is frequently used to offer free access in public spaces. It is a great example of maximizing the use of this scarce resource. The President's June 2013

memorandum – Expanding America’s Leadership in Wireless Innovation – calls for the FCC, in consultation with NTIA, to “promulgate and enforce rules for licensed services to provide strong incentives for licensees to put spectrum to use and avoid spectrum warehousing. Such rules may include build-out requirements or other licensing conditions as appropriate for the particular circumstance” Despite having been allocated this spectrum in 1999, there is still only one DSRC test deployment in the entire United States. Furthermore, the Department of Transportation has stated pilot deployments will not begin until 2015 or 2016. It seems that if we are going to require strict build-out requirements for companies that pay significant sums for spectrum, we should, at a minimum, require incumbents who have spectrum and are not fully utilizing it to work with entities that want to use that spectrum on a secondary basis, in this case the Wi-Fi industry. It only makes sense to maximize the use of that spectrum. Do you think that is a fair requirement?

As you note, Section 6406 of the Middle Class Tax Relief and Job Creation Act required the National Telecommunications and Information Administration (NTIA) to study the feasibility of allowing unlicensed devices to share the 5850-5925 MHz band. NTIA completed this study along with a review of the 5350-5470 MHz band in January of last year. Among other things, the NTIA report found that non-federal use of the 5850-5925 MHz band is limited to Dedicated Short Range Communications Service systems operating in the Intelligent Transportation System radio service.

Last February, the FCC began a proceeding that included a proposal to allow unlicensed devices in the 5850-5925 MHz band. Since that time, I understand that the FCC has been working with the National Highway Traffic Safety Administration, among others, to determine the viability of this proposal.

However, I do agree with you that unlicensed use in this band has real potential. These are the kind of airwaves that can be a catalyst for new innovation—because this band has enough contiguous spectrum that could enable it to unlock the full potential of the 802.11ac Wi-Fi standard. At the same time, I understand that additional testing of this spectrum to determine whether or not risks to incumbent users can be mitigated will take some time. It may also require the development of sharing technologies like new databases, dynamic frequency selection, and transmit power control. So I believe that we should continue to push forward on these efforts and strive to find a solution that maximizes the efficient use of this spectrum without jeopardizing health and safety.

7. The President’s June 2013 memorandum – Expanding America’s Leadership in Wireless Innovation – also calls for the FCC in consultation with NTIA, to: “identify spectrum allocated for nonfederal uses that can be made available for licensed and unlicensed wireless broadband services and devices, and other innovative and flexible uses of spectrum, while fairly accommodating the rights and reasonable expectations of incumbent users” I, along with several of my colleagues, recently wrote to you regarding the importance of looking for all sharing solutions in the 5850-5925 block. The 5850-5925 block is a key component of maximizing use of the 5 GHz band, but I understand the incumbent in that spectrum, the Intelligent Transportation System of America, has continually raised concerns and objections to sharing despite any final conclusions about

the possibilities for successful sharing. That approach seems inconsistent with the President's call for "reasonable expectations." Can you explain how you interpret this from the Commission's perspective, and in this particular case, would you agree "reasonable expectations" for ITS require at least a full dialogue looking for sharing with the respective agencies and stakeholders? If it were necessary, would you view small adjustments to the DSRC standards to facilitate shared use at this nascent point in its development, given it is only deployed in 2,800 vehicles in a pilot program, as a reasonable expectation?

As noted above, I agree that there is potential for the 5850-5925 MHz band to be a catalyst for new and innovative wireless services. I also believe that we should continue to push forward to find a way to maximize the efficient use of this spectrum while continuing to protect health and safety. So I am open to rule changes, provided they are consistent with these goals.

8. I appreciated Mr. Pai's comments on 5 Ghz. He hits the nail on the head talking about the benefits that can come from maximizing unlicensed use in those bands, and the opportunities it presents consumers. It's important that a technically sound outcome on whether sharing can be achieved with DSCR and Wi-Fi is reached. Is it your understanding that all parties with interest in that band are working together to explore all sharing opportunities and reach a consensus based on technical findings? Is there more the Commission can be doing to facilitate that work?

Although I am not a direct participant in ongoing technical discussions regarding the 5850-5925 MHz band, I understand that the FCC staff has been working to facilitate productive discussions among stakeholders. I support these efforts.

However, I think the FCC can act to increase the amount of spectrum available for unlicensed use in the 5 GHz band in the near term—and specifically in the 5150-5250 MHz band. In July last year, the Department of Defense wrote a letter noting that they do not need access to this band for telemetry, acknowledging that it could be made available for Wi-Fi. The FCC should seize this opportunity—now. We can take the flexible rules that have been responsible for unlicensed use in the 5725-5825 MHz and expand them to the 5150-5250 MHz band. If we do, we can dramatically increase the bandwidth for the 802.11ac standard. This will mean more potential for unlicensed in this band—and less congestion on licensed wireless networks.

The Honorable Bobby Rush

1. Section 257 of the Communications Act requires the Commission to promote diverse ownership of the airwaves, particularly ownership by entrepreneurs and small businesses (including those owned by women and minorities) by taking regulatory action to *identify and eliminate* market entry barriers in the provision and ownership of telecommunications and information services, or in the provision of parts or services to providers of telecommunications or information services. Under the statute, the Commission is also directed to *eliminate* statutory barriers to market entry by those entities, consistent with the public interest, convenience, and necessity. These efforts are to be memorialized by the Commission in a report that it is to prepare and submit to Congress every three years.

Recently, under Chairman Wheeler’s direction the FCC decided to hold off on adopting and to reassess certain broadcast-ownership NPRM proposals that could foreseeably undermine Section 257 and decrease already-anemic and abysmally low levels of diversity in ownership of communications licenses and facilities.

- **What steps should the Commission take going forward to ensure that the statutory goals of Section 257 are met and to increase already-abysmally low levels of female and minority ownership?**

The FCC’s Office of Communications Business Opportunities serves as the agency’s principal advisor on issues, rulemakings, and policies affecting small, women-owned, and minority-owned communications businesses. This office is responsible for developing the triennial report to Congress pursuant to Section 257 of the Communications Act, which, among other things, directs the agency to identify and remove “market barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications and information services.” I fully anticipate that our upcoming report will solicit and may include specific recommendations for the FCC to address what you accurately describe as the unacceptably low level of female and minority communications ownership.

Beyond this report, however, the FCC has taken additional steps to address this issue. In particular, last year the agency clarified its policies and procedures for reviewing transactions involving the broadcast industry—and in particular, those that would result in foreign investment exceeding 25 percent. This action, which was sought by a broad and diverse range of stakeholders—including broadcasters, public interest advocates, and investors—could remove obstacles to new capital investment. This has the potential to improve financial support for small, women-owned, and minority-owned broadcast ownership.

- **In light of existing market trends and forces attendant to upcoming spectrum auctions, is it reasonable to anticipate further diminution in diverse ownership of broadcasting licenses and cable systems?**
 - **If so, what should the Commission be doing to offset that diminution in ownership share?**

As you acknowledge, the FCC has significant spectrum auction responsibilities in the near term under the Middle Class Tax Relief and Job Creation Act. First and foremost, the agency must develop these auctions consistent with the law. At the same time, we absolutely must be mindful of the potential impact of these upcoming spectrum auctions on the diversity of ownership.

At this time, it is difficult to predict the impact of these auctions on ownership diversity, because the law makes participation by full-power television stations voluntary. However, through channel sharing and other innovations made possible by the incentive auction, it may be possible to strengthen small, women-owned, and minority-owned stations economically while allowing them to continue to broadcast over the air.

- **When will the Commission be prepared to release its next Section 257 Report?**

The timing of the release of the FCC's report pursuant to Section 257 is at the discretion of the Chairman.

2. In prior testimony before our subcommittee, it has been stated that added regulations on broadcasters “stem from what some have characterized as a ‘social contract’ between the government and the broadcasting industry: broadcasters use licensed spectrum to serve the public interest and offer their service free to American consumers.” (see Testimony of Edward L. Munson, Jr., C&T Subcommittee Hearing, *Innovation versus Regulation in the Video Marketplace 1*)(9/11/2013)

Many of these American broadcast TV consumers and watchers are minorities. In the 2013 Ownership Survey and Trend Report, it was cited that 22 percent of all African-American households and 25 percent of Hispanic households are broadcast-only homes. Additionally, minorities comprise 41 percent of all broadcast-only homes.

Notwithstanding these considerable percentages, minority and female ownership of television stations and cable systems has shrunk dramatically over the years.

- **Do you concur or disagree with the proposition that minority TV broadcast and cable system owners can be just as if not more responsive to the needs of their minority viewers and audiences?**

I absolutely concur.

- **Other than, or in addition to the reinstatement of minority tax certificates what measures can Congress take so that more programming and news meeting the critical needs of minority viewers and consumers gets carried over the public airwaves?**

I support the reinstatement of minority tax certificates. History demonstrates that this was the single most effective tool for diversifying the ownership of broadcast stations. From 1978 to 1995, during the time that this policy was in effect, more than 200 media transactions took place, resulting in 290 minority-owned radio stations and 43 minority-owned television stations.

Beyond reinstatement of the minority tax certificate program, I believe that the FCC's Section 257 reports could be improved by including recommendations to Congress regarding legislative action that could further reduce barriers to entry for small, women-owned, and minority-owned communications businesses.

3. Federal law mandates that railroads install a safety technology known as positive train control by December 2015. This technology will require the installation of more than 20,000 antenna poles to ensure communication among railroad locomotives, computer servers and GPS devices.

- **Is it necessary to submit these short antenna poles to the same level of agency scrutiny and tribal review under the National Historic Preservation Act, as, for instance, much taller cell towers?**

The FCC's review of tower applications is governed in part by the National Historic Preservation Act (NHPA), which requires the FCC to consider the effects of its federal undertakings on historic properties. In this case, the railroads are FCC spectrum licensees. As a result, the construction of their infrastructure to operate under the law is considered a federal undertaking. Pursuant to FCC rules, the review of tower applications is based on whether or not the poles will be erected and dug into the ground—and not the size of the poles. This is intended to allow State Historic Preservation Officers and Tribal Nations the opportunity to identify and protect historic properties.

- **Would you agree many of these smaller poles located on railroad rights-of-way where the property has been disturbed for many decades (or longer) could be exempted from the review process?**

I believe that a wholesale exemption of Positive Train Control infrastructure from NHPA review would require negotiation and consultation with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers, in addition to government-to-government consultation with Tribal Nations and a full notice-and-comment rulemaking from the FCC. That said, I would be open to considering any approach to expedite review of these deployments that is consistent with the law and respects the sovereignty of Tribal Nations. I believe that finding a solution to this issue should be one of the FCC's highest priorities.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

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February 11, 2014

The Honorable Ajit Pai
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Commissioner Pai:

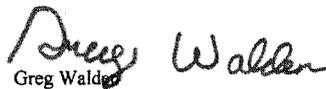
Thank you for appearing before the Subcommittee on Communications and Technology on December 12, 2013, to testify at the hearing entitled "Oversight of the Federal Communications Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on February 25, 2014. Your responses should be e-mailed to the Legislative Clerk in Word format at Charlotte.Savercool@mail.house.gov and mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

February 25, 2014

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
United States House of Representatives
2182 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Walden:

Thank you for the opportunity to appear before the Subcommittee on Communications and Technology on December 12, 2013, to testify at the hearing entitled "Oversight of the Federal Communications Commission."

Attached, please find my answers to the questions submitted for the record.

Sincerely,

Ajit Pai
Commissioner
Federal Communications Commission

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

Attachment — Additional Questions for the Record

The Honorable Greg Walden

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

ANSWER: When the FCC proposed to eliminate the UHF discount, it stated its intent to grandfather only those applications pending when the Notice of Proposed Rulemaking was adopted. As I made clear in my dissenting statement, I do not believe that this decision comported with good administrative process. The UHF discount remains the law of the land today, and the FCC should treat it that way until such time as it is actually removed from the Code of Federal Regulations. Otherwise, the rest of the rulemaking process would be merely an empty formality.

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

ANSWER: Yes, I believe that it would be impossible for the FCC to justify the conclusion that it is unnecessary to change the media ownership rules. In particular, I believe, like many former Democratic and Republican FCC Chairmen, that it is time to repeal the newspaper-broadcast cross-ownership rule. Given the financial state of the newspaper industry these days, we should be thanking anyone that wants to run a newspaper, not subjecting them to antiquated regulatory burdens. Additionally, there is no evidence in the record whatsoever to support other outdated restrictions, such as the radio/television cross-ownership rule.

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

ANSWER: Yes, I believe that it makes sense to relax the media ownership rules in light of increased competition in the content market. And as stated above, I support repealing the newspaper-broadcast cross-ownership rule (among others). That rule dates back to 1975, and the media marketplace is now far more crowded and diverse than it was thirty-nine years ago. It is absurd in this day and age that there cannot be common ownership of a newspaper and a radio station in the same market.

The Honorable Mike Pompeo

1. Commissioner Pai, you have been rather vocal supporting attempts to modify media ownership rules. In particular, you have favored a relaxation of the cross-ownership ban. However, some recent drafts on the issue have included attempts to count shared-services agreements between broadcast stations toward ownership limits. For example, in our home state of Kansas, an agreement between an Entravision and Univision station in Wichita enabled the introduction of the only Spanish-language local newscast in the market. Can you elaborate on the relaxation of the cross-ownership ban and the importance of shared-services agreements?

ANSWER: Given the realities of the modern media marketplace, I believe that we should relax or eliminate many of our ownership rules. The Internet is having a dramatic impact on television broadcasters. The competition that they face for viewers and advertisers is fiercer than it has even been. This demands fundamental changes in their business models. The days when Americans' home video options were limited to a few broadcast television channels are long gone. Our regulations must reflect that reality.

As broadcasters' share of the advertising market has shrunk in the digital age, television stations must be able to enter into innovative arrangements in order to operate efficiently. This is particularly true in smaller markets where advertising revenues are far from plentiful. JSAs and SSAs, for example, allow stations to save costs and to provide the services that we should want television broadcasters to offer. As you have noted, in our home state of Kansas, a JSA between two Wichita stations enabled the Entravision station, a Univision affiliate, to introduce the only Spanish-language local news in Kansas. A representative of Entravision recently told me that it will have to stop offering this Spanish-language local news if it has to terminate its JSA. Across the border in Joplin, Missouri, a JSA between Nexstar and Mission Broadcasting not only led to expanded news programming in that market but also nearly \$3.5 million in capital investment. Some of that money was spent upgrading the stations' Doppler Radio system, which probably saved lives when a devastating tornado destroyed much of Joplin in 2011.

2. One way that that the FCC deals with eliminating regulations when changing market conditions warrant is through the forbearance process which today can be used to eliminate rules that no longer make sense given competitive market conditions. Commissioner Pai, you mentioned this issue in your testimony. Can you expand further on how this could work and its possible benefits?

ANSWER: Currently, section 10 of the Communications Act allows the Commission to “forbear from applying any regulation or provision of the [Communications] Act to a telecommunications carrier or telecommunications service, or a class of telecommunications carriers or services.” Over the years, forbearance has allowed the Commission to remove outdated regulatory burdens from telecommunications carriers, which in turn has encouraged infrastructure investment and broadband deployment. But we can't take these same steps with respect to laws and regulations aimed at multichannel video programming distributors (MVPDs)—even though those laws and regulations contemplate an uncompetitive marketplace that no longer exists.

This dichotomy no longer makes sense. Permitting forbearance for voice regulation but not for video regulation is an anachronism, for the video industry is undergoing the same transformation that we are witnessing in the telecommunications sector. Technology is turning voice *and* video into applications transmitted over the Internet. And companies that once were dominant video providers face intense “intermodal” competition as we move to an all-IP world (for instance, cable companies now face competition from telephone, direct broadcast satellite, and over-the-top Internet-based companies). That’s why I believe that the FCC should have the authority to relieve MVPDs from obsolete regulations as we currently have for telecommunications carriers. So long as the FCC determined that enforcement of the regulation was no longer necessary to protect competition or promote the public interest, it could forbear from enforcing that regulation. This would reduce regulatory burdens on companies and free up capital that they could pour into next-generation service and infrastructure investments.

The Honorable Henry Waxman

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

ANSWER: I would need to learn more about this proposal before offering a firm view. As a general matter, however, I believe that the Commission should be open to innovative ideas for preserving low power television stations and therefore am interested in studying this proposal more closely.

2. In your testimony at the hearing, you cited the FCC's 2013 Local Telephone Competition Report stating that "99.6 percent of Americans can choose from at least three wireline competitors and 92 percent can choose from 10 or more." However, the Local Competition Report goes on to state: "However, because providers may not offer service across an entire ZIP Code and because different providers may target different customer segments in areas where they provide service, we cannot conclude that the number of providers identified as delivering wireline service within a ZIP Code represents the number of options available to any specific customer within that ZIP Code. We further note that these data on the number of providers in a ZIP Code do not indicate whether a particular provider is offering service solely over its own last-mile facilities or is using the facilities of another carrier or entity." Do you agree that zip code data may not adequately capture the number of actual choices available to consumers? And do you agree that policy makers should consider who controls access to the last-mile facilities when analyzing competition?

ANSWER: I agree that the 2013 Local Telephone Competition Report may not completely capture the number of actual choices available to consumers. The use of zip codes is one component of the problem. Another is that consumers are increasingly substituting wireless services for wired services, and competition among both postpaid and prepaid wireless operators is rampant. As such, the Local Telephone Competition Report may in fact consistently understate the number of actual choices to consumers for substitutable services.

I also agree that investments in last-mile facilities are a relevant factor in analyzing competition. That is why, during my time at the Commission, I have consistently supported removing regulatory barriers to infrastructure investment.

The Honorable Ben Ray Lujan

1. Commissioners, I appreciate your work to extend new communications networks across the digital divide to rural and difficult-to-connect regions of our country. As many of you are aware, my district in New Mexico is home to many Native Americans. Tribal lands are amongst the most underserved—with only about 10% of all homes connected to broadband and some of the lowest rates of wireless communications in the country. The Commission's recent reforms of the Universal Service Fund acknowledged this need by including a "tribal coefficient" to increase capital expenditures and operating expenses on tribal lands. I plan on introducing legislation to make the FCC's Office of Native Affairs and Policy, which provided invaluable advocacy in the adoption of the tribal coefficient, into a permanent agency and ensure that it reports directly to the Chairman instead of to another office or Bureau. My legislation has the support of the National Tribal Telecommunications Association, which is comprised of eleven Tribally-owned communications companies from around the country. Do you believe that the telecommunications needs of Native Americans are being adequately addressed by the FCC's current structure? How do you believe that ONAP could be better empowered to advocate on behalf of Tribal Americans?

ANSWER: In my two years as a Commissioner, I have been able to engage directly and forthrightly with the Office of Native Affairs and Policy whenever needed, and I believe the staff of that office is working hard to address the telecommunications needs of Native Americans. At this time, I do not have a firm view as to whether the Office of Native Affairs and Policy would be more effective or less effective were it to be taken out of the Consumer and Governmental Affairs Bureau.

2. While I appreciate the Commission's efforts to include the Tribal Coefficient in its calculation of USF funds, I believe that more is needed in order to connect our tribal lands to modern communications networks. This coefficient must be properly calculated to recognize the full cost impact of providing service on Tribal lands. In fact, the coefficient's impact is substantially less than a similar coefficient that is provided to measure the cost of providing service on National Park Service lands. Do you believe that the Coefficient is adequate to connect Tribal lands?

ANSWER: The Tribal coefficient is one among several coefficients used by the FCC's Wireline Competition Bureau to calculate quantile regression analysis (QRA) benchmarks for rate-of-return carriers serving high-cost lands. I do not believe that the QRA benchmarks, even with the Tribal coefficient, were an adequate means of connecting Tribal lands. As such, I was pleased that Chairman Wheeler recognized at this hearing that the QRA benchmarks have not served rural America—including Tribal lands—well, and that we would be reconsidering their application soon.

3. The Navajo Nation, which is partially in my district, has some of the highest rates of poverty and lowest rates of wireless broadband access in the United States. NTUA Wireless, LLC, which is majority owned by the Navajo Nation, has been seeking an ETC designation in order to access universal service fund support to help make telecommunications service available to more residents of the Navajo Nation. This designation would enable NTUA to make additional investments into infrastructure, which would in turn spur job growth and economic development.

NTUA Wireless initially petitioned the FCC for an ETC designation on March 3, 2011 and I have repeatedly joined with New Mexico's Senators to support this petition and urge its resolution. To date, I am not aware of a single filing in opposition to this application, yet the FCC has not acted upon it. What is the current status of the NTUA application and when should the Navajo Nation expect the matter to be resolved?

ANSWER: I understand that the Chief of the Wireline Competition Bureau and the Acting Chief of the Wireless Telecommunications Bureau granted NTUA's application on February 18, 2014.

4. The FCC was given significant responsibilities in meeting the challenges of Positive Train Control deployment. Nevertheless, it is my understanding that the FCC was just notified this past May that railroads will need to install over 20,000 new antennas along their tracks. I'm shocked that the railroads would wait 5 years after passage of the Rail Safety Improvement Act of 2008 to notify the FCC of this fact. As I'm sure you're aware, railroads in New Mexico cross Tribal lands and have the potential to affect a number of religious and cultural sites in my home state. Could you please explain the steps that the Commission is taking to not only expedite the deployment of positive train control, but also ensure that the needs of Tribal Nations are met?

ANSWER: The Commission is taking all required steps under the National Historic Preservation Act and other statutes to ensure that the needs of Tribal Nations are met and is working diligently to conduct the consultation process in a manner that efficiently addresses the daunting amount of wireless infrastructure that must be deployed to meet the needs of Positive Train Control (PTC).

5. As you know, Section 254 of the Communications Act includes a statutory and laudable goal of providing low-income families access to telecommunications services. As part of this mandate, the FCC has managed the Lifeline program that provides discounted mobile telephone service to eligible consumers. The FCC has recently taken action to strengthen and preserve the Lifeline program by working to confirm that consumers may only receive one phone per household, certify that they are eligible for the service and agree to recertify their eligibility each year. To date these steps have proven fruitful, saving an estimated \$2 billion to the program and resulting in the collection of \$90 million in fines from enforcement actions over the past 3 months. How would you evaluate the effectiveness of the recent FCC reforms to the Lifeline program? What work remains to be done to ensure that it continues supporting the low income Americans who depend upon it?

ANSWER: I support the FCC's recent actions to guard the Lifeline program against the waste, fraud, and abuse that has skyrocketed over the past four years. Recently, the National Lifeline Accountability Database went live. It will be rolled out on a state-by-state basis over the coming months. I hope the deployment of that system—along with our recent enforcement actions against Lifeline providers that benefited from intra-company duplicates—will further reduce the problems in that program, but I am willing to take further steps to reform the program if necessary.

6. As required by provisions in the Middle Class Tax Relief Act of 2012, the Commission has an open Notice of Proposed Rule-making (NPRM) to allow greater Wi-Fi use in the 5 GHz band. Finalizing this rule could greatly benefit consumers by providing the spectrum necessary for tremendously faster Wi-Fi connection speeds, with greater capacity and a host of new Wi-Fi

applications. Given it is a secondary use, Wi-Fi provides tremendous value to the American public and is frequently used to offer free access in public spaces. It is a great example of maximizing the use of this scarce resource. The President's June 2013 memorandum – Expanding America's Leadership in Wireless Innovation – calls for the FCC, in consultation with NTIA, to “promulgate and enforce rules for licensed services to provide strong incentives for licensees to put spectrum to use and avoid spectrum warehousing. Such rules may include build-out requirements or other licensing conditions as appropriate for the particular circumstance” Despite having been allocated this spectrum in 1999, there is still only one DSRC test deployment in the entire United States. Furthermore, the Department of Transportation has stated pilot deployments will not begin until 2015 or 2016. It seems that if we are going to require strict build-out requirements for companies that pay significant sums for spectrum, we should, at a minimum, require incumbents who have spectrum and are not fully utilizing it to work with entities that want to use that spectrum on a secondary basis, in this case the Wi-Fi industry. It only makes sense to maximize the use of that spectrum. Do you think that is a fair requirement?

ANSWER: In order to foster innovation and ease Wi-Fi congestion, I support the Commission's efforts to make another 195 MHz of spectrum available in the 5 GHz band.

Moreover, I have urged the FCC to move forward with its 5 GHz proceeding in stages, and I continue to believe that is the prudent path. For example, the Commission should move promptly to modify the service rules for the U-NII-1 band. By raising the power limits on the U-NII-1 band and allowing for outdoor use, we can make this band attractive for commercial Wi-Fi while safeguarding incumbent users. Given the growing congestion in the 2.4 GHz band (which consumers commonly rely upon for Wi-Fi access), we should not let a few difficult issues involving the 5 GHz band delay us from making progress on the easier ones.

7. The President's June 2013 memorandum – Expanding America's Leadership in Wireless Innovation – also calls for the FCC in consultation with NTIA, to: “identify spectrum allocated for nonfederal uses that can be made available for licensed and unlicensed wireless broadband services and devices, and other innovative and flexible uses of spectrum, while fairly accommodating the rights and reasonable expectations of incumbent users” I, along with several of my colleagues, recently wrote to you regarding the importance of looking for all sharing solutions in the 5850-5925 block. The 5850-5925 block is a key component of maximizing use of the 5 GHz band, but I understand the incumbent in that spectrum, the Intelligent Transportation System of America, has continually raised concerns and objections to sharing despite any final conclusions about the possibilities for successful sharing. That approach seems inconsistent with the President's call for “reasonable expectations.” Can you explain how you interpret this from the Commission's perspective, and in this particular case, would you agree “reasonable expectations” for ITS require at least a full dialogue looking for sharing with the respective agencies and stakeholders? If it were necessary, would you view small adjustments to the DSRC standards to facilitate shared use at this nascent point in its development, given it is only deployed in 2,800 vehicles in a pilot program, as a reasonable expectation?

ANSWER: Opening up this spectrum will not be without its challenges, but I believe that we will ultimately find solutions that adequately protect incumbent users. By conducting critical, realistic analysis of these incumbent services and their needs, I am optimistic that

technology can be developed and deployed in such a way that the significant potential of this band can be realized for a great numbers of consumers.

8. I appreciated your comments on 5 Ghz. You hit the nail on the head in talking about the benefits that can come from maximizing unlicensed use in those bands, and the opportunities it presents consumers. It's important that a technically sound outcome on whether sharing can be achieved with DSCR and Wi-Fi is reached. Is it your understanding that all parties with interest in that band are working together to explore all sharing opportunities and reach a consensus based on technical findings? Is there more the Commission can be doing to facilitate that work?

ANSWER: Thank you for your support of my views on the opportunities presented in the 5 GHz band. As I mentioned above, I have urged the FCC to move forward with its 5 GHz proceeding in stages, and I continue to believe that is the prudent path. We have not yet finished the hard work of reaching consensus on the upper 5 GHz band. However, I am optimistic that a technical solution can be developed that will allow both Wi-Fi and DSCR to flourish.

The Honorable Bobby Rush

1. Section 257 of the Communications Act requires the Commission to promote diverse ownership of the airwaves, particularly ownership by entrepreneurs and small businesses (including those owned by women and minorities) by taking regulatory action to *identify and eliminate* market entry barriers in the provision and ownership of telecommunications and information services, or in the provision of parts or services to providers of telecommunications or information services. Under the statute, the Commission is also directed to *eliminate* statutory barriers to market entry by those entities, consistent with the public interest, convenience, and necessity. These efforts are to be memorialized by the Commission in a report that it is to prepare and submit to Congress every three years.

Recently, under Chairman Wheeler's direction the FCC decided to hold off on adopting and to reassess certain broadcast-ownership NPRM proposals that could foreseeably undermine Section 257 and decrease already-anemic and abysmally low levels of diversity in ownership of communications licenses and facilities.

- What steps should the Commission take going forward to ensure that the statutory goals of Section 257 are met and to increase already-abysmally low levels of female and minority ownership?

ANSWER: The biggest obstacle to minority ownership in the broadcast industry is the lack of access to capital. That is why I believe that the Commission should adopt an incubator program to promote diverse new entrants into the broadcasting industry. That is also why I supported the FCC's recent action to relax restrictions on foreign investment. The Minority Media and Telecommunications Council and 30 other national minority and civil rights organizations told us that permitting additional foreign investment in the broadcasting industry would be "one of the most significant steps the Commission could take" "[t]o reverse the decline in minority broadcast ownership." I agree. With an expanded ability to access capital from abroad, minority entrepreneurs will have a better chance of being able to enter into the broadcast industry or expand existing businesses. I believe that the Commission should move forward promptly to approve on a case-by-case basis foreign investment that is in the public interest.

- In light of existing market trends and forces attendant to upcoming spectrum auctions, is it reasonable to anticipate further diminution in diverse ownership of broadcasting licenses and cable systems?

ANSWER: If the Commission does not make the right policy decisions, then I believe that we will see this trend continue. For example, I believe that restricting the ability of broadcast stations to enter into or maintain JSAs and SSAs will harm women and minority-owned stations that currently benefit from these arrangements. For example, WLOO is a Vicksburg, Mississippi television station that is owned and operated by Tougaloo College, a historically African-American college founded in 1869. Tougaloo College has entered into a JSA with a television station in Jackson, Mississippi and has told the Commission that "without the JSA, we would not be able to operate the station as effectively as we do. In our experience, a JSA can be vital to allowing new, diverse entrants into the television business to provide services to the community."

- o If so, what should the Commission be doing to offset that diminution in ownership share?

ANSWER: I believe that the Commission should implement an incubator program to encourage new entrants into the broadcast industry and increase ownership diversity. I also believe that the Commission should take concrete steps to revitalize the AM radio band. This is important because most minority-owned radio stations are in the AM band.

- When will the Commission be prepared to release its next Section 257 Report?

ANSWER: The Chairman's Office has not circulated a draft of the next Section 257 report, and I am unaware of the Chairman's schedule for doing so.

2. In prior testimony before our subcommittee, it has been stated that added regulations on broadcasters "stem from what some have characterized as a 'social contract' between the government and the broadcasting industry: broadcasters use licensed spectrum to serve the public interest and offer their service free to American consumers." (see Testimony of Edward L. Munson, Jr., C&T Subcommittee Hearing, *Innovation versus Regulation in the Video Marketplace* 1)(9/11/2013)

Many of these American broadcast TV consumers and watchers are minorities. In the 2013 Ownership Survey and Trend Report, it was cited that 22 percent of all African-American households and 25 percent of Hispanic households are broadcast-only homes. Additionally, minorities comprise 41 percent of all broadcast-only homes.

Notwithstanding these considerable percentages, minority and female ownership of television stations and cable systems has shrunk dramatically over the years.

- Do you concur or disagree with the proposition that minority TV broadcast and cable system owners can be just as if not more responsive to the needs of their minority viewers and audiences?

ANSWER: There is every reason to believe that a minority- or female-owned television or cable property can be just as responsive to the needs of its viewers as a station owned by any other party. In fact, unprecedented competition in the video marketplace means all broadcast and cable system owners must be as responsive as possible to the needs of their audiences, or those audiences will seek out more responsive programming or services from a competitor.

- Other than, or in addition to the reinstatement of minority tax certificates what measures can Congress take so that more programming and news meeting the critical needs of minority viewers and consumers gets carried over the public airwaves?

ANSWER: As stated above, I believe that the Commission should implement an incubator program to encourage new entrants into the broadcast industry and increase ownership diversity. I also believe that the Commission should take concrete steps to revitalize the AM radio band because most minority-owned radio stations are in the AM band and much foreign-language programming is broadcast on the AM band.

3. Federal law mandates that railroads install a safety technology known as positive train control by December 2015. This technology will require the installation of more than 20,000 antenna poles to ensure communication among railroad locomotives, computer servers and GPS devices.

- Is it necessary to submit these short antenna poles to the same level of agency scrutiny and tribal review under the National Historic Preservation Act, as, for instance, much taller cell towers?

ANSWER: It is my understanding that the NHPA does not distinguish among the types of towers that require consultation, but that as a result of the consultation process, agreements may be reached that focus the parties' attention on a subset of the infrastructure necessary to implement PTC.

- Would you agree many of these smaller poles located on railroad rights-of-way where the property has been disturbed for many decades (or longer) could be exempted from the review process?

ANSWER: Although I have not yet had the opportunity to review such a proposal, I support taking any steps available within the scope of our authority to streamline the review process so that PTC can be implemented on schedule.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

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February 11, 2014

The Honorable Michael O'Rielly
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Commissioner O'Rielly:

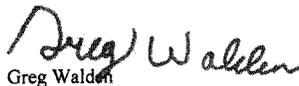
Thank you for appearing before the Subcommittee on Communications and Technology on December 12, 2013, to testify at the hearing entitled "Oversight of the Federal Communications Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on February 25, 2014. Your responses should be e-mailed to the Legislative Clerk in Word format at Charlotte.Savercool@mail.house.gov and mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

February 11, 2014

The Honorable Michael O'Rielly
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

Attachment — Additional Questions for the Record

The Honorable Greg Walden

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

Response: Yes, I am deeply concerned that a complete switch in positions can't be justified with the information available in the record. If the Commission maintains the absolute ban, the Commission is likely to be subject to increased judicial scrutiny.

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

Response: I have stated that I am open to thoughtfully updating our media ownership rules to reflect current market realities. I believe that this can be done in a way that is not harmful to localism, diversity, competition or the public interest. I am concerned that our current cross-ownership ban is harmful to local newspapers and retaining it cannot be justified. The record and corresponding data leans strongly in favor of eliminating the rule or at least modifying it, as the statute provides.

The Honorable Henry Waxman

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

Response: I am willing to consider any proposal and vote on any item that comes before me. Although this provides an interesting additional outlet for reception of audio signals, there are some basic questions that would have to be answered first. For example, whether or not such operations could cause harmful interference.

The Honorable Ben Ray Lujan

1. Commissioners, I appreciate your work to extend new communications networks across the digital divide to rural and difficult-to-connect regions of our country. As many of you are aware, my district in New Mexico is home to many Native Americans. Tribal lands are amongst the

most underserved—with only about 10% of all homes connected to broadband and some of the lowest rates of wireless communications in the country. The Commission’s recent reforms of the Universal Service Fund acknowledged this need by including a “tribal coefficient” to increase capital expenditures and operating expenses on tribal lands. I plan on introducing legislation to make the FCC’s Office of Native Affairs and Policy, which provided invaluable advocacy in the adoption of the tribal coefficient, into a permanent agency and ensure that it reports directly to the Chairman instead of to another office or Bureau. My legislation has the support of the National Tribal Telecommunications Association, which is comprised of eleven Tribally-owned communications companies from around the country. Do you believe that the telecommunications needs of Native Americans are being adequately addressed by the FCC’s current structure? How do you believe that ONAP could be better empowered to advocate on behalf of Tribal Americans?

Response: My understanding is that ONAP is doing everything it can within the current structure to address the telecommunications needs of Native Americans. I defer to Congress on legislative changes to the current structure to better empower ONAP.

2. While I appreciate the Commission’s efforts to include the Tribal Coefficient in its calculation of USF funds, I believe that more is needed in order to connect our tribal lands to modern communications networks. This coefficient must be properly calculated to recognize the full cost impact of providing service on Tribal lands. In fact, the coefficient’s impact is substantially less than a similar coefficient that is provided to measure the cost of providing service on National Park Service lands. Do you believe that the Coefficient is adequate to connect Tribal lands?

Response: The coefficient is part of the Commission’s Quantile Regression Analysis or “QRA Benchmarks,” which limit a type of USF support received by some carriers, including some carriers that provide service on Tribal lands. The Chairman has proposed eliminating the QRA benchmarks altogether, which is something I support. As a result, the tribal coefficient would be eliminated as well.

3. The Navajo Nation, which is partially in my district, has some of the highest rates of poverty and lowest rates of wireless broadband access in the United States. NTUA Wireless, LLC, which is majority owned by the Navajo Nation, has been seeking an ETC designation in order to access universal service fund support to help make telecommunications service available to more residents of the Navajo Nation. This designation would enable NTUA to make additional investments into infrastructure, which would in turn spur job growth and economic development. NTUA Wireless initially petitioned the FCC for an ETC designation on March 3, 2011 and I have repeatedly joined with New Mexico’s Senators to support this petition and urge its resolution. To date, I am not aware of a single filing in opposition to this application, yet the FCC has not acted upon it. What is the current status of the NTUA application and when should the Navajo Nation expect the matter to be resolved?

Response: On February 18, 2014, the Wireline Competition Bureau and the Wireless Telecommunications Bureau, working together with ONAP, conditionally designated NTUA Wireless, Inc. (NTUA Wireless) as an eligible telecommunications carrier (ETC) on the Navajo Nation in Arizona, New Mexico, and Utah for purposes of the Tribal Mobility Fund Phase I auction. The Bureaus also designated NTUA Wireless as a Lifeline-only ETC on the Navajo Nation in areas where NTUA Wireless does not otherwise receive support

through Tribal Mobility Fund Phase I. The complete text of the order may be found here: http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0218/DA-14-200A1.pdf.

4. The FCC was given significant responsibilities in meeting the challenges of Positive Train Control deployment. Nevertheless, it is my understanding that the FCC was just notified this past May that railroads will need to install over 20,000 new antennas along their tracks. I'm shocked that the railroads would wait 5 years after passage of the Rail Safety Improvement Act of 2008 to notify the FCC of this fact. As I'm sure you're aware, railroads in New Mexico cross Tribal lands and have the potential to affect a number of religious and cultural sites in my home state. Could you please explain the steps that the Commission is taking to not only expedite the deployment of positive train control, but also ensure that the needs of Tribal Nations are met?

Response: I know that Commission staff is working closely with Tribal Nations and the railroad industry to expedite the deployment of Positive Train Control (PTC) facilities. For instance, the Commission released a public notice seeking input on a process to facilitate the deployment of PTC facilities while meeting the needs of Tribal Nations. Once finalized by the Commission, this process, which is contained in a Program Comment, will be submitted to the Advisory Council on Historic Preservation for its consideration. I am also aware that Commission Staff has engaged in outreach efforts, including events in Tulsa, Oklahoma and Rapid City, South Dakota to facilitate a dialogue between railroads and Tribal Nations regarding PTC deployment. Although I am actively following this matter, the Chairman is in the best position to provide more detailed information regarding these, and other, steps Commission staff has taken and will take going forward.

5. As you know, Section 254 of the Communications Act includes a statutory and laudable goal of providing low-income families access to telecommunications services. As part of this mandate, the FCC has managed the Lifeline program that provides discounted mobile telephone service to eligible consumers. The FCC has recently taken action to strengthen and preserve the Lifeline program by working to confirm that consumers may only receive one phone per household, certify that they are eligible for the service and agree to recertify their eligibility each year. To date these steps have proven fruitful, saving an estimated \$2 billion to the program and resulting in the collection of \$90 million in fines from enforcement actions over the past 3 months. How would you evaluate the effectiveness of the recent FCC reforms to the Lifeline program? What work remains to be done to ensure that it continues supporting the low income Americans who depend upon it?

Response: While the Commission has made a number of changes to improve effectiveness, I have deep concerns that these will not be sufficient to address the widespread waste, fraud and abuse in the program. The FCC should press forward with the reforms and, and at a minimum, undertake an extensive top to bottom review of the program to ensure that it is operating as intended.

6. As required by provisions in the Middle Class Tax Relief Act of 2012, the Commission has an open Notice of Proposed Rule-making (NPRM) to allow greater Wi-Fi use in the 5 GHz band. Finalizing this rule could greatly benefit consumers by providing the spectrum necessary for tremendously faster Wi-Fi connection speeds, with greater capacity and a host of new Wi-Fi applications. Given it is a secondary use, Wi-Fi provides tremendous value to the American public and is frequently used to offer free access in public spaces. It is a great example of maximizing the use of this scarce resource. The President's June 2013 memorandum –

Expanding America's Leadership in Wireless Innovation – calls for the FCC, in consultation with NTIA, to “promulgate and enforce rules for licensed services to provide strong incentives for licensees to put spectrum to use and avoid spectrum warehousing. Such rules may include build-out requirements or other licensing conditions as appropriate for the particular circumstance” Despite having been allocated this spectrum in 1999, there is still only one DSRC test deployment in the entire United States. Furthermore, the Department of Transportation has stated pilot deployments will not begin until 2015 or 2016. It seems that if we are going to require strict build-out requirements for companies that pay significant sums for spectrum, we should, at a minimum, require incumbents who have spectrum and are not fully utilizing it to work with entities that want to use that spectrum on a secondary basis, in this case the Wi-Fi industry. It only makes sense to maximize the use of that spectrum. Do you think that is a fair requirement?

Response: I am a strong supporter of spectrum efficiency and unlicensed use. We must maximize the nation's spectrum resources and ensure that spectrum is put to its highest and best use. Therefore, I am in favor of unlicensed use throughout the 5 GHz Band. Although I am supportive, I recognize that, currently, there are varying levels of federal and non-federal use throughout this band. For instance, in the 5850-5925 block, the Department of Defense, NASA, NOAA and the Department of Energy use this band alongside Dedicated Short-Range Communication (DSRC) services and fixed satellite services. Assuming that harmful interference would not occur to other primary users, the Commission should give serious consideration to allowing unlicensed use in the 5850-5925 frequencies. Moreover, I have concerns that DSRC may not come to fruition anytime soon, if ever.

7. The President's June 2013 memorandum – Expanding America's Leadership in Wireless Innovation – also calls for the FCC in consultation with NTIA, to: “identify spectrum allocated for nonfederal uses that can be made available for licensed and unlicensed wireless broadband services and devices, and other innovative and flexible uses of spectrum, while fairly accommodating the rights and reasonable expectations of incumbent users” I, along with several of my colleagues, recently wrote to you regarding the importance of looking for all sharing solutions in the 5850-5925 block. The 5850-5925 block is a key component of maximizing use of the 5 GHz band, but I understand the incumbent in that spectrum, the Intelligent Transportation System of America, has continually raised concerns and objections to sharing despite any final conclusions about the possibilities for successful sharing. That approach seems inconsistent with the President's call for “reasonable expectations.” Can you explain how you interpret this from the Commission's perspective, and in this particular case, would you agree “reasonable expectations” for ITS require at least a full dialogue looking for sharing with the respective agencies and stakeholders? If it were necessary, would you view small adjustments to the DSRC standards to facilitate shared use at this nascent point in its development, given it is only deployed in 2,800 vehicles in a pilot program, as a reasonable expectation?

Response: As discussed above, I agree that all incumbents should engage with the Commission to open up the 5 GHz band to unlicensed use. I am willing to consider any proposal that would allow this spectrum to be put to its highest and best use.

8. I appreciated Mr. Pai's comments on 5 Ghz. He hits the nail on the head talking about the benefits that can come from maximizing unlicensed use in those bands, and the opportunities it presents consumers. It's important that a technically sound outcome on whether sharing can be

achieved with DSCR and Wi-Fi is reached. Is it your understanding that all parties with interest in that band are working together to explore all sharing opportunities and reach a consensus based on technical findings? Is there more the Commission can be doing to facilitate that work?

Response: It is my understanding that Commission staff is actively working with stakeholders to reach a consensus that will allow unlicensed use in the 5 GHz Band. The Chairman is in the best position to provide a response regarding the bureau's assessment of conversations taking place between outside parties and Commission staff, whether all stakeholders are actively participating, and what should be done going forward.

The Honorable Bobby Rush

1. Section 257 of the Communications Act requires the Commission to promote diverse ownership of the airwaves, particularly ownership by entrepreneurs and small businesses (including those owned by women and minorities) by taking regulatory action to *identify and eliminate* market entry barriers in the provision and ownership of telecommunications and information services, or in the provision of parts or services to providers of telecommunications or information services. Under the statute, the Commission is also directed to *eliminate* statutory barriers to market entry by those entities, consistent with the public interest, convenience, and necessity. These efforts are to be memorialized by the Commission in a report that it is to prepare and submit to Congress every three years.

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- What steps should the Commission take going forward to ensure that the statutory goals of Section 257 are met and to increase already-abysmally low levels of female and minority ownership?

Response: I am hopeful that Commission's recent LPFM application window, which provided an opportunity for non-profit organizations already representing and actively serving our citizens to acquire radio stations, will help increase the diversity of programming and voices in local markets.

In regard to television and radio stations generally, the Commission should, as Section 257 contemplates, conduct a top-to-bottom review of market entry barriers that can be eliminated to ensure a diversity of media voices. The Commission's ability, however, to adopt specific rules aimed at increasing female and minority ownership is limited by the Constitution.

Separately, one very positive option available for all Americans, especially entrepreneurs and other small businesses is to take advantage of new technologies, like the Internet, to provide programming and content to consumers. While I acknowledge that these technologies may not have the history or economic impact of existing broadcasters yet, they may best represent the future of consumer content adoption and provide low costs of entry.

- In light of existing market trends and forces attendant to upcoming spectrum auctions, is it reasonable to anticipate further diminution in diverse ownership of broadcasting licenses and cable systems?
 - If so, what should the Commission be doing to offset that diminution in ownership share?

Response: It may be too early to predict the possible impact of the spectrum incentive auction. For instance, it is likely that the Commission will only need to purchase stations in top television markets. Therefore, there may be little to no impact on existing broadcasters, beyond repacking of stations, in the vast majority of U.S. markets. These broadcasters should be able to continue broadcasting and serving their communities.

The most important thing the Commission can do is not take steps that may diminish minority- or women-owned stations. One real concern is the Commission's ill-conceived attempt to attribute joint sales agreements (JSAs) under our media ownership rules. In at least one specific case and likely elsewhere, the elimination of JSAs would harm an existing minority broadcaster and the citizens they serve.

- When will the Commission be prepared to release its next Section 257 Report?

Response: This question can be best answered by the Chairman and his staff. I am prepared to review and vote on a report whenever it is ready.

2. In prior testimony before our subcommittee, it has been stated that added regulations on broadcasters "stem from what some have characterized as a 'social contract' between the government and the broadcasting industry: broadcasters use licensed spectrum to serve the public interest and offer their service free to American consumers." (see Testimony of Edward L. Munson, Jr., C&T Subcommittee Hearing, *Innovation versus Regulation in the Video Marketplace* 1)(9/11/2013)

Many of these American broadcast TV consumers and watchers are minorities. In the 2013 Ownership Survey and Trend Report, it was cited that 22 percent of all African-American households and 25 percent of Hispanic households are broadcast-only homes. Additionally, minorities comprise 41 percent of all broadcast-only homes.

Notwithstanding these considerable percentages, minority and female ownership of television stations and cable systems has shrunk dramatically over the years.

- Do you concur or disagree with the proposition that minority TV broadcast and cable system owners can be just as if not more responsive to the needs of their minority viewers and audiences?

Response: I concur.

- Other than, or in addition to the reinstatement of minority tax certificates what measures can Congress take so that more programming and news meeting the critical needs of minority viewers and consumers gets carried over the public airwaves?

Response: I believe that the Commission is obligated to implement the laws enacted by Congress. Therefore, it has been my practice not to provide too much input into its workings. However, I will suggest ownership has proven to be only one factor in producing quality programs for the consumers in a market. A more telling factor is the ability of the local station manager to select programming to meet the needs of viewers or listeners. In addition, the availability of quality programs from content providers is directly related to whether consumers are satisfied that their local broadcasters offer programming that meets their needs and interests.

3. Federal law mandates that railroads install a safety technology known as positive train control by December 2015. This technology will require the installation of more than 20,000 antenna poles to ensure communication among railroad locomotives, computer servers and GPS devices.

- Is it necessary to submit these short antenna poles to the same level of agency scrutiny and tribal review under the National Historic Preservation Act, as, for instance, much taller cell towers?

Response: I would be open to considering ways to quickly approve a process that includes a lower level scrutiny for wayside facilities.

- Would you agree many of these smaller poles located on railroad rights-of-way where the property has been disturbed for many decades (or longer) could be exempted from the review process?

Response: Yes, in accordance with current law.