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MANAGEMENT PRACTICES AT THE FEDERAL COMMUNICATIONS COMMISSION: THE CHAIRMAN REPORTS

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

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MANAGEMENT PRACTICES AT THE FEDERAL COMMUNICATIONS COMMISSION: THE CHAIRMAN REPORTS

FRIDAY, OCTOBER 6, 2000

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 12:32 p.m., in room 2247, Rayburn House Office Building, Hon. Stephen Horn (chairman of the subcommittee) presiding.

Present: Representatives Horn, Walden, Turner, and Owens.

Staff present: J. Russell George, staff director and chief counsel; Earl Pierce, professional staff member; Bonnie Heald, director of communications; Bryan Sisk, clerk; Elizabeth Seong, staff assistant; George Fraser and Trevor Petigo, interns; Trey Henderson, minority counsel; Jean Gosa, minority clerk; and Earley Green, minority assistant clerk.

Mr. HORN. A quorum being present, the Subcommittee on Government Management, Information, and Technology will come to order.

Today's hearing is the subcommittee's 90th hearing in this Congress during which we've covered a wide range of issues. We successfully prodded the executive branch departments and agencies to prepare their computers for Y2K, we highlighted government agencies' inability to balance their books, and we've examined the government's efforts to protect Federal computers from malicious attacks.

Today's hearing touches on all of those areas and more. We will examine management practices at the Federal Communications Commission. The Commission was established by the Communications Act of 1934. Since its inception, the FCC has been responsible for interstate communications systems from the early days of radio, then television, and now satellite and cable communications.

The Commission oversees the licensing of approximately 3 million companies and station owners. Its five members are nominated by the President and confirmed by the Senate. To help ensure the nonpartisan role of this independent commission, no more than three members can be members of the same political party.

In 1994 the FCC began auctioning off frequency spectrums. These auctions have brought $15.3 billion to the U.S. Treasury. Last year alone, the FCC collected more than $1 billion from the

auctions. But as in most business propositions, the auction process has not been trouble free.

For example, 5 years ago, NextWave Communications Inc. won a bid gaining rights to the use of a spectrum, agreeing to pay $4.7 billion for the airwave frequency. After making a down payment of $500 million, the company declared bankruptcy. That case resulted in a protracted court battle delaying resale of the spectrum, which is now thought to be worth about $18 billion.

We're interested in learning more about the extent of this type of problem. We want to examine the management practices and the challenges facing the Commission in the increasingly complex world of communications.

I welcome our witnesses today. I look forward to your testimony. And I yield now to the gentleman from Texas, the ranking member, Mr. Turner.

Mr. TURNER. Thank you, Mr. Chairman.

Clearly, the FCC is a very important Federal agency, with very significant responsibilities that deserve the oversight of the Congress. And in our effort in carrying out our responsibility as a subcommittee to give that oversight, we are here today to hear from the witnesses before us.

The FCC has as its primary goal, as I understand it, the promotion of competition in communication, protection of consumers, and to support access for every American to the existing and future communications services.

The purpose of our hearing today is to be sure that the FCC has the necessary tools, the resources, and the management practices in place to accomplish those very important goals.

So we are looking forward to hearing from each of our witnesses. And I thank the chairman for calling this hearing today so that we might have the opportunity to carry out the responsibility we have of oversight of this agency.

Mr. HORN. I thank the gentleman.

And now for the witnesses, if you have not been a presenter before us, this is an investigative committee. We do ask you to be sworn in. We do have your very fine papers, and if you would like to summarize, we would appreciate it in, say, 5, 7 minutes. Then that gives us more time for questions.

So if you will stand and raise your right hands.

[Witnesses sworn.]

Mr. HORN. The clerk will note that the three presenters have affirmed the oath.

And we now begin with the first of them. H. Walker Feaster III, Inspector General, Federal Communications Commission.

Mr. Feaster.

STATEMENTS OF H. WALKER FEASTER III, INSPECTOR GENERAL, FEDERAL COMMUNICATIONS COMMISSION; ADAM THIERER, RESEARCH ANALYST, HERITAGE FOUNDATION; AND JEFFREY EISENACH, PRESIDENT, ACCOMPANIED BY RANDY MAY, DIRECTOR OF COMMUNICATION STUDIES AND SENIOR FELLOW, THE PROGRESS & FREEDOM FOUNDATION

Mr. FEASTER. Thank you, Mr. Chairman. Mr. Chairman, Ranking Member, I appreciate the opportunity to appear before you

today to discuss the accomplishments of the FCC's Office of Inspector General and to share with you those activities that have aided the FCC's efforts to enhance its efficiency and effectiveness.

It is especially rewarding to Inspectors General when the Congress of the United States takes an interest in our continuing efforts to improve Federal programs and operations.

The FCC's Office of Inspector General was established in 1989 as a result of the amendments to the Inspector General Act of 1978. The office is staffed with nine people and has an annual budget of approximately $1.1 million.

During my years as IG, my approach has been to focus on major issues of agency-wide significance. This approach has resulted in audits, investigations, and related activities in the areas of information technology, procurement and contract administration, financial management and program management. In order to better familiarize you with our efforts, I will briefly review some of the very significant activities.

In 1992, the Commission engaged in an agency-wide effort to modernize its automated systems. By 1994, the FCC had equipped all of its employees with personal computers and connected these computers internally via an intranet and to the world via the Internet. This effort served as the backbone of a system that has allowed the Commission to meet the challenges that must be faced on a day-to-day basis.

The Commission also invested heavily in automated systems that permit its customers to interact with the Commission using computer technology. In response to this major commitment of resources and as the Commission grew more dependent on automated systems technology, my office commenced work in selected critical areas. We initially focused on the physical and environmental security of computer systems.

As our reliance on computers grew, our concern about the external security to the network increased. In 1998, my office began working with individuals from the Information Technology Center and the Commission's bureaus and offices to develop a systems development life-cycle model. This will give the Commission a standard model to use as it develops its computer systems in the future.

My office has also done considerable audit work related to Y2K conversion. We provided the chairman independent assessments of the Commission's progress toward the successful conversion to the year 2000.

In summary, my office has been an active participant in the Commission's evolution to technology-based organization. The Commission has made substantial progress in the management and security of its computer systems. However, based upon the findings in the recently concluded fiscal year 1999 financial statement audit, additional efforts must be undertaken to bring the Commission into full compliance with the OMB Circular A–130, requirement for a comprehensive security plan. It also needs to accelerate its efforts to develop and test its computer contingency plans.

Like many other agencies in the Federal Government, the FCC has expanded its use of contractors to meet its many needs in lieu of hiring additional staff. Since 1997, my office has been routinely conducting floor checks, selected voucher reviews, and incurred cost

audits to monitor the Commission's administration of contract funds. It is my belief that the risk in this area has been significantly reduced through extensive efforts by the management and my office.

In the mid-1990's, the FCC made a major commitment to improve the financial operations of the Commission. Recognizing this change, my office began to look at the critical components of the Commission's financial system. In 1998, we conducted a special review of the Commission's existing collection system.

Of major significance is the Commission's commitment to improve its financial management has been the completion of a financial statement audit for fiscal year 1999. The result of this audit was the issuance of a qualified opinion on the financial statement. This qualification involved property, plant, and equipment documentation and unfunded liabilities.

I am quite pleased by the progress that the Commission is making in the area of financial management. While the efforts of my office have identified a significant number of issues that must be dealt with in the years and months ahead, it is my view that the Commission's commitment to improved operation in this area remains firm. My office will continue to monitor the implementation of our recommendations from various audits we have completed in the past. We are currently conducting an audit of the fiscal year 2000 financial statement and related reports to test the policies and procedures that have been put in place as a result of our recommendations.

One of the statutory functions of my office is to conduct and supervise audits and investigations related to program operations. During the fiscal year we have increased the scope of our activities to include selected operating programs that will require additional oversight. We have currently three projects under way in this area. The first is a special review of the management of nonpublic information, the second is an audit of the operational effectiveness and efficiency of the Commission's national consumer center, and the third project is an audit of the FCC's performance as it seeks to fully address the requirements of the Government Performance and Results Act.

The results of these activities and audits will be available to the Congress and FCC management in fiscal year 2001.

Another major responsibility of an Inspector General is to conduct investigations of alleged misconduct on the part of government employees, contractors or other recipients of government funds. Over my years as IG, my office has been involved in a wide variety of allegations. Our caseload runs about 20 to 30 cases a year, and it has included, for example, employee theft of supplies, misuse of computer equipment, attorney misconduct in a proceeding, abuse of authority by senior officials, improper conduct by employees related to a contract award, and operating a business on government time and with government equipment.

It is important to note that in all our inquiries and investigations, the rights of employees are fully protected. When conducting interviews, employees are given the appropriate legal warnings, depending upon the situation. During the interview, they are permitted to be accompanied by a union official, a private attorney, or

an individual of their choice. We also protect the information gained in the interview process to the fullest extent of the law.

In closing, I'd like to thank you for the opportunity to review the operations of my office with you. I believe that the Office of Inspector General has had a meaningful impact upon the operations of the Commission. We have met the challenge that you, the Congress, have set before us in the law that established my office. My staff and I will work vigorously to build upon this foundation.

I will be glad to answer any questions you might have. Thank you.

Mr. HORN. Thank you very much.

[The prepared statement of Mr. Feaster follows:]

Statement of

H. WALKER FEASTER III
INSPECTOR GENERAL
FEDERAL COMMUNICATIONS COMMISSION

Before the

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION AND TECHNOLOGY

COMMITTEE ON GOVERNMENT REFORM

UNITED STATES HOUSE OF REPRESENTATIVES

On the

MANAGEMENT PRACTICES
OF THE
FEDERAL COMMUNICATIONS COMMISSION

OCTOBER 2, 2000

Introduction

Mr. Chairman and Members of the Subcommittee!

I appreciate the opportunity to appear before your subcommittee today to discuss the accomplishments of the FCC's Office of Inspector General and to share with you those activities that have aided the FCC's efforts to enhance its efficiency and effectiveness.

It is especially rewarding to an Inspector General when the Congress of the United States takes an interest in our continuing efforts to improve federal programs and operations.

Office of Inspector General

The FCC's Office of Inspector General was established in 1989 as a result of amendments to the original 1978 Inspector General (IG) Act that created Inspectors General in selected Executive Branch agencies. These '88 amendments created Offices in designated federal entities (DFE) headed by an Inspector General appointed by the agency head.

Like our Presidentially-appointed and Senate-confirmed counterparts in the larger IG offices, DFE Inspectors General are tasked by the Inspector General Act to (1) promote economy, efficiency, and effectiveness in the administration of, and (2) to prevent and detect fraud and abuse in, agency programs and operations. The only difference between the two types of offices is usually one of size.

At the FCC, the Office of Inspector General is staffed with nine people and has an annual budget of approximately $1.1 million. We also have contracted with private auditing and consulting firms to augment our staff for selected projects. In the past we have made extensive use of contractors in IT security and financial audit.

Because of our limited size it is necessary to prioritize our efforts in order to make effective use of available resources. Over my five plus years as IG, my approach has been to focus on major issues of agency wide significance. Or, in other words, we tend to conduct oversight on issues of broad public interest, large expenditures of funds, major resource investments or high financial risk. We also monitor issues that are identified by the GAO and the IG community as government-wide management challenges.

Over the past five years this approach has resulted in audits, investigations, and related activities in the following broad areas:

- Information Technology
- Procurement and Contract Administration
- Financial Management
- Program Management

In order to better familiarize you with our efforts I will briefly review some of our more significant activities in the four areas identified above.

Information Technology

In 1992, the Commission engaged in an agency-wide effort to modernize it's automated information systems. The goal of the program was to replace the Commission's obsolete equipment and systems with entirely new information system architecture to meet our mission needs. To accomplish the objectives of this program, the Commission moved from a centralized mainframe data processing environment to a distributed network-based processing environment. By 1994, the FCC was well on its way to bringing the agency into the computer age by equipping all of its employees with personal computers and connecting these computers internally via an Intranet and to the world via the Internet. This effort served as a backbone of a system that has allowed the Commission to meet the challenges that must be faced on a day-to-day basis. The Commission also invested heavily in automated systems that permit its customers to interact with the Commission using computer technology.

In response to this major commitment of resources and as the Commission grew more dependent on automated systems technology my office commenced work in selected critical areas. We initially focused on **physical and environmental security**. The objective of this effort was to ensure that network components were adequately protected. Many of the problems found in this area were the result of trying to retrofit new technology to an old building and have been resolved by our move to a new building.

As our reliance on computers grew, our concern about the **external security** of the network increased. Our efforts to assist the Commission's Chief Information Officer (CIO) and Computer Security Officer (CSO) resulted in a series of audits by our information security auditors that resulted in recommendations to improve selected aspects of the computer systems. For example, we conducted Internet penetration studies and reviewed the security of remote access to the network. In cases where vulnerabilities were identified and could be eliminated or reduced in a short period of time the CIO and CSO took immediate action to resolve the problem. In other situations where fixes required substantial work or resources, longer-term plans were developed to eliminate the vulnerability. This was the case in an audit of the Commission's **Consumer Information Center IT Security** that we recently have completed. We found that general controls governing operation of the IT infrastructure are not sufficient to meet minimum-security requirements. The audit report contained one hundred three recommendations for corrective action. Commission management concurred with all recommendations and is in the process of implementing them in the months ahead.

After initially focusing on the security of the Commission's Information Technology infrastructure, we began to examine other components of the program. In 1998, while conducting a review of the Commission's collection system, we identified weaknesses in the Commission's information systems development process. As a result, we began

working with individuals from our Information Technology Center (ITC) and the Commission's Bureaus and Offices, to develop a Systems Development Life Cycle (SDLC) model. This will give the Commission a standard model to use as it develops its computer systems in the future. The model is currently being "piloted" on a series of development efforts and will be implemented later this fall. A structured systems development process, combined with effective project management and active user participation, should significantly reduce the risks commonly associated with developing information systems.

My office has also done considerable audit work related to Y2K. In early 1997, staff from my office began to monitor Commission readiness activities by attending meetings of the Commission's Year 2000 readiness task force. Early last summer we began to conduct reviews of Commission efforts related to the **Year 2000 Program.** From August 1999 until early November 1999 we provided the Chairman, the Commission, and the Chief Information Officer with independent assessments of the Commission's progress toward a successful conversion to the Year 2000. The Commission successfully transitioned to the year 2000 without a disruption to operations.

In summary, my office has been an active participant in the Commission's evolution to a technology-based organization. We have provided FCC management with independent and expert advice in the information technology area that assisted them in mitigating the risks associated with modern computer technology. The Commission has made substantial progress in the management and security of it computer systems. However, based upon the findings in the recently completed **FY1999 Financial Statement** audit, additional efforts must be undertaken to bring the Commission into full compliance with OMB Circular A-130 requirement for a comprehensive security plan. It also needs to accelerate its efforts to develop and test its computer contingency plans.

Procurement and Contract Administration

Like many other agencies in the Federal Government the FCC has expanded its use of contractors to meet many of its needs in lieu of hiring additional staff. For example, in FY2000 the Commission spent approximately $30 million for contract services. In order to make sure we are getting what we pay for, my office increased its oversight in this area very early in my tenure.

In FY 1997 we conducted an audit of **contract administration**, focusing on the performance of Contracting Officer's Technical Representatives (COTRs). We found that many of the COTRs lacked the appropriate training to carry out their responsibilities. Management responded in a positive manner and initiated efforts to ensure that all COTRs had the proper training before they took on their role.

Since 1997 we have also been routinely conducting **floor checks, selected voucher reviews, and incurred cost audits** to monitor the Commission's administration of contract funds. In the past year these actions have identified specific violations of

procurement regulations such as false labor charges ($15,000) and identified questioned costs of over $540,000 related to a contractor's proposal.

It is my belief that risks in this area have been significantly reduced through extensive efforts by management and my office. Despite these improvements we will continue our aggressive program of monitoring of selected actions because of the size and scope of Commission efforts in this area.

Financial Management

In the mid 1990s the FCC made a major commitment to improve the financial operations of Commission. The need for this change was brought about by an increase in funds brought into the Commission by the expanded fee programs, spectrum auctions and an overall, government-wide emphasis on improved financial management. An agency that once dealt with collections of approximately $40 million became responsible for the collection of funds totaling almost $15 billion.

Recognizing this change, my office began to look at the critical components of the Commission financial system. In 1998 we conducted a special review of the Commission's existing **collection system** and determined that it did not have the required functionality to handle many of the transactions related to increased Commission responsibilities. This review resulted in the formulation of 128 observations and associated recommendations for improvements to the system. Management agreed with the review's findings and, as a result decided to design and implement a completely new system that met FCC, OMB, and Treasury requirements. This system, called RAMIS, is scheduled for full implementation in the first quarter of CY2001.

In the fall of 1999 my office participated in the Government-wide review of **Non-Tax Delinquent Debt** sponsored by the President's Council on Integrity and Efficiency (PCIE). This review was undertaken by the PCIE in response to concerns raised by the Subcommittee on Government Management, Information and Technology.

The reviewers found that at the time of the review the FCC was experiencing significant collections issues related to the Spectrum Auction installment loan portfolio. The report on this review identified such problems as unclear and undefined internal debt collection policies; non-performance of certain debt activities; insufficient reporting and monitoring of portfolio performance and difficulty with an outsourced tracking system. The report made 17 recommendations for corrective action. Commission management concurred with 16 of the 17 recommendations. The one recommendation not agreed to by management was the recommendation to perform credit checks on individuals or organizations entering into a financial relationship with the government.

As a result of this review the FCC has taken steps to improve debt management practices of the Commission and has made significant strides to better protect the financial assets of the Federal government.

In August of this year we issued a report on an audit of the **FCC's Civil Monetary Penalty Program.** The objective of the audit was to determine if the Commission had established an effective program for managing civil monetary penalties. Based on our findings we concluded that the Commission had not established an effective program. We made three recommendations for corrective action, which were accepted by management. Management is currently in the process of implementing a plan of corrective action.

Of major significance in the Commission's commitment to improve its financial management has been the completion of a **financial statement audit** for FY 1999. While the FCC is not presently a designated agency under the CFO Act, the Office of Inspector General, with the concurrence of the Department of the Treasury, conducted the audit in accordance with the requirements of a CFO audit. The result of the audit was the issuance of a qualified opinion on the financial statement. This qualification involved property, plant and equipment documentation and unfunded liabilities. The auditors also issued a series of reports identifying areas where FCC management needs to concentrate to ensure adherence to generally accepted accounting principles, improve internal controls, and effect compliance with rules and regulations. The report also contained sixty-four recommendations for corrective action with Commission management generally concurring with all recommendations. Commission management is currently in the process of implementing a plan of corrective action.

I am quite pleased by the progress the Commission is making in the area of financial management. While the efforts of my office have identified a significant number of issues that must be dealt with in the months (and years) ahead it is my view that Commission's commitment to improved operations in this area remains firm. My office will continue to monitor the implementation of our recommendations from the various audits we have completed in the past. We are currently conducting an audit of the FY2000 financial statement and related reports, to test the policies and procedures that have been put in place as a result of our recommendations.

Program Management

One of the statutory functions of my office is to "conduct and supervise audits and investigations relating to the programs and operations..." In the past years our resources has been focused on information technology, financial management and procurement. During this past fiscal year we have increased the scope of our activities to included selected operating programs that we believe require additional oversight. Early last year we conducted an audit of **Auctions Physical Security** at the Commission's Headquarters facility located in the Portals building in southwest D.C. The objective of this audit was to determine whether the FCC's Portals facility had sufficient safeguards to protect auctions data. An additional objective was to evaluate whether FCC security controls were in accordance with federal requirements. The audit report contained 31 recommendations for corrective action. Commission management concurred with 23

recommendations and concurred in part with eight recommendations. To date 21 of the 31 recommendations have been implemented.
In January 2000, we issued a report of our **FY1999 Field Inspection Program (FIP).** The FIP consists of OIG visits to selected field offices to perform a detailed review of office procedures for controls over program functions and administrative activities. Additionally, field office employees are given the opportunity to discuss their concerns with OIG auditors and provide feedback to Commission management. We did not make any formal recommendations in the report. It was provided to the Chief of the newly created Enforcement Bureau to consider in his management of the field staff.

We currently have three other projects underway in this area. The first is a special review of the **management of nonpublic information.** This review was at the request of the Chairman and looks at the way the Commission handles information not routinely available to the public.

The second project is an audit of the operational effectiveness and efficiency of the Commission's **National Consumer Center (NCC)** in Gettysburg, Pennsylvania. The objective of the audit is to assess the quality of services provided to FCC customers.

The third project is an audit of the FCC's performance as it seeks to fully address the requirements of the **Government Performance and Results Act (GPRA).**

Results of these activities will be available to FCC management and to the Congress during FY2001.

Investigations

Another major responsibility of an Inspector General is to conduct investigations of alleged misconduct on the part of government employees, contractors or other recipients of government funds. In those cases of where potential criminal violations are found, we work with local (e.g. city, state) or federal (e.g. Federal Protective Service, FBI, or the Department of Justice) authorities in the investigation of the allegation. Investigative matters pursued by my office are generally received through the OIG Hotline or from FCC managers and employees. My office also receives complaints from the general public and from private citizens and commercial enterprises, about the manner in which the FCC executes its programs and oversight responsibilities. All complaints are examined to determine whether there is any basis for OIG audit or investigative action. If nothing within the jurisdiction of the OIG is alleged, the complaint is usually referred to the appropriate FCC bureau or office for response directly to the complainant.

Over my years as IG my office has been involved in a wide array of allegations. Our case load runs about 25 to 30 cases a year and has included, for example, employee theft of supplies, misuse of computer equipment, attorney misconduct in a proceeding, abuse of authority by senior officials, improper conduct by an employee related to a contract award and operating a business on government time and with government equipment.

It is also important to note that in all our inquiries and investigations the rights of employees are fully protected. When conducting interviews employees are given the appropriate legal warnings depending upon the situation. During the interview they are permitted to be accompanied by a union official, a private attorney or an individual of their choice. We also protect the information gained in the interview process to the fullest extent of the law.

The Future

I am currently in the process of developing my audit plan for FY2001. In that plan I intend to focus our efforts on areas of Commission operations that reflect the concern of the Congress, Commission management, the public, and my assessment of potential risks. Some of the areas we may be looking into are:

- Common Carrier Bureau Oversight of the Universal Service Administrative Corporation (USAC)
- Spectrum Auctions Loan Portfolio
- Information Technology Network Security
- Contractor Floor Checks
- Incurred Cost Audits
- Purchase Card Program
- Human Capital Management
- Field Inspections
- Workplace Violence

These projects, along with our on-going activities present an extensive workload for my office. As always our plan is flexible to meet changing needs or respond to internal and external requests. I can assure you, however, we stand ready to carry out our mission to promote economy and efficiency in government.

Conclusion

In closing, I want to thank you for the opportunity to review the operations of my office with you. I believe that the Office of Inspector General has had a meaningful impact upon the operations of the Commission. We have met the challenge that you the Congress have set before us in the law that established my office. My staff and I will vigorously work to build upon this foundation.

I will be glad to try to answer any questions you might have!

Mr. HORN. We now go to the second presenter, Adam Thierer, research analyst, the Heritage Foundation.

It sounds like we have a vote, but let's proceed for at least 5 minutes, and then we will just have to go and be in recess and vote and come back.

Mr. THIERER. Mr. Chairman, Ranking Member and members of the committee, thank you for having me here today to testify on the urgent need for reform in the Federal Communications Commission.

I have worked on several projects related to FCC reform, both on my own at Heritage and with other public policy research organizations and academic experts in my 10 years at the Heritage Foundation. But I'll stress that my remarks here today are mine, and mine alone, and not those of the Heritage Foundation or any other organization.

Let me begin with a few brief words on why it is absolutely essential that Congress take steps to reform and downsize the Federal Communications Commission. And I'll begin with what I believe is a shocking paradox, which is that we live in an age of deregulation, but the FCC is larger and more powerful than ever before.

Mr. Chairman, as you know, Congress took important steps under the Telecommunications Act of 1996 to deregulate this important marketplace. Yet, while companies in this industry have been forced to begin a demanding transition to a competitive market, nothing has been done to simultaneously ensure that the FCC reforms itself or downsizes in any serious way. In fact, FCC spending and staffing are at all-time highs.

The FCC has requested total gross budget authority in fiscal year 2001 of almost $280 million and total staffing of 1,971 FTEs. By comparison, 10 years ago, FCC spending stood at $108 million and staffing was 1,734 FTEs. In other words, the FCC's budget has essentially doubled over the past decade and the agency has hired roughly an additional 250 bureaucrats over the same period.

I should stress that this is a situation almost without precedent both domestically and internationally. Domestically, when other important industries such as airlines and trucking were deregulated, the agencies which oversaw those industries were forced to downsize and in many cases were eliminated shortly after deregulation was pursued. This has not been the case with FCC as telecom has been deregulated.

On the international front, other countries pursuing telecom liberalization have tended also to greatly curtail or even end outright the meddling of their regulatory authorities within the affairs of industry. Again, this has not been the case with the FCC in America.

Frankly, this situation is now becoming somewhat unbearable. There is simply no development within the telecommunications marketplace that is not scrutinized under the FCC's regulatory microscope. No major decision or development in this sector goes forward without the FCC somehow casting judgment on the matter.

I would suggest that this sort of intrusive behavior is inconsistent with the intentions and framework that Congress set forward in the Telecom Act of 1996, and while many FCC officials will claim that the bulk of their increased workload is because of the

deregulatory activities they've pursued, one is forced to ask, does the FCC really need to take any steps to achieve deregulation? Why can't they just step aside and stop micromanaging the day-to-day affairs of this fast-paced sector?

Congress should indeed reject this logic that some FCC officials seem to put forward that only they can make this marketplace competitive through their vigilant oversight and constant micromanagement of the affairs of this sector. The logical retort to that is simple. If FCC oversight is so virtuous, then indeed why is it that the least regulated sectors, such as cellular phones and Internet services, are the most competitive and fastest growing? Moreover, when Congress downsized and abolished previous regulatory agencies, they did so because they knew competition, real competition, would not blossom so long as companies could come to Washington and plead their case for special treatment with captured regulators.

Real competition will develop only when companies stop competing within the Beltway for the allegiance of regulators and start competing in the marketplace for the allegiance of consumers. This, more than any other reason, explains why there is such an absolute, essential need for Congress to begin taking steps to reform and downsize the FCC soon.

So what should Congress do to rectify this situation? A simple question deserves a simple answer, and I'll outline for you, in closing, a very reasonable and short and simple strategy to do so. Let's call it the "cut and peel" strategy.

First, set the objectives. The "cut" part of this would be maybe three simple goals or objectives such as, say, first, a 30 percent reduction in funding; second, a 30 percent reduction in staffing; and third, perhaps the consolidation of the FCC's 16 existing bureaus and offices into, say, three streamlined divisions or units.

And, again, you should demand that these goals or objectives be achieved over the next 3 years. So with this sort of 30/30/3/3 framework in mind, you should then demand that the FCC achieve these objectives by shedding some of their responsibilities, or redundant powers, that they currently still enforce. This is the "peel" portion of the "cut and peel" strategy.

I'll give you four specifics to close: One, spin off antitrust oversight functions to the Department of Justice or the Federal Trade Commission, who already has the expertise and authority to do so, whereas the FCC doesn't; second, transfer and consolidate all spectrum management authority and responsibilities within the NTIA within the Department of Commerce; third, transfer international regulatory responsibilities to the Department of State or Department of Commerce, which are in a better position to deal with global trade and investment issues; and fourth, devolve universal service responsibilities to the State and local level, who are in a better position to target assistance to those most in need.

Mr. Chairman and members of the committee, to conclude, may I be so bold as to suggest that is not an unreasonable plan, especially viewed in light of the fact that the FCC has received a fairly lengthy reprieve from oversight and downsizing in the past 5 to 10 years. I think the time has come to rectify this situation, and this

sort of simple "cut and peel" strategy, I believe strikes the right balance.

Thank you, Mr. Chairman and members of the committee for the opportunity to testify.

Mr. HORN. Well, we thank you.

[The prepared statement of Mr. Thierer follows:]

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Congressional Testimony

United States House of Representatives

House Committee on Government Reform
Subcommittee on Government Management, Information, and Technology

October 6th, 2000

Written Statement Submitted for the Record on "The Role of the Federal Communications Commission in the Information Age"

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Testimony of Adam D. Thierer
Before the House Committee on Government Reform
Subcommittee on Government Management, Information, and Technology

Mr. Chairman and members of the Committee, thank you for inviting me here today to testify on the urgent need for reform of the Federal Communications Commission. My name is Adam Thierer, and in my capacity as a regulatory policy analyst for The Heritage Foundation, I have spent the last decade studying communications and computing policy issues.

Toward that end, I have worked on several projects related to FCC reform, both on my own at Heritage and with other public policy researchers and academic experts. I hope to present for you here today a few conclusions and proposals for FCC reorganization and reform that have come out of these efforts, the vast majority of which have still not been undertaken by the FCC or enacted into law by Congress. I should stress, however, that the views I express in this testimony are my own and should not be construed as representing the official position of The Heritage Foundation or any other organization I have worked with on this matter.

The Urgent Need for Reform

Let me begin with just a few brief words on why it is absolutely essential that Congress takes steps to reform and downsize the FCC. Let's begin with what I believe is a shocking paradox: *We live in an age of deregulation, but the FCC is larger and more powerful than ever before.*

Mr. Chairman, as you know, Congress took important steps under the Telecommunications Act of 1996 to deregulate this marketplace. Yet, while companies in this industry have been forced to begin a demanding transition to a competitive marketplace, nothing has been done to simultaneously ensure that the FCC reforms itself or downsizes *in any way.*

In fact, FCC spending and staffing are at all-time highs. The FCC has requested total gross budget authority for Fiscal Year (FY) 2001 of almost $280 million ($279,595,000) and total staffing of 1,975 FTEs. By comparison, ten years ago, FCC spending stood at $108 million ($107,550,000) and staffing was 1,734 FTEs. In other words, the FCC's budget has essentially doubled over the past decade and the agency has hired roughly 250 additional bureaucrats over the same period.

This is a situation virtually without historical precedent, both domestically and internationally. On the domestic front, when other important industries such as airlines and trucking were deregulated, the agencies which oversaw them were forced to radically downsize and in most cases were eliminated shortly after deregulation was initiated. This has not been the case with the FCC as the telecom sector has been deregulated.

On the international front, other countries pursuing telecom liberalization have tended to also greatly curtail, or even end outright, the meddling of their regulatory

agencies in the affairs of industry. Again, this has not been the case with the FCC in America as our country has pursued reform of this sector.

Frankly, this situation is now becoming unbearable. There is simply no development within the communications marketplace today that is not scrutinized under the FCC's regulatory microscope. No major decision or development within this sector goes forward without the FCC's somehow casting judgement on the matter.

I would suggest that this sort of intrusive behavior is inconsistent with the intentions and framework Congress put forward in the Telecom Act of 1996. And while FCC officials will claim that the bulk of their increased workload and oversight activities are related to deregulatory activities, one must ask: Does the FCC really need to take *any* steps to achieve deregulation? Why can't they just step aside and stop micromanaging the day-to-day developments in this fast-paced sector?

Congress should reject the logic some FCC officials seem to put forward that only they can make this market competitive through their vigilant oversight and constant micromanagement of the affairs of industry. The logical retort to that is simple: If FCC oversight is so virtuous, why is it that the least regulated sectors, such as cellular phones and Internet services, are the most competitive and the fastest growing?

Moreover, Congress downsized and then abolished previous regulatory agencies such as the Civil Aeronautics Board (CAB) and the Interstate Commerce Commission (ICC) *precisely because* lawmakers knew that real competition would not blossom so long as companies could come to Washington and plead their case for special treatment with captured regulators. *Real* competition will develop only when companies stop competing inside the Beltway for the allegiance of regulators and start competing in the marketplace for the allegiance of consumers.

This, more than any other reason, explains why it is absolutely essential that Congress begin taking steps to reform and downsize the Federal Communications Commission.

A Simple Strategy for Reform

So what should Congress do to begin to rectify this situation? Well, a simple question deserves a simple answer. Therefore, I want to outline for you a very reasonable strategy to downsize the FCC in a sensible fashion while the industry is being deregulated. Let's call it the "cut and peel" strategy.

The first objective under the "cut and peel" strategy is for Congress to establish a few straightforward benchmarks or objectives which you hope to achieve over, say, the next three years. Let me suggest three such goals:

(1) a 30% cut in FCC funding;
(2) a 30% cut in FCC staffing; and

(3) the consolidation of FCC's 16 existing bureaus and offices into 3 streamlined divisions or units.

And again, you should demand that these goals be achieved in 3 years. With this 30-30-3-3 framework in mind, you should then demand that the FCC achieve these objectives by shedding many of its redundant or obsolete powers and transferring remaining responsibilities of importance to other agencies. This is the "peel" portion of the "cut and peel" strategy. Let me suggest 4 specific FCC responsibilities which could immediately be peeled off and given to other agencies to help achieve these objectives:

(1) Spin off all **antitrust oversight functions** to the Department of Justice and Federal Trade Commission, which have more expertise in these matters anyway. I should also note that the FCC has *no* statutory authority to be reviewing communications industry mergers, so you will be essentially returning powers to the DOJ or FTC which did not belong to the FCC in the first place.

(2) Transfer and consolidate all **spectrum management authority** and responsibilities to the National Telecommunications and Information Association (NTIA) within the Department of Commerce to end this unnecessary separation of federal spectrum management.

(3) Transfer all **international responsibilities** to the State or Commerce Department, both of which are in a better position to deal with global trade and investment matters.

(4) Devolve all **universal service responsibilities** and subsidy programs to state and local officials who are in a better position to target these efforts to those most in need.

Mr. Chairman and members of the Committee, may I be so bold as to suggest this is not an unreasonable plan. Indeed, I view it as a very moderate proposal in light of the fact that the FCC has been given a lengthy reprieve by Congress when it comes to regulatory reform and agency downsizing. Given the central role communications plays in today's global economy, the costs and inefficiencies of unneeded FCC regulation can ripple throughout the U.S. economy and mean higher prices, lower quality, and fewer choices for American families. The time has come to rectify this situation, and this sort of simple "cut and peel" compromise strikes the right balance.

I thank the Committee for the opportunity to testify, and I would be happy to take any questions if time permits. Thank you.

Mr. HORN. We now have three members who need go over to the floor to cast their votes, so we will be in recess for probably around 10, 15 minutes.

[Recess.]

Mr. HORN. We are now out of recess and we have our third presenter, Jeffrey Eisenach, president of the Progress & Freedom Foundation.

Mr. EISENACH. Mr. Chairman, thank you for having me here today. Let me begin by noting that while I serve as the president of the Progress & Freedom Foundation, the views I express are my own and do not necessarily represent those of the Foundation, its board or its staff.

I would note that we at the Progress & Freedom Foundation have dedicated ourselves to studying the digital revolution and its implications for public policy. Our 7-year history has been spent studying the telecommunications marketplace, and the Federal Communications Commission in particular.

Here with me today is our director of communication studies and senior fellow, Randy May, who is leading a major and comprehensive study of the FCC, looking at its role in deregulation and the need for continued deregulation and FCC reform.

Now, the FCC oversees what is arguably the most important and vibrant sector of the American economy. I brought with me today and made available to the members of the subcommittee something that we publish every year called "The Digital Economy Fact Book," which is just a compendium of statistics. You'll find, Mr. Chairman, that one of the things that it shows is that the telecommunications sector is in a state of transformation from a marketplace characterized by scarcity and monopoly to one of abundance and competition.

In passing the Telecommunications Act, the Congress tasked the FCC with implementing a new policy framework consistent with that transformation. The vision of the Telecommunications Act was clear. It aims to replace monopoly with competition and to impose the discipline of the marketplace in lieu of government regulation.

In short, it says to the Commission: Facilitate the transition to competition and when you're done, deregulate.

But deregulation is a task for which this commission, at least, has turned out to be poorly suited. As Adam Thierer noted, the Commission is larger than 5 years ago when the act was passed. It's also—and I'm going to talk a little bit about the extent to which it is—vastly more intrusive into the affairs of the marketplace than it was 5 years ago.

Some examples: In its review of the mergers under its vague public interest standard, the Commission engages in what is essentially an exercise in "designer regulation" with separate and unequal regulatory regimes imposed on similarly situated firms through conditions which are supposedly voluntary, but in fact are necessary if the merger is going to be permitted to go forward under a very vague set of criteria.

The Commission has refused to forbear from regulating in the local service marketplace for broadband services, and it's now poised to impose common carrier-type regulations on broadband

Internet offerings by cable service. It is now looking even at extending itself into the arena of digital broadcasters.

Under this Commission, under this administration, and under the Telecommunications Act, the Commission has now become a social policy agency, something for which I think it's ill-suited. Administering what its former chairman, Reed Hundt, called the largest national effort for K through 12 education in our Nation's history, namely the so-called E-Rate program.

This continuing mission creep would be less troubling if the Commission had a better track record of implementation, but its track record in that regard in fact is poor. As I mentioned, in its review of mergers under the public interest standard, the Commission is able to avoid all of the requirements of the Administrative Procedures Act which applies only to industry-wide rulemakings.

The Commission often fails to meet deadlines and is often engaging in creative interpretation of its statute. This leads to not only Congress but also the courts having to step in and do the agency's job in areas as arcane as reciprocal compensation and as central to the agency's mission as the implementation of unbundling and resale requirements of the local telephone loop.

And I do need to say, Mr. Chairman, I would hope that all of the members of this subcommittee would take a moment to read the book by former Chairman Reed Hundt.

And I gather this book is available free at www.Reedhundt.com. It is a book that everyone should look at because, as someone who formerly served as chief of staff in an independent regulatory agency, I believe it contains a series of admissions that suggest that the Commission has been far more involved and insensitive to political concerns than is appropriate for an independent regulatory agency; and I just think that is something the subcommittee should be aware of.

Now comes the Commission with its 5-year draft strategic plan, which essentially asks the Congress to sign off on a broad new mission for the agency. It's not clear exactly what that mission is. The Commission talks of becoming a "market facilitator." It is not clear why in a competitive marketplace this particular market needs its own facilitator. Many markets seem to behave just fine without their own industry-specific regulators. But it is the Commission's position, I guess, that it does need to have such a function.

And at the same time, the Commission comes forward with no proposals, at least no substantial proposals, for limiting its authority or reducing its activities.

I respectfully submit, the Commission could and should take a different tack. In my opinion, the advent of competition in the communications marketplace should result not in a larger and more powerful regulatory agency, but in a scaling back of both the cost of the agency and its intrusion into decisions better made in the private sector. In the report we release in December, we will present some comprehensive recommendations for how to do that.

In summary, it seems to me there are four suggestions that I would offer for this subcommittee's consideration, for the consideration of Congress in general: First of all, the Commission should be required to make explicit the criteria it uses to judge the public interest, starting with its application of the public interest stand-

ard to the license transfers involved in mergers. If the Commission is reviewing license transfers as such, then it should limit its deliberations to the direct implications of those transfers. Conversely, if it is going to engage in a broader antitrust-like merger review, it ought to do so using its authority under the Clayton Act.

Second, the Commission should get out of the social policy arena, and that includes transferring the functions of the E-Rate program over to the Department of Education, which would be in a better position to run them.

Third, Congress should undertake a comprehensive examination of the Commission's structure. Proposals have been made to reorganize the Commission along less stovepipe, industry-specific lines to reflect convergence. That's something the Commission should do, and Congress should assist in and insist on. Also, I think Congress should consider additional approaches to streamlining the agency and would agree with what Mr. Thierer said with respect to offloading some of its functions to other kinds of agencies and looking at alternative structures.

Fourth, and keeping in mind that the strategic plan presented by Chairman Kennard, at least all of the versions I've seen to date are still labeled "draft," Congress should insist on a draft 2. Rather than focusing on creating new missions and expanded responsibilities, draft 2 ought to point the way to the smaller and less expensive and less powerful FCC that one would think would be the natural consequence of telecommunications competition and deregulation.

Mr. Chairman, thank you very much.

[The prepared statement of Mr. Eisenach follows:]

TESTIMONY

OF

JEFFREY A. EISENACH

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM,

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,

INFORMATION AND TECHNOLOGY

UNITED STATES HOUSE OF REPRESENTATIVES

October 6, 2000

Mr. Chairman and Members of the Subcommittee, it is an honor to appear before you to discuss management practices of the Federal Communications Commission.

Before continuing, I should note that while I serve as President of The Progress & Freedom Foundation, the views I express are my own, and do not necessarily represent those of the Foundation, its board or other staff. The Progress & Freedom Foundation is dedicated to studying the digital revolution and its implications for public policy. Since its founding in 1993, issues of telecommunications deregulation and FCC reform have been an important part of the Foundation's program of research. Today, under the leadership of Director of Communications Studies Randolph J. May, we are preparing a comprehensive report on reform of our communications laws and of the FCC's role in implementing these laws, which we expect to release in early December of this year.[1]

The FCC oversees what is arguably the most important and vibrant sector of the American economy. The communications business is in the midst of revolutionary change, transformed by technology from a marketplace of scarcity and monopoly to one of abundance and competition. In passing the Telecommunications Act of 1996, Congress created a policy framework for managing this transition, and charged the Commission with implementing that framework.

The vision of the Telecommunications Act is clear: It aims to replace monopoly with competition, and to impose the discipline of the marketplace in lieu of government regulation. In some areas, like cable television and wireless, Congress was quite explicit in mandating deregulation. In other cases, such as the market for local telephone service, it provided guiding principles and specific tools. And at the broadest level, Congress granted the FCC authority to forebear from regulating whenever it concluded competition was a viable alternative. Congress did not decide every issue,

[1] The Progress & Freedom Foundation is a 501(c)(3) non-partisan research and educatonal organization which accepts no government funds. I am grateful to Randolph J. May for helpful comments on this testimony.

but its direction could not have been more clear: Facilitate the transition to competition and, when it is complete, deregulate.

But deregulation is a task for which the Commission – at least, this Commission -- has turned out to be poorly suited, and the results have left much to be desired. Indeed, the Federal Communications Commission in 2000 is larger than it was when the Act was passed, and in many ways it plays a more intrusive regulatory role than it did five years ago.

In fact, the Commission has shown both the will and the ability to expand the scope and effect of its regulations. For example:

- Its review of mergers under the vague "public interest" standard has become an exercise in designer regulation, with separate and unequal regulatory regimes imposed on similarly situated firms through supposedly "voluntary" conditions.

- While paying lip service to the "unregulation" of the Internet, the Commission has refused to forebear from regulating broadband Internet access services (such as DSL) provided by local phone companies, and it has now opened a proceeding that threatens to impose common carrier-type regulation on broadband Internet offerings by cable companies.

- In its current proceeding on the public interest obligations of digital broadcasters, the Commission contemplates imposing a new regime of First Amendment-threatening content regulation on the new converging electronic media.

In recent years, the Commission has expanded its mission beyond the traditional boundaries of communications regulation to take on some of the functions of a social policy agency. Already, it manages what former Chairman Reed Hundt called "the largest national effort for K-12 education in the country's history"[2] -- the so-called "E-Rate." Through the "universal service" program (which remains largely unreformed despite Congress' mandate to make such subsidies "explicit" and "transparent"), the Commission operates a massive income transfer program that, among other things, subsidizes the rural rich at the expense of those living in urban areas. The Commission appears now to be poised to further expand this social policy mission by broadening the definition of "universal service."

This continuing "mission creep" would be less troubling if the Commission had a better track record of implementation. But the fact is that the Commission's practices and procedures leave much to be desired. Consider the following examples:

[2] Reed E. Hundt, *You Say You Want a Revolution: A Story of Information Age Politics* (New Haven: Yale University Press, 2000), p. 184.

- In its review of mergers under the "public interest" standard, the Commission routinely imposes regulatory conditions which go beyond what it likely could require through rulemaking. By using this "regulation by condition" technique, the Commission avoids the procedural requirements of the Administrative Procedures Act (which are applicable to industry-wide rulemakings). As noted above, the result is not only to increase the intrusiveness of regulation, but to leave similarly situated companies facing very different sets of rules.

- The Commission often fails to meet deadlines, even when they are self-imposed. One result is that issues such as "reciprocal compensation," which should be resolved by the Commission, end up being tossed back into the lap of Congress not on substantive grounds but simply because of the Commission's failure to act in a timely fashion.

- When the Commission isn't missing deadlines, it is engaging in creative interpretations of seemingly plain statutory language -- again placing Congress in the position of having to do the Commission's job for it. Proposals now before Congress that would address such issues as attribution rules for cable ownership and "truth-in-billing" requirements for phone bills are necessary largely because the Commission's decisions in these areas seem to violate not only basic rules of statutory construction but also common sense.

- When Congress isn't having to correct the Commission, the courts often are. Despite the *Chevron* doctrine, which gives substantial deference to the decisions of agencies like the FCC, key elements of its rules have been overturned in court -- including, most importantly, the centerpiece of its local competition policy, the so-called "TELRIC" pricing standard.

- If one is to take former Chairman Hundt's book at face value, it would appear that the Commission has been far more involved in and sensitive to political concerns than is appropriate for an independent regulatory agency. At a minimum, the appearance of politicization diminishes the public's (and Congress') ability to have faith in the results of the agency's decisionmaking process.

Despite these problems, the Commission's five-year "draft strategic plan" asks Congress to sign off on a broad new mission. While the agency continues to predict that the U.S. communications market will be characterized by "vigorous competition" within five years, the plan offers no proposals for curtailing the agency's size or authority. Indeed, it demands still further increases in the agency's staffing and budget, and proposes yet another new role for the Commission, this time as a "market

facilitator" that would "promote competition, protect consumers and support access for existing and advanced communications services."[3]

The plan does not describe the specifics of what it would mean for the Commission to be a "market facilitator," nor does it explain why a competitive market for telecommunications services would be more in need of such facilitation than other competitive markets -- which seem to function quite adequately even without their own industry-specific regulators. The plan also leaves unstated the standard the Commission would apply in exercising its new functions, but it is fair to assume that it would intervene in the marketplace whenever three commissioners decided it was "in the public interest" to do so. This is potentially a big job, and we might well expect still more staff and resources will be required to do it well!

I respectfully submit that the Commission could and should take a different tack. In my opinion, the advent of competition in the communications marketplace should result not in a larger and more powerful regulatory agency, but in a scaling back of both the cost of the agency and its intrusion into decisions better made in the private sector. The report we will release in December will present comprehensive recommendations for how to accomplish this objective.

In the meantime, I would offer the following suggestions for your consideration.

First, the Commission should be required to make explicit the criteria it uses to judge "the public interest," starting with its application of the public interest standard to the license transfers involved in mergers. If the Commission is reviewing license transfers as such, it should limit its deliberations to the direct implications of those transfers. If it is going to engage in a broader, antitrust-like merger review, it ought to do so using its authority under the Clayton Act.

Second, the Commission should get out of the social policy arena as expeditiously as possible. Federal education programs should not be run by the FCC, but by the Department of Education, and universal service programs should be further targeted, not further expanded.

Third, Congress should undertake a comprehensive examination of the Commission's structure. Certainly there should be a streamlining and consolidation of the separate bureaus and offices so that the internal agency structure better reflects the realities of a converging marketplace. In addition, Congress should consider additional approaches to streamlining the agency, including examining whether some of the agency's functions would be better placed elsewhere in the Federal government.

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[3] See Statement of William E. Kennard before the Subcommittee on Commerce, Justice, State and the Judiciary, Committee on Appropriations, United States Senate, on the Federal Communications Commission's FY 2001 Budget Estimates, p.2.

Fourth, and keeping in mind that the Strategic Plan presented by Chairman Kennard remains a "draft," Congress should insist on a "Draft 2.0." Rather than focusing on creating new missions and expanded responsibilities, Draft 2.0 ought to point the way to the smaller, less expensive and less powerful FCC that should be the natural consequence of telecommunications competition and deregulation.

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to offer these thoughts and look forward to any questions you may have.

Mr. HORN. Well, we thank you. That's very helpful, all three of you.

We are now going to go to questions for this panel. And we are going to have 5 minutes per person, alternating between the majority and the minority.

Let me start in with Inspector General Feaster if I might. What's your view of the FCC's initiatives to improve its financial management operations and accounting systems?

Mr. FEASTER. I believe since they made the commitment several years ago to improve the systems, they've gone a long way, as we pointed out in our fiscal 1999 financial statement audit. They've been successful in improving conditions to date. But they do have some areas that need improvement. The statement was qualified on the basis of getting ahold of the property and plant and equipment accounts in a more accurate manner, and implementing procedures to do that.

There are a lot of things that they need to do, but it is a multiyear solution to the problems we have identified in that audit. We are currently conducting a fiscal year 2000 financial statement audit in which we will review their progress toward these goals.

Mr. HORN. Chairman Kennard's testimony notes that the year 2000 failure caused difficulties with an electronic complaint processing system. What was the magnitude of that failure?

Mr. FEASTER. I—I'm not familiar—my guess——

Mr. HORN. The Y2K bit.

Mr. FEASTER. They basically went through the Y2K without any major failures that I know about. We looked at the critical systems and they made the process.

The only thing I can think of is perhaps the Oscar system which——

Mr. HORN. Well, the chairman will be here, of course, but this is from his formal statement on page 6, the beginning paragraph, where he says "Because of difficulties caused by an electronic complaint processing system that was not Year 2000 compliant and lack of staff resources, the inventory of informal complaints at one point grew to 154,000 pending cases."

I just wondered if you as Inspector General have looked in on that or you have made a contract with a consulting firm to try and sort it all out.

Mr. FEASTER. That was the Oscar system, sir, which is the system that would process these complaints. I was recently briefed by the acting chief of the Consumer Information Bureau, and I believe the chairman can testify that significant progress has been made in reducing those complaints to a number of about 36,000 to 39,000 complaints that are currently pending. So in the past 6 months, the complaints have been reduced.

Mr. HORN. Let me move on. If you have any comments on these questions, all of you, we would welcome your thoughts. How many companies still have not paid for their spectrum auction bids and how much is outstanding? Inspector General, what's your view of the situation?

Mr. FEASTER. We did a nontax delinquent debt study that I think you had a great interest in seeing done on a governmentwide basis.

Mr. HORN. That's right, because there's billions of dollars that the taxpayers are losing.

Mr. FEASTER. $13 billion or—lots of billions.

Mr. HORN. $13½ just for Medicare. It gets up to several hundred billion.

Mr. FEASTER. What is the old saying, as soon as it starts adding up? Something like that.

Mr. HORN. Senator Dirksen's famous words, "Pretty soon it's real money." Now we're into the trillion age. Poor Senator Dirksen, he wouldn't——

Mr. FEASTER. It boggles my mind the number of zeros. But I think there are one or two companies that own a significant amount of the debt of that $13 million, or whatever the actual number is involved in that, and one of them is in litigation and I think trying to get some legislation passed. I think the chairman could address that a lot better than I could. I don't know where they stand right at the present moment.

Mr. HORN. Well, if you have some thoughts on it when you get back to the office, we will reserve a letter or something and put it in the record at this point.

Mr. FEASTER. Yes, sir.

Mr. HORN. Have you discovered any case of fraud or abuse of the spectrum auctions?

Mr. FEASTER. We had some tangential issues related to the conduct of contractors that were providing support to the spectrum auctions group. We did not—and one of the contractors ended up going to jail for 18 months and was fined a significant amount—well, $40,000, a significant amount of money to me, anyhow. But we found nothing in the spectrum auctions process that was a problem.

Mr. HORN. Well, if again you change your mind on that, we'll have a letter at this point in the record.

I've used my 5 minutes. I now turn to Mr. Turner for his 5 minutes.

Mr. TURNER. Thank you, Mr. Chairman. Mr. Feaster, you heard both of our other witnesses offer certain suggestions, recommendations for streamlining of the agency. What's your views on the suggestions that they made?

Mr. FEASTER. That's a hard one. One of the ways an Inspector General gets into trouble is to make comments on stuff he has not studied, and I haven't looked at that issue. I believe it is more of a discussion between—within and between members of the public groups like this and the Congress.

I've been at the Commission since 1974, not in this capacity, and I've seen the Commission grow in both size and responsibility. New programs have come in. Spectrum auctions is one of those programs where a substantial amount of effort is put into collecting and dealing with the actual auctioning of spectrum. So I think my official position is I have no comment on that since I haven't done extensive work in that area.

Mr. TURNER. Well, from your vantage point as Inspector General, do you see any areas within the agency that you think could be pared down or they could operate more cost effectively?

Mr. FEASTER. I guess two comments I'd have on that. One, I think the move toward a functionally oriented commission is the right move. In the past in my other positions I've advocated that type of structure and the Commission has taken steps to do that in the enforcement area and in the consumer information area.

I think that helps meet the rising demand. The public keeps wanting information and services from the Commission. I think we average a million hits a day on our Web sites. There's a constant demand for information and services from the Commission by the public. So I don't see the workload decreasing. What the Commission has tried to do is use computers to meet that workload. We have a substantial investment in the computer area and we are constantly involved with the Chief Information Officer to review the use of computers and the security of computers, an area that I know that the chairman and the committee are interested in.

So I can't come up with any areas that are really, as you suggested, may be bloated. I think the demands of the Commission are ever growing.

Mr. TURNER. Thank you. One of the comments that you made, Mr. Eisenach, was the recommendation that you said the Commission should get out of the social policy arena as expeditiously as possible. And what you cited in that regard were Federal education programs should not be run by the FCC but by the Department of Education and that universal service programs should be further targeted, not further expanded.

I'd like for you to expand on your thoughts there. I know those are important programs and have a lot of benefits, particularly in areas of the country like I represent. Why do you feel so strongly about transferring that function?

Mr. EISENACH. Well, two really separate issues, both related in the sense that they are both related to social policy or social policy-like programs. With respect to the e-rate, you have a program which is intrinsically and inherently an educational program. Its purpose and design is to facilitate the use of computers, the availability of computers in America's schools.

The focus in that program of course is on the hardware. One of the things that I think happens by having it at the Federal Communications Commission, as opposed to some place like the Department of Education with a broader view, is that the program has not been easily integrated, for example, with programs for training teachers, which is an essential part of bringing technology in a more useful way into the classroom.

I think that an agency like the Department of Education which has the ability to integrate and balance the use of technology in the classroom would be in a better position to manage that well.

The separate issue goes to the funding of that program and whether it is best funded by imposing what are essentially taxes on telecommunications services as opposed to a broader funding source like the general revenues of the Federal Government. I think we would all agree that there is some role for the government in that, and I'm not getting into the question of whether we're spending too much or too little. It may be too little for all I know. But with respect to the source of funds, telecommunications

taxes, are extremely regressive and extremely harmful to people's ability to get on the Internet because they affect Internet access.

On the universal service issue, this is obviously a very controversial and an extraordinarily complex set of programs. But the long and short of it I would say is the need to focus that assistance on people most in need and not to be subsidizing the rural rich, if you will, the Ted Turners in Wyoming or Aspen, CO, who are benefiting from those subsidies as much as your constituents who may need them much more.

Mr. HORN. We now turn to Mr. Walden for 5 minutes for questioning.

Mr. WALDEN. Thank you, Mr. Chairman. I don't know that I will use the full 5 minutes but I do appreciate the opportunity to be here today and address the panel.

I would at the outset of my questions, just for full public disclosure and disclaimer, say that I am a licensee of the FCC. We have owned and operated radio stations in Oregon since 1986 and my family before that dating back to 1967, and actually in Oregon broadcasting to 1934, I think is when my dad got his ham license. So we have been in the business a long time. So it is with some concern that I come here and discuss some of this. But it is also with hands-on understanding of being on the receiving end of the FCC, both the good and areas where I think there might be some room for improvement.

Mr. Feaster, I have a question for you. Your testimony talks about the civil monetary penalty program. Do you think that small businesses suffer more from those penalties compared to large corporations? I don't know if you have that schedule in front of you, but as I recall, the penalty for literally having something out of order in the file for the public file can be a $5,000 penalty. I don't know if all of our committee files are kept in exact order, but I doubt the penalty would be $5,000 if they weren't.

Mr. FEASTER. The civil monetary penalty study we did we were looking more into the processes and procedures of recording the fines and more the financial aspects of it and really did not do any work in terms of the potential impact on small business type operations. I can't make that judgment.

Mr. WALDEN. How does this finding, set of civil forfeitures, civil monetary penalties for the types of things that are being dealt with, how do they stack up against other agencies? Can you speak to that at all? I know you are probably specific to this one.

Mr. FEASTER. I really can't—I haven't done any comparison. I do know that the base schedule as set by statute—by congressional statute and from that a subschedule was developed as it breaks down to various offenses. I haven't had any complaints by broadcasters, for instance, about the unfairness of their—the enforcement actions taken against them. But I'm not sure that they would use my office as a vehicle.

Mr. WALDEN. I was going to suggest they may not even know to go to an IG, for example.

Mr. FEASTER. People tend to find us when they have a problem. We get a lot of complaints about telephone type bills which we don't really handle. But they tend to find us. A lot of times we are

the first contact they have, other than our information center in Gettysburg, and we refer them to the proper people to talk to.

Mr. WALDEN. I'd like to commend the Commission and its staff for the work they're doing in improving and developing the Web site. I think that is and can be a very useful tool. I think there are some areas where there is room for improvement. I myself have obviously used it and it may just be my Explorer. I don't know, I sometimes have been frustrated with things that haven't been updated and I think that is probably a problem for all of us with our Web sites, but I know some of the information did not seem to be updated as regularly. Weren't they in a transition period?

Mr. FEASTER. Yes, sir, and they made significant progress in that area. In fact the CIO is sitting back in the back row right now about the oversight of that.

Two things, the Web site was rated very highly in a study recently done. We also have just completed work in checking on the accessibility of the Web site to disabled individuals and although we haven't released the report yet, in draft it looked very good. So I think in those two areas, they are improving in overall access and specialized access.

Mr. WALDEN. Let me ask anybody on the panel that may want to respond, does the FCC have statutory authority to regulate content on private Web sites, to regulate what is on there and what is not?

Mr. THIERER. I do not believe they do without some sort of clear congressional statutory approval to do so. There may be some general authority they could try to construe under the mass media responsibilities, but I doubt that would wash with a court. I do not think it would work, no, because Web sites are not licensed and that's the difference.

Mr. FEASTER. I don't think so. I'm not a lawyer.

Mr. WALDEN. That's two of us.

Mr. EISENACH. I would just say briefly, one of the things I touch on in my testimony is the existence of this very vague and undefined public interest authority at the Commission, which is ultimately the authority that the Commission relies on in many and to some extent in all of its activities. That authority is as broad as three FCC commissioners find the public interest to be on a given day.

Mr. WALDEN. I have expended my time. Thank you very much, gentlemen. Thank you, Mr. Chairman.

Mr. HORN. We now turn to the gentleman from New York, Major Owens, for 5 minutes and that will be the last round. The other questions will be submitted to all of you and if you don't mind, fill them in and we will put them at this point in the record. And then we will have a chance to have the chairman, Mr. Kennard, who is here. Major Owens, all yours for 5 minutes.

Mr. OWENS. One quick question to the Inspector General. Recent audits have indicated improvements need to be made in the FCC's collection system. Would you say we have made some strides toward making those improvements? Many Federal agencies like the Department of Agriculture have a history of allowing corporations and private interests to get away with murder with respect to paying their debts. Decades go by and they don't pay large amounts.

Corporations and the corporate culture in general might have begun to see government in this way in general and not want to pay their debts or fees, etc. What is the situation with collection?

Mr. FEASTER. A couple of points. One, the collection system itself, there will be a new collection system I am told by January 2001. We did an audit of the old system and found problems. They've made minor changes to that to address the problems, but they will have a new collection system the beginning of the calendar year.

Also, the chief financial officer is conducting an aggressive program of following up on past years' nonpayments of regulatory fees to make sure that nobody has the ability to skip paying a required fee to the government.

Mr. OWENS. This rides herd on the auction payments as well?

Mr. FEASTER. Both the auction payments and on regulatory fees also. And we have continuing discussions almost on a weekly basis about regulatory fee collection and auction payment fees, so this is part of the—we will be reviewing this portion of the financial statement in our 2000 audit of the financial statement. So we will be looking at those areas specifically.

Mr. OWENS. Do you have any concrete recommendations about what other steps might be taken?

Mr. FEASTER. I think we've had this discussion in the past with them and they have basically implemented a very aggressive program. They have two approaches. One, the new collection system will more accurately record fees, and two, there is a system called CORES, which will be making sure we have very tight links between our licensees and the financial transactions that they do make to make sure that everybody is paying their fair amount and required amount.

Mr. OWENS. Thank you. Mr. Eisenach, you mentioned the e-rate, and I would like for you to expand a little on that. I am reminded of the picture on the front page of the New York Times today of the folks in Yugoslavia rebelling, people rising up and seizing their own destiny and their own government. If we tamper with the e-rate at this point, we will have the teachers and the students and a whole lot of people out there rising up against any efforts, I assure you, to lessen the impact of e-rate or make it weaker. And it seems to me a proposal to move the administration of it to the Department of Education would certainly weaken the effort because what you have—we have gone through a stormy set of skirmishes with the big corporations in the telecommunications industry, some have even gone to court and we have had Members of Congress who have threatened the agency and all kinds of things have happened as we pursue the implementation of the e-rate, and we finally came out and it has been implemented now and you can't take it away from the people.

It seems to me that it is mainly a communications matter for one, and not education. But for two, there is a need for some power in terms of making the giants who resisted having e-rate implemented in the first place, making them to continue to stay in line and saving the e-rate from any counterattacks that might develop out there.

You know, I admire the Department of Education. I think it is one of the most important functions of government. But it is one of the weakest agencies in terms of its clout right now.

Could you elaborate on your proposal to move the e-rate to the Department of Education?

Mr. EISENACH. I've recently had the opportunity to listen to FTC Commissioner Orson Swindle speak on unrelated matters. He said that all government programs have three things in common, a beginning, a middle, and no end.

I think what you just said, Mr. Owens, suggests why. I think it is very difficult to reform or modify programs once they are put in place, and I think even those with the best of intentions are subject to that problem.

Mr. OWENS. Sometimes that is good. We don't want the e-rate and Social Security to come to an end.

Mr. EISENACH. I understand that. I think from a larger perspective—and I would not want the perfect to be the enemy of the good—there is a general consensus that there is a role for the Federal Government in helping to see to the implementation of Internet availability in our Nation's schools. But at the same time, I think that there are good government reasons for moving that program where it could be integrated with the programs of the Department of Education.

Mr. HORN. Time is up on this, and we are sorry about that. We'll probably ask the chairman the same thing. But I want to thank all three of you for coming here and giving us a perspective which raised some very interesting questions, and we will be in touch with you in terms of some of these questions to put them in the book and in the record. So thank you very much for coming.

We'll now ask the chairman of the Federal Communications Commission to come forward.

We welcome you. This is the first time he's testified before this subcommittee. Chairman Kennard, I understand you had some scheduling conflicts and I appreciate your effort to join us today, and I think you know, since this is an investigating committee, we will swear you in and your aides too. Anybody that will talk and get on the record. It doesn't matter how deep. I have seen the Pentagon come in here with 15 people.

[Witnesses sworn.]

Mr. HORN. Mr. Chairman, did you take the oath?

Mr. KENNARD. Yes, I said "I do."

Mr. HORN. The clerk will note that the chairman and his aides have accepted the oath. And please proceed any way you would like. We prefer not to hear what we have already read, but we would like a summary. If you want to emphasize a particular paragraph, but this way there will be a chance for the members of the panel on both sides to ask questions and we won't be here forever. Thank you.

STATEMENT OF WILLIAM E. KENNARD, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; RONALD S. STONE, CHIEF INFORMATION OFFICER, INFORMATION TECHNOLOGY CENTER; AND MARK REGER, CHIEF FINANCIAL OFFICER

Mr. KENNARD. Thank you very much, Mr. Chairman, thank you for the opportunity to appear before this subcommittee today. With me I have two very important members of the senior management at the FCC. To my left is Mr. Ron Stone, who is our Chief Information Officer; to my right is Mark Reger, who is our Chief Financial Officer. Both of these gentlemen are responsible for areas that are within the jurisdiction of this committee, and I know that they will be able to provide a number of the details that you're seeking.

I'm pleased to present testimony concerning the management of information technology and financial operation activities of the Federal Communications Commission. The FCC is an independent regulatory agency with regulatory responsibilities for interstate communications activities of the wireless, wireline, satellite and radio and television broadcast industries. We have a total agency staff of 1,975 full time equivalents and a fiscal year budget of $210 million.

Principally, our mission is guided by the Communications Act of 1934. Its mission is to promote competition, protect consumers and provide access for every American to existing and advanced communications services.

As you know, Mr. Chairman, the last few years have been a time of momentous change in the telecommunications industries here and around the world. And so they have been a time of change in the administration and management of the FCC. We have continued to work hard to keep up with the pace of change by expanding and enhancing our information technology program, both internally and in the electronic filing systems available to the public. We've also made many improvements to the agency's financial management systems to oversee the wide range of congressionally authorized revenue generating programs now within the agency's purview.

In the area of financial management, the Commission completed its first ever audited financial statement for fiscal year 1999. We are very proud of that financial audit. We did it on a voluntary basis. It's not required of our agency to do so, but we felt that it was important, given the many revenue generating activities that we are now in, including auctions and our extensive fee program, that we have a high degree of fiscal discipline at the agency.

I have a pretty extensive oral statement here, but in the interest of time and as a concession to the shortness of life, I will not read my entire statement. But I will sum up what I think are the principal challenges that are facing the agency today.

These markets are transitioning from an era of monopoly regulation to competition. This is not just something that's happening in the United States, it is in fact a worldwide movement. We have been charged by the Congress with introducing competition in these markets. The competition is now the organizing principle of our law and policy in this area and the entire world is watching what we are doing at the FCC. It makes it a profoundly important

time for us, because the world is now waking up to the power of the Internet and e-commerce.

As Congressman Owens well knows the importance of technology in uplifting our people, educating our children, improving health care, and we know that the best way to get these benefits to the public is through an open competitive telecommunications marketplace. We have been charged at the agency with making that happen. And we have been quite successful, I believe, in intervening with a strong regulatory hand where necessary to pry open historic monopoly markets and force incumbents to deal with new entrants, new competitors, but at the same time easing off the hand of regulation in areas where we see the markets becoming more competitive.

So you can see we have attempted to create a careful balance: intervening where there are blocked arteries or bottlenecks, but easing off where we see competition developing, like in the long distance marketplace or in the wireless marketplace.

At the same time, we have been very reluctant to regulate in areas that are new and innovative and dynamic, like the Internet. We have been very forceful in articulating that the Internet has been an area of fertile innovation and it has grown precisely because there has not been a lot of government micromanagement and regulation.

On our management side, the things that we are most proud of is the successful implementation of our auction program, our Web site, which has recently been rated very highly. The Taubman Public Policy Center rated over 1,800 government Web sites around the country. We were No. 4. And we get about 1 million hits a day. As I travel around the country, I am finding that because we have converted a lot of our processes to electronic filing and because we have a very high quality Web site, people are able to interact with the agency around the country and, indeed, around the world without having to have a presence in Washington. That is very, very important.

Congressman Walden, you talked about your family background in broadcasting. As I am sure you know, now broadcasters around the country can file applications with us electronically, communicate via e-mail with our staff, and it has been a very, very satisfying thing to see.

With that, Mr. Chairman, I will conclude my prepared opening remarks, and I would be happy to answer any questions that the subcommittee may have. Thank you.

[The prepared statement of Mr. Kennard follows:]

Testimony of

Chairman William E. Kennard
Federal Communications Commission

Oversight Hearing
Regarding

"Management Practices of the FCC: The Chairman Reports"

Before the
Subcommittee on Government Management, Information & Technology
Committee on Government Reform
U.S. House of Representatives

Friday, October 6, 2000
2247 Rayburn House Office Building

Good afternoon Mr. Chairman, Ranking Member and members of the Subcommittee on Government Management, Information and Technology. I am pleased to present testimony concerning the management, information technology and financial operations activities of the Federal Communications Commission.

The Federal Communications Commission is an independent regulatory agency with regulatory responsibilities for the interstate communications activities of the wireless, wireline, satellite and radio and television broadcast industries. Our headquarters is in Washington, D. C., with 16 field locations and nine resident agent locations throughout the nation. We also have facilities in Gettysburg, Pennsylvania, Laurel, Maryland and Powder Springs, Georgia. The Commission has a total staff of 1,975 full time equivalents and a Fiscal Year 2000 budget of $210 million.

The FCC's substantive activities are guided by the Communications Act of 1934, as amended, and its mission is to promote competition, protect consumers and support access for every American to existing and advanced communications services.

The past few years have been a time of many achievements and challenges for the Commission. During this time period, the pro-competitive, deregulatory policies articulated in the Telecommunications Act of 1996 have spawned numerous advances in the range and number of communications services available to the American public. In addition, new technologies and multiplying competitors are transforming the fundamentals of telecommunications markets. During the crucial period of transition to fully competitive communications markets, the Commission must have a clearly defined vision, objectives and performance benchmarks. The agency recently presented to Congress a five-year strategic [illegible] chart the policymaking course and to revamp its functions, processes and structure more effectively to meet the challenges ahead.

The last few years have also been a time of change in the administration and management of the Commission. We have continued to expand and enhance our information technology program, both internally and in the electronic filing systems that are available to the public. We have also made many improvements to the agency's financial management systems to oversee the wide range of congressionally-authorized revenue generating programs now within the agency's purview. In the area of financial management, the Commission completed its first-ever, audited financial statement for Fiscal Year 1999.

Let me now discuss each of these areas in greater detail.

Strategic Planning, Information Technology and Other Digital Age Initiatives

The Commission has just submitted to Congress a five-year strategic plan, as required by the Government Performance Results Act. The plan was developed after receiving extensive input from industry groups, consumer groups, academicians and state and local governments. The strategic plan outlines a framework for ordering the agency's activities and measuring its achievements as we transition from industry regulator to market facilitator. The Plan announced four goals:

- Create a model agency for the digital age
- Promote competition in all communications markets
- Promote opportunities for all Americans to benefit from the communications revolution
- Manage the electromagnetic spectrum (the Nation's air[illegible]) in the public interest

The first goal is directly relevant to the topics under the Subcommittee's review today. It has several specific objectives. First, as the agency responsible for promoting policies fostering competition and technological advances, the FCC must lead the way in electronic government. In particular, we must invest in new technology in order to automate our processes and make more information available to the public.

We have made substantial advances in this area. For the past several years, the FCC has spent nearly all of its discretionary funding on two basic information technology goals: (1) converting its traditional licensing applications to state-of-the-art, internet-based electronic filing and support systems; and (2) improving its internet pages and supporting infrastructure to enhance the amount of information that is publicly available.

Today, more than 15 filing and support systems have been converted to electronic filing, covering roughly 72% of the agency's application and filing services. Approximately 62% of receipts in services with electronic filing systems are now filed electronically. These systems offer the public a host of capabilities, including the ability to file electronically, to obtain information about communications law and programs, to access technology-specific databases, and to receive authorizations electronically. These systems enable the agency to improve speed of service, expand public access to a greater amount of information, and redirect resources previously devoted to manual processing to other priority activities.

The agency has also improved its website, which gets approximately one million hits per day, and publicly disseminates information about the wide [illegible] of FCC activities to anyone with internet access. Just last week, in a survey of 1,813 state and federal government websites by the Taubman Center for Public Policy at Brown University, the FCC's internet site was ranked fourth (in a tie with two other federal agencies) among major federal agencies. The agency also had a successful Year 2000 date conversion program, and transitioned its many systems into the new millennium without service disruption. The agency's successful Y2K program was led by my colleague Commissioner Michael Powell, who served as the point man for the Commission's Year 2000 Task Force and spearheaded our efforts to reach out to industry and other parts of the Federal government.

Developing a model agency for the information age also requires reorganizing the Commission consistent with technological convergence. In late 1999, the agency completed a

major reorganization, consolidating its previously dispersed public information functions into a new Consumer Information Bureau and its formerly dispersed enforcement functions into a new Enforcement Bureau. By leveraging scarce resources more effectively, the consolidation of these two key functions enables the agency to maximize the information it provides consumers about their rights under communications law and to improve the effectiveness of enforcement activities in an increasingly competitive communications marketplace.

As the pace of competition and deregulation intensifies, it is all the more important for consumers to be able to obtain quick, clear and consistent information about their rights and quick resolution of informal complaints against regulated entities. The Consumer Information Bureau provides one stop service for these public inquiries and complaints, as well as proactive information about issues of high public interest such as telephone company billing practices, slamming and cramming. Similarly, as communications markets are increasingly deregulated, it is vital that those regulations that still remain on the books are swiftly and consistently enforced. The creation of the Enforcement Bureau has allowed the agency to take action against violators of the Communications Act and agency rules, to resolve market disputes and to address other key enforcement issues, thereby promoting competition and protecting consumers more effectively.

Creating a model governmental agency also requires faster decisionmaking, reduced application processing times, and elimination of unnecessary delay. We are making progress here too, although resource limitations have prevented us from moving as fast as we believe is required to eliminate agency backlogs. At the end of June, our agency-wide backlog was eight percent. Action on many of these matters has been delayed pending the completion of a related

rulemaking, auction or other relevant action. In some cases, action is slower than we would like because of the need to resolve complicated engineering and international coordination issues.

We have experienced particular challenges in the area of informal consumer complaints. The agency receives thousands of informal consumer complaints every quarter. These complaints run the gamut of issues, including disputes over telephone billing practices, slamming and cramming; and unsolicited junk faxes. Because of difficulties caused by an electronic complaint processing system that was not Year 2000 compliant and lack of staff resources, the inventory of informal complaints at one point grew to 154,000 pending cases. Through a combination of computer upgrades, staff reallocation and processing changes, the number of pending informal complaints has now been reduced by 75% to 39,000. Thirty thousand of these remaining cases have been processed already and served on carriers for responses. We expect to eliminate the backlog entirely by the end of 2000. Having seen the widespread public confusion in these areas, the Commission has implemented a new consumer education program to better inform members of the public about their legal rights. The agency also has issued large fines to companies that violate the law, thereby deterring others from the unlawful practices that lead to these complaints.

To become a model governmental agency, the Commission must also maintain a dedicated staff and enhance the expertise of the staff so that it can respond to the regulatory challenges of the digital age. The agency is beginning an internal training program to offer, within its limited budget, greater opportunities for staff to receive continuing education. We have also placed a high priority on recruiting additional engineers to assist in critical spectrum

management activities. To provide a more flexible workplace for our staff, we have recently instituted a telecommuting program, which has been generally well received.

Much work remains to be done to achieve the objectives of the strategic plan. However, the results thus far are positive, and the plan has been extremely valuable in clarifying the objectives to be achieved by the agency, and articulating the specific results that will measure our success.

Financial Operations

Since the early 1990s, the number and scope of financial programs the agency oversees has increased significantly and, consequently, so has the nature of the agency's financial oversight responsibilities. As a result, the agency has expanded its financial program management activities substantially in the past few years. In contrast to the early 1990s, when our principal financial oversight related to managing the agency's budget, the Commission today is responsible for a host of congressionally-authorized programs, including the regulatory fee program, the spectrum auction program, the associated installment payment program and the universal service fund.

The Budget Reconciliation Act of 1993 directed the Commission to recover regulatory fees to offset a portion of the annual appropriations. In FY 1994, the regulatory fee offset was $58.7 million and represented 37% of the agency's appropriations. This revenue source has increased over the years so that by FY 2000, Congress authorized the collection of $185.8 million in fees to offset against authority of $210 million or 88% of the agency's appropriation.

The Commission also administers the application fee program, which was originally designed in the late 1980s to collect the costs of the Commission's authorization of service activities and remit those fees directly into the General Fund of the Treasury. Since FY 1997, the Commission's regulatory and application fee program receipts have contributed more than the total annual appropriation for the Commission.

During this same time, Congress authorized the spectrum auction program. Since 1994, this program has deposited over $15.3 billion in receipts into the Treasury through July 31, 2000 from 31 separate auctions. Of these receipts, $1.9 billion represents repayments of auction loans. The auction loan portfolio had a net value of just over $5 billion as of September 30, 1999.

The Commission is also responsible for the Universal Service Fund. The Fund provides money to telecommunications companies to fund the high cost, low income, rural health care, telecommunications relay service and schools and library programs. As of August 31, 2000, USF receipts have totaled $4.1 billion and disbursements were $3.6 billion.

In order to strengthen the financial reporting and oversight capabilities, the FCC elected in late 1998 to begin following the standards of the Chief Financial Officers Act of 1990, although the agency is not subject to that law. The FCC prepared the first auditable financial statement for Fiscal Year 1999 and subjected it to the review of an independent audit firm hired by the Inspector General. The auditors issued a qualified opinion on the statement and accompanying notes -- a rare first-year achievement for a federal agency. The sole qualification was the value of the agency inventory, which was complicated by the agency's move from eight

locations in Northwest Washington to a single headquarters facility during the year. The auditors noted a variety of record keeping problems for the agency to rectify, although none was serious enough to result in a qualification of the audit statement. We have devoted this past year to implementing several improvements in financial management systems and procedures. Let me review our most significant improvements.

We have implemented a new Commission registration system (CORES) which, by assigning a unique identifier to each entity that makes payments to the FCC, will allow us more reliably to collect all required fees, fines and auction installment and loan payments. We are implementing a new integrated revenue accounting management tracking system (RAMIS) to centralize all collection, revenue and receivable activity into one integrated system. When fully implemented, CORES and RAMIS will address the major r[illegible] keeping deficiencies noted in the Inspector General's audits on fines and forfeitures and non-tax delinquent debt. By linking CORES with the agency's various licensing systems, we will also be able to preclude the processing of applications submitted by entities whose accounts are in arrears. The CORES system was initiated in July. RAMIS has just become operational, and should be fully implemented by January 2001.

The agency has recently contracted with Chase Bank in New York to assume the servicing functions for the spectrum auction loan portfolio. This is the final step in our effort to overhaul the management of the loan portfolio, which we reclaimed from the Department of Treasury in FY 1999 after experiencing difficulty tracking and collecting auction installment payments. After resuming day to day oversight of the loan processing function last year, the

agency engaged Ernst and Young to confirm loan balances and reconstruct loan files. When that task is completed later this Fall, we will turn over the loan processing function to Chase.

We have also intensified our efforts to identify and collect payments from entities that have not paid the required regulatory fees. This plan resulted in $1.9 million in delinquent collections and penalties in FY 1999 and $2.3 million in FY 2000. Such a program is, as mentioned earlier, built into our new revenue tracking systems. Similarly, based on a GAO recommendation, the agency retained Ernst and Young to review the fines and forfeiture records prior to transferring them into the new RAMIS system.

The agency has achieved important gains in strategic planning, information technology, application and complaint processing and financial oversig he past few years. Still, much work remains to be done. The agency can only fully meet the challenges ahead if Congress appropriates the necessary funds. Without sufficient funding, the agency's ability to undertake programmatic improvements that require substantial financial outlays will be sharply curtailed.

In the information technology area, the agency is now in the midst of a costly effort to ensure compliance with government-wide system security requirements. I was gratified to see that this very subcommittee has recognized our efforts thus far to improve computer security by giving the Commission's computer security procedures a grade of 85 – a respectable B plus. We are working to improve upon that score – and gain even higher grades – through implementing a number of initiatives. First, we are in the process of establishing a comprehensive and integrated computer security plan, as required by OMD Circular A-130. Second, we have begun an effort

to review, certify and accredit all major applications and to develop and implement security plans. Third, we are implementing other measures to improve controls over electronic databases, and developing and testing contingency plans. Although much work is already underway, a significant amount of work is contingent on the outcome of our FY 2001 budget, which is still pending in Congress.

We are also taking steps to ensure compliance with government-wide accessibility standards that will be released next year. We have developed a comprehensive agency-wide plan and begun implementation. Again, however, much of the work that remains is contingent on our FY 2001 budget.

We must also maintain the life-cyle replacement pr[illegible] for our network and telecommunications infrastructure to ensure that these systems continue to function reliably and meet the basic requirements of the public we serve. We must expand our automation activities so that we can more readily reconcile financial accounts and track inventory in accordance with government standards. And, we must implement program-enhancing initiatives such as a comprehensive public database of radio frequency spectrum usage to promote better spectrum management. These and other initiatives are all contingent on the outcome of the FY 2001 budget.

Our FY 2001 budget is presently pending before Congress. The House funding level of $207.9 is $2 million less than last year's budget, $16 million less than required to operate at the current services level, and $30 million less than the Administration's budget request. Our ability

to build on the management successes of the recent past, and to respond to the issues of particular concern to this Subcommittee, will be dramatically affected by the ultimate outcome of this year's budget.

The Washington Post
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Bid for Vital Airwaves Falters

Bankrupt Mobile-Phone Firm Tries to Keep Slice of Spectrum

By PETER S. GOODMAN
Washington Post Staff Writer

For a bankrupt venture, NextWave Communications Inc. has marshaled an impressive lobbying effort for its last-ditch bid to keep the slice of the airwaves that it won in a federal auction five years ago but never paid for.

The lobbyists have worked the hallways of the Capitol on behalf of NextWave and its creditors, seeking legislation that would secure the would-be mobile telephone company the rights to the airwaves or at least delay another auction by the Federal Communications Commission, now scheduled for December. The slice of the spectrum is worth as much as $18 billion.

But yesterday it appeared the campaign would end in failure. Senate leadership has concluded that the final days of the congressional budget season are already too complicated to consider legislative help for NextWave, sources said, prompting the company and its creditors to train its efforts on the House.

There, Majority Leader Richard K. Armey (R-Tex.) has argued that the FCC should not put the spectrum out for auction again until the resolution of court cases challenging its authority to recapture the licenses. But in an interview yesterday, Armey said legislative efforts to delay the auction were now futile.

"I would have preferred language saying, 'Don't take it away until the courts are finished,' " Armey said. "But I don't think I can get that done."

Unless NextWave can persuade a judge to stay the upcoming auction or persuade the Supreme Court to hear its case—two avenues it is pursuing—its corporate life may be nearing an end.

Control of the airwaves once seemed far removed from Capitol Hill. But as the skies grow thick with telephone calls and Internet data, the right to transmit has become a critical commodity. The radio spectrum at issue reaches 165 million people.

NextWave agreed to pay $4.7 billion for the spectrum in the auction. But after handing over a $500 million down payment, the company filed for bankruptcy. The FCC argued that the licenses should revert to the federal government, to be sold again. NextWave challenged that finding, asserting that the FCC devalued its spectrum with a flood of other airwave sales, complicating the company's efforts to secure financing. The company won in bankruptcy court but lost in the U.S. Court of Appeals for the 2nd Circuit. The FCC formally revoked NextWave's licenses and scheduled the auction.

The battle, meanwhile, was also being waged on Capitol Hill. With a valuable commodity hanging in the balance, NextWave's creditors—including Global Crossing Ltd., a long-distance and Internet company that bought a piece of NextWave last year—have not hesitated to pump millions in lobbying fees to hang on to the spectrum. Meanwhile, a coalition of wireless companies hungry for the spectrum—led by Nextel Communications Inc., AT&T Wireless and Verizon Wireless—has deployed its own considerable forces on Capitol Hill to seek to ensure the FCC auction will go forward.

In August, one NextWave creditor hired Bill Crispin, who worked with FCC Chairman William E. Kennard at the Washington firm Verner Liipfert. According to sources with knowledge of their talks, Crispin offered a new proposal: NextWave would hand over about $6 billion and walk away with about two-thirds of the spectrum, leaving the rest for the FCC to auction again.

Kennard referred Crispin to his general counsel, Chris Wright, the sources said. Wright floated the idea to members of the commission but found no support: The spectrum was now worth four times as much as NextWave's initial bid, by some reckonings. FCC officials argued that the integrity of the auction required that NextWave be given no special deal.

As the NextWave camp shifted back to Capitol Hill, one of the company's creditors hired Rick Davis, formerly the chairman of Sen. John McCain's presidential campaign. The creditors hoped to persuade the Arizona Republican, who is chairman of the Commerce Committee, to attach an amendment to a bill funding loans for satellite television that would cement the deal offered at the FCC.

Two weeks ago, Davis met with McCain and Mark Buse, staff director of the Commerce Committee. According to Buse, McCain brushed off the request.

"The commission ought to be allowed to make their own determination and go forward with their auctions based on what they determine will maximize the revenue to the public," Buse said.

In recent days, NextWave and its creditors have lowered their sights, seeking to delay the auction. Global Crossing co-Chairman Lodwrick Cook last week visited Sen. Ted Stevens (R-Alaska), chairman of the Appropriations Committee, to ask for a last-hour budget amendment, sources said. Former House Appropriations chairman Bob Livingston (R-La.) and Haley Barbour, former chairman of the Republican National Committee—both working for NextWave creditors—have focused on Republican leaders.

But in this election year, with campaigns beckoning, the leadership is increasingly intent on finishing business quickly. NextWaves's imperatives, the sources said, are now seen by those in a position to help as unwanted weight at a time when the idea is to lighten the load.

Staff writer Juliet Eilperin contributed to this report.

Mr. WALDEN [presiding]. Thank you, Chairman Kennard. I am going to fill in for Chairman Horn while he goes to vote and then we will trade places. I have a couple of questions I wanted to ask and then I will turn to my colleagues, who may have questions as well.

One, I just want to draw your attention to something I hope that you will work on, and I guess I am drawing on my background, which I guess is what makes a legislative body a good thing to have people of different background, because some of us are actually on the ground, on the receiving end, and that is not necessarily the cost, the regulatory fees, but just the process you have to go through to fill out the forms and apply.

I remember calling my Senator when I did not think I was going to be in this process certainly a couple of years ago, after spending many hours going through the notice and all of the forms, trying to figure out which code I needed to put in which box at which point and then being referred to something I couldn't find, and this was probably predating some of your Internet improvements on your Web site.

The thing that has always struck me is you have 9 days to get it in. You cannot pay your bill before September 11th, I think, this year and it had to be there before September 20th. I cannot imagine in my business telling my clients, you have a 9-day window and I am going to fine you 25 percent if you are late in your payment, and expect to have anybody do business with me. Now, I do not have a choice. I need your license, so I am your humble servant.

I guess I always wanted to ask that question. I always wanted to be in that position where I could, and so I am here. I am curious, why that closed window? Why not let people file it ahead of time? Why that 9-day window to have every broadcaster in America to pay their bill.

Mr. KENNARD. The mandatory fee program, as you know, is mandated by the Congress, and every year we have to go through a process of establishing what the regulatory fees are going to be for the year. What we try to do is give people as much notice as we can early in the year of what we think the fee structure will be so that they can prepare to make these payments, and then once the fee structure is established, usually in the fall of the year, we go through a process of having to collect the money in fairly short order.

It is an issue that I am glad you brought to our attention and it is something that I will focus on and see if there is a way that we can make it easier on our licensees.

Mr. WALDEN. Because this does come out August 2nd this year. But I have just never seen an agency that would not accept your money earlier. You know what I mean? So anyway, I throw that out there. I know you have made a lot of improvements and I commend you on the Web site. The ability to download a lot of forms and do a lot of this work is a tremendous asset. I mean I shudder sometimes at the thought of 24-hour government and what it can really mean, but I also appreciate the fact that in the middle of the night I can pull up all kinds of information, technical and otherwise, and be able to continue to move on in terms of business.

Let me turn to some other policy issues. Does your agency have plans to introduce new regulations or guidance affecting religious broadcasters between now and the end of the year? Because that has obviously been one I have gotten a lot of mail on, a lot of interest in.

Mr. KENNARD. First of all, in response to your earlier issue, my Chief Financial Officer has just informed me that we would be happy to accept your money earlier if you would like to send it in before the September deadline.

Mr. WALDEN. Well, and I appreciate that, but your own rules say I can't.

Mr. REGER. No, actually, it sets up a fee window by when you can pay, but you may pay that any day after the public notice is released. You wouldn't know the amount until the public notice is released each year in the congressional review.

Mr. WALDEN. Really. Well, you are going to cost Federal Express a lot of money then, because——

Mr. REGER. May I also tell you, sir, that there were 2 new Web sites available to you this year that allow you to pay electronically and both of those were up to try to help people not send their payment——

Mr. WALDEN. Right. Because this says the fee payments must be received by the Commission during the period beginning September 11 and ending September 20.

Mr. REGER. Yes. But this year for the first time you could send it in any day after the public notice and we were set up to accept and take your payment.

Mr. WALDEN. OK. It is interesting, because that is the one from August 2. Good to know.

Back to religious broadcasting policy. Any plans to do anything new between now and the end of the year?

Mr. KENNARD. Not at this time. We addressed this issue earlier in the year, the very controversial clarification of our policies in this area, so I don't anticipate that we will be addressing it again.

Mr. WALDEN. OK. I think we will need to recess, because I need to go vote, being the only one left not to. So I will put the committee in recess and we will return. Thank you.

[Recess.]

Mr. HORN [presiding]. Mr. Chairman, where are we, with us having to get over there to vote, where are you on your statement?

Mr. KENNARD. I have given my opening statement, Mr. Chairman, and I received some initial questioning from Mr. Walden.

Mr. HORN. I see. OK. Sorry about that. We have had a series of votes, but that has to be done around here.

Mr. KENNARD. Quite all right.

Mr. HORN. And of course, if you have this jurisdiction, I suspect, over little beepers, if you could sort of neutralize the ones on Capitol Hill, we could hold more hearings.

Mr. KENNARD. I think we could help you with that.

Mr. HORN. That is democracy.

Was Mr. Walden doing the questioning?

Mr. KENNARD. Yes, sir.

Mr. HORN. OK. Well, I might intervene a little bit with that. We have a few questions in general. There was an article in the folder

you had. How has the Commission prepared itself to prevent another NextWave debacle in its spectrum auction program? That is one of our concerns, so we would appreciate your comments.

Mr. KENNARD. Certainly. When Congress authorized the FCC to conduct spectrum auctions in 1993, the statute specifically directed the FCC to experiment with different auction methodologies. One of those methodologies was allowing small businesses to get installment payments in order to ease the financial burden that they would encounter in these auctions. It was a very well-intentioned effort to ensure that when we went to the auction regime, we would not inadvertently create an environment where small businesses could not participate.

So, in one of our first major auctions for what we call the C-block PCS auction, we extended credit in effect to small businesses. Some of them overbid, got overextended, and that is the problem we ran into.

Since that time, we have not extended installment payments. We have come up with other methodologies to create incentives for small businesses like bidding credits. So I don't anticipate that particular problem will reoccur.

Mr. HORN. You heard, I think, some testimony on the e-rate business in terms of, should it be in the Department of Education, should it stay in the Federal Communications Commission? What are your feelings on that?

Mr. KENNARD. Well, I strongly disagree with the notion that the e-rate program should be moved to the Department of Education. Here is why.

The e-rate program is a part of our universal service policies, which the FCC has administered for decades. Those policies are largely responsible for the fact that in our country, we have the highest telephone penetration of any country in the world. On average, 94 percent of Americans have access to a phone. That is because the FCC, over time, has administered policies, known as universal service, to ensure that people in rural areas get phone service, as well as low-income people and people in inner city areas. The e-rate is an extension of that policy. It was an extension that was mandated by the Telecommunications Act of 1996. So it is really part of the core of the Commission's responsibilities to ensure that the phone network reaches all people.

Now, of course, the phone network is not just delivering voice telephony, it is delivering voice on the Internet. So our responsibility appropriately is to ensure that those networks reach all people.

Mr. HORN. You know, I believe that this subcommittee has a great interest in making sure the loans that have been made to various agencies come true and are fulfilled and put the money back into the Treasury to help the next generation. So I am curious how much money is owed to the FCC from its spectrum auctions and what is being done to collect those amounts?

Mr. KENNARD. Well, if memory serves, we have collected about $15 billion in the auction program and about $5 billion is outstanding. Most of it owed by one company: NextWave. We have worked very, very hard to advocate that the U.S. Congress change the statute so that it is clear that if someone defaults in the payment of moneys owed us in a spectrum auction, that the FCC can imme-

diately reauction the license. We had planned to reauction the NextWave spectrum, if you will, December 12th, and we are—unfortunately, it has taken some time, because the statute was not entirely clear and there has been litigation in the bankruptcy courts and the appellate courts. But that clarification would be very, very helpful in ensuring that the American public get the value of the spectrum.

Mr. HORN. Have you sent a recommendation from your office through the Office of Management and Budget which would clear it on behalf of the President to the Congress so that the relevant committees can act on that?

Mr. KENNARD. Yes, in fact, we have. Beginning I believe in 1997, we have sent up language that would fix this problem every year since then, and we have worked with OMB and the relevant committees, the Commerce Committee and the Budget Committee in the Senate.

Mr. HORN. And it has not gotten anywhere?

Mr. KENNARD. No. It is always very controversial. In fact, it is controversial as we speak. There are efforts to try to address this issue through our appropriations bill at this time.

Mr. HORN. Well, I see I have 30 seconds on the 5, so I will maintain that later. I now yield to my colleague, the gentleman from Texas, Mr. Turner, the ranking member on the subcommittee.

Mr. TURNER. Chairman, welcome to our committee.

Mr. KENNARD. Thank you.

Mr. TURNER. We appreciate you being here.

I come from an area in rural east Texas that by and large has found itself on the wrong side of the digital divide, and I was curious as to what the FCC is doing to address the gap between those who have access to the information highway and those of us who do not. I do not want to be in a position to have to look back and think that the information highway passed us by and that all we have is a dirt onramp that we cannot use too well. So what hope do we have in rural areas of the country to be sure that we can have the same access that everyone else has?

Mr. KENNARD. There is a lot that is being done. The FCC is very, very focused on this issue. We have a very, very aggressive program. I will highlight some of the things that we have been doing.

One is we are reevaluating our universal service programs on an ongoing basis to find ways to ensure that the phone network reaches all people. Every year we send a report to Congress on advanced services to make sure that as the network improves and starts rolling out such things as broadband access that people in rural areas are not on the wrong end of the digital divide. We are also focusing on populations and areas that are particularly at risk. Just last week, we had the first ever conference here. We pulled together over 100 leaders of tribal governments to assist them in finding ways to ensure that people living on tribal lands and Indian reservations are not left behind.

This is the most at-risk population. I mentioned before that 94 percent of Americans have a phone, but if you look in some tribal lands, the percentage on average drops to 50 percent. And on some reservations, like the Navajos, for example, it is below 20 percent. We just have to rectify that situation.

We are also aggressively promoting wireless technology, satellite and terrestrial wireless as ways to extend access into rural and remote areas, because those technologies are often more efficient in delivering phone service in remote areas.

So it is a huge agenda for us at the FCC and there are a number of policy things that we have adopted or have ongoing.

Mr. TURNER. Are some of the European countries ahead of us in developing the wireless Internet?

Mr. KENNARD. This is a raging debate. We have taken a different approach in the United States. The Europeans have sort of, a philosophical difference. They imposed a uniform standard early on. They have a more coordinated government industry policy. We went a different way.

I tend to believe that our approach ultimately is the best approach, because we put our faith in the marketplace and ultimately we have more innovation in our marketplace. I think that the benefits of that will be seen as the next generation of wireless services come on board, what we call third generation wireless.

Mr. TURNER. One other issue that I wanted to briefly ask you about. This issue probably generated more mail in my office over the last year or so than any other one subject, and that is being in a rural area where it is hard to receive a television signal by an antenna. We have a lot of very unhappy constituents who have been upset with the fact that they are not able to receive a signal and that, of course, the law we passed, the Satellite Home Viewers Improvement Act, mandated the FCC to develop a new signal strength model for determining whether satellite owners are eligible to receive distant broadcast networks from their satellite provider.

But I want to know how the FCC is making progress toward developing that new model, because I still hear some complaints from satellite owners that they are not being provided access through some of the signals they think they should be and, in many cases, have been turned down when they make application to receive those signals.

Mr. KENNARD. Well, as you know, Congressman, the statute, the Satellite Home Viewer Improvement Act, established some pretty tight statutory deadlines for the FCC to implement that law. We are in the process of doing that. The precise issue that you reference, the redefinition of the so-called grade B contour, that proceeding is under way, and I am confident we will meet our statutory deadline on it. We have sought comment on it. I believe the deadline is toward the end of this year, and we will meet it.

Mr. TURNER. Do you think that is going to resolve the issue once you do that?

Mr. KENNARD. It is hard for me to say at this point whether it will have 100 percent resolution. I think the more difficult problem is, as oftentimes in our area, we deal with some very litigious parties, and there are lots of rumblings that the Satellite Home Viewer Act is going to be challenged in court and that could hold us up. But I think fundamentally Congress was very wise in passing that act, because this whole area of the law was antiquated and really needed to be updated, and it is my hope that we will have a solution.

Mr. TURNER. Thank you.

Thank you, Mr. Chairman.

Mr. HORN. Thank you. The gentleman from New York, Mr. Owens, 5 minutes for questioning.

Mr. OWENS. Mr. Secretary, I first want to salute you, congratulate you, and thank you and your predecessor, Reed Hundt, and the Clinton-Gore administration for operating with policies and initiatives that let the American people know that the airwaves belong to all of us. For too long, it appeared that the airwaves were the property of an elite group that got there first and they ran things pretty much as they saw fit.

In the process of making certain that the airwaves serve all the people, you have taken some steps that have been quite controversial and have met quite a bit of opposition. Two of those steps are the establishment of the e-rate and the implementation of e-rate, and the second is the latest edition of low power radio stations. Could you bring us up to date as to where the opposition to the e-rate is now in terms of court cases that are still being pursued out there and what kind of impediments are you experiencing, and do the same in the case of the low power radio.

Mr. KENNARD. Certainly. First of all, Congressman, I want to thank you for what you just said about our efforts at the FCC. But I think it also should be noted for the record that we were not alone in those efforts, and you, sir, in particular, were instrumental in making the e-rate happen. You were one of the early supporters of the program. I recall you came to the FCC and were the first Member of Congress to testify in support of the e-rate program. So I think that is an accomplishment that we should both share.

The e-rate program itself, as you pointed out earlier, has really been recognized around the country as being very, very important to the next generation of Americans. It has literally touched the lives of about 40 million American schoolchildren, will wire 1 million classrooms to the Internet by the end of this year, and people are recognizing that. We were successful in beating back the major constitutional and statutorial challenges to the e-rate. Our main challenge now is to continue to operate the program in a well-managed way and we are working very hard on that.

Mr. OWENS. There are no lawsuits still in process?

Mr. KENNARD. No. No major challenges. The most major challenge was an attack on the e-rate in the 5th Circuit and we prevailed.

Low power FM is a newer program. It was an initiative that I championed to try to allow community-based organizations an opportunity to use the public's airwaves to speak to their communities, churches, schools, nonprofit groups, in an effort to give a little piece of the airwaves back to the people. We adopted rules implementing low power FM in January and opened opportunities for these groups to file applications. We have received I believe about 1,200 applications.

There is an effort to kill the program legislatively. Congress passed legislation in the House earlier in the year that would, in effect, kill low power FM. Similar legislation has been offered in the Senate. There is also an effort to try to kill the program through the appropriations process.

I think it would be very, very unfortunate, because there are literally thousands and thousands of churches and schools and nonprofit community-based organizations that need an outlet to use the public's airwaves to speak to their communities and low power FM will do that. It will do it in a time when there is increasing consolidation in the airwaves and fewer opportunities for mom and pop radio stations and small church stations. So it is a very, very important program for the Nation.

Mr. OWENS. I think before you cited Indian reservations as one example of a special situation that would be helped by low power stations. Is it possible that we can get some special consideration for certain foreign languages—groups that do not speak English, but have large populations say in places like Brooklyn, NY, that has a large Haitian American population? The older people speak Creole and I even have a Pakistani population. For those kinds of groups, is it possible to get some kind of special consideration in the allocation of low power stations?

Mr. KENNARD. Well, the program is designed for just those types of populations. The unfortunate thing is that in some of our larger metropolitan areas, the airwaves are already so congested that there are not that many opportunities to squeeze in new low power licenses. But around the country I have talked to many, many foreign language groups, I have talked to Creole-speaking Haitians in the south Florida area and Spanish speaking populations in the Southwest, and some of our tribal leaders who want to get low power FM stations to broadcast in foreign languages. So it is a very, very important population that this service could serve.

Mr. HORN. Thank you.

We now yield 5 minutes to the gentleman from Oregon, Mr. Walden.

Mr. WALDEN. Thank you, Mr. Chairman. I want to followup on both LPFM and LPTV. Can you tell me what your views are on LPTV and what the Commission's plans are now and for the rest of this year and early next year, if you are going to take any regulatory initiatives in this area or if you have undertaken any already or considered any?

Mr. KENNARD. Certainly. It is very interesting that you raise low power television, because I have studied the history of the creation of that service in the early 1980's, and all of the same arguments that are being used to try to kill low power FM were used against low power TV, that we didn't need it, that it would—that the stations couldn't survive financially if they got these licenses; that it would create interference problems for the incumbents. Fortunately, the FCC prevailed and created a low power television service for the country, and that service today is still alive and thriving. It is a wonderful little microcosm of diverse programming on the airwaves. It covers, as you know, local high school football and basketball games, local news, foreign language programs.

Congress recognized in the last Congress the value of low power television and it specifically granted some of those stations what we call class A status, which basically gives them a stay of execution as we convert to digital television. So that has been a very important service. It is sort of ironic that at the same time Congress was preserving and protecting low power TV, there were efforts to

kill low power FM, which is an effort to basically do the same thing for the country, but on the radio side.

Mr. WALDEN. My question was, does the Commission have any plans to do anything additional with LPTV?

Mr. KENNARD. No, not other than implementing the legislation to give LPTV stations class A status. That is the major proceeding. There may be other smaller waivers or proceedings.

Mr. WALDEN. No new initiatives on LPTV?

Mr. HORN. No major initiatives, no.

Mr. WALDEN. I just have a question on LPFM, because I know the struggle the Commission has gone through since 1995 when the rules were put in place, or thrown out by the courts in terms of how you decided among competing applications for broadcast licenses, and that led to the whole process of Congress saying, you know, you have to do it by auction. So really, it was a financial entry fee that would make the decision.

I am just curious on a couple of things on LPFM, how you are going to select among competing applications, what criteria you will use and how that will meet a constitutional test when the criteria that the Commission used to decide among competing commercial licenses couldn't meet that test. Second, will LPFM, and I have not read your rules on this, but will they have the same requirements for public file candidate access, community issues, all of those that other broadcast licensees have in the community, and do you have the staff to monitor that?

Mr. KENNARD. I believe we do. To answer your question, this is a noncommercial service, so it is a very different licensing procedure than we use for the commercial side. The commercial side, as you know, Congress changed this statute in 1997. So we have to auction those licenses.

Mr. WALDEN. Right.

Mr. KENNARD. We don't like to auction noncommercial stations. So we have established criteria to make sure that we have a way of deciding from between competing applicants. Essentially, we look to ensure that those are local community-based organizations, that they will operate on a noncommercial basis, and I am confident, given our experience with the decades of history with our noncommercial licensing procedures, that is a lawful and constitutional way of selecting.

Mr. WALDEN. So you will have the ability to do that?

Mr. KENNARD. Yes.

Mr. WALDEN. OK. Will they have to meet the same requirements? I mean it is the public's airwaves that we are dealing with here. Will they have the same requirements for candidate access, people who want to access the public, like other broadcasters do, even public broadcasters?

Mr. KENNARD. The requirements are modified in recognition of the fact that these are noncommercial stations, so their mission is to provide a noncommercial service. So we don't have the same tensions as you do on the commercial side where we are always struggling to make sure that the profit mode does not interfere with the licensee's ability and performance in serving the public interest.

So to answer your question, the public interest requirements are different because it is a noncommercial service.

Mr. WALDEN. And are those specific requirements spelled out in your regulations?

Mr. KENNARD. Yes, they are. If you want additional detail, I would have to provide the rules for you.

Mr. WALDEN. I understand. It is just an issue that I run into as I talk to fellow broadcasters; it is just a lot of change coming.

Mr. HORN. You have 30 seconds coming from me that I did not use last time, so go ahead.

Mr. WALDEN. Well, I think that really covered—no new rules planned on LPTV between now and the end of the year, and I want to make sure I understood on the religious broadcasting issue that was just an issue earlier this year, and you are not planning on doing anything between now and the end of the year.

Mr. KENNARD. No, not on the programming issue, no.

Mr. WALDEN. OK. I think that covers it, Mr. Chairman. Thank you.

Mr. HORN. I will now yield myself 5 minutes.

Mr. Chairman, in your testimony, you noted you had reduced the backlog of complaints from 154,000 to 39,000. What procedures does the FCC have in general for handling complaints? How does it work?

Mr. KENNARD. It varies somewhat, depending on the nature of the complaint. The backlog that you mentioned, this 154,000 backlog is basically what we call informal consumer complaints. This is somebody that has a problem with the phone company, a consumer, and they write the FCC a letter, and this backlog piled up over many, many years. This is the first time that we have basically reduced that backlog. We have really in effect eliminated it since 1987. Even though there is still a pending backlog of 39,000, of that number, 30,000 have been referred to the carriers. So we are waiting for their response.

So this is a really significant accomplishment for the agency in eliminating that backlog. We have backlog reduction plans throughout the agency. It is hard for me to answer your question, because the procedures sort of vary, depending on the type of complaint that is filed.

Mr. HORN. What is the role of the commissioners in deciding some of these complaints? Is this strictly a staff effort, or are there certain things that are really tremendously important that are left to the commissioners?

Mr. KENNARD. Most of these complaints are handled on delegated authority, unless a complaint raises a new and novel question of law, in which case the Commission would have to deal with it. But I can't even remember in my tenure as chairman and previously as general counsel where an informal consumer complaint was kicked up to the Commission to deal with.

Mr. HORN. And what do they do then? Do they follow various policies that the general counsel's office has, or is it Commission policies?

Mr. KENNARD. It is Commission policy.

Mr. HORN. OK. What is your view on the recent initiatives to outlaw the use of cellular phones in automobiles? That is popping up all over America.

Mr. KENNARD. Well, I really don't have a view that I can express on these various State law efforts. I do know that at the FCC we do have standards to protect the public health. There are standards that are incorporated in our rules. We do testing to make sure that manufacturers comply. It is an area we have devoted a lot of time to recently, and we have put some new testing equipment in place. But I am really not prepared at this time to give you a view on the various State law efforts.

Mr. HORN. Do you have a cellular phone in your car?

Mr. KENNARD. Yes. I have two in my car, as a matter of fact.

Mr. HORN. You have two in your car. Well, there was an old joke around here about how Senator Dirksen finally got a cellular phone of the age and he said, let's see what Senator Johnson is doing, and of course Johnson was a very powerful majority leader, and so he got the Johnson car and the driver said, oh, I am sorry, he is on the other line. So when you get all of these lines in the car, I just wonder if we could get it so the people could again get their hands on the steering wheel and not doing this. I saw one joker the other day which was putting the hand over here and going. I don't know, maybe he has a tin ear or something. But it just seems to me you ought to get the speaker phone or something in the car and not have to hold it.

Mr. KENNARD. It is always a good idea.

Mr. HORN. Just so you don't have to keep your hand all over it, or get, as we have in computers, just press a button and the whole thing is done. But I think they are real, without question, a real nuisance. Now, if you are in bumper to bumper traffic on the San Diego freeway, which I will be on in a few hours, that also is a problem. You just see people looking around every which way, not that that will stop them, but they seem to be a real nuisance. But they are necessary when you need them for getting a tow truck.

The Federal Communications Commission has seen a lot of disparities in minority and women ownership. Have we really looked at that to the degree to which you get minority and women ownership in the FCC licensing process? And if so, what are you doing to get women and minorities with licenses?

Mr. KENNARD. It is a very good question and something that I have devoted a lot of time and resources of the agency in addressing during my tenure. The main challenges we face is that this is an era of consolidation, and it is harder for new competitors of whatever color or gender to get a foothold in many of these markets. They are consolidating.

We have worked very hard, both in our licensing process historically and also in some of the things that we are preparing to do, to try to remedy this issue.

A number of the things that we have done is basically help small and minority companies to get information about how to get into these businesses. We have an Office of Communications Business Opportunities that reaches out to small businesses to help provide them information. I am always working with industry leaders——

Mr. HORN. Excuse me. On that point, is there any relationship to the Small Business Administration? Because that would provide some money.

Mr. KENNARD. Well, we are not a grantmaking organization. We do coordinate with the SBA and they participate in our conferences. In fact, at the end of this month, we are having a presentation by the SBA to all of our senior managers on how to sensitize the agency to becoming more attuned to small business issues, which has been a problem in the past.

Later this month, or in November, we plan to roll out a major set of studies on market entry barriers for minority and women-owned businesses in the communications arena, and I think that is going to be a very, very significant look across the board at some of the unique barriers that minority companies face when they are trying to get into these businesses.

Mr. HORN. I now yield 5 minutes to the gentleman from New York, Mr. Owens.

Mr. OWENS. I have no further questions.

Mr. HORN. OK. I thank the gentleman.

Let me go back to a few rather technical ones.

You heard part of the testimony of the previous panel. What was your reaction to the call for an FCC reorganization?

Mr. KENNARD. Well, I think it is a good call. In fact, we are in the process of reorganizing the FCC as we speak. A year ago, I submitted a strategic plan to the Congress. It was a 5-year strategic plan that basically calls for a very significant overhaul of the FCC to reorganize the agency along functional lines, come up with new and innovative ways to eliminate backlogs, convert to a paperless agency. We have proceeded to implement that. I have created two new bureaus, a consumer information bureau and an enforcement bureau, which are the first steps in implementing that plan. Today, in fact, we are having a senior management retreat where we are taking stock of where we are in our progress toward implementing that plan.

So as I said in my opening statement, the agency has got to change. The markets that we deal with are changing dramatically with convergence and other issues, and we are trying to keep up.

Mr. HORN. In books on public administration, they talk about whether it should be a single agency with an administrator or a commission with a variety of viewpoints. How do you feel about that, being chairman of the situation? Would you like to just be the single administrator and get rid of all your colleagues?

Mr. KENNARD. Some days I do. But actually, if you look around the world, some of the countries that have used a single administrator find that sometimes that approach does not work that well. In the United Kingdom, for example, our counterpart agency there, OFTEL, has had a single administrator for years and they are moving toward a more multi-member commission.

The fact is that multi-member agencies often are more cumbersome almost by definition because you have to coordinate the views of more people, but I have found as chairman that the interchange and dialog between the other commissioners really is helpful, and I think overall we come up with better policies by working with one another to try to come up with a consensus view.

Mr. HORN. Well said. Your colleagues will be smiling tomorrow.

Mr. KENNARD. Very politic answer, don't you think?

Mr. HORN. That is right.

The FCC's decision to allocate spectrum suitable for high definition television was made with the expectation that television stations would use the spectrum in a timely fashion that would serve the American people.

Now, the transition to high definition television has been extraordinarily slow. What is the consequence of this action to the American people?

Mr. KENNARD. It is one of the major challenges we face, which is how do we ensure that the American public gets high quality digital television service. It is a very complicated issue involving a lot of different issues. But fundamentally, I believe the problem is that the broadcast industry has not really coalesced around a business plan for digital television, so the market is not driving this conversion. If the business model was clear, I don't think that we would have a transitional problem.

Nevertheless, we are doing whatever we can on the public policy side to expedite the transition by coming up with interoperability standards; for example, goading the industry along, trying to facilitate the development of these standards. But it may be necessary for Congress to address this issue again in the future, because this transition is important for the American public and I, for one, am very impatient that it has not happened.

Mr. HORN. I am going to yield to Mr. Walden, who has to leave. The gentleman from Oregon.

Mr. WALDEN. Thank you very much, Mr. Chairman. I just wanted to make one other comment, or maybe two.

One is, I know many times when we are dealing with constituents and in these hearings, one of the issues that comes up is overzealous enforcement activities. I would just like to commend the Commission that I think in the many years I have been around this industry, it is a group of people with the field staff who are generally more helpful than they are punitive. They do come in and try and be helpful, and I commend you for that, because I think that is to your credit as an agency. Not all agencies follow that same process.

Mr. KENNARD. Thank you.

Mr. WALDEN. I want to go back to your comment about women and minority-owned entry, or minority access into the broadcast industry, because it is difficult, and financing clearly has to be one of the big issues. Because most of these sales on the small side, the small communities, you end up having to carry a contract when you go to sell. Congress has passed some legislation recently that does not help in that respect in terms of the tax policy.

But under your old rules that were I think thrown out by the courts, it gave a preference to women and minority participation as applicants. Those were thrown out. Is there anything you can do, aside from LPFM, to give advantage to minority populations and women?

Mr. KENNARD. Absolutely. I think that the most significant policy mechanism that we have ever had to create really powerful incentives for the sale of broadcast stations to minorities has been the tax certificate program. This is a program that allowed the sellers of broadcast stations to defer capital gains on the sale of the station if it was sold to a minority-owned company. The program was

initiated in 1978. Unfortunately, it was repealed by Congress in 1995. But during that period of time, the overwhelming majority of minority-owned stations were made possible through the benefit of the tax certificate policy.

Now, there have been efforts to bring that policy back, and indeed expand it to some of the other technology areas like wireless, for example. John McCain has been a very vocal proponent of bringing back the tax certificate in the Senate, as has Charlie Rangel in the House. I have been very encouraging of these efforts, because I think that if we really want to remedy this severe underrepresentation of minority-owned stations in this field and indeed, not just broadcast stations, but in the whole emerging telecom marketplace, we need to work on creative tax incentives, to create incentives for this to happen.

Mr. WALDEN. Mr. Chairman, I have to depart to another meeting on a bill that is very important to my district, so thank you for your courtesy and I thank the chairman for his testimony.

Mr. HORN. You are quite welcome.

Mr. KENNARD. Thank you.

Mr. HORN. Mr. Chairman, most Federal departments or agencies are required to include a cost-benefit assessment and rulemaking with an economic impact of more than $100 million. The FCC is noteworthy because it does not regularly do so. There is no doubt that many FCC regulations cause consumer and provider impacts exceeding $100 million. Why aren't economic studies conducted and published as part of the explanations supporting most agency rulings?

Mr. KENNARD. Well, actually, we do do a similar analysis. We comply with the Regulatory Flexibility Act where we—and also the Paperwork Reduction Act where we assess the impact of all of our actions on small businesses. We do comply with the Contract with America Act that requires that any of our rulemakings which have an aggregate impact of I think over $100 million have to be reviewed by Congress, or at least there is a period for congressional review.

Mr. HORN. What is the process for reviewing rules that have been in effect for 5 years with the Commission? Does the Federal Communications Commission formally review whether the rules are appropriate, given the rapid change in consumer and information technology in the marketplace?

Mr. KENNARD. Well, in some cases, we commit to reviewing rules after a set period of time. Some of our rules are sunset. I think generally we should do more of that. We should either sunset more rules or at least commit to reevaluating them.

We have one important tool. In the 1996 act, Congress mandated that every 2 years we review all of our rules involving the common carrier side of our actions. When I became chairman, I expanded that, and I commenced a review process of all of our rules that we undertake every 2 years. We are in the process of doing that now. It is called our biennial review. Every 2 years, we review all of our rules.

Mr. HORN. Can you name any major regulation where the FCC has imposed a sunset date?

Mr. KENNARD. Yes. I believe that one major rule is the spectrum cap, which I believe would sunset after 5 years. We also sunset rules, and it is really not a sunset, but a modification of our rules in the area of set top box compliance. I am sure there are more. If you would like a more exhaustive list, I am sure I could provide it.

Mr. HORN. I just wanted to get a feel for how often that is utilized. It does help us up here when we have to sunset something and face up to renewing it. Hopefully we take a look at it, the legislation, and make a more effective document than we did 5 years before.

I have two more questions, and if you don't mind, we are going to have a few to send you so that you can at your leisure respond to at this point in the record.

Mr. KENNARD. Of course.

Mr. HORN. So let me just ask my last two.

Considering the slow progress that some broadcasters have shown in adopting the spectrum to actual consumer use, did the FCC perform an economic cost-benefit analysis of alternate uses for that spectrum before making the allocation, and when will the FCC review that decision and analyze the public cost-benefit of leaving the allocation as it is?

Mr. KENNARD. Well, if you are referring to the digital spectrum, which I believe you are, this was basically a decision by the U.S. Congress in the 1996 act when Congress gave to each commercial broadcaster, and noncommercial broadcaster and television licensee an additional 6 megahertz of spectrum to convert to digital, subject to a requirement that it be given back to the government in 2006. Congress came back in 1997 and created what is, in effect, a loophole in that requirement by saying that broadcasters don't have to return the spectrum until there is a certain level of penetration of digital sets in the marketplace.

So this area is pretty much governed by statute and the FCC doesn't have a whole lot of discretion in this area.

Mr. HORN. When I was heading a large university and we had disaster exercises, let's say in Los Angeles County, where there are 10 million people, 83 cities in it, there was a real problem in getting communication. Now, we had heard there was a lot of the bands in the East Coast and we didn't have them on the West Coast. Has that problem been solved for emergency vehicles and all that needs to be done to communicate with the police department? It looks like everything is just going to be jammed up if you try to get through. What is the FCC doing about it?

Mr. KENNARD. It is still a problem, but we have been making some pretty significant strides. The most significant thing that we have done is made more spectrum available for public safety uses. Thanks to the Congress, we were able to reclaim some spectrum and relicense it for public safety uses. We also have established an advisory committee, which includes representatives of the various public safety users around the country, to try to come up with ways to more efficiently use the spectrum and ensure that it is interoperable, so that State, Federal and local law enforcement and public safety officials can use it to communicate with one another. So we are on top of that issue.

Mr. HORN. I am going to throw you a softball for the last question. What do you envision as the role of the Commission in the 21st century?

Mr. KENNARD. That is a hard question, but one that we answered——

Mr. OWENS. One minute or less.

Mr. KENNARD. One that we answered in our strategic plan which we submitted to the Congress a year ago and that we are continuing to update and work on.

Essentially, the challenge is to make sure that we are facilitating a competitive marketplace at the same time we are protecting consumers and making sure that the benefits of information technology reaches all Americans. We have made a lot of progress in that regard. There is a lot more work to be done. But it is really exciting, because we are seeing so much investment pouring into these industries and Americans waking up every day to new uses of technology.

Mr. HORN. On your strategic plan, did you sit down with the powers that be in the Commerce Committee to go over it with them, or did they care?

Mr. KENNARD. Oh, they certainly care. Yes, we did talk with a lot of the key members of the Commerce Committee. But in addition, we reached out to all of the key stakeholders. We had public roundtables where we brought in groups of academics, and then we brought in consumer advocates and advocates from the disability community and minority entrepreneurs and we also reached out to industry. It was really a very useful and dynamic process. We even had forums where we had all of the FCC employees come together and give us advice on how we should change the agency for the future. It is very much a living, breathing document that we are working on literally as we speak.

Mr. HORN. The reason I ask is that this subcommittee has basic jurisdiction on how the processes occur here between the executive branch and the legislative branch, and when a strategic plan is developed or a financial plan is developed, what we would like to see is the political appointees such as the chair and the commissioners who have been confirmed by the Senate deal with the elected employees in the legislative branch. Too often it is just our staff or Commerce's staff and your staff, and I think it would be great if we could get the people that have to go back to the people in one case, and who are the wards of the President, who is duly elected by all of the people, and I just think that we need to get away from simple staff-staff contact, as bright as they all are on both ends of the avenue. I just would like to see the Commissioners sit around the table and sit down and say, hey, do we agree on this as what we ought to be doing under the law. Because sometimes silly things, as you know, are in the law, or they are so broad that an agency does not know what it is supposed to do.

Mr. KENNARD. That is, I think, a very good suggestion.

Mr. HORN. Well, I have enjoyed this, and I thank you for coming, and we will send you a few questions. You are still under oath. Thank you very much.

I would like to thank the following people: J. Russell George, staff director and chief counsel; Earl Pierce, professional staff mem-

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This hearing is adjourned.

[Whereupon, at 2:45 p.m., the subcommittee was adjourned.]

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