

OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

HEARING BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

WEDNESDAY, OCTOBER 25, 2017

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

The subcommittee met, pursuant to notice, at 2:17 p.m., in room 2322, Rayburn House Office Building, Hon. Marsha Blackburn (chairman of the subcommittee) presiding.

Present: Representatives Blackburn, Lance, Shimkus, Latta, Guthrie, Olson, Kinzinger, Bilirakis, Johnson, Flores, Brooks, Collins, Walters, Costello, Walden (ex officio), Doyle, Welch, Clarke, Loeb sack, Ruiz, Dingell, Eshoo, Engel, Butterfield, Matsui, McNerney, and Pallone (ex officio).

Also Present: Representatives McMorris Rodgers and Tonko.

Staff Present: Ray Baum, Staff Director; Kelly Collins, Staff Assistant; Robin Colwell, Chief Counsel, Communications and Technology; Chuck Flint, Policy Coordinator, Communications and Technology; Adam Fromm, Director of Outreach and Coalitions; Gene Fullano, Detailee, Communications and Technology; Brighton Haslett, Counsel, Oversight and Investigations; Elena Hernandez, Press Secretary; Tim Kurth, Senior Professional Staff, Communications and Technology; Lauren McCarty, Counsel, Communications and Technology; Alex Miller, Video Production Aide and Press Assistant; Evan Viau, Legislative Clerk, Communications and Technology; Hamlin Wade, Special Advisor, External Affairs; Sean Farrell, Professional Staff, Communications and Technology; Jeff Carroll, Minority Staff Director; Alex Debianchi, Minority Telecom Fellow; Evan Gilbert, Minority Press Assistant; David Goldman, Minority Chief Counsel, Communications and Technology; Tiffany Guarascio, Minority Deputy Staff Director and Chief Health Advisor; Jerry Leverich, Minority Counsel; Jourdan Lewis, Minority Staff Assistant; Lori, Maarbjerg, Minority FCC Detailee; Jessica Martinez, Minority Outreach and Member Services Coordinator; Dan Miller, Minority Policy Analyst; Tim Robinson, Minority Chief Counsel; Andrew Souvall, Minority Director of Communications, Outreach and Member Services; and C.J. Young, Minority Press Secretary.

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

Mrs. BLACKBURN. The Subcommittee on Communications and Technology will now come to order. And the chair recognizes herself for 5 minutes for an opening statement.

And I do want to welcome each and every one of you, obviously a hearing of interest as we have a full room in front of us. And it is our first hearing in 2017 with a fully formed Federal Communications Commission.

As often seems to be the case, the Senate takes their dear, ever-loving time to get things done, but I am pleased to see that the Commission is back up to speed. And I will tell you, I am pleased that we have five members of this Commission, and they have different points of view to bring to the discussion on all things telecom related. And I think that that is healthy for the telecommunications and technology industry.

And we are here today to conduct oversight of the agency, which is this subcommittee's primary role. It is very important that we fulfill these obligations, because we have given the FCC a critical mission and critical task to fulfill. From the Commission's disaster response efforts, to its work supporting the deployment of rural broadband, to its efforts to streamline and modernize the regulatory environment impacting some of America's greatest creators and innovators, you are all doing important work, and we appreciate what you do.

One of the FCC's many jobs is to regulate broadcasters who accept and fulfill unique public interest obligations due to their use of valuable public spectrum. While we were in the final stages of planning for this routine oversight hearing, some of my colleagues asked that the committee hold an entire hearing about comments by the President on Twitter regarding certain broadcasters' work. So I fully expect them to question the Trump tweets.

And, Chairman Pai, since we have a very full slate of issues, my hope is that you will address that concern so that we can focus on the work and responsibilities of the Commission.

The Commission has conducted entirely appropriate oversight of broadcast licenses. There is no indication it has any interest in regulating political content, unlike some in our chamber who have urged the FCC to adopt a new fairness doctrine mandating that broadcasters provide equal time to the opposition if they allow anyone to express any type of political opinion on air.

The outrage over the President's Twitter musing stands in sharp contrast to the silence as Twitter cuts off the voices of conservatives, sexual assault victims, and potentially anyone who posts something they just don't like for whatever reason, all this on a platform so powerful and far-reaching that you could argue that it is the modern day public square. And some on Twitter have even called to suspend the President's account. And after my recent experience, I will say I wouldn't put it past some people.

The latest Twitter scandal is an attempt to distract from the Commission and the American people from the FCC's real work, which is delivering on a mission to unleash American innovation.

So, Chairman Pai, no matter what questions are said, I hope that we are going to stick to keeping our eye on the ball and making certain that we address things like media ownership rules, the Lifeline program, the imperatives of expanding rural broadband, and restoring a free and open internet. That is something that we want to see done by the end of this year.

And at this time, I yield 1 minute to the vice chairman of the subcommittee, Mr. Lance.

[The prepared statement of Mrs. Blackburn follows:]

PREPARED STATEMENT OF HON. MARSHA BLACKBURN

Good afternoon and welcome to our first hearing in 2017 with a fully formed Federal Communications Commission. As often seems to be the case, the Senate has taken its time, but I'm pleased to see the Commission back up to speed with five vastly different opinions about everything telecom-related. We're here today to conduct oversight of the agency, which is this subcommittee's primary role.

It is very important that we fulfill our oversight responsibilities, because we have given the FCC a critical mission and critical tasks to fulfill. From the Commission's disaster response efforts, to its work supporting the deployment of rural broadband, to its efforts to streamline and modernize the regulatory environment impacting some of America's greatest creators and innovators, you are all doing important work, and we appreciate it.

One of the FCC's many jobs is to regulate broadcasters, who accept and fulfill unique public interest obligations due to their use of valuable public spectrum. While we were in the final stages of planning for this routine oversight hearing, my Democratic colleagues asked the Committee to hold an entire hearing about comments by the President on Twitter regarding certain broadcasters' work.

So I fully expect them to use this opportunity to try to turn this hearing into the Trump Tweet hearing. Chairman Pai, since we have a very full slate of issues, my hope is that you will address that concern so we can focus on the work of the Commission.

This Commission has conducted entirely appropriate oversight of broadcast licensees. There is no indication it has any interest in regulating political content, unlike some of my Democratic colleagues who have urged the FCC to adopt a new Fairness Doctrine, mandating that broadcasters provide equal time to the opposition if they allow anyone to express any type of political opinion on air.

The outrage over the President's Twitter musings stands in sharp contrast to the silence as Twitter cuts off the voices of conservatives, sexual assault victims, and potentially anyone who posts something they just don't like for whatever reason. All this on a platform so powerful and far-reaching that you could argue it serves as a modern day public square.

Some left wingers on Twitter have even called for the company to ban the President's account. After my recent experience, all I will say is I wouldn't put it past them. The latest Twitter "scandal" is an attempt to distract both the Commission and the American people from the FCC's real work: delivering on its mission to unleash American innovation.

Chairman Pai, no matter what loaded YES OR NO questions may be posed today, or what insinuations are made about a would-be plot by the FCC to crack down on political speech, I urge you not to be distracted. Keep your eye on the ball. We are waiting for important reforms to address the media ownership rules, the Lifeline program, the imperatives of expanding rural broadband and restoring a free and open Internet, and we want to see them by the end of this year.

Mr. LANCE. Thank you very much, Chair. And welcome to Chairman Pai and the now full complement of commissioners. What a good-looking group. Thank you for appearing before us today.

Since our last oversight hearing in July, the Commission has continued its important work on issues such as disaster relief and recovery in the communities affected by the recent hurricanes, commercial spectrum availability, fraud prevention in closing the digital divide. The Commission is also moving forward in the process

to roll back the misguided Title II reclassification of ISPs from the previous administration.

Here on the subcommittee, we have recently taken a bipartisan step forward in reauthorizing the FCC for the first time since 1990. I applaud the chairman and ranking member for their leadership in reasserting this vital oversight tool. I also thank Commissioner O’Rielly for joining me in the district I serve in August for a 5G industry roundtable. I commend his leadership at the Commission pursuing innovation-friendly spectrum and infrastructure policies that will be important in our efforts to win the race to 5G.

Thank you all for being here, and I look forward to your testimony.

Mrs. BLACKBURN. The gentleman yields back.

Mr. Doyle, you are recognized for 5 minutes.

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

Mr. DOYLE. Thank you, Madam Chair, for holding this hearing. And thank you to all the witnesses for appearing before us today. Let me just say that I really enjoy our time here together, as I am sure all of you do. And I would encourage the chairman to continue to hold these get-togethers far more often.

Mrs. BLACKBURN. Absolutely.

Mr. DOYLE. Commissioner Rosenworcel, welcome back. Your work on the homework gap has been missed.

Commissioner Carr, congratulations on your confirmation. I hope that as you establish your agenda, that you remember that the guiding principle of the FCC is to act in the public’s interest. It is a standard that I will hold you to as well.

Chairman Pai, many people around the country, including myself, and many of colleagues are deeply alarmed by your response to the President Trump’s threats against the media, and specifically his tweet threatening NBC. In 2014, you wrote in The Wall Street Journal that the government has no place pressuring media organizations into covering certain stories. You took 6 days to respond to the President’s tweet. And when you did, you did not directly address the President’s threat at all or its chilling effects on the media.

While the President and the administration can dispute the veracity of any story, even ones that are demonstrably true, they cannot attack the free institutions that enable our democracy. As Senator Flake said yesterday, it is time for our complicity and our accommodation of the unacceptable to end.

Besides this issue, the Commission’s agenda under your leadership has already had a profoundly negative effect on our country. From increasing cost on small businesses, driving up the cost of calls to family members in prison, and claiming that wireless broadband is competitive, even when people in rural America know it is not, it seems that in every fork of the road you have chosen the path that leads to higher consumer cost, fewer choices, and less innovation. And if it sounds as if the worst is yet to come, news reports suggest that you unveil plans tomorrow to vastly alter the

media landscape in this country, clearing the way for more media consolidation, including the Sinclair-Tribune merger.

Yesterday, the Commission eliminated the main studio rule that had ensured for 77 years that local news was gathered and reported locally. What good would a studio and reporters in New York have done for broadcast stations in Houston or Florida after the hurricanes? What good is local news if it isn't local? Other news reports suggest you will announce an order to repeal the FCC's open internet order around Thanksgiving.

Madam Chairman, I sincerely hope that, if this true, that we have a chance to talk to the Commission in advance of a vote on that order. The idea that such a significant order that would affect so much of our economy would be voted on without oversight is unconscionable and would be a dereliction of this committee's duties. If the chairman is intent to act, I believe that his actions should be done under the scrutiny of Congress and in the light of the public.

That concludes what I want to say. And I am going to yield the remaining part of my time to Ms. Eshoo.

Ms. ESHOO. I thank the gentleman for yielding his remaining time to me.

I want to associate myself with our ranking member's comments, particularly to what the President said that was a direct assault on the First Amendment and, with all due respect to you, Mr. Chairman, your delayed and rather tepid response to that. I want to place verbally in the record the First Amendment of the Constitution of our country.

It was written, adopted by—

Mrs. BLACKBURN. Without objection.

Ms. ESHOO. Thank you—December 15, 1791. It is as new and as important today as the day that it was adopted.

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof or abridging the freedom of speech or of the press—they were very clear. They were very clear—or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

I hope you will choose to enlarge on the public statement that you put out.

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

Mrs. BLACKBURN. The gentlelady yields back to the ranking member.

Mr. DOYLE. And I yield back.

Mrs. BLACKBURN. The gentleman yields back.

At this time, I recognize the Chairman of the full Energy and Commerce Committee, Mr. Walden, who has been in the chair all day along with the hearing downstairs.

The gentleman is recognized for 5 minutes.

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

Mr. WALDEN. Well, thank you, Madam Chair. And I want to welcome especially Commissioner Carr. Welcome aboard. We are glad to have you here for the first time in this capacity. And welcome back Commissioner Rosenworcel. It is sure good to see you on the

Commission. And we look forward to continuing our work with you and the other members. Chairman Pai, thank you too for being here and for your leadership.

I couldn't agree more with Chairman Blackburn that this Commission has some very, very important work to do. The United States has weathered a large share of natural disasters this year, including wildfires that have devastated literally hundreds of thousands of acres in my home state. And we know the tragedies all across the West from these fires. These catastrophic weather events have shown the importance of maintaining the most reliable and modern communication systems possible. And we certainly owe the work many of us were engaged in on FirstNet and going clear back to 2012, and we need to make sure that works as planned.

I look forward to hearing updates on the agency's contributions to the overall Federal relief efforts underway in these areas as well as those impacted by Hurricanes Irma, Harvey, and Maria, although some of the affected areas are almost back up to speed, which is great, thanks to a lot of hard work on both industry and government. We know we are facing enormous challenges elsewhere in restoring essential services, in places like Puerto Rico and the Virgin Islands, as well as others here on the mainland.

We appreciate the Commission's efforts to streamline permitting, advance funding, and provide much needed assistance in these situations. We also appreciate the Commission's work to keep us informed through a bipartisan, bicameral briefing on FCC hurricane response efforts that we requested and that Chairman Pai's team quickly provided at the beginning of this month. Thank you for doing that.

As 2017 draws to a close, we find ourselves waiting on a number of key items to emerge from the Commission. In no way does this committee expect our oversight to delay the Commission's important work. Rather, hearings like this are vital to keeping open the lines of communication and exposing commissioners and committee members alike to different perspectives, yielding better understanding and better decision-making. But we expect the Commission's work to go regardless, just as it did under the previous administration.

The subcommittee continues its work as well having just finished a markup on an FCC reauthorization bill for the first time in many years. I want to thank my colleagues on both sides of the aisle for their work on this effort as we continue to move toward full committee markup soon.

Last month, we held a hearing on the challenges and opportunities presented by the repacking process that the Commission has embarked upon. I commend the Commission's continuing efforts to release funding and work with every broadcaster to ensure their needs are being met as this transition evolves in a timely manner. Your input has been and will continue to be extremely important to this committee as we look at options to solve the remaining issues. And we certainly know there are some out there.

Some of my colleagues may wish to use this opportunity as a forum to rehash, once again, the arguments for dumping cutting edge broadband internet service into the stale, musty bucket that

is Title II. In any case, if anyone was wondering, my position hasn't changed on that, and I don't sense others have.

This Commission should not be dissuaded in any way by the previous Commission's partisan maneuver, which upended stacks of Commission precedent, disregard reams of legislative history to achieve the results that were demanded by then President Barack Obama. It is up to the Commission to set the optimal regulatory conditions to fuel broadband investment and deployment. And I hope to see a new bar set in this regard before the end of the year.

Ultimately, Congress is the appropriate forum to settle the net neutrality debate. I think you hear a little of that passion here on both sides. And I have been continuing my efforts to negotiate a compromise. Although my staff continues to engage the various affected parties in productive discussions toward that end, my colleagues in the minority have, unfortunately, seemed largely uninterested at this point. I would love to see that change, by the way. The door remains open.

We are willing and able to codify net neutrality protections and establish a Federal framework in statute for providing certainty to all participants in the internet ecosystem. I don't think we need Title II to do that. We have the same end goal: Preserving the internet as a free, open, dynamic environment to unleash innovation and drive our economy, while also doing everything we can to extend its benefits to every American. We should be able to work together to clear this issue off our plates.

With that, again, I thank the Commission for being here today. We are glad to see you fully constituted and confirmed. And as you can imagine, we have a lot of issues to hear from you on and to have good discourse back and forth. So thanks again.

And with that, I yield back.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

Thank you, Madam Chairman. I'd like to welcome Commissioner Carr for the first time, and welcome back Commissioner Rosenworcel as this subcommittee continues in its long tradition of active oversight of the FCC.

I couldn't agree more with Chairman Blackburn that this commission has some very important work to do. The United States has weathered a large share of natural disasters this year, including the wildfires that have devastated hundreds of thousands of acres in Oregon and across much of the West. These catastrophic weather events have shown the importance of maintaining the most reliable and modern communications systems, particularly in emergencies.

I look forward to hearing updates on the agency's contributions to the overall federal relief efforts underway in these areas as well as those impacted by Hurricanes Harvey, Irma, and Maria. Although some of the affected areas are almost back up to speed, thanks to a lot of hard work on the part of both industry and government, we are facing enormous challenges in restoring essential services in other areas.

We appreciate the commission's efforts to streamline permitting, advance funding, and provide much needed assistance. We also appreciate the commission's work to keep us informed, through a bipartisan, bicameral briefing on FCC hurricane response efforts that we requested and that Chairman Pai's team quickly provided at the beginning of this month.

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The subcommittee continues its work as well, having just finished a markup of an FCC reauthorization bill for the first time in many years. I want to thank my colleagues on both sides of the aisle for working with us to see this effort through, and continuing that work as we move toward full committee markup.

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I commend the commission's continuing efforts to release funding and work with every broadcaster to ensure their needs are being met as this transition evolves in a timely manner. Your input has been, and will continue to be, extremely valuable as this committee explores initiatives to solve for the issues that still remain.

Some of my colleagues may wish to use this opportunity as a forum to rehash once again the arguments for dumping cutting-edge broadband Internet service into the stale, musty bucket that is Title II. In case anyone was wondering, my position on this has not changed.

This commission should not be dissuaded in any way by the previous commission's partisan maneuver, which upended stacks of commission precedent and disregarded reams of legislative history to achieve the result demanded by President Obama.

It is up to the commission to set the optimal regulatory conditions to fuel broadband investment and deployment, and I hope to see a new bar set in this regard before the end of the year.

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Mrs. BLACKBURN. The gentleman yields back.

Anyone seeking the remainder of the chairman's time?

No one else. The gentleman yields back.

At this time, Mr. Pallone, you are recognized for 5 minutes.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Madam Chairman and Ranking Member Doyle, for holding this hearing today. And I appreciate that you are maintaining the subcommittee's tradition of oversight of the FCC. I know some people here today would prefer you wouldn't.

Congressional oversight is especially important now because the FCC is on a path to take up a number of controversial issues in the next few months. Nonetheless, it is curious that this hearing is scheduled for today in particular, just one day before Chairman Pai is expected to make public at least one proposal that enriches a single company above others, and that would clear out any last obstacles to Sinclair broadcasting's purchase of Tribune Media Company. This will be the single largest owner of television broadcast station, and they would be buying the second largest.

So Chairman Pai has claimed repeatedly that it is simply coincidence that his actions are all timed to benefit Sinclair. But if that was the case, why can't the members of this committee see the latest proposal that he plans to circulate tomorrow before the Commission came before us? And now Chairman Pai has refused repeatedly to respond to my questions about allegations about his relationship with Sinclair. And this kind of evasiveness with Con-

gress does not help put anyone's concerns to rest. These moves are just another example of how this FCC values large companies over small ones and always puts companies before consumers.

The most glaring example of this, of course, is Chairman Pai's commitment to eviscerate net neutrality protections by the end of this year. Net neutrality protects consumers, protects small businesses, and protects free speech. And I hope that the FCC is spending this time reviewing the millions of comments that had been filed, including comments from the Democratic members of this committee. And I also hope the FCC considers the thousands of consumer complaints that have been made public since the comment period closed. These complaints demonstrate that consumer problems with broadband providers is much farther reaching than the FCC's proposed rulemaking lets on.

Now, together, these items have the potential to drastically remake the way Americans communicate. And in taking on these issues, the FCC must find a way to insulate itself from the political pressures from the President. Chairman Pai has claimed that he has restored independence to the FCC, yet he refuses repeatedly to put any distance between himself and President Trump, whether it is net neutrality, Sinclair, or even protecting a free press. And that evasiveness does not inspire confidence.

I have said many times, and I think I have told some of the Commission members, that I remember earlier this year when Sean Spicer was at a press conference and he said that the President would have the FCC repeal net neutrality before the FCC even addressed the issue. So, again, it just seems that everything is, whatever the President wants, and there is really no independence at all on net neutrality or the other issues. And the FCC has a long tradition of bipartisanship. But, unfortunately, that is simply not the case today. Hardworking American consumers and future Congresses are sure to take a dim view of the current partisan politics at the FCC, and it is time to restore that bipartisan tradition.

But, again, I thank the chairman and the commissioners for all being here today. And I would like to yield a minute each to Mr. McNerney and Matsui. I guess I will start with McNerney.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

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ample of this, of course, is Chairman Pai's commitment to eviscerate net neutrality protections by the end of the year.

Net neutrality protects consumers, protects small businesses, and protects free speech. I hope that the FCC is spending this time reviewing the millions of comments that have been filed, including comments from the Democratic members of this Committee. I also hope the FCC considers the thousands of consumer complaints that have been made public since the comment period closed. These complaints demonstrate that consumers' problems with broadband providers is much farther reaching than the FCC's Proposed Rulemaking let on.

Together, these items have the potential to drastically remake the way Americans communicate. And in taking on these issues, the FCC must find a way to insulate itself from the political pressures from the President. Chairman Pai has claimed that he has restored independence to the FCC. Yet he refuses-repeatedly-to put any distance between himself and President Trump, whether it is net neutrality, Sinclair, or even protecting a free press. That evasiveness does not inspire confidence.

The FCC has a long tradition of bipartisanship, but unfortunately that is simply not the case today. Hardworking American consumers and future Congresses are sure to take a dim view of the current partisan politics at the FCC. It's time to restore that bipartisan tradition.

I thank the Chairman and Commissioners for appearing before us today. And with that, I yield back.

Mr. MCNERNEY. Well, I thank the ranking member for yielding.

I have noticed a troubling trend in the FCC's recent actions. The very core of the FCC's mission is in the public interest. In fact, the words "public interest" appear over 100 times in the Communications Act. But by taking steps to limit access to information and content, the Commission has gone against what I think is the public's interest. This is evidenced by the Commission's current efforts to dismantle net neutrality protections. It is further evidenced by the steps the Commission has taken to undercut localism from reinstating UHF discount to eliminate the main studio rule. These and other actions signaling favorable treatment for Sinclair.

And then there was the chairman's initial silence regarding the President's threat to revoke broadcast licenses on the basis of viewpoints, followed by the chairman reluctantly making a statement, but one that was too late and insufficient. I am disappointed in these actions and the effect that they will have on the information my constituents and Americans across the country have access to.

With that, I yield to Ms. Matsui.

Ms. MATSUI. Thank you very much. Thank you for yielding.

In order to expand broadband deployment across this country, it is critically important that we accelerate our work to free up spectrum for commercial use. Additional spectrum is necessary both to expand wireless coverage across rural America and build capacity across all of America. We must also focus on locking more spectrum frequencies that will allow new and innovative technologies to grow. This means everything from precision agriculture, public safety communications, telehealth services, the Internet of Things, and connected devices. All of this to rely on access to spectrum's invisible infrastructure of the 21st century.

Access to the spectrum would depend on the FCC conducting auctions that will allow additional low-, mid-, and high-band spectrum to be delivered to commercial users. That is why Congressman Guthrie and I introduced the Spectrum Auction Deposits Act yesterday. Without this fix, future auctions may be put on hold indefinitely. And I look forward to working with Chairman Pai, the

committee, and Congressman Guthrie to work together to enact this into law.

And with that, I yield back.

Mrs. BLACKBURN. The gentlelady yields back.

And I see no other members requesting time, so this concludes our opening statements.

I would like to remind members that, pursuant to the committee rules, all members' opening statements will be made a part of the record.

We want to thank our witnesses for taking the time to be here today and for preparing for the hearing, submitting your testimony. We do appreciate this. Today's witnesses will have the opportunity to give opening statements, followed by the questions that are going to come from our members.

Our witness panel for today's hearing: The Honorable Brendan Carr, Commissioner Clyburn, Chairman Pai, Commissioner O'Rielly, Commissioner Rosenworcel. We appreciate that you all are here for this.

And as the tradition of this subcommittee, we will go in the order of seniority. So, Chairman Pai, you will be first, followed by Commissioner Clyburn, and then Mr. O'Rielly, Mr. Carr, and Ms. Rosenworcel.

So, Chairman Pai, you are recognized for 5 minutes for an opening statement.

STATEMENTS OF AJIT PAI, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; MIGNON CLYBURN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; MICHAEL O'RIELLY, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; BRENDAN CARR, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; AND JESSICA ROSENWORCEL, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

STATEMENT OF AJIT PAI

Mr. PAI. Thank you. Chairman Blackburn, Ranking Member Doyle, members of the subcommittee, thank you for holding this hearing today. I appreciate this opportunity to update you on the FCC's work to advance the public interest.

That work has been substantial. In my written statement, I outlined progress in four key areas: Promoting public safety, bridging the digital divide, modernizing our regulations, and combatting unwanted robocalls. Additionally, I commended the subcommittee for its work on reauthorizing the FCC.

Of particular importance is the provision just mentioned by Congresswoman Matsui that would allow the deposits placed by bidders in spectrum auctions to be sent to the Treasury. Without this measure, the FCC won't be able to launch a large spectrum auction for the foreseeable future.

But this morning, I would like to address an area of concern for all members and for me: The First Amendment. I have said again and again that the First Amendment must be at the heart of our work. That is why I oppose the prior FCC's critical information needs study, an ill-conceived initiative which would have

involved sending government funded agents into newsrooms to second-guess editorial judgment. And that is why just last month I spoke at the Newseum about the importance of the First Amendment.

My record on these issues is clear. And these issues are not new. President Kennedy targeted The Washington Post and NBC directly telling one of my predecessors that a particular story was outrageous and to, quote, “do something about it.” More recently, some have said that the FCC should reject a transaction involving the transfer of FCC broadcast licenses because of editorial judgments. And six members of this very committee, including the current ranking members of the committee and subcommittee, once demanded that the FCC investigate a broadcaster based solely on the content of a documentary that they didn’t like and that hadn’t even aired.

Let me be clear. I stand on the side of the First Amendment. I firmly believe that journalists should heed to their viewers, their listeners, and their readers, not the dictates of officials in Washington, D.C. But don’t just trust my words. For if you believe, as I do, that the Federal Government has no business intervening in the news, then we must stop the Federal Government from intervening in the news business. And that is why this afternoon I shared with my fellow commissioners an order that will reform our media ownership rules and help pull the government, once and for all, out of the newsroom. We will vote on this order at our November 16 meeting.

The marketplace today is nothing like it was in 1975. Newspapers are shutting down. Many a radio and TV stations are struggling, especially in smaller and rural markets. Online competition for the collection and distribution of news is even greater than it ever was. And just two internet companies claim 100 percent of recent online advertising growth. Indeed, their digital ad revenue alone this year will be greater than the market cap of the entire broadcasting industry. And yet the FCC’s rules still presume that the market is defined entirely by pulp and rabbit ears. As one newspaper has put it, making the argument that the current rules are outdated is easy. That radical right wing rag was The New York Times in 2003.

Now, if this order is adopted, the FCC will belatedly recognize reality and match our rules to the modern marketplace. First, the order will, once and for all, eliminate the newspaper broadcast cross-ownership rule. As President Clinton’s first FCC chairman has explained, under current conditions in the media business, the FCC’s rule is perverse. And the Third Circuit has said that it remains at, quote, significant expense to pro-competitive arrangements.

Second, the item will eliminate the radio-television cross-ownership rule, which is unnecessary into today’s marketplace given the Commission’s separate local radio and local television ownership rules.

Third, it will revise the local television ownership rule to eliminate the eight-voices test and incorporate a case-by-case review of the top-four prohibition. This better reflects the competitive conditions in local markets.

Fourth, it will eliminate the attribution rule for television joint sales agreements, finding that JSAs serve the public interest by allowing broadcasters to better serve their local markets.

Fifth, it will retain the disclosure requirement for shared services agreements involving commercial television stations.

And, sixth, it will finally, finally, establish an incubator program to encourage greater diversity in and new entry into the media business and seek comment on what the details of that program should be. And unlike under the prior administration, I have ordered that the text of this decision be made publicly available tomorrow, 3 weeks before we vote on it. That too is news that is fit to print.

Chairman Blackburn, Ranking Member Doyle, members of the committee, thank you once again for holding this hearing, and I look forward to answering your questions.

[The prepared statement of Mr. Pai follows:]

TESTIMONY OF FCC CHAIRMAN AJIT PAI
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”
OCTOBER 25, 2017

Chairman Blackburn, Ranking Member Doyle, and Members of the Subcommittee, thank you for holding this hearing. I appreciate this opportunity to update you on the work of the Federal Communications Commission to advance the public interest.

That work has been substantial. For instance, over the past nine months, we have voted on 63 items at our monthly meetings under my chairmanship, compared to 102 in three years under my predecessor. In the interests of time and space, I’ll focus on four key areas in which we have made a mark: promoting public safety, bridging the digital divide, modernizing our regulations, and combatting unwanted robocalls.

1. Promoting Public Safety.—Hurricanes Harvey, Irma, and Maria, recent wildfires in California, and other emergencies have underscored the importance of public safety communications. The FCC has tackled the challenge head-on. I have personally visited Texas in the wake of Hurricane Harvey and Florida (with Commissioner Clyburn) in the wake of Hurricane Irma to meet with those impacted. From those who handled thousands of calls in 911 call centers to those who provided wireless connectivity to thousands of evacuees at Houston’s George R. Brown Convention Center to those who stayed on the broadcast airwaves to help South Floridians stay safe, countless Americans stepped up to help. That includes the FCC’s terrific staff, who have spent many long hours and traveled many long miles to serve the American people.

Puerto Rico and the U.S. Virgin Islands have presented unique and active challenges, and the FCC has responded uniquely and actively. For example, the FCC has made available almost \$77 million in advanced Universal Service support to carriers in Puerto Rico and the U.S. Virgin Islands to assist in the restoration of communications services. We have also granted over 200 STAs and waivers to help get communications networks up and running. One such example is an experimental license we granted to Alphabet's Project Loon, which went live late last week in collaboration with AT&T to provide connectivity to some of the hardest hit areas of Puerto Rico. For my part, I have spoken with the FEMA Administrator and other FEMA officials; with Puerto Rican government officials; with wireless carriers serving Puerto Rico and the U.S. Virgin Islands; with tower companies whose assets are in Puerto Rico and the U.S. Virgin Islands; and others both to understand the scope of the challenge and to offer the FCC's help. With so much communications and power infrastructure destroyed and so many other pressing needs on the island, from hospitals to schools, the road to recovery in Puerto Rico will be hard. But we are and will be helping in every way we can. And because we recognize that this will be a long-term project, earlier this month, the FCC established a Hurricane Recovery Task Force to support the restoration of communications services in areas affected by this season's hurricanes, with an emphasis on addressing the challenges facing Puerto Rico and the U.S. Virgin Islands.

2. Bridging the Digital Divide.—The FCC's top mission under my leadership has been bridging the digital divide. That divide keeps too much human capital on the shelf. As I explained during a recent Rise of the Rest visit in Indianapolis with entrepreneur Steve Case and others, bridging that divide benefits individuals, communities, and the country.

So we've gotten to work in several respects. We've reformed our Universal Service Fund programs to focus taxpayer funds on parts of the country that lack high-speed Internet

access. In particular, our \$2 billion Connect America Fund Phase II initiative and \$4.5 billion Mobility Fund II initiative aim to bring fixed and mobile broadband respectively to unserved areas. And in our wireline and wireless infrastructure proceedings, we have teed up numerous proposals to make it easier to deploy the networks of the future for the benefit of Americans who are on the wrong side of the divide today. Additionally, I've encouraged the Administration and Congress to consider including broadband as part of any infrastructure plan and to give serious consideration to bills like the Gigabit Opportunity Act (which has been introduced in both the House and Senate).

Closing the digital divide won't be easy. But America will reap a significant return on its investments if it enables every American to be a participant in, rather than a spectator of, the digital economy.

3. Modernizing Our Regulations.—One of the most powerful forces in government is inertia. Rules that get on the books stay on the books, sometimes long after the rationale that underlay their adoption is gone. In most cases, the rules simply don't reflect the marketplace of today; and in some, they affirmatively harm consumers and competition by diverting investment and impeding innovation.

Regulatory inertia no longer has purchase at the FCC. We have actively sought to repeal and revise outdated rules. Several months ago, for instance, we started a Media Modernization Regulatory Initiative. We observed that there are over 1,000 pages of regulations that apply to the media sector alone and asked the public to identify any that ought to be eliminated or streamlined. The response was overwhelming, so much so that beginning in September, and for the foreseeable future, the FCC will vote every month on a Notice of Proposed Rulemaking addressing these regulations. The very first repeal we proposed is a useful exemplar; there's

simply no need for certain companies to be forced to maintain hardcopies of our regulations when virtually everyone can find them online. There's more of that to come. (And not just in the media space. Just last week, we finally wiped away the rules relating to certain telegraph services—years after the last telegraphs were sent in the United States.)

4. Ending Unwanted Robocalls.—Unwanted and illegal robocalling represents the number one category of consumer complaints that the FCC receives every year. And small wonder—with billions of robocalls unleashed every month, and with untold time and money lost, consumers have had it. So have we. That's why I announced early in my tenure that we would deem our top consumer protection priority what consumers have clearly told us is *their* top priority.

We've matched our aims with action in three ways. *First*, we've taken steps to obstruct these calls from being placed. We've proposed to allow carriers to block “spoofed” robocalls that appear to originate from invalid or unassigned telephone numbers. We've proposed to empower consumers and businesses to tell carriers to block calls that mimic their phone numbers but aren't actually placed by them—that is, a “do not originate” system. We've started a process to enable “call authentication”—that is, a digital fingerprint for a call that will ultimately make clear which calls come from a legitimate source. And we're exploring the creation of a reassigned numbers database so that consumers won't receive calls from businesses intended for someone else and businesses can reach customers who want to receive their calls.

Second, we've taken aggressive action against those who bombard consumers with unwanted and illegal robocalls. We have proposed a \$120 million fine against a Florida man who directed over 100 million robocalls to consumers in the last three months of 2016 alone. This is the largest fine ever considered by the FCC. This case and others like it signal to those

who might seek to scam, annoy, and harass Americans that the Commission is an active cop on the beat.

Third, the FCC is working with other entities to help root out and prosecute these scams. In particular, I've spoken with Chairman R.S. Sharma of the Telecom Regulatory Authority of India (TRAI). We discussed the problem of U.S.-bound robocalls coming from India, and Chairman Sharma proactively offered the investigative assistance of the Indian government. I'm optimistic that this kind of cooperation—backed up by the Memorandum of Understanding between the FCC and TRAI, the first bilateral agreement signed under my chairmanship—will help us give American consumers more moments of peace than they've had of late.

* * *

Finally, I want to commend the Subcommittee for its efforts to pass an FCC reauthorization bill. Of particular importance is the provision in this legislation which would allow the deposits placed by bidders in spectrum auctions to be sent to the Treasury. This measure is critical because without it, the FCC won't be able to launch a large spectrum auction for the foreseeable future.

As I testified this past July, the Communications Act requires that upfront payments made by bidders in spectrum auctions be deposited in "an interest bearing account at a financial institution designated . . . by the Commission (after consultation with the Secretary of the Treasury)." But recent regulatory requirements have dissuaded private institutions from holding upfront payments. And public institutions have indicated that they will not set up the special purpose accounts that would be necessary to offer such services. As a result, no financial institution will accommodate the holding of upfront payments in an interest bearing account for a large spectrum auction. Thus, the Commission currently has no way to comply with the law—

and no way to move forward with any large spectrum auction. By allowing upfront payments to be deposited at Treasury, the reauthorization legislation passed by the Subcommittee would enable the Commission once again to hold major spectrum auctions. This is critical if America is going to lead the world in 5G.

* * *

Chairman Blackburn, Ranking Member Doyle, and Members of the Subcommittee, thank you once again for holding this hearing. I look forward to answering your questions.

Mrs. BLACKBURN. We thank the chairman.
Commissioner Clyburn, you are recognized for 5 minutes.

STATEMENT OF MIGNON CLYBURN

Ms. CLYBURN. Chairman Blackburn, Ranking Member Doyle, and members of the subcommittee, good afternoon, and thank you for the opportunity to once again appear before you today.

We are 9 months into a new administration, making it appropriate, I believe, to reflect on the tremendous change that has taken place when it comes to our outlook on consumers, competition, and viewpoint diversity. Beyond the Washington acronyms, inside of the beltway jargon and flashy press headlines, are a series of actions, I fear, that are jeopardizing the FCC's role as the referee on the field protecting consumers and small business interests.

Now, I ask you not to take my word about this. In my hand are 80 mostly handwritten letters I have received in the recent months. They express concern ranging from open internet and proposed mergers to inmate calling and a lack of affordable broadband in their communities. Amid the many policy changes, what may have gone unnoticed are the enforcement actions that we have failed to take against the Nation's largest regulatees, where they have violated the public trust and the Commission's rules.

In March, for example, millions of consumers were unable to call 911 for 5 hours. Similar outages in the past few years resulted in the Commission collectively fining companies more than \$30 million. These past fines were a recognition that we depend on 911 being available during times of greatest need. How did the current FCC handle this year's outage, one of the largest fines ever? No penalty and no report that addressed the question of whether the Commission's rules were violated.

Now, I am all for taking enforcement action whenever the public's trust has been violated. But what is clear is that the majority's focus is on targeting individuals and small businesses, where we are least likely to collect any fines.

Turning to policy. It is a source of great disappointment that as we approach the holiday season, 2.7 million children continue to wait for this agency to make good on its word to bring about real reform when it comes to the inmate calling regime. In April, the FCC majority welcomed Industry Consolidation Month by reinstating the technologically obsolete UHF discount. The result: Opening the door for a single broadcast station group to reach more than 70 percent of the television households. In that same month, we paved the way for huge rate hikes on business data services, formerly known as special access, that will not only negatively impact small businesses but rural hospitals, schools, libraries, and police departments as well. Instead of looking out for millions of little guys, the Commission's majority once again chose to align with an interest of a handful of multibillion dollar providers.

In August, we began an inquiry that may actually put us on a path of lowering the bar for what we now consider to be high-speed broadband. As I travel across this country, the refrain I hear is that service is too expensive and speeds are too low. We should be aiming to lead the world in having the fastest, most robust

broadband, not heading in the opposite direction by green-lighting broadband service at excruciatingly slow snail-like speeds.

Now, last month, we took another worrisome turn with the adoption of our latest mobile competition report. Ask those that I have met in rural America who are struggling with 2G and 3G service. What they want is reliable wireless connectivity. What they have is lackluster noncompetitive service, simply put.

Our reports' findings do not match the experiences on the ground and in the communities across this great Nation. And if I am to believe the reports that I am hearing and reading, in just a matter of days, as you have heard, the chairman will circulate a series of items that include rolling back the best elements of our media ownership rules. If true, the already consolidated broadcast media market will become even more so, offering little to no discernible benefits for consumers.

Our actions, most often the ones that fail to make the headlines, have real everyday consequences. And while I keep and will keep doing everything in my power to make sure that we do not dial back any further when it comes to consumer protections, just, reasonable, and fair phone rates for all of our citizens, media ownership opportunities, and digital inclusion, I remain fearful, in part, because the rhetoric is not in line with the actions. I have submitted a longer statement for the record.

But once again, allow me to thank the subcommittee for providing me the opportunity to testify today. I look forward, I believe, to answering any questions you may have.

[The prepared statement of Ms. Clyburn follows:]

Testimony of FCC Commissioner Mignon L. Clyburn
Before the
U.S. House of Representatives
Committee on Energy & Commerce
Subcommittee on Communications & Technology
Oversight of the Federal Communications Commission
October 25, 2017

Chairman Blackburn, Ranking Member Doyle, Members of the Subcommittee, good afternoon. Allow me to begin by welcoming our newest colleague, Commissioner Carr and a special welcome back to Commissioner Rosenworcel.

We are nine months into a new Administration, making it appropriate I believe, to reflect on the tremendous change that has taken place when it comes to our outlook on consumers, competition and viewpoint diversity. Behind the Washington acronyms, inside of the beltway jargon and flashy press headlines, are a series of actions I fear are jeopardizing the FCC's role, as the referee on the field protecting consumers and small business interests.

In most cases, these come in the form of proceedings that will never garner millions of public comments, but make no mistake, their impact will be felt by every single American: the Lifeline recipient with fewer choices for affordable voice or broadband service; a family forced to pay unreasonably high rates to keep in touch with an incarcerated loved one; or the small business owner now facing immediate price hikes, for high-capacity broadband service.

I begin with a trip down memory lane, that started in February when, an action billed as helping the "country's smaller providers," resulted in billion dollar public companies not having to be transparent with their consumers about things like data caps on their broadband connection.

Also in February, is when the agency refused to fully defend before the D.C. Circuit Court, the inmate calling reforms the prior FCC had adopted. Following the loss of that case in the D.C. Circuit, there was a commitment made by the leadership to address those outstanding issues, but to date, 2.7 million children, as we approach the holiday season, are still waiting for this agency to make good on its word.

Over the objection of my office, the FCC's Wireline Competition Bureau revoked the designation of nine entities already approved to provide Lifeline broadband service back in February. By refusing to allow new broadband providers into the Lifeline program, the digital divide in this country has deepened, widened, and has now become more cemented.

Then in March of this year, was a stay of the FCC's rule requiring voice and broadband providers to take reasonable measures to secure the data that they gather from their customers. As the furor over Equifax and other data breaches show, we need enforceable rules of the road to ensure that consumers are adequately protected when they go online. Sadly, when it comes to broadband providers, we have none.

Next were the showers in April, that could best be described as “Industry Consolidation Month.” Despite endless declarations extolling the need and virtues of clearing our books of antiquated regulations, the FCC majority reinstated the technologically obsolete UHF discount. In doing so, this Commission opened the door to a single broadcast station group reaching more than 70 percent of television households ... an action that does absolutely nothing to further localism or viewpoint diversity on our public airwaves.

In that same month, we paved the way for huge rate hikes on business data services, that will not only negatively impact small businesses but rural hospitals, schools, libraries, and police departments as well. Our use of faulty data and lackadaisical market analysis in this proceeding, resulted in an order that does not reflect market realities. Instead of looking out for millions of “little guys,” the Commission’s majority once again chose to align with the interests of a handful of multi-billion dollar providers.

In May, the FCC majority began the process of undoing the open internet protections that just last year, were upheld by the D.C. Circuit. Beyond a free and open internet, this also has serious ramifications for universal service, and for infrastructure deployment. Although the Commission has received a record number of comments, the Majority continues down a path that leaves consumers and content providers to fend for themselves.

In August, we began an inquiry that may actually put us on a path of lowering the bar for what we now consider to be high-speed broadband. As I travel the country, I can honestly say, that I have never heard anyone clamoring for slower internet speeds. The refrain I hear, is that the service is too expensive and the speeds are too slow. We should be aiming to lead the world in having the fastest, most robust broadband, not heading in the opposite direction by greenlighting broadband service at excruciatingly slow, snail-like speeds.

Last month, we took another worrisome turn, with the adoption of our latest mobile competition report. This was the first time during my tenure, that the Commission used a flawed and truncated analysis, to conclude that the market for commercial mobile wireless services was effectively competitive. Ask those I meet in rural America who are struggling with 2 and 3 “G” service. What they want is reliable wireless connectivity. What they have today is lackluster, non-competitive service. Simply put, our report’s findings do not match with the experiences on the ground, and in communities across this great nation.

Then there is this week, where we have eliminated a rule, that has ensured those entrusted with use of the public airwaves, have a local presence in their community. While I am sympathetic to the concerns facing small and rural broadcasters, the action we took, will eliminate that local connection to the community, without regard to market size or economic standing, and without any guarantee that the savings derived will be invested in expanding local programming or improving newsgathering.

And if I am to believe the reports that I am hearing and reading, in just a matter of days, the Chairman will circulate a series of items, that will roll back the best elements of our media ownership rules. If true, the already consolidated broadcast media market will become even more so, offering little to no discernible benefit for consumers.

Our actions, most often the ones that fail to make the headlines, have real, everyday consequences. And while I will keep doing everything in my power to make sure that we do not dial back any further when it comes to consumer protections, just reasonable and fair phone rates for all of our citizens, media ownership opportunities and digital inclusion, I remain fearful in part, because the rhetoric is not in line with the actions.

What also may have gone unnoticed is how few of the FCC's enforcement actions this year have been targeted at the nation's largest regulatees. Flashy headlines announcing the agency's largest-ever fine disguise the fact that we are predominantly targeting individuals and small businesses, but when large companies are found at fault, we only manage to levy fines that are cents on the dollar of harm to the public. Now I am not especially faulting the actions we have taken to-date on those that have violated the public's trust. What I am saying is that we do need to ensure our rules are equally enforced, and at a minimum, fines should appropriately reflect the level of harm done.

Finally, I would like to address the sizeable number of process fouls that have taken place since the first quarter of 2017. It began, guess when, in February, with what I can best label the "Friday News Dump." It continued in July with a media transaction, involving a major entity with a large pending transaction, which was approved without informing my office. Commitment to transparency and the quote, "longstanding process under which every Commissioner [is] provided 48-hours notice of a significant, bureau-level decision," unquote, let's just say the atmosphere is murky at best. There have been several instances, in which our office should have been made aware and given the opportunity to review an item, but we were not afforded that chance. And now, Commissioners are subject to a new process that will result in the release of a Commission-level item on delegated authority, even when Commissioners have asked for edits and voted on the item.

But I am opting to end on a positive note this afternoon. The Federal Communications Commission has taken important steps to improve accessibility for those living with a disability. We continue to free up spectrum to support the next generation of wireless services. We have acted to implement Mobility Fund Phase II, something I have advocated for years, which will be key in closing the mobile connectivity gap in rural America. I am proud of these actions and remain hopeful that we can find more ways to work together and if we are able to approach the next nine months in a transparent and bipartisan manner, better days are sure to follow.

My thanks to the Subcommittee for providing the opportunity for me to appear before you today. I look forward to answering any questions you may have.

Mrs. BLACKBURN. Commissioner Clyburn, you always look forward to the questions, and we are delighted you are here.

Commissioner O’Rielly, you are recognized for 5 minutes.

STATEMENT OF MICHAEL O’RIELLY

Mr. O’RIELLY. Thank you, Mr. Chairman.

Good afternoon. It is a pleasure to be before the subcommittee once again as it conducts further oversight of the Federal Communications Commission.

Before I discuss certain policy and other matters, I would like to address the recent tweets by the President of the United States raising matters within the purview of this FCC. Let me be clear, I do not speak for the President, and I have never met him. However, I think it is fair to say that the new President and his administration have received what can be most kindly called unbalanced coverage from various media sources. But you don’t have to take my word for it or corresponding studies showing the same. Former President Carter stated over the weekend: I think the media have been harder on Trump than any other President, certainly that I have known about.

With that said, I do not believe that the Commission’s licensing decisions should be influenced or decided by politics. Similarly, like my objections to the cozy relationship between the past administration and the Commission, I continue to support the FCC as an independent agency. Moreover, I strongly believe in the Constitution of the United States, which includes the First Amendment, and have sworn to support and defend it as part of my oath of office. But this is somewhat immaterial, because the beauty of the Constitution is that it is the highest law of the land, and the rights that it affirms and provides supersede my belief or any action by the Commission. It serves to protect us all, even the unwitting bystander or active hostile.

Turning to substantive matters. A top priority of mine is to ensure that the electromagnetic spectrum is being put to the most efficient use possible. My overall goal of this work is to position the United States and our wireless carriers for overall success in the coming years. We know that internationally several nations seek to corner the market on next generation wireless technologies, commonly known as 5G, to reap the economic benefits and dictate the world’s wireless future. I intend to ensure that the United States’ ingenuity and technological development are not unfairly hampered by others’ quest for this premier position.

Moreover, as the insatiable demands of consumers for more mobility and broadband offerings continue, the Commission has the arduous task of reclaiming, reallocating, clearing, and, in some cases, facilitating spectrum sharing. A prime location for such efforts is the mid-bands, including a 3.5, 3.7 to 4.2, and 3.1 to 3.5 GHz bands. In terms of unlicensed spectrum, the time has come to determine whether the DSRC remains the best use of the 5.9 GHz band. If it no longer makes any sense, the Commission could combine the 5.9 GHz with the rest of the 5 GHz band and potentially the 6 GHz band to expand current unlicensed operations and promote continued growth.

Once spectrum is made available, additional auctions will be needed to assign licenses. But as Chairman Pai testified, the Commission faces difficulty in securing a financial institution to meet the statutory requirements to hold our upfront auction payments. Without a willing partner or a change in law, the Commission believes that it is unable to announce a schedule for future spectrum auctions, much less hold an auction itself.

While the subcommittee has included a technical fix within its larger reauthorization bill, it is possible that this larger legislation may take additional time. Accordingly, I want to thank Representatives Guthrie and Matsui for introducing the Spectrum Auction Deposits Act of 2017, a stand-alone bill for this purpose, and express my support for moving this rifle shot approach as soon as possible.

In terms of process reform, I believe that the Commission is more open and transparent now than it has been since I started following its activities. However, I continue to believe that additional changes to the Commission's procedures, both formal and informal, are necessary and prudent. On that note, the Commission's perpetual struggle over the excessive use of delegated authority continues. To rectify this, I have put forth what I consider to be a balanced plan to accommodate the competing interests of permitting commissioners to vote and resolving matters expeditiously. I would be pleased to work with the subcommittee on this and any other process reform ideas.

I thank the members of the subcommittee for holding this hearing, and I look forward to answering any questions you may have. Thank you.

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

Statement of FCC Commissioner Michael O’Rielly

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

**Hearing on
“Oversight of the Federal Communications Commission”
October 25, 2017**

Good afternoon, it is a pleasure to be before this Subcommittee once again as it conducts further oversight of the Federal Communications Commission. I appreciate the opportunity to be here and welcome any questions you may have.

Before I discuss certain policy and other matters, I would like to reiterate my overall support for the way Chairman Pai has operated and managed the Commission during his short tenure as chair. While there is always room for improvement, the Commission is more open and transparent than it has ever been during my involvement as a Commissioner or as a congressional staffer. I also appreciate that Chairman Pai has promised additional process changes in the future, including codifying or memorializing those that have already been made. Just as we all expect our nation’s communications providers to continually upgrade and modernize, so must the Commission’s operating procedures.

Commission’s Role in Recent Hurricanes

While I am on the topic of applauding the Chairman, I think he is due extensive credit for his leadership during the recent hurricanes of Harvey, Irma, Maria and others. The Chairman, his team, and the requisite bureau personnel were actively engaged in orchestrating the Commission’s response and assistance during these difficult events. And what a trying time that was and still remains for many.

Some critics have tried to assert that the Chairman didn't do enough or should have done this or that differently. Others argued that he and his team should have been focused on changing our procedures for future responses or plan for the next crisis while in the midst of responding to the current one at hand. I disagree.

At numerous points, I heard repeated appreciation for the Chairman's work from those communications companies trying to serve those within the affected areas. From Commission actions, including approving requests for special temporary authority and waivers, to communicating with other involved federal government agencies, to getting supplies, equipment and personnel approved for access, the Chairman and his team were on top of the situation and kept everyone informed of the changing circumstances on the ground. As I see it, he was solely focused on preventing service disruption as best as possible, ensuring emergency information was provided via our nation's communications providers, and facilitating the private sector efforts to restore service to those people impacted by these dreadful hurricanes.

In fact, during these hurricanes, I continuously reassessed whether I, personally, could improve the Commission's response but realized that my value add would be minimal. In times of ultimate crisis, a unified and effective voice taking appropriate action is important.

Spectrum

A top priority of mine — along with improving broadband deployment — is to ensure that the electromagnetic spectrum is being put to the most efficient use possible. It's why I have spent so much time delving into the weeds on particular wireless issues and increasing my engagement with international regulators, including seeking reforms to the International Telecommunication Union (ITU).

To put this in perspective, in the last four months I have given eight spectrum related speeches, attended three international spectrum focused conferences (in Orlando, Bogota and Brussels), taken a lead role in reviewing the rules for the 3.5 GHz band, and advocated for reallocating mid band spectrum (above 1 GHz and below 5 GHz) at both the 3.4 and 3.7 to 4.2 GHz bands. And, I am pleased to say that the Commission is likely to release additional millimeter wave spectrum in the coming months as a result of a deal I struck with the preceding Chairman.

My overall goal of this work is to position the United States and our wireless carriers for overall success in the coming years. We know that internationally a number of nations seek to corner the market on the next generation wireless technology, commonly known as 5G, in order to reap the economic benefits and dictate the world's wireless future. I intend to ensure that United States' ingenuity and technological development are not unfairly hampered by others' quest for this premier position.

To effectuate spectrum policy internationally, I believe that reforms to the procedures for and U.S. engagement in the ITU are needed and appropriate. International spectrum harmonization should be a key priority but it cannot come at the expense of overall wireless technological progress. Additionally, the U.S. should no longer expect that sound policy will rule the day at the ITU, especially given our recent experiences at the World Radiocommunication Conference in 2015 when simple spectrum studies were blocked, potential agenda items were shoved aside for protectionist reasons, and new blocking mechanisms were imposed allowing countries to veto a neighbors' interest in 600 MHz spectrum allocations. I would certainly appreciate the Subcommittee's increased engagement in these issues in the coming months.

Domestically, it remains important to take advantage of technological improvements to use higher and higher frequencies, but we will still need to reallocate spectrum now dedicated for one purpose to other uses. As the insatiable demands of consumers for more mobility and broadband offerings continues, the Commission has the difficult task of reclaiming, reallocating, clearing and in some cases, facilitating spectrum sharing. A prime location for such efforts is the mid-bands, including the C-bands, and 3.1-3.550 GHz.

I'd also like to quickly address unlicensed spectrum, particularly the 5.9 GHz proceeding. The Commission has run its test on nine prototypes and is analyzing the results. In my opinion, it is time to bring this proceeding to a close. More importantly, the time has come to determine whether we still need DSRC altogether. At a minimum, it should not be used for any services that can be offered using other technologies available today. If DSRC no longer makes sense, the Commission could combine the 5.9 with the rest of the 5 GHz bands to expand current unlicensed operations and promote continued growth. Further, the Commission should look to opening the 6 GHz band for unlicensed uses.

In addition, the Commission has a lot of work ahead to remove barriers being imposed on broadband deployment by *some* state, local and tribal governments. These barriers tend to come in one of two forms: (1) delayed or non-existent approval processes for siting of necessary equipment, including towers and antennas; and (2) exorbitant fees for application procedures and the right to access certain properties. If we truly want to facilitate access to broadband by unserved Americans, the Commission will likely need to exert its authority provided in the statute to preempt certain government agencies acting in bad faith and hampering broadband deployment nationwide.

Auction Authority Problem

As Chairman Pai previously testified, the Commission faces difficulty in securing a financial institution to meet the statutory requirements to hold our upfront auction payments. Without a willing partner or a change in law, the Commission believes that it is unable to announce a schedule for future spectrum auctions, much less actually hold an auction. This means that spectrum auctions for additional millimeter wave bands and Citizens Band Radio Service (CBRS) are not being scheduled. In fact, unless this gets fixed quickly, it's likely that no spectrum auctions will be held next year and it won't be until mid to late 2019 before an auction occurs. This development will have an impact on potential investment in particular bands and may prove to tilt the marketplace in favor of less efficient or more expensive spectrum bands.

Thankfully, the Subcommittee has included a technical fix within its larger "FCC Reauthorization Act of 2017." While this would address the situation, it is possible that this larger legislation may take some additional time before being enacted into law. Accordingly, I respectfully request that the Subcommittee consider splitting off this one fix and moving it as a rifle shot through the legislative process. Fortunately, such action could match up nicely with Senate Commerce Chairman Thune's stand-alone bill for this purpose.

FCC Procedures & Process Improvements

I continue to believe that additional changes to the Commission's procedures both formal (via the statute and Code of Federal Regulations) and informal (via our internal procedures handbook) are necessary and prudent. While Chairman Pai has improved the situation, and promises more to come, there is only so much that he can champion given his other responsibilities. It's one reason I have remained engaged on this issue and see it as part of my responsibility as a Commissioner. Moreover, it

is clear that some changes can only be made legislatively, requiring the assistance of this good Subcommittee. In some regards, however, process improvements can only be accomplished if there is sufficient leadership and willingness to defeat the status quo.

Along these lines, I was disheartened to learn that certain Commission process improvements were removed during Subcommittee consideration of the "FCC Reauthorization Act of 2017." For instance, a provision to codify our recent practice to make public the documents for our open meeting at the same time they are circulated to commissioners was struck from the bill. I am aware of few people who disagree with this practice and have found a large number of converts who now actively support it, as it has been a tremendous success in reducing overall item confusion and unnecessary Commission ex parte meetings. A lay person just reading stories about the removal of these pro-process reforms may mistakenly see this as an effort to weaken the transparency and openness of the Commission. Having had multiple conversations with the Chairmen of the full Committee and Subcommittee I know of their commitment to these and other changes. I therefore hope these provisions can be revisited and included in the bill as it proceeds forward.

On another note, the Commission's perpetual struggle over the use of delegated authority and its limits continue. Like the previous Commission, current Commissioners seek a greater ability to pull items to the Commissioner-level that are scheduled to be released by staff under delegated authority. At the same time, there must be reasonable time limits for any item elevated from delegated authority and a process for addressing potential delays. Commissioners should use the elevation of an item to actively engage in a proceeding, not as a delay tactic. To rectify these issues, I have put forth what I consider a balanced plan to accommodate the differing interests. I have attached my blog outlining this proposal for the Subcommittee's review and consideration.

* * *

I thank the Subcommittee for holding this hearing and look forward to any questions you may have.

Mrs. BLACKBURN. The gentleman yields back. And so far, he is winning the prize for most time yielded back.

Mr. Carr, you are recognized.

STATEMENT OF BRENDAN CARR

Mr. CARR. Thank you.

Chairman Blackburn, Ranking Member Doyle, distinguished members of the subcommittee, it is a privilege to appear before you today. This is a particular honor for me because this is my first opportunity to testify since I was sworn in as a commissioner in August. For the 8 months before that, I served as the general counsel of the FCC, after joining the agency originally as a staffer back in 2012.

In my 5 years at the Commission, I have enjoyed working with you and your staffs on policies that promote the public interest. I want to commend you in particular for your efforts to enact bipartisan legislation, such as Kari's Law, the Improving Rural Call Quality and Reliability Act and, most recently, the markup of an FCC reauthorization bill.

Having served in various roles in both the majority and the minority at the FCC, these experiences have instilled in me an appreciation for the importance of bipartisan consensus and working toward common ground. I commit to carrying that forward in my time on the Commission.

In my testimony, I want to focus on the ways the FCC can continue to incentivize broadband deployment. This is particularly important as we make the transition to 5G, a shift that will require a massive investment in both wired and wireless infrastructure. But if we get the right policies in place, this transition could mean \$275 billion in network investment, 3 million new jobs, and half a trillion added to the GDP.

As I see it, there are at least three keys to getting there: Spectrum, infrastructure, and ensuring we have the skilled workforce in place to deploy these NexGen networks. First, we need to get more spectrum into the market. I am pleased the FCC is pressing forward on this front. We have a proceeding underway that is looking at broad swaths of spectrum between 3 and 24 GHz. And the chairman has announced that we will vote later this year on opening up additional bands above 24 GHz. These are really great steps towards maintaining the United States' leadership in the global race to 5G.

Second, we must modernize the Federal, State, and local regimes that currently govern broadband infrastructure deployment. 5G is going to require a 10- to 100-fold increase in the number of cell sites in this country. The current regime is simply not tailored to support this type of massive new deployment. It costs too much, it takes too long. So we need to find ways to drive the unnecessary regulatory costs out of the system, and we need to speed the timeline for obtaining regulatory approvals. Doing so will be particularly important for rural America.

One recent study shows that regulatory reform can shift the business case for entire communities. Streamlining alone could make it economical for providers to deploy 5G to nearly 15 million more homes than under the existing and more burdensome regime.

The lion's share of those would be in less densely populated parts of the country.

Third, we need the skilled workforce necessary to get this transition across the finish line. Last month, I participated in a roundtable hosted by the Wireless Infrastructure Association outside of Baltimore. A broad range of stakeholders from wireless companies to independent infrastructure providers all talked about the shortage of skilled workers that can deploy the small cells, distributed antenna systems and other infrastructure necessary for 5G.

Now, while there is no direct regulatory role for the FCC here, I think we need to focus additional attention on this issue and potential solutions, including the role that apprenticeship and other job training programs can play. And to that end, I will be participating at an event next month at the Department of Labor on workforce development.

One last point. While technology continues to evolve, one constant is the FCC's obligation to promote public safety. This has been highlighted in a most devastating of ways over the past 2 months with the hurricanes that have overwhelmed communities across the country and now currently with the wildfires that we see. The FCC has been working hard since well before the first hurricane made landfall. And Chairman Pai has kept the agency focused on the immediate task of supporting restoration efforts, including by forming a hurricane recovery task force that is coordinating the agency's work. Right now, the FCC is focused on the emergency situations in Puerto Rico and the U.S. Virgin Islands, while continuing to assess restoration efforts across the country. I will see some of those firsthand on Friday when I visit Houston to hold a roundtable with broadcasters, meet broadband providers, and visit a 911 call center. I will be taking stock of the progress that has been made and the ways the FCC can continue to support those efforts.

So, Chairman Blackburn, Ranking Member Doyle, members of the subcommittee, thank you again for the opportunity to testify. I look forward to answering your questions.

[The prepared statement of Mr. Carr follows:]

**TESTIMONY OF BRENDAN CARR
COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION
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”
OCTOBER 25, 2017**

Chairman Blackburn, Ranking Member Doyle, and distinguished Members of the Subcommittee, it is a privilege to appear before you today. This is a particular honor for me because this is my first opportunity to testify since I was sworn in as a Commissioner in August. For the eight months before that, I served as the General Counsel of the FCC after joining the agency as a staffer in 2012.

In my five years at the Commission, I have enjoyed the chance to work with you and your staffs on policies that promote the public interest. I want to commend you in particular for your efforts to enact bipartisan legislation, such as Kari’s Law, the Improving Rural Call Quality and Reliability Act, and, most recently, the markup of an FCC reauthorization bill.

Having served in various roles in both the majority and minority at the FCC, these experiences have instilled in me an appreciation for the importance of bipartisan consensus and working towards common ground. I believe that focusing on our shared goals produces the best and lasting results for the public. I commend the Subcommittee for working in that spirit, and I commit to carrying that forward in my time on the Commission.

During my confirmation hearing this summer, I spoke about the opportunity we have in the technology and communications space to work together on policies that will create jobs, spur investment, and grow the economy for the benefit of all Americans. It is one of the reasons that I am focused on policies that will promote broadband deployment. Whether it is the workers that manufacture and deploy broadband infrastructure, the app economy that runs over high-speed networks, or the businesses that use these connections to reach customers around the world, broadband can harness the talents of all Americans, create good-paying jobs, and help drive our nation’s economic growth.

I saw this first hand when I visited North Carolina during my first official trip as a Commissioner. I visited a plant in Claremont, North Carolina that manufactures fiber optic cables and other network infrastructure. I had the chance to tour the plant floor and meet some of the highly-skilled men and women that operate the machines that produce cables used for everything from data centers to wireless and wireline deployments. A few weeks later, I visited a manufacturing facility in Sunnyvale, California, where workers are assembling next-generation satellites.

Over the past two months, I also had the chance to visit with construction crews that were hard at work trenching conduit, pulling fiber, and maintaining the towers needed to deliver high-speed broadband. And I spent time with innovators and entrepreneurs in tech hubs on both coasts that are taking advantage of all this broadband infrastructure to launch new businesses.

These experiences only underscore the important role that broadband plays in creating jobs and opportunities for Americans across the country. So I want to focus my testimony this afternoon on some of the ways the FCC can incentivize even greater broadband deployment. This is particularly important as we make the transition to 5G—a shift that will require a massive investment in both wired and wireless infrastructure.

In fact, if we get the right policies in place, this transition could mean \$275 billion in network investment, three million new jobs, and a half a trillion dollars added to the GDP.

In my view, there are at least three keys to getting there—spectrum, infrastructure, and ensuring that we have the skilled workforce necessary to deploy and maintain next-generation networks.

First, we need to get more spectrum into the market. This means that the FCC must continue to pursue an all-of-the-above approach. We need a spectrum pipeline that can deliver a mix of low-, mid-, and high-band spectrum into the commercial marketplace. And we need to ensure that providers can choose from a mix of licensed, unlicensed, and shared spectrum bands to meet consumer demand, whether to connect people or the burgeoning Internet of Things. I am pleased that the FCC is pressing forward on this front. The agency now has a proceeding under way that looks at broad swaths of spectrum between 3 and 24 GHz. And the Chairman has announced that the agency will vote later this

year on opening up additional bands above 24 GHz. These are great steps towards maintaining the United States' leadership in the global race to 5G.

Second, we must modernize the federal, state, and local regimes that govern infrastructure deployment. 5G is going to involve a 10- to 100-fold increase in small cells in addition to millions of miles of new fiber and other high-speed connections. The current regulatory regime is not designed to support or process deployments on this type of scale. It costs too much and takes too long. So we need to drive the unnecessary regulatory costs out of the system, and we need to speed the timeline for obtaining regulatory approvals.

Doing so will deliver real results, including in rural and less densely populated parts of the country that might otherwise miss out on 5G and other advanced deployments. In fact, one study shows that through streamlining alone, the FCC could flip the business case for thousands of communities. Regulatory reforms alone could make it economical for the private sector to deploy 5G to nearly 15 million more homes than under the existing regime. That's an additional \$24 billion in investment that could be incentivized simply by removing regulatory barriers to deployment.

Third, we need to ensure that we have the skilled workforce necessary to get the transition to next-generation networks across the finish line. Last month, I participated in a roundtable hosted by the Wireless Infrastructure Association outside of Baltimore, Maryland. It was eye opening, to the say the least. A broad range of stakeholders all agreed that there is a shortage of workers with the skills necessary to deploy and maintain the small cells, distributed antenna systems, and other network infrastructure for 5G deployments. And this skills gap is a topic that has come up repeatedly in my meetings with both wireless and wireline providers. While there is no direct regulatory role for the FCC, I think we need to focus some additional attention on this issue and potential solutions, including the role that apprenticeship and other job training programs can play.

Finally, while technology continues to evolve, one constant is the FCC's obligation to promote public safety. This has been highlighted in the most devastating of ways over the past two months when hurricanes overwhelmed communities across the country. The FCC and its staff have been working hard

since well before the first hurricane made landfall. And broadcasters and broadband providers alike have been deploying crews and working around the clock to restore communications—a task that has been complicated by the lack of commercial power in many of the hardest hit areas. The FCC has been supporting these restoration efforts, including by sending personnel to the impacted areas in coordination with FEMA, granting waivers, and providing special temporary authorizations.

Chairman Pai also formed a hurricane recovery task force that is coordinating the FCC's efforts in this area. The agency is laser focused on the emergency situations in Puerto Rico and the U.S. Virgin Islands, while at the same time continuing to assess and monitor restoration efforts in other parts of the country. I will see some of those efforts on Friday when I visit Houston to hold a roundtable with broadcasters, meet with broadband providers, and visit a 911 call center. This trip will allow me to continue to take stock of the progress being made and the ways the FCC can support those efforts.

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Chairman Blackburn, Ranking Member Doyle, and Members of the Subcommittee, I want to thank you again for holding this hearing and for the opportunity to testify. I look forward to answering your questions.

Mrs. BLACKBURN. Thank you, Commissioner Carr. You did well in your first appearance.

Commissioner Rosenworcel, you are recognized for 5 minutes.

STATEMENT OF JESSICA ROSENWORCEL

Ms. ROSENWORCEL. Thank you.

Good afternoon, Chairman Blackburn, Ranking Member Doyle, and the other members of the subcommittee. Thank you for the opportunity to be here today. This is my first appearance before you since returning to the FCC. I had a little vacation courtesy of your friends in the United States Senate.

Of course, a little distance provides some perspective. And in my time off, one thing became abundantly clear: The future belongs to the connected. No matter who you are or where you live in this country, you need access to modern communications to have a fair shot at 21st century success. But the fact of the matter is that, today, too many Americans lack access to broadband. Let's put a number on it. Right now, 34 million Americans lack access to high speed-service. That number includes 23 million Americans living in rural areas. That is just not acceptable. We need to do better.

But, of course, statistics alone don't tell the whole story. To get a picture of just what it means to be consigned to the wrong side of the digital divide, consider kids and homework. Today, 7 in 10 teachers assign homework that requires internet access. But data from the FCC show that as many as one in three households do not subscribe to broadband. Where those numbers overlap is what I call the homework gap. And according to the Senate Joint Economic Committee, the homework gap is real, and it affects 12 million children all across the country.

I have heard from students in Texas who do their homework at fast-food restaurants with fries just to get a free WiFi signal. And I have heard from students in Pennsylvania who make elaborate plans every day to get to the homes of friends and relatives just to be able to get online. I have also heard from high school football players in rural New Mexico who linger in the school parking lot late at night in the pitch-black dark because it is the only place that they can get a reliable connection. These kids have grit, but it shouldn't be that hard, because, today, no child can be left offline.

Developing digital skills is essential for education and for full participation in the modern economy. So I hope that adds a human dimension to what it means to not have access to broadband.

Now, let me tell you what we can do about it. If we want to get serious about addressing our broadband problems, we need to know exactly where those problems are most pronounced. We need better mapping. Nearly 9 years ago, in the American Recovery and Reinvestment Act, Congress had a good idea. It created a national broadband map identifying where deployment has and has not occurred. But if you check that map online now, you will last see that it was updated 3 years ago. And I don't have to tell you, in the internet age, 3 years is an eternity.

You cannot manage what you do not measure, so I think it is time for a national broadband map that offers an honest picture of both wired and wireless broadband across the country. And, of

course, we can build this map with all sorts of datasets here in Washington. But I think it would be great if we had a clearer picture on the ground. I am a big believer in the wisdom of crowds, so I think we should put it to the public. If any of your constituents have not been able to get service or live in an area that lacks it, help us make that map and write us at broadbandfail@fcc.gov.

I set up this account to take in the public stories and ideas, and I will share everything that comes in with the chairman and my colleagues, because I think it is time to make every one of those broadband fails into something better: broadband success.

Finally, I want to point out that, with broadband, speed matters. The FCC has a statutory duty to annually assess the state of broadband deployment. Today, our national standard is 25 megabits. But the agency has sought comment on scaling this back to 10 megabits. That is crazy. We won't solve our broadband problems by lowering our standards. We need to correct this course immediately and start setting bigger goals if we want to do bigger things.

Let me close by thanking you for having me at this hearing today. I look forward to answering any questions you may have.

[The prepared statement of Ms. Rosenworcel follows:]

STATEMENT OF
JESSICA ROSENWORCEL
COMMISSIONER
FEDERAL COMMUNICATIONS COMMISSION
BEFORE THE
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY
ENERGY & COMMERCE COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
“OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION”
WASHINGTON, DC
OCTOBER 25, 2017

Good afternoon, Chairman Walden, Ranking Member Pallone, Chairman Blackburn, Ranking Member Doyle and other Members of the Committee. Thank you for the opportunity to appear here today. It is my first appearance before you since rejoining the FCC. Of course, a little distance provides perspective. And in my time away one thing became abundantly clear: The future belongs to the connected. No matter who you are or where you live in this country you need access to modern communications for a fair shot at 21st century success.

But the fact of the matter is that today too many Americans lack access to broadband. Let’s put a number on it. Right now, 34 million Americans lack access to high-speed service. This number includes 23 million Americans living in rural areas. This is just not acceptable. We need to do better.

But statistics alone don’t tell the whole story. To get a picture of just what it means to be consigned to the wrong side of the digital divide consider kids and homework. Today, seven in ten teachers assign homework that requires broadband access. But data from the FCC show that as many as one in three households do not subscribe to Internet service. Where those numbers overlap is what I call the Homework Gap. According to the Senate Joint Economic Committee, the Homework Gap is real. By their estimate, it affects 12 million children across the country.

I have heard from students in Texas who do homework at fast food restaurants with fries—just to get a free Wi-Fi signal. I have heard from students in Pennsylvania who make elaborate plans every day to head to the homes of friends and relatives just to be able to get online. I have heard from high school football players in rural New Mexico who linger in the school parking lot after games with devices in the pitch-black dark because it is the only place they can get a reliable connection. These kids have grit. But it shouldn’t be this hard. Because today no child can be left offline—developing digital skills is flat-out essential for education and participation in the modern economy.

I hope that adds a human dimension to what it means to not have access to broadband. So now let me tell you what we can do about it.

If we want to get serious about addressing our broadband problems, we need to know exactly where those problems are most pronounced. We need better mapping. Nearly nine years ago, in the American Recovery and Reinvestment Act, Congress had a good idea. It created a

National Broadband Map, identifying where deployment has and has not occurred. But if you check that map online now you will see that it was last updated over three years ago. In the Internet age, three years is an eternity.

You cannot manage what you do not measure. So I think it's time for a National Broadband Map that offers an honest picture of wired and wireless broadband across the country. Too often the FCC cobbles together data for each individual rulemaking and report without a comprehensive and updated snapshot of where service is and is not.

We can build this map with data sets in Washington, but it would be great if we had a clearer picture on the ground. I'm a big believer in the wisdom of crowds, so I think we should put it to the public. If any of your constituents have not been able to get service, or live in an area that lacks it, help us make a map and write us at broadbandfail@fcc.gov. I set up this account up to take in the public's stories and ideas. I will share everything that comes in with the Chairman and my other colleagues, too. Because it is time to turn every one of these broadband fails into something better—broadband success.

Mapping is important because it can improve FCC work under the Communications Act. Section 254 directs the FCC to ensure “consumers in all regions of the Nation” have access to communications, with rural rates reasonable comparably to urban rates. To do so we have more ongoing universal service proceedings than I have time to talk about today. But one thing is clear: with better data we will do a better job.

Finally, I want to point out that with broadband speed matters. The FCC has a statutory duty to annually assess the state of broadband deployment. Today, our national standard is 25 Megabits. But the agency has sought comment on scaling this back to 10 Megabits. That's crazy. We won't solve our broadband problems by lowering our standards. We need to correct this course immediately and start setting bigger goals if we want to do bigger things.

Let me close by thanking you for having me at this hearing. I look forward to answering any questions you may have.

Mrs. BLACKBURN. We thank everyone for the testimony. And this concludes our testimony portion, and we are going into the Q&A portion. And I will recognize myself for 5 minutes.

Chairman Pai, I am going to come to you first. I want to stay with that freedom of speech theme. During the last administration, the Commission had proposed a multimarket study of critical information needs, and you had made the comment that you thought it thrust the Federal Government into the newsrooms across the country. And Chairman Upton, Chairman Walden, and many members on this subcommittee, including myself, sent Chairman Wheeler a letter calling the study what we thought would be unconstitutional, and urging him to put a stop to the attempt to engage the FCC as the news police. Fortunately, Chairman Wheeler did heed our call.

And I want to know if he put a stop to it, but can you tell us more about that project? How close was it to actually happening? How much money got spent on that project?

Mr. PAI. Thank you for the question, Chairman Blackburn, and thank you for your advocacy several years ago. The critical information needs study was a study that was conceived in the prior FCC. It spent approximately \$900,000, as best I can discern it. And the project involved sending government-funded researchers into newsrooms to ask questions about why they were or were not covering eight different categories of news that the government thought were important, asking questions to news directors and the like about perceived bias, and asking a whole host of other intrusive questions.

It seemed to me that this was not compatible with the agency's obligations under the First Amendment. And so I wrote up an op-ed about it. And I am grateful that Chairman Wheeler ultimately scrapped that study, but not before, as I said, a great deal of money had been expended and a rubicon of some sort had been crossed.

Mrs. BLACKBURN. OK. Now, when Chairman Wheeler pulled the plug on it, the FCC said that some of the questions may not have been appropriate and that the Commission would be modifying the draft study. So what is the current status on this?

Mr. PAI. That study will not proceed and—period.

Mrs. BLACKBURN. OK. I just want to ask, for each of you on the Commission, is there anybody on this current Commission that would support such a study?

Ms. CLYBURN. Well, Madam Chairman, one of the things that I take issue with is how that was couched. I was a part of that study, which started out being a study of studies, looking at what the Commission gathered in terms of information about the entire media ecosystem. And as a result of us not having information, we have been kicked back several times to the court about not having justification, not having information, not having data. When it comes to certain policies, the court has spoken. We don't have the information needed. We are making decisions by putting a finger up in the wind and seeing where the political winds are flowing and going in terms of information, in terms of our decision-making.

Mrs. BLACKBURN. OK.

Ms. CLYBURN. And that is why we have a UHF discount that has no justification. And that is because we have no information that

we are gathering. We are just making decisions based on political——

Mrs. BLACKBURN. So you would support the FCC being in the newsroom?

Ms. CLYBURN. I will support the FCC not being in the newsroom, because I am a First Amendment prophet. I had a newspaper for 14 years, and dare not anybody come into my newsroom and tell me what to print. That is not what I am saying.

Mrs. BLACKBURN. All right. Let me ask you all this. In 2009, Anita Dunn, the White House communications director said of Fox News: We are going to treat them the way we would treat an opponent. We don't need to pretend that this is the way that legitimate news organizations behave. This overall attitude culminated in the exclusion of Fox News from access in numerous large and small ways.

As deputy press secretary Josh Earnest wrote in an email to a Treasury official, and I am quoting: We are demonstrating our willingness and ability to exclude Fox News from significant interviews.

Did any of this raise First Amendment concerns with any of you?

Yes or no. Commissioner Carr, start with you, and go right down the line.

Mr. CARR. I think it underscores the need for the Commission to just stay focused on every action that the agency takes being consistent with——

Mrs. BLACKBURN. OK. We are going to learn to do yes and no. OK. Commissioner Clyburn.

Ms. CLYBURN. I am trying to grasp what are you saying. All I know is I am very consistent on First Amendment principles.

Mrs. BLACKBURN. OK. So exclusion from asking questions or being included, would that bother you?

Ms. CLYBURN. Exclusion——

Mrs. BLACKBURN. Excluding a news outlet, would that bother you?

Ms. CLYBURN. Excluding a news outlet from—that is not how I conduct myself.

Mrs. BLACKBURN. OK. All right.

Chairman Pai?

Mr. PAI. I agree with Commissioner Carr.

Mrs. BLACKBURN. OK.

Mr. O'RIELLY. Yes.

Chairman BLACKBURN. Yes. OK. Follows instructions well.

All right. Chairman Rosenworcel?

Mr. ROSENWORCEL. Tension between administration——

Chairman BLACKBURN. Yes or no. You have got to learn to do it.

Mr. ROSENWORCEL. Tension between administrations are as old as the republic.

Mrs. BLACKBURN. All right.

Mr. ROSENWORCEL. Nothing strikes me about what you have just described as being particularly new or unique.

Mrs. BLACKBURN. OK. That is unfortunate.

All right. Mr. Doyle, you are recognized for 5 minutes.

Mr. DOYLE. Thank you very much.

Commissioner O'Rielly, in the spirit of Chairman Dingell, I have a number of questions that I want to ask you with—just requiring yes or no answers. And I would appreciate you doing that as rapidly as possible.

Mr. O'RIELLY. Yes.

Mr. DOYLE. Thank you. You got it. You used to work on this committee.

Mr. O'RIELLY. Yes.

Mr. DOYLE. And you helped draft legislation that prevented one entity from owning broadcast stations that reach more than 39 percent of the national population, correct?

It is a yes or no.

Mr. O'RIELLY. Thank you.

In response to a question for the record from me, did you state that you believe only Congress can change the cap via the passage of legislation?

Mr. O'RIELLY. Yes.

Mr. DOYLE. Thank you. At that time that you worked on this legislation, did you understand that a UHF station signal, the ones above channel 13, could not travel as far as VHF signals?

Mr. O'RIELLY. Yes.

Mr. DOYLE. Were you aware at that time that the FCC did not count the entire reach of UHF stations against the 39 percent national ownership cap?

Mr. O'RIELLY. Yes.

Mr. DOYLE. And in a twist of fate, since the DTV in 2009, digital UHF stations can now reach a larger audience than VHF stations, right?

Mr. O'RIELLY. Yes.

Mr. DOYLE. The UHF discount now allows a single entity to own stations that reach more than 39 percent of the national population, correct?

Mr. O'RIELLY. Yes.

Mr. DOYLE. Even though there is no technical reason for this discount anymore, right?

Mr. O'RIELLY. Yes.

Mr. DOYLE. So the UHF discount just allows companies to reach close to 80 percent of the national audience, right?

Mr. O'RIELLY. Yes.

Mr. DOYLE. Do you believe the Congress intended to create a loophole in the law?

Mr. O'RIELLY. That is a no.

Mr. DOYLE. Thank you.

Did you state in a response to me that, even though you think only Congress can change the national cap, this entire issue may need to be litigated through the judicial process to determine which position is accurate?

Mr. O'RIELLY. Yes.

Mr. DOYLE. Did you also say that you suspect your position will ultimately prevail at the end of the day?

Mr. O'RIELLY. Yes, always.

Mr. DOYLE. Does that mean you believe the court will find that only Congress can adjust the 39 percent national cap?

Mr. O'RIELLY. Both parts, yes, national cap and the UHF discount.

Mr. DOYLE. But did you also state that you will support whatever action is necessary to see that the issue gets its day in court?

Mr. O'RIELLY. Yes.

Mr. DOYLE. So are you saying that you are willing to vote to raise the cap, even though you think Congress prohibited the FCC from taking that action?

Mr. O'RIELLY. I am saying that I need to see what the item is. I don't want to—

Mr. DOYLE. It is a yes or no question.

Mr. O'RIELLY. Well, yes.

Mr. DOYLE. Thank you.

If the 39 percent cap is statutory, as you and I both believe, will you oppose any attempts by companies to contravene congressional intent?

Mr. O'RIELLY. I believe that they comply with the law.

Mr. DOYLE. Specifically, if the Sinclair-Tribune merger resulted in a combined entity reaching more than 39 percent of the national audience, that would contravene congressional intent, correct?

Mr. O'RIELLY. No.

Mr. DOYLE. Why not?

OK. Thank you. I will let you get by on that one.

So if that is the case, though, if it did contravene the 39 percent, would you oppose the merger?

Mr. O'RIELLY. I don't talk about any pending merger before the Commission.

Mr. DOYLE. If the Sinclair merger goes through and the courts determine that you were right, that Congress prohibited companies from exceeding the cap, should the FCC undo the merger?

Mr. O'RIELLY. I don't talk about any pending mergers before the Commission.

Mr. DOYLE. Well, let me just say, I think this is a dangerous path, because your response to my questions for the record and some of your answers here today suggest that you may take steps to evade the law by approving a merger, even though you and the majority of the Commission agree that it would violate congressional intent. And I hope that you will reconsider that.

Let me ask Commissioner Rosenworcel if she has anything she wants to add to the line of questioning that I have had regarding that merger.

Ms. ROSENWORCEL. Thank you. I believe that 39 percent is the figure that Congress chose to put in the law and that this Commission needs to abide by it.

Mr. DOYLE. Thank you.

Madam Chair, I want to ask unanimous consent to enter into the record five documents. One is the chairman's 2014 Wall Street Journal op-ed, his response; a letter also that he sent regarding a letter that a number of members sent regarding the President's threats against the media; a letter from Consumers Union; and the statement for the record that Commissioner O'Rielly had sent back to me.

Mrs. BLACKBURN. So ordered.

[The information appears at the conclusion of the hearing.]

Mr. DOYLE. Thank you very much. I see my time is just about expired, so I will yield back.

Mrs. BLACKBURN. Yes, it has.

And, now, Chairman Walden, you are recognized.

Mr. WALDEN. Well, thank you, Madam Chair.

Yes or no, Commissioner O'Rielly, do you wish communications issues were as simple as yes or no?

Mr. O'RIELLY. Yes.

Mr. WALDEN. Thank you.

Now, moving on. Commissioner Rosenworcel, so I am glad you raised the ARRA issue. I was on the committee at the time when the stimulus bill came through. And I fought like the dickens to get the maps done before the money went out the door, and I failed in that effort. And so the money went out the door, then they drew the maps.

What I am trying to figure out is why are the maps 3 years old? Does the FCC not have a responsibility to keep those up to date?

Ms. ROSENWORCEL. Thank you for the question. I agree with you. I think we should be keeping them up to date. I think the fact that we spend billions of dollars on Universal Service Fund every single year without having a full sense of where service is and is not is a problem.

Mr. WALDEN. I fully agree.

Ms. ROSENWORCEL. And it is my understanding that the funds that were used to support that map at the Department of Commerce ceased to be available when the American Recovery and Reinvestment Act came to an end, and I think that the FCC has been collecting data through its own 477 process. But it is not—

Mr. WALDEN. And how valuable is that 477?

Ms. ROSENWORCEL [continuing]. Compatible with the data from the Department of Commerce.

Wherever you are sitting on this issue, it just seems to me that with better data we are going to make better decisions—

Mr. WALDEN. Thank you.

Ms. ROSENWORCEL. And that is the point I—

Mr. WALDEN. I actually agree with that and hope you all can figure out what the best reporting improvement mechanism is to get to those data points, because we shouldn't be overbuilding or wasting the ratepayers' money.

Mr. Chairman, did you want to comment on that?

Mr. PAI. I would be happy to. That is precisely why, several months ago, I asked the House and Senate Appropriations Committees for a reprogramming of funds to enable us to discharge that important function. And I am glad to report that each committee agreed with that recommendation and that task is now underway and certainly welcome Commissioner Rosenworcel's support for it.

Mr. WALDEN. Ms. Rosenworcel.

Ms. ROSENWORCEL. I just want to point out that that sounds terrific, but it is my understanding that that is only for wired broadband. And I think an adequate map at this point has to include both wired and wireless.

Mr. PAI. Certainly, if the committees give us additional reprogramming funds, we would love to pursue it. We cannot act in

the absence of congressional authorization from our appropriators, as this committee well knows.

Mr. WALDEN. Very good. Maybe we can get everybody on the same page on this one. We stand ready to work with you on it.

Chairman Pai, we have spent a lot of time together over the years before this committee, and one of my concerns has been that the FCC did not always operate in an open and transparent way. I argued for making some of the proposed orders public and have it actually circulated so Commissioners could read it, the public could read it.

Have you done anything to improve that process down there?

Mr. PAI. I believe I have, Chairman Walden. I announced a pilot project in the second week I was in office that, for some of the upcoming meetings, we would be publishing at least 3 weeks in advance the actual text on the internet of these orders—

Mr. WALDEN. Had that been done before?

Mr. PAI. It had never been done, and I had been told not only was it potentially unlawful for it to be done, but it was also unwise for it to be done. And I think the success of the pilot program has disproved each one of those claims of fear.

And, just yesterday, I announced that—or 2 days ago, rather, that this would be a permanent project, that we would be doing this on a permanent basis for every meeting that the FCC will hold into the future so long as I have the privilege of leading the agency.

Mr. WALDEN. There was an issue about delegated authority and Commissioners wanting to be able to take it off delegated authority. Have you made any changes on that one?

Mr. PAI. Absolutely. One of the things that Commissioner O'Rielly and I noticed in the minority is that if one of us or both of us requested that an item that was reportedly going to be done on delegated authority—if we requested that item be considered by the full commission, my predecessor would typically ignore that. And so I said, if there are two Commissioners who want to handle something on the full commission level, we will do that. And that is what we have done.

Mr. WALDEN. Good.

Main studio rule—

Mr. PAI. Yes, sir.

Mr. WALDEN. I think I am the only one on the panel that actually had to comply with that, as an FCC licensee for more than two decades.

Obviously, you believed it outlived its purpose. I believed it outlived its purpose. It made no sense. We very seldom, if ever, had anybody come into the main studio for the purpose of looking at the public file. That is now online, I believe, right?

Mr. PAI. Absolutely right.

Mr. WALDEN. And so I am trying to get to this issue of why some people think it was like the holy grail of local communication. Because I don't see it that way; I didn't see it that way. We acquired three other stations in another market. It would have been nice to be able to consolidate in overhead and put the money, like we did, into more news gathering and into the programming and all of that. People still knew where we lived, and we knew where we lived. And so I commend you for getting rid of that rule.

I think there are a whole bunch of other antiquated rules that are legacy, that make no sense in today's internet communication world, that other providers and competitors in the market have no obligation to comply with. I don't see Twitter with their local community rule in any community they serve or any of these others. I realize they are not licensed. But, obviously, there is a lot of debate going on now about how all these communication mechanisms work in today's environment.

My time is gone. Thank you, Madam Chair.

Thank you, Commissioners, for all the good work you do. We look forward to having you back up here on a regular basis.

Mrs. BLACKBURN. The gentleman yields back.

Mr. McNerney, you are recognized for 5 minutes.

Mr. McNERNEY. I want to thank the chair for the hearing.

And I thank you, Commissioners, for your work. It is not an easy job. And it is interesting to see the different viewpoints that you all have.

Mr. Chairman, I recently had a chance to visit The Huddle, which is a coworker space in my district where startups go together to bring innovative ideas and working hard to get their businesses off the ground. But they are very worried about the impact that doing away with net-neutrality protections will do to their businesses.

If net-neutrality protections are weakened, as you propose, can you commit to me that small businesses and jobs will not be hurt in my district? Please answer with a "yes" or "no."

Mr. PAI. Well, Congressman, I don't know that particular company, but, obviously, we support a free and open internet that allows small businesses like that to thrive.

Mr. McNERNEY. Commissioner Clyburn, do you think that that will hurt small businesses?

Ms. CLYBURN. I think, if we shift gears, that they would not have the certainty that they need.

And I think that what doesn't get enough attention is the impact on universal service. And we can talk about that later, but the Chairman is not speaking clearly about what the impact on universal service would be if we shift from Title II.

Mr. McNERNEY. Well, thank you.

Commissioner Rosenworcel, there has been a series of reports on the Sinclair-Tribune merger. I am very concerned about the impact that this merger would have.

The FCC has a critical role to play in the merger approval process. From your perspective, how do you think the Commission has handled the review of this merger and the related proceedings?

Ms. ROSENWORCEL. Thank you for the question.

Frankly, I am concerned. I think any broadcaster reaching more than 70 percent of United States households would be unprecedented.

I am also concerned that, if you look at the series of media policy decisions that has been made by this Commission, they all seem to serve Sinclair Broadcasting's business plans, from reinstating the UHF discount, to changing the 39-percent rule that was enacted by Congress, to possibly foisting on all of our households a new broadcast standard for which they own many, many patents.

I think it has reached a point where all of our media policy decisions seem to be custom-built for this one company. And I think it is something that merits investigation.

Mr. MCNERNEY. Thank you. That is a pretty strong statement.

Mr. Pai, should the FCC be doing more to ensure local officials have local resources and know how to use the WEA, the Wireless Emergency Alerts?

Mr. PAI. Absolutely, Congressman. That is part of the reason why I supported the proposal last year to work cooperatively with local officials and stakeholders to see if we can strengthen that system.

Mr. MCNERNEY. So we can count on your support in terms of producing resources and education?

Mr. PAI. Absolutely. Our public safety bureau and I personally are committed to making sure that that system is as robust as it can be.

Mr. MCNERNEY. Thank you.

Mr. Pai, last September, the FCC adopted a further notice of proposed rulemaking that addresses increasing the accuracy of the WEA geotargeting. The final round of comments was due on January 9. When does the Commission plan to move on that?

Mr. PAI. We don't have a particular timeframe, Congressman. I will note two things, however: First, the reason that we have that geotargeting proposal is because my office last year urged the full Commission to include it. And that is part of the reason why I was pleased to support it.

The second thing is that we are still working very cooperatively with local officials, with stakeholders, and others to figure out the right way forward. So, while I can't give you a specific timeframe, I do want you to know that this is under active consideration, and we are going to do the best we can to make sure that the system, as I said, is robust.

Mr. MCNERNEY. Well, would you commit to giving the committee a quarterly report on the progress of that?

Mr. PAI. I would be more than happy to do so.

Mr. MCNERNEY. Thank you.

Chairman Pai, during our last FCC oversight hearing, I asked you if you would commit to turning over to this committee any reports, requests, memoranda, and server logs related to the alleged May 7 DDOS attacks on the FCC's electronic systems.

You said that you had hoped to consult with IT staff and attorneys to see if there were any applicable technical or legal prohibitions against you sharing information with this committee. You then committed to sharing the requested information with the committee to the extent that you could do so.

So far, no one from your staff has followed up with my office regarding this matter, and we still have not received a single document in response to the request.

Do you recall consulting with the IT staff about this issue?

Mr. PAI. I do remember meeting about this issue after the hearing. If you don't mind, I will take a look at it. My understanding was that we had gotten in touch, perhaps not with your office but with the committee. But I will double-check to make sure, and we will get you the information that you need.

Mr. MCNERNEY. OK. Well, I will follow up on that, then, and make sure we get that information.

Mr. PAI. OK.

Mr. MCNERNEY. Well, I am going to yield back.

Mrs. BLACKBURN. The gentleman yields back.

Mr. Lance, you are recognized for 5 minutes.

Mr. LANCE. Thank you, Chairman Blackburn.

Good afternoon to members of the Commission.

And, regarding the First Amendment, let me say that I think you, Chairman Pai, and all members of the Commission, are devoted to the First Amendment, as, of course, we are in Congress. I am proud that New Jersey was the first State to ratify the Bill of Rights in 1791.

You mentioned President Kennedy, Chairman Pai, in The Washington Post. Before you were born and, I would imagine, before any member of the Commission was born and when I was a little boy, John Kennedy canceled his subscription to the Herald Tribune, the great Republican newspaper in New York, and my late father, who was involved in public policy in New Jersey, sent him a subscription to the Herald Tribune. And we have in our family files a very sarcastic and curt letter back from Pierre Salinger saying we should stay out of the subscription business of the White House.

And so, from my perspective, all presidents, on occasion, criticize various news agencies. I don't find it necessarily attractive. My reading of American history is that this is done by various presidents. And I have great confidence in you, Chairman Pai, and in members of the Commission in this regard.

Mr. PAI. Thank you, Congressman.

Mr. LANCE. To Commissioner Carr and to Commissioner Rosenworcel, congratulations on your confirmation.

Commissioner Rosenworcel, you recently applauded the AIRWAVES Act, introduced by Senators Gardner and Hassan, for identifying more spectrum that can be made available for wireless broadband.

How would the AIRWAVES Act arm the FCC with tools to keep pace with consumers' significant demand for bandwidth and for the race to 5G?

Ms. ROSENWORCEL. Thank you for the question and the delightful family story.

Mr. LANCE. I hope I haven't bored you.

Ms. ROSENWORCEL. The best part of the AIRWAVES Act is something incredibly simple: It is full of deadlines. It chooses certain spectrum bands, and then it tells the agency that it has to auction them on a very clear calendar. I think that calendar is useful for all aspects of the wireless ecosystem, and I think it is vitally important.

Mr. LANCE. Thank you very much.

Chairman Pai, last month, I believe without warning, Google blocked Amazon's new Echo Show devices from showing any YouTube videos. As of November 2016, YouTube was by far the leading internet video portal in this country, with 79 percent market share. Netflix was ranked second, with 8 percent. The same study found that users age 25 to 34 years spent an average of 178

minutes each week watching online video. So access to YouTube is a deal-breaker for videos devices like the Echo Show.

From your perspective, Chairman Pai, should the FCC be involved in any way in this matter?

Mr. PAI. Congressman, our internet regulations do not apply to edge providers or to conduct of the kind you are describing. So, as a matter of law, they simply don't, at this point.

Mr. LANCE. Thank you. And I think that this is a serious matter, and I don't know exactly the venue we should pursue.

But is there any other member of the Commission who would like to comment on this?

Thank you, Madam Chairman. I will yield back a minute and a half.

Mrs. BLACKBURN. We are rolling. You might get the prize.

Mr. LANCE. I hope so.

Please, everyone else, may I have the prize?

Mrs. BLACKBURN. OK. Now we are into a competition. I have Goo Goos in the office. We will see who wins.

Mr. Ruiz, you are recognized.

Mr. RUIZ. Thank you, Chairman Blackburn. And, yes, I vote to give him the prize.

This hearing is timely for a number of reasons, but, in particular, I would like to focus on the FCC's role in the ongoing recovery effort in Puerto Rico and the Virgin Islands.

By way of background, I have training in humanitarian disaster relief from the Harvard Humanitarian Initiative. I am an emergency medicine physician. And I was on the ground in Haiti as the medical director for the largest internally displaced camp in all of Port-au-Prince after the earthquake in 2010. So I have seen firsthand the challenges that arise in a humanitarian crisis and the importance of communication systems and coordination amongst agencies, local governments, and NGOs in the field.

Two weeks ago, I flew down to Puerto Rico to see the conditions for myself and to do a needs assessment based on my training and experience. And I found two things that I would like for you to carry back and figure out how we can work together to improve. One is a lack of clarity of leadership as to which agency is really running the show and taking the leadership on the ground. And two is a lack of coordination amongst agencies, NGOs, the local governments, out in the field, not necessarily in San Juan.

And so my first question is for Chairman Pai.

Has the FCC been in the room during these conversations in leadership? What is your footprint in Puerto Rico, and what are your efforts in coordinating with the other agencies on the ground?

Mr. PAI. Thank you for the question, Congressman, and thank you for your attention to this issue, including personal attention in the island itself.

I have spent a lot of time over the last several weeks involved in Puerto Rico and the recovery efforts. I have regularly consulted with FEMA, with Puerto Rican officials, with wireless companies, with tower companies—

Mr. RUIZ. "Regularly" means what? Are you invited to weekly, daily briefings?

Mr. PAI. So we get daily briefings on some of the situation there—

Mr. RUIZ. Do you have people on the ground full-time?

Mr. PAI. Yes, sir.

Mr. RUIZ. Do they go to those meetings in San Juan?

Mr. PAI. My understanding is that they do liaise with—

Mr. RUIZ. Just follow up with that. Do they go down into the periphery and the municipalities as well?

Mr. PAI. The FCC staff I have spoken with have described to me how difficult it was, in some cases—

Mr. RUIZ. It is.

Mr. PAI [continuing]. To go from place to place.

Mr. RUIZ. Very difficult.

Mr. PAI. Because, in some cases, the roads weren't even cleared—

Mr. RUIZ. Yes.

Mr. PAI [continuing]. So it was very difficult.

Mr. RUIZ. So that is good to hear, that you personally are involved in getting calls for sure.

Mr. PAI. Absolutely.

Mr. RUIZ. And, in this case, we have some lessons learned that could save lives.

I have also made some calls with telecommunication carriers that have run into a myriad of barriers, including—and please take notes here—one is a lack of security available to keep their engineers and equipment safe so they can make the repairs necessary to restore service; two, inconsistent coordination with power providers that could have freed up critical generators for use elsewhere on the island; and, three, failures in the backhaul infrastructure that have prevented towers from coming online even when they are powered and repaired; and, four, logistical delays that kept temporary satellite trucks, which were utilized, for example, in Texas and Florida to provide temporary wireless service, literally waiting on the boat for days.

So, while a disaster of these proportions is hopefully a rare occurrence, Hurricane Katrina and Sandy have shown us that hope is not a luxury that we can rely on.

Two weeks ago, I submitted a proposal to have the FCC create a list of best practices for telecommunications infrastructure and preparedness in hurricane and disaster-prone areas. I hope we can work together on this proposal to find a commonsense solution that fosters improved coordination and more efficient response efforts in the future.

So, Chairman Pai and to the other Commissioners, will you work with me on this important issue?

I will go down the line.

Mr. CARR. Yes.

Ms. CLYBURN. Absolutely.

Mr. PAI. Yes.

Mr. O'RIELLY. Yes.

Ms. ROSENWORCEL. Yes.

Mr. RUIZ. Wonderful. I appreciate your willingness to work on this critical issue.

Finally, Commissioner Rosenworcel. You have been outspoken on the need for FCC action in response to Hurricanes Harvey, Irma, and Maria. What more do you think the FCC can do to help with recovery efforts right now as well as better prepare for future disasters?

Ms. ROSENWORCEL. Thank you for the question and your work on this subject.

I think we just need to take a playbook from what we did with Hurricane Katrina and Hurricane Sandy. We held hearings. We held hearings and talked to people on the ground in locations that are different than Washington, D.C. We came up with ideas, we put them in reports, and then we changed our rules to make sure that we are better prepared the next time.

While I appreciate that we have a task force, I am confident that all good ideas do not reside in our building on 12th Street. And so I think we should be getting out, holding hearings, issuing reports, and then changing our rules to be better prepared in the future.

Mr. RUIZ. Thank you.

I yield back.

Mrs. BLACKBURN. The gentleman yields back.

Mr. Shimkus, you are recognized for 5 minutes.

Mr. SHIMKUS. Thank you, Madam Chairman.

I appreciate you all being here. Opioids, NDAA conference, and then here, so I apologize for missing some of the opening statements. It has been a busy day.

And I just caught the last end of the comments from you, Commissioner Rosenworcel. And Chairman Pai was out to my district, and I appreciate that, visiting on an issue that many of you know that I have been working on, 911, going back to when we officially made it the national cellular number, all the way until next generation. And the interesting thing about the trip was that it was multiple counties, rural counties, working together to move forward.

And then we had a roundtable. And the roundtable, from my point, the people who talked about vesting in the program, they said the good and the bad. People who hadn't yet joined talked about why, but why they are thinking about it.

So I know you have made—and this is to the Chairman.

I know you have made a lot of trips to rural America. I would like to know what some of your takeaways are, other than just the next-generation 911, but other issues that have been raised in your travels.

Mr. PAI. Thank you for the question, Congressman, and for the hospitality you and your folks showed in Harrisburg.

The key takeaway I have from the trips I have taken, over 4,000 road-miles in small towns across the country, is that the digital divide is real and that it leaves human capital on the shelf, particularly in rural towns that don't have internet access. And that is why I am deeply committed to doing everything that I can and hopefully the FCC doing everything it can to bridge that divide.

We have seen the payoff in places like Harrisburg, where, as you mentioned, 15 rural counties, predominantly lower-income, are able to band together and create a next-gen 911 system that enables everybody to be safer than they were before.

We have seen the potential in education, where rural communities that have high-speed internet access are able to give their kids distance-learning opportunities and better educational opportunities overall.

We have seen the change in telemedicine. I personally visited a small town in southwestern Virginia that has been able to cut the sepsis rate by 34 percent by using advanced technologies like remote monitoring.

And we have seen the power in precision agriculture. I have been in feed lots in Allen, Kansas, and farms in Maryland and other places that tell me that the notion of an analog tractor is long gone. Right now, technology is the key driver for agricultural growth.

So, to me, it just reaffirms the mission of this agency, so long as, again, I have the privilege of leading it, that the digital divide has to be our top priority.

Mr. SHIMKUS. So let me follow up on the Universal Service Fund issues that have been addressed. A lot of House Members have talked about how it is insufficient. Letters have gone back and forth. My colleague Congressman Cramer and, I know, Congressman Peterson from Minnesota has also taken an interest in this.

What do you have in the forefront of your plans to address the funding issue on the Universal Service Fund?

Mr. PAI. It is a difficult question, Congressman. Obviously, some of the bigger-picture initiatives that we have been able to get across the finish line, like the Mobility Fund Phase II and CAF Phase II, have been more successful in terms of getting off the ground.

In terms of the budget issue for the rate of return for carriers you are talking about, unfortunately, we are in a pickle. Last year, the Commission made a decision—over my dissent, I would add—that I forecasted at the time would leave us with a shortfall. And here we are, and the shortfall is here.

So one of the things that I have suggested to my staff is that we should think about getting a notice of proposed rulemaking out by the end of the year, to think about some of these budget issues, to be able to tee up before the end of the next budget cycle, which I understand ends at the end of June 2018, to be able to address this issue in a timely way so that rate-of-return carriers and, more importantly, rural consumers have the certainty they need in order to participate in the digital age.

Mr. SHIMKUS. And with my 54 seconds left, does anybody else want to—I don't want to leave out the other Commissioners.

Commissioner Clyburn?

Ms. CLYBURN. What you are not hearing is a call for contribution reform. And that is the elephant in the room—no party pun intended—

Mr. SHIMKUS. No, that is fine.

Ms. CLYBURN [continuing]. That nobody is talking about. And if we don't have a rational conversation about that, we are going to stay in a pickle.

Mr. SHIMKUS. Yes, I appreciate that.

Commissioner O'Rielly?

Mr. O'RIELLY. Two parts. One is, I do believe there is an opportunity to use some of our reserves for rate of return to balance out

both the legacy and the model side to provide—we are not going to provide all the money they are requesting, but I think there is some opportunity to increase the budget. They have nothing to do with the reforms that we adopted last year, which are mostly guardrails to prevent bad behavior.

And then, two, in terms of contribution reforms, since I happen to be the chair of the Joint Board on Universal Service, we are trying to move forward on that, but there is a great difference of opinion on some of those things, so we have had to sideline that for the time being.

Mr. SHIMKUS. Well, my time has expired. I think there is still a great difference of opinion among a lot of Members of Congress too. So I appreciate the challenges, and I appreciate you being here.

I yield back.

Mrs. BLACKBURN. Mr. Loeb sack, 5 minutes.

Mr. LOEBSACK. Thank you, Madam Chair.

And I do agree with my friend Mr. Shimkus that we have to deal with the funding issue. The question is going to be how are we going to do it.

First, Commissioner Rosenworcel, great to see you back. Appreciate that. I haven't seen you since you were actually in Newton and Baxter, Iowa—

Ms. ROSENWORCEL. Yes.

Mr. LOEBSACK [continuing]. Way back in 2016. And people there were very happy to hear you talk about the homework gap issue and, just generally speaking, these rural broadband issues.

I saw that at a recent field hearing you did highlight the need for better data collection. And now you have this crowdsourcing proposal. After you mentioned that, I quickly went to your Twitter account and checked it out to see what was going on there, because I do want you to talk about that a little bit more.

But, before I do that, I am grateful that the subcommittee took up my Rural Wireless Access Act and we did move it forward. Thank you, Madam Chair. We have to get that out of the full committee.

It is great to talk about making sure that we have better data. I remember, Chairman Pai, when we talked last, you had mentioned going through northwest Iowa, going from southwest Minnesota to northwest Iowa—or maybe it was the other way—and you had a lot of problems, obviously, with cell service. As someone who has 24 counties in Iowa, I am fully aware of this problem, as are all my constituents.

But my bill, hopefully we are going to get it out of full committee, get it on the floor, and get this thing enacted at some point, and hopefully sooner rather than later, to make sure that you folks have statutory authority, as much as anything, to do the things that you are talking about today.

But can you elaborate a little bit on your crowdsource proposal?

Ms. ROSENWORCEL. Sure.

Listen, for a long time, the way that the FCC collected data about broadband is we found, if there was one subscriber in a census block, we presumed that it was available throughout the block.

Mr. LOEBSACK. Right.

Ms. ROSENWORCEL. I think we all know that that is not a fair assumption anymore, and we are leaving too many households behind.

We also have been collecting data and shapefiles from wireless carriers, and sometimes they get it right, but sometimes, as you probably know, you can drive through places and find that you have no bars and no ability to make a call.

We are going to have to work hard to have more precision in our maps to target our policy efforts, and I think we should be asking the public for help. I think they know better than anyone else where they live, where they get service and they don't. And I feel like it is time to start incorporating public comment into our maps if we want to make them effective and accurate.

Mr. LOEBSACK. I appreciate that. It is democratizing the process, and that is—

Ms. ROSENWORCEL. Exactly.

Mr. LOEBSACK [continuing]. Very important. I think we can all agree with that. Thank you.

For all the witnesses, at the recent repack hearing that we held, American Tower's witness said in his testimony that there was a shortage of qualified tower crews. There are some of us who have some ideas about how we can address that issue.

Do you agree with that assessment, and do we have enough crews to get the job done in 39 months? If not, what will happen to broadcasters who can't complete the transition in that time?

To any of you folks who would like to address that issue.

Yes, go ahead, Commissioner.

Mr. PAI. Well, I will simply say that we try to structure the phases such that we would be able to accommodate variations in terms of weather and availability of crews and the like.

If we get information that there is a bottleneck like that that might stand in the way of the 39-month deadline being able to be met, we will certainly work with Congress and with stakeholders to take the appropriate action.

Mr. LOEBSACK. Anyone else want to comment?

Mr. O'Rielly?

Mr. O'RIELLY. Well, I have raised this issue a number of times with different industry groups to see where we were, and I was concerned that there was a shortage of crews. And we have seen an increase of the number of crews, some of those sponsored by the wireless companies who would like to take advantage of those licenses on an early basis.

So it has been relatively positive, but I think the Chairman is exactly right. We have to get through some of the phases and see where we are.

Mr. LOEBSACK. Any of the other Commissioners want to speak on that issue? No?

It is a workforce development issue too. We have to get the right number—we have to get the people trained so they can do that. And I have talked to my friend Mr. Shimkus about that too. We have to move forward on that.

While we are on the subject of the Universal Service Fund—and, Commissioner Pai, you know that I have written to you about moving the resources to the U.S. Treasury and some of the concerns

I have about that, making sure that the funds actually are used as they are supposed to be used.

Would you like to address that issue? Because I think that is a legitimate issue. If we move the funding, you know, to the U.S. Treasury instead of from the bank, then I think that is going to be a really difficult issue that we have to resolve.

Go ahead, if you want.

Mr. PAI. Thank you, Congressman. And I appreciate your concern.

The issue, as I understand it, from a financial perspective, is twofold. Number one, from a legal perspective, it is safer for Federal funds of this kind to be stored with the United States Government as opposed to a private account.

Secondly, given some of the issues that arise when these funds are kept in a private bank account—for example, if there is somebody who owes money to the IRS and that person is also at the same time getting money from the FCC, the Federal Government is limited in its ability to have an offset, so to speak. Keeping the money in that Treasury account allows essentially the Federal taxpayer to be whole, that we are not sending money out the door in a way that, at the end of the day, Congress might not want.

And so we have been exploring with Treasury and with others the way to move forward on this. But, obviously, we are happy to take any input on ways to accommodate multiple interests.

Mr. LOEBSACK. Commissioner Rosenworcel, you look like you wanted to say something.

Ms. ROSENWORCEL. I appreciate what my colleague just said. I think we have gotten conflicting advice over the years on this from OMB and GAO.

But I just want to make this point: We get about \$50 million in interest income every year from the accounts as they are held today. \$55 million can go far for rural broadband—

Mr. LOEBSACK. That is right. Exactly.

Ms. ROSENWORCEL [continuing]. For connecting schools and students. We are choosing to forgo those dollars. I don't think that makes sense.

Mr. LOEBSACK. Right. Thank you.

Mr. PAI. If I may, Congressman, if, God forbid, something were to happen to those funds when they were in a private bank account and all the billions of dollars of Universal Service Funds somehow went away, we would be accountable to Congress. And you would be asking me, as the leader of this agency, why did you jeopardize taxpayer funds by keeping them in a private bank account when thousands, if not millions, of Americans are depending on those funds? That is a tough tradeoff I have to make.

Mr. LOEBSACK. I think it is a—

Ms. CLYBURN. That is why we need to put this out for comment.

Mr. LOEBSACK. Thank you so much. It is a difficult issue. We have to deal with it.

Thank you, Madam Chair.

Mrs. BLACKBURN. You are welcome.

And, Mr. Latta, 5 minutes.

Mr. LATTA. Well, thank you very much, Madam Chairwoman, for today's hearing.

And thanks very much to the Commissioners for being with us today. As always, it is great to see you all.

And just following up on my friend from Illinois, I really appreciate, Mr. Chairman and Commissioner O'Rielly, for you coming out to my district, because I think you take an interest. And, in this one case, when the Chairman was out with the very small rural telecoms that you met with. And it wasn't really a round-table; we were actually sitting around a square table. But there were quite a few people there that day that you addressed, and they appreciated it. And, Commissioner O'Rielly, for coming out and talking to our smaller broadcasters in the area, I appreciated that. So it is good that you are listening to the folks back home.

Chairman Pai, if I could start my questions with you. Like you, I believe modernizing regulations is critical to spur innovation. For instance, I would like to see the FCC streamline procedures for small entities to seek regulatory relief. The current waiver regime has a one-size-fits-all construction. It is disproportionately burdensome on small entities and, when needed, diverts the resources from infrastructure investment to regulatory compliance.

Do you believe there is a need for a more efficient and expedited process that allows small entities to seek relief from these unnecessary regulations?

Mr. PAI. Congressman, I appreciate the question. And I do think, consistent with my views, that we should try to minimize the regulatory burdens on smaller providers, that that is an approach that has merit.

Mr. LATTA. Thank you.

Commissioner O'Rielly, what are your thoughts?

Mr. O'RIELLY. I agree. I think it has incredible merit.

Mr. LATTA. Thank you.

Commissioner O'Rielly, in your statement on the Commission's adoption of the mid-band spectrum, NOI, you noted that the 6 gigahertz band is adjacent to the unlicensed 5 gigahertz band. Would you elaborate on the potential benefits if the 6 gigahertz band is made available on an unlicensed basis?

Mr. O'RIELLY. So we have to deal with incumbency issues within 6 GHz, but I think that there will be tremendous benefit by combining it with 5 GHz. Wider channels provide opportunity for greater speeds, latency reductions, and consumer experience will go through the roof.

We have a shortage of WiFi spectrum or unlicensed spectrum going forward, and we need to address that. There are estimates, by 2025, we will need somewhere between 500 MHz and 1 GHz of additional unlicensed spectrum. Six GHz makes a great platform for that solution.

Mr. LATTA. So when you are talking about especially how badly congested that 2.4 to 5 GHz bands—are already available to the unlicensed community. So the congestion is how bad, would you say?

Mr. O'RIELLY. So I don't have an exact measurement, but when I talk to folks in the industry, they barely will use 2.4. Five gigahertz is obviously popular, but that is becoming extremely more popular, and so we are running out.

That is why I have spent a great deal of time on 5.9 and my colleague and I have worked really hard on 5.9. But then 6 gigahertz, being right next door, is a great platform.

Mr. LATTA. Thank you.

Voice-activated virtual assistants, like Siri, Alexa, and Google Assistant, are becoming an increasingly popular consumer gateway to the internet. Someday soon, they might even become the consumer-preferred interface with the internet, leaving the age of the desktop Google search behind.

You get Yelp results in Siri, OpenTable in Google, TuneIn radio from Alexa. These interactions are occurring through private partnerships among these companies to have their apps interact. However, it creates a situation where, by definition, the consumers' access to other internet content is limited or completely blocked. It is the question of who answers Siri's question when you ask Siri something.

Chairman Pai, can the FCC do anything about this?

Mr. PAI. Congressman, under our current internet regulations, we cannot. Those do not apply to edge providers.

Mr. LATTA. And, Commissioners Clyburn and Rosenworcel, do you think this is a concern for the open internet?

Ms. CLYBURN. Again, our jurisdiction is very limited. I think there is an impact, an influence, but, in terms of our ability, it is very limited to negligible.

Mr. LATTA. Commissioner Rosenworcel?

Ms. ROSENWORCEL. I would agree with both my colleagues that our jurisdiction does not extend to that.

Mr. LATTA. Thank you very much.

And, Madam Chair, I yield back the balance of my time.

Mrs. BLACKBURN. The gentleman yields back, but he is not in the running for a prize.

OK. Ms. Eshoo, you are recognized.

Ms. ESHOO. Thank you, Madam Chairwoman.

And welcome to you, Mr. Chairman, and all of the Commissioners.

Commissioner Carr, congratulations to you.

Commissioner Clyburn, it is always an honor to have you here at the committee, get to know you.

Commissioner O'Rielly, terrific to keep the Irishmen together here. You're a set of bookends.

And to Commissioner Rosenworcel, it is really terrific to have you back.

And I think that it all represents a win for the American people, hopefully.

Mr. Chairman, I have been debating something inside of myself, so I am just going to make a statement. I don't want to go on and on about it, but I need to say something. To bring together President Kennedy with Donald Trump I don't think is palatable. And I am just going to leave it there.

You know, Mr. Chairman, that I have raised deep concerns about RT. Our intelligence community has determined, with high confidence—that is the highest level of agreement between all of the agencies—that they interfered in our democracy. The intelligence

community described them as the Kremlin's "principal international propaganda outlet."

I wrote to you May 8, urging you to consider applying broadcast transparency requirements to state-sponsored media outlets like RT so the American people would know whether foreign governments are behind the content they are reviewing. I found your response to be ambiguous, and, most frankly, I don't think you answered my questions. And it is curious that I get a response to my letters at about 6:30 in the evening the night before the day we are going to have a hearing with you.

I think that this is a very serious issue. The intelligence community and all of the Members of the House participated in that briefing. It was a classified briefing, but there was also an unclassified report that was put out, and that unclassified report was replete with RT.

Now, I don't know what I need to do to either impress upon you that this is a serious issue and that you take it seriously—so I want to ask you, will you commit to us that you will apply or consider applying broadcast transparency requirements to state-sponsored media outlets like RT? And if not, why not?

Mr. PAI. Congresswoman, thank you for the question.

Ms. ESHOO. Well, you are welcome.

Mr. PAI. As I understand the law, there is no jurisdictional hook at this point, no transfer of a license, for example, that allows the FCC to assert jurisdiction. If—

Ms. ESHOO. But what about those that have a license and carry them? Doesn't the FCC have any say-so in that? Or is this—as the intelligence community said, that they are a principal international propaganda outlet. So are they just going to operate in the United States no matter what?

Mr. PAI. Congresswoman, again, under the Communications Act and the Constitution, the First Amendment, we do not have, currently, a jurisdictional hook for doing an investigation of that kind.

If you are privy to, obviously, classified or unclassified information that suggests that there might be another agency that has obviously a direct interest in the issue, we are obviously happy to work with them. But, at the current time, as I have been advised, neither under the First Amendment nor under the Communications Act do we have the ability to—

Ms. ESHOO. Well, the First Amendment applies to free speech in our country. It doesn't mean that the Kremlin can distribute propaganda in our country through our airwaves.

I don't know if you are looking hard enough. Maybe if Commissioner Carr were still the general counsel, he could advise you better. But I am not going to give this up.

I want to move to something else, and that is this issue on media consolidation. Three years ago, Mr. Chairman, the Commission voted unanimously to prohibit two stations in a market from jointly negotiating retransmission consent. And you were part of that unanimous vote.

Now, by eliminating the duopoly rule, which reports indicate you are preparing to do next month, you would permit two of the top four stations in a market to merge.

So how do you explain this?

Mr. PAI. Well, those reports are inaccurate. As I outlined in my opening statement and as you will see tomorrow when we publish in unprecedented fashion the actual text of this document, we were doing a case-by-case review in particular markets——

Ms. ESHOO. So this will apply to Sinclair?

Mr. PAI. It applies to any broadcaster that seeks to enter into an agreement that otherwise would be in violation of the top-four prohibition. So some——

Ms. ESHOO. With 73-percent dominance of a market, how does that fit? Where does that fit?

Mr. PAI. So some had argued we should just get rid of the top-four prohibition——

Mrs. BLACKBURN. The gentlelady's time has expired.

Ms. ESHOO. Well, he can answer the question.

Mrs. BLACKBURN. Yes.

Mr. PAI. Some had argued that we simply get rid of the top-four prohibition. My recommendation to our staff was to draft it so that there would be a case-by-case review. We would not get rid of it. We would review, if there were particular facts that a particular broadcaster would bring to us and that presents a compelling case that that combination would be in the public interest, then we will take a look. But, otherwise, the prohibition applies.

Mrs. BLACKBURN. Time has expired.

Ms. ESHOO. I wish I had more time.

Mrs. BLACKBURN. Mr. Guthrie, 5 minutes.

Mr. GUTHRIE. Thank you, Madam Chairman.

Thank you, everyone, for being here.

And, Commissioner Carr, welcome.

And, Commissioner Rosenworcel, welcome back.

We look forward to working with you guys over the course of this term.

First, Chairman Pai and Commissioner O'Rielly, thanks for letting us know about the auctions and the inability for the financing fix that you need. I know that the chairman in the overall authorization bill is taking care of this. But also, yesterday, Congresswoman Matsui and I did drop a bill to specifically fix the issues so we can move forward, hopefully, on the auctions moving forward.

I had a question. In 2013—and I was one of the households affected by this—there was a carriage dispute between CBS and Time Warner Cable, and CBS blocked Time Warner Cable internet customers from viewing its shows online through its cbs.com website. So I couldn't get any of CBS or Showtime or any of that on TV. If you went to the website, because Time Warner Cable was our cable provider and internet service provider, you couldn't go to cbs.com—it was blocked—or Showtime to watch any of those shows that were coming out. And that is when some new ones were coming out that August, so we were trying to find that.

But some Members of Congress did bring this up, and I think Chairwoman Clyburn was acting Chairwoman at the time and said that she didn't believe the agency had the jurisdiction to intervene in this situation.

And, Chairman Pai, do you think if it happened now, do you think the FCC would have the opportunity to intervene in a similar case?

Mr. PAI. Congressman, I think the legal authorities have not changed. To the extent that the FCC gets a complaint that a party is acting in bad faith in the context of a retransmission dispute, then we would be able to adjudicate it. But absent such a complaint or additional authority from Congress, we couldn't take further action.

Mr. GUTHRIE. But, currently, the Title II open internet is still in effect. How would that affect it?

Mr. PAI. Oh, yes. To be clear, I should have added, as well, then, our internet regulations would not apply to that kind of content, to the extent you are talking about the blocking of online distribution of—

Mr. GUTHRIE. Because it only applies to the service provider, not to the content provider?

Mr. PAI. That is correct, sir.

Mr. GUTHRIE. So I brought your name up there, Commissioner Clyburn, to comment on that. So, being an advocate for the Title II—and I think Commissioner Rosenworcel, when she was on the Commission, as well—should it be expanded, where it doesn't just affect internet service providers but you should also have jurisdiction on the content side as well? If it is good for one, should it be good for the other is my question.

Ms. CLYBURN. Well, I am not in a position to comment at this time. I just know what is in front of me and what the rules of the roads are at this time.

Mr. GUTHRIE. OK.

Same answer, I guess?

Ms. ROSENWORCEL. No. To be clear, that behavior was problematic. From a consumer perspective, that stinks, right?

Mr. GUTHRIE. Yes. I was a consumer.

Ms. ROSENWORCEL. But I would point out that what we are talking about when we talk about telecommunications service and telecommunications under Title II is about the provision of service by a provider of broadband, and the jurisdiction does not extend to the content providers, as you described.

Mr. GUTHRIE. Yes, that was my point. Yes. Thanks a lot.

So I have some questions on spectrum. I am cochair with Congresswoman Matsui on the Spectrum Caucus. So Congresswoman Matsui and I sent a letter last summer—this is to Commissioner Pai, Chairman Pai—last summer regarding a pending license modification petition for the L band satellite-terrestrial network.

What is your ideal timeline for getting information from the other agencies you are working with? Do you think the end of the year is reasonable, or will you need more time?

Mr. PAI. Congressman, we don't have a specific timeframe in mind at this point. What I can say is that it is a matter that is under active consideration and that we are collaborating with other agencies and private stakeholders to see if we can reach a resolution.

Mr. GUTHRIE. OK. Thanks.

And for all the Commission, given the efforts of the Spectrum Caucus, I strongly support a further deep dive by the committee on wireless issues. And so, just getting your opinion, going down the committee, for auctions, could you each give me what you think is

the top spectrum issue that we should be focusing on this upcoming calendar year for moving forward on auctions? What do you think is the top issue for the committee?

All of you who would like to answer that. Commissioner Carr first.

Mr. CARR. Sure. Thanks.

Obviously, we have the hurdle right now in terms of our authority to conduct the auctions in terms of the money. And so the top focus that I have over the next year is going to be infrastructure deployment on the wireless side. I think we have a lot of progress that we can make there to help maintain our leadership.

Mr. GUTHRIE. OK.

Ms. CLYBURN. And for me, it is to ensure multiple providers, no matter what size, and if they have the ability to participate. So it would be contours, the size of the bidding areas.

Mr. GUTHRIE. Thank you. That is a good answer. Thank you.

Mr. PAI. In the tried and true tradition of pandering to my questioner, I think the Guthrie-Matsui legislation is the number-one issue. We cannot have any spectrum auctions, certainly of any significance, without that fix. It is a bottleneck for the agency.

Mr. GUTHRIE. Yes, I think you may be about next, so that was a good pandering.

Commissioner O'Rielly, about 10 seconds.

Mr. O'RIELLY. I agree with my colleagues there, infrastructure and freeing more spectrum.

Mr. GUTHRIE. Commissioner Rosenworcel?

Ms. ROSENWORCEL. All right. I agree with my colleagues there, but I also want to quickly read you a list: 470 to 512 megahertz, 3.5 gigahertz, 3.7 to 4.2 gigahertz, 6 gigahertz, 28, 37, 39, 24, 32, 42, 47, 50, 70, 80, and 95 gigahertz are all under consideration at the Commission right now.

What we need, instead of that blitz of spectrum, is a calendar that makes clear we have some bands that we are going to auction earlier than others so that the wireless ecosystem and financial markets can organize around it.

Mr. GUTHRIE. Thank you. That is helpful.

Thank you very much. I appreciate it.

I yield back.

Mrs. BLACKBURN. The gentleman yields back.

Mr. Pallone for 5 minutes.

Mr. PALLONE. Thank you, Madam Chairman.

My questions are to Chairman Pai. And I want to discuss your reaction to the President's attacks on the press. And I have a number of questions, so if you could keep your answers to yes or no, I would appreciate it.

Mr. Chairman, are you aware that the President said, "Network news has become so partisan, distorted, and fake that licenses must be challenged and, if appropriate, revoked"?

Mr. PAI. Is that from a tweet?

Mr. PALLONE. That is a quote. Yes. The question is, are you aware of that quote?

Mr. PAI. Yes. Yes.

Mr. PALLONE. OK. Thank you.

Mr. Chairman, are you aware that the President said, "It is frankly disgusting that press is able to write whatever it wants to write and that The New York Times, NBC News, ABC, CBS, and CNN are the enemy of the American people"? That he said that, are you aware?

Mr. PAI. Yes.

Mr. PALLONE. OK.

Now, do you think that these types of statements are appropriate for the President of the United States to make?

Mr. PAI. Congressman, I am going to speak to my own views and my own words. And my views are that I stand with the First Amendment. I am not going to characterize the views of anybody else.

Mr. PALLONE. But, Mr. Chairman, you did say on another other occasion, and I quote, that the American people are being misled about President Obama's plan to regulate the internet, right? You said that.

Mr. PAI. Because that was a direct compromise of the agency's independence on a particular pending issue where the agency was already heading in a different direction.

Mr. PALLONE. But if you are not shy about speaking out against President Obama, let me ask you this: Would you condemn attacks on the press if they had come from President Obama?

Mr. PAI. Congressman, I always focus on the facts and the law. That is our job, in terms of licensing—

Mr. PALLONE. Well, I just think it is a double standard here.

Before coming to the FCC, you worked for then-Senator Jeff Sessions, correct?

Mr. PAI. Yes, sir.

Mr. PALLONE. Are you aware that, when asked if he would, and I quote, jail reporters for doing their job, he said he cannot make a blanket commitment to that effect?

Mr. PAI. I am not aware of that. I hadn't heard that.

Mr. PALLONE. Well, he said it.

When you spoke at the Mercatus Center last week, did you say, "Under the law, the FCC doesn't have the authority to revoke a license of a broadcast station based on the content of a particular newscast"?

Mr. PAI. Yes, I did.

Mr. PALLONE. OK. Do you understand why reporters might be concerned when the Attorney General and the Chairman of the FCC leave open the threat of punishment and even jail time?

Mr. PAI. Congressman, again, I wasn't familiar with General Sessions' statements, and I am certainly not familiar with the perceptions of journalists. All I will simply say is that this FCC stands on the side of the First Amendment, and that includes the ability of journalists to gather news as they see fit.

Mr. PALLONE. But the problem is that the people raising this issue, Mr. Chairman, are concerned that your silence or your overly lawyered responses contribute to a culture of intimidation that can chill free speech. And so, that is why I am trying to clear the air, because I am concerned about the impact of either silence or an overly lawyered response.

At the Mercatus Center, you said that you would not act based on a particular newscast. Would you revoke a license based on multiple newscasts?

Mr. PAI. No.

Mr. PALLONE. OK.

Now, I have here a working paper—I don't know if it is in the record, Madam Chairwoman, so I am going to have to ask if we can enter it into the record.

Mrs. BLACKBURN. So ordered.

[The information appears at the conclusion of the hearing.]

Mr. PALLONE. I have a working paper produced by the Mercatus Center. In this working paper, the Center suggests the FCC is able to threaten free speech through other mechanisms, like license transfers.

Do you commit that your Commission will not threaten broadcasters' license transfers based on the content of the reporting?

Mr. PAI. Absolutely.

Mr. PALLONE. OK. Do you commit that your Commission will not launch investigations into companies based on the content of the reporting?

Mr. PAI. Sorry. Can you repeat that?

Mr. PALLONE. Do you commit that your Commission will not launch investigations into companies based on the content of the reporting?

Mr. PAI. Yes.

Mr. PALLONE. OK. Do you commit that your Commission will not take any acts of retribution against companies based on the content of the reporting?

Mr. PAI. Yes.

Mr. PALLONE. OK. Well, let me look. I appreciate working that out, because I think that is important.

So, finally, Chairman Pai, when you first took office, you committed to me that you would be responsive to Congress even if a request came from Democratic Members. Now, I have heard complaints from my colleagues that your responses to a number of their letters have also been nonsubstantive and evasive. You have even avoided multiple times answering my questions about allegations involving your relationships with Sinclair Broadcasting, including refusing to even answer my letter.

So let me just say, we are going to look into your continued evasiveness on some of these important issues, including Sinclair. And I just want you to know that I am not happy, and I am not going to tolerate the agency not responding to us, because I don't really feel they have, with regard to Sinclair and so many other issues. That is just my opinion.

Thank you, Madam Chairman.

Mrs. BLACKBURN. The gentleman yields back.

Mr. Bilirakis, you are recognized for 5 minutes.

Mr. BILIRAKIS. Thank you, Madam Chair. I appreciate it very much.

Before I begin my questioning, Chairman Pai, I know you inherited a backlog of petitions related to the Telecommunications Consumer Protection Act. This is an area of real concern to many indi-

viduals across various industries. I look forward to your response and future action to this topic.

I will move on here.

Commissioner O’Rielly, during the last oversight hearing, I had a discussion with Chairman Pai regarding interference complaints and pirate radio operations. I know that this is an important area. I know you care about it, very much, to resolve it.

Can you share the differences between repercussions pirate radio operators face as compared to robo-callers?

Mr. O’RIELLY. So I will give you an example of a couple different items, enforcement actions that were taken by the Commission.

In terms of pirate radio, we just did one for—and the NAL was \$144,000 for pirate radio operating in Florida. In terms of a robo-call, it was \$82 million. And in terms of a cramming call, cramming behavior and slamming, it was \$3.9 million. So \$3.9 million, \$82 million, \$144,000. The difference between the two—or between the three is amazing.

Mr. BILIRAKIS. Wow. Wow.

OK. Related to this topic, again, for you, Commissioner, do you or any of the Commissioners here on the panel know of any instances where pirate radio operators interfere with public safety or military use frequencies?

We will start off with you, Commissioner O’Rielly.

Mr. O’RIELLY. So, technically, it wouldn’t be pirate radio because that is someone operating within the AM or FM band, but they have violated the sanctity of public safety. Just recently, we had an enforcement action of someone in New York that was violating the New York public safety system, and they were fined, or they had an enforcement action against them. They are still in prison at the time, but we will see if we get that money.

Mr. BILIRAKIS. Anyone else?

OK. I will go on to the next question.

Chairman Pai, I regularly advocate for seniors and, again, improved quality of life for seniors. I think you know that. 5G technology promises great benefits for our growing elderly population.

What can the FCC do to advance specific telehealth technologies like remote patient monitoring to allow seniors to remain independent and age in place?

Mr. PAI. That is a great question, Congressman, and it is a growing need as our population ages. I don’t want to steal her thunder, but Commissioner Clyburn has been the leader on this issue in pioneering the Connect2Health Initiative, but I—

Mr. BILIRAKIS. Oh, I would like to give her an opportunity as well.

Mr. PAI. And I don’t want to throw it in her lap, but she has been a leader on it.

Ms. CLYBURN. Thank you so very much, Mr. Chairman.

Mr. BILIRAKIS. OK.

Ms. CLYBURN. One of the things that we are proud of, as the Chairman has endorsed, is the Connect2Health Task Force, as he mentioned. And one of the things that it is doing is looking at that intersection of broadband, technology, and health.

And another thing that it is doing is very helpful. It has developed a broadband mapping tool that looks at what is going on on

a county-by-county basis in the United States and looking at where broadband is available, where healthcare providers are or are not, and is informing communities as to how best to approach different business models, different initiatives that might be needed in particular areas.

And so we are really on—as quiet as it is kept, even though people in the ecosystem know about it, we are front and center on providing a means for people to be informed so they can make better critical decisions.

And this will help us also on our Healthcare Connect Fund, which we need to talk about enhancing that. Because, in order to make all of these things more ubiquitous, allowing people to age in place and address their needs, connectivity is key, affordability is key. And I am looking forward to working with you as we progress.

Mr. BILIRAKIS. I, too.

Everyone on board with this? Anyone want to make a comment?

Mr. O'RIELLY. Well, just to the last point maybe, that we have to balance all those things with all our budget overall. And so, we talk about expanding services; we have to figure out how we can pay for all of that. And that gets—

Mr. BILIRAKIS. Of course.

Mr. O'RIELLY [continuing]. Back to the conversation on contributions.

Mr. BILIRAKIS. Absolutely.

Chairman Pai?

Mr. PAI. I will simply add to Commission Clyburn's able disquisition on the issue that I think the importance of remote monitoring, in particular, cannot be overstated. If you are an older person who has difficulty coming into a hospital or you have just had surgery and you have just returned home, the worst thing that can happen for you is to get an infection or some sort of illness that will require you to come back.

And so I have seen for myself in Staunton, Virginia, how a hospital center is using remote monitoring, as I said earlier in response to a question, to decrease the sepsis rate by 34 percent, disproportionately, I think, among older individuals. And that is something, if you can intervene quickly, thanks to this technology—

Mr. BILIRAKIS. Absolutely.

Mr. PAI [continuing]. Everyone is better off. The healthcare system is better off because you are not spending money on an in-hospital regimen of treatment.

And so it is something that I am really excited about. And I am glad that Commissioner Clyburn has been a pioneer on this issue.

Mr. BILIRAKIS. Wonderful. Wonderful. Thank you very much.

I yield back, Madam Chair.

Mrs. BLACKBURN. The gentleman yields back.

Mrs. Dingell, 5 minutes.

Mrs. DINGELL. Thank you, Madam Chair. I have no voice. Too much talking.

It is great to have all of you here. The Dingell names have a long connection with the FCC, sometimes good, sometimes not. But I want to first start on the important topic of privacy and how it relates to the ATSC 3.0.

I am really worried about privacy, and I think you all need to be too. This new broadcast standard allows for interactive TV, personalized ad placements, and for granular collection of data about who is watching what.

Chairman Pai, if someone is looking to take advantage of this personalized content, they would like to give up information about themselves, would they not?

Mr. PAI. So, sorry, would they be—

Mrs. DINGELL. So, if someone wants to use it, they are going to have to tell the provider what personal information about themselves?

Mr. PAI. The individual consumers?

Mrs. DINGELL. Yes, the consumer.

Mr. PAI. Well, it depends on the particular—these are nascent services. I don't know—

Mrs. DINGELL. Yes, the personalized content. So, as we are looking at this ATSC 3.0, it is going to be more personalized content.

Mr. PAI. Right. Yes. I see where you are—yes.

Mrs. DINGELL. So how is the FCC considering privacy concerns as the Commission is looking at this new standard?

Mr. PAI. A great question, Congresswoman.

Right now, we are looking at just the technical standard, should we be able to proceed with this new next-generation TV standard and, if so, what should the technical parameters be. I would imagine that, as those privacy concerns and others like that come to the fore, that the agency is going to be looking at that too.

Mrs. DINGELL. I think it is really important.

My staff wouldn't let me ask some of the other questions I wanted to ask today. But I don't think people realize that, when we will have televisions watching us, that there is reverse, as people are using all of these great new gadgets, how much information is being collected about them.

And who has responsibility for letting people know that kind of data is being collected?

Mr. PAI. Right. I think, in the first instance, the Federal Trade Commission has generally been the cop on the beat of privacy—

Mrs. DINGELL. They have, but so much of this is with the FCC. I think you all have a responsibility to really look at some of this.

And do you think that this new data that is generated will be kept in house by the provider, or do you think it is going to be sold to third parties?

Mr. PAI. Again, here, it is a nascent—the standard hasn't even been adopted, so we are not sure how any particular service—

Mrs. DINGELL. But should this be part of looking at a standard?

Mr. PAI. As the services materialize, Congresswoman, we will certainly be monitoring all those kinds of concerns.

Mrs. DINGELL. OK.

The last time you were here, in July, you agreed to follow up with this committee on the steps you were taking to mitigate DDOS attacks. What updates can you share with us?

Mr. PAI. Congresswoman, we have provided a detailed response to the committee, and I would be happy to provide that to you with some of the particulars in that regard.

But what I can say is that our IT staff is always vigilant to make sure that we have the protocols in place to make sure that our IT systems are up and running. And I have appreciated the chance to work with this committee, as well as our appropriators, to get the funding to make sure that continues to be the case.

Mrs. DINGELL. I will leave you off the hook and ask Commissioner Rosenworcel, do you think that the public-interest standard requires that you look at the effect of Commission actions on small businesses and consumers?

Ms. ROSENWORCEL. Absolutely. Small businesses create two-thirds of the new jobs in the economy. The Commission should always be thinking about the impact on small business, and I think the public-interest standard incorporates that.

Mrs. DINGELL. Thank you.

A lot of us have already asked this question, so I am just going to make an observation and see if you all agree or disagree with me.

Mergers of the scale of the Sinclair-Tribune are not always popular, but I can't ever remember when everybody was so opposed to the idea. Can any of you think of a merger that has met this type of united opposition?

Ms. ROSENWORCEL. No.

Mrs. DINGELL. Commissioner Clyburn?

Ms. CLYBURN. I can say that, within my last 8-plus years, this is the most energized that I have seen diverse parties.

Mrs. DINGELL. And anybody else that wants to say something.

Mr. O'RIELLY. I will jump in here. I used the word "energize." But I would say that I have seen it before, and that is the reason we have a 39 percent cap. It was a result of a transaction that caused a lot of uprest between the relationship between the network and an affiliate. And that is the reason the Congress stepped in at the time and addressed it.

So in terms of the excitement or energy, I have seen the energy level far beyond what it is today in that—

Mrs. DINGELL. But the broad spectrum of people opposing is unusual.

I may yield back my 9 seconds, Madam Chair.

Mrs. BLACKBURN. The gentlelady yields back.

Mr. JOHNSON for 5 minutes.

Mr. JOHNSON. Thank you, Madam Chair. And I thank the commissioners for being here today.

I have heard some buzzwords that caught my attention. Full Chairman Walden talked about the complexity of the telecom environment and how difficult your job is, and I agree with that. Commissioner Clyburn talked about how the technology is necessary to create opportunities for Americans, particularly in rural America. And it took me back a little bit, and I have been thinking about this for the last several months, how important your job is.

If we look at the hundred years of American history, from 1868 to roughly 1970, we started out in 1868 at the most divided point that our Nation has ever been in, at the end of a brutal and bloody Civil War. We healed our internal wounds to go in to fight off tyranny in Europe in two world wars, mobilizing from scratch both times, practically. Did the same thing in Korea. And at the same

time in that hundred-year period, from 1868 to 1970, we saw one of the most explosive, innovative periods in human history: the light bulb, the combustion engine, the automobile, the mass production of automobiles, the assembly line process, the industrialization of Western cultures, the airplane, powered flights, space travel, landing a man on the Moon, organ transplants, telecommunications and computing technologies, nuclear power. That, I think, the case could be made that that was one of the most innovative periods in human history.

I talk about that a lot to people that I represent back in Ohio, because then I follow it with a question. What have we done since 1970? You know what answer I get most often? The internet, telecom. And why is that the case? I believe that is the case because it is the one area that the Federal Government couldn't figure out how to regulate. If you go back to the 1970s, that is when the EPA came into being, that is when the Department of Energy came into being, that is when the Department of Education came into being. All of a sudden back in the 1970s, Washington kind of thought that the American people had it wrong for all that time.

Instead of telling the American people what we should be innovating on and what we should be focused on to create opportunities for the American people, Washington started talking about how to innovate, where to innovate, when to innovate, why to innovate, and in many cases, picking the winners and losers and determining who should be able to innovate.

So I throw that out there just as a thought provoker to you folks. Your job is so vitally important. We can't throw water on the campfire of American innovation and ingenuity. And I would submit that if we really want to create opportunities, if we would just look at our own Nation's history and realize that if Washington would just get out of the way, in many regards that the American people are more than capable of creating their own opportunities through innovation and ingenuity. And I think that is an important thing for you folks to remember. And I see the attitude of the Commission today, and I think that is what you are trying to do. So I applaud that.

Let me ask you one quick question here, and it is a yes or no question, so it will be easy, especially for Commissioner O'Rielly. He is good at this. In 2013, it was reported that the Justice Department had spied extensively on Fox News reporter James Rosen in 2010, collecting his phone records, 2 days' worth of his personal emails, and tracking his movements to and from the State Department. So in the 32 seconds that I have remaining, each of you, starting with Mr. Carr, Commissioner Carr, did this raise First Amendment concerns for you at that time? Yes or no.

Mr. CARR. I think what I said is that it reinforces—

Mr. JOHNSON. Come on now, follow Mr. O'Rielly.

Mr. CARR [continuing]. The importance of the Commission, as everyone has said, being committed to the First Amendment in everything that we do at this agency.

Mr. JOHNSON. OK.

Ms. CLYBURN. That is an interesting question. I will say it raised personal and privacy and other concerns.

Mr. JOHNSON. OK. All right.

Mr. PAI. I agree with Commissioner Carr.

Mr. JOHNSON. OK.

Mr. O'RIELLY. Yes.

Mr. JOHNSON. You are good.

Ms. ROSENWORCEL. That is a disturbing tale. Yes.

Mr. JOHNSON. OK. Thank you.

Madam Chair, I yield back.

Mrs. BLACKBURN. The gentleman yields back.

Ms. Matsui for 5 minutes.

Ms. MATSUI. Thank you very much, Madam Chair.

First of all, welcome. I am glad to see all of you here, and I especially want to welcome back Commissioner Rosenworcel and welcome Commissioner Carr.

Mr. CARR. Thank you.

Ms. MATSUI. As co-chair of the Congressional Spectrum Caucus with my good friend, Representative Guthrie, we are very focused on the opportunity to unleash new spectrum that will help us get to 5G. We have introduced legislation that provides financial incentives to Federal agencies to reallocate unused or underutilized spectrum holdings.

Commissioner O'Rielly, will you commit to working with us to try to strike an appropriate balance for the 3.5 gigahertz band that will be the foundation for 5G deployment?

Mr. O'RIELLY. Well, I am not in charge of the 3.5. The chairman was nice enough to have me take some of the lead. But we are going to work as an agency to dispose of our item that we adopted yesterday. So I will work with, of course, the committee in any capacity and take its views into account in terms of my vote.

But in terms to your point that you raised, which is the incentives for Federal agencies to clear bands, I have also made the point that it is not just incentives; we need the carrot and the stick. So we need some more of the stick. And so I think that those two pieces have to go hand in glove. And I would be happy to work with you on putting some of the stick into your legislation.

Ms. MATSUI. OK. Commissioner Rosenworcel, so I think we talked about this before. Would you like to add a comment or two?

Ms. ROSENWORCEL. Yes. I believe carrots work better than sticks. And I think when it comes to spectrum policy, what we need to do is make Federal users internalize the cost of their holdings. They need to be able to report at some level what the value of what they have today is, and then we need to figure out how to give them incentives so that they see gain and not just loss from reallocation.

Ms. MATSUI. OK. I can see a carrot and a stick here working very well together. So thank you.

Today, everyone needs a broadband connection, we all know that, in every part of the country. And I have over 20,000 constituents utilizing the Lifeline program to obtain access to broadband. This is a real program that is helping low-income families access communications that are essential in our digital academy. The National Lifeline Eligibility Verifier will be a significant step toward this goal, but will not be fully up and running until 2019. Now, in August, I wrote to the Commission to request steps that the FCC is taking to implement the verifier.

Chairman Pai, I received your response last night. Could you give me an update on getting the National Verifier fully up and running, and commit to providing me and the committee with regular updates in the future?

Mr. PAI. Congresswoman, I will take the second piece first. Yes, the quarterly reports will be forthcoming, and I think our staffs have talked about that going forward.

In terms of the first point, which is the update, we are on track. I have been advised to, in December of 2017, for what is called a soft launch of the National Verifier, with a full launch in early 2018. The first states that will be considered for the National Verifier, there are six of them, it is Colorado, Mississippi, Montana, New Mexico, Utah, and Wyoming. And in 2018, USAC will roll out at least an additional 19 states in the National Verifier. And USAC has been working with other stakeholders under our oversight, with your consumers groups and carriers and others, to make sure that that verifier works and actually serves consumers' needs.

And so we would be happy to work with you continuously on this issue. And I thank you for flagging it for our attention.

Ms. MATSUI. OK. I appreciate that.

Commissioner Clyburn, can you talk about what is needed at the FCC to ensure the Lifeline program remains an option for low-income households to access the communications or broadband moving forward?

Ms. CLYBURN. We need to have the mechanism to encourage providers to get involved and to provide more opportunity. If you know, back in February, we stopped nine providers that did nothing wrong from gaining access and for offering opportunities. And some of them had to even discontinue service. So we need to give the states the power and the ability they need to include to have Lifeline providers particularly for broadband. And we need to get out of the way. The FCC is not getting out of the way and allowing these reforms that have been—the contours that have been laid out to happen. So we are in the way of Lifeline becoming a phenomenal program.

Ms. MATSUI. OK. Well, at this point.

Thank you very much. And I will yield back some of this time, Madam Chair.

Mrs. BLACKBURN. Awesome. Not in the running for the prize, but getting close.

Mr. Flores, 5 minutes.

Mr. FLORES. Thank you, Madam Chair. And I want to welcome Commissioner Carr, Commissioner Rosenworcel to the Commission. It is great to have you here for your first testimony today.

We all know that reliance on mobile networks is growing at a breakneck pace. My question is this: What more does the FCC and Congress need to be doing to ensure that we keep up with consumer and business demands for mobile?

So I will start with you, Commissioner Carr.

Mr. CARR. Thanks for the question.

Mr. FLORES. Just short answers, if you can.

Mr. CARR. Yes. My principal focus right now is infrastructure deployment. We have to streamline the rules. The current regime, we have relatively few small cell deployments. We are going to need

to get to millions of cell sites pretty quickly here, so we have got to streamline the process.

Mr. FLORES. OK. Commissioner Clyburn.

Ms. CLYBURN. We need to focus on the areas where we have 2 and 3G service. That is why I was pushing so much for the Mobility Fund Phase II. And we need to talk about affordability, which is why I am pushing for a Lifeline program.

Mr. FLORES. OK. Chairman Pai.

Mr. PAI. I agree with my colleagues. I would also add that spectrum, of course, is a critical input from 600 megahertz all the way up to 95 gigahertz.

Mr. FLORES. OK. And I think Commissioner Rosenworcel went through that list, although I couldn't write that fast.

Commissioner O'Rielly.

Mr. O'RIELLY. Three things. Infrastructure, which means preemption. Two, it is spectrum, which we have talked about. And, three, it means deciding what to do on those hardest-to-reach individuals we don't have a plan for today.

Mr. FLORES. OK. Commissioner Rosenworcel.

Ms. ROSENWORCEL. I will give you one thing, which is we should set a time for auctioning the 28 gigahertz band, make it our first millimeter wave band so that we can lead the world in 5G and millimeter waves.

Mr. FLORES. And so the first priority is that auction. Is that correct?

Ms. ROSENWORCEL. I believe so, yes.

Mr. FLORES. OK. Thank you.

I want to go back to the First Amendment conversations we have had today. Yes or no answers will be appropriate for this one. In 2013, the Justice Department revealed that they had been secretly combing through the work, home, and cell phone records of almost 100 Associated Press reporters and editors in what appeared to be a fishing expedition for sources of leaks, as well as an effort to frighten off whistleblowers. Did this action raise First Amendment concerns for you, Commissioner Carr?

Mr. CARR. This is what drives some of the importance of us committing to the First Amendment and always acting consistent.

Mr. FLORES. OK. That is a yes.

Commissioner Clyburn.

Ms. CLYBURN. Not sure how to answer that at this point.

Mr. FLORES. Yes or no would be easy.

Ms. CLYBURN. Yes or no. I'm sorry.

Mr. FLORES. Chairman Pai.

Mr. PAI. Yes.

Mr. FLORES. OK.

Mr. O'RIELLY. Yes.

Ms. ROSENWORCEL. That sounds troubling.

Mr. FLORES. All right. I appreciate the work you all have been doing for AM revitalization, particularly your orders from February and September. Let's continue along that line for a minute. In general, what is the status of your efforts to revitalize AM radio?

We will start with you, Chairman Pai.

Mr. PAI. Thanks for the question, Congressman. So the translator window has been a success. A great many folks have applied

for an FM translator, and we are in the process of processing those. I would anticipate by the end of the year we will have several hundred of those that will be processed. And going forward, we are thinking about some of the bigger-picture issues that are of interest to broadcasters. And we are trying to sort through the record and see if we can find a consensus on some of those issues.

Mr. FLORES. OK. And you answered my second question in that regard as well.

What can this committee do to be helpful to encourage a revitalization of AM radio?

Mr. PAI. Certainly, we will take all the support from whatever corridor we can get it. I can tell you, as my colleagues will probably agree, that I have never been shy about the issue of AM revitalization. So you don't need to encourage me. But I will say that it is important to talk about the importance of the work that AM broadcasters do in their communities every day. And I know you visited some of these stations. I have too. And to me they are not just call signs. WRDN and KZPA and KKOW. These are folks who really are keeping the lights on and keeping their communities informed.

Mr. FLORES. In my community it is WTAW and KWTX.

I assume the entire Commission's on board with that?

OK. Everybody shook their heads yes. That is good.

Mr. PAI. That is across the board, I hope.

Mr. FLORES. Across the board. That is what I meant. It seemed to me like that was one area where we had good cohesiveness among the Commission.

For all of you, I understand that other countries are moving rapidly to make mid-band spectrum available for 5G services. Particularly China, Japan, and South Korea are all making spectrum available to win the global race to 5G. My question is this, for each of you—two questions. One is, in the United States, are we risking falling behind those other countries if we don't catch up on making mid-band spectrum available for 5G?

Commissioner Carr?

Mr. CARR. I think we are in good shape right now with the high-band spectrum that we have opened up. But as your point says, we have got to keep the pedal down and keep moving forward. And we have a number of proceedings right now that the chairman has teed up that will let us do that. So I am confident about where we stand right now.

Mr. FLORES. OK. Commissioner Clyburn.

Ms. CLYBURN. I agree. And our spectrum management policies have to be all of the above to make sure we get the optimal use with the optimal players.

Mr. FLORES. OK. Chairman Pai.

Mr. PAI. Yes.

Mr. FLORES. OK.

Mr. O'RIELLY. High-band spectrum is great and it is part of the equation, but we have to address the mid-bands. 3.5, 3.7 to 4.2, 3.1 to 3.5, we have to take action on those going forward.

Ms. ROSENWORCEL. I am not the only one with a list.

Mr. FLORES. That is right. That is good.

Ms. ROSENWORCEL. I think we are at risk of falling behind. And I think we need something simple. We need a calendar for which bands are moving at what time.

Mr. FLORES. OK. I would like to work with you on that some more, if we can, on the calendar.

So thank you. I yield back.

Mrs. BLACKBURN. The gentleman yields back.

Ms. Clarke for 5 minutes.

Ms. CLARKE. Thank you very much, Madam Chair. And I thank our Ranking Member Doyle. I thank our commissioners, Chairman Pai. And Commissioner Carr, welcome.

Mr. CARR. Thank you.

Ms. CLARKE. Commissioner Rosenworcel—

Ms. ROSENWORCEL. Perfect.

Ms. CLARKE [continuing]. Welcome back. Of course, it is good to see you, Commissioner Clyburn.

I wanted to just talk about how important today's hearing is. There is so many pressing matters and changes happening under the FCC's authority, on a daily basis it seems. And I can say that it has been quite instructive and interesting just listening to today's proceedings and your answers regarding these issues and the significance in facilitating announced changes.

So I want to talk about a couple of things that are currently on my mind. And as co-chair of the Multicultural Media Caucus with colleagues Rep. Cardenas and Rep. Chu, we are extremely interested in the recent media ownership changes.

As you have indicated, Chairman Pai, the Commission is poised to take up an item to modify the local TV ownership rule at the next Commission meeting. This important rule provides for diversity of voices and ownership at the local level by limiting ownership of more than one TV station to the largest markets. So hypothetically, Commissioner Pai, if the Commission were to modify the local TV ownership rule next month by adopting a case-by-case approach, who do you think should have the burden of proof? Those seeking more consolidation or those seeking to maintain diversity of ownership?

Mr. PAI. Congresswoman, as always is the case, if a prohibition remains and the party is seeking a relaxation of that prohibition on a case-by-case bases, the petitioner would bear the burden of proof that that application was in the public interest.

Ms. CLARKE. So let me ask Commissioner Clyburn and Rosenworcel. Do you have any substantive or process concerns with the potential modification of local TV ownership rules?

Ms. CLYBURN. Well, one of the things that we were demonized for was trying to look at the media ecosystem. I don't think we have the tools and the data needed to make these wholesale changes. There are 67 women-owned broadcast stations, 12 African-American-owned stations. Clearly, our policies must be out of sync because that is not diversity and inclusion in any stretch of the way.

Ms. ROSENWORCEL. Thank you for the question.

Listen, media ownership matters. What we see on the screen says so much about who we are as individuals, as communities, and as a Nation. And right now, when you look at the ownership

structure, it does not reflect the full diversity of this country. I am worried that with more consolidation, that is not going to get better; it is going to get worse.

Ms. CLARKE. OK.

Mr. O'RIELLY. Can I just comment and say——

Ms. CLARKE. Certainly.

Mr. O'RIELLY [continuing]. The situation we have today is under our current rules, and those rules have been in place for so long, they haven't worked. We ought to try something new.

Ms. CLARKE. Here's the question: You are saying that it hasn't changed. We are not certain whether what you are proposing will make it even worse.

Mr. O'RIELLY. It is really hard to get much worse.

Ms. CLARKE. You think so? I know that that is not the case.

Mr. O'RIELLY. The numbers are so low. I mean, 12. The numbers are really low, and it has been——

Ms. CLARKE. Right.

Mr. O'RIELLY. And there are a lot of reasons why they are going to go even lower, because——

Ms. CLARKE. And what you are saying is your new proposal is going to transform that?

Mr. O'RIELLY. No. I am saying that the current——

Ms. CLARKE. No. What I am asking you is your new proposal is going to transform that?

Mr. O'RIELLY. I think it is given——

Ms. CLARKE. Is that what you are saying?

Mr. O'RIELLY. I am saying——

Ms. CLARKE. Are you saying here today that this new proposal is going to transform that? Yes or no.

Mr. O'RIELLY. Well, it is not my proposal and——

Ms. CLARKE. I am just asking.

Mr. O'RIELLY. But, in general, I am hopeful that it provides a better opportunity——

Ms. CLARKE. You are hopeful. OK.

Mr. O'RIELLY. Because the current situation isn't working.

Ms. CLARKE. Commissioner Pai.

Mr. PAI. Yes. The answer is yes.

Ms. CLARKE. You think it will?

Mr. PAI. Absolutely. Part of the reason why we don't have more diversity is because the Commission, several years ago, the prior majority, rejected my suggestion for an incubator program and other diversity proposals. Part of the reason why we don't have diversity is because the prior administration let the diversity committee lapse, so we haven't had input from stakeholders. I reconstituted that diversity committee several months ago, and specifically tasked one of the working groups with promoting more diversity in the broadcast business. Part of the reason we don't have more diversity is because the prior administration outlawed JSAs.

I have met with Pervis Parker——

Ms. CLARKE. Are you saying that this is going to be a pilot project or is this going to be a wholesale change?

Mr. PAI. We are seeking comment on the scope of the incubator program, but we will——

Ms. CLARKE. Are you saying this is going to be a wholesale change or a pilot program?

Mr. PAI. The incubator program?

Ms. CLARKE. Yes.

Mr. PAI. If we get the public input we need, this is going to be a real program.

Ms. CLARKE. OK. Let me move on to my next question, because I only have 18 seconds left. And I would like to ask—and we can talk about that further.

I have been working with Congresswoman Plaskett with respect to the U.S. Virgin Islands. And specifically, is the FCC engaged to assist Puerto Rico and the U.S. Virgin Islands regain the telecom capabilities in the wake of last month's hurricane season? And what must we learn from these hurricanes and their impact on existing communications infrastructure?

Mr. PAI. Yes, Congresswoman, is the answer to your question. I have personally called the Congresswoman's office and offered our assistance as well. In addition, I make sure that I have talked to some of the stakeholders, just as I have in Puerto Rico, stakeholders, tower companies, wireless companies and others, who might have had infrastructure affected in the U.S. Virgin Islands. I also conveyed to FEMA and to others that, to the extent there are power issues in the U.S. Virgin Islands, we would love for those communications power requirements to be elevated in terms of getting that infrastructure onto the island. And, obviously, there are hospitals and schools and other things that are competing for attention, but communications networks are critical too. So we are working on it.

Ms. CLYBURN. And as the chairman would also tell you that we forwarded a universal service—we green-lit universal service money so people have hard dollars to rebuild their telecommunications systems.

Mr. PAI. And I proposed just yesterday doing something similar for E-rate, for schools and libraries to be able to help those in need.

Ms. CLARKE. Madam Chair, I yield back. And thank you.

Mrs. BLACKBURN. You are welcome.

Mrs. Walters, 5 minutes.

Mrs. WALTERS. Thank you, Madam Chair.

I would like to thank the witnesses for being here today, and welcome the two newest FCC commissioners.

5G deployment is important to my district where the majority of the residents have multiple wireless devices and are increasingly using IoT technology. Further, investment in 5G deployment has the potential to create over 2,300 jobs in my district. A recently released survey found that 5G will improve business operations and competitiveness, which further demonstrates the need to deploy this technology.

Since joining the subcommittee at the beginning of the year, I have focused on issues related to the sitings of 5G infrastructure. Earlier this month, the Governor of California vetoed a bill that would have established uniform standards across the state for the installation of 5G equipment. The bill would have limited the ability of local governments to block antenna placement. It would have also capped installation rates on public properties such as traffic

lights. But California isn't the only state where siting is an issue. I would like to get your thoughts on some of the issues 5G deployment is facing.

Chairman Pai, can the FCC take immediate action to work with states and localities to streamline the siting process? And if so, could you briefly discuss what the Commission can do to address these issues?

Mr. PAI. Thank you for the question, Congresswoman. The answer is yes. And we teed up earlier this year in our wireless infrastructure proceeding a number of different tools that we could use to help streamline that approval process. And I am hopeful that together we can move on that relatively soon.

Mrs. WALTERS. All right. Great.

And, Commissioner Carr, congratulations on your confirmation.

Mr. CARR. Thank you.

Mrs. WALTERS. Your testimony mentioned the importance of 5G and the need for infrastructure to deploy this technology. Are you concerned that local zoning requirements throughout the country, not just in California, are impeding the deployment of the infrastructure necessary for 5G services?

Mr. CARR. I am concerned. I was disappointed to see the veto of that small cell bill. Again, we are going to see a massive new deployment of small cells. The current regime is not tailored to support that type of deployment. If we are going to get 5G across the finish line, this could be the real bottleneck is these infrastructure deployment rules. So I am glad that we actually have a number of steps teed up at the Commission, and I look forward to working with my colleagues to get them across the finish line.

Mrs. WALTERS. OK. Thank you.

And this third question I have, and you touched a bit on it just a few minutes ago. But, Chairman Pai, as you know, wireless networks in Puerto Rico were devastated by Hurricane Maria. Networks in east Texas and Florida were impacted by Hurricanes Irma and Harvey. And the fires in my home state have damaged wireless infrastructure in California. And I commend you for speeding the availability of USF funds to carriers in Puerto Rico to accelerate rebuilding of these critical communication networks.

Will the FCC contemplate similar efforts to support reconstruction in other states impacted by this fall's natural disasters?

Mr. PAI. We are certainly open to hearing that case and to taking action if appropriate.

Mrs. WALTERS. OK. All right. Thank you.

And I yield back the balance of my time.

Mrs. BLACKBURN. And the winner is. All right. Way to go, Mimi.

All right. Mr. Welch, you are recognized for 5 minutes.

Mr. WELCH. Thank you very much. Welcome to the full Commission. It is really tremendous to see you at full strength. Congratulations on your confirmation.

Mr. CARR. Thank you.

Mr. WELCH. It is very good to have you back, Commissioner. It wasn't a swift process, but it had an end result.

And, Mr. Chairman, congratulations to you as well.

Mr. PAI. Thank you.

Mr. WELCH. Net neutrality we have talked about some. And we know the debate here, in my view, was that the actions of the previous Commission made a lot of sense. But my understanding is that your Commission is opening that up. You have heard millions of comments. The apprehension among the industry has largely been that there may be a new Commission at some point that is overbearing, but they won't necessarily agree to put in a statute. There are assurances that they give privately and publicly that they won't do anything to interfere with net neutrality. So there is a skepticism on their part about the durability of the current practice, which worked well.

But isn't it fair for consumers to have some skepticism that when CEOs change in these companies, when shareholders start demanding a bigger return, that there won't be the pressure to do things that advantage the company at the expense of the folks who need solid net neutrality?

Chairman Pai?

Mr. PAI. I appreciate the question, Congressman. Obviously, we are now engaged in the question of what is the regulatory framework best calibrated to preserve the free and open internet—

Mr. WELCH. Here's my question, though. Why not have it be embodied in a statute? They are saying to us, as I assume they are saying to you, that they want to maintain that neutrality. But that is who is in those executive offices now. There will be other people there later. So do you consider that to be a valid concern on the part of those of us who want to make certain that we preserve net neutrality?

Mr. PAI. Congressman, all I can say is what I said in the wake of the 2014 D.C. Circuit Court decision myself, which is that the proper course, I think, is for Congress to ultimately decide what the rules of the road are going to be. That is obviously—

Mr. WELCH. I don't have a lot of time.

So, Commissioner O'Rielly, you looked like you wanted to say something. Quickly.

Mr. O'RIELLY. Well, I think, if I heard you correctly, you said embody it into statute. And I would say, yes, that is the law, and you have an opportunity in this committee to craft a law and then decide whether we should go forward. And I think that is what members of this committee were contemplating for a number of months.

Mr. WELCH. But we haven't seen the statute. The majority has to act on that.

Commissioner Rosenworcel.

Ms. ROSENWORCEL. I support net neutrality. Our internet economy is the envy of the world. It is built on a foundation of openness. I think our current rules support that openness. They have been sustained in courts, and they are wildly popular. I am at a loss that we would decide to take them away.

Mr. WELCH. OK. Thank you. A lot of us are from rural America, Republicans and Democrats up here. In fact, Mr. Latta and I started a rural broadband caucus. A real concern we have is not only deployment. We are so lagging behind. It is the speed. And there has been some movement toward reducing what is considered to be the adequate speed. That would be very damaging to us in rural America.

Commissioner Clyburn, do you want to comment on that?

Ms. CLYBURN. I think any talk about slowing things down—sub 253 is problematic. It is problematic for keeping and ensuring that rural America catches up. You haven't caught up, and that is problematic. So that is why this talk of loosening these standards, of lowering speeds is just very problematic to me, and that is not the direction we need to go.

Mr. WELCH. Commissioner Rosenworcel, you were in Burlington, Vermont, I appreciate your visit, talking about the homework gap. Burlington is not where we have the issue. That is an urban area. They have high speed. But a lot of Vermont is much like a lot of rural America; it is slow. And rural America in rural Vermont is on its heels economically. We have to have this tool to have any shot at getting back in the game. Your view on it lowering the standards.

Ms. ROSENWORCEL. Oh, I think lowering the standard is crazy. I believe you have to set audacious goals if you want to do big things. And deciding that we can get 100 megabit speed to everyone in this country is worth the effort, including rural America.

Mr. WELCH. OK. Chairman Pai, you have got a real history of rural America, so—

Mr. PAI. Yes.

Mr. WELCH. I am hoping that you are not going to be in favor of changing the definition for rural America.

Mr. PAI. A few different points, Congressman. First, the actual proposal is to maintain the 253 standard. There is no proposal other than that. Secondly, I am a little puzzled by the criticism, because when the prior majority actually had the pen and had the ability to do something for folks in rural America, in December of 2014, they decided to allocate billions of dollars of funding for 10 megabit per seconds connectivity in rural America. According to them now, that is not broadband.

Last year, when we reformed the Lifeline program, I specifically suggested that we increase the speeds to 25 megabits per second to say, well, if the FCC is saying this is broadband, poor consumers should get broadband. The prior majority specifically rejected that suggestion. And so I think it is a little hollow now to somehow just be grandstanding on this issue—

Mr. WELCH. My time is up. I won't argue with you about that, but you are in the chair now.

Mr. PAI. That is why a proposal is to maintain the 253 standard.

Mr. WELCH. So does that give us assurance that there is not going to be any suggestion to lower that standard?

Mr. PAI. Congress charged us with taking a look at what is connectivity. And as a part of that, we have to seek comment on what is the impact of mobile broadband? What do consumers use the internet for? Are there some applications that they require 10 megabits per second or some other standard? That is basically what we are trying to do. But the lead proposal is to maintain that standard.

Mr. WELCH. OK. Thank you, Madam Chair.

Mrs. BLACKBURN. The gentleman yields back.

Mr. Olson, 5 minutes.

Mr. OLSON. I thank the chair, and welcome to our witnesses. And a special welcome, Commissioner Rosenworcel. I spent a few weeks with my dad in ICU. It is not a pleasant time to have a loved one, a parent, in the hospital, so thank you so much for coming. We are praying for you.

Ms. ROSENWORCEL. Thank you.

Mr. OLSON. My first question and comments are for Chairman Pai. Thank you so much for coming down to Houston to see the devastation of Hurricane Harvey firsthand. You saw it with your own eyes. Hit us twice, came back. Fifty inches of rain in parts of the district, parts of the county. We did very well, but we can do much better.

I would just like to ask you, what do you see with respect to forwards of communication networks throughout the region during Hurricane Harvey? What are the steps the FCC is taking to support the restoration and recovery efforts back home?

Mr. PAI. I appreciate the question, Congressman, and your leadership on this issue. I know you have been active in trying to inform your constituents about where they could get help.

A few different things. Number one, the FCC is working very proactively to make sure that we assist state and local partners in Texas. And I personally, as you mentioned, visited and offered my assistance.

A few different things that we could do going forward. First, I was quite taken by a point that I learned at the Harris County 911 center, which is that part of the reason why the networks were relatively reliable compared to, say, Florida and Puerto Rico was because—despite the fact that 33 trillion gallons of water, as you know, were dumped on the Houston surrounding area, was because of the backhaul they had that was fiber-based as opposed to copper-based. And despite the fact that there was a huge amount of weight placed on those networks, because they were fiber, they were relatively more resilient. If it had been copper, it might have degraded or just disintegrated altogether.

The second thing is that we all need to work together. We are all in this together. And I heard time after time that state and local partners and the industry relied on our disaster information reporting service, which was very helpful. And they also found it useful to have a point of contact at the FCC that they knew could provide assistance. So a lot of things that we are excited about going forward in terms of our disaster response. And we are going to apply some of that in Puerto Rico, and have already.

Mr. OLSON. And thank you.

How about what is called the network resiliency framework? That, as you know, is the wireless industry initiative to better prepare and respond for times of emergency. Do you think this framework helped restore coverage faster than other recent natural disasters?

Mr. PAI. There is no question. I heard firsthand from wireless providers when I was in Texas about how useful that had been. The other piece that I should mention that was very useful is that, as I understand it, the Governor's office, Governor Abbott's office, provided some of these wireless companies with information as to where the flooding was. And some of the companies were able to

overlay that information on where they saw their cell networks up or down. And they were able to target in some places, OK, we see there is huge flooding here, but there are people actually on the network. We need to get help there. And so that overlay is the kind of serendipitous, I think, benefit that, going forward, we will be able to take advantage of in other jurisdictions.

Mr. OLSON. Anything we could learn from Harvey? Anybody want to comment on those? I know he was down there. He saw it firsthand, but——

Ms. ROSENWORCEL. I would just want to mention, the wireless network resiliency that you cited was the industry coming together in the aftermath of Hurricane Sandy. And, in fact, we have it in place because we learned from that past disaster. And it is my hope that we will learn comparably from this one.

Mr. OLSON. Great. Well, I am about out of time here.

Commissioner Carr, I believe you are going to Texas, Houston, see for yourself?

Mr. CARR. Yes. On Friday I will be in Houston meeting with broadcasters to hear about what the FCC can continue to do to support the recovery efforts down there.

Mr. OLSON. Great. They are thrilled to hear that.

One thing I have to warn you about. Can you say y'all?

Mr. CARR. I will work on it.

Mr. OLSON. And can you say "beat L.A."?

Mr. CARR. Yes.

Mr. OLSON. Well played.

And, Commissioner Pai, I know you are a baseball fan, a huge baseball fan of pro baseball. And as I sort of alluded to, the L.A. Dodgers are playing my Houston Astros in the World Series. Yesterday, we had a rough day. Didn't quite do as well as I wanted. But that morning, all over Capitol Hill, signs popped up about that game, especially, this sign popped up on the door of the majority leader from California.

In having jurisdiction over Federal communications, let's make sure that is not some Federal offense you are looking at. I neither confirm nor deny my involvement in those operations. And one thing too, Commissioner Pai, just what is your prediction? Astros in five, six, or seven games?

Mr. PAI. Well, Congressman, first I want to reiterate. I stand in favor of the First Amendment and your right to plaster everybody——

Mrs. BLACKBURN. And the gentleman's time has expired.

Mr. OLSON. I like the word "plaster."

Mrs. BLACKBURN. Mrs. Brooks, 5 minutes.

Mrs. BROOKS. Thank you, Madam Chairman. And thank you and congratulations to all of those who have recently gotten confirmed.

Just recently, I joined with my colleague across the aisle, Debbie Dingell, to form a 5G caucus. And we had our first briefing with congressional staff yesterday, led by CTIA. And I am learning more and more about 5G. This is not something that I think is commonly understood among the citizens of our country. And a slide was put up during the presentation that talked about the global race being on for 5G. And, quite frankly, because we have often been the leaders in innovation and technology in the world, I was a bit surprised

to see it appears that China and Europe and others may be further along in 5G deployment than in the United States.

Now, obviously, some of those countries, particularly China, for instance, don't have the division in governments between Federal, state, and local jurisdictions the way that our great democracy does. But how are we taking that into account, and what should our role be in Congress? And what can the FCC and our role in Congress do to better partner with our state and local governments? Because I think we are struggling, quite frankly, particularly in state legislatures, either educating or understanding what this race is about and how we are, I think, falling behind.

Chairman Pai, would you like to start as to what we could be doing differently and better? Because I think we all, from what I can tell from your responses today, we are in agreement here that we all need to do a lot more and a lot better. But what does it mean for us, A, to fall behind, and what should we be doing? And I am pleased, Indianapolis, that I represent the northern part of, is a 5G test site. But I think we are way behind these other countries.

Chairman Pai.

Mr. PAI. I have an answer, Congresswoman. And before I start, thanks for the hospitality you showed me in Noblesville back in the district.

With respect to the first, I think there is a significant opportunity cost that attaches to American inertia on this issue. If we don't lead, there are plenty of other continents and countries that are more than happy to take that lead. And one of the things I have learned in this role as I liaise with my counterparts in other countries, is that they are quite eager to capitalize on what they see is a lesson of the 4G revolution, which is that America was forward-thinking in terms of spectrum and infrastructure. And as a result, not that long ago, we had 4 percent of the world's population and 50 percent of the world's 4G LT subscriptions. Europe and China, among others, they don't want that to happen with 5G. And so they are trying to be very aggressive in terms of spectrum and, in some cases, infrastructure as well.

I think it is important for the FCC, but not just the FCC, to think very creatively about this issue. Working with Congress and with state and local governments, as Commissioner Carr first pointed out in his testimony, we really need to have a serious conversation about what is the appropriate regulatory framework for 5G. Is it this trifurcated or even quadfurcated system of regulation, or is there a more streamlined approach that we need to consider? I recognize the equities are difficult here. But at the end of the day, if national competitiveness in the wireless world is our priority, then we have to make some very difficult decisions.

Mrs. BROOKS. And I appreciate the need for a calendar, the need for the discussions with state legislatures. But what is the FCC doing—and I'm sorry that I might have missed part of that—relative to educating state legislatures and local communities? Because in our state, which did pass some legislation this last session, it was a fight between local jurisdictions and the state legislature. And so what can we and the FCC be doing, I think, to maybe edu-

cate, in large part, or have these really tough discussions? I don't know if Commissioner Carr——

Mr. CARR. Sure. There is a number of steps that the FCC is taking and can continue to take on this. We have an advisory committee where we have representatives from local government on that that we can help have these discussions. But to your broader point, this is critically important. The U.S., that we heard, led the world in 4G. The regulatory structures we have right now are going to be the bottleneck that hold us back. But I am confident that, right now at the Commission, we have the momentum to move forward to try to streamline some of those, and it is going to make a real difference. As I have said in my testimony, we can shift entire communities from being uneconomical for the private sector to deploy to to becoming economical simply by streamlining the deployment rules.

Mrs. BROOKS. Can, briefly, someone say why it is important that we win this? Anyone?

Mr. PAI. Well, risk capital is fickle. It will go to any country in the world where it thinks that innovation will find a home and that an investment will yield a return. And that doesn't necessarily have to be the United States in the 21st century.

Ms. CLYBURN. I think if our policies are flexible that we include the needs of all communities, the voices of all communities, that we will win this race.

Mrs. BROOKS. Thank you. I yield back.

Mrs. BLACKBURN. The gentlelady yields back.

Mr. Doyle for——

Mr. DOYLE. Madam Chair, can I ask unanimous consent to waive Mr. Tonko onto the committee today?

Mrs. BLACKBURN. Mr. Tonko. So ordered.

Mr. TONKO. Thank you. Thank you, Chair Blackburn and Ranker Doyle, for you conducting what I think is a very important hearing. And welcome to all of our commissioners, and thank you for your service on what are very critical issues for the growth of our economy.

Commissioner Rosenworcel, I recently introduced the Access Broadband Act to create an office of internet connectivity and growth within the National Telecommunications and Information Administration. Under this bipartisan legislation, that office would coordinate broadband deployment programs across our governments, among other things, to make sure we are all working together, pulling in the same direction.

In your time at the FCC, do you believe that our agencies could do better coordinating with the various programs that serve broadband interests?

Ms. ROSENWORCEL. Thank you for the question.

Yes, more coordination is always going to make scarce dollars go further. And I think that is particularly true with respect to the FCC and the folks who are just up the road from us at the Agriculture Department, at the Rural Utilities Service, which runs grant and loan programs for rural broadband too. The more coordination, the better.

Mr. TONKO. Thank you.

Any other comments from any of our commissioners?

Commissioner Clyburn.

Ms. CLYBURN. And also, when we are green-lighting those devices, we need to work closely with other agencies, in particular when we talk about telehealth and telemedicines. There are so many synergies that can be realized if we leverage those relationships we have inside of government.

Mr. TONKO. Thank you. I appreciate that.

Anyone else?

If not, my bill would also task this office with tracking just how many consumers each of these programs serve so that we have a better sense of how many people are being connected, the cost of these programs, and where the consumers live.

So, Chairman Pai, today, does the FCC know definitively how many Americans it helps to serve through the Connect American Fund?

Mr. PAI. We have an estimate, but it is not as definitive as the metric that I think your legislation contemplates.

Mr. TONKO. Right. Is there any way you can commit to providing my office or this subcommittee, the committee in general, with that information before the end of the year?

Mr. PAI. So that information being the number?

Mr. TONKO. Right.

Mr. PAI. We would be more than happy to provide any information that we have that bears on that question.

Mr. TONKO. Thank you.

And, Commissioner Rosenworcel, if put in the right context, do you believe that the information would be valuable for policymakers, not just as it relates to the Connect America Fund but for all of the government's broadband programs?

Ms. ROSENWORCEL. Absolutely. We can't manage what we don't measure. And if we get better broadband data, that can inform all of our communications policy. But as Commissioner Clyburn has acknowledged, it can inform things like healthcare policy too. So I think it is imperative.

Mr. TONKO. Right. Thank you.

I have found that sometimes people without high-speed broadband at their homes may not understand all the benefits that broadband can bring, and so education becomes important. That is why the Access Broadband Act includes educational components to help people learn what broadband can do for them and the difference it can make in a community, and what it means toward a stronger bit of economic recovery.

So, Commissioner Clyburn, do you believe that there is value in the educational component of what we are attempting to do here?

Ms. CLYBURN. You talk about the educational component in terms of us, you know—

Mr. TONKO. Broadband awareness and what it provides.

Ms. CLYBURN. Absolutely. Again, the commissioner talks about not measuring what—whatever you said is true. But sincerely, if you don't have the exposure, you don't know what is possible. You don't know what is possible for you to better age in place if you have connectivity, if you are not aware of the options and opportunities that you have. So there are so many things from an educational standpoint. We mentioned health. In terms of keeping in

touch and knowing what is going on in government in real time. Those are the types of things that can better empower individuals only with connectivity, only with the awareness. And I think all of us have a role to play in ensuring that the public is informed so they can be better enabled to live those lives more fully.

Mr. TONKO. Thank you very much. And finally, I know that there was some exchange with our colleague from Vermont. But the Commission is considering lowering its definition of broadband, or could. To be honest, it is hard to make sense of this proposal when I receive calls from my constituents day in and day out asking for faster broadband speeds. They don't want the FCC to lower the definition of broadband. They want a faster internet access.

So while we did hear some of that exchange, are there other comments you would want to make about that definition of broadband to speed, definition?

Mr. PAI. Two different points, Congressman. First, as I said, the proposal is to maintain the 253 standard. The second point I will add is that if you look at some of the decisions we have made in terms of our Universal Service Fund, we have been always trying to push the envelope. And that is why in the very first vote that happened after I became chairman was to deliver \$170 million in funding to unserved parts of upstate New York so that they can have the connectivity that folks in big cities often take for granted.

Mr. TONKO. Anyone else?

With that, I will yield back. Thank you very much.

Mrs. BLACKBURN. The gentleman yields back.

Mr. Engel for 5 minutes.

Mr. ENGEL. Thank you, Madam Chair. I want to start with funding for the repack. I understand that the FCC has reduced its total cost estimate for the repacking process downward, from approximately \$2.1 billion to \$1.86 billion. Many have told me, though, that they think the amount is likely higher.

So, Chairman Pai, do you think that Congress should provide additional funding for the repacking process?

Mr. PAI. Thanks for the question, Congressman. And that number could fluctuate up or down. It is not set in stone at this point.

What I said to the other committees on the Senate side was that, to the extent that we don't have the ability to be on the \$1.75 billion that is in the relocation fund, that additional funding from Congress will be necessary in order to meet that gap that, otherwise, broadcasters would have to pay out of their own pocket in order to fill.

Mr. ENGEL. Let me also ask you this, Mr. Chairman. If Congress provides additional funding, do you believe that low-power TV stations and TV translators should also be eligible for that funding?

Mr. PAI. That is obviously a decision for Congress to make in the Spectrum Act. Congress decided not to give those entities rights in terms of reimbursements. So if Congress changes that determination, then certainly the FCC would be duty-bound and would happily administer it.

Mr. ENGEL. So you don't personally have a position on that?

Mr. PAI. Well, I have been talking to a lot of these low powers and translators, and they are in a tough situation. And so I can tell you I have been pushing for them since September 28, 2012, when

we issued the notice of proposed rulemaking on this issue that whatever consideration the FCC can give them, and Congress too, would be welcome.

Mr. ENGEL. Because there is another group that we have heard from, FM radio stations, who are impacted by the transition, but not included——

Mr. PAI. Correct.

Mr. ENGEL [continuing]. In the initial reimbursement fund.

Mr. PAI. And we have heard those concerns too that, under the Act, they aren't entitled. But to the extent they are piggybacking, essentially, on infrastructure that is owned by the television broadcaster, then here too Congress, I think, could step in and provide some relief.

Mr. ENGEL. Thank you.

Let me ask Commissioner Clyburn, how important is it to ensure that there is money for consumer education in this transition?

Ms. CLYBURN. Oh, my goodness. It is just so obvious, you know, in terms of, you know, looking at what impact, if any. Hopefully, negligible that would happen in this—as we move toward relocating and making our ecosystem more efficient. The public needs to be aware that the low power—the stations and those who are not protected but impacted, they need to be informed. And we need to continue to do what we can to protect them to make sure they don't have to do relocation twice. All of these things are very important for us to be at the forefront of ensuring that the transition is smooth as possible.

Mr. ENGEL. Yes. I don't think anybody would really disagree.

Let me talk a bit about cybersecurity. And, Commissioner Rosenworcel, I am going to ask you a question. We have seen from high-profile data breaches at companies like Equifax and Yahoo, that consumers are having everything exposed, from social security numbers to login names and passwords. So do you think that the FCC has the necessary authority to address cybersecurity?

Ms. ROSENWORCEL. Thank you for the question.

I do. I believe the very first sentence of the Communications Act references our obligation to make sure that we make available communications for the purposes of national defense and for the protection of safety of life and property. I believe that encompasses what is modern, which is cybersecurity. At the same time, I recognize that our cyber aggressors will always move faster than any regulation. And so the task is can we bring people together so that we can come up with good best practices and implement them widely to make sure our networks are more secure.

Mr. ENGEL. Did the Congressional Review Act rescinding the FCC's broadband privacy rules have any effect on the FCC's cybersecurity authority?

Ms. ROSENWORCEL. That is a good question. I think the primary problem right now with cybersecurity is that my colleagues don't agree with me. In addition, I think there is the fact that our Communications Security, Reliability, Interoperability Council used to be tasked with coming together and identifying good practices for cybersecurity. But in its current iteration, that is not part of their agenda.

Mr. ENGEL. And finally, how did the CRA impact the security of consumers' private information?

Ms. ROSENWORCEL. Only time will tell. But I am worried about that as well.

Mr. ENGEL. OK. Thank you.

Ms. CLYBURN. Let the record reflect I cosigned.

Mr. ENGEL. Thank you.

Thank you, Madam Chair.

Mrs. BLACKBURN. The gentleman yields back.

For everyone's awareness, they are going to call votes in about 15 minutes. Mrs. McMorris Rodgers is seeking to be UC'd to the committee for the purpose of asking a question. Without objection, so ordered.

You are recognized.

Mrs. MCMORRIS RODGERS. Thank you, Chairman Blackburn, for giving me the opportunity to join you today.

The internet has revolutionized the lives of millions of Americans and is vital to an individual's economic potential in the 21st century. Unfortunately, many in eastern Washington live with a digital divide that is limiting employment, educational, health, and economic opportunities.

Ensuring that hardworking families in eastern Washington have reliable access to broadband technology is a top priority of mine, and we must use every tool in the toolbox to provide greater opportunity. That is why I am excited in the opportunity the build-out from the broadcast incentive auction can provide to rural America. Many individuals and families in the most rural parts of my district struggle to get a signal for a cell phone, let alone connect to the internet. I am encouraged by the commitment the private sector has made in purchasing this spectrum and the practical effect it will have in eastern Washington.

Deployment of infrastructure and technology as a result of the auction will support millions of jobs and generate billions in economic opportunity in rural America. An increased broadband will help the U.S. continue its leadership in technology and innovation by providing an on-ramp for 5G network deployments. That is why I led a letter with Congresswoman Eshoo and a bipartisan group of 54 of our colleagues urging the FCC to continue supporting the current timeline for the repack resulting from the auction. This issue is too important. Ensuring that the repack remains on schedule will mean that many in eastern Washington will gain reliable broadband access in a matter of months, not years.

I want to thank the FCC for putting a renewed emphasis on closing the digital divide, and I am encouraged by the engagement of the Commission in looking for new innovative ways to deliver broadband to the 35 million Americans without access. I believe we have a great opportunity working together in a bipartisan manner to provide every American the opportunity they deserve, regardless of where they live. So I look forward to you making that a reality.

So at this time, I would like to submit to the committee this letter that Congresswoman Eshoo and I lead with the 54 colleagues.

Mrs. BLACKBURN. So ordered.

[The information appears at the conclusion of the hearing.]

Mrs. MCMORRIS RODGERS. Before I go, I would also like to ask you, Chairman Pai, on Title II, until the last FCC chairman acted late in the previous administration to upend really decades of bipartisan work in fostering broadband infrastructure, providers of this service were subject to a light regulatory touch. As you have made the rounds throughout the country, are you concerned about achieving the level of broadband investment necessary to deploy broadband deeper into rural areas if the U.S. does not go back to the light regulatory touch model? And can you tell us what is on the horizon to remove this uncertainty over investment for folks that just want fast and reliable internet service?

Mr. PAI. Thank you for the question, Congresswoman, and for the way you captured, I think, both the peril and the promise of bringing connectivity to folks in eastern Washington.

We are, as I mentioned earlier, engaged in open proceeding to figure out what is the best regulatory framework that is calibrated to both promote the free and open internet and preserve as much infrastructure investment as possible, especially in parts of the country that don't have it. And so we have taken a fair amount of public comments at this point, and we are studying the record and trying to figure out the appropriate way forward.

And what I can tell you is that we want to make sure, not just in this proceeding, but in every proceeding, that we have first and foremost in our minds closing the digital divide. There are far too many Americans, as you pointed out, who are on the wrong side of that divide. Those are individuals who don't have the opportunities that others have. Those are families that don't have the chance to thrive. Those are communities that are increasingly going to wither on the vine. And ultimately, it is the country that is weaker as a result of leaving human capital on the shelf. And that is why the first day I was in office I said this would be our top priority. And it is going to remain so, so long as I draw a paycheck at the FCC.

Mrs. MCMORRIS RODGERS. Great. Well, I thank you for that commitment.

And with that, I will yield back.

Mrs. BLACKBURN. The gentlelady yields back.

There being no further members wishing to ask questions of the panel, you all have been generous with your time for the over past 3 hours, and I thank you all for being here today.

As we conclude, I ask unanimous consent to enter the following letters into the record: The five documents offered by Mr. Doyle, Mercatus Center paper offered by Mr. Pallone, the letter from the LPTV Coalition, and the McMorris-Eshoo repack letter. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mrs. BLACKBURN. Pursuant to committee rules, I remind members that they have 10 business days to submit additional questions for the record. And I ask that witnesses submit their responses within 10 business days upon receipt of the questions.

Seeing no further business before the subcommittee today, without objection, the subcommittee is adjourned.

[Whereupon, at 5:16 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

DOW JONES, A NEWS CORP COMPANY ▼

DJIA ▼ 23282.86 -0.68%

S&P 500 ▼ 2551.43 -0.69%

Nasdaq ▼ 6550.40 -0.73%

U.S. 10 Yr ▼ -6/32 Yield 2.438%

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COMMENTARY

The FCC Wades Into the Newsroom

Why is the agency studying 'perceived station bias' and asking about coverage choices?

By Ajit Pai

Feb. 10, 2014 7:26 p.m. ET

News organizations often disagree about what Americans need to know. MSNBC, for example, apparently believes that traffic in Fort Lee, N.J., is the crisis of our time. Fox News, on the other hand, chooses to cover the September 2012 attacks on the U.S. diplomatic compound in Benghazi more heavily than other networks. The American people, for their part, disagree about what they want to watch.

But everyone should agree on this: The government has no place pressuring media organizations into covering certain stories.

Unfortunately, the Federal Communications Commission, where I am a commissioner, does not agree. Last May the FCC proposed an initiative to thrust the federal government into newsrooms across the country. With its "Multi-Market Study of Critical Information Needs," or CIN, the agency plans to send researchers to grill reporters, editors and station owners about how they decide which stories to run. A field test in Columbia, S.C., is scheduled to begin this spring.

The purpose of the CIN, according to the FCC, is to ferret out information from television and radio broadcasters about "the process by which stories are selected" and how often stations cover "critical information needs," along with "perceived station bias" and "perceived responsiveness to underserved populations."

How does the FCC plan to dig up all that information? First, the agency selected eight categories of "critical information" such as the "environment" and "economic opportunities," that it believes local newscasters should cover. It plans to ask station managers, news directors, journalists, television anchors and on-air reporters to tell the government about their "news philosophy" and how the station ensures that the community gets critical information.

The FCC also wants to wade into office politics. One question for reporters is: "Have you ever suggested coverage of what you consider a story with critical information for your customers that was rejected by management?" Follow-up questions ask for specifics about how editorial discretion is exercised, as well as the reasoning behind the decisions.

Participation in the Critical Information Needs study is voluntary—in theory. Unlike the opinion surveys that Americans see on a daily basis and either answer or not, as they wish, the FCC's queries may be hard for the broadcasters to ignore. They would be out of business without an FCC license, which must be renewed every eight years.

This is not the first time the agency has meddled in news coverage. Before Critical Information Needs, there was the FCC's now-defunct Fairness Doctrine, which began in 1949 and required equal time for contrasting viewpoints on controversial issues. Though the Fairness Doctrine ostensibly aimed to increase the diversity of thought on the airwaves, many stations simply chose to ignore controversial topics altogether, rather than air unwanted content that might cause listeners to change the channel.

The Fairness Doctrine was controversial and led to lawsuits throughout the 1960s and '70s that argued it infringed upon the freedom of the press. The FCC finally stopped enforcing the policy in 1987, acknowledging that it did not serve the public interest. In 2011 the agency officially took it off the books. But the demise of the Fairness Doctrine has not deterred proponents of newsroom policing, and the CIN study is a first step down the same dangerous path.

The FCC says the study is merely an objective fact-finding mission. The results will inform a report that the FCC must submit to Congress every three years on eliminating barriers to entry for entrepreneurs and small businesses in the communications industry.

This claim is peculiar. How can the news judgments made by editors and station managers impede small businesses from entering the broadcast industry? And why does the CIN study include newspapers when the FCC has no authority to regulate print media?

Should all stations follow MSNBC's example and cut away from a discussion with a former congresswoman about the National Security Agency's collection of phone records to offer live coverage of Justin Bieber's bond hearing? As a consumer of news, I have an opinion. But my opinion shouldn't matter more than anyone else's merely because I happen to work at the FCC.

Mr. Pai is a commissioner of the Federal Communications Commission.

Congress of the United States
Washington, DC 20515

October 16, 2017

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Pai:

The President recently raised the stakes on his continuing attacks against the free and independent press when he questioned whether NBC station licenses should be renewed – or revoked – based on his disagreement with the reports released by NBC News. We find this escalation very troubling in that it could have a chilling effect on First Amendment freedoms.

The Protecting Dissenting Viewpoints and Voices Act specifically prohibits the FCC from retaliating against stations based on the viewpoints expressed or disseminated by the licensee, and prohibits the President from directing the Commission to take action against licensees on the same basis. We would encourage you to publicly support this bill and the position it stakes out.

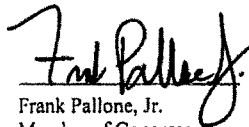
It is a sad state of affairs that such a bill would have to be introduced in the first place, but it is the situation that we find ourselves in today. In the absence of Congressional action on this bill, we ask you to specifically commit that you will promptly inform our offices if anyone in the Administration contacts you or a member of your staff regarding the license renewals for any broadcast station. We also ask for you to confirm your commitment that you will remain independent from any pressure by the President or his administration to influence the Commission's review of any broadcast license renewal or broadcast license transfer application. We hope that you stand by your prior comments that "these demands are fundamentally at odds with our legal and cultural traditions."

We appreciate your prompt reply to our requests by October 24.

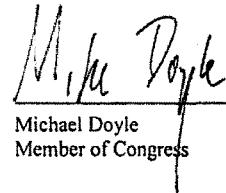
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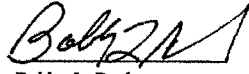
Ben Ray Lujan
Member of Congress



Frank Pallone, Jr.
Member of Congress



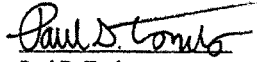
Michael Doyle
Member of Congress



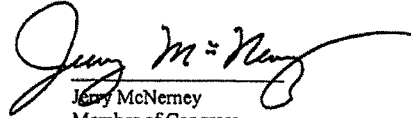
Bobby L. Rush
Member of Congress



Doris O. Matsui
Member of Congress



Paul D. Tonko
Member of Congress



Jerry McNerney
Member of Congress



Peter Welch
Member of Congress

ConsumersUnion¹

POLICY & ACTION FROM CONSUMER REPORTS

October 24, 2017

The Honorable Marsha Blackburn
Chairman, Subcommittee on
Communications and Technology
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Michael Doyle
Ranking Member, Subcommittee on
Communications and Technology
House Energy and Commerce Committee
2322A Rayburn House Office Building
Washington, D.C. 20515

Re: October 25, 2017 Oversight of the Federal Communications Commission Hearing

Dear Chairman Blackburn and Ranking Member Doyle:

Consumers Union, the policy and mobilization division of Consumer Reports,¹ appreciates this Subcommittee's oversight of the Federal Communication Commission (FCC) and looks forward to the hearing on October 25, 2017. In advance of that hearing, we urge you to consider for discussion the topics detailed below. These topics focus on how FCC policy affects U.S. consumers—and specifically, how it affects their access to the internet, the prices they pay, and the choices they have in the marketplace. This hearing provides a unique opportunity to review the Chairman Pai's agenda for the Commission to date, and measure it against these critical consumer interests.

Telecommunications in the early 21st century is all about connecting to the world around us—with friends, strangers, movements, information, art, ideas, and more. We can stream video via YouTube or Netflix, buy just about anything from Amazon or eBay, book an apartment overseas via Airbnb, post updates and organize rallies on Facebook, share photos on Instagram, hail a ride from a stranger via Uber or Lyft, or have a face-to-face chat with a friend on our smartphones. When we encounter something we don't know, we "Google it" or "look it up on Wikipedia" and seconds later, we have our answer. Telecom today means we truly have the world at our fingertips.

These advancements did not magically happen. Although many politicians and activists have long demanded an internet "free" from regulation, the fact is that government has carefully fostered the rise of a diverse internet full of choices—good choices—for consumers. By favoring competition over consolidation, and common-sense rules of the road over unbridled commercialization,

¹ Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumers Reports has over eight million subscribers to its magazine, website, and other publications. Consumers Union works for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves, focusing on the areas of telecommunications, health, auto and product safety, financial services, food safety, and privacy, among others.

policymakers have encouraged a rich and robust telecommunications industry and a vibrant, open internet that is changing our lives for the better every day.

Smart decisions by government have played a role, and must continue to do so, to protect consumers in a world of dizzying telecom inventions, and guarantee a marketplace where great ideas can flourish. Increased consolidation and industry calls for unwarranted deregulation pose challenges to the level playing field that benefits consumers. We at Consumers Union recognize the crucial role the FCC plays in the telecommunications sector, and urge you to examine the critical consumer issues described below.

I. The Future of Net Neutrality and the 2015 *Open Internet Order*

Consumers Union has long been a champion of strong net neutrality rules to ensure non-discriminatory treatment of internet traffic, and to prevent throttling or paid prioritization of web content. We supported the adoption of the FCC's 2015 *Open Internet Order* and have publicly stated our opposition in the Commission's current proceeding² that we are concerned could weaken or abolish the net neutrality rules contained within the *Order*.

Consumers are not clamoring for the repeal of net neutrality. In fact, evidence suggests that the majority of Americans support net neutrality rules. In partnership with our publication, Consumer Reports, in late July of this year we surveyed more than a thousand consumers about the role of the internet in their everyday lives, and whether they supported net neutrality.³ The survey results confirm that 57 percent of Americans support the FCC's current net neutrality rules. Only 16 percent said they either strongly opposed or somewhat opposed the rules. These results demonstrate that consumer opposition to net neutrality is small—fewer than two in 10. And neither is net neutrality a terribly partisan issue, with 61 percent of consumers identifying themselves as Democrats supporting the rules, and 48 percent of Republicans also responding in support, compared to only 13 percent of Democrats and 21 percent of Republicans opposed.

Equally important and relevant to the current net neutrality debate are the survey results of how consumers use and perceive internet access in 2017. For example, while the *NPRM* derides the 2015 *Open Internet Order* as “utility-style” regulation, our survey found that 61 percent of Americans equate internet access as important as water or electricity service. Although we disagree with the *NPRM*'s characterization, and with the related charge that the rules “regulate the internet”—indeed, the rules represent a “light touch” and regulate access *to* the internet—the FCC cannot ignore that many Americans already view internet service as a daily essential, much like a utility.

² *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108, Notice of Proposed Rulemaking (May 23, 2017) (*NPRM*)

³ Reply Comments of Consumers Union, *Restoring Internet Freedom*, WC Docket No. 17-108, Notice of Proposed Rulemaking (May 23, 2017) (filed August 30, 2017; see Appendix for CR Survey Report)

Nothing in the *NPRM* persuasively demonstrates that the five net neutrality rules in the *2015 Open Internet Order* should be reconsidered now, much less repealed, or that broadband service was inappropriately reclassified as a telecommunications service regulated under Title II of the Communications Act. Of particular concern is the apparent justification provided by the Chairman to revisit these rules: that investment by ISPs in broadband has declined since adoption of the *2015 Open Internet Order*, and that consumers have been denied new services offered by ISPs as a result of this reduced deployment of broadband services. This justification is not borne out by the facts. As discussed in our formal comments,⁴ surveys of ISPs' capital expenditures, media reports, and announcements of better product offerings made by the ISPs themselves suggest a thriving broadband market with increased investments and new services—all despite the adoption of net neutrality rules and Title II reclassification in 2015. This evidence includes a report by one of the leading ISP trade associations, USTelecom, touting “substantial capital investment” by ISPs in their broadband networks.⁵

Consumers Union believes there is nothing wrong with the current rules that needs to be fixed as the *NPRM* suggests. The *2015 Open Internet Order*'s net neutrality rules and the Title II reclassification upon which they stand were twice upheld in federal court, and serve consumers well. Because of them, consumers have access to an open internet that is a level playing field free of blocking, throttling, and paid prioritization—core protections that preserve a dynamic internet full of competition, new services, and innovation that benefits consumers.

We encourage you to ask the Commissioners how repealing the FCC's net neutrality rules would help consumers—a majority of whom support the current rules—and how those supposed benefits compare with the likely benefits afforded to the ISPs. Further, we urge you to ask them how they can rely on the argument that the current rules have stymied broadband investment in light of substantial industry evidence to the contrary?

II. Stemming Rising Cable Prices and the Rapid Growth of Unwarranted, Company-Imposed Monthly Fees

More than six years ago, Charter Communications began charging a “broadcast TV surcharge,” purportedly to recoup the rising costs of network programming retransmission consent fees negotiated with broadcasters. Other large pay-TV providers—e.g., Comcast, and Time Warner Cable (now owned by Charter)—followed suit with their own “broadcast fee” in addition to other new

⁴ Comments of Consumers Union, *Restoring Internet Freedom*, WC Docket No. 17-108, Notice of Proposed Rulemaking (May 23, 2017) (filed July 17, 2017)

⁵ Patrick Brogan, U.S. Broadband Availability Mid-2016, USTelecom Research Brief (August 25, 2017) <https://www.ustelecom.org/sites/default/files/BB%20Availability%202016%201H%20RB%20Final%207.pdf>.

charges, such as a “regional sports fee” for sports channels that some consumers never even watch. Some providers even add another “HD technology” fee. These fees are all in addition to hefty set-top box fees that pay-TV providers have been charging consumers for years.

Moreover, these add-on fees are tacked on top of the rates advertised to consumers, and are typically shown on the monthly bill near or with government-imposed taxes and fees, misleadingly suggesting that they are also required by law. Company-imposed fees cause consumer confusion, and more importantly, add up. A sample cable bill from December 2016 lists the bundled services rate of \$119.99 for video programming and broadband internet. But then there’s an “AnyRoom DVR” fee of \$10, an “HD Technology Fee” of \$9.95, a “Broadcast TV Fee” of \$5, and a “Regional Sports Fee” of \$3. That’s almost \$28 in add-ons in one month that consumers are often unaware of when signing up for service.

To make matters worse, some of these company-imposed fees have increased dramatically since being introduced a few years ago, and were hiked again for 2017. Taking a look at the same cable bill updated for February of this year reveals a “Broadcast TV Fee” of \$7, and a “Regional Sports Fee” of \$5—a 50 percent increase over what was charged last year. So, the add-ons rose to \$32 a month! This now represents close to a 27 percent surcharge per month on top of the rate for what consumers believe they are paying for cable and broadband service. What better way to camouflage rate increases?

We agree with the FCC’s Consumer Advisory Committee’s (CAC’s) recommendation that pay-TV providers should provide consumers with the estimated dollar amount of their total monthly bill that includes company-imposed fees and surcharges at the time service is initiated. Even better would be if pay-TV providers did away with these arbitrary add-on fees altogether, and offered a competitive bundled rate that fully represents the cost of programming consumers are purchasing.

We urge you to ask the Commissioners what should be done to stem the proliferation of company-imposed fees and whether they will adopt the CAC’s modest, consumer-friendly recommendation.

III. Examining the Sinclair-Tribune Merger

Earlier this year, Sinclair Broadcast Group announced its intention to purchase Tribune Media Company, increasing its ownership to more than 220 broadcast stations. The combined company would expand Sinclair’s reach to 72 percent of American consumers—irrespective of whether one takes into account the so-called UHF discount, whereby UHF television stations count as half of VHF stations when calculating compliance with the national media ownership cap, currently 39 percent. This past April, the Commission reinstated the UHF discount. Then, just a few weeks later, Sinclair announced its plans to acquire Tribune. As an initial matter, we observe this deal never

would have been possible had the FCC not resurrected the UHF discount, which many agree—including the current Commission—is technologically obsolete in today’s digital television marketplace. We strongly believe the FCC erred when it repealed the repeal of the UHF discount, and we have publicly endorsed legislation to permanently eliminate it.

Even when taking into account the UHF discount for legal purposes, the combined companies would still exceed the national media ownership cap. If we believe the goal of this limit upon what percentage of the national audience any one company may reach is to ensure a diverse media and localism of content—a goal we agree with and believe benefits consumer choice—the FCC must explain how a combined Sinclair-Tribune will restructure its assets to comply with the cap.

Finally, the retransmission consent regime, a product of the 1992 Cable Act, has long been broken. Though broadcasters and pay-TV providers point fingers, fight, and blame one another, the real losers are consumers who are harmed by higher prices and station blackouts. Unfortunately, Sinclair has developed a reputation for being one of the toughest broadcast groups to negotiate with, and its executives boast of extracting the highest fees from cable and satellite operators.⁶ As explained above, we know these increased costs are passed onto consumers in the form of the “broadcast fees” by pay-TV operators.

Of further concern, Sinclair was fined by the Commission for acting in bad faith during retransmission consent negotiations a little more than a year ago.⁷ It strains credulity, as well as basic economics, to think that a larger Sinclair will become a better actor with more stations under its control, or that this merger will benefit consumers with more choice and lower prices. A recent article in *The Economist* points out what experience already shows—the larger a media group becomes by adding stations through mergers and acquisitions, the more leverage it gains in retransmission consent negotiations with pay-TV providers.⁸ The same article points out that retransmission consent fees have grown dramatically in the last decade, and now represent nearly a quarter of the multi-billion dollar revenues enjoyed by broadcasters. We believe that if Sinclair is allowed to get even bigger, costs for consumers will only increase.

⁶ Reply Comments of DISH Network, *Tribune Media Company and Sinclair Broadcast Group, Inc.*, Consolidated Applications for Consent to Transfer Control, MB Docket No. 17-179 (Filed August 29, 2017) citing on p. 19, footnote 45: Sinclair Broadcast Group Inc. at JP Morgan Tech, Media and Telecom Conference, Fair Disclosure Wire (May 22, 2017) (comments of Christopher S. Ripley)

⁷ Daniel Frankel, *Sinclair Fined \$9.5M by FCC for Violating Good-Faith Retrans Bargaining Obligations*, Fierce Cable (Aug. 1, 2016), <http://www.fiercecable.com/cable/sinclair-fined-9-5m-by-fcc-for-violating-good-faith-retrans-bargaining-obligations>

⁸ *Sinclair Broadcast Buys Tribune Media*, *The Economist* (May 13, 2017) <https://www.economist.com/news/business/21721966-americas-media-regulator-aids-consolidation-tv-stations-sinclair-broadcast-buys-tribune>.

Parties to license transfers such as these bear the duty to demonstrate how the transaction serves the public interest. Based upon the evidence we have seen thus far, the deal as proposed fails this important test, and the Commission must conduct a very thorough review to ensure consumers' interests are protected. At the very least, a combined Sinclair must divest stations to satisfy the 39 percent national ownership cap.

We encourage you to ask the Commissioners if they anticipated the Sinclair-Tribune merger after reinstating the UHF discount earlier this year—a discount that will allow Sinclair to reach more than 70 percent of Americans and well above the national ownership cap of 39 percent. Further, we urge you to ask, if the merger is approved, what consumer benefits demonstrate that the deal is in the public interest.

We close with a note of appreciation for holding this important hearing overseeing the work of the FCC. Consumers deserve to know whether the Commission is working to create a telecommunications marketplace that promotes their interests and protects their pocketbooks. We stand ready to work with you, your fellow members on the Energy and Commerce Committee, and other stakeholders to address the issues we identified, to help ensure all consumers have reliable access to affordable products and services, and are empowered to participate fully in the modern-day telecommunications marketplace.

Respectfully submitted,



Jonathan Schwantes
Senior Policy Counsel

cc. Members of the U.S. House Energy and Commerce Committee, Subcommittee on Communications and Technology



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

October 23, 2017

The Honorable Mike Doyle
U.S. House of Representatives
239 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Doyle:

Thank you for your letter regarding First Amendment freedoms and the independence of the Federal Communications Commission (FCC or Commission).

As a strong supporter of the First Amendment and the FCC's independence, I can assure you that under my leadership the Commission's review of any broadcast license renewal or broadcast license transfer application will not be impacted by political pressure from the Executive Branch. I also committed, in a March 17, 2017 letter to Democrats serving on the Senate Committee on Commerce, Science, and Transportation, that I would inform them and the public if there were any attempt by the Executive Branch to influence my decision-making with respect to any media interests with the FCC's jurisdiction, a commitment that clearly includes broadcast license renewal and transfer applications. I am happy to expand that commitment to include informing you as well if there is any such attempt by the Executive Branch to influence my decision-making on these matters.

I appreciate your interest in this matter and look forward to working with you on important matters before the Commission.

Sincerely,

A handwritten signature in black ink that reads "Ajit V. Pai". The signature is fluid and cursive, with the first name "Ajit" and last name "Pai" being the most prominent parts.

Ajit V. Pai

How FCC Transaction Reviews Threaten Rule of Law and the First Amendment

Brent Skorup and Christopher Koopman

May 2016

MERCATUS WORKING PAPER



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3434 Washington Blvd., 4th Floor, Arlington, Virginia 22201
www.mercatus.org

Brent Skorup and Christopher Koopman. "How FCC Transaction Reviews Threaten Rule of Law and the First Amendment." Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, May 2016.

Abstract

Since its creation in 1934, the Federal Communications Commission (FCC) has had authority to approve or deny the consummation of transactions by wireless and wired communications firms under a public interest standard. Despite the passage of decades, neither the FCC nor the courts have put meaningful limits on what the FCC can pursue under this authority. Today, regulated companies—including broadcast TV and radio, satellite TV and radio, cable TV, and Internet service providers—need FCC permission to transfer licensed assets. Moreover, the FCC increasingly uses license transfer proceedings as an opportunity for an ad hoc merger review that substitutes for rulemaking. We model the FCC's decisions to extract concessions from firms under the empire-building model. The FCC's subjective determinations of the public interest during transaction reviews and the impracticability of judicial review have pernicious effects on modern media and the rule of law. Consistent with the model, the FCC increasingly extracts nominally voluntary concessions from firms—including programming decisions, hiring practices, and net neutrality compliance—in the transaction approvals that the agency is legally barred from or unwilling to pursue through the normal regulatory process. We argue that the FCC's unpredictable and coercive transaction reviews violate rule of law norms and pose significant First Amendment problems. We urge the FCC or Congress to limit what the agency can accomplish during transaction reviews.

JEL codes: D63, D72, D73, D78, D79, D81

Keywords: FCC, merger review, transaction review, telecommunications, net neutrality, programming, media, new media, public choice, First Amendment, regulation, constitutional law

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**How FCC Transaction Reviews Threaten Rule of Law
and the First Amendment**

Brent Skorup and Christopher Koopman

In the run-up to the 2004 presidential election, Carleton Sherwood (a journalist who has won Pulitzer and Peabody awards) made a film that featured Vietnam prisoners of war and that cast Senator John Kerry (the Democratic presidential nominee) in an unfavorable light.¹ The Sinclair Broadcast Group, which owns TV stations scattered around the country, announced plans to air the 40-minute film but received significant criticism because of the timing before an election. Democratic politicians complained to the Federal Communications Commission (FCC) about the film's lack of balance, and advocacy groups vowed a multiyear regulatory challenge to Sinclair's airwave license renewals.²

The *Boston Globe* and *New York Times* editorial pages requested that the FCC investigate Sinclair for countenancing the airing of the film.³ An MSNBC television host, Deborah Norville, captured the mood and asked a Sinclair vice president on air, "Why would Sinclair Broadcasting, which has a license from the FCC, risk that very, very precious license by going forward with a program like this?"⁴ Reed Hundt, former FCC chairman, similarly

¹ STOLEN HONOR: WOUNDS THAT NEVER HEAL (Red, White, and Blue Productions 2004). This production should not be confused with the advocacy organization titled Swift Boat Veterans for Truth, a different 2004 controversy involving certain veterans' criticism of Senator Kerry.

² Bill Carter, *Risks Seen for TV Chain Showing Film about Kerry*, N.Y. TIMES, Oct. 18, 2004, available at <http://www.nytimes.com/2004/10/18/business/media/risks-seen-for-tv-chain-showing-film-about-kerry.html>.

³ *Sinclair's Slander*, BOSTON GLOBE, Oct. 15, 2004, available at http://www.boston.com/news/globe/editorial_opinion/editorials/articles/2004/10/15/sinclairs_slander/; *Dangerous Territory*, N.Y. TIMES, Oct. 15, 2004, http://www.nytimes.com/2004/10/15/opinion/dangerous-territory.html?_r=0.

⁴ *Deborah Norville Tonight: Sinclair Controversy* (MSNBC television broadcast, Oct. 21, 2004), available at <http://www.nbcnews.com/video/msnbc-news/6303047#6303047>.

asked Sinclair executives, “Why should a broadcaster keep its licenses if it behaves in this manner?”⁵

Sinclair got the message. Financial analysts and FCC staff members predicted that the controversy posed political and financial risks to Sinclair and other FCC-licensed stations⁶—what one analyst report called “the Sinclair payback provision”—and Sinclair stock value quickly dipped 17 percent.⁷ Within days, Sinclair abruptly backed off and chose to broadcast only four minutes of the film.⁸

The Sinclair episode illustrates the power that the FCC holds over some media outlets and gives a glimpse into how political actors and activists are able to channel the FCC’s regulatory process to chill unwanted speech. Quite simply, many US firms that carry and distribute speech, such as Sinclair, must remain in the FCC’s good graces—through license renewals and approvals of license transfers—to operate. Over the past 20 years, the FCC has increasingly used its leverage during licensing proceedings as an opportunity to engage in an ad hoc merger review that substitutes for formal rulemaking. Through license renewals and through—the focus of this article—transaction approvals, the agency allows constituencies to influence media content, business models, and operations.

⁵ Josh Marshall, *Yesterday Former FCC Chairman*, TPM (Oct. 11, 2004, 6:30 PM), <http://talkingpointsmemo.com/edblog/--97479> (reproducing Reed Hundt’s letter).

⁶ Carter, *supra* note 2.

⁷ *Sinclair Revises Anti-Kerry Broadcast*, CNN MONEY (Oct. 20, 2004, 3:02 PM), <http://money.cnn.com/2004/10/19/news/midcaps/sinclair/>.

⁸ Bill Carter & Scott Shane, *Viewers Get Only a Peek of a Movie Chiding Kerry*, N.Y. TIMES, Oct. 23, 2004, available at http://www.nytimes.com/2004/10/23/politics/campaign/viewers-get-only-a-peek-of-a-movie-chiding-kerry.html?_r=0. The Republican FCC chairman at the time, Michael Powell, refused to intervene or to exercise prior restraint, citing agency precedent and First Amendment concerns. *FCC Won’t Block Airing of Anti-Kerry Film*, NBC NEWS (Oct. 14, 2004, 3:02 PM), <http://www.nbcnews.com/id/6249909/ns/politics/t/fcc-wont-block-airing-anti-kerry-film/#.Vqv1SrerSzc>. Nevertheless, the possibility of Kerry’s winning the close election and nominating a new FCC chairman a few months later contributed to Sinclair’s stock decline. As one major Sinclair shareholder noted, “Those guys at Sinclair better watch out if Kerry is elected.” Bill Carter, *supra* note 2.

Neither the FCC nor the courts have put meaningful limits on what the FCC can extract during license transfers, thereby leading to arbitrary and unpredictable results.⁹ Today, regulated companies—including broadcast TV and radio, satellite TV and radio, cable TV, and Internet service providers (ISPs)—are the primary producers and distributors of mass media and publications. Increasingly, the FCC extracts nominally voluntary concessions from those firms—including programming decisions, hiring practices, and net neutrality compliance—through coercive conditions to transaction approvals. In many cases, the FCC is legally barred from enforcing or is unwilling to enforce such policies through the normal regulatory process.¹⁰

Not much has changed in the 15 years since Bryan Tramont, then legal advisor to FCC Commissioner Harold Furchtgott-Roth, wrote that “procedural loopholes and circumstance create opportunities for the Commission to operate free of the discipline imposed by the statute and administrative procedure” during license transfer approvals and consent decrees.¹¹ If anything, the problem may be becoming more severe and getting far worse.¹² Scholars criticize lawmakers for the *jawboning*—a term for informal regulation and threats using dubious legal authority—of Internet and media companies outside of transparent regulation.¹³

⁹ *Novel Procedures in FCC License Transfer Proceedings: Hearing Before the Subcomm. on Commercial and Administrative Law Oversight of the H. Comm. on the Judiciary*, 106th Cong. (1999) (statement of Harold W. Furchtgott-Roth, FCC Commissioner), available at https://transition.fcc.gov/Speeches/Furchtgott_Roth/Statements/sthfr925.html#N_1_ (“Agency decisions regarding which license transfers to review . . . are entirely *ad hoc* . . .”).

¹⁰ *Id.* (“[T]he Commission requires companies to do certain things—things that it could not for lack of statutory authority require outright in a rulemaking—as a quo for the quid of receiving a license.”).

¹¹ Bryan N. Tramont, *Too Much Power, Too Little Restraint: How the FCC Expands Its Reach Through Unenforceable and Unwieldy “Voluntary” Agreements*, 53 FED. COMM. L.J. 49, 52 (2000), available at <http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1260&context=fclj>.

¹² Christopher Yoo, *Merger Review by the Federal Communications Commission: Comcast–NBC Universal*, 45 REV. IND. ORGAN. 295, 312 (2014) (noting that since 2004, “conditions have become increasingly common features of [FCC] merger clearances”). See also Derek E. Bambauer, *Against Jawboning*, 100 MINN. L. REV. 51, 126 (2015) (“Jawboning of Internet intermediaries is increasingly common, and it operates beneath the notice of both courts and commentators.”); T. Randolph Beard et al., *Eroding the Rule of Law: Regulation as Cooperative Bargaining at the FCC* 5 (Phoenix Center, Policy Paper No. 49, 2015), available at <http://www.phoenix-center.org/pcpp/PCPP49Final.pdf>.

¹³ The term derives from the biblical story of Samson, who killed a thousand Philistines with a donkey’s jawbone.

Derek Bambauer, professor of law at the University of Arizona, notes that “Informal enforcement . . . cloaks what is in reality state action in the guise of private choice,” and such “regulation by transaction” has far-reaching legal and constitutional effects.¹⁴

Once an acquisition or license transfer is before the FCC, the applicants and the FCC engage in a secretive bargaining over what “voluntary” commitments the applicants must make to remain in the agency’s good graces.¹⁵ Those negotiated agreements are made either pursuant to a consent decree or as a way to gain transaction approval and are, practically speaking, not appealable.¹⁶

Such circumstances eviscerate norms of good governance and the rule of law and may also be unconstitutional because of the amount of discretion that the FCC has over speakers. The FCC’s transaction practices pose the speech infringement risks that the Supreme Court warned of in a 1988 case, *City of Lakewood v. Plain Dealer Publishing Company*,¹⁷ regarding a city’s licensing of newspaper racks: “[T]he mere existence of the licensor’s unfettered discretion, coupled with the power of prior restraint, intimidates parties into censoring their own speech, even if the discretion and power are never actually abused.”

The FCC continues down its current path at legal peril. The expansion of FCC authority during license transfers, the FCC’s ad hoc determinations of the public interest, and the

¹⁴ Bambauer, *supra* note 12, at 65.

¹⁵ See Beard et al., *supra* note 12.

¹⁶ In theory, the transaction applicants could submit to a hearing with an administrative law judge. See 47 U.S.C. 309(e) (“If . . . a substantial and material question of fact is presented or the Commission for any reason is unable to make the [public interest, convenience, and necessity] finding . . . it shall formally designate the application for hearing. . . .”). However, scholars such as Daniel Deacon, a lecturer at Harvard law and a former telecommunications law attorney, point out the “adjudication process is considered so onerous that the reference to the ALJ [administrative law judge] (or merely the announcement that the FCC will refer) effectively denies the merger.” The idea that the FCC cannot deny a transaction before a hearing before a neutral adjudicator “is largely a fiction.” Daniel Deacon, *Some Thoughts on FCC Merger Review Occasioned by the Demise of the Comcast-Time Warner Cable Deal*, NOTICE & COMMENT, Apr. 29, 2015, <http://www.yalejreg.com/blog/some-thoughts-on-fcc-merger-review-occasioned-by-the-demise-of-the-comcast-time-warner-cable-deal-by>.

¹⁷ *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 757 (1988).

impracticability of timely judicial review have pernicious effects on modern media and the rule of law. Given the immense discretion over media, the FCC's transaction reviews may be subject to facial challenges to First Amendment rights.¹⁸ If the FCC does not voluntarily abandon its de facto merger review, the agency should at least promulgate guidelines for what its public interest standard requires.

Background on FCC Authority over Communications Transactions and the Public Interest Standard

By statute, the FCC must find that a wireless license transfer serves “the public interest, convenience, and necessity,”¹⁹ and there must be a similar finding for a transfer of common carrier lines.²⁰ Parties with transactions subject to FCC jurisdiction bear the burden and must prove by a preponderance of the evidence that the transaction affirmatively provides public interest benefits.²¹ Notably, the Communications Act provides no general merger authority, but the agency has treated this authority over license transfers as reason to evaluate and approve mergers. As a result, the subsequent transaction analysis frequently makes only incidental mention of the underlying licenses.²²

¹⁸ *Id.* at 759 (“Therefore, a facial [First Amendment] challenge lies whenever a licensing law gives a government official or agency substantial power to discriminate based on the content or viewpoint of speech by suppressing disfavored speech or disliked speakers.”).

¹⁹ 47 U.S.C. 310(d) (“No . . . station license . . . shall be transferred . . . to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.”).

²⁰ 47 U.S.C. 214(a) (“No carrier . . . shall acquire or operate any line . . . unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require the . . . operation of such . . . line.”).

²¹ *See, e.g., FCC, Re: Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations, Opinion and Order*, MB Docket No. 14-90, para. 18 (July 28, 2015).

²² *Novel Procedures in FCC License Transfer Proceeding*, *supra* note 9 (“[M]ost orders involving mergers do not even identify the radio licenses or section 214 authorizations at issue or discuss the consequences of their conveyance, but instead move directly to a discussion of the merger. . . .”).

This regulatory power over speakers exists because the FCC's authority predates changes in the market that created more speakers—for instance, traditional telephone companies now provide television. It also predates the expansion in coverage of the First Amendment since the 1970s.²³ The “public interest” was first applied to mass media more than 80 years ago (in 1927), with the creation of the FCC's predecessor, the Federal Radio Commission (FRC), which regulated radio broadcasters.²⁴

This vague standard had little meaning even to the members of Congress who promulgated it in the 1920s,²⁵ but contemporaries believed that courts would give meaning to the standard.²⁶ Courts had, after all, constrained seemingly discretionary antitrust laws through common law–like development.²⁷ Despite the passage of decades, however, neither the FCC nor the courts have put meaningful limits on what the FCC can do under the public interest standard.²⁸

Since the 1970s, Congress and the FCC have moved away from formal industrial policy in telecommunications and public interest programming mandates in media and have moved

²³ See, e.g., Leslie Kendrick, *First Amendment Expansionism*, 56 WM. & MARY L. REV. 1199 (2015) (discussing the expansion of the First Amendment to more activities).

²⁴ Louis G. Caldwell, *The Standard of Public Interest, Convenience or Necessity as Used in the Radio Act of 1927*, 1 AIR. L. REV. 295, 296 (1939).

²⁵ Louis G. Caldwell, the first general counsel of the FRC, described the standard in 1930 as being akin to instructing a radio czar to “do the best he can.” *Id.* (“‘Public interest, convenience or necessity’ means about as little as any phrase that the drafters of the Act could have used and still comply with the constitutional requirement that there be some standard to guide the administrative wisdom of the licensing authority.”).

²⁶ Acting Attorney General William Donovan noted that what is necessary to satisfy the FRC's public interest standard “has to be marked out and developed by a line of administrative and judicial decisions.” William J. Donovan, *Origin and Development of Radio Law*, 2 AIR. L. REV. 107, 118 (1931).

²⁷ Section 1 of the Sherman Antitrust Act, for instance, bars “contract[s] . . . in restraint of trade or commerce.” Taken literally, this provision makes even the most routine commercial agreements illegal. Rather than trust the antitrust agencies with that immense discretion, courts provided common law–like standards to the statute to prevent the exercise of arbitrary power.

²⁸ *Novel Procedures in FCC License Transfer Proceeding*, *supra* note 9 (“[T]he Commission has failed to place any outer limits whatsoever on [the public interest test], freely reinterpreting the standard in each new case.”); John O. Robinson, *Spectrum Management Policy in the United States: An Historical Account* 43 (Office of Plans and Policy, FCC, Working Paper No. 15, 1985), available at https://transition.fcc.gov/Bureaus/OPP/working_papers/oppwp15.pdf (“The public interest has become, therefore, whatever the Commission decided it to be.”).

toward market competition and free speech norms.²⁹ Old habits die hard, however. Lacking the legal authority or political will to engage in, for instance, formal broadband rate regulation and cable TV programming mandates, the FCC extracts nominally voluntary commitments from merging firms about rates, programming, and other issues such as net neutrality.³⁰ Combined with the FCC's pervasive public interest standard,³¹ regulation by transaction commitments "may be the [FCC's] primary and most potent form of regulatory control."³² As communications scholar Randy May explains,³³

The Commission merely withholds approval of the merger until the parties come forward to propose conditions which the Commission has telegraphed in closed door negotiations that it would find acceptable to meet whatever public interest concerns that opponents, the FCC, and others have raised.

Because it lacks merger authority, the FCC does not have statutory time limits for transaction reviews, and reviews often take about a year.³⁴ This delay is much longer than competition reviews at the Federal Trade Commission (FTC) and Department of Justice, which generally take two to four months³⁵ because of the requirements of the Hart-Scott-Rodino Act.³⁶

Because transaction delays are costly to merging firms and because those firms bear the burden of showing public interest benefits, such delays give the agency great leverage over firms and appear designed to extract public interest concessions from firms. Typically, the

²⁹ See, e.g., Joseph D. Kearney, *Will the FCC Go the Way of the ICC?*, 71 U. COLO. L. REV. 1153, 1153–54 (2000).

³⁰ FCC, *supra* note 21, at appendix B (listing conditions for the merging firm, including nondiscrimination rules for online video and price requirements for low-income customers).

³¹ Randolph J. May, *The Public Interest Standard: Is It Too Indeterminate to Be Constitutional?*, 53 FED. COMM. L.J. 427, 429 (2001) (estimating that nearly 100 statutory provisions direct or authorize the FCC to act according to the public interest standard).

³² Beard et al., *supra* note 12, at 23.

³³ Randolph J. May, *Modest Plea for FCC Modesty Regarding the Public Interest Standard*, 60 ADMIN. L. REV. 895, 904 (2008).

³⁴ The FCC has self-imposed guidelines to limit review to 6 months, but typical FCC merger review takes 9 to 12 months. Yoo, *supra* note 12, at 311.

³⁵ *Id.* at 310.

³⁶ 15 U.S.C. § 18a.

FCC will challenge license transfers when the underlying value of the transaction is in the billions of dollars. Some firms spend tens or hundreds of millions of dollars on FCC approval-related expenses alone, which presumably are substantially less than the value of the transaction to the firms.³⁷

Concerning one of the largest recent merger attempts, reports suggest that Comcast and Time Warner Cable collectively spent more than \$500 million on merger-related expenses, a deal that the FCC rejected.³⁸ Merging firms that disagree with the need for or legality of a merger condition are in no position to challenge the condition.³⁹

There are sensible debates about where voluntary action by a private firm ends and where government coercion begins. We do not believe that distinction is relevant here, and we are aware of no scholarship defending the agency's coercive "regulation by transaction." Tim Wu, a law professor from Columbia Law School, wrote perhaps the most prominent defense of informal regulation in fast-moving industries, yet he expressly names the FCC's merger reviews as potentially abusive because legal review is unfeasible.⁴⁰

Therefore, we argue that conditions extracted during the FCC's approval process are coerced and not voluntary because the penalty for not offering concessions is so severe: a rejected merger. Further, as we explain *infra*, when speech interests are at stake, the Supreme Court regards even modest regulatory oversight—even licensure and a requirement to show public interest benefits—as unconstitutional because the risk of government intimidation is too great.

³⁷ Bob Fernandez, *How Comcast Sealed the NBCU Deal*, PHILADELPHIA INQUIRER, Jan. 23, 2011, available at http://articles.philly.com/2011-01-23/business/27044733_1_nbcu-deal-comcast-shareholder-largest-cable-distributor (reporting that Comcast alone spent nearly \$100 million in NBC Universal acquisition expenses).

³⁸ Kyle Wiggers, *Comcast's Failed Acquisition of TWC Cost a Third of a Billion Dollars*, DIGITAL TRENDS, May 5, 2015, available at [http://www.digitaltrends.com/home-theater/comcast-spent-\\$336-million-on-failed-twc-merger/](http://www.digitaltrends.com/home-theater/comcast-spent-$336-million-on-failed-twc-merger/).

³⁹ The notion that the FCC cannot deny a transaction before a hearing before a neutral adjudicator "is largely a fiction." Deacon, *supra* note 16.

⁴⁰ Tim Wu, *Agency Threats*, 60 DUKE L.J. 1841, 1855 (2011).

To provide some context for FCC decision-making in the absence of any clear standards being set by Congress or enforced by courts, we will use part I to outline a basic model of bureaucratic action. That is, if we begin with the premise that officials within the FCC are individuals who respond to incentives, it is important to model what incentives are driving decisions within the agency. By using part II to reveal the legal precariousness of the FCC's current practice, we aim to change the incentives of agency officials so those individuals attempt more modest, defensible transaction reviews.

Part I: A Model of FCC Action, Agency Coercion, and the Rule of Law

Scholars have long recognized that government actors are not selfless, disinterested people seeking to maximize the public interest.⁴¹ Instead, regulators may use their government position as cover to achieve their own goals and objectives. If the public interest is not the chief concern of individuals within the FCC, what then do bureaucrats within the agency seek to maximize? Max Weber, the German political economist, notes that, in general, bureaucrats seek to maximize power.⁴² Although this basic idea has laid the foundation for much of the public choice research about bureaucratic action, it nonetheless fails to adequately describe FCC decisions. A more specific description is necessary.

Elaborating on this basic idea that individuals within agencies seek to increase power, William A. Niskanen provided the first systematic analysis of bureaucratic action.⁴³ The core insights of his initial framework are that individuals within agencies such as the FCC are

⁴¹ See, e.g., MAXWELL STEARNS & TODD ZYWICKI, PUBLIC CHOICE CONCEPTS AND APPLICATIONS IN LAW 340–66 (2009).

⁴² Max Weber, *Bureaucracy*, in FROM MAX WEBER: ESSAYS IN SOCIOLOGY 196, 233–34 (H. H. Gerth & C. Wright Mills eds., trans., 1946); see also Stearns & Zywicki, *supra* note 41, at 242.

⁴³ WILLIAM A. NISKANEN JR., BUREAUCRACY AND REPRESENTATIVE GOVERNMENT (1971).

primarily engaged in maximizing their budgets and expanding the overall scope of the agency's jurisdiction. This concept is what scholars have come to recognize as *empire building*, and it has shaped the understanding of agency behavior. It is also central to understanding the FCC's use of its merger review authority.

However, much of Niskanen's initial empire-building model of agency behavior is not universally accepted.⁴⁴ One criticism of Niskanen's initial model is that the primary focus, budget maximization, is somewhat disconnected from observed agency behavior.⁴⁵ Building on that insight, others have stated that the model is not simply wrong; it may, in fact, predict the precise opposite of what actually occurs at agencies.⁴⁶ Niskanen himself noted that although his initial framework was certainly important, it was "conspicuously flawed."⁴⁷

Given the criticisms, the model has been refined over time, and our use of the insights from the empire-building model extends beyond the FCC's budget. Although agencies may seek to enlarge budgets, there are other ways in which an agency such as the FCC may build its empire. In addition to simply seeking a larger discretionary budget, an agency may also seek to build its empire by maximizing, among other variables, its public reputation, patronage, output, ease of rulemaking, and ease of management.⁴⁸ For the FCC, this approach can be best understood as seeking to increase a combination of the agency's discretionary

⁴⁴ See, e.g., Daryl J. Levinson, *Empire-Building in Constitutional Law*, 118 HARV. L. REV. 915, 932–34 (2005). See also JAMES Q. WILSON, *BUREAUCRACY: WHAT GOVERNMENT AGENCIES DO AND WHY THEY DO IT* (1989); STEVEN P. CROLEY, *REGULATION AND PUBLIC INTERESTS: THE POSSIBILITY OF GOOD REGULATORY GOVERNMENT* (2007).

⁴⁵ Levinson, *supra* note 44, at 932 (noting that "[e]ven if most bureaucrats were primarily interested in lining their own pockets, the relationship between a larger agency budget and higher salaries or cushier working conditions is empirically tenuous").

⁴⁶ Nicholas Bagley & Richard L. Revesz, *Centralized Oversight of the Regulatory States*, 106 COLUMBIA L. REV. 1260, 1294–95 (2006).

⁴⁷ William A. Niskanen Jr., *Bureaucracy: A Final Perspective*, in REFLECTIONS OF A POLITICAL ECONOMIST: SELECTED ARTICLES ON GOVERNMENT POLICIES AND POLITICAL PROCESSES 194 (2008).

⁴⁸ Niskanen, *supra* note 43, at 38.

budget, the scope of its jurisdiction, and its independence from congressional oversight and the courts.⁴⁹

Using this framework as a lens to view FCC behavior, we reject the argument that the agency is simply seeking to pursue the public interest in imperfect ways. Instead, this framework provides a coherent theory that explains why much of the FCC policy making is done on an ad hoc basis and in the form of nominally voluntary concessions extracted from firms in exchange for transaction approvals. If the goal of the agency is to increase its jurisdiction, public reputation, patronage, and output—while balancing a desire for ease of rulemaking and management—then the FCC’s reliance on its amorphous public interest standard to create rules through its transaction reviews rather than through its formal rulemaking is the most effective tool at the agency’s disposal.

Moreover, if policy changes and agency management were otherwise accomplished through a formal process, such a process would require congressional participation as well as formal notice and comment under the Administrative Procedures Act. However, relying on informal rulemaking through voluntary concessions enables the agency to increase its jurisdictional domain without an act of Congress or a court review. Thus, the FCC will look to novel approaches to expand the agency’s jurisdiction while also minimizing congressional oversight and control. As a result, the FCC has a strong incentive to build its empire through ad hoc consent decrees and conditions extracted through transaction reviews.

This analysis, in many ways, describes the FCC’s approach to rulemaking since the Telecommunications Act of 1996. Over the past two decades, the FCC’s merger review process has become far more active, and the agency has increasingly relied on the use of “voluntary

⁴⁹ See Stearns & Zywicki, *supra* note 41, at 343.

commitments” and merger conditions to accomplish its policy goals.⁵⁰ This device has been undertaken to achieve—through concessions from merging parties—what would traditionally be achieved through formal, industry-wide rulemakings.⁵¹ In addition, as suggested previously, many of those voluntary concessions would not have been achieved if they had been attempted through the formal process.

Moreover, with the lack of institutional constraints, the FCC can engage in *de facto* rulemaking through a transaction review that has little external oversight or control. Without a clear objective standard on which merger approvals are granted, the agency can use its amorphous public interest standard to achieve its policy goals without any practical limitations. This ability places the FCC in a unique position when compared to agencies empowered with merger review authority, especially the FTC. As noted earlier, merging parties are forced to establish—to the FCC’s satisfaction—how the merger will affirmatively provide public interest benefits.⁵² Moreover, unlike other agencies, the FCC has no statutory time limits to review mergers.⁵³

This lack of limits places the FCC in a position of power and gives it a strong incentive to achieve extraneous policy goals through merger review. There are several high-profile examples of this scenario playing out. For instance, when News Corp. acquired DirecTV in 2004, the FCC used its transaction review to impose program access conditions.⁵⁴ Program access rules are authorized by Congress through formal, industry-wide rulemaking,⁵⁵ but they require public notice and comment periods and have the potential for judicial review. When achieved through

⁵⁰ Beard et al., *supra* note 12, at 5.

⁵¹ *Id.*

⁵² Yoo, *supra* note 12, at, 298.

⁵³ It has self-imposed guidelines to limit review to 6 months, but typical FCC merger review takes 9 to 12 months. *Id.* at 311.

⁵⁴ *Id.* at 312.

⁵⁵ 47 U.S.C. § 548(b)–(c).

merger conditions, however, such access rules avoid notice and comment and cannot be reviewed by the courts.

Moreover, the FCC uses its transaction review to create policies that are beyond the scope of its statutory authority. For example, AT&T Broadband agreed to comply with the FCC's dubious regulations that capped a cable company's market share at 30 percent when AT&T acquired MediaOne in 2000. Those regulations were subsequently struck down in 2001 in *Time Warner Entertainment Co. v. FCC*.⁵⁶ Similarly, the agency conditioned the Bell Atlantic–NYNEX merger on the merged firm's agreement to accept a complex price ceiling—total element long run incremental cost (TELRIC)—for allowing competitors to have access to the firm's networks.⁵⁷ This agreement remained in force even though the Eighth Circuit had held at that time that TELRIC was impermissible and beyond the agency's jurisdiction.⁵⁸

The result is a clear threat to the rule of law. Merging parties may not know what conditions will be tied to their transaction and, more important, may not be able to escape those conditions even when the underlying policies are beyond the agency's authority. In effect, the FCC is able to create rules that have the force of law but that apply only to specific firms and are practically unreviewable later by courts.

The FCC's extracted conditions increasingly relate to speech and the distribution of speech. For example, the FCC used three large mergers in the mid-2000s—SBC–AT&T, Verizon–MCI, and AT&T–BellSouth—to extract agreements from those firms to abide by the

⁵⁶ The FCC agreed not to enforce the condition.

⁵⁷ FCC, Bell Atlantic–NYNEX, Memorandum Opinion and Order, FCC 97-286, 12 FCC Red 19985, Appendix C (rel. Aug. 14, 1997).

⁵⁸ *Iowa Utilities Board v. FCC*, 135 F. 3d 535 (8th Cir. 1998) (later overturned by the Supreme Court in *AT&T v. Iowa Utilities Board*, 525 U.S. 366 (1999)).

2005 policy statement on network neutrality.⁵⁹ In 2010, the FCC's authority to enforce the 2005 policy statement as an official rule was struck down.⁶⁰ However, because the voluntary concessions are not recognized as official agency action, they remained in place.⁶¹ Moreover, as a condition for FCC approval of the Comcast–NBC Universal merger, Comcast agreed to abide by the 2010 Open Internet Order for 10 years. Although those rules were substantially struck down in 2014,⁶² the parties were still bound by their consent decrees.

By disregarding the formal rulemaking process and by using transaction reviews to enforce policy positions, the FCC has left market participants in a position of knowing the law only after it is applied to them. This situation creates an environment with no *ex ante* predictability, with no opportunity for notice and comment, and with little ability to challenge the agency's decisions in court.

Part II: Threat to Free Speech

If it persists in extracting public interest benefits from firms that create and distribute speech, the FCC may see its transaction authority limited after a facial challenge to First Amendment rights. When alerted to circumstances where government intimidation of the press is foreseeable and where appeal is difficult, courts typically take a dim view. The Supreme Court noted in a 1994 case that “laws that single out the press, or certain elements thereof, for special treatment pose a particular danger of abuse by the State.”⁶³ Because court scrutiny is higher when government

⁵⁹ Yoo, *supra* note 12, at 313.

⁶⁰ *Comcast v. FCC*, 600 F.3d 642 (D.C. Cir. 2010).

⁶¹ Yoo, *supra* note 12, at 313.

⁶² *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

⁶³ *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 640 (1994) (quotation marks omitted) (citing *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 228 (1987)). However, A “differential burden on speakers is insufficient by itself to raise First Amendment concerns.” *Leathers v. Medlock*, 499 U.S. 439, 452 (1991), citing

action is directed at portions of the press, the FCC's chosen path of empire building—extracting unreviewable concessions from firms during coercive transaction reviews—likely violates the Constitution's protection of the press and free speech.⁶⁴

Speech distributors that the FCC oversees, such as cable and satellite TV companies, are covered by the First Amendment press protections.⁶⁵ As Justice Potter Stewart wrote,⁶⁶

[T]he Free Press guarantee is in essence a structural provision of the Constitution. Most of the other provisions in the Bill of Rights protect specific liberties or specific rights of individuals: freedom of speech, freedom of worship, the right to counsel, the privilege against compulsory self-incrimination, to name a few. In contrast, the Free Press Clause extends protection to an institution.

As one federal court said in striking down regulations directed at an ISP, “Not only the message, but also the messenger receive constitutional protection.”⁶⁷ US courts' sensitivity to state intrusions into the press arise because there is a historic appetite among many lawmakers and regulators to censor undesired speech, to compel desired speech, and to compel speakers to waive their speech rights.⁶⁸

For hundreds of years, governments have targeted speech intermediaries for censorship rather than dispersed speakers and authors, who are more numerous, are difficult to identify, and are more protected by law and social norms.⁶⁹ Regulation of nascent distributors of speech throughout history is unfortunately the norm, not the exception. Ever since the spread of the

Mabee v. White Plains Publishing Co., 327 U.S. 178 (1946) and Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186 (1946).

⁶⁴ U.S. CONST. amend. I (Congress shall make no law . . . abridging the freedom of speech, or of the press. . . .).

⁶⁵ The “press” expands as the modes of information distribution change. *Lovell v. City of Griffin, Ga.*, 303 U.S. 444 (1938) (“The liberty of the press is not confined to newspapers and periodicals.”). New forms of media distribution are protected by the First Amendment. *See, e.g., City of Los Angeles v. Preferred Communications, Inc.*, 476 U.S. 488, 494 (1986) (explaining that cable companies exercise editorial discretion over content that they distribute).

⁶⁶ Potter Stewart, *Or of the Press*, 26 HASTINGS L.J. 631, 633 (1975).

⁶⁷ *Comcast v. Broward Co.*, 124, F. Supp. 2d 685, 693 (S.D. Fla. 2000).

⁶⁸ *City of Griffin, Ga.*, 303 U.S. 444 (1938) (“The struggle for the freedom of the press was primarily directed against the power of the licensor.”).

⁶⁹ Bambauer, *supra* note 12, at 85.

printing press in the 1500s, when “broadcast” media first became economical, governments have initially sought to license and exert control over the producers and distributors—the printing press,⁷⁰ the first newspapers,⁷¹ and the motion pictures⁷²—of mass communications.

Those illiberal instincts survive today. In the 20th century, US scholars and judges—like the printing press licensors of old—manufactured justifications⁷³ for why new speech distributors should face license renewals,⁷⁴ should be compelled to carry speech,⁷⁵ or should be prosecuted for transmitting speech that the government or its constituencies dislike.⁷⁶ Though First Amendment jurisprudence since the 1970s has weakened direct FCC regulation of speech, legacy FCC intrusions into a free media exist today. In the United States, then, radio and TV broadcasters, such as Sinclair Broadcasting, can be subjected to programming mandates.⁷⁷ Moreover, cable and satellite TV companies are compelled to carry video and speech from those local broadcasters.⁷⁸

⁷⁰ DAVID SCOTT KASTAN, I THE OXFORD ENCYCLOPEDIA OF BRITISH LITERATURE 420 (2006). Some present-day governments license printing presses, as in Singapore. See Newspaper and Printing Presses Act, chap. 206, part II, available at <http://statutes.agc.gov.sg/aol/search/display/view.w3p;ident=0cb3b405-4401-427b-9858-92f2a603f4bb;page=0;query=DocId%3A%224a71c728-6dbf-4de2-a730-a121b679ffac%22%20Status%3Ainforce%20Depth%3A0;rec=0#pr3-he-> (requiring a license to operate a printing press).

⁷¹ Berrin A. Beasley, *History of Journalism: Before 1861*, in ENCYCLOPEDIA OF JOURNALISM 695–96 (Christopher H. Sterling, ed.) (2009) (discussing early licensing of printers and newspapers in England and in the American colonies).

⁷² See *Mutual Film Corporation v. Industrial Commission of Ohio*, 236 U.S. 230, 243–45 (1915) (listing cases that uphold state laws regulating and licensing motion pictures).

⁷³ The Red Lion case, upholding the FCC’s equal time rules because of the scarcity of the airwaves, is particularly criticized. See Jim Chen, *Liberating Red Lion from the Glass Menagerie of Free Speech Jurisprudence*, 1 J. TELECOMM. & HIGH TECH. L. 293, 296 (2002) (“Of course, no one besides the Justices actually believes the scarcity rationale.”).

⁷⁴ 47 U.S.C. 309(k) (providing that the FCC can renew a broadcaster’s license if the broadcaster has, inter alia, served the public interest).

⁷⁵ Congress requires, for instance, that cable operators carry certain noncommercial educational broadcasters and local commercial broadcast TV channels in the cable market. See 47 U.S.C. 534, 535.

⁷⁶ For instance, the FCC fined a licensee, a college FM station, for airing an interview with Jerry Garcia of the Grateful Dead that featured profanity. *WUHY-FM, Eastern Education Radio, Notice of Apparent Liability*, 24 F.C.C. 2d 408 (1970). Federal law prohibits profanity on the airwaves. 18 U.S.C. 1464. Broadcast programming featuring drugs, oral sex, violence, cigarette advertising, and children’s advertising has also brought FCC punishment. See THOMAS G. KRATTENMAKER & LUCAS A. POWE JR., *REGULATING BROADCAST PROGRAMMING* 103–40 (1994).

⁷⁷ *NBC v. United States*, 319 U.S. 190, 215–16 (1943) (“[T]he [Communications] Act does not restrict the Commission merely to supervision of the [broadcast] traffic. It puts upon the Commission the burden of determining the composition of that traffic.”).

⁷⁸ See 47 U.S.C. 534, 535.

Therefore, our model of empire building suggests that the FCC's transaction reviews will increasingly violate free speech norms. The appetite to put speech distributors under duress is always present, and transaction reviews give the agency leverage and little risk of judicial review. Alarming, governments are increasingly looking to regulate content online even as Internet-delivered media gain constitutional protection in the United States. Legal scholars in the federal courts are concluding that Internet-based media distributors—ISPs,⁷⁹ search engines,⁸⁰ online video distributors, and social media companies⁸¹—create and disseminate information and therefore are speakers protected by the First Amendment.⁸² Congressional policy is that the Internet should be unregulated,⁸³ and the Supreme Court applies strict scrutiny to Internet regulation that has a nexus to speech.⁸⁴ Thus, regulation is more difficult, but online speech regulations are popping up in the United States and around the world.

The FCC's recent Open Internet regulations, for instance, compel Internet service providers to carry video and other content that they do not wish to carry.⁸⁵ In recent years,

⁷⁹ *Comcast v. Broward Co.*, 124 F. Supp. 2d 685, 698 (S.D. Fla. 2000) (applying strict scrutiny to a county's ISP open access requirement for a cable company and finding that the ordinance violated the First Amendment).

⁸⁰ *Langdon v. Google*, 474 F. Supp. 2d 622 (D. Del. 2007) (finding that Google's search results are protected by the First Amendment).

⁸¹ See Eugene Volokh & Donald M. Falk, *Google First Amendment Protection for Search Engine Results*, 8 J.L. ECON. & POL'Y 883 (2012) (explaining why interactive online media are protected by the First Amendment).

⁸² *Reno v. ACLU*, 521 U.S. 844 (1997) (holding that the First Amendment protects communications delivered via the Internet as much as it protects print communications). See also *Sorrell v. IMS Health, Inc.*, 131 S. Ct. 2653 (2011) ("[C]reation and dissemination of information are speech within the meaning of the First Amendment."); *Leathers v. Medlock*, 499 U.S. 439, 444 (1991).

⁸³ 47 U.S.C. 230(b) ("It is the policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet . . . unfettered by Federal or State regulation. . . .").

⁸⁴ See *Reno v. ACLU*, 521 U.S. 844 (1997).

⁸⁵ Randolph J. May, *Net Neutrality Mandates: Neutering the First Amendment in the Digital Age*, 3 I/S: J.L. & POL'Y 197, 202 (2007) ("[N]eutrality mandates invariably require ISPs to send or post content which the ISPs might prefer not to send or post . . . [and are] in effect, speech restrictions that infringe the ISPs' constitutional rights."). Some scholars argue that ISPs are not protected by the First Amendment. See, e.g., Susan Crawford, *First Amendment Common Sense*, 127 HARV. L. REV. FORUM 2343 (2014). But see *Comcast v. Broward Co.*, 124 F. Supp. 2d 685, 698 (S.D. Fla. 2000) (applying strict scrutiny to a county's ISP open access requirement for a cable company and finding the ordinance violated the First Amendment); Stuart M. Benjamin, *Common Sense and Key Questions*, 127 HARV. L. REV. FORUM 346, 347–48 (2014) ("If an Internet access provider is willing to say, 'We give you an edited Internet—the Internet we think you want,' I think they are engaged in speech under the prevailing

several states and Congress have attempted to deputize ISPs and other online intermediaries to remove indecent material and to prevent copyright infringement.⁸⁶ Lawmakers recently requested that the FCC chairman pressure Facebook to prevent terrorist and gang communications.⁸⁷ In 2015, the United Nations Broadband Commission went so far as to encourage regulators to “use their licensing prerogative to ensure that only those Telecoms and search engines” that monitor and screen “cyber violence” against women be allowed to operate.⁸⁸

Coverage of the First Amendment has broadened in recent decades, but advocates still call for compelled speech of new speech distributors. In the 1970s, courts began reversing the earlier trends, which permitted expansive regulation of media. The Supreme Court’s *Tornillo* decision⁸⁹ holds that freedom of speech is not limited to censorship but “extends also to [government] attempts to compel speech.”⁹⁰

Today, many legal scholars express frustration that the First Amendment hinders content-based regulation of modern distributors such as the Internet, cable TV, search engines, and algorithms.⁹¹ Scholars are now searching for novel justifications for why search engines and ISPs

jurisprudence.”); Brent Skorup, *ISPs Have a First Amendment Right to Block Offensive Content*, PLAIN TEXT, Nov. 17, 2015, <https://readplaintext.com/isps-have-a-first-amendment-right-to-block-content-323ca1ebdf0b#.4vmksnc0v> (providing examples of “edited” Internet access).

⁸⁶ See Derek E. Bambauer, *Orwell’s Armchair*, 79 U. CHI. L. REV. 863, 878–82 (2012). See Stop Online Piracy Act, H.R. 3261, 112th Cong. (2011).

⁸⁷ John Eggerton, *FCC’s Wheeler Connects with Facebook’s Zuckerberg*, BROADCASTING & CABLE (Dec. 8, 2015, 4:00 PM ET), <http://www.broadcastingcable.com/news/washington/fccs-wheeler-connects-facebook-s-zuckerberg/146268>.

⁸⁸ UN BROADBAND COMMISSION FOR DIGITAL DEVELOPMENT, CYBER VIOLENCE AGAINST WOMEN AND GIRLS: A WORLD-WIDE WAKE-UP CALL 48 (2015), available at http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2015/cyber_violence_gender%20report.pdf.

⁸⁹ *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). See also *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group*, 515 U.S. 557, 570 (1995) (holding that “an edited compilation of speech generated by other persons” is protected under the First Amendment).

⁹⁰ Oren Bracha, *The Folklore of Informationalism: The Case of Search Engine Speech*, 82 FORDHAM L. REV. 1629, 1646 (2014) (“By extension, this rationale also applies to attempts to dictate the mode of inclusion or prominence given to certain content.”) (citation omitted).

⁹¹ Bracha, for instance, warns that First Amendment arguments threaten to upend “the basic structure of post-New Deal constitutional law.” *Id.* at 1633. See also Jedediah Purdy, *The Roberts Court v. America: How the Roberts Supreme Court Is Using the First Amendment to Craft a Radical, Free-Market Jurisprudence*, 23 DEMOCRACY: J.

lack First Amendment protection and can be compelled to carry speech,⁹² though the success of such arguments in court is in doubt.⁹³ Because most formal regulation of content is precluded but appetite for content regulation persists,⁹⁴ the FCC relies on informal methods such as extracting conditions during transaction reviews. In fact, given deregulatory policy and norms, this tool is the most powerful one that the FCC has left.⁹⁵

For the reasons described previously, transaction review serves to achieve what the FCC cannot or refuses to achieve through formal regulation. Under existing law, the FCC can, as noted, require more racial minority, children's, health, and public affairs programming on broadcast TV and radio through rulemaking. It is also permissible for the FCC to promulgate modest regulations about industry composition if they are intended to increase viewpoint diversity in broadcast and cable TV.⁹⁶ Yet, today, the FCC is wary of formal mandates because those mandates bring unwanted congressional attention, irritate media companies that are quick to allege free speech violations, and provoke public complaints of censorship. In ways consistent with the empire-building model, the agency uses opaque, coercive pressures that end in

IDEAS 46 (2012), <http://democracyjournal.org/magazine/23/the-roberts-court-v-america/> ("[T]he [Supreme] Court has made the First Amendment a new anti-regulatory hammer."). See also Marvin Ammori, *Another Worthy Tradition: How the Free Speech Curriculum Ignores Electronic Media and Distorts Free Speech Doctrine*, 70 MO. L. REV. 59 (2005).

⁹² Bracha, *supra* note 90, at 1651 (asserting that "search engines do not qualify for First Amendment protection given to editors against compelled speech"); Crawford, *supra* note 85 (arguing that ISPs are not speakers protected by the First Amendment).

⁹³ Skorp, *supra* note 85; Susan Crawford, *Reading Brown v. Entertainment Merchants Ass'n*, SUSAN CRAWFORD BLOG (June 27, 2011), <http://scrawford.net/reading-brown-v-entertainment-merchants-assn/> (lamenting "the absolutist approach of the current Supreme Court to protection of speakers of all kinds—including distributors of speech. . .").

⁹⁴ See Marvin Ammori, *Another Worthy Tradition: How the Free Speech Curriculum Ignores Electronic Media and Distorts Free Speech Doctrine*, 70 MO. L. REV. 59 (2005).

⁹⁵ Beard et al., *supra* note 12, at 23.

⁹⁶ The Supreme Court in *Turner I* concluded that three of the FCC's main policy goals underlying regulation—(a) the preservation of free, local television; (b) the promotion of a diversity of information sources; and (c) the promotion of competition—are unrelated to the content of the message conveyed. *Turner I*, 512 U.S. at 662. See also *FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775, 798–801 (1978) (holding that the promotion of diverse views is content-neutral). See Christopher Yoo, *Architectural Censorship and the FCC*, 78 SO. CAL. L. REV. 669 (2005). Diversity and localism are types of content, however, and the holding presents a paradox. Cass R. Sunstein, *The First Amendment in Cyberspace*, 104 YALE L.J. 1757, 1778 (1995).

ostensibly voluntary commitments, thereby avoiding headline risk while allowing the agency to take credit for any public benefits.

Jawboning and informal pressures on media cannot be eliminated. It is likely beneficial to have government officials joining advocates in encouraging good media norms about, say, offering (a) diverse viewpoints, (b) respectful treatment of controversial issues, and (c) educational programming. The problem of coercion arises when those expectations are paired with the FCC's coercive power in transaction reviews. Hortatory language about diverse viewpoints and local news can transform to something more pernicious for a free media, and media companies are increasingly cooperating to satisfy their regulator's whims, including decisions related to content.⁹⁷

Firms that have been through the FCC transaction process and are likely to have transactions in the future are—for fear of FCC retaliation and poor press—not forthcoming about their motivations for various concessions. Nevertheless, the political activity and advocacy surrounding a transaction suggests which concessions will quiet a powerful transaction opponent and sate the FCC's loudest constituencies.⁹⁸ Occasionally, parties' transaction strategies become public information.

The size of the Comcast–NBC Universal merger in 2010 and the nature and amount of the concessions received news and scholarly coverage. The episode reveals what firms are willing to concede to accomplish a merger, and many of Comcast's and NBC Universal's concessions were related to hiring, pricing, and programming decisions. For instance, knowing

⁹⁷ Beard et al., *supra* note 12, at 6 (“[B]argaining in the regulatory sphere is increasing in importance, and this development may be among the most important innovations in regulation in many years.”). Bambauer, *supra* note 12, at 87 (“Internet platforms face structural incentives to knuckle under government jawboning over content.”).

⁹⁸ Beard et al., *supra* note 12, at 10 (“[T]he FCC now routinely expects the merging firms to proffer various ‘voluntary commitments’ as part of the transaction . . . to sweeten the deal for regulators and public-interest groups.”).

Commissioner Mignon Clyburn's desire for more TV programming targeted for racial and ethnic minorities, Comcast promised to add cable channels that were owned by minorities or were aimed at minority audiences.⁹⁹ After pressure from smaller cable distributors that feared a vertically integrated competitor, Commissioner Clyburn also requested that Comcast allow small cable providers easier, inexpensive access to NBC Universal content.¹⁰⁰

Comcast–NBC Universal volunteered many other conditions that the FCC will enforce. The concessions require Comcast to continue providing NBC programming to online distributor Hulu. Hulu is a joint venture of NBC Universal, 21st Century Fox, and Walt Disney Co., but NBC Universal can no longer exercise influence over Hulu operations.¹⁰¹ The merged firm was required to create a new Spanish-language broadcast channel and to expand its Spanish-language programming choices for video on demand from 35 to 300 within three years.¹⁰²

Comcast–NBC Universal agreed to purchase certain programming content (“a new weekly business news program”) from an independent producer and to use a certain business model (syndication) for that program.¹⁰³ The content-based conditions included expanding local and public interest programming¹⁰⁴ and entering agreements with local nonprofit news organizations for local reporting.¹⁰⁵ There are similar requirements for children's programming, and the FCC required the company to add 1,500 choices of video-on-demand programming targeted to children and families.¹⁰⁶ Comcast–NBC Universal is also required to spend

⁹⁹ Fernandez, *supra* note 37.

¹⁰⁰ *Id.*

¹⁰¹ FCC, Comcast–NBC Universal Conditions, appendix A at 125 (2011), <http://corporate.comcast.com/images/FCC-11-4-Appendix-A-Conditions.pdf>.

¹⁰² *Id.* at 134.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 135.

¹⁰⁵ *Id.* at 136.

¹⁰⁶ *Id.* at 137.

\$15 million per year on digital literacy, Food and Drug Administration nutritional guidelines, and childhood obesity on networks targeted to young families.¹⁰⁷ It must also transmit public access, educational, and governmental programming to 85 percent of its cable subscribers, exercise no editorial discretion over those programs, and create additional video-on-demand options.¹⁰⁸ The list goes on, and Comcast-NBC Universal's agreement showed sufficient public interest benefits to gain approval.

The FCC asserts it is preserving Comcast-NBC Universal's editorial discretion with regard to those conditions,¹⁰⁹ but this assertion is a polite fiction. The company has to file a semiannual report with the FCC identifying which parties it is working with, what the nature of its agreements is, and what the quantity of programming produced—down to individual “videos, articles, blog posts, and photos”—will be.¹¹⁰ The fact that the content required in such programming concessions is prosocial or (more dubiously) relatively easy for the merged company to accomplish serves to distract from the questionable legality of the process. Those circumstances are precisely the ones that the courts would not tolerate—finding them unconstitutional—in similar circumstances for print media.

Suppose the same regulatory process that applies to broadcast, cable, and Internet companies applied for newspaper-related transactions. Anytime major newspapers merged or sold or acquired delivery trucks, printing facilities, or some other necessary input for operation, the newspaper had to first show the FCC that the transaction served the public. Suppose further that in short time the commissioners made it publicly known to newspapers that they would substantially help the likelihood of a transaction if they made certain public interest concessions.

¹⁰⁷ *Id.* at 139.

¹⁰⁸ *Id.* at 139–40.

¹⁰⁹ *Id.* at 136.

¹¹⁰ *Id.* at 136–37.

The agency does not formalize the guidelines, but in another short time, merging newspapers promise to give a column to an activist, to publish more stories about climate change, to no longer endorse candidates, to publish new Russian-language dailies, and to give free advertising to local churches.

Most readers would likely sense that those circumstances represent a First Amendment violation and that they predictably chill the free exercise of speech. The readers would be correct. This conclusion follows from *City of Lakewood*, where a city ordinance that gave the mayor much more modest regulatory power—the ability to reject and accept applications to install newsracks on public property according to public interest determinations—was found to violate the First Amendment.¹¹¹ In that case, the Supreme Court established that a licensing law with a “nexus to expression” to give discretionary power to a governmental official is subject to facial challenge and is presumptively unconstitutional.¹¹²

[A] law requiring the licensing of printers has historically been declared the archetypal censorship statute. . . . [W]ithout standards to bound the licensor, speakers denied a license will have no way of proving that the decision was unconstitutionally motivated, and, faced with that prospect, they will be pressured to conform their speech to the licensor’s unreviewable preference.¹¹³

The court noted that “nothing in the law as written requires the mayor to do more than make the statement ‘it is not in the public interest’ when denying a permit application.” Recall that this is the very standard the FCC is bound to. In *City of Lakewood*, the court called such a standard an “illusory constraint” on the discretion of the mayor. It stated that absent binding

¹¹¹ *City of Lakewood*, 486 U.S. at 772.

¹¹² *Id.* at 759–60. See also David C. Knieriem, *Diminishing the First Amendment Rights of Newsracks: City of Lakewood v. Plain Dealer Publishing Co.*, 108 S. Ct. 2138, 37 WASH. U. J. URB. & CONTEMP. L. 243, 253 (1990).

¹¹³ *City of Lakewood*, 486 U.S. at 750, 760.

judicial or administrative construction of the public interest or some other explicit limits, the law is impermissible.¹¹⁴

The review of mergers by media companies and distributors gives the FCC substantial power to discriminate between speakers.¹¹⁵ Improper censorial motive is not required for an action to be a violation of the First Amendment.¹¹⁶ If Congress authorized expressly that the FCC could compel, say, Spanish-language programming and contracts with independent documentary producers, then the law would likely be subject to facial challenge by any party subject to the rules.¹¹⁷

Many large cable companies, broadcasters, and ISPs have several financially significant dealings with the FCC and are unlikely to challenge the law even if there is a great possibility of success. The risk of retaliation in other proceedings is too great. Furthermore, some large parties might regard the existence of opaque public interest reviews as a competitive benefit.¹¹⁸ Any challenge, therefore, would likely need to come from a smaller operator that is not as reliant on the FCC's good graces for competitive survival. Such a challenge, however, might be successful in light of the FCC's more recent transactions that single out certain speech distributors and that solicit "voluntary" programming obligations.

¹¹⁴ *Id.* at 770.

¹¹⁵ It is likely legally irrelevant that the regulator claims to be regulating merely the means of distribution and promises to leave editorial discretion to the firms. Regulating speech distribution can also violate the First Amendment. As the US Supreme Court has said, a law "cannot be saved because it relates to distribution and not to publication. 'Liberty of circulation is as essential to . . . freedom [of the press] as liberty of publishing; indeed without the circulation, the publication would be of little value.'" *Lowell v. City of Griffin*, 303 U.S. 444, 452 (1938) (citing *Ex parte Jackson*, 96 U.S. 727, 733 (1877)).

¹¹⁶ *Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue*, 460 U.S. 575, 592 (1983) ("Illicit legislative intent is not the sine qua non of a violation of the First Amendment.").

¹¹⁷ *City of Lakewood*, 486 U.S. at 759.

¹¹⁸ Bambauer, *supra* note 12, at 102–3 (explaining that the insider knowledge required to navigate informal enforcement may serve as a helpful barrier to entry).

Proposals for Reform

Creating regulation is the central function of any agency, including the FCC. However, given the potential dangers of an unfettered regulatory agency, several constraining measures have been introduced into the regulatory process. Notice and comment periods, judicial review, and other mechanisms guard against unrestrained agency action.

Those protections, however, are not present when it comes to the FCC's transaction review authority. The FCC, when it uses its transaction review authority in novel ways to condition approval on firms' concessions, is essentially engaged in rulemaking that is free from the safeguards that have been embedded in the formal rulemaking process. Moreover, as we have shown earlier, the FCC may even use its review authority to extract concessions that would be overturned by courts if implemented as an official, industry-wide rule. If the agency does not articulate predictable standards in transaction reviews, it is vulnerable to a facial First Amendment challenge that could limit the FCC's existing authority.¹¹⁹

The most straightforward proposal to guard against the problems inherent in the FCC's current approach is removal of the agency's authority to review mergers. This change could be accomplished in one of two ways.

First, the FCC could simply choose to constrain itself. As noted earlier, the Communications Act provides no general merger authority. However, the agency has treated its authority over license transfers as de facto merger review authority.¹²⁰ Reversing this position could be achieved by something as simple as the chairman of the FCC stating that the

¹¹⁹ *City of Lakewood*, 486 U.S. at 758 ("Only standards limiting the licensor's discretion will eliminate [the danger of speech infringement] by adding an element of certainty fatal to self-censorship.").

¹²⁰ FCC, *supra* note 21 (statement of Commissioner Michael O'Rielly, approving in part and concurring in part) ("... I find the conditions being imposed, albeit less onerous than some of those extracted in past merger approvals, are unrelated to the transaction at hand. . . .").

commission would no longer review mergers because such review is outside its authority under current law. Any effort to resurrect such authority for the FCC should then be explicitly given by Congress. However, it is also unlikely that the FCC would voluntarily give up this authority.

Second, if the FCC is unwilling to constrain itself, Congress could explicitly remove the FCC's authority to review mergers. It is important to note that constraining the FCC's authority to review mergers would not leave the telecommunications industry mergers unreviewed. The Department of Justice (DOJ) currently reviews telecommunications mergers, with overlapping authority with the FCC. Instead of FCC reviews, however, the transaction review could be left with DOJ or given to the FTC, whose scope and jurisdiction already covers mergers in all industries, rather than the FCC's industry-specific focus.

Ending the FCC's merger reviews and leaving the reviews with DOJ and the FTC would achieve two goals. First, it would provide for a transaction review process that has clearly delineated standards. Currently, mergers reviewed by the FTC and DOJ are subject to welfare-based standards and analysis rather than to the FCC's amorphous public interest standard.¹²¹ Second, because the FTC and DOJ both focus almost solely on anticompetitive effects across a number of industries, the incentive to use transaction review as a tool to extract other policies is much lower. The FCC, in its current form, is interested not merely in mergers but also in every facet of the telecommunications industry. This interest creates a strong incentive for the FCC to use its merger review authority to achieve other unrelated policy objectives. Such an incentive does not exist when the FTC and DOJ are reviewing mergers.

Another option, short of removing the FCC's transaction review authority, is to clearly articulate limits to the FCC's ability to condition merger approval. Specifically, the FCC's

¹²¹ See, e.g., U.S. DEP'T OF JUSTICE & FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES (2010), available at <https://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf>.

statutory authority could be defined to include only those conditions sought to remedy merger-related harm.¹²² The FCC could then be required to articulate the merger-related harms it identifies, to describe the remedy it seeks to condition approval on, and to provide some theory about how that particular condition will remedy that specific harm.

However, requiring the FCC to engage in such an analysis is useless unless there is some type of reviewability. In particular, parties should have an easier access to the appeals process for those conditions that a merging party believes to be unduly burdensome. As the process currently stands, parties for all practical purposes are unable to challenge the terms set out by the FCC. Allowing for some ex post judicial review could go a long way toward ensuring that the FCC conditions are not arbitrary, capricious, an abuse of discretion, or otherwise in violation of law.

Given the deference that courts give to agencies in the absence of clear statutory standards, such a review would require some clearly delineated standards. Congress or the FCC should provide some clear guidance on what the term *public interest* means within the context of the Communications Act. At the very least, Congress could define the public interest standard and could begin to place clear limits on the use of this standard for informal rulemaking through a transaction review.

Moreover, if Congress is truly interested in constraining FCC review authority, it should do away with the public interest standard altogether. Instead, a welfare-based standard—similar to that applied by courts in general antitrust cases—ought to be adopted. In that way, transaction reviews would shift away from the current standard, which is a grab bag of economic, social, political, and personal goals of individuals within the agency and in advocacy groups. The review could move toward becoming one that focuses on the actual

¹²² For a further discussion, see Beard et al., *supra* note 12. The FCC is empowered to enforce sections of the Clayton Act for common carriers. See also 15 U.S.C. 21(a).

competitive effects of a proposed merger. Adopting such a standard would also shift the burden within the FCC with regard to transaction review. Under a welfare-based standard, the agency would bear the burden of showing a merger's harm to competition rather than requiring merging parties to establish its benefit.

Conclusion

Regulatory agencies have natural incentives to engage in empire-building behavior, which is why most agencies have been constrained, in some way, by Congress and the courts. However, the FCC, through its public interest standard, faces few formal legal constraints on growing its power. Continuing to allow the FCC to have broad discretion to approve or deny transactions under a public interest standard violates basic rule of law norms and poses significant First Amendment problems.

As the agency uses its transaction review authority to extract concessions from individual companies, it has created a powerful tool for informal rulemaking that binds parties to policy goals that are otherwise unachievable in the formal rulemaking process. Moreover, it allows the FCC to pursue policy goals that are outside its jurisdiction. Because of such abuses, we propose doing away with the FCC's authority altogether, or, at the very least, reforming the process to better protect transaction reviews from the designs of political actors. Such reforms would be an exercise in good governance and would mitigate the possibility of a successful facial First Amendment threat to FCC transaction review.



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October 25, 2017

Chairwoman Blackburn
House Energy and Commerce
Subcommittee on Communications and Technology
Washington, DC

**CONGRESS NEEDS AN ESTIMATE FROM THE FCC OF THE LPTV & TV TRANSLATOR
RELOCATION COSTS**

Dear Madam Chairwoman:

Our Coalition requests that your Subcommittee request from the FCC a financial estimate of what it thinks the costs will be to LPTV and TV translators from channel relocations related to the incentive auction repacking process. The FCC already has a working model in its reimbursement process, and Congress needs to know the range of these costs in order to consider providing funding to displaced LPTV and TV translators.

Congress already has estimates of individual station costs from the 2016 GAO Report, *"Information on Low Power Television, FCC's Spectrum Incentive Auction, and Unlicensed Spectrum Use"* <http://www.gao.gov/products/GAO-17-135>

NAB also came up with their estimates for Class A repacking costs, which are similar to most all major market LPTV. Our Coalition has been using a blended average of what we have found out from members.

The chart below is a simple illustration of the matrix of the impacted stations and the estimated cost ranges:

2017 - 2021 LPTV & TV TRANSLATORS

ESTIMATES OF POST AUCTION DISPLACEMENTS			BIG LPTV & CA	BLENDED
ESTIMATE	GAO LOW	GAO HIGH	NAB	LPTV & TX
\$ PER IMPACT	\$50,000	\$600,000	\$350,000	\$150,000
# STATIONS				
1000	\$50,000,000	\$600,000,000	\$350,000,000	\$150,000,000
2000	\$100,000,000	\$1,200,000,000	\$700,000,000	\$300,000,000
3000	\$150,000,000	\$1,800,000,000	\$1,050,000,000	\$450,000,000
4000	\$200,000,000	\$2,400,000,000	\$1,400,000,000	\$600,000,000

Our Coalition will gladly assist your Subcommittee with any other information you need to better understand the impacts to us related to the incentive auction repacking and displacement process.

Respectfully submitted,

_____/signature/_____
Michael Gravino
Director

Congress of the United States
Washington, DC 20515

October 16, 2017

The Honorable Ajit Pai, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20536

Dear Chairman Pai,

We write to urge you to ensure the 600 MHz spectrum that was made available by the Federal Communications Commission's (FCC) broadcast incentive auction is cleared no later than July 3, 2020, as currently scheduled.

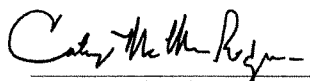
The Internet has revolutionized the lives of millions of Americans, changed the way we communicate and engage in the 21st century economy, and expanded our nation's economy. Reliable broadband internet provides significant employment, educational, health, and economic opportunities to those who have access. However, too many Americans remain unserved or underserved. One out of every ten Americans lacks broadband internet access with most of these 35 million individuals residing in rural communities. Deploying a robust broadband infrastructure across the country is not just a matter of creating jobs and stimulating economic growth here at home. Ultimately, it's a matter of economic necessity in today's globally-connected world.

Clearing the 600 MHz band as quickly as possible is a critical component of the ongoing effort to deploy high-speed internet to rural America and close the digital divide. We are concerned that delays to the 39-month repacking timeline established by the FCC will impede the billions of dollars of private sector investments in infrastructure necessary for achieving this goal. Deployment of the infrastructure and technology as a result of the auction will support millions of jobs and generate billions in economic development, much of which will benefit rural America. Additionally, rapid deployment of this spectrum is critical for the U.S. to continue its leadership in technology investment and innovation by providing an on-ramp for 5G network deployments.

We commend you for your work to increase the deployment of broadband to underserved communities in rural America and encourage you to build on these efforts by clearing the 600 MHz spectrum no later than July 3, 2020. Additionally, we support the FCC's robust waiver process, and believe that it provides the Commission with reasonable, effective, and sufficient procedures to provide flexibility for stations as they move channels. We also encourage all stakeholders to work together to find creative solutions for faster clearing where possible. Every day that the 600 MHz spectrum is not put to use represents a lost opportunity for citizens in rural America to utilize the technology and services necessary in today's economy. By encouraging a rapid, reasonable, and cost-effective transition of the 600 MHz spectrum, the FCC can help ensure that citizens in rural America enjoy the benefits that reliable, high-speed internet connectivity promise.

Thank you for your attention to our request and we look forward to your timely response.

Sincerely,



Cathy McMorris Rodgers
Member of Congress



Kevin Cramer
Member of Congress



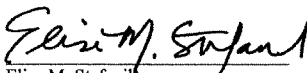
Steve Scalise
Member of Congress



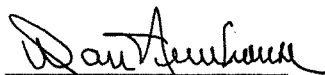
Darrell Issa
Member of Congress



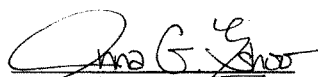
Jaime Herrera Beutler
Member of Congress



Elise M. Stefanik
Member of Congress



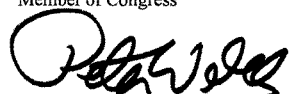
Dan Newhouse
Member of Congress



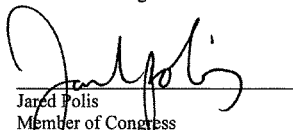
Anna G. Eshoo
Member of Congress



Doris Matsui
Member of Congress



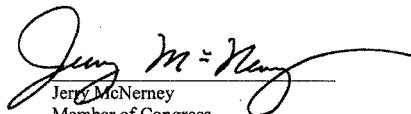
Peter Welch
Member of Congress



Jared Polis
Member of Congress



Adam Smith
Member of Congress



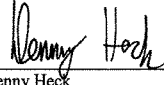
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Member of Congress



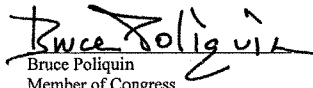
Suzan K. DelBene
Member of Congress



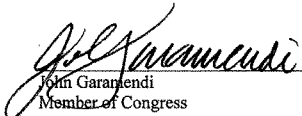
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Member of Congress



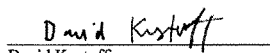
Denny Heck
Member of Congress



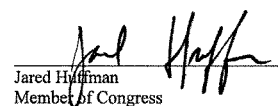
Bruce Poliquin
Member of Congress



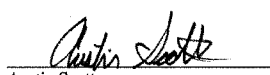
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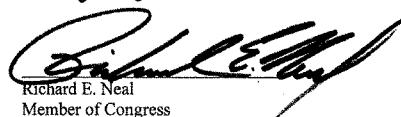
David Kustoff
Member of Congress



Jared Huffman
Member of Congress



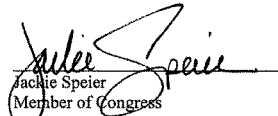
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Member of Congress



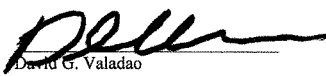
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Member of Congress



Ron DeSantis
Member of Congress



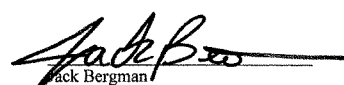
Jackie Speier
Member of Congress



David G. Valadao
Member of Congress



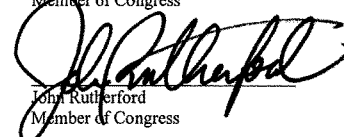
Vicente Gonzalez
Member of Congress



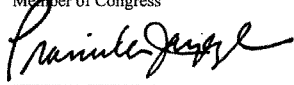
Jack Bergman
Member of Congress




Derek Kilmer
Member of Congress

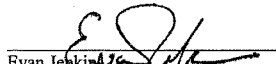


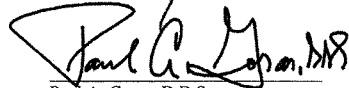
John Rutherford
Member of Congress

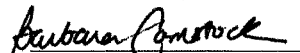



Pramila Jayapal
Member of Congress



John Moolenaar
Member of Congress

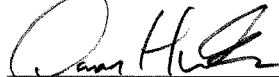

Evan Jenkins
Member of Congress



Paul A. Gosar, D.D.S.
Member of Congress



Barbara Comstock
Member of Congress



Dave Reichert
Member of Congress

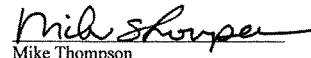

Lloyd Smucker
Member of Congress



Duncan Hunter
Member of Congress



Rick Crawford
Member of Congress


Kurt Schrader
Member of Congress

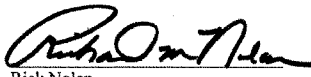

Rick Larsen
Member of Congress



Mike Thompson
Member of Congress

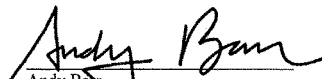

Mark DeSaulnier
Member of Congress

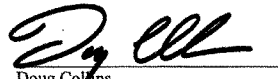

Adriano Espaillat
Member of Congress



Terri A. Sewell
Member of Congress

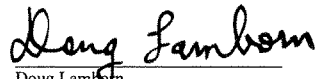

Rick Nolan
Member of Congress

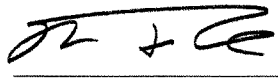

Chuck Fleischmann
Member of Congress


 Andy Barr
 Member of Congress

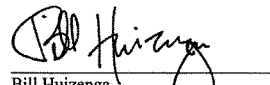

 Doug Collins
 Member of Congress



 Dennis A. Ross
 Member of Congress

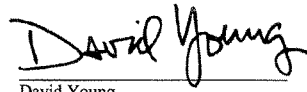

 Doug Lamborn
 Member of Congress

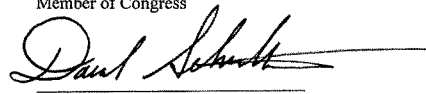

 Cedric Richmond
 Member of Congress


 Colleen Hanabusa
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 Bill Huizenga
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 Mia B. Love
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 David Young
 Member of Congress


 David Schweikert
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ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641
November 20, 2017

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Chairman Pai:

Thank you for appearing before the Subcommittee on Communications and Technology on Wednesday, October 25, 2017, 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 Wednesday, December 6, 2017. Your responses should be mailed to Evan Viau, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Evan.Viau@mail.house.gov.

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

Sincerely,



Marsha Blackburn
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Michael F. Doyle, Ranking Member,
Subcommittee on Communications and Technology

Attachment



Office of the Director

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

December 12, 2017

The Honorable Marsha Blackburn
Chairwoman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Blackburn:

Enclosed please find responses to Questions for the Record submitted for Chairman Ajit Pai regarding his appearance before the Subcommittee on Communications and Technology on October 25, 2017, at the hearing entitled "Oversight of the Federal Communications Commission."

If you have further questions, please contact me at (202) 418-2242.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy B. Strachan", written over a horizontal line.

Timothy B. Strachan
Director

Additional Questions for the RecordSubcommittee Chairman Marsha Blackburn

1. In your testimony, you cited the importance of provisions in the Subcommittee's recently passed FCC reauthorization bill that would authorize the Commission place deposits from bidders in spectrum auctions to be sent to the Treasury. Specifically, you testified this measure is "critical" because without it "the Commission currently has no way to comply with the law—and no way to move forward with any large spectrum auction.

Can you elaborate for the record on the legal and administrative impossibility of moving forward with auctions without a change in the law to allow the Commission to deposit bidder payments directly with the U.S. Treasury?

Response: Absent a legislative change, the Commission will not be able to move forward with any large spectrum auctions in the future. That would include potential auctions of the 3.5 GHz band (mid-band spectrum) or the 24, 28, 37, 39, and 47 GHz bands (high-band spectrum) in 2018 and 2019.

The current statute, at 47 U.S.C. § 309j(8)(C), states as follows: "Any deposits the Commission may require for the qualification of any person to bid in a system of competitive bidding pursuant to this subsection shall be deposited in an interest-bearing account at a financial institution designated for purposes of this subsection by the Commission (after consultation with the Secretary of Treasury)."

This requirement made it difficult for us to find a private-sector bank willing to hold the upfront payments for our last large spectrum auction (the broadcast incentive auction). In fact, after conducting market research through a request for information to potential depository institutions, the FCC determined that *no* private financial institution appeared willing to receive the upfront payments and provide adequate collateralization for the incentive auction. Placing the upfront deposits in a private financial institution without adequate collateralization would subject the United States government to an imprudent risk of loss, so the FCC sought an alternative solution for that auction.

Although the Treasury Department designated the Federal Reserve Bank of New York (FRBNY), as fiscal agent of the United States, to hold upfront payments for the Incentive Auction, the FRBNY did so in a non-interest-bearing account. Given the terms of the statute, all parties agreed this solution was a once-only, stop-gap measure for the incentive auction. The FCC and the FRBNY do not have an ongoing agreement for future auctions, and the FRBNY has previously indicated to the FCC that it would not be interested in providing these services on an ongoing basis.

For these reasons, the FCC's Office of Managing Director (OMD) does not expect to identify a private financial institution willing to set up an interest-bearing account in compliance with the statute for a large spectrum auction. This would severely impact both expected public revenues from such an auction and American leadership in wireless innovation.

2. **The Subcommittee notes recent changes in the proceeding regarding the Citizens Broadband Radio Service (GN Docket No. 12-354). It appears these changes may increase the value of the spectrum to potential bidders.**

Without legislation authorizing the Commission to place auction bidder deposits directly with the Treasury, can you estimate how much the federal government loses for deficit reduction?

Response: On October 24, 2017, the FCC proposed revisions to its rules in the 3.5 GHz band to promote investment, keep up with technological advancements, and maintain U.S. leadership in the deployment of next-generation services. The 3.5 GHz band is expected to be a core component of worldwide 5G network deployments, and these proposed rule changes could facilitate the implementation of 5G networks and accelerate deployment of a promising new generation of wireless technologies.

We expect the auction of the 3.5 GHz band would be a large spectrum auction—meaning we could not proceed with the auction without legislative action with respect to bidder deposits—based on recent wireless spectrum auctions. We note that the 3.5 GHz spectrum auction could include up to 70 MHz of mid-band spectrum. Our most recent large auctions were the broadcast incentive auction (auctioning 70 MHz of low-band spectrum with net bids of more than \$19 billion), the AWS-3 auction (auctioning 65 MHz of mid-band spectrum with net bids of more than \$40 billion), and the H-Block auction (auctioning 10 MHz of mid-band spectrum with net bids of more than \$1.5 billion).

The Honorable Brett Guthrie

1. **I understand that NHTSA has an open rulemaking on the matter of V2V communications and is coordinating with the Commission on whether or how to share the spectrum currently allocated to Intelligent Transportation Systems (ITS) in the 5.9 GHz band. Are you willing to commit to working with NHTSA and other stakeholders on this issue to ensure the band remains available for ITS use in the future, and free from in-band or out-of-band emissions from other potential users?**

Response: The FCC already is working with NTIA, which represents the Federal Government (including NHTSA) on spectrum matters, and the Department of Transportation, while evaluating the potential use of 5.9 GHz spectrum for unlicensed devices. We have not proposed to make any changes in the current allocations for ITS at 5.9 GHz at this time and will continue to monitor developments in this area. As with all spectrum, our goal is for spectrum to be put to its most efficient use.

2. **There are critical infrastructure industries like electric utilities whose wireless needs are absolutely paramount when it comes to reliability and freedom from interference, as drastic consequences can follow when their networks are disrupted by outside users. Are you willing to work with utilities on how best to harden their networks, and is there anything you can share on work you've already been doing to meet their wireless reliability needs?**

Response: I agree that the wireless reliability and resiliency needs of the electric grid are a critical priority. We have taken steps to work with utilities to address best practices for their wireless operations. In particular, the Commission's Communications Security, Reliability and Interoperability Council (CSRIC), the federal advisory committee that provides recommendations

to industry and government to ensure reliability and security of communications systems, has developed best practices for wireless network operations. These best practices apply to service providers, government agencies, equipment suppliers, and network operators—including utilities that operate their own networks.

Commission staff also coordinate with representatives from the Electricity Information Sharing and Analysis Center (E-ISAC) to determine the interdependencies between the communications industry and the transmission/transportation of electrical power. We will continue to work with our partners in the critical infrastructure industries, coordinate with E-ISAC and provide support to utilities on hardening networks and improving reliability.

Subcommittee Ranking Member Michael F. Doyle

1. **Mr. Chairman, you have highlighted the need for evidence-based, data-driven policymaking. The FCC needs quality data to allow objective assessment of both expected effects and actual effects. Can you clarify how this will be applied to the April 2017 decision to eliminate longstanding protections in the \$45 billion Business Data Services market?**

Response: In the *BDS Order*, the Commission determined that, thanks to increased competition, most—but not all—areas are now sufficiently competitive that tariffs and price caps are no longer optimal. Based on a massive and unprecedented data collection on industry service and prices, the agency developed a “competitive market test” to identify which areas would receive regulatory relief. Under that two-prong test, a county is deemed sufficiently competitive if (1) 50% of the locations with BDS demand in that county are within a half mile of a location served by a competitive provider, or (2) 75% of the census blocks in that county have a cable provider offering broadband services. In both cases, the Commission concluded that the record evidence supported lower percentage thresholds but opted to take a “conservative approach,” out of an abundance of caution, to ensure that the counties where *ex ante* regulation will now not apply are predominantly competitive. Indeed, the record showed many providers are willing to build out at least by a half-mile, with some going further. And there’s strong competition well within the half-mile threshold; about half of buildings with demand are within 88 feet of competitive fiber facilities, and 75% are within 456 feet.

In addition, the *BDS Order* reminded stakeholders that all telecommunications services remain subject to the backstop of the Commission’s fast-track complaint process, which will ensure just and reasonable rates and terms.

Going forward, the *BDS Order* directed the Wireline Competition Bureau to review data on competition every three years to determine whether there are additional regulated counties that meet the 75% threshold specified by the Commission’s competitive market test. This determination is subject to challenge from interested parties that can submit additional data in response.

2. **On the one hand, you have sought feedback on how to streamline the Form 477 process, which means less data will be available. On the other hand, you have said you plan to evaluate competition, pricing, and last-mile deployments in the BDS market at least every 3 years.**

a. What data do you expect to utilize for the review process?

Response: The *BDS Order* provides that the Wireline Competition Bureau will use Form 477 data to determine whether any additional regulated counties meet the 75% threshold specified in the competitive market test. Parties challenging those results may submit other data to the Commission for review.

Notably, the Commission is undergoing a review of the Form 477 data collection process to “examine our experience based on our current data collection in order to collect better and more accurate information on Form 477; and, to explore how we can revise other aspects of the data collection to increase its usefulness to the Commission, Congress, the industry, and the public.” Among other things, the Commission has sought comment on requiring fixed broadband providers (like those subject to the 75%-threshold test) to report more granular data.

b. When will you disclose to Congress and the public how the review will be structured and what metrics will be used as determinants of success?

Response: The *BDS Order* specifies that the Wireline Competition Bureau will review the Form 477 data on a regular three-year basis and determine whether any additional regulated counties meet the 75% threshold specified in the competitive market test. The *BDS Order* also specified the structure of the test—if there is cable broadband availability in 75% of the census blocks served by an incumbent LEC in a particular county, that county is deemed competitive. Once that analysis is complete, the Wireline Competition Bureau will release a Public Notice that lists newly competitive counties and will also provide this information on the Commission website. At that time, parties desiring to challenge these results may file petitions for reconsideration or seek full Commission review through an Application for Review.

The Honorable Yvette Clarke

1. Chairman Pai, at the Subcommittee’s October 25th FCC Oversight hearing, you seemed to testify that rolling back the FCC’s Local TV Ownership Rules would increase the number of diversely-owned TV stations. I would like to clarify your answers.

a. Will your deregulatory media ownership order (FCC-CIRC1711-06)—as opposed to any new smaller projects you are proposing— increase the number of women owned and controlled TV Stations and the number of African-American owned and controlled TV stations? Please answer yes or no, and then provide a brief explanation.

Response: I believe that actions taken in the recent Media Ownership Order on Reconsideration will help promote competition in the broadcast television industry and facilitate new entry. The Local Television Ownership Rule adopted in the Order better reflects the competitive conditions in local markets and will allow television broadcasters to improve service to their local communities.

To be sure, structural ownership rules—such as the competition-based Local Television Ownership Rule—cannot directly address the most significant barriers to station ownership, i.e., lack of access to capital and the need for technical/operational experience. But as I

testified at the hearing you mention, the Order took two important steps that *will* help address these issues.

First, it eliminated the attribution rule for television Joint Sales Agreements (JSAs). By eliminating this restriction, the Order increases access to a potential source of financing and technical assistance for new entrants. Television JSAs can help promote diverse ownership and improve program offerings, including local news and public interest programming, in local markets. (I have previously used the example of WLOO-TV, owned by Tougaloo College and managed by Pervis Parker, as an example of how JSAs can enable African-American ownership, leadership, and content-generation in broadcasting.)

Second, the Commission decided in the Order that it will adopt an incubator program to help create new sources of financial, technical, operational, and managerial support for eligible broadcasters. This program can create ownership opportunities for new entrants and small businesses, thus promoting competition and new voices in the broadcast industry. The Notice of Proposed Rulemaking accompanying the Order initiates a new proceeding to seek comment on how best to implement the Commission's incubator program.

Additionally, our consideration of this issue will be assisted by the newly established Advisory Committee on Diversity and Digital Empowerment. As you may know, this Committee lay dormant for the past few years. I rekindled it, specifically directing the creation of a working group on promoting diversity in the broadcast business. It is my hope that this committee and working group will recommend ways in which the Commission can help increase diversity throughout the communications industry.

- b. If your deregulations do not result in those increases within six months of when they go into effect, will you commit to reversing these deregulatory policies at that time? Please answer yes or no.**

Response: Next year, we will have the opportunity to review our rules once again. Consistent with our statutory mandate, in 2018 we will begin the next Quadrennial Review of our media ownership rules and will seek public comment on these regulations at that time. The decisions that we make during that review will be based on the facts in the record, including any impact of the policies we adopted this year. Moreover, I will continue to seek out ways to promote ownership diversity during my Chairmanship. In particular, I look forward to the recommendations of the Diversity Committee on how best to structure the Commission's incubator program to help promote ownership diversity in the broadcast industry.

The Honorable Debbie Dingell

1. **Chairman Pai, you noted in response to my questions at a recent FCC Oversight Hearing before the House Committee on Communications and Technology that the Federal Trade Commission (FTC) will have a role in overseeing the privacy of ATSC 3.0 users.**
 - a. **Has FCC staff coordinated with FTC staff to discuss these issues to ensure the FCC does not approve a technical standard that fails to adequately protect consumers' privacy or security?**

Response: The Commission's approval of the technical standards for ATSC 3.0 did not raise novel privacy issues requiring coordination with the FTC. If Next Gen TV broadcasters fail to ensure that consumers' personal information is protected, the FTC has broad authority to enforce consumers' privacy rights. In particular, Section 5 of the FTC Act, which prohibits unfair and deceptive practices in the marketplace, gives the FTC the authority to take enforcement action against companies that fail to adhere to their stated privacy and security policies. The FCC intends to closely monitor the transition to Next Gen TV.

2. **It is my understanding that there are several different business models for targeted advertisements under ATSC 3.0. One model includes building transmitters similar to cell towers around the DMA to do regional advertising. I understand this is a very capital intensive process with a high operating expense, but that it would not require the collection of personal information from consumers.**

- a. **Is that correct? If no personal information from consumers is required, what standards will be applied to determine whether my constituents would choose to see targeted advertisements or not?**

Response: Based on the specifications in the ATSC 3.0 technical standard, there are multiple ways in which an ATSC 3.0 broadcaster could provide geographically targeted advertising without collecting consumers' personal information. To provide geographically targeted ads, the broadcaster transmits multiple simultaneous advertisements, and the consumer's receiver makes the decision as to which ad to display. One way this can be accomplished is through the use of Single Frequency Networks (SFNs), a technique that broadcasters use to transmit signals on the same frequency from multiple antennas in a local geographic area in order to improve coverage of the broadcast station. In addition to providing improved coverage, the use of SFNs may enable a receiver to figure out where it is located by knowing from which SFN transmitter it is getting its signal and decide which advertisement to display based on this information. Geographically targeted advertising could also be enabled by the local collection by the receiver of a zip code or some other location information provided by the consumer during the set-up of the receiver. The receiver would never have to transmit that information back to the broadcaster or anyone else. Such geographically targeted advertising could allow a small regional business to advertise to only those viewers residing in its local geographic area, rather than to the entire television market.

You are correct that such geographically targeted advertising would not require the collection of personal information from consumers. There also is no need to enable consumers to opt in or opt out of such geographically relevant advertising.

3. **It is my understanding that a second business model for targeted advertisements involves delivery via the internet.**

- a. **In this scenario will the age, sex, address, and other demographic information be collected in order to deliver targeted advertising?**

Response: Given that the Next Gen TV standard is new, it is not yet known which advanced or interactive features of Next Gen TV may require viewers to provide some personal information. Broadcasters have stated that there will be opt-in procedures for the collection of consumer information, analogous to the opt-in procedures for the collection of consumer information used by smartphone apps, and that the use of any information collected will be governed by user licensing agreements of the type that are common when consumers activate

a smartphone app. If a consumer decides to provide his or her personal data, the broadcaster will be responsible for securing the data in accordance with its stated privacy and data security policies and will be subject to FTC oversight.

b. Would consumers have to provide consent in order for their data to be collected?

Response: Broadcasters have stated that there will be opt-in procedures for the collection of consumer information, analogous to the opt-in procedures for the collection of consumer information used by smartphone apps.

c. Could they choose not to provide their demographic information and not receive targeted advertisements but still receive the enhanced picture quality and public safety communications?

Response: Given that the Next Gen TV standard is new, it is not yet known how and on what terms certain aspects of the video transmissions using this standard may be offered.

d. If a consumer decides to provide their personal information, who is responsible for protecting it?

Response: In any cases in which a consumer decides to provide his or her personal data, the entity receiving that data (in this case a broadcaster) would be responsible for securing the data in accordance with its stated privacy and data security policies and would be subject to FTC oversight.

4. It is my understanding that another business model would use an encrypted signal, even for over-the-air television broadcasts that have traditionally been free.

a. Would this require consumers to use some sort of encryption key to access the signal?

Response: In the Report and Order, the Commission notes that broadcasters have acknowledged that free Next Gen TV signals may be encrypted. However, the Commission explicitly stated in the Order that any ATSC 3.0 programming that is encrypted must not require special equipment supplied and programmed by the broadcaster to decode ATSC 3.0 signals. Broadcast stations deploying ATSC 3.0 will also be required to simulcast their programming in the current DTV standard, so viewers will still be able to access unencrypted free, over-the-air programming.

b. Would such a key require a consumer to enter their age, address, gender, and other demographic information?

Response: The Commission explicitly stated in the Order that any ATSC 3.0 programming that is encrypted must not require special equipment supplied and programmed by the broadcaster to decode ATSC 3.0 signals. Broadcast stations deploying ATSC 3.0 will also be required to simulcast their programming in the current DTV standard, so viewers will still be able to access unencrypted free, over-the-air programming.

c. If the free over-the-air signal is encrypted and needs demographic information from a consumer to access it, do you still consider this service to be “free” in your opinion?

Response: The Commission explicitly stated in the Order that any ATSC 3.0 programming that is encrypted must not require special equipment supplied and programmed by the broadcaster to decode ATSC 3.0 signals. Broadcast stations deploying ATSC 3.0 will also be required to simulcast their programming in the current DTV standard, so viewers will still be able to access unencrypted free, over-the-air programming.

5. **There have been media reports that ATSC 3.0 would allow for better collection of audience data and would use this information as a sales tool for the advertisers, rather than relying on Nielsen or other measurement data.**

- a. **Will the new standards permit broadcasters to collect data on age, sex, income, address, or any other personal information?**

Response: The new technical standards for ATSC 3.0 adopted by the Commission do not include new regulations governing the collection or use of personal consumer information by broadcasters. The Federal Trade Commission has broad authority to enforce consumers' privacy rights. Additionally, broadcasters have stated that personal data collected from ATSC 3.0 receivers will be anonymized so as not to identify individual viewers and that broadcasters will have access only to data on age, gender, and zip code, to the extent that viewers are willing to share such information.

- b. **How will they be permitted to use this information?**

Response: Broadcasters have stated that personal data collected from ATSC 3.0 receivers will be anonymized so as not to identify individual viewers and that broadcasters will have access only to data on age, gender, and zip code, to the extent that viewers are willing to share such information. Additionally, any use of this information must be consistent with the particular entity's privacy and data security policies, FTC oversight, and other safeguards.

- c. **Will consumers be able to opt-out of having their data collected for this purpose?**

Response: Broadcasters have indicated that there will be opt-in procedures for the collection of consumer information, analogous to the opt-in procedures used by smartphone apps, and that the use of any information collected will be governed by user licensing agreements of the type that are common when consumers activate a smartphone app.

6. **It appears that new ATSC 3.0-capable TV sets could be susceptible to hacking, malware, and other potential computer viruses that could lead to predatory advertising instead of legitimate commercials.**

- a. **Is there anything contained in the proposal to address this potential problem?**

Response: There is nothing in the record to suggest that ATSC 3.0-capable receivers will be susceptible to hacking, malware, or computer viruses that could lead to predatory advertising instead of legitimate commercials. While Internet connectivity and the ability to transmit applications to TV receivers will be new capabilities to over-the-air broadcasting, these features are not new to television receiver manufacturers. Smart TVs with Internet connectivity and the ability to run applications that can download and display over-the-top media are already pervasive.

b. How many TV sets are in the country today, and what will happen to them when ATSC 3.0 is deployed?

Response: While the Commission does not maintain data on the number of television sets in use in the United States, Nielsen data indicate that there are approximately 119.6 million U.S. television households for the 2017-2018 television season¹¹ and it is reasonable to assume that a substantial number of these households have multiple television sets. The voluntary deployment of Next Gen TV will not affect the ability of these television sets to receive free, over-the-air broadcast television signals. This is because broadcast stations deploying ATSC 3.0 will be required to simulcast their programming in the current DTV standard to ensure that viewers can continue to receive their existing broadcast service without having to purchase any new equipment.

c. How many TV sets will need to be replaced when broadcasters are not required to carry both the current ATSC 1.0 signal and the new ATSC 3.0 signal?

Response: The Commission has not set an end date for the requirement that broadcast stations deploying ATSC 3.0 simulcast in the current DTV (ATSC 1.0) standard. The Commission has stated that it will decide this issue in a future proceeding. In addition, the record suggests that it will be possible for consumers to easily upgrade their existing television sets to receive ATSC 3.0 transmissions by connecting converter equipment, such as an external tuner dongle, set-top box, or gateway device, to the HDMI ports on their television sets. Thus, most consumers who wish to view over-the-air television in ATSC 3.0 should be able to do so without purchasing new television sets.

The Honorable Anna Eshoo

1. **Over the last year it has come to light that foreign media outlets have been using public airwaves, which are owned by the American people, to manipulate our elections and undermine our democracy. I have raised concerns in particular about RT, which the intelligence community has said they have “high confidence” interfered in our democracy. I wrote to you on May 8th urging you to consider applying broadcast transparency requirements to state-sponsored media outlets like RT so the American people can know whether foreign governments are behind the content they are viewing. Your response was ambiguous, and you refused to answer my questions.**

a. Should the Russian government, through outlets such as RT, be allowed to use our nation’s public airwaves to influence our elections?

Response: I do not believe that the Russian government should be permitted to own a broadcast station in the United States. And along those lines, I would note that Section 310(b)(4) of the Communications Act establishes a 25% benchmark for investment by foreign individuals, governments, and corporations in U.S.-organized entities that directly or indirectly control a U.S. broadcast radio station license. However, to the extent that a U.S. broadcast station wishes to air programming produced by a foreign outlet, the First Amendment and the Communications Act generally bar the Commission from interfering with a broadcast licensee’s choice of programming, even if that programming may be objectionable to many viewers or listeners.

- b. Do the American people deserve to know whether a foreign government is behind content being broadcast on our airwaves that has a direct impact on our elections?**

Response: Yes. The Commission's sponsorship identification rules require broadcast stations to disclose when they are paid or promised money, services, or other valuable consideration in exchange for the agreement to air particular programming. When this occurs, the Commission's rules require the broadcast station to announce (1) that the programming is sponsored and (2) who sponsored the programming. If RT compensated a broadcast radio or television station for transmitting RT programming, these sponsorship identification rules would apply and disclosure would be required. This requirement applies no matter the content broadcast.

- c. Will you commit to applying or consider applying broadcast transparency requirements to state sponsored media outlets like RT? Yes or no. If not, why?**

Response: As stated above, broadcast transparency requirements are already applied through the Commission's sponsorship identification rules.

- 2. The proposed Sinclair-Tribune merger would give the new company access to over 70% of American households. Such a disproportionate share of viewer access provides Sinclair an abnormal amount of ability to influence American viewers. The American people deserve access to a competitive and independent media marketplace to provide diverse viewpoints. Competition is an essential ingredient in our nation's economy and one of the major reasons our economy has succeeded and thrived.**

- a. How would consumers benefit from a single company owning 70% of the market?**

Response: The reach of the combined company is an issue that has been teed up in the Sinclair-Tribune proceeding. I do not comment on specific issues raised by transactions pending at the Commission. However, rest assured that the agency is looking at the entire record in reaching its decision.

- 3. In the time since you came before our committee, you have announced a Lifeline item for the November agenda that would effectively scrap a program specifically designed to help bridge the digital divide you consistently claim you want to bridge. The item would cap the program for people who depend on it despite the fact that studies consistently show capping does not address the "waste fraud and abuse" problems you're attempting to address. The item also takes particular aim at tribal communities who are uniquely disadvantaged when it comes to getting connected in the 21st Century.**

- a. How do you reconcile your constant rhetoric about bridging the digital divide with the fact that your "update" of Lifeline would rob essential aid from the people who need it most and who will be left in the dust without it?**

Response: I am deeply committed to promoting digital opportunity and access to modern communications services for our nation's low-income families. The Commission's November *Lifeline Reform Order* was fully consistent with this objective.

With respect to Tribal lands, the change to support facilities-based providers adopts the proposal of the *prior* Administration—a proposal that received strong support from Tribes and those that have built facilities on Tribal lands during the comment period. Additionally,

we have targeted the enhanced Tribal subsidy to rural Tribal lands where services tend to be scarcer and/or more expensive than in more urban areas—again a proposal of the *prior* Administration.

These reforms incentivize broadband deployment and curtail waste in the program by targeting enhanced Lifeline support to (a) providers that invest in or build out their own facilities and (b) residents of rural Tribal areas where the costs of providing service, and deploying and building infrastructure are high. These changes were necessary to ensure that enhanced Lifeline support serves its intended purpose of encouraging deployment and infrastructure build out on rural Tribal lands where it is most needed, rather than in cities such as Tulsa, OK. Moreover, these changes took into account discussions with and comments submitted by Tribes, Tribal organizations, and facilities-based Tribal providers advocating for the Commission to take steps to encourage broadband deployment on Tribal lands.

The November *Lifeline Reform Order* also promotes Lifeline consumer choice and ensures that Lifeline consumers receive high-quality broadband service. First, the item eliminates the “port freeze” rule that allowed Lifeline providers to lock-in Lifeline broadband consumers for a year and Lifeline telephone customers for sixty days. Second, the item clarifies that Lifeline supported mobile broadband service must use at least 3G mobile technologies and does not include sub-standard “premium Wi-Fi” services that require use at a Wi-Fi hotspot, which may not be located near the Lifeline customer’s residence or may be at commercial locations (e.g., McDonald’s) where free Wi-Fi is already available. Through this necessary clarification, the item ensures that low-income families receive high-quality broadband services.

Taken together, the targeted measures taken in the November *Lifeline Reform Order* will help bridge the digital divide by incentivizing further broadband deployment where it is most needed, promoting Lifeline consumer choice, and ensuring that Lifeline consumers receive quality broadband service.

The Honorable Jerry McNerney

1. **Chairman Pai, when I asked you about how your proposal to eliminate net neutrality protections would impact small businesses, you failed to directly answer my question.**
 - a. **If net neutrality protections are weakened, as you propose, can you commit to me that small businesses and jobs will not be hurt in my district? Please answer yes or no.**

Response: Repealing the *Title II Order* will lead to more investment throughout the United States, more jobs, and ultimately better, faster, cheaper broadband for consumers, including small businesses. I have no reason to doubt that what is true for Americans at large will be true for your constituents.

The Honorable Jerry McNerney and the Honorable Debbie Dingell

1. **Chairman Pai, at the Subcommittee’s July FCC Oversight hearing, you committed to turning over to our offices any reports, requests, memoranda, and server logs related to the alleged May 7th DDoS attacks on the FCC’s electronic systems. After receiving no response**

following your commitment, we again asked about the status of our offices' request for the above-mentioned documents. You, again, committed that you would "double-check to make sure," and that you would fulfill our outstanding request.

- a. By what date can we expect you to fulfill your commitment of July 25th to produce for our offices any and all reports, requests, memoranda, and server logs related to the alleged May 7th DDoS attacks on the FCC's electronic systems?

Response: As I indicated when you made your initial request, I could not commit to a document production absent a consultation with our legal staff. I have since been advised by our Office of General Counsel that many of the materials you are requesting are non-public and confidential, because they contain personally identifiable information (PII) or information about the FCC's information security practices. The Commission has a strong interest in protecting this information from public release. As a result, before the Commission could consider sharing these documents, I would need an official letter from the Committee clearly describing the scope of the material that is being requested as well as the methods that would be used to protect the confidentiality of this information.

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641
November 20, 2017

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

Dear Commissioner Clyburn:

Thank you for appearing before the Subcommittee on Communications and Technology on Wednesday, October 25, 2017, 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 Wednesday, December 6, 2017. Your responses should be mailed to Evan Viau, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Evan.Viau@mail.house.gov.

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

Sincerely,



Marsha Blackburn
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Michael F. Doyle, Ranking Member,
Subcommittee on Communications and Technology

Attachment

**FCC Commissioner Mignon L. Clyburn
Response to Additional Questions for the Record
October 25, 2017 Hearing before the
Subcommittee on Communications and Technology
“Oversight of the Federal Communications Commission”**

The Honorable Brett Guthrie

- 1. I understand that NHTSA has an open rulemaking on the matter of V2V communications and is coordinating with the Commission on whether or how to share the spectrum currently allocated to Intelligent Transportation Systems (ITS) in the 5.9 GHz band. Are you willing to commit to working with NHTSA and other stakeholders on this issue to ensure the band remains available for ITS use in the future, and free from in-band or out-of-band emissions from other potential users?**

Thank you for the question, Congressman. I believe the best way to resolve the issues in the 5.9 GHz band is to have advocates for the Intelligence Transportation Systems (ITS) and advocates for increased use of the band for unlicensed communications services continue to work towards a voluntary technical solution that allows both services to share the band. I commit to cooperating with our federal partners and considering all data and stakeholder concerns on this issue.

- 2. There are critical infrastructure industries like electric utilities whose wireless needs are absolutely paramount when it comes to reliability and freedom from interference, as drastic consequences can follow when their networks are disrupted by outside users. Are you willing to work with utilities on how best to harden their networks, and is there anything you can share on work you’ve already been doing to meet their wireless reliability needs?**

As you know, utility companies use spectrum in the 3.5 GHz and 6 GHz bands for their wireless networks. The companies have also expressed interest in the 4.9 GHz band that the FCC had previously allocated for public safety services. In 2012, I endorsed the FCC’s decision to explore allowing other entities, such as utility companies, access to the 4.9 GHz band and yes, I remain willing to work with utilities when it comes to network reliability.

The Honorable G.K. Butterfield

- 1. Commissioner Clyburn, earlier this year I introduced the Expanding Broadcast Ownership Opportunities Act of 2017. My bill would help increase diversity of ownership in the broadcasting industry by reestablishing the minority tax certificate program, and requiring an incubator program at the FCC. The bill also requires the Commission to report to Congress on recommendations to help increase diversity of ownership, as well as a report on whether there is a nexus between diversity of ownership or control of broadcast stations and the diversity of**

viewpoints broadcast by the stations. I believe that these policies should have bipartisan support.

- a. Do you support the minority tax certificate program? If so, why do you think it's important?**

Thank you for the question, Congressman. I strongly support reinstating a tax certificate program. Based on history, I believe that such a program can increase media diversity and business opportunities, including those owned by women and minorities. As evidence, prior to the previous program being in place, minorities owned just 40 of 8,500 U.S. radio and television stations. During the existence of the policy, minorities acquired 288 radio stations and 43 television stations. The *Expanding Broadcast Ownership Opportunities Act*, which you introduced earlier this year, would be an effective means of promoting great viewpoint diversity and I support its passage.

- b. I know that you've had a strong opinion on this issue. What else can Congress do to help increase minority and female ownership in the broadcasting industry?**

While the lack of diversity in media is apparent and glaring, solutions or answers to the question of how we transform this dismal reality of the present into a future that offers abundant opportunities for women and minorities are rarely put forth. Among the proactive actions I have called for to address this imbalance include:

- Finding ways to replicate and enhance the LPFM success story for more underrepresented groups – that are largely minority and women – who are seeking to be a part of the broadcast landscape.
 - Establish a pilot incubator program aimed at increasing the number of women and minority owners in the broadcast space.
 - When divestitures are required during merger transactions, we should urge parties to strongly consider offers from women and minority business owners.
 - Act on the Commission's independent programming NPRM.
- 2. This subcommittee has often had a robust discussion about what is being done and what can be done to buildout broadband in rural America. That is an extremely important discussion for districts like mine, but I'm also concerned that if we're not careful we may see the development of more digital deserts in urban areas where low-income neighborhoods just don't have access to affordable high-speed broadband.**
- a. Shouldn't we also be talking about making sure affordable broadband is being deployed in these low-income urban areas, and what we can do to get more broadband into the hands of low-income families and young people?**

Absolutely, Congressman. I completely understand why companies deploy their best networks where they can get the greatest return on investment. This makes business

sense. But that approach too often leaves low-income Americans behind. I have seen credible evidence that shows that in several cities across the country, low-income urban neighborhoods have less attractive broadband options than their counterparts in higher-income communities. This further disadvantages people who could most benefit from a robust broadband connection, which is contrary to the public interest.

We need to ensure that providers are living up to their obligations and if industry is not willing to provide for these communities, then we need to think creatively about what to do next. This should include enabling municipal broadband projects, incenting public-private partnerships, aggregating demand, and targeting universal service support to those areas most in need.

3. **Internet access is crucial to taking part of the 21st century U.S. economy. But for 60% of low-income families with household incomes of less than \$20,000, they have no broadband connection at home. And although this FCC has promised to close the digital divide, it seems like the one program designed to help poor people afford broadband is under constant assault. Whether it's using old data to justify reducing its rolls or blocking providers unilaterally without a vote of the Commission, the result is the same to the program- death by a thousand cuts.**

- a. **Do you believe this Commission is erecting barriers to entry for Lifeline providers who want to provide low-income people with broadband access?**

Yes, I do. It is unfortunate that the current FCC majority is embarking down a path that is likely to rip the phone away from those who are economically disadvantaged. For them, we have and will make it more difficult for willing providers to enter and stay in the Lifeline program.

For those looking to serve economically poor people, the majority appears quite comfortable in attacking even blameless companies as they force them to divest customers, lose millions of dollars even after they have entered the market, and ensuring that it will take 25 years instead of one year to enter into the nationwide market. The current majority enables providers to offer free data plan to consumers, but not if they are economically poor, they allow universal service benefits to flow in perpetuity for telecommunications companies, but not for the economically poor; they sing praises about competition and choice, but not for the economically poor; and this Administration decries consumers having to pay a minimum fee for voice service, but for the economically poor, they are just fine with suggesting just that.

Poor process and poor policy is leading to poor outcomes for those whose voices need to be heard, but are being ignored here at the FCC. I fear that the impact on the program, and on people from this majority's actions will be severe, maybe even terminal.

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS
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2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641
November 20, 2017

The Honorable Michael O'Rielly
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Commissioner O'Rielly:

Thank you for appearing before the Subcommittee on Communications and Technology on Wednesday, October 25, 2017, 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 Wednesday, December 6, 2017. Your responses should be mailed to Evan Viau, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Evan.Viau@mail.house.gov.

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

Sincerely,



Marsha Blackburn
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Michael F. Doyle, Ranking Member,
Subcommittee on Communications and Technology

Attachment



Mike O'Rielly
Commissioner

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON DC

December 4, 2017

Via U.S. Mail and Email

Mr. Evan Viau
Legislative Clerk
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Re: Questions for the Record
October 25, 2017 Hearing before the House Energy and Commerce
Subcommittee on Communications and Technology
"Oversight and Reauthorization of the Federal Communications Commission"

Dear Mr. Viau:

Please find enclosed my responses to the questions for the record in connection with my testimony at the October 25, 2017 hearing entitled "Oversight and Reauthorization of the Federal Communications Commission."

Thank you and please do not hesitate to contact me if you should have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mike Rielly".

Michael O'Rielly
Commissioner

Enclosure
cc w/enc: Evan.Viau@mail.house.gov

Additional Questions for the Record to FCC Commissioner Michael O'Rielly

Subcommittee Chairman Marsha Blackburn

1. In your testimony you cited the importance of provisions in the Subcommittee's recently passed FCC reauthorization bill that would authorize the Commission place deposits from bidders in spectrum auctions to be sent to the Treasury. Specifically, you testified this measure is "critical" because without it "the Commission currently has no way to comply with the law – and no way to move forward with any large spectrum auction."

Can you elaborate for the record on the legal and administrative impossibility of moving forward with auctions without a change in the law to allow the Commission to deposit bidder payments directly with the U.S. Treasury?

The unwillingness of financial institutions, including the U.S. Federal Reserve Bank of New York, to accept and hold bidder deposits is a severe problem and I am aware of no legal or administrative options to conduct a spectrum auction without addressing this statutory quirk, as the Commission does not have the authority to supersede the law — even for good cause. This means that no auctions will be held until the law is changed via legislative efforts, including those already before the Subcommittee, such as the "Spectrum Auction Deposit Act" introduced by Representatives Guthrie and Matsui. Congress should expect that no spectrum auction revenues, beyond those that have already been collected, will be forthcoming in the meantime.

2. The Subcommittee notes recent changes in the proceeding regarding the Citizens Broadband Radio Service (GN Docket No. 12-354). It appears these changes may increase the value of the spectrum to potential bidders.

Without legislation authorizing the Commission to place auction bidder deposits directly with the Treasury, can you estimate how much the federal government loses for deficit reduction?

While the Commission is still in the process of seeking comments in response to its recent 3.5 GHz Notice of Proposed Rulemaking (NPRM), it is not unreasonable to assume that a number of proposals made in that document will make it into our final rules. These changes — such as longer licensee terms, license renewal expectancy, auction modifications, and larger geographical license areas — should enhance the value of the band when eventually set for auction. These changes and others will provide prospective auction participants the needed certainty that their investments won't be stranded and would make this important mid-band spectrum attractive for larger 5G wireless mobile and fixed deployments, thus increasing the overall auction interest and the number of potential bidders. Quantifying any added auction value may be difficult at the time, but it should be in the multiple billions of additional auction receipts.

If the Commission continues to be precluded from holding this auction because of the bidder deposits issue, the Federal government could lose a good percentage of this revenue permanently as potential bidders find other uses for their funds, including purchasing spectrum licenses on the secondary market. Moreover, delaying this auction could disrupt

future auctions for complementary bands the Commission is exploring for commercial use, such as 3.1- 3.55 and 3.7- 4.2 GHz or even the millimeter waves above 24 GHz, causing additional revenue losses.

The Honorable Brett Guthrie

- 1. I understand that NHTSA has an open rulemaking on the matter of V2V communications and is coordinating with the Commission on whether or how to share the spectrum currently allocated to Intelligent Transportation Systems (ITS) in the 5.9 GHz band. Are you willing to commit to working with NHTSA and other stakeholders on this issue to ensure the band remains available for ITS use in the future, and free from in-band or out-of-band emissions from other potential users?**

As you know, the Commission in 1999 allocated the 75 MHz between 5.850 and 5.925 for Digital Short Range Communications (DSRC). While the vision of what DSRC might offer in terms of safety generally seemed meritorious, the pace of technology development has been quite dreadful. During this same time period, a variety of technologies have been developed and deployed in other spectrum bands that replicate uses once envisioned by DSRC. In addition, advances in autonomous vehicles have further called into question the efficacy of DSRC. For these reasons and others, I believe that the Commission should reevaluate whether DSRC will ever be widely deployed and adopted both in automobiles and infrastructure, which are necessities if it is to provide increased overall vehicle safety. If not, the Commission will have to consider whether this highly prized spectrum should be reallocated — not just opened for sharing — for other valuable purposes, including additional unlicensed services. Given these circumstances, it would seem inappropriate to commit at this time to permanently reserving spectrum for DSRC. Moreover, it would be premature to determine that, if DSRC is not continued, the 5.9 GHz band should lay dormant awaiting some unidentified and undefined other ITS safety technology.

- 2. There are critical infrastructure industries like electric utilities whose wireless needs are absolutely paramount when it comes to reliability and freedom from interference, as drastic consequences can follow when their networks are disrupted by outside users. Are you willing to work with utilities on how best to harden their networks, and is there anything you can share on work you've already been doing to meet their wireless reliability needs?**

All spectrum license holders, including electric utilities, deserve protection from harmful interference as provided for under Commission rules, including vigorous Commission investigations and enforcement actions against any party found in violation of our rules. This is one reason I have spent so much time on the issue of pirate radio “broadcasting” and its impact on licensed AM and FM radio stations. In terms of electric utilities, I would be happy to explore ways to ensure their spectrum license rights are appropriately protected. As part of this, I would want to make sure that we consider technology advances, which are narrowing protections once deemed necessary.

The Honorable Yvette Clarke

- 1. Commissioner O’Rielly, at the Subcommittee’s October 25th FCC Oversight hearing, you seemed to testify that rolling back the FCC’s Local TV Ownership Rules would increase the number of diversely-owned TV stations. I would like to**

clarify your answers.

As I testified at the Subcommittee's October 25th FCC Oversight hearing, the number of women and African-American owned and controlled TV stations in the United States is abysmally low. In fact, according to the Commission's most recent report on the ownership of commercial broadcast stations, women collectively or individually held a majority of the voting interests in 102 full power commercial TV stations, or 7.4 percent. African Americans fared even worse, holding collectively or individually a majority of the voting interest in 12 full power commercial television stations, or 0.9 percent.¹ It is important to note, however, that this ownership situation resulted under the FCC's archaic media ownership rules, which we took a major step to modernize in November. I believe that updating our rules to reflect the actual marketplace will allow broadcasters to better compete and potentially thrive in the increasingly dynamic marketplace. Congress shared this sentiment when it passed the Telecommunications Act of 1996, which included Section 202(h) that required the Commission to review its rules on broadcast ownership every four years in order to "determine whether any of such rules are necessary in the public interest as the result of competition" and to "repeal or modify any regulation it determines to be no longer in the public interest."² As I stated at the hearing, the current rules have not worked to promote diversity in media ownership. We ought to try something new.

- a. **Do you believe that the Chairman's deregulatory order (FCC-CIRC 1711-06)-as opposed to any new smaller projects you are proposing-will increase the number of women owned and controlled TV stations and the number of African-American owned and controlled TV stations? Please answer yes or no, and then provide a brief explanation.**

Yes. I believe that modernizing the FCC's media ownership rules, as well as eliminating burdensome administrative requirements imposed on both broadcasters and cable operators, will benefit the entire media ecosystem, including diversely-owned and controlled TV stations. These reforms vary from eliminating cross-ownership bans and the "eight voices test" to various rulemakings seeking to dispose of forms regulatees must file at the Commission that do not serve the public interest (or any particularly purpose) and interpreting "written notice" to include electronic notice. One rule we hope to eliminate actually requires broadcasters and cable operators to maintain paper copies of FCC rules. It boggles the mind to think that this requirement is still being imposed on relevant parties. Importantly, the costs imposed by government red tape adversely affect small businesses, which are more likely to be diversely-owned.

- b. **If your deregulations do not result in those increases within six months of when they go into effect, will you commit to reversing these deregulatory policies at that time?**

No. Under the Commission's prior regulations, the number of diversely-owned and controlled TV stations did not meaningfully increase. This includes rules like the

¹ FCC, Media Bureau, Third FCC Form 323 Report on Ownership of Commercial Broadcast Stations as of October 1, 2015 (2017), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-344821A1.pdf.

² Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996).

Newspaper-Broadcast Cross Ownership Rule that has been in place since the 1970s. After more than four decades of rules that did not work to promote localism, competition, or viewpoint diversity, I believe we should give a deregulatory approach a sufficient chance.

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS
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Majority (302) 226-2927
Minority (202) 225-3841
November 20, 2017

The Honorable Brendan Carr
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Commissioner Carr:

Thank you for appearing before the Subcommittee on Communications and Technology on Wednesday, October 25, 2017, 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 Wednesday, December 6, 2017. Your responses should be mailed to Evan Viau, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Evan.Viau@mail.house.gov.

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

Sincerely,



Marsha Blackburn
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Michael F. Doyle, Ranking Member,
Subcommittee on Communications and Technology

Attachment



Federal Communications Commission
Washington, D.C. 20554

Brendan Carr
Commissioner

December 5, 2017

Via U.S. Mail and Email

Mr. Evan Viau
Legislative Clerk
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Re: Questions for the Record
October 25, 2017, Hearing before the House Subcommittee on
Communications and Technology
"Oversight of the Federal Communications Commission"

Dear Mr. Viau:

Please find enclosed my responses to the questions for the record in connection with my testimony at the October 25, 2017 hearing entitled "Oversight of the Federal Communications Commission."

Please do not hesitate to contact me if you should have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be "B Carr", with a long horizontal line extending to the right.

Brendan Carr

FCC Commissioner Brendan Carr
Questions for the Record
House Subcommittee on Communications and Technology Hearing:
“Oversight of the Federal Communications Commission”
October 25, 2017

The Honorable Brett Guthrie

1. **I understand that NHTSA has an open rulemaking on the matter of V2V communications and is coordinating with the Commission on whether or how to share the spectrum currently allocated to Intelligent Transportation Systems (ITS) in the 5.9 GHz band. Are you willing to commit to working with NHTSA and other stakeholders on this issue to ensure the band remains available for ITS use in the future, and free from in-band or out-of-band emissions from other potential users?**

In 2013, the FCC launched a rulemaking that sought comment on ways that the agency might open up the 5.9 GHz band for unlicensed use while balancing the interests of incumbent DSRC interests. In 2016, the Commission issued a Public Notice seeking to refresh the record in the FCC's proceeding. Though I was not a Commissioner when the agency took those actions, I look forward to working with all stakeholders as the FCC moves forward with its proceeding and reaches a determination that best serves consumers and the public interest. As always, I welcome the opportunity to learn from NHTSA's views on these important issues.

2. **There are critical infrastructure industries like electric utilities whose wireless needs are absolutely paramount when it comes to reliability and freedom from interference, as drastic consequences can follow when their networks are disrupted by outside users. Are you willing to work with utilities on how best to harden their networks, and is there anything you can share on work you've already been doing to meet their wireless reliability needs?**

Commission licensees expect to use their licensed spectrum free from harmful interference. And the FCC has a key role to play when it comes to ensuring that our communications networks are hardened against cyber and related attacks that seek to disrupt communications networks. I support the FCC's efforts, in conjunction with the Department of Homeland Security, to address these issues and promote resilient and reliable communications networks. I welcome the chance to continue to work with stakeholders on these important issues.

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3841
November 20, 2017

The Honorable Jessica Rosenworcel
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Commissioner Rosenworcel:

Thank you for appearing before the Subcommittee on Communications and Technology on Wednesday, October 25, 2017, 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.

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

Sincerely,



Marsha Blackburn
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Michael F. Doyle, Ranking Member,
Subcommittee on Communications and Technology

Attachment

House Energy & Commerce Subcommittee on Communications and Technology
 “Oversight of the Federal Communications Commission”

October 25, 2017

Questions for the Record for
 FCC Commissioner Jessica Rosenworcel

The Honorable Brett Guthrie

1. **I understand that NHTSA has an open rulemaking on the matter of V2V communications and is coordinating with the Commission on whether or how to share the spectrum currently allocated to Intelligent Transportation Systems (ITS) in the 5.9 GHz band. Are you willing to commit to working with NHTSA and other stakeholders on this issue to ensure the band remains available for ITS use in the future, and free from in-band or out-of-band emissions from other potential users?**

Last year, the Department of Transportation’s National Highway Traffic Safety Administration (NHTSA) initiated a rulemaking that proposed to require all light vehicles to be equipped with V2V communication technology. While this proceeding remains pending, I understand it was removed from the Office of Management and Budget’s list of regulations actively under consideration.

Nonetheless, the FCC, in close coordination with the Department of Transportation and the Department of Commerce, continues to move forward to update and refresh the record on the status of potential sharing solutions between unlicensed devices and Dedicated Short Range Communications (DSRC) systems operating under the Intelligent Transportation Service (ITS). That process includes a three-phase test plan, with collaborative testing by the FCC, the Department of Transportation, and the National Telecommunications and Information Administration (NTIA). Through a record refresh and vigorous—but timely—testing of prototypes, I anticipate that we can develop a pathway forward that protects DSRC safety-of-life functions while promoting innovation and expanding the unlicensed services that American consumers seek. I support these collaborative efforts, and I commit to continuing to work with NHTSA and other stakeholders on this issue.

2. **There are critical infrastructure industries like electric utilities whose wireless needs are absolutely paramount when it comes to reliability and freedom from interference, as drastic consequences can follow when their networks are disrupted by outside users. Are you willing to work with utilities on how best to harden their networks, and is there anything you can share on work you’ve already been doing to meet their wireless reliability needs?**

Across the board, FCC policies should support reliable and resilient communications service. Moreover, the agency should be mindful of the consequences of its policies on critical infrastructure providers that rely extensively on communications for continuity of service. To this end, I have called on the FCC to study the impact of Hurricanes Harvey, Irma, and Maria on network recovery and in its wake develop a plan for fixing any vulnerabilities we identify.

Moreover, I support past efforts of the FCC's Communications, Security, Reliability, and Interoperability Council (CSRIC) to develop a series of best practices that promote reliable networks, as well as the Wireless Network Resiliency Cooperative Framework, which builds upon the CSRIC recommendations. Recently, the agency sought input through this council with respect to security issues for new 5G networks. I am hopeful that practical security and reliability practices will result—including ones that take into consideration the impact of these new networks on infrastructure industries dependent on communications.