

**NOMINATIONS TO THE FEDERAL
COMMUNICATIONS COMMISSION**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION**

UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

MAY 17, 2001

Printed for the use of the Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE

86-540 PDF

WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
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COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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NOMINATIONS TO THE FEDERAL COMMUNICATIONS COMMISSION

Thursday, May 17, 2001

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

The Committee met, pursuant to notice, at 9:56 a.m. in room SR-253, Russell Senate Office Building, Hon. John McCain, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

The CHAIRMAN. Good morning. The Senate Commerce Committee is meeting today to examine the qualifications of Mr. Michael Powell, who has been nominated by the President to serve as Chairman of the Federal Communications Commission.

I would like to welcome Mr. Powell this morning, as well as his family and friends, and I would like to take this opportunity to congratulate him on his exceptional and distinguished record. As Chairman and as a Commissioner of the FCC and as an attorney in private practice, he has consistently demonstrated extraordinary talent and leadership abilities.

A recent *Washington Post* article said it best when they wrote: "Michael Powell is well-liked and respected to a degree not often found in Washington, drawing praise from both sides of the partisan aisle." Such qualities are absolutely essential to an FCC Chairman who must lead the FCC into the digital age and the new economy.

Mr. Powell has already devoted much of his career to public service. In addition to being the current Chairman and Commissioner of the FCC, he served as Chief of Staff of the Antitrust Division at the Department of Justice and had a distinguished military career as an officer in the United States Army. I appreciate his willingness to continue to serve his country and I thank him for his steadfast commitment and dedication. I also thank his family, who I am sure have been instrumental in his success and his being here with us this morning.

Today we are here to review and seek comment from Mr. Powell on his qualifications to be Chairman of the FCC and to engage in a dialog with the members of this Committee about what direction the FCC will take under his leadership if he is confirmed.

I would like to point out that the FCC is an independent agency created by the Congress. As such, its primary responsibility is to implement and enforce the will of Congress and thereby facilitate

Congress' exercise of its responsibilities pursuant to the Commerce Clause. The Congress enacts the laws governing interstate commerce, including telecommunications. The FCC is an agency created by the Congress and delegated the responsibility to implement the telecommunications laws that Congress enacts.

Again, I would like to congratulate you for your continued service to your country. Public service is a worthy cause and it is people such as yourself who embody and demonstrate the type of leadership that inspires young Americans to serve their country and renew their pride in public service. As Chairman of the FCC, you will face many pressing issues and difficult decisions, but I am confident that you will confront these in the fair and balanced manner for which you have been justly praised.

Chairman Powell, would you care to introduce members of your family who are with us this morning.

[The prepared statement of Senator McCain follows:]

PREPARED STATEMENT OF HON. JOHN MCCAIN,
U.S. SENATOR FROM ARIZONA

We continue with the second panel of today's hearing to examine the qualifications of three individuals nominated by the President to serve as members of the Federal Communications Commission.

We welcome this morning FCC nominees Kathleen Abernathy, Michael Copps, and Kevin Martin, their family members and guests. Together with Michael Powell, who will continue as Chairman of the Commission, these individuals, if confirmed, will guide American telecommunications policy into the digital age.

I congratulate the nominees on the talent and dedication that has brought them the recognition they enjoy today, and I appreciate their willingness to undertake the tremendous responsibilities of serving as an FCC Commissioner. They are outstanding individuals with diverse individual talents and deep collective expertise in telecommunications.

These talents and expertise will prove particularly important as the FCC continues to confront the tremendous challenges that face us in the digital age, and to address the issues raised by the rapid changes taking place in the telecommunications industry.

Ms. Abernathy has an extensive background and experience in telecommunications both at the FCC, where she served as legal advisor to two FCC commissioners and served in the Office of the General Counsel. Recently, Mr. Copps served as the Assistant Secretary of Commerce for Trade Development. Mr. Martin was also a staff member at the FCC, serving as Legal Advisor to Commissioner Harold Furchtgott-Roth. Each one of these individuals brings to the Commission years of experience and knowledge of the issues. I commend each of them for their commitment to serve their country. I would also ask of them that they dedicate their efforts to implementing sound public policy, that serves the interest of consumers, during this era of convergence in the telecommunications industries.

I can also appreciate the pride their families must feel today, and I thank them for their support because it will be so important to the nominees' performance of their official duties.

The Congress enacts the laws governing interstate commerce, including telecommunications. The FCC is an agency created by the Congress and delegated the responsibility to implement the telecommunications laws that Congress enacts.

I take this Committee's advice and consent role very seriously, and it is our responsibility to ensure that prospective members of the FCC fully understand their duties and are capable and committed to fulfilling the mission requested of them. However, while we must be thorough, we must also be careful. Just as it is not appropriate for nominees to the bench be asked how they will vote on a specific issue that is currently before, or likely to come before, their court; it is not appropriate for commissioners who have quasi-judicial responsibilities to pre-judge cases they must consider. I hope and trust that we will all respect those boundaries, in deference to the process and in fairness to those who have the right to a fair and impartial hearing before the commission.

With that, I would like to yield to Senator Hollings, who will introduce Mr. Copps, followed Senator Stevens, who will introduce Ms. Abernathy, and finally Senator Edwards, who will introduce Mr. Martin.

**INTRODUCTORY REMARKS OF HON. MICHAEL POWELL,
CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION**

Mr. POWELL. Yes, Mr. Chairman. It is good to be here, Senator Hollings and distinguished members of the Committee. Let me take an opportunity to introduce my moral and important family backbone. I have with me here my wife Jane, whose beloved support and unflinching caring for our children gives me some of the ability to do the challenging mission that is before me. I am forever grateful and thankful for her here in public.

I would like to introduce my mother- and father-in-law, Navy Captain Dick Knott and his wonderful wife Eleanor, some of the best in-laws you could ever hope for.

The CHAIRMAN. I am sure that Navy influence was very beneficial.

Mr. POWELL. It is not bad.

I also have with me here a woman who is known in this town, my gracious mother, Alma Powell, who I can say unquestionably without whose efforts I really would not be here today.

[Laughter.]

Mr. POWELL. Even though he is not here, I have to publicly thank my father, the Secretary of State of the United States, who never pushed me to public service, but merely lured me by virtue of his example and his commitment to selfless service, one that I follow with great pride and great honor. That is the family I have with me here today.

The CHAIRMAN. We want to welcome all the members of the family and thank you for the influence you have had.

Senator BURNS. Can they stand?

The CHAIRMAN. Senator Burns demands that you stand. I do not, but we would like for you to stand if you would care to. Thank you. Would you care to stand so that we can all recognize the family members.

[Applause.]

The CHAIRMAN. We welcome you here today and we appreciate your presence and we share your pride in this outstanding American. Thank you for being here.

Senator Hollings.

**STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA**

Senator HOLLINGS. Mr. Chairman, let me take the liberty here at this moment to introduce for the record and ask that it appear at the appropriate time, my friend Dr. Michael J. Copps, who has been nominated by the President for Commissioner of the Federal Communications Commission. The reason for this is the fact that we have already commenced at the Subcommittee on State, Justice, Commerce hearing, the hearing on the FBI which is my major Committee and I have got to get over there. So with your indulgence, Mr. Chairman.

The CHAIRMAN. Without objection.

Senator HOLLINGS. I thank you very much. I will put in an opening statement. Let me congratulate Chairman Powell on his outstanding record and dedication to public service.

With respect to Dr. Copps, he is an honor graduate at Wofford and also at the University of North Carolina in history and Russian, professor of history down at Loyola until 1970, when he came to help our friend Ed Muskie, and Ed Muskie withdrew from the race. So we picked him up, and for 15 years Dr. Copps served not only as a Legislative Assistant, but more particularly, Chief of Staff, and he learned both sides of every question.

I have always, in addressing graduating classes at this time of year, called on them as my fellow students. As long as they remain a student, they will continue to live. That is the best part of the U.S. Senate; it is the best postgraduate course I know of.

Dr. Copps has taught me a great deal, as he has also learned tremendous amounts here. He went on, of course, in the private sector with the Collins and Aikman firm as their Director of Government Affairs, then Senior Vice President of the American Meat Institute, served as Deputy Assistant Secretary at the Department of Commerce on the Trade Development Division, and then, of course, in the last few years as the Assistant Secretary of Commerce on the Department's International Trade Administration.

So he has had a distinguished career here in Washington. Most of us who know him really admire him for his objectivity. Like I say, more than a balanced budget we need balanced Senators and public servants up here. He is balanced. I am confident that he will bring outstanding service here to the Federal Communications Commission. So I welcome him, and I appreciate, Mr. Chairman, your indulgence.

[The prepared statement of Senator Hollings follows:]

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA

Today's nomination hearing represents a unique opportunity to share our concerns and thoughts with a new FCC chairman and three nominees to the FCC. In the upcoming months there are a number of issues that the FCC will have to address that will have an impact on how consumers receive their communications service.

First and foremost, the FCC must enforce the pro-competitive provisions of the Telecommunications Act of 1996. The Act's overarching goal is to provide a transition from monopoly local phone markets to competitive local markets with multiple service providers offering new and innovative services. This transition certainly will not happen of its own accord. It will be the responsibility of the FCC to apply the existing law to 271 applications and effectively enforcing the competitive tenets of the 1996 Act.

Second, since the passage of the 1996 Act, there have been record-breaking mergers and the FCC and the courts are in the process of reviewing various ownership limits. The diversity of local broadcast programming that we receive is in part due to a diversity of owners. The many wireless phone competitors from which we choose, is in part due to the existing spectrum cap. The availability of programming and the ability of cable programmers to negotiate carriage is in part due to the cable ownership rules. Therefore, as mergers occur and as ownership caps are reviewed, it is important that rates, programming, competition, and consumers do not become casualties in the process.

Third, the FCC has before it, increasingly difficult spectrum coordinations—domestically between commercial and government users as well as internationally with other countries. It is important that the FCC working with Congress, NTIA, and the industry put in place a mechanism to better manage spectrum. Wireless communications has the potential to revolutionize the way we live our lives. There-

fore, the FCC must fulfill its responsibilities and successfully manage spectrum, allocate spectrum for new services, and license spectrum to applicants.

Lastly, the universal service system we have today has been successful in maintaining low cost affordable phone service in rural and high cost areas. These areas of the country probably would have very little telephone service were it not for the federal support and government mandate of universal service. The FCC has taken a number of steps to reform universal service and has opened a proceeding to look at the various inter-carrier compensation mechanisms that exist today. As competition evolves and as the FCC works to make the existing universal service funding explicit, it must effectively strike a balance between the sufficiency of the fund, affordable rates, promoting competition, and maintaining service to high cost areas.

With that said, I welcome the nominees and look forward to hearing their testimony.

[The prepared statement of Senator Inouye follows:]

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

I am pleased to be a part of this nominations hearing. I welcome the nominees for chairman and commissioner of the Federal Communications Commission, and also their family and friends.

This is an important period in the history of the communications industry. As we transition from a monopoly local phone market to a competitive one, the FCC must ensure that Bell companies fully meet the requirements outlined in section 271, before they are allowed into the long distance market. The FCC must also enforce the Act's market opening requirements and pursue violators of these provisions. The FCC must send a strong message to the industry that we expect nothing less than full competition and that slowing the entrance of competition into local markets is unacceptable.

Two policies of great importance to my home state of Hawaii are rate integration and geographic averaging. These policies were first adopted by the FCC in order to ensure that the so called "off shore points", Alaska, Hawaii, Puerto Rico, and the Virgin Islands were integrated into the telecommunications rate and service structure prevailing on the mainland. Previously, these points were deemed "international" points for purposes of telephone communications. Long distance rates were 3 times that of mainland levels. In the 1996 Act, Congress in adding section 254(g) codified these policies and expanded their reach. Even though the long distance market was deemed competitive, Congress took this action to ensure that all Americans, even those in remote areas, received the benefits accorded by a competitive market.

In Commission proceedings and in the legislative processes, long distance carriers have opposed rate integration and geographic averaging. There have been petitions for exemption and forbearance, but none prevailed because the simple logic supporting the adoption of the policies remain valid. I believe it is important that the FCC continues to sustain these policies in order to ensure that residents of Hawaii have affordable phone service.

Lastly, Hawaii has long struggled to obtain DBS service similar to that available on the mainland. Today, one provider does, pursuant to the Commission's mandate, provide service in Hawaii that roughly approximates that available in the mainland states. The other DBS provider does not, and has vigorously resisted doing so. For this reason, it is important that the Commission enforces its rules and ensures that there is no misunderstanding that DBS services must be offered to Alaska and Hawaii and that such services must be substantially equivalent to that offered in the mainland states. This is important, because DBS promises not only video programming and competition to cable, but it also promises Internet access services.

I look forward to working with all of the nominees in the months ahead.

The CHAIRMAN. Thank you very much.

We have an informal rule on this Committee that there be only opening statements by the Chairman and the Ranking Member. But, like every rule, there is exceptions to it, and Senator Rockefeller has asked to make a brief statement.

Senator Rockefeller.

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

Senator ROCKEFELLER. Mr. Chairman, I appreciate that, as I appreciate your permission and the permission of the Ranking Member. I would be happy to yield, Mr. Chairman.

The CHAIRMAN. Would you like for them to make the introductions and then a statement?

Senator ROCKEFELLER. Yes.

The CHAIRMAN. Fine. We welcome our two colleagues from Virginia here and we appreciate that you are here on his behalf.

Mr. DAVIS. I have a vote, but the Senator has to preside, so I will yield.

Senator ALLEN. I am supposed to preside at this moment.

The CHAIRMAN. Senator Allen. Thank you, Senator Allen.

**STATEMENT OF HON. GEORGE ALLEN,
U.S. SENATOR FROM VIRGINIA**

Senator ALLEN. Thank you, Mr. Chairman, and thank you, members of the Committee, of which I am a member. It is a pleasure to be here also with my colleague Tom Davis, Congressman from Northern Virginia, for a wonderful event, obviously, the cross-examination of someone who everyone knows fairly well in this Committee, and that is Michael Powell. It is great to see his wonderful family here. I will not get into all sorts of satirical verse as far as his upbringing and how he had to move around the country. Suffice it to say he, like most people in the military, but particularly Michael, was raised by outstanding parents.

I do think that he does have a lot of good experience in the Department of Defense working with Mr. Armitage, and years ago I am sure he had some conversations with the Joint Chiefs of Staff, the Chairman of the Joint Chiefs of Staff. But also, some of the issues that do have to do with communications, such as the challenges of limited spectrum, a term that we would have laughed at merely a decade ago, now is very important; new technologies such as the third wave, the third generation of wireless communications, wireless Web browsers, the impact of new regulations in foreign countries and what impact they have on our country's businesses as they try to expand.

He is clearly conversant with the issues. He is knowledgeable on the issues. Clearly, when you look at this Committee, which has a tremendous amount of jurisdiction, there is probably no Federal agency that reports to this Committee that is any more important than the Federal Communications Commission. It is essential that we have someone who has already shone steady leadership on the Federal Communications Commission on difficult issues from reciprocal compensation to increasing fines for Section 251 violations to access rates to universal service reform.

Clearly, we will, I think, welcome his insight on issues of what is the impact of Internet access taxes or discriminatory taxes and what segment of society is most impacted by any of those sort of proposals.

So the decisions made in this Committee and with the FCC have a tremendous impact on our schools, on our commerce, and our ability to even interact with our family members. Mr. Chairman,

the President has once again come forward with an outstanding individual and clearly there is no better person in this entire country in my estimation to be Chairman of the Federal Communications Commission, whether it is based on integrity, knowledge, experience, or also having that enterprising spirit of innovation and embracing the advances of technology, no one better to meet all those characteristics than Michael Powell.

It is my pleasure to present him to this Committee and wholeheartedly endorse his nomination.

The CHAIRMAN. Thank you, Senator Allen. We appreciate you being here. We understand you have to go preside over the Senate, and I thank you very much for your statement.

Senator ALLEN. Thank you, Mr. Chairman.

The CHAIRMAN. Congressman Davis, welcome.

**STATEMENT OF HON. TOM DAVIS,
U.S. REPRESENTATIVE FROM VIRGINIA**

Mr. DAVIS. Thank you, Senator. Mr. Chairman, it is both an honor and a privilege to appear before you and the members of the Committee this morning to present one of my most distinguished constituents, FCC Commissioner Michael Powell, for your consideration as the Commission's next Chairman. As you know, the House Subcommittee on Telecommunications and the Internet, on which I serve, had the distinct pleasure of having Chairman Powell testify before us in late March. My colleagues and I and the Subcommittee were deeply impressed by the high caliber of his expertise, his responsiveness to members' concerns, and his willingness to tackle the most difficult issues facing the telecommunications industry over the next decade.

Chairman Powell's list of career accomplishments is as diverse as it is impressive. A long-time resident of the Virginia Commonwealth, he is a 1981 graduate of Lake Braddock High School in my district, of the College of William and Mary. Chairman Powell has served as a Commissioner on the FCC since 1997 and in that capacity he also serves as the FCC's defense Commissioner, responsible for the oversight of the Commission's national security emergency preparedness functions.

During his previous life, he served as the Department of Justice's Chief of Staff for the Antitrust Division and specialized in litigation and regulatory issues affecting telecommunications, antitrust, and employment law at the law firm of O'Melveny and Myers.

After graduating from the Georgetown University Law Center, Chairman Powell clerked for the Honorable Harry T. Edwards, Chief Judge of the U.S. Circuit Court of Appeals for the District of Columbia.

The FCC has entered a critical period that will affect our Nation's long-term competitiveness in the overlapping arenas of technology and telecommunications. With issues as diverse as the spectrum management and the widespread deployment of broadband and digital television pressing on the congressional agenda, I am thankful we have such an exceptionally qualified and articulate individual as Chairman Powell to lead us through this time.

I appreciate you giving me the opportunity to be here today and am just very, very happy to recommend his confirmation. Thank you very much.

The CHAIRMAN. Thank you very much, Congressman Davis. You are always welcome here and we thank you for taking the time to speak on behalf of this candidate.

Now, Senator Rockefeller, would you like—

Senator ROCKEFELLER. Thank you, Mr. Chairman, and I will eliminate one page from my two-page remarks.

I will get right to the point. I think the FCC is the most important Commission in Washington, DC I think it is now and I think it will be for years and years to come. Therefore, this hearing this morning, which I will come back to in time for questioning, I want to emphasize two points. First is the E-rate. Chairman Powell, I am not just speaking to you, but also to your fellows, your colleagues and fellow nominees.

I think the E-rate has been a great success. We have wired thousands and thousands, in fact millions of classrooms and libraries. Demand far exceeds the money available. We have this year about \$5 billion of requests for \$2.25 billion available in the universal service fund. Together we are bringing technology to teachers and to kids in a way which would simply never have been possible in my State and other places across the country.

I strongly believe, Mr. Chairman, that we should not make risky changes to the E-rate now because it is doing its job. I think we have to keep its funding level. I think we have to keep its funding source, that is the universal service fund, rather than turn it over to the appropriations process. I think we have to keep the funding source secure and stable from year to year. That means keeping the E-rate at the FCC, within the universal service program.

We should not, in my judgment, add new programs, new services beyond those hammered out in very, very tough, lengthy negotiations in 1996. These additions could undermine the program's core mission. They will undermine the program's core mission, as well as the funding for it, and create opportunities without any doubt for lawsuits. I will elaborate on that when I return.

We should not subject schools to new formula-based systems. We should keep the current system that in fact creates accountability, school planning, creates that, that has spurred \$500 million in local and educational technology investment.

When I do my questioning, I am going to need to know that each of you will promise not to use the FCC to undermine the will of the Congress as passed in the law and threaten this important program through rules and regulations.

Second and finally, broadband deployment and rural telecom. I have introduced a bill along with a lot of folks who are on this Committee. Those of us from rural States have seen the connection between communications infrastructure and economic development firsthand. It is the future. Internet is great. Broadband is what counts.

Broadband deployment, the universal service fund, other infrastructure initiatives, are not subsidizing luxuries. They are subsidizing jobs, they are subsidizing hope and the future of many, many millions of people across our country. You must, all of you

must help us figure out how to make sure that the technologies that we all fight to support do not only benefit a small portion or the most profitable portion of America. I think that is a sacred trust that the FCC Commission has.

I will stop here, Mr. Chairman. I feel passionately about those two subjects, and four or five others which I have not mentioned. I respect the Chairman greatly. He knows that. We have talked in many exchanges and I have talked with the other members, all except one, and I look forward to the hearing. I particularly thank the Chairman for his indulgence.

The CHAIRMAN. Thank you very much, Senator Rockefeller.

Welcome, Commissioner Powell. Please proceed with your opening statement.

**STATEMENT OF HON. MICHAEL POWELL, CHAIRMAN,
FEDERAL COMMUNICATIONS COMMISSION**

Mr. POWELL. Thank you, Mr. Chairman, and thank you, members of the distinguished Committee.

It was nearly 4 years ago that I had an opportunity to sit here and present myself for the advice and consent of the Senate in response to the President's nomination and my selection. I am deeply honored to do so again. I was humbled then by the challenges that lay before me, and if I was humbled then I am in awe today.

I have seen over the course of the past 4 years how truly tough a job it is, how difficult and complex our decisions are. Despite the desire sometimes of the media and various industry segments to translate communications issues into good versus evil, simple versus simple, our issues are always complex, subtle, intricate, and difficult. I am uniquely aware of those.

I understand increasingly, in a world driven by technological change, convergence, and innovation, we operate in a world more uncertain than ever before. We cannot know, with the kind of certainty that we ever once had, what will be the case in the communication industry, what services consumers will respond to, and the manner in which they will be provided. We have to make our decisions against that backdrop of uncertainty and retain a sufficient amount of flexibility and foresight to make thoughtful ones as we proceed into the bright future.

When I completed my questionnaire that has to be submitted to this Committee, there was a question that arrested me as I was looking through the sheet. It asks: "Why do you want this job?" Trust me, after 4 years I often ask myself that. But put in a nutshell, the opportunity to serve one's country is singularly unique and I would do it for that purpose alone.

But I am more challenged and driven by the idea of being able to be involved in the great undertakings of my day. The decisions we make will have far-reaching impact, not only on our economy, but on our children, on us as human beings. The way that we communicate and relate are all going to resonate from the decisions that we make in conjunction with this Committee and the Congress. I am awed by that responsibility, but I assume it wholeheartedly because I recognize the importance of it.

I look forward to serving, not only with the extraordinary staff of the Federal Communications Commission, but, should you deem

worthy, the members who will follow me for confirmation as we proceed into that future.

As I said, I do not know what the world looks like in 5 years. Candidly, I do not know what the world looks like in 1 year. But I can pledge this to the Committee and the American public: I will make decisions and I will make the hard decisions, and at times many will not agree with them. Members of this Committee undoubtedly will disagree with them. But I will assure you this: They will be principled, they will be based on the facts, they will be based on my most sober analysis of the law, and they will be based on a little bit of instinct and intuition just for good measure. But you will never have any doubt that they are the exercise of my best judgment as best I know how.

Finally, an important emphasis: They will be independent decisions. This is what I am paid to do. We are guided by a simple credo: "We owe fairness to all and allegiance to none." Everything we do is in the public interest.

With that, I am honored to sit before you and submit my name for confirmation and for advice and consent of the Senate, and welcome to take your questions.

[The biographical information of Mr. Powell follows:]

A. BIOGRAPHICAL INFORMATION

1. Name: Michael Kevin Powell.
2. Position to which nominated: Chairman, Federal Communications Commission.
3. Date of nomination: May 10, 2001.
4. Address: Not released to the public. Office: Federal Communications Commission, 445 12 Street, S.W., Suite 8B201, Washington, DC 20554.
5. Date and place of birth: March 23, 1963; Birmingham, Alabama.
6. Marital status: Married to Jane Knott Powell, formerly Jane Ellen Knott.
7. Names and ages of children: Jeffrey Michael Powell, Age 12; Bryan Richard Powell, Age 6.
8. Education: Lake Braddock Secondary School, Burke, Virginia, August 1977 to June 1981, H.S. Diploma; The College of William & Mary, Williamsburg, Virginia, August 1981 to May 1985, A.B. in Government; Georgetown University Law Center, Washington, DC, August 1990 to May 1993, Juris Doctor.
9. Employment record: Chairman, Federal Communications Commission, Washington, DC, January 2001 to Present; Commissioner, Federal Communications Commission, Washington, DC, November 1997 to January 2001; Chief of Staff, Antitrust Division, U.S. Department of Justice, Washington, DC, December 1996 to November 1997; Associate, O'Melveny & Myers LLP, Washington, DC, July 1994 to December 1996; Judicial Clerk to the Honorable Harry T. Edwards, Chief Judge, U.S. Court of Appeals for the District of Columbia Circuit, Washington, DC, July 1993 to July 1994; Summer Associate, Williams & Connolly, Washington, DC, May 1993 to June 1993; Summer Associate, O'Melveny & Myers LLP, August 1992; Summer Associate, Arnold & Porter, Washington, DC, May 1992 to August 1992; Summer Associate, O'Melveny & Myers LLP, May 1991 to August 1991; Assistant for Japan, Office of the Secretary of Defense, The Pentagon, Washington, DC, May 1988 to August 1990; Army Officer (Armor Branch), 3/2 Armored Cav Regiment (last duty station), Amberg, Germany, May 1985 to February 1988.
10. Government experience: None other than that listed above.
11. Business relationships: Member, Board of Visitors (uncompensated), Georgetown University Law Center; Trustee (Uncompensated), The Endowment Association of the College of William & Mary; Advisor (Uncompensated), The ABA Standing Committee on Law and National Security; Board Member (Uncompensated), Reeves Center for International Studies, The College of William & Mary.
12. Memberships: Member, The District of Columbia Bar; Member, The Pennsylvania Bar; Member, The American Bar Association; Member, Theta Delta Chi Fraternity.
13. Political affiliations and activities: (a) None; (b) Fundraising for Senator John Warner's 1996 Campaign; Member, Republican Party; Staff Member, 1992 Republican Platform Committee; (c) \$300.00 to RNC in 1999.

14. Honors and awards: ROTC Scholarship; Distinguished Military Graduate, William & Mary, 1985; Distinguished Graduate (first in class), Armor Officer Basic Course, 1985; Army Service Ribbon, Army Commendation Medal; Aspen Institute Crown Fellow 1999-2001; Media Institute First Amendment Award, 1999.

15. Published writings: Michael K. Powell, "Why Y2K?: Challenges for the Communications Industry" (Catholic University of America, Columbus School of Law, Washington, DC CommLaw Conspectus, ed. Winter 1999); Michael K. Powell, "Communications Policy Leadership for the Next Century" (Indiana University School of Law-Bloomington, Federal Communications Bar Association, Federal Communications Law Journal, ed. May 1998); Michael K. Powell, "Waiting For The Unlikely, In Beyond the Hoppo Ryodo: Japanese-Soviet American Relations In The 1990s" (J. Jacobs, American Enterprise Institute, Washington, DC ed. 1990). There are a number of statements and other writings regarding proceedings in which I have participated while serving at the Federal Communications Commission. Although not published, these writings can be found on the Worldwide Web at the Commission's Internet site at <http://www.fcc.gov/commissioners/powell/statements> and at <http://www.fcc.gov/commissioners/powell/27lessays.html>. (As a courtesy, a reproduction of a list of Mr. Powell's statements are appended hereto at Tab A.)

16. Speeches: See, www.fcc.gov/commissioners/powell for complete list. (For the convenience of the Committee, the requested copies are provided herein at Tab B.)

17. Selection: (a) I believe the President chose me for this nomination because of my public policy experience in the field of communications. Prior to being designated Chairman of the FCC by the President in January 2001; I served for approximately 3 years as a Commissioner of the Agency. In this role, I have developed subject matter expertise in all facets of communications law and policy. Additionally, my tenure has afforded me the opportunity to develop a keen understanding of the inner workings of the Agency. This prior experience has allowed me to assume the Chairmanship more seamlessly than would otherwise be possible. (b) In addition to my FCC experience referenced above, I believe my background and further work have prepared me for this appointment. Immediately prior to the FCC, I served as Chief of Staff of the Antitrust Division in the Department of Justice. In that capacity I advised the Assistant Attorney General on substantive antitrust matters, including criminal and civil investigations and mergers. Prior to joining the Antitrust Division, I was an associate in the law firm of O'Melveny & Myers LLP, where I focused on litigation and regulatory matter involving telecommunications, antitrust and employment law. Upon graduation from Georgetown University Law Center, I served as a judicial clerk to the Honorable Harry T. Edwards, Chief Judge of the United States Court of Appeals for the District of Columbia Circuit. Before attending law school, I served as a policy advisor to the Secretary of Defense on matters involving the United States-Japan security relationship. My experience also includes military service as an armor officer in the United States Army. I spent the majority of my active service with the 3/2 Armored Cavalry Regiment in Amberg, Germany where I served as a cavalry platoon leader and troop executive officer.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Not Applicable.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

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

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. I am aware of none.

3. Describe any business relationship, dealing, or financial transaction which you have had, during the last 10 years, whether for yourself, on behalf of a client, or

acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated? O'Melveny & Myers LLP. Served as an Associate from July 1994 to December 1996. Major firm clients that might present a conflict of interest: Pacific, Gas & Electric; Goldman, Sachs; GTE; Univision Communications Co.; The Game Show Network, L.P.; The Walt Disney Co./ABC; Sony Pictures Entertainment, Inc.; Columbia Pictures, Inc.; KnightRidder, Inc.; Calcell Wireless, Inc. (Served as an uncompensated advisory board member for roughly 1 year between 1995 and 1996).

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. In my law practice, I advised Conoco Oil in its attempt to win administration approval for a deal to drill for oil in Middle East waters. In my official capacity as a FCC Commissioner, I have discussed legislation relating to telecommunications issues with various lawmakers both in open testimony and private conversations. I have specifically given public remarks supporting the concept of a tax initiative to encourage diversity of ownership of telecommunications facilities. Most recently, in my capacity as current Chairman of the Federal Communications Commission, I sent letters to various Members of Congress encouraging them to increase the FCC's authority to impose forfeitures on common carriers and take other action to improve the FCC's enforcement authority.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.) I would resolve any potential conflict of interest in a manner consistent with the applicable conflict of interest statutes and ethics rules. More specifically, I would consult with the FCC's ethics officials and follow their advice for dealing with any possible conflict.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

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

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

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

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

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

E. RELATIONSHIP WITH COMMITTEE

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

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

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

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress. The FCC's first obligation is to ensure any action it takes complies squarely with the letter of the law. Moreover, the FCC will ensure it complies with the spirit as well, by keeping abreast of and promptly responding to Congressional correspondence and other communications. I also make a point of visiting members frequently to solicit their views and to main-

tain a dialog on key issues. Finally, oversight hearings provide a fruitful opportunity to hear the views of members on FCC actions.

5. Describe your department/agency's current mission, major programs, and major operational objectives. The mission of the FCC is to encourage and facilitate effective competition in all communications markets and to protect the public interest. In response to direction from the Congress, the FCC develops and implements policy concerning interstate and international communications by radio, television, wire, satellite, and cable. At present, its primary task is the implementation of the Telecommunications Act of 1996. Additionally, it is very focused on promoting the efficient deployment of broadband technology.

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

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualifies you for the position for which you have been nominated. My military career taught me the fundamentals of leadership and management that will prove useful in the administration of the Agency and the management of its' nearly two thousand employees. Law school provided the legal training and basic understanding of administrative law that are important to administering properly the communication statutes. My legal clerkship on the DC Circuit exposed me to administrative decisions from a variety of agencies, including the FCC, and gave me insight into how the court views those actions. My service as Chief of Staff of the Antitrust Division allowed me to further my management development and gave me experience with complex antitrust and competition policy questions that are fundamental to competitive markets. Finally, my preceding 3.5 years as a Commissioner has given me first hand experience at the FCC wrestling with communications issues.

2. Why do you wish to serve in the position for which you have been nominated? It is a high privilege to serve my country in any capacity. This position is particularly challenging, for communications is a central driver of the economy and the decisions we make today will have important and far-reaching impact on the lives of our citizens and our children. I will have a front row seat at the revolution and believe my experience and my commitment to the public interest will allow me to make the very tough decisions necessary to illuminate America's bright future.

3. What goals have you established for your first 2 years in this position, if confirmed? I intend to substantially improve the operation of the FCC, so that it is an efficient, effective and responsive Agency fitting of the Internet age. I intend to substantially advance the FCC's independent technical capability in order to responsibly address the complex issues of a technology-driven marketplace. I intend to improve the effectiveness of the Agency's enforcement activities.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills? I continue to try to improve my understanding of advanced technical and economic issues. I have undertaken a concerted program of reading and study. I attend forums and seminars, and reach out to leading thinkers in these fields.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when should society's problems be left to the private sector, and what standards should be used to determine when a government program is no longer necessary. I believe that the role of government, particularly in the realm of commerce, is multi-faceted. Government must establish the legal and economic framework in which private entities will operate. Free markets can only thrive where the rule of law is clear. It must, for example, establish property rights and decide the manner in which disputes over such property will be resolved. Government must also police against harms to individuals and to the public generally, such as laws and regulations prohibiting fraud, theft or pollution. Government in a democratic capitalist society, in particular, must ensure that no actor or group of actors is allowed to exert undue influence in economic markets, lest such influence deny consumers the benefits of quality, efficient pricing and innovation that competition brings. Government officials have a solemn duty to carry out faithfully and vigorously the economic, social and other programs that have been duly adopted by citizens' elected representatives.

I firmly believe that, in many areas of commerce, consumer welfare is maximized where competitive market forces allocate economic resources. Consumers empowered with accurate and meaningful information on products, as well as a choice of suppliers generally can direct what will be produced, what they will buy and the terms and conditions of these activities. History over the twentieth century has con-

firmed that, in most cases, competition will lead to greater efficiency, wealth and liberty for society. Government may unwittingly inflict great losses in economic welfare if it intrudes on the functioning of competitive markets unnecessarily.

My belief in the benefits of competitive markets, however, is more practical than ideological. In particular, I believe that government can play a useful role in both promoting competition and in policing already competitive markets. Government should safeguard important issues, such as health and safety that are not readily factored into competitive market decisions. The analytical and remedial tools of antitrust should be used to prevent already competitive markets from becoming so concentrated that the efficiencies of such concentration are outweighed by the losses to consumers in light of diminished competitive choice. In many cases, the government can and should take affirmative steps to transform industries, such as telecommunications, that have been subject to legal and economic monopolies into more competitive markets. One of the critical questions in deciding whether the government should intervene is whether the benefits of choice, innovation, and more efficient pricing that come with competition outweigh the stability of legally sanctioned monopolies. Often, I believe they do.

Just as government has a critical role with respect intervening to preserve and promote important interests, government has an equally critical role in deciding when to withdraw from a subset of its activities. In particular, the government can and should release the reins of regulation to the extent technological or market developments, or its own efforts to promote competition, obviate the need for such regulation. There are many possible standards by which one could decide when the government should step aside, but one apt standard is provided by section 10 of the Communications Act. To paraphrase, section 10 mandates that the FCC withdraw telecommunications regulations that are no longer necessary to protect consumers or prevent discriminatory or anticompetitive actions among firms. Section 10 also requires the FCC to consider whether withdrawing regulation would promote competition among telecommunications firms. I believe that this standard, when rigorously applied, can provide useful guidance to regulators regarding when and in what areas to deregulate.

6. *In your own words*, please describe the agency's current missions, major programs, and major operational objectives. The FCC is tasked primarily with carrying out the Communications Act of 1934, as amended, in a manner that promotes competition, deregulation and innovation in the communications industry. In keeping with the Act's mandates regarding universal service, advanced telecommunications capability, etc., the FCC's mission is also to promote the availability of high quality communications services for all Americans.

The major programs of the FCC consist primarily of the activities of its seven operating bureaus: mass media, common carrier, wireless telecommunications, cable services, international, enforcement and consumer information. The Mass Media Bureau regulates AM-FM radio and television stations and broadcast facilities. The Common Carrier Bureau regulates wire and radio communications common carriers, such as telephone and telegraph companies. The Wireless Telecommunications Bureau regulates all domestic wireless telecommunications programs, except those involving satellite communications. The Cable Services Bureau regulates multichannel video program distributors. The International Bureau handles all FCC international telecommunications and satellite programs and policies. The Enforcement Bureau enforces the Communications Act and the FCC's rules affecting common carriers, wireless telecommunications carriers, as well as broadcast radio and television stations. And the Consumer Information Bureau handles public inquiries and informal consumer complaints regarding communications services and regulation. Thus, the Agency has traditionally organized its activities according to the type of service being regulated, in keeping with the statutory requirements.

The FCC's major objective is to implement faithfully and vigorously the Communications Act of 1934, as amended, including the promotion of competition, deregulation and innovation in communications markets. In carrying out this objective, the FCC should strive to: (1) establish a clear substantive policy vision; (2) manage the organization in a manner that promotes cohesion and efficiency, and that leads to clear and timely decisions; (3) train its staff regarding developments in technology and economics; and (4) develop an organizational structure that complements the dynamic and converging marketplace.

7. In reference to question No. 6, what forces are likely to result in changes to the mission of this agency over the coming 5 years? As I state in response to Question F.6, above, the FCC has traditionally organized its activities according to the type of service being regulated, in keeping with the statutory requirements. However, rapid evolution and convergence of Internet-based and other new technology will continue to erase traditional regulatory distinctions between different sectors of

the communications industry. Although the FCC will retain its duty to implement the Act in a manner that promotes competition, deregulation and innovation in the communications industry, the will have to modify its policy vision, further refine its organizational structure and develop new expertise to keep pace with technological evolution and convergence.

8. In further reference to question No. 6, what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three challenges facing the department/agency and why? There are several outside forces that will challenge the FCC in the pursuit of its mission. First, is the challenge of attracting, developing and retaining exceptional technological, economic and legal talent. The communications industry, despite some of setbacks recently facing certain segments, will continue to be an important and lucrative component of the Nation's economy. In this environment, the best technologists, economists and lawyers will have numerous options for employment. Thus, the FCC will need to pursue recruitment and retention activities aggressively in order to tap that pool of talent.

Second, technological convergence will enable firms to compete in non-traditional markets to provide both familiar and innovative services to customers. Such convergence will put increasing pressure on the regulatory structure, which developed when a given service tended to be provided by firms using identical or very similar technologies. As firms use technology in new ways, the question will arise whether entrants from other sectors should be subjected to their traditional regulations, to the regulations of the sector they are entering, to some new form of regulation or to no regulation at all. In the absence of perfect foresight, the FCC will thus be challenged to answer these questions expeditiously and in a manner it hopes will promote competition, deregulation and innovation in the short and long terms.

Third, the FCC will be faced with more numerous and contentious disputes among communications firms as those firms, predictably, applaud being permitted to compete freely in new markets, while simultaneously advocating protection from new entrants in their traditional, core businesses. Complicating these disputes will be, as I have suggested above, knotty issues of first impression regarding services and technologies that do not fit conveniently into the regulatory classifications of the statute and the FCC's implementing rules. In order to withstand the enormous pressures and distractions occasioned by such disputes, the FCC will have to hew even closer to its substantive policy vision and replenish the expertise by which it can see through the smoke of this advocacy to divine the public interest.

9. In further reference to question No. 6, what factors in your opinion have kept the department/agency from achieving its missions over the past several years? See responses to Questions F.6 and F.7. I am proud of the FCC's many accomplishments over the last several years, including the immeasurable hard work that the Agency staff has invested in the success of its implementation efforts. To the extent it has fallen short of the mark, however, I believe it has been with respect to the objectives I believe the Agency should pursue in earnest now. In particular, I believe the FCC must do more to (1) establish a clear substantive policy vision; (2) manage the organization in a manner that promotes cohesion and efficiency, and that leads to clear and timely decisions; (3) train its staff regarding developments in technology and economics; and (4) develop an organizational structure that complements the dynamic and converging marketplace. Making these improvements is especially critical in light of the ever-increasing challenge of adapting the FCC's activities in light of technological convergence.

10. Who are the stakeholders in the work of this agency? The primary stakeholder in the work of this Agency is the American public. Everything the FCC does and every judgment we make should be in the public interest. Additional stakeholders include the industries regulated by, and affected by FCC policy including the broadcasting, cable television, common carrier and wireless industries.

11. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question No. 10. We owe fairness to all stakeholders and favoritism to none. In my opinion this should be the proper relationship between all FCC employees and the Agency's stakeholders.

12. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector. (a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls? I believe that I hold a public trust. Each year, the FCC is provided by Congress an annual appropriation of funds Congress and the American public have a right to an accurate accounting of how those resources are used. In 1998, the FCC hired its first Chief Financial Officer with the express intent of generating auditable financial statements to provide assurance that the funds entrusted to the FCC are adequately

protected. I encouraged that action as a Commissioner. In 1999, the Treasury Department notified the FCC that because of the expansion of the auction program the Agency would be required to provide CFO Act level audited financial statements annually. Fiscal year 2000 was the first year the FCC produced auditable statements. The OIG has informed us that we will receive an "unqualified," or "clean," opinion on our financial statements. Most Federal agencies began efforts in 1991, after the passage of the CFO Act, to prepare statements. Many are still trying to get an opinion on those statements. I support the goals of the CFO Act and am proud of our accomplishments thus far. I value this added independent verification of our accounting activities very highly and will hold the Agency to this standard as long as I am Chairman. The audit process has raised a number of questions and given us a roadmap of improvements to our process, and we are strongly committed to making continuous progress in this area.

(b) What experience do you have in managing a large organization? I have been a Commissioner of the Federal Communications Commission since November 3, 1997. In addition to my normal duties as a Commissioner since my appointment, I served as the FCC's Defense Commissioner and was responsible for overseeing all National Security Emergency Preparedness functions for the FCC as a whole. I also served as the FCC representative to the President's Council on Year 2000 Conversion to address the Year 2000 computer problem. This involved not only ensuring that the FCC as an Agency of the Federal Government was prepared, but that the telecommunications industry as a whole was prepared for the potential issues associated with the date conversion. Prior to my service with the Commission, I served as the Chief of Staff of the Antitrust Division in the Department of Justice. In that capacity, I led a staff of nearly 800, and advise the Assistant Attorney General on substantive antitrust matters, including policy development, criminal and civil investigations and mergers.

I commanded and combat platoon of 46 people as an armor officer in the United States Army. While serving with the 3/2 Armored Cavalry Regiment in Amberg, Germany, I also served as a troop executive officer, the second in command of a 150 person armored cavalry unit.

13. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals. (a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals. Every successful organization, whether it is a small business enterprise, a private corporation, or a government Agency, must have a business plan with measurable milestones in order to succeed. An enterprise without a performance plan is much like a ship at sea without charts or navigation aids. The Government Performance and Results Act, with its requirements for a Strategic Plan and Annual Performance Plans, provides Federal agencies and Congress with a structured approach to measuring performance and determining budget allocations.

Measurable performance goals allow the Agency, Congress and the public to assess the progress that is being made in meeting concrete benchmarks. They also guide the Agency's allocation of human and budgetary resources to the most essential programs. Additionally, performance goals and benchmarks aid in determining whether certain programs must be changed, de-emphasized or eliminated.

(b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs? One of the key benefits of GPRA planning is that it allows an Agency to adjust its plans to accommodate revised resources, a changing marketplace, the emergence of new technologies, and other pertinent developments. GPRA also recommends that agencies conduct program evaluations when an activity is not meeting established objectives. An Agency's failure to achieve performance goals may be due to a variety of factors, some of which are within the Agency's control and some of which are not. It is, of course, the prerogative of Congress to decide whether to take action in those circumstances. The techniques mentioned above are among the many options that may be considered in addition to the options of restructuring, modifying or automating underperforming programs.

(c) What performance goals do you believe should be applicable to your personal performance, if confirmed? In my Opening Statement before the Subcommittee on Telecommunications and the Internet on March 29 of this year, I noted that for this Agency to fulfill its congressional charge, indeed to remain relevant at all, it must write and execute a new business plan built along four dimensions: (1) a clear substantive policy vision, consistent with the various communications statutes and rules, that guides our deliberations; (2) a pointed emphasis on management that

builds a strong team, produces a cohesive and efficient operation and leads to clear and timely decisions; (3) an extensive training and development program to ensure that we possess independent technical and economic expertise; and (4) organizational restructuring to align our institution with the realities of a dynamic and converging marketplace.

These are the goals on which my performance should be measured.

14. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you? I believe that executives, managers and supervisors should lead by example and by the vision they articulate for the organization. A well-articulated vision ensures that staff understands the goals of the organization, which in turn enables them more effectively to achieve those goals.

For staff to fulfill the organization's goals, they must be given the necessary tools, training and incentives to succeed. This involves creating an environment in which human capital is prized and sufficient resources are devoted to training and technology enhancements. It involves creating a reward system that rewards individuals quickly and well for meeting organizational goals. And it involves transferring ownership of projects to those who actually do the work so that they have a clear stake in the outcome of the undertaking. Supervisors should expect results and hold employees accountable for those results. Last, they must also establish work/life programs that allow employees to strike a reasonable balance between their work and personal lives. If I had to put a label on that philosophy, I would characterize it as judicious employee empowerment. And no, I have never had an employee complaint brought against me personally. However, since becoming Chairman in January 2001, there have been three complaints filed against me in my official capacity as Chairman. In addition, there are four cases that were brought under my predecessor that will be automatically converted to include my name as Chairman of the Agency.

15. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe. I would describe my working relationship with the Congress as cooperative, productive and positive. In the course of my professional career at the Department of Justice, the Department of Defense and the FCC, I have had numerous opportunities to work with Congressional committees. In all of these encounters I have endeavored to make myself available and to provide substantive expert advice to the Members of Congress and their staff as requested. I have specifically endeavored during my tenure at the FCC to comply, to the best of my ability, with directives and deadlines established by the Communications Act of 1934, as amended, and subsequent communications-related obligations mandated by the Congress. If confirmed, I expect to continue to work to be an attentive and responsive public servant to the Congress.

16. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency. I believe that the FCC Inspector General must have autonomy from the Chairman and Commissioners and all other employees of the FCC. It would be my duty to report possible impropriety to the Inspector General and his duty to investigate in a thorough but independent manner. In addition, each year the Inspector General develops a plan for audits of various FCC programs. I would accept and review any recommendations from the Inspector General with regard to the operation of the FCC and decide whether to act on those recommendations based on applicable legal and policy considerations.

17. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress. I intend to work closely with this Committee, as well as Congress in general, to ensure that our regulations faithfully implement the laws. I believe that elected representatives that Congress first and foremost sets the communications agenda for the American people and I will endeavor to work closely with you to make sure our regulations reflect those important decisions. I will, for example, ensure that the Agency keeps abreast of Congressional concerns and that it responds promptly to Congressional correspondence and other communications. I will also make a point of visiting members as appropriate to solicit their views, as well as those of the various stakeholders and maintain open dialog on key issues.

18. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please State your personal views. As I stated in my May 4, 2001 letter to members of this Committee, I am committed to working with Congress to improve the breadth of the FCC's enforcement tools. In addition, I believe Congress should consider ways to encourage diversity of ownership of telecommunications facilities. I have specifically supported efforts to design

a tax initiative aimed at this goal. Further, I believe Congress should consider changes in the Communications Act that gives the FCC greater flexibility in dealing with the convergence occurring in the communications industry. Often we are stymied by the different regulatory systems applicable to different technologies. Flexible regulatory authority will permit us to address these changes more effectively.

19. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a timeframe for their implementation. I fully intend to develop and implement a system that allocates spending based on the best national priorities, which we will determine in an open fashion with the guidance of OMB and Congress. Under my leadership, the FCC will develop and implement an accounting system that will measure budgetary allocations and expenditures against those criteria. I will continue to forward the Agency's Government Performance and Results Act plan each year to Congress with our budget so that it is clearly stated how our resources are being allocated and the program results they are producing. I have established a process for setting up measurable performance goals and will hold managers accountable for attaining these goals. I anticipate that the first phases of this plan will be implemented this year. This will be a priority of mine for the FCC under my chairmanship.

The CHAIRMAN. Thank you very much.

Five years after the enactment by Congress of the Telecommunications Act of 1996, incumbent local exchange carriers, or ILECs, continue to hold a level of service in our Nation's local exchange markets that most would not have anticipated when the Act was passed. According to your organization's own numbers, in 1999, ILECs directly served over 92 percent of all local customers and 97 percent of all residential and small business customers, and in the process collected over 94 percent of all local exchange telecommunications revenue.

Further, over two-thirds of competitive local exchange carriers, CLEC, customers were served by CLECs using ILEC facilities leased or resold by the CLECs. Only 2.2 percent of all local customers were served by CLECs using CLEC-owned facilities.

The Commission's report makes clear that meaningful local competition has not developed in the residential or business local exchange markets. Is this because of the structure of the act, enforcement of the act, or is it some combination?

Mr. POWELL. Mr. Chairman, I suspect it is some combination, but I think it is also this. It is hard, and I think it is harder than many people understood or expected. To build a local company with long-term viability is more akin to a construction project than a dot-com venture. Regrettably, I believe that not only the financial markets, but often even the regulatory environment, have misapprehended that. We misapprehended how difficult it would be to build viable business models, how difficult it would be to develop interconnection relationships with incumbents who had extraordinary power, and how long and complex the legal resolution of ambiguities that existed in the legal framework would take to resolve.

All of those things have combined 6 years later to lead to the numbers that you identified. But I would also like to emphasize that all is not lost. In my view, one has to think about convergence and the communications marketplace as a whole. When I sit down in my home and I—

The CHAIRMAN. Thanks to technology.

Mr. POWELL. Excuse me?

The CHAIRMAN. Thanks to technology.

Mr. POWELL. Thanks to technology, and thanks to a competitive and economic environment that encourages innovation.

I believe that when I sit down to make a decision to communicate with my sister, it might be by e-mail, it might be by instant messenger, it might be by my mobile phone, it might be by the local telephone exchange. But each one of those opportunities is available to me, and I would argue each one of them is a competitor, in essence, to the traditional local form of calling that we are accustomed to.

Those are difficult to measure in the way that market shares for basic telephony, voice telephony, are. But they are nonetheless things that we should learn from and continue to try and encourage the technical differentiation of communications.

The CHAIRMAN. So has the 1996 Act failed?

Mr. POWELL. I do not believe it has failed, no.

The CHAIRMAN. Would the numbers that I just cited to you—92 percent of all local customers and 97 percent of all residential and small customers, and in the process collected over 95 percent of all local exchange telecommunications revenue—

Mr. POWELL. If the sole purpose of the Act was to create market shares that are much higher than that, certainly it has failed. But I think that its purposes were broader and more far-reaching than that. I think it also tried to incent an economic model, a commitment to innovation and convergence that allowed other services to flourish, which we are seeing the beginnings of.

We may conclude at some point that it did not achieve these objectives, but I personally believe that we continue to have an environment, even if strained, that provides opportunity for this to continue to be a good deal for consumers. It will be harder than it was ever imagined, but I do think that we have a chance at realizing it.

The CHAIRMAN. Several applicants for mobile satellite licenses have asked the FCC for authorization to use their valuable spectrum to provide terrestrial mobile services in urban areas. I would be concerned about any Commission action that allowed the mobile satellite providers to substitute terrestrial service for their licensed services without competitors having a chance to apply for licenses. All qualified parties for a proposed service should have the chance to apply for licenses. As available spectrum becomes increasingly scarce, it will be increasingly difficult for the FCC to balance competing demands for spectrum.

What principles do you think should guide the FCC in its decisionmaking?

Mr. POWELL. I think that is an excellent question. We have a problem with convergence in that increasingly innovative producers will attempt to provide services using technologies and, frankly, regulatory structures that do not necessarily jibe. In the example that you pointed to, we have a satellite regime that has a particular licensing structure. Under congressional statute, you cannot auction licenses for satellite services. Similarly, you have a terrestrial wireless system that has a very different regulatory process for allocating and assigning licenses, in which auctions are mandatory.

When innovators try to combine the two into a single service offering, you run into the difficult, complex challenges of two different regimes. One of the things that we have made a pointed effort to do is in the effort of FCC reform and FCC evaluation of its processes to look for more aggressive ways to harmonize regulatory structures across technology differentiated areas. We are constrained in that regard to some degree by virtue of the statute itself. For example, the example I pointed out: I simply do not have the discretion to auction satellite spectrum, nor do I have the discretion not to auction it in the context of mutually exclusive terrestrial applications.

But I think there are ways that we are looking at trying to find to make sure that we provide an opportunity for that innovation, but it is still fair under the different licensing regimes.

The CHAIRMAN. Today one of the news outlets headlined "ITU Chief Urges U.S. to Catch Up With Rest of the World on 3G." "With decisions still pending on 3rd-generation wireless spectrum, ITU Secretary-General Yoshio Utsumi warned in Washington . . . that U.S. 'is at this moment left aside from the world trend' of 3G licensing. Unfortunately, the U.S. doesn't have secure frequencies for this service . . . development of 3G in the U.S. market is very, very crucial for the success of these services," etcetera, etcetera.

Do you share that view?

Mr. POWELL. Parts of it. Parts of it I do not agree with. Let me talk about what I do agree with. I do think that the United States is strained and constrained by its inability to have as cohesive a spectrum management policy as it could due to the fact that, for historical reasons, spectrum management is divided across the government. As you are well aware, Federal spectrum in the hands of Federal Governmental users is in the hands of the Commerce Department, under the jurisdiction of the Secretary of Commerce. Commercial spectrum and State and public safety spectrum is in the jurisdictional realm of the Federal Communications Commission, an independent agency, not part of the government particularly.

Trying to coordinate coherently spectrum policy across those realms has proven difficult. It has proven difficult within our own agency. We have problems between spectrum that is in the mass media realm, and spectrum that is in the wireless realm and the satellite realm. We are working on our little piece within the FCC.

We have also reached out to Secretary Evans in the Commerce Department to look for ways to harmonize our decisions in more cohesive ways that allow us to be more efficient in providing spectrum, as the Europeans have done, for these advanced services.

Now, that said, I am not a fan of national champion comparisons. I believe that Europe may be ahead, but it depends on what they are headed to. This stuff to my mind is a lot like a marathon race. Sometimes the best place to be is in the third slot on the twentieth mile, not the first. We are looking now at European's environments that went very fast on third generation spectrum. The amount of money paid at auctions is breathtaking.

By some estimates, there are venerable companies that may be facing collapse purely as a consequence of getting ahead of themselves on third generation wireless spectrum. British Telecom may

face the grim reaper as a consequence of their decisions and the amount of money they bid at auctions, for an input that they do not yet know whether consumers are going to respond to. I think that example introduces some level of caution that we need to be consistent and persistent in chasing new opportunities for advanced spectrum, but we need not get too far ahead of ourselves, lest we enjoy similar fates in the United States.

The CHAIRMAN. Well, I would appreciate it if you and the Commission would give us some recommendations as to how to address this issue. I agree with you that perhaps the Europeans have gotten out too far ahead of themselves, but with great frequency we are deluged with people who want this spectrum moved one place to another, that want DOD to give up theirs, that want more auctions or not auctions.

I think there is a degree of incoherency on what obviously will become a scarcer and scarcer commodity. It is not a matter of whether, it is a matter of when. So I would hope that you would prepare at least your recommendations for some overall policy as to how we can address this issue.

Senator Wyden.

**STATEMENT OF HON. RON WYDEN,
U.S. SENATOR FROM OREGON**

Senator WYDEN. Thank you, Mr. Chairman.

Mr. Powell, welcome. I enjoyed working with you in the past and look forward to working with you again. I want to explore with you the question of the major media in this country being owned by fewer and fewer hands. I think we know that the merger trend is on the upswing in a variety of sectors. I happen to think most mergers are just the comings and goings of the modern marketplace, but certainly in a number of sectors they can be very troubling.

I am concerned about media concentration. I want to ask you specifically about it. As you know, the FCC has imposed limits on ownership of mass media outlets, including the 35 percent national audience reach cap on TV stations and the newspaper-broadcast cross-ownership rule. You have expressed formally questions, skepticism about the need for such limits, and what concerns me is if I look at all of your inclinations in terms of what I have seen in print, on your watch we could perhaps have the most radical consolidation of media ownership in the country's history.

We could have one company owning 60 percent of all the cable outlets. The same company could buy two TV broadcast networks, NBC and another. The same company could buy at least one-third of all radio stations in the country. The same company could buy newspapers in every town in which it owned radio stations, and most towns already have a monopoly newspaper situation.

I think the first question I would like to ask is what are your views formally on this question of media concentration, and are you troubled by the prospect of what I have described, and if so what would you do about it?

Mr. POWELL. I believe that the concern about media concentration is genuine. I believe that there is a reason to be concerned about consolidation generally. As an antitrust attorney, I know

what the dangers are of monopolization of any producer of any goods or services, and I understand the uniqueness of the media in our society as well.

That said, all I have expressed publicly is a commitment to do what Congress ordered me to do, which is to on a biennial basis thoughtfully review each and every one of the ownership rules to consider whether they continue to be necessary, given the changes in the environment. That is a legal obligation and one that I have merely suggested we would pursue.

I also believe that it is healthy to do so. One of the reasons is that the goals of many of these rules I would be the first to support, both the limitation on concentration and the continued importance of diversity in the media. But a good number of these rules date back to their original conception in the 1970s, some of them in the 1940s, in a world in which nobody can intellectually defend the proposition that the marketplace has not changed dramatically.

Maybe these rules will be validated in the context of a fulsome examination of the current media marketplace environment. I will say publicly if that case can be demonstrated—I do not deregulate for its own sake, and that if the rule continues to serve that purpose then it will be maintained.

Moreover, if those goals can be pursued in a more thoughtful and less interventionist way I would consider that as well. But I do think that part of our obligation and responsibility is not to ignore changes in the environment and the market and what is available to consumers and what is not in the preservation of rules without examining fulsomely whether those rules continue to serve those purposes in the modern context.

Finally, I would say we have an obligation to do so because whenever you talk about concentration or issues of diversity in the media area you are talking about an upper constraint in the form of the First Amendment, which I do not believe is some cynical “get-out-of-jail” card for broadcasters, but is one of the most cherished obligations that this country adheres to.

Many of these rules have been increasingly threatened in court because of the government’s unwillingness to articulate strong and thoughtful defenses of them. If we have any hope of their goals being continually pursued, I think that we have an obligation to review them and even defend them thoroughly and rigorously or offer alternatives or eliminate them.

Senator WYDEN. What about the prospect of the scenario that I described? That is a very real prospect. In fact, I could go further. I mean, you would have this one outfit owning almost everything and then one or two others owning what is left. I look at the FCC statutory responsibility to regulate in the public interest, which I know you take very seriously, to promote diversity of media sources, and I say that responsibility that the Commission has does not square with the very real prospect of a radical concentration of media in a few hands on your watch.

I would like to know if that scenario troubles you.

Mr. POWELL. It troubles me that it is ascribed to me before we have done anything.

Senator WYDEN. That is why I asked.

Mr. POWELL. That to me is a speculation in and of itself that I sort of will not agree with the fundamental premise of. Any rule that is altered or changed in the context of a factual record that is rigorously evaluated and considered will be one that includes into consideration the kinds of prospects that you maintain. I will always have to yield to whether that result will occur or not until we have the opportunity to have a record and a fulsome examination of it.

The second thing I think we need to say, which is not trivial, is that many of the scenarios you postulate would also violate the antitrust laws of the United States. I would certainly hope that if the radical levels of concentration you suggest were to begin to occur that they would find ourselves in violation of the Sherman and Clayton Acts and that forceful antitrust would not allow that to occur, just like it would not in the context of oil or automobile concentration.

Senator WYDEN. That raises an important point. Do you believe that the goal of media diversity is separate from issues of antitrust enforcement? I happen to. I happen to think that it is possible that you may not have two major companies coming together, violating the antitrust laws, but still undermining in a very significant way important diversity objectives. Do you share that view?

Mr. POWELL. I do. I believe that the government could make a judgment about the importance of diversity that fell short of what traditional antitrust would say is the level of concentration that considers traditional anticompetitive effects. That said, I also think it has been one of the most difficult areas for the government to actually make constructive and defensible rules in, because diversity, unlike antitrust, where we have the ability to almost mathematically determine the antitrust effects—we can examine price effects and we can use HHI indexes—the problem with diversity which is difficult is that it has a certain visceral component to it.

When is too much? When is too little? An HHI index for diversity does not exist. We also have the additional constraint, that we do not have in concentration analysis, of the upper limits of the First Amendment which the courts do not fail to regularly remind us of when we assert diversity as a purpose but do not defend the validity of the rule's furtherance of that objective.

Senator WYDEN. Mr. Chairman, I know my time is up.

Just for the record, Mr. Powell, could you state your views with respect to the matter of limits on ownership of mass media outlets? I think, given the fact you have been concerned about positions that have been imputed to you, it would be good to have you formally on the record with respect to your views on the question of whether you ought to keep limits on ownership of mass media outlets.

Mr. POWELL. I think we have a duty to ask, in sort of a critical schematic, first and foremost, whether something is necessary above and beyond the antitrust laws, which should be rigorously enforced. If so, should it be in a prophylactic way, as opposed to case-specific way? A rule that prohibits up front certain kinds of combinations? What are we pursuing?

Diversity may be a justification for that. But can we demonstrate to the satisfaction of the First Amendment and the satisfaction of

the Administrative Procedures Act that the rule in fact promotes that purpose in a defensible way. If all those things can be done, I assure you we will have a rule on it.

But I do not think that we should shy from the challenge. I would also argue—and I am one of them—for those of us who do believe in diversity, we had better commit ourselves to a more thorough, intellectual and rigorous defense of those rules, lest we will see them continually eroded by judicial skepticism, as I think we have seen. The greatest threats to these rules recently has been judicial intervention, not regulatory intervention. I would submit that we have to, if we wish to preserve those goals in a regulatory context, examine 30- to 50-year-old rules to see whether they continue to serve those purposes and whether there is a better way.

Senator WYDEN. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Stevens.

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

Senator STEVENS. Thank you very much.

Mr. Powell, I am delighted to see you here. I am sorry I was not here when you introduced your mother. Those of us who have known and loved your father and mother are delighted that you are here and carrying on in the Powell tradition.

Having said that, I do have some specific questions that are related to the rural areas. What steps do you think the FCC should take to assure consumers in rural and high cost areas such as Alaska and the rural States receive telecommunications and access to information services that are reasonably comparable in price and quality to those that are received by people in urban areas, where by definition they are much lower cost?

Mr. POWELL. I think the first thing to do is the Commission can quell the degree of uncertainty that has hung over the continuance of the rural subsidization programs and rural universal service programs that I think have been a drain on investment in rural America. One of the first things I was committed to doing was ensuring that the rural high cost proceeding was completed quickly, which we voted last month, which establishes a universal service regime in rural America for at least the next 5 years, which I believe will not only provide more money for the subsidization and deployment of new infrastructure, but also will lessen the uncertainty that I think was causing a drain on investment in rural America because of an uncertainty about what that regulatory environment will be.

We are going to complete the second half of that this year in the form of access charge reform for rural areas as well, and I think that will be the final shoe in order to create the rationalized environment necessary for investment in rural America.

The other thing I think we need to do is have a pointed and concerted focus on the promotion of new and advanced technologies that are able to bypass the traditional geographic and demographic limitations of rural America because the cost infrastructures are not as critical to those services as they were in the traditional wired form.

I am one of those who believe deeply that satellites services and wireless services hold great promise for rural America as well as

the lower developed world. You see this all over the world, in the continent of Africa for example, that never really had the step of a first class wired infrastructure, just skipping it altogether, moving right into infrastructures that put a premium on wireless technologies.

I think there are policies that can incent investment in that technology and innovation that we should pursue.

Senator STEVENS. Well, I hope you are right. We have 161 of our villages and small cities that do not have even dial-up Internet access now. They do have cells and they have gone directly to those and they work very well. But we have a real problem in trying to get deployed the advance services in the areas that do have voice communications but have really no digital access and really no basic high-speed access to the Internet.

What do you think you can do to help in the deployment of full-scale communications to rural areas?

Mr. POWELL. Well, it is a tough question. The real answer to that will have to be in partnership with the Congress to find new ways to incent the deployment of that technology. One is to protect to the greatest extent possible, as I mentioned, the sort of universal service subsidizations that allow for basic infrastructure on top of which advanced capability is built.

For those areas that do not have basic wire line infrastructure to build on, which is what most of the country will do in pursuit of broadband, I think we have to look for ways to lower the cost of some of the wireless advanced services. I know that Senator Burns and others have pursued tax credits and other forms of incentives for the deployment of satellite-delivered high-speed infrastructure. Those things hold promise for that kind of development.

3G—quite candidly, the rigorous pursuit of new spectrum for purposes of high-speed wireless Internet data holds the possibility of using those wireless infrastructures in remote areas to provide real-time high-speed interactivity experiences for all Americans.

Senator STEVENS. I would like to submit some questions to you, if you would answer them. That quorum call I believe is for me to come make a statement. But Mr. Powell, I am basically concerned about the survival of the universal service fund. It really does derive from the action that Senator Inouye and I instigated to bring about a basic concept of rate integration and the industry itself created that fund. It created it in a meaningful way.

Those are not taxes that are paid into that fund. But unfortunately, through action of the Congress that fund is now being treated as though it was a tax revenue fund and is being allocated by your Commission to a whole series of things that have nothing to do with access to rural America. I really think the burdens on it are so great now that it is really a great problem for us to foresee that it will survive.

I do not think those people paying into the fund who are getting long distance service are going to keep up and go along with a constant increase in the rate they pay in order to subsidize rural America. It has to be done by everybody. So I hope you will find a way to do that.

Mr. Chairman, if I may, if you will pardon me, Mr. Powell, I told an old friend that I would do this. Jim Quello was so much a mem-

ber of the Alaska side of the Commission that we gave him an honorary citizenship. Kathleen Quinn Abernathy worked with my great friend, a graduate of Marquette University and Catholic University School of Law. She came to CBO in 1980. She has been with several well-known law firms here in the area and she has worked in various capacities in the telecom business.

Above all, she was legal adviser to Commissioner Jim Quello. I think that says that this young lady is eminently qualified to be one of your colleagues. But beyond that, she has had a series of involvements in the industry for Bells such as USWest and Qwest, for the broadband industry. She has practiced representing wireless companies and Vodafone. She is going to bring a new perspective to the Commission, but above all her reputation as one of Jim Quello's great advisers really qualifies her eminently to be a member of the Commission.

She has one major defect. She has never been to Alaska. But she has promised me she will come.

[Laughter.]

Thank you, Mr. Chairman.

The CHAIRMAN. They all get to come.

Senator STEVENS. It is a basic requirement.

[Laughter.]

**STATEMENT OF HON. JEAN CARNAHAN,
U.S. SENATOR FROM MISSOURI**

Senator CARNAHAN. Thank you, Mr. Chairman. Mr. Powell, thank you for being here this morning. I share Senator Stevens' interest in broadband deployment in rural and low income America, and we appreciate any concern you could have for that as well.

There has been a great deal of speculation about the concern about the future of the E-rate program. I am a strong supporter of the E-rate program and I fear that any changes could have a detrimental effect on our schools and libraries in Missouri and across the country. So I was wondering if you could discuss your thoughts about this program and what, if any, changes you envision for the future.

Mr. POWELL. Well, thank you, Senator. I first would say I think the program has been an extraordinary success, as well as other programs that have contributed toward the universal goal of trying to make sure our children have access to this technology in their schools and in their libraries. I think, at last count, 95 percent of all public schools had access to the Internet. I think, at last count, 63 percent of all classrooms, public classrooms in America, had access to Internet services. I think that it is fair to say that the E-rate program was a substantial engine that fueled that development.

My responsibilities are to administer the program as written by Congress. We, at the Commission, have no independent intention, of doing anything but. It will continue to be administered thoughtfully and carefully to ensure its preservation and to ensure its adequate funding. Simultaneously, though, it needs to balance the interests of consumers who pay the costs of the universal service fund and make sure we do not jeopardize the fund by, as Senator

Stevens pointed out by contributing to increases in bills that are more than consumers are prepared to sustain.

The debates over where it belongs and what it should include I am happy to say are above my pay grade. These are proposals that had been at one time floated by the President.

I think that it is legitimate for the President and the Congress to have that discussion. But I just stand ready to administer the program as you all see fit to deliver it to me.

In its current form, I think it is a success and going to continue to be.

Senator CARNAHAN. I have one other question. I am very concerned about the State of competition in our local phone markets and I was wondering if you could give me your thoughts on the State of the industry now, 5 years after passage of the Telecom Act, and tell me what you see as the FCC's role in fostering competition.

Mr. POWELL. The Act did a lot of things, but we sometimes forget what it could not do. It could not eliminate business cycles. It could not eliminate economic downturn and it could not prevent "irrational exuberance," to use Alan Greenspan's phrase, in the financing of business models. I think we enjoyed 5 years of frenetic activity, much of which unfortunately pursued, in my opinion, unsound business models, short-term revenue collection, growth that was too fast and too quick for the network's ability to deliver or to market and adequately serve consumers at the quality levels that were demanded, and it broke. I think it broke principally because the financial markets I think are just as capable of irrational disinterest as they are irrational exuberance and they quickly recognized in some ways the error of their ways, and had extended financing far beyond what those business models should have predicted and they pulled back and they pulled back hard.

Regrettably, what has happened is that they have pulled back not only on the carriers that are probably deserving of it—that is, those who did not come up with solid plans, who pursued regulatory arbitrage, who did not invest in serious long-term viable options—but, they also, sadly, have turned away from companies that I think are outstanding, that are viable, that still are pursuing fundamentals that are healthy. I think there are more than a few of them.

I hope and I firmly believe that many of them are going to rise again. They are going to restructure and reorient toward healthier models. I think that consumers still want those services and there will be people prepared to provide them. But many of them will have to do it through the pain of bankruptcy reorganization. Many of them will have to weather capital markets that do not seem willing, sadly, to look, given their exposure and their losses from their first round.

We need to do everything we can to try to encourage the financial markets to see the long-term viability of this option for our consumers and hope that the cash comes back.

What can regulators do? It is limited, but the regulators can, No. 1, be vigilant to the opportunities for regulatory arbitrage. We too can inadvertently provide opportunities to chase short-term opportunities. I think that is what reciprocal compensation was. I think

that is the problem with certain parts of access charge reform. Companies entered the market to cream-skim at times. They entered the market to take super-economic profits as a consequence of regulatory distortions.

I think it has taken the Commission a little too long to jump in and rationalize those things. That is painful medicine. Those are some of the toughest items I work on. They are sometimes wrongly interpreted as being anti-CLEC. Well, they are only anti-CLEC because we will not let you drink indefinitely from revenues that are unsustainable based on economics.

We hope that in the end what happens as a consequence of market correction—and I think it is important to point out that markets do not just reward people, they also punish them for inefficient activity. I think what I hope for and am confident about is that the market will produce longer-range competitors with much more viable models, with much more sustained growth levels, and consumers will see the benefits.

I also think it will take longer than we tend to talk about in political Washington. I think it is a long-term project. I do not think it is a year, or a 2-year thing. I think we are, after 100 years of monopoly, it is going to take more than a few years to see the benefits of the changes.

Senator CARNAHAN. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Burns.

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

Senator BURNS. Thank you, Mr. Chairman.

Chairman Powell, congratulations on your opening statement. After our visit in our office and everything, understanding the challenge that you have to make and under the circumstances in which you have got to do it, and also in this 17 square miles of logic-free environment, I want to congratulate you for doing that.

I also want to congratulate you of your leadership in grasping what is in front of us, as we talked before, the future of wireless, and your organization's ability to deal with some of the challenges that you will have in front of you in requesting some money to upgrade your laboratories. We know that is a very, very important part of what you do, and also your hiring practices, attracting good engineers to the FCC.

As you know, the way technology is moving and the speed it is moving, we cannot afford to be behind in making some decisions that are very important to the success of any new idea or innovative thing that we might want to deploy. So I congratulate you on that.

Also, as you know, Senator Kerry and Senator Hollings and I have requested a study of spectrum. As you have heard from the rest of the members on this Committee, spectrum is of concern, and the way we manage it and the way we allot it. So I, realizing this last year—and of course, I was in the middle of a campaign, but also understanding that I think it is time that, working with the Commission and you working with us, that we should start inves-

tigating and turning our thoughts to the way we manage our spectrum and look to some reforms.

As you know, we are fragmented. In some cases that is why maybe we regard the Europeans as a foot-and-a-half in front of us on 3G, third generation. But nonetheless, I think this country will always be the international leader in communications because of the way that we can respond to new technologies and the way we look at them and the way our sorting process, our thought process, to deploying those new technologies.

So we have great challenges ahead. I want to shift just a little bit from the discussion of 271, so to speak. The FCC has initiated a notice of inquiry regarding interactive television. I am concerned that without continued action by the FCC consumers will not have access to all the creative and innovative interactive television offerings that are currently being deployed. Will you support the continued rulemaking in this area?

Mr. POWELL. I voted for the Notice of Inquiry that was initiated and I see no reason why it will not proceed. I think there is a lot we can learn from that inquiry and examination of what the status of the market is and what the technologies are and what kind of regulatory problems are going to be presented by them, if any.

Senator BURNS. Also, in the areas of universal service, I would like your opinion: Is it time for Congress to look at universal service for some reform there, working with the Commission?

Mr. POWELL. I think universal service is the kind of thing that should be looked at constantly, because I think the goals of ubiquity and affordability are unassailable, but I do believe that the foundation of how to achieve those goals is constantly shifting. It is shifting—it is probably about to undergo some of the most dramatic shifts ever as it moves to advanced technology infrastructures to deliver datacentric services. Whether the historical approach to ubiquity and affordability will translate well into the new infrastructures is a real question that I think is not yet ripe for dramatic change, but I do think begins to peek through the clouds and is something we are going to have to start thinking about early and often as networks move more out of the traditional copper switched environment into packet-based IP protocol environments.

Senator BURNS. I think, you know, it is incumbent on us that serve on this Committee to keep the rest of the Congress apprised on what is going on, because there is a lot of activities that are very fast moving. I think two of these areas spectrum management reform and also in universal service, are things that we are going to have to take a look at, and they will create quite a lot of interest as we take a look at those. They also have international impact with our friends in Canada, Mexico in the hemisphere, but also around the world.

So I am very supportive of your nomination and your permanency to the chairmanship. I look forward in working with you and the Commission on those challenges that we have ahead of us.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Edwards.

**STATEMENT OF HON. JOHN EDWARDS,
U.S. SENATOR FROM NORTH CAROLINA**

Senator EDWARDS. Thank you, Mr. Chairman.

Good morning, Mr. Powell.

Mr. POWELL. Good morning, Senator.

Senator EDWARDS. I want to talk to you about privacy on a couple of different aspects. You know, there are a lot of new technologies that allow people to determine the location of people, including cell phones and these technologies that they put in automobiles now that allow you to figure out where you need to go, but also allows them to figure out where you are.

Senator Dorgan and I have been working on a bill to address this issue, but I just wanted to get some sense from you about what your feelings are about the privacy aspects of that information, because a lot of people believe that their location is something that they would not want the world to know. I can imagine a situation where that information, if gathered, could be sold to third parties and it could be used for marketing purposes. For example, Starbucks figures out you are in the area, so they give you information about something they have got going on, or a retail store, whatever.

My belief is that that information is information that the consumer should have control over, and that is what our bill is dealing with.

But tell me. Give me your sense of that and what your feelings are about the privacy aspects of this location information.

Mr. POWELL. I would love to. I am going to throw my mandatory caveats first. First, the Commission only lightly touches on privacy issues. Some of the ones you mentioned are generally outside of our expertise or jurisdiction. It is not going to stop me from talking about it, but I just wanted that caveat.

I am not that familiar with your bill, so I apologize; I cannot comment as to the specifics. I think privacy is a very, very important issue, but a very, very difficult one. It will prove to be a critical component of how the new economy and Internet-based services evolve. If you think about it, in many ways the real beauty and curse of modern technology is it is ultimate diversity—it is ultimate tailored services.

That is, this is the sort of the my generation: my Yahoo, my Amazon, my this-my that. You are increasingly able to use the technology to customize services for you, not legions of people like you, but actually you. I think it is what consumers are partly responding to and liking in Internet-based services and other advanced services. It is also where producers are excited about the opportunities. If Nordstrom's knows it is you, it can be much more efficient in tailoring things for you that you like. When Amazon is up on your habits, your book-buying interests, it begins to aggregate that information. And every time you come on Amazon tells you a little bit about what you might like. Some of us like that, like the fact that I see things that I might not otherwise stumble into.

Consumers are funny about privacy. They all care immensely about it, as they should, but it is also something people seem to want the right to trade for something of value, within limits. That

is, you will see companies that offer free PCs if you will tell them everything about you. They ran out of those PCs before you could count to three.

What you find is that you have to ensure that consumers are well aware of what can be made use of their private information and that if any of it is going to be used that it is done with their full knowledge and acquiescence. But on the other hand, I think that there will probably be a difficulty making sure that consumers have the right to make judgments about how intrusive they are willing to allow providers to be as long as it is an exchange for value.

When I was in law school we wrestled with the Fourth Amendment and it is because the expectation of privacy is a critical sub-component to the constitutional provision, and expectations evolve and migrate and change for different consumers.

This is going to be a fundamental question on how the Internet evolves, whether its promises are realized, and whether consumers are adequately protected. I cannot think of any one question or issue more central to the government's consideration and debate over.

Senator EDWARDS. Specifically to the question I asked you on location kinds of information. From your perspective, does that sound like the kind of information that consumers ought to have some control over?

Mr. POWELL. Oh, sure, up to a point. I have friends who have GPS receivers that we use to tell us where we are going in our cars. I own a small boat; we use it to know where we are on the water. That is location-specific technology. That GPS receiver knows where I am. I would like to be able to control who knows where I am.

But, I also might want the right to provide it. For example, I may be in a strange city with my 3G wireless phone and would like it to tell me what the closest coffee shop is or where Starbucks is. I may want to authorize that my location-specific information is released to some service that will then be able to, given where I am, identify options for me locally.

But I think, as you point out rightly, the critical issue is to make sure that I have a sufficient amount of control over that choice, as opposed to someone's misuse of it.

Senator EDWARDS. Good, good.

Mr. Chairman, if I could ask briefly about one other area. Are you familiar with the Tenth Circuit decision in USWest versus FCC case?

Mr. POWELL. Yes.

Senator EDWARDS. In the 1996 Telecom Act Congress talked about telephone companies getting "approval"—that is the term they used—prior to selling confidential or private telephone records to any third party. The FCC issued regulations to support that language. The Tenth Circuit said—basically struck down the FCC regulations, but invited us, us being the Congress, to come back and define exactly what we mean by "approval," and did not deal with the constitutional argument that was raised in that case.

We are going forward with some legislation, me specifically, to define what "approval" means and to define it basically exactly as

the FCC had defined it, which is that “approval” means that a customer gives prior approval before the telephone company can sell their personal records to third parties. I wanted to get your view about that subject.

Mr. POWELL. I think it is a legitimate way to go. I think basically this is two options: You either opt-in or you opt-out. Our attempt to proffer an opt-in regime was struck down by the circuit court, as you pointed out. I think part of it was statutory. Also, I think part of it was a sense of whether we had been able to adequately justify why that level of affirmance was required.

You know, when we were doing this we made some effort to examine how it works in a lot of other areas of the economy. For example credit cards. There are many things in the economy that make use of your information, and a lot of the uses opt-out, to be candid. So I think that it is a legitimate judgment on the part of the Congress or anyone else that we would prefer to have affirmance.

But there is a welfare loss, which is you will get much less incidental subscription or advice or information. There are a lot of things that if I had pre-selected not to know about that I will never have the opportunity to trip on and see. I think that is just a balancing judgment and I do not have a strong view of which is superior, but I think that either will potentially work.

Senator EDWARDS. So you continue to support the notion that the customer ought to have control over that decision, No. 1; and No. 2, that they ought to be able to affirmatively have control over giving the telephone company permission before it can go to third parties?

Mr. POWELL. I would agree, but I would probably move slightly further than maybe you would. That is, I believe that they should have absolute clear knowledge of the choice. I also believe that they should act affirmatively. But I also believe that it is possible you could have an opt-out regime that satisfied those objectives, that is that—many Internet sites, for example, that subscribe to the trustee privacy regime make sure that you are given an identification at a Web site of what will be done with your information and you are boldly, clearly given the opportunity to check not to be included, to opt-out. Otherwise you will receive this. I would consider that to be at least an example potentially of “I had knowledge, I took an affirmative act, but my affirmative act was passive. That is, I elected not to check the box.

Senator EDWARDS. My time is up, but my concern about that in the context of telephone companies is that there is a difference, of course, in the way people interact with a Web page and receiving something in the mail, which they throw in the garbage with everything else. So I just want to be sure that people actually have notice and have control over the decision.

Mr. POWELL. That is absolutely correct, there are different environments.

Senator EDWARDS. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cleland.

**STATEMENT OF HON. MAX CLELAND,
U.S. SENATOR FROM GEORGIA**

Senator CLELAND. Thank you very much. Thank you very much, Mr. Chairman. Mr. Powell, welcome. We want to thank you for your years of public service. I know your father and have the utmost respect for him and I know the apple does not fall too far from the tree. So welcome, and you have my unqualified support in your nomination and we think you are going to be an outstanding leader there at the FCC.

May I just follow onto Senator Edwards' point. I am, as I look at this question of privacy, more and more pro-choice here in terms of the consumer or the individual. I think that is where the question of privacy really lies, is who has the power to choose whether to opt in, opt out, choose to be found or not found, disclosed or non-disclosed; and that the real question is who chooses.

I think there is no question but what, with our values in our society and our democratic society, we leave that decision to the consumer. Then the consumer has the confidence then to enter the marketplace and make other choices. I think that will facilitate the continued growth of the Internet. I just thought I would mention that.

But we appreciate your leadership, your guidance on these issues as they come along. May I just say, in a parochial way, that Georgia has been a big beneficiary of the E-rate funding for schools and libraries, allowing youngsters to be connected to the Worldwide Web and to the Internet. I think we are fifth in the country in terms of receiving E-rate funding, which is why I would just like to make a point here.

The FCC has apparently proposed to change its rules for distributing E-rate funding to schools and libraries when the requests for funding exceed the available funds. Specifically, the FCC has proposed to exclude from funding this year—this is year 4 of the E-rate program—any school or library that received a commitment for internal connections last year. This proposal was just made April 30.

I see two problems with this proposal. First, the FCC would be changing its rules after the applications has already been filed, potentially causing disruption and delay in the funding. Second, there are likely to be a number of unintended consequences of these new rules. For example, even a school that received a small amount of funding last year could be excluded this year.

Also, any school that received funds for its internal connections last year could be barred from receiving the maintenance funds needed to keep its network running. There are over 40 schools that could be affected in my own home State alone.

I would just like to ask you, what consideration would you give to the potential problems that could result from changing these E-rate rules?

Mr. POWELL. Well, just to be clear, that is only one proposal among several to be considered about how to deal with priority funding when funds fall short of demand. I can honestly say that I do not think that the Commission has expressed any particular bias yet as to how that should come out.

We will consider that. That is, frankly, being currently considered along with other evaluations of the priority funding system. But to be clear, that is not the process that is in place now and it is not, as best as I understand it, the one that is currently going to be used for the allocation of shortfalls unless the Commission—and maybe that will be the three behind me in addition—make a decision to change that.

There are some complaints from States, which is why we had to and we wanted to consider it, which are unable to get access to funds, claiming that certain applicants seem to get repetitive funding where they have gotten none. I think that is something we have an obligation to examine to ensure that it is widely distributed. But I assure you, we are just in the beginnings of looking at that question and I personally have reached no judgment.

Senator CLELAND. Thank you very much.

Now, you were with the Justice Department, particularly the Antitrust Division. Now you are up for head of the FCC, have been on the FCC for a number of years now. I would like to have your view of the FCC role in this whole world of quicksilver mergers and acquisitions in the telecom world. What role does the FCC play here in your opinion to protect the public interest?

Mr. POWELL. Well, first of all, it plays the role that is articulated in the statute, which is if a merging party owns a license—it is important to know if the merging party has a license and that license will have to be transferred to the new entity—then that license transfer has to be examined by the Commission and the Commission has to affirmatively approve, as in the public interest, the transfer of that license.

That is a different standard than that employed by antitrust authorities which administer the standards of the Clayton Act and the Sherman Antitrust Act. But as a practical matter, more often than not, it also involves on the part of the Commission a review of traditional horizontal and vertical merger concentration analysis in an examination of that transfer.

I will admit that I have been critical of the way the Commission has administered this process in the past. I think the government has a real interest in asking itself whether we are value adding as to that. And I want to be particular about this—value adding as to that concentration analysis or are we simply duplicating the activities of the Federal Communications Commission or the Antitrust Division. If we are, I think it is legitimate to ask whether that additional duplication is warranted.

That said, there are other things that we do in the context of a public interest analysis which I think are warranted. For example, it is important to make sure that the merging parties would comply with all the provisions of the Communications Act and the Federal Communications Commission's rules. That is not something the Antitrust Division will do.

I also think, as Senator Wyden was alluding to, to the degree that we have a good analytical basis for doing so, diversity is a component that the antitrust authorities will never consider. It is not a legitimate consideration under the standards.

Senator CLELAND. My time is up, but where are we going here? Are we going to wind up with just three or four major global telecom companies in this country and then just everybody else?

Mr. POWELL. I do not think so. I think that the mistake we make, in some sense, on that discussion is the idea that local is not valuable. Local is an extremely valuable service. If anything, I see a trend toward increased parochial provision of service. We just talked about the Internet. Talk about penultimate diversity: service providers attempting to provide the programming content that you want, not even people in your community, not even all those who like history on the History Channel, but you personally.

I think that the trends are very powerful toward being able to provide diversity in local content to consumers. I think that it is not only valuable as a public interest policy, which it has always been talked about as, but I think we sometimes underestimate about how valuable it is as an economic matter. A local television station's most valuable content, its highest rated card, will always be local news if it provides it. It will be the programming that draws the greatest advertising and it will be the programming that is most watched on most local television stations.

That is not an argument, by the way, for "who cares, laissez faire". But there can be threats to those values that we should be vigilant about.

But I do think that we sometimes underappreciate that people do live in communities. We are a diverse Nation with different interests and as long as there is a value component in that we can incent people to serve those interests.

Senator CLELAND. Thank you, Mr. Powell.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Brownback.

**STATEMENT OF HON. SAM BROWNBACK,
U.S. SENATOR FROM KANSAS**

Senator BROWNBACK. Thank you, Mr. Chairman.

Welcome, Chairman Powell. Delighted to have you here. I think your service on the Commission has already shown you are well up to the task. I look forward to supporting you in that role as Chairman. Your tenure there on the Commission has been rewarded and rewarding for those looking for a little bit of common sense and courage in dealing with some tough issues of the day.

I want to focus you on, if I could, on two question areas. One is the deployment of high-speed Internet access into rural areas and the second is the role of FCC in addressing television content under its public interest test. Those are the two areas I would like to inquire with you for a minute.

We still are having a great deal of difficulty getting any high-speed Internet access into many rural areas of the country. The distance, the ability to get the customers they wanted, the concentration of customers, has been difficult. I have got an example, though, of one place in Kansas where we do have some high-speed Internet access, and I would just like to put this in front of you and pose a question to you.

There is a small cable company, Sumner Cable, located in Wellington, Kansas. Wellington has about 8,700 people. Sumner is de-

ploying cable modem services in Wellington. Yet, the major Bell company that offers local telephone service is not.

Do you believe that there is any different treatment that these two have in the regulatory regime that has any bearing on whether or not one deploys and the other one does not for high-speed Internet access?

Mr. POWELL. That is a good question. I think that it varies dramatically from market to market as to the choice to invest in that infrastructure. One thing I would say which I think is hopeful, both for rural America and America generally, about broadband is, unlike the original telephone system, it will not have to be laid across our public rights-of-way and land from scratch, like telephone or rural electrical service was. It is basically a functionality that is going to be built on top of networks that already reach a substantial number of Americans. Whether it be 94 or 95 percent penetration by the telephone network. Cable networks pass 96 percent of American households.

So we have a real opportunity to try to incent investment in the upgrading of existing infrastructure, rather than laying the first infrastructure.

The cable incentives are sometimes similar, sometimes different. I think that the biggest reason we have seen cable lead the way on this technology is not just, as some would suggest, the regulatory freedom, which is a real part of it, but because cable was very committed to expanding video programming capacity by digitizing the system. If anything, I worry to make sure that cable companies continue to have incentives focused on the data side as much as they do on what their traditional biases have been, which is more capacity for more viewing programs.

I think that they really were driven, first and foremost, to increase the capacity of video product available. Coincidentally, the upgrades that were required to do that were similar to the upgrades necessary to do high-speed Internet, and it became a real possibility to create a value-added product being driven by the possible revenues of both of those things combined. I think that is part of why cable jumped out fast.

I also think that cable's quick actions have led principally to the competitive threat to the telephone companies. By the way, I do not think it is just because of the possibility of cable telephony. I think people now get it, which is datacentric communications is without question the future. We may not know exactly what it looks like, but if you are sitting on a horse that cannot do this you are going to lose, and everyone understands that they need to be able to start converting networks and drive revenue toward datacentric capability. The phone companies are starting to respond and are responding, interestingly enough, having lagged, at a much faster rate of growth than cable modem service at the moment.

Any given specific market, any given specific phone company, I do not know for sure. Part of the problem with phone companies has been the problem that is often true of large, entrenched interests who make a lot of money from their legacy stuff: It is hard to move boldly. It is easy to continue to draw revenue from incremental changes. A lot of phone companies had DSL technology for 15 years. They also have other technologies they make a lot of

money on, like T-1, that they did not want to cannibalize in rolling out a cheaper service, and I think the competitive threat of cable started to spur them to do that.

Senator BROWNBACK. I am still concerned about the disparity in access between rural and urban and suburban areas for high-speed Internet, and I hope you will continue to look at that and to see ways, if there are, that we can incentivize or have a regulatory regime or reduce the regulatory regime that could incentivize more of this to take place, so that we do not get in a big digital divide.

The second question: This Committee has held a lot of hearings about television content, particularly violent content, particularly that during the family viewing hour, and some letters sent to the FCC regarding the public interest test on this. I just wanted to get, if I could, your views on that public interest test relative to the issue of highly violent, violence outside of any context, being presented on over-the-air broadcasts during the family hour, if you think the FCC has any role or need to, not regulate the industry, but to press it to move to a higher standard if they could, and to review what the industry is doing in putting out this sort of programming, particularly during the family hour.

Mr. POWELL. I will try to be brief. Candidly, we have a right to be outraged, both as consumers of television, watchers of television, and listeners to radio, about outrageous conduct or content that offends us. I wholly subscribe to that and I often am disappointed myself. What I think we have seen increasingly in the media space is, to use a sine wave, we have seen greater amplitude. That is, I would argue we see some of the finest television product that we have ever seen in the history of television. At the same time, we have seen some of the darkest. We really have dramatically expanded the range of what is available to consumers and what they have access to in the consumer space, and many of those troughs are truly deep. But I do want to point out that I think many of the crests of those waves are very high as well.

I think it is a difficult issue, not so much because of the desire, but because of the challenge in definition and the crafting of actual rules. I, for one, as the father of two children, get very concerned about violent content. I get concerned about it a lot more in the video games that I see them play, to be candid, than I do in some of the things they see on television.

But I often sit there in front of it and think, OK, hotshot, write the rule; distinguish between the inappropriate violent content and appropriate. You know, what about "Saving Private Ryan" is art and what about something else is not? That is where I think it becomes very difficult, and it becomes very difficult given the fact that it is layered over, no matter what anyone wants to debate about its parameters, a First Amendment limitation.

So you have—only to mean, not that you cannot do it, but that you have to do it at a higher level of rigor than you do all your other rules. So I have always been frustrated. It is very difficult for me to imagine at times how to do that.

The second quick thing I would say is we are a diverse country and we all make different value judgments about what is acceptable. I am always amazed about what my neighbors think it is OK for their kids to see, where we do not want them to, and vice versa.

What I am very uncomfortable with is the Commission making these judgements—we are not elected individuals. We operate by a 3 of 5 majority and I am not always comfortable that we impose our value preferences on society as a whole.

I am happy, though, and indeed willing, to administer those judgments of the Congress, because there I think that all of the public, of all those interests, have an opportunity through their representatives to debate and arrive at, through that deliberative process, a value judgment that we are prepared to impose on the medium and the country as a whole.

That is not to say I do not think there is anything that the Commission could or would do independently. But I am a lot more comfortable when we are given a statutory basis to pursue this because I feel like then the people through their representatives have made some deliberative judgment about these value choices, as opposed to the Commission, who may answer to the Congress but does not have any direct answering to the public.

Senator BROWNBACK. Thank you for your response.

Senator HOLLINGS [presiding]. The Chairman indicated it was my turn. Mr. Chairman, I am looking at a statement you made relative to enforcement. All of these Bell companies operate as former Ma Bell, dissemblers, artful dodgers, and everything else that you know of. In fact, Judge Greene, after 12 years and 12 decisions made by your Federal Communications Commission, none of them could be enforced because they out-lawyered them—they just kept filing motions and everything else like that. Not the Congress, not the Commission, but the courts had to finally move in and break up that monopoly.

Now we see monopolistic conduct that our distinguished Chairman was just referring to with the CLECs and so forth trying to get in and survive and otherwise trying to open up the local Bells. The local Bells told us advisedly again and again that they wanted to open up and get into long distance. In fact, I have got two of their statements I will provide for the record, that they would be in within 12 months of the signing of the bill.

[The press articles follow:]

[From The New York Times, Feb. 8, 1996.]

COMMUNICATIONS BILL SIGNED, AND THE BATTLES BEGIN ANEW

(By Edmund L. Andrews)

WASHINGTON, DC.—President Clinton today signed a sweeping bill to overhaul the telecommunications industry, starting a new round of warfare between the giant media and communications companies even before the ink was dry.

Scores of industry executives, from Ted Turner to the chairman of AT&T, crowded into the signing ceremony along with politicians of both parties and the lobbyists, lawyers and regulators who will be the foot soldiers in the struggles ahead.

“Today, with the stroke of a pen, our laws will catch up with the future,” Mr. Clinton said, signing a bill that knocks down regulatory barriers and opens up local telephone, long-distance service and cable television to new competition.

Within hours of the signing at the Library of Congress, however, civil liberties groups filed a lawsuit challenging provisions that block indecent sexual material from being transmitted over computer networks. Television broadcasters began bracing for a new battle with the Clinton Administration over provisions aimed at reducing violence on television. And top executives at local and long-distance telephone companies immediately vowed to start attacking each other’s markets within the next 12 months.

Robert E. Allen, chairman and chief executive of AT&T, vowed that his company would try to offer local telephone service in every state and pledged to capture one-third of the business now controlled by the regional Bell companies. Elsewhere in the same room, the president of the Bell Atlantic Corporation all but said publicly that his company was actively seeking some kind of alliance or merger with the Nynex Corporation—a deal that would create a company that controls local phone service from Virginia through Maine.

The measure, passed after years of struggle and lobbying between rival segments of the communications industry, is expected to unleash a wave of mergers and acquisitions but eventually knock down traditional monopolies in local telephone service and cable television.

Its most immediate impact will probably be ferocious legal battles in the courtroom and at the Federal Communications Commission. In Philadelphia, a broad range of civil liberties groups led by the American Civil Liberties Union immediately sought a court injunction against provisions that impose heavy fines and prison terms on those who make available pornography or indecent sexual material over computer networks.

In Brooklyn, abortion-rights groups went to court to block a provision that some say would make it illegal to transmit information about abortions over computer networks. But the Justice Department said the provision, which expanded the reach of a little-known law passed in 1873, was clearly unconstitutional and would never be enforced.

President Clinton also put new pressure on television broadcasters to develop a system for rating violence on their shows. The new law requires manufacturers of television sets to install a special V-chip in every new set to allow parents to automatically block any program with a special code.

To be effective, however, broadcasters must develop a system for deciding which shows are violent and then transmit the signal. Commercial broadcasters are adamantly opposed to the whole idea, and some have threatened to challenge the law in court.

Today, Mr. Clinton announced that the White House would meet with representatives of the entertainment industry on Feb. 29 to discuss ways of reducing gratuitous violence on television and to make a plea for a new rating system.

“However well intentioned, legislative proposals to restrict violence or access to programs deemed to contain ‘objectionable content’ mean government control of what people see and hear and violate the First Amendment,” the National Association of Broadcasters said in a statement today.

Much of today’s ceremony was couched in theater and hoopla, a rare moment of relief shared by political leaders from both parties and executives of most segments of industry after finally passing the huge bill.

To that end, Vice President Al Gore engaged in a bid of cybershtick with Lily Tomlin, the comedian, who reprised her famous role as Ernestine the telephone operator. Ms. Tomlin, who appeared over a voice-and-video link through the Internet, told Mr. Gore he wasn’t as stiff as he seemed. “You’re just a techno-nerd,” she snorted, as Mr. Gore politely thanked her.

Behind the theater, however, the country’s biggest telephone and media companies were already gearing up for a new era of unbridled competition. One of the biggest battles will be between the local Bell telephone companies and long-distance carriers like AT&T, MCI Communications and Sprint.

Mr. Allen, AT&T’s chairman, said his company would offer an unprecedented new range of local, long-distance and even television services to its customers in the near future.

Mr. Allen said his company would immediately start striking deals to lease local telephone capacity from both the Bells and from newer rivals in the local phone market, and that AT&T would also invest in local communication networks of its own—possibly using wireless links as a substitute for phone service carried over copper wires today.

Even though long-distance carriers fought adamantly against provisions to let the Bell companies offer long-distance service within about two years, Mr. Allen said the future was bright for his company.

“This legislation is good for America, it’s good for the communications industry and, not incidentally, it’s good for AT&T,” he said.

James G. Cullen, president of Bell Atlantic, which provides local phone service in the mid-Atlantic region, said his company would start offering long-distance service outside its traditional region immediately and inside its region within a year. He also strongly suggested today that Bell Atlantic would team up in some fashion—though probably not an outright merger—with Nynex, which serves New York and New England.

"We've got to figure out how we can offer long-distance and local service in competition with the likes of AT&T," Mr. Cullen said as he waited for President Clinton to arrive at the signing ceremony. Mr. Cullen insisted he could not comment on widespread news reports about merger talks with Nynex, but offered a broad hint. "In between where we are today and something that falls short of a full merger, there are things that make sense," he said.

Cable television executives, who suffered a huge political defeat only four years ago when Congress voted to regulate cable rates, gleefully talked about how the new law would sweep away regulatory barriers that keep them from entering the local phone business and other new markets.

"The beauty of this is that there is enough new business, both domestically and internationally, that there won't be a war of attrition" between telephone and cable companies, said Gerald M. Levin, the chairman and chief executive of Time Warner Inc.

Even some consumer advocates who had warned that the new law would raise prices for consumers and lead to a new era of media conglomerates said the final bill had been moderated by pressure from Mr. Gore and Senate Democrats and might actually be good for ordinary people.

"This bill went from being a consumer nightmare to being something that while it still has significant risks is dramatically improved and offers at least at hope of greater competition and lower prices," said Gene Kimmelman, co-director of Consumers Union.

[From The Orange County Register, Feb. 9, 1996.]

STAKES ARE HUGE AS SCRAMBLE TO GAIN MARKET SHARE GEARS UP; OUTLOOK: INVESTORS WILL HAVE TO SORT THROUGH A FRENZY OF DEAL-MAKING OVER THE NEXT FEW WEEKS

(By Liza McDonald, Bloomberg Business News)

WASHINGTON, DC.—Telecommunications companies wasted no time touting plans to enter one another's markets after President Clinton signed into law the most sweeping industry reform in 62 years.

"The gloves are off and we are now free to take on the monopolies head-on," said Nate Davis, chief operating officer for MCI Communications Corp.'s local phone unit.

As the ink on the new law was drying, MCI said it would become the first U.S. long-distance company to offer local phone service in Boston.

Not to be outdone, AT&T Corp. said it would start making moves into the \$90 billion local phone market in all 50 states by March 1. "We're ready to play, we're ready to win, and we don't intend to lose any time doing it," Chairman Robert Allen said.

And the largest local telephone company, GTE Corp., announced that it had a contract with WorldCom Inc., the fourth-largest long distance company, to resell long-distance service under the GTE name.

While the jockeying created a frenzy among telecommunications companies, investors weren't quite so euphoric.

"Who knows if they (telecom companies) will do it correctly?" said Scott Vergin, portfolio manager at Lutheran Brotherhood in Minneapolis. "The concern, as an investor, is all the spending they are going to do.

Investors will have to sort through a frenzy of deal making over the next few weeks. Communications companies will be trying to fill gaps in their service with alliances or acquisitions.

Wall Street analysts say small long-distance companies and so-called competitive-access providers, which let businesses bypass local carriers when connecting to long distance, are in great positions to make deals or even be acquired.

US West Inc., one of the seven local Bells, made its first overture into the \$70 billion long-distance market by naming the head of its long-distance unit. *Pacific Telesis Group said it plans to be in the long-distance market in 10 to 12 months.*

Some companies decided to forgo the bill-signing festivities in Washington.

"While (Bell Atlantic Chairman) Ray Smith, Robert Allen, and other industry big-wigs were toasting the bill, we've been sitting in a war room in San Antonio planning our next offense," said Brian Posnanski, spokesman for SBC Communications Inc.

SBC said it will immediately begin offering long-distance service to its cellular phone customers. "It's not a time to celebrate, it's a time to get down to business," he said.

At stake is the \$200 billion phone and cable TV market. Not since before AT&T was broken up in 1984, creating the Baby Bells, has there been such a frenzy to stake a claim in the telecommunications market.

And not everybody's going to be a winner. "There will have to be some sort of shakeout, because not everybody can get rich at everybody's else game just because the restrictions have been lifted," said Albert Lin, an analyst at Cowen & Co.

Consumer advocates, meanwhile, wondered what's in it for phone customers. They said the telecommunications overhaul may mean a rash of mergers that may lead to higher prices.

But Vice President Al Gore said: "Over time, we'll all see prices come down significantly."

The Associated Press contributed to this report.

Senator HOLLINGS. They got no idea of doing that. They hold onto their monopoly and they play these tricks on each other. AT&T has lost \$100 million up there in the New York market. SBC has already said we have got to get back out of Atlanta. I think Verizon lost another with GEC, another \$100 million. They try and they try, and we have got a hard experience.

Evidently, you have experienced it also. So you make the statement: "I might give you the benefit of the doubt, but when you cheat I am going to hurt you and hurt you hard." Do you really believe that?

Mr. POWELL. Absolutely, if I can get more power to do it.

Senator HOLLINGS. More power? I mean, what power would you ask the Congress to give you that you do not have?

Mr. POWELL. Well, I submitted to the Congress several weeks ago a letter expressing my concern that under the statute the penalties that are within our authority to impose are wholly inadequate to give meaning to a statement as bold as that.

Senator HOLLINGS. Inadequate in what way? Not a sufficient amount or what?

Mr. POWELL. Not a sufficient amount. A billion dollar company who can face at times a maximum of a million dollar fine, well, that is the cost of doing business, and particularly when the cost of compliance is not trivial. If you look at the amount of money that the Bell Operating Companies have to spend in order to bring OSS systems to allow CLECs to interconnect pursuant to the standards that we have established, it is in the billions of dollars. If you are the CEO of a company and you are faced with a simple economic decision of whether to spend a billion to comply or to write a check for a million dollars not to, it does not get too difficult a decision to make at times.

I think we have tried to increase our aggressiveness within the limits of what we have. My best judgment is that we do not have enough to provide the deterrent value that I think is required if it is going to really work.

Senator HOLLINGS. Your request is that the limit be removed so that you can make a \$10 million fine, I think, according to your letter?

Mr. POWELL. Our letter noted at least \$10 million, as well as some other modifications that would give us investigatory authority.

Senator HOLLINGS. Well, I am looking at the record, which I could pick, and I have got all of them here: BellSouth, Qwest, and so forth. For example, SBC, since July of last year, have had 21 violations: \$8,750,000 fine in Ohio; a \$13,750,000 fine in Wisconsin;

\$19 million in Michigan; \$1,800,000 in Illinois; another \$1,750,000 in Wisconsin, these last two in March of this year. That does not seem to affect them. You have got Verizon with eight violations since March of last year, for a total for Verizon of \$233 million. Do you think the directors pay that?

Mr. POWELL. I am sorry, the what?

Senator HOLLINGS. Do you think the directors of Verizon pay that \$233 million?

Mr. POWELL. No, I suspect not. The shareholders do.

Senator HOLLINGS. Do you think that the ratepayers ought to pay it?

Mr. POWELL. No, I think the shareholders and the company leadership ought to pay it.

Senator HOLLINGS. Do you think the shareholders ought to pay it?

Mr. POWELL. As investors in that company, for a company whose behavior is irresponsible, yes.

Senator HOLLINGS. As between the shareholders and the users, the ratepayers, who do you think really is paying it?

Mr. POWELL. I have no idea where the checking accounts come from for Verizon.

Senator HOLLINGS. They are a monopoly and they are passing it on in the rates. They are guaranteed a profit. It is just like them hiring their Washington reps around here chasing us any and everywhere. They just write it off. I have been through on one company 11 of them. They have not found out yet how to get me. All good friends and everything else, but I believe as the Chairman. I want to see them compete. I want to see them open up. And, what about structural separation? The Pennsylvania Commission has experienced the same thing you and I are talking about. The fines mean nothing, whether it is \$10 million or \$233 million in a year's time. They just pass it on either to the ratepayers or to the stockholders, but more or less to the ratepayers. They do not worry about it. They are, just like you say, a billion-dollar company. They do not mind these things at all.

So it is not the authority. It is the approach you and I are using which is not responsive at all. We have got to have some kind of structural separation. We did that for manufacturing when we wrote the 1996 Act and it has worked. Why not separate out wholesale and retail so we can really audit the thing and just look at it and make sure they are selling to the competition at the same time they sell to their former monopoly? You and I organized these monopolies. I have been paying the rates. They are outstanding services and an outstanding company. Not trying to reflect on them, but I mean, it is just the nature of having a monopoly. They have still got 98 percent of that last line into the home and into the business.

That is what is frustrating us here at the congressional level. They come and ask for more fines that mean absolutely nothing, like water off a duck's back as I see it. Why not go with the structural separation?

Mr. POWELL. Well, I will tell you that many years ago I too thought that that theory was not given sufficient consideration in the context of what you might have done at the first inception of

the statute. Now, that said, I would have to be candid and say that doing it now would be possible, but at great cost to the stability of the market and would likely be an extraordinary period of disruption, and maybe it would work, but maybe it would not.

I also think that it would be a very complex undertaking and one that would require many, many years, just like the divestiture of AT&T did, to achieve a complete separation, and once it was achieved maybe it would improve the efficiency of interconnection.

Senator HOLLINGS. About the instability of the market, now, come. What we are looking at is for the benefit of the consumers. It is easy to keep—they have got more auditors and recordkeeping of any group you will ever find. They have just got to get another column and put it down here, and here is the wholesale price that we sold to ourselves and we sold to everybody, the same price, here are the records. What is destabilizing to the market in that?

Mr. POWELL. Well, I think we have had experience with structural separation. We would merely have to examine them and see what it took to do it effectively. I do not take a position whether the Congress should or should not do that, but I will say that I think that any suggestion that it is a light or easy thing to do I do not subscribe to. I think it would be a very difficult thing to do and it would be certainly some periods of years of working through it.

That said, it may be in the judgment of the Congress the best option. My job is to say that, given that the agency will probably have to administer such change, that I think that they would involve a very substantial amount of effort and work and we will probably have a fairly unsettled environment for quite some period.

Again, that is not to take away from the merits of the theory and whether in the long term that is the better answer for consumers, but just that it will be very difficult to do.

Senator HOLLINGS. That is your task and mine, on behalf of the public interest, is to unsettle the environment. We are not to stabilize it. We are supposed to unsettle it and get all the market forces of competition in play. What is easy is obviously to give these fines, because nobody cares. They write a little story about it or a statement is made, "I am going to hurt you and hurt you hard." There is no way to hurt them by fines. You cannot hurt them.

I know if I was on the board of directors I would go on back out to the club and have another drink.

[Laughter.]

Senator HOLLINGS. I mean, come on. He has puffed and blowed and acted like he is doing something for Congress, but I mean, nothing has happened.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Chairman Powell, I, as you know, am passionate about the E-rate and I am not letting loose of this subject, even though I know Jean Carnahan has some very good questions on it. I feel equally passionately about the digital divide. I want to get to in a moment the statement that you made to Senator Brownback about when he was referring to broadband and small corporations, and you said if

you are not on the right horse that will not make it, they will not make it.

My point will be, I think, that also occurs to people and groups of people. I want you to comment on that in a minute.

But very specifically, the whole 1996 Telecom Act worked out and what followed within the FCC with the Joint Board and the FCC on setting up the E-rate and making it work was an extraordinarily complex, painstaking, difficult process. There was a lot of going back and forth, and courts ruled this and that, and people said they were not going to sue and did. Now it has settled down and, as I indicated, it is \$5 billion in search of \$2.25 billion, one of the probably five great things that has happened in education in this century in my judgment.

So you talked about this being higher than my pay grade, so to speak, and the whole question of does the FCC make changes in this. You say that your instruction needs to come from Congress, and I respect that very much.

The President, however, wants to make some changes, or at least I believe he does, and I do not know where that stands at the present time. But one of those is, whereas the statute is very clear about what can be done and what cannot be done with the E-rate, what the money can be spent for, he has added on software, teacher training, things of this sort, which would clearly dilute the universal service fund if the FCC were to do that.

So "higher than my pay grade" can refer to Congress, which confirms you, as I certainly plan to. But it also can relate to who appointed you in the first place, and that is another form of it. I think that you are deeply moral and very strong and very bright and very firm in your views, but I just want to get on record that you are going to, as Chairman, stick with the E-rate as a discount program.

Mr. POWELL. Absolutely, and I have no other alternative even if I was inclined, which I am not. "Above my pay grade," I personally meant the President and the Congress. Unless it is written in a statute that instructs me to administer the differently than it is currently administered, there is no discretion on my part to make the kinds of changes that you are concerned about, whatever the merits of them are. Even if I personally agree with those changes as a citizen debating how the program should be, as a regulator and administrator of Section 254 and the provision of specific universal service for schools and libraries, it is unassailable.

Senator ROCKEFELLER. I respect that, but Senator Carnahan did not actually ask these specific questions and I just want to do it, as I will with those that follow. Also, ensuring that all groups continue to have fair and equal access to the E-rate, including private and parochial schools, and libraries, as well as the public schools; you will support that?

Mr. POWELL. Sure, absolutely.

Senator ROCKEFELLER. Ensuring that the E-rate is predictable for the telecommunications companies that both contribute and collect from the universal service?

Mr. POWELL. Yes.

Senator ROCKEFELLER. The telecommunications folks have been very good partners with the E-rate and the demand for tele-

communications and Internet is growing, partly because through all of these internal connections that are being set up we are building exactly the network that we hoped that we would and that creates more demand.

Above all, I want to hear Chairman Powell say that he will protect the universal service fund and that, where teacher training is important and software is important and hardware is important and none of those are included in the statute, and so there is that problem, but that nevertheless is the nature of the universal service fund and what the money is spent on will not change.

Mr. POWELL. I do not see any reason to even consider changing them. They cover information services, Internet services, telecommunications services, and internal connection.

Senator ROCKEFELLER. It is all very clear, is it not?

Mr. POWELL. That is what we distribute and that is what, as far as I am concerned, we will continue to distribute.

Senator ROCKEFELLER. I respect and appreciate that and am greatly relieved by your answer, sir. The other is just a general question with respect to the point I raised about broadband access, because K through 12 is absolutely the essential building block, but in the State I come from, as we have discussed privately, only 36 percent of homes have computers, 28 percent have access to the Internet on those computers. That is a lot of computers that are not there, so if one is moving—if one assumes that what you learn in school is buttressed fourfold by what happens at home and then adds onto that the question of broadband and what broadband implies for data, video, and voice, that is a daunting prospect for rural areas, and hence the digital divide. I take this even farther.

The CHAIRMAN. Senator Rockefeller, your time has expired.

Senator ROCKEFELLER. Then I would simply ask your comment, sir.

Mr. POWELL. Just generally about the importance of pursuing it in rural areas, I take it to be the question. Of course. The Telecom Act in its preamble talks about services for all Americans. That has always been understood and interpreted to try to aggressively pursue ubiquitous and affordable service.

I think that the modifications in Section 254 that talk about an evolving level of service means we continually try to ensure that service is deployed broadly, including the areas that have been historically difficult. My only caveat is that we should be challenged to always look for creative ways to do it, innovative new ways to do it. Do not always assume that you have to do it the same way you did it before, but never lose sight of the sub-principles of ubiquity and affordability and pursue those pretty rigorously.

I think that Congress set that vision out in Section 254 pretty clearly and I think the Commission is on a course to continue it.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Wyden has an additional question, which is going to be brief.

Senator WYDEN. Thank you, Mr. Chairman, and it will.

Mr. Powell, you said this morning that markets punish inefficiency, but that is not usually the case when it comes to allocating spectrum. As you know, the spectrum rules determine not just who can use it, but exactly what services they can use it for. So the in-

cumbents sort of cling to these licenses like fleas to a dog and, in effect, they just hold themselves hostage in order to drive up the value of what they have.

Now, the FCC has broad powers to change this and to put some real marketplace forces into allocating spectrum. I would like to ask you to just respond to whether you think that is something you would like to see, whether we ought to create trading rights, for example, in spectrum.

I am working on legislation in this area, because I think we have got a mess on our hands and that is the beachfront property, and it is not right now responding to marketplace forces.

Mr. POWELL. If I understand your inquiry, I think I agree with you very much so. I think that if you read most economic literature about spectrum policy, economists are nearly unanimous in the idea that we do not create a sufficient amount of market incentive by allowing licenses to have greater flexibility in the alienability of licenses, mixed uses.

Frankly, this is an area where the Commission has been steadily moving toward in many ways. We have created greater incentives for secondary markets. We increasingly issue licenses with much more flexibility as to what can be done with them and what cannot be done. We have started to be a little more ruthless in the return of spectrum when it is not being used by milestones and benchmarks in the satellite context. We certainly, with some blood on the floor, have fought for the return of C and F block licenses that went into bankruptcy.

I think that there is a lot the government needs to be thinking about in terms of increased flexible use of spectrum and greater property-like rights, if you will. I do not mean that in the conservative ideological sense, but when we talk about not being able to keep up with Europe or the challenges of spectrum, part of the reason is the government has got to go through a thousand steps before it can even get spectrum back, then allocate it again, and we do not have the ability to let players in the marketplace. It ought to be more like a driver's license: Here is your license, here is what you cannot do for interference purposes, and then you can do almost whatever else you want to do, and let the market and consumers figure out what those highest and best uses are.

Senator WYDEN. That is a very constructive answer.

The CHAIRMAN. Thank you, Senator Wyden, for your question.

Thank you very much, Chairman Powell. We look forward to many visits with you before the Committee. As one of the members of the Committee said, we believe that the FCC is perhaps the most important and impactful bureaucracy in the Federal Government today, given the scope of your responsibilities and its effect on information technology, which is the basis of our economic future.

We thank you for your testimony today. We will try to mark up your nomination next week at the markup and get you and the other Commissioners confirmed as rapidly as possible.

Thank you very much.

Mr. POWELL. Thank you, Mr. Chairman.

The CHAIRMAN. Our next panel is: Ms. Kathleen Abernathy, who is a Commissioner-designate of the Federal Communications Com-

mission; Dr. Michael Copps; and Mr. Kevin Martin. Would you please come forward.

I would like to welcome the witnesses today of our second panel and we would like to have our witnesses introduce any family members who are here with them today, and I will put the balance of my statement in the record.

Ms. Abernathy.

**INTRODUCTORY REMARKS OF KATHLEEN Q. ABERNATHY,
COMMISSIONER-DESIGNATE, FEDERAL COMMUNICATIONS
COMMISSION**

Ms. ABERNATHY. Thank you, Senator. It is a pleasure to be here and I would like to introduce two family members. I think my sister found her way back, and I know my husband, Charles Abernathy, is here with me today.

The CHAIRMAN. Would you stand, please, Ms. Abernathy? Thank you. Welcome.

Ms. ABERNATHY. We have known each other over 20 years. He has been an incredible support, particularly in the last several months as we have been going through this process.

My sister, Marilyn Quinn, who is not back, is taking care of child care arrangements for me.

Senator ROCKEFELLER. You are a little hard to hear, Ms. Abernathy. Could you pull that a little bit closer, the mike?

The CHAIRMAN. Well, your sister is welcome, too, and I understand her priorities. We welcome her and your husband.

Ms. ABERNATHY. She is also a public servant. She is an FBI agent here in town.

The CHAIRMAN. Wonderful. Thank you.

Dr. Copps.

**INTRODUCTORY REMARKS OF MICHAEL J. COPPS, PH.D.,
COMMISSIONER-DESIGNATE, FEDERAL COMMUNICATIONS
COMMISSION**

Dr. COPPS. Thank you, Mr. Chairman. I have full representation here today. Let me introduce first of all my wife Beth, who is the managing partner of the Copps household.

The CHAIRMAN. Stand as you are mentioned. Ms. Copps.

Dr. COPPS. She is also the mainstay of our family and works at Saint Mary's Church in Alexandria as church secretary.

The CHAIRMAN. Welcome, Ms. Copps.

Dr. COPPS. We have five children. The eldest could not be here today. His name is Bobby and he is an attorney in Atlanta, Georgia.

My eldest daughter, Betsy Von Hagen, is here. She is a reading teacher. She was Teacher of the Year at Queen of Apostles School here in suburban Virginia a year or two ago. Her husband, Richard Von Hagen, is also with us today. He is a school psychologist. They are going to present us shortly with our first grandchild, which we are very much looking forward to.

Our son Michael is here. He is a recent graduate, last year, of James Madison University in Harrisonburg, Virginia, and he is a communications assistant with a national trade association, located in Alexandria.

My youngest son Will is here. He got the day off, much to the consternation of his classmates from Gonzaga High School, where he is a freshman, honor student, tennis player. He is also the poet laureate of the Copps family.

My youngest daughter, Claire, who is 13 years old, is a seventh grader at Saint Mary's Elementary School, and she is a pianist, an artist, and a basketball player, too.

So I am very proud of all of them and they are really life's sweetest reward.

The CHAIRMAN. Welcome to the entire Copps family. We are glad you are here at this occasion. We know you are very proud of Dr. Copps.

Mr. Martin.

**INTRODUCTORY REMARKS OF KEVIN J. MARTIN,
COMMISSIONER-DESIGNATE, FEDERAL COMMUNICATIONS
COMMISSION**

Mr. MARTIN. Thank you, Mr. Chairman. I would like to introduce my wife Cathy and thank her for her unwavering support and constant commitment through this process.

I would like to introduce my father, who owns a small insurance company in North Carolina and has always tried to remind me to be wary of the burdens that government can place on small businesses.

Finally, I would like to introduce my mother, who always tried to impart in me one of her greatest strengths, one I think this Committee will be particularly appreciative of, and that is the importance of talking a little bit less and listening a little bit more. I know that a lot of Commissioners have gotten themselves in trouble by not heeding that advice and, if confirmed, I will make sure to follow her wisdom.

Thank you.

The CHAIRMAN. Thank you again. Welcome to the Martin family as well.

I believe that Senator Edwards would like to make a statement concerning Mr. Martin.

Senator EDWARDS. Thank you, Mr. Chairman. Mr. Chairman, it is my pleasure to introduce Kevin Martin, who is a fellow North Carolinian from Waxall, and his parents. We are glad to have all of you and his wife here.

He currently serves as Special Assistant to the President for Economic Policy, where he is responsible for coordinating telecommunications, technology, and other commerce-related policy. He is no stranger to the FCC. Before joining the Administration, he worked at the FCC as a legal adviser. He is a very good lawyer. He began his legal career at the law firm of Wiley, Rein & Fielding, after first spending a year as a clerk for Federal Court Judge Hoeverler—am I pronouncing it right, Kevin?—in Miami, Florida.

He attended the University of North Carolina as an undergraduate and received a Master's Degree in public policy from Duke. He is a real North Carolinian, Mr. Chairman, because, even though he went to Harvard Law School, he wrote his law school thesis on legal and historical development of NASCAR.

We are proud and happy to have you here, Kevin.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. I now question your qualifications.

[Laughter.]

The CHAIRMAN. Senator Hollings, would you like to make—

Senator HOLLINGS. No. My previous introduction of Dr. Copps, let it appear in the record. We welcome him. The hour is late. Let us find out what questions we have got.

The CHAIRMAN. Ms. Abernathy, we will begin with you. All three witnesses, your complete statements will be made part of the record.

STATEMENT OF KATHLEEN Q. ABERNATHY, COMMISSIONER-DESIGNATE, FEDERAL COMMUNICATIONS COMMISSION

Ms. ABERNATHY. Mr. Chairman and members of this Committee: It is indeed a pleasure for me to have the opportunity to appear today before the members of the Senate Committee on Commerce, Science, and Transportation. I want to especially thank Senator Stevens for his kind and generous introduction today.

I have had the pleasure of talking with many members of this Committee over the past few weeks and I want to thank all of you for taking the time to share your thoughts and concerns with me. At this time I would also like to take the opportunity to tell you how deeply honored I am to have been nominated by President Bush to serve as a Commissioner on the Federal Communications Commission. Having had the opportunity to work in various capacities in the Federal Government, I know that it is a genuine privilege to be in government service and I understand the importance and necessity of developing and administering sound public policy.

If confirmed, it will also be a special privilege to work with Chairman Powell, my fellow Commissioners, and the highly dedicated and talented FCC staff. I think that Chairman Powell is a leader of unusual foresight and energy and it will be a distinct pleasure to serve with him at the Commission.

If confirmed, I also look forward to working with Congress and this Committee in particular, with the understanding that fundamentally it is the Commission's responsibility to administer and implement communications policy as set forth by Congress. I understand this role and I welcome the opportunity to serve in this capacity.

Despite the challenges facing the FCC, I think it is important to remember we have communications systems, industries, and choices that are second to none and that are in fact the envy of the world. I also recognize, however, that through its decisions and policies it is the responsibility of the FCC to help ensure that this excellence and world leadership continues.

In this regard, communications policy stands at a critical juncture for consumers and for the economy. As Chairman Powell has said, the FCC is facing a unique challenge, in that virtually all communications industry segments are in the midst of revolution. They are attempting to adapt to the most fundamental changes in their history, and frequently this translates into FCC proceedings in which the Commission is called upon to balance many competing interests.

These are not easy issues. I do not presume to think that they are. But if confirmed, I pledge to you to thoroughly weigh these critical issues as they come before the Commission, to deal with them fairly, and to be guided always by the principles and policies set forth by Congress in the Communications Act.

With your support and approval, I look forward to the opportunity to serve the people of this country at the Federal Communications Commission, and I look forward to working with this Committee and with my colleagues at the FCC.

Thank you again for the opportunity to be here today, and I look forward to responding to any questions you may have.

[The prepared statement and biographical information of Ms. Abernathy follow:]

PREPARED STATEMENT OF KATHLEEN Q. ABERNATHY, COMMISSIONER-DESIGNATE,
FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman and Members of the Committee, it is indeed a pleasure for me to have the opportunity to appear today before the members of the Senate Committee on Commerce, Science and Transportation. I have had the pleasure of talking with many members of this Committee over the past *few* weeks and I want to thank all of you for taking the time to share your thoughts and concerns with me.

I am deeply honored to have been nominated by President Bush to serve as a Commissioner on the Federal Communications Commission. Having had the opportunity to work in various capacities in the Federal government, I know that it is a genuine privilege to be in government service. My government experience has also led me to understand the importance and necessity of developing and administering sound public policy.

If confirmed, it will be a special privilege as well to work with Chairman Powell—as well as my colleagues on the Commission—and with the highly dedicated and competent FCC staff I think that Chairman Powell is a leader of unusual foresight and energy—one who has charted a challenging agenda of promoting competition, deregulation, and internal reform—and it will be a distinct pleasure to serve with him at the Commission.

If confirmed, I also look forward to working with the Congress—and this Committee in particular—with the understanding that fundamentally it is the Commission's responsibility to administer and implement communications policy as set forth by Congress. I understand this role and welcome the opportunity to serve in this capacity.

Despite the challenges facing the FCC, I think it is important to remember that we have communications systems, communications industries, and communications choices that are second to none—that are, in fact, the envy of the world. This is true across the board—from voice telecommunications to television, from two-way radio systems to satellite platforms. I also recognize, however, that through its decisions and policies, it is the responsibility of the FCC to help insure that this excellence and world leadership continues into the 21st Century.

In this regard, communications policy stands at a critical juncture for consumers and for the economy. As Chairman Powell has said, the FCC is facing a unique challenge in that virtually all communications industry segments are in the midst of revolution—attempting to adapt to the most fundamental changes in their history. And frequently this translates into FCC proceedings in which the Commission is called upon to balance many competing interests and industries.

These are not easy issues—and I do not presume to think that they are. But if confirmed, I pledge to you to thoroughly weigh these critical issues as they come before the Commission, to deal with the myriad competing interests fairly, and to be guided always by the principles and policies set forth by Congress in the Communications Act.

With your support and approval, I look forward to the opportunity to serve the people of this country at the Federal Communications Commission. And I look forward to working with the Committee and my colleagues at the FCC on the communications policies that vitally affect the lives of us all.

Thank you, again, for the opportunity to be here today. I would be happy to answer any questions you might have.

A. BIOGRAPHICAL INFORMATION

1. Name: Kathleen Quinn Abernathy (maiden name Kathleen Marie Quinn).
2. Position to which nominated: Commissioner, Federal Communications Commission.
3. Date of nomination: April 30, 2001.
4. Address: Not released to the public. No office address.
5. Date and place of birth: June 5, 1956, Louisville, Ky.
6. Marital status: Married to Charles Fuzell Abernathy, June 30, 1984.
7. Names and ages of children: Julia Quinn Abernathy (5½ years old); Charles F. Abernathy, Jr. (31 years old).
8. Education: Presentation Academy High School, Louisville, Ky., 9/70 to 6/74, Diploma (1974); Marquette University, Milwaukee, Wisconsin, 9/75 to 12/78, BS in Speech Pathology (5/82); Columbus School of Law, The Catholic University of America, 9/80 to 5/84, JD (5/84).
9. Employment record: Secretary, Congressional Budget Office, Washington, DC, 9/80 to 12/81 (approximately); Reader and Researcher for Blind Attorney and Voting Rights Analyst, U.S. Department of Justice, Washington, DC, 1/82 to 5/83; Summer Associate, Semmes, Bowen & Semmes, Baltimore, MD., 6/83 to 8/83; Law Clerk and, after passing the bar exam, associate, Fletcher, Heald & Hildreth, Washington, DC, 9/83 to 4/86; Associate, Kadison, Pfaelzer, Woodard, Quinn & Rossi, Washington, DC, 5/86 to 7/87; Associate, Thelen, Marrin, Johnson & Bridges, Washington, DC, 8/87 to 2/88; Director, Federal Affairs, COMSAT World Systems Division, Washington, DC, 3/88 to 6/90; Special Assistant to the General Counsel and subsequently legal advisor to Commissioner Sherrie Marshall and Legal Advisor to Chairman James H. Quello, Federal Communications Commission, Washington, DC, 7/90 to 8/93; Vice President, Federal Regulatory, AirTouch Communications (acquired by Vodafone), Washington, DC, 8/93 to 3/98; Vice President, Regulatory Affairs, U.S. West Inc. (now known as Qwest Communications), Washington, DC, 3/98 to 3/99; Partner, Wilkinson Barker Knauer, LLP, Washington, DC, 7/99 to 3/00; Director, Government Affairs, BroadBand Office, Inc, 3/00 to 3/01.
10. Government experience: None other than listed in #9.
11. Business relationships: None other than employment listed in #9.
12. Memberships: Former President and Executive Officer of the Federal Communications Bar Association (FCBA) and still a member Volunteer for the American Diabetes Association Member of the Washington DC Bar.
13. Political affiliations and activities: (a) None. (b) None. (c) Bush for President 2000, \$500. No others.
14. Honors and awards: Meyer Scholarship recipient, Marquette University, 9/76 to 12/79; Member of Alpha Sigma Nu while attending Marquette University.
15. Published writings: None.
16. Speeches: None.
17. Selection: (a) I have an extensive background in the field of telecommunications and a reputation as a consensus builder. (b) I have worked for international, wireless, and wireline telecommunications companies and I understand the critical role regulation plays in their growth and development. In addition, I have worked for both the large Bell Operating Companies and most recently for one of the smaller new competitors and that inside experience has increased my understanding of the competitive marketplace and the hurdles encountered by the new competitors.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Yes.
2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.
3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.
4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.
5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

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

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. Affected investments include the following: Qwest Communications Common (formerly U.S. West Communications); Verizon Communications Common; Vodafone PLC Common; Dobson Communications Common; U.S. West Savings Plan/ESOP (Qwest Shares Fund) (Adm'd by METLIFE); U.S. West Savings Plan/ESOP (U.S. Asset Allocation Fund) (Adm'd by METLIFE); AirTouch Communications Retirement Plan 401K; Vodafone AirTouch Stock Fund; Zephion Communications Networks Common (not publicly traded); BroadBand Office Common (not publicly traded); BroadBand Office Preferred (not publicly traded). (Employment—see #3).

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated? Employment: BroadBand Office, Inc., 2900 Telestar Court, Falls Church, VA 20402—Director, Government Affairs; Wilkinson Barker & Knauer, 2300 N Street, N.W., Suite 700, Washington, DC 20037—Law Partner; U.S. West, Inc. (now known as Qwest Communications), 1020 19th Street, N.W., Suite 700, Washington DC 20036—Vice President, Federal Regulatory Affairs; AirTouch Communications, Inc., 1818 N Street, N.W., Washington, DC 20036—Vice President, Federal Regulatory.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. See #3. I engaged in no lobbying before legislative bodies. I represented my employers in matters before the FCC. In addition, as a partner at Wilkinson Barker & Knauer LLP, I represented clients before the FCC. My clients were wireless companies, large and small wireline telecommunications companies, and international telecommunications companies.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.) See #2. I will divest my holdings as outlined in a letter from the FCC or I will disqualify myself from any proceedings that may affect any companies whose stock I retain. In addition, I will not participate in any particular matter involving specific parties coming before me as a member of the Commission in which BroadBand Office, Inc. or Zephion Communications Networks is a party during a 1-year period ending on March 30, 2002.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

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

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details? No, (never an officer).

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

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

E. RELATIONSHIP WITH COMMITTEE

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

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

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

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress. I plan to work closely with members of the House and Senate, in all ways permitted by law, to understand and appreciate their views and concerns.

5. Describe your department/agency's current mission, major programs, and major operational objectives. The FCC's primary objective is to implement the mandates of the Communications Act. In addition, it strives to further competitive alternatives for consumers, ensure advanced telecommunications services are available to all Americans and manage the allocation of spectrum in a way that furthers the public interest.

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

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualified you for the position for which you have been nominated? My experience working in the private sector for a number of different telecommunications companies combined with my prior government service at the FCC provides me with a unique perspective on the role and benefits of regulation. Most recently I worked for a startup company interested in deploying broadband service to small and medium sized businesses. In addition, I have worked for international, wireless and wireline telecommunications companies. This experience has increased my understanding of the competitive landscape and the effect regulation has on the marketplace.

2. Why do you wish to serve in the position for which you have been nominated? I strongly believe in public service. I have been very fortunate to work with, and learn from, a number of talented and dedicated FCC Commissioners and staff. My nomination provides an incredible opportunity for me to utilize the experience I have gained over the last 20 years to implement the mandates of the Communications Act and, to the best of my abilities, serve the American people.

3. What goals have you established for your first 2 years in this position, if confirmed? If confirmed, and under the guidance of Congress, I hope to provide quick, decisive answers to industry questions, thereby avoiding regulatory uncertainty, and to closely adhere to the mandates of the Telecommunications Act in an effort to enhance the credibility of the FCC in the eyes of Congress and the Courts.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills? Although my work experience includes international, wireless and wireline experience, I have had very limited opportunity throughout my career to work with Congress. Therefore I intend to spend a significant amount of time getting to know the Members and their staff to build a relationship of trust and respect that will be critical as the FCC confronts many controversial, difficult issues during the next several years.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when should society's problems be left to the private sector, and what standards should be used to determine when a government program is no longer necessary. First, I recognize that the Commission is an independent agency that responds to, the direction of Congress. Therefore, my first frame of reference will be the statutory framework enacted by Congress to govern the actions of the FCC. To the extent this framework leaves room for interpretation, my past experience with both large and small telecommunications companies has led me to the following conclusions. Competitive markets generally benefit consumers. In addition, fewer rules allow companies to respond to consumer demand more quickly and cost effectively and this usually translates into more choices and lower prices. Nevertheless, I realize that every rule has its exceptions. There are certainly instances where competition is so limited that companies need not be responsive to consumer demands and in those instances the government must stand ready to respond to protect the public interest. There are also instances where the government has articulated broad public policy goals that can not be furthered absent direct government oversight. There-

fore, while my general philosophy is deregulatory I appreciate the critical role that government plays in protecting consumer interests.

6. *In your own words*, please describe the agency's current missions, major programs, and major operational objectives. In no particular order, I believe the FCC's current mission includes all of the following: (1) Promote competition in the telecommunications arena because that directly translates into reduced prices for consumers. (2) In cooperation with the Executive Branch, manage the allocation and assignment of spectrum. (3) Fulfill Congressional mandates as set forth in the Communications Act. (4) Provide business certainty for companies regulated by the FCC. (5) Ensure that the benefits of advanced telecommunications capabilities are ultimately available to all Americans.

7. In reference to question No. 6, what forces are likely to result in changes to the mission of this agency over the coming 5 years? The FCC's core mission will change only to the extent that Congress modifies the Communications Act. Nonetheless, the Commission will be called upon to adapt its discretionary regulations to account for changes in technology and in the marketplace. In this regard, the FCC's mission will not only be to promulgate sensible regulation, but also to enforce vigorously those mandates.

8. In further reference to question No. 6, what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three challenges facing the department/agency and why? I am not aware of any outside forces which may prevent the agency from accomplishing its statutorily mandated mission.

Three key challenges facing the Agency are: (1) keeping pace with the rapidly changing state of the technology to ensure that the FCC's regulations are appropriate and effective; (2) ensuring that the benefits of advanced telecommunications services are available to all Americans, including those in rural areas; and (3) developing a spectrum management policy that maximizes the public interest.

9. In further reference to question No. 6, what factors in your opinion have kept the department/agency from achieving its missions over the past several years? In some instances the judicial review process has led to differing or inconsistent interpretations of the Communications Act and this has sometimes delayed the FCC as it attempts to move forward to implement various important policy objectives.

10. Who are the stakeholders in the work of this agency? The primary stakeholders are consumers. In addition, Congress, regulated companies, and trade associations also have an immediate interest in the work of the FCC.

11. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question No. 10? I believe the FCC has an obligation to work cooperatively with all stakeholders and to listen attentively and to act responsively to their concerns, consistent with the Act. Procedurally, this requires the FCC to act in a prompt and fair way to resolve stakeholder concerns. Substantively, it requires the agency to give each stakeholder an opportunity to be fully heard. If confirmed, I hope to reach out to all the stakeholders to improve the information available to the FCC in assessing the proper course of action.

12. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector. (a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls? I believe I should work closely with the Chairman, my fellow Commissioners and the staff to review those controls and ensure they are effective. (b) What experience do you have in managing a large organization? My prior experience in private industry and as President of the Federal Communications Bar Association has provided me with a unique opportunity to manage people and budgets.

13. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals. (a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals. During my employment in the private sector I have seen performance goals utilized by employees and supervisors to measure current efforts against a concrete list of goals. This constant evaluation process results in a more focused, directed organizational unit. (b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs? I would not presume to tell Congress how it should respond to such a failure. Clearly all of the above remedial options are available. (c) What performance goals do you believe should be applicable to your personal performance, if confirmed? I should be evaluated based on whether I am responsive to the con-

cerns of Congress and consumers and whether I keep my commitment to provide regulatory certainty for industry.

14. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you? As a supervisor, I attempt to hire the most qualified people available. I then set the broad philosophy and goals of my organization and allow the employees significant freedom in designing a plan to achieve our goals. No employee complaints have been brought against me.

15. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe. I look forward to building a productive and close working relationship with Congress.

16. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency. The Inspector General serves a vital role in ensuring the integrity of the Commission. Therefore, if confirmed, I pledge to give my full support and cooperation to the Inspector General to ensure that he has the unfettered authority and ability to fulfill his obligations.

17. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress. The primary mission of the FCC is to execute the Communications Act as written by Congress. Thus, my primary responsibility is to ensure that the FCC's regulations adhere to the letter and spirit of the Act. In advancing this goal, and if confirmed, I plan to work closely with members of the House and Senate, in all ways permitted by law, to understand and appreciate their views and concerns. I look forward to an open and constructive dialog on the important communications issues facing the nation. Similarly, as stated previously, I fully intend to work cooperatively with all interested parties to ensure that their views are fully considered in the policymaking process.

18. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views. I do not believe FCC Commissioners should be advocates for specific changes in the law. Rather, I believe my role would be to execute the laws as written. To the extent that Congress seeks my view on pending legislation, in my role as a Commissioner at the FCC, I would be more than willing to assist Congress in any way it deems helpful.

19. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a timeframe for their implementation. Not applicable.

The CHAIRMAN. Thank you very much.
Dr. Copps.

**STATEMENT OF MICHAEL J. COPPS, PH.D., COMMISSIONER-
DESIGNATE, FEDERAL COMMUNICATIONS COMMISSION**

Dr. COPPS. Mr. Chairman, Senator Hollings, Senator Rockefeller: Thank you very much for granting us this hearing so soon after our nominations came up. I want to thank all of you and all the many Senators on the Committee with whom I had the pleasure of meeting over the past few weeks. These discussions have been just tremendously invaluable to me in learning more about your priorities and about the many issues which, if confirmed, I will be grappling with at the Commission, and I look forward to many more such meetings.

Permit me a moment to thank my mentor and my friend, Senator Hollings, for his warm and generous introduction. I do not deserve all of those accolades, but I happily accept them anyhow. My formative years in Washington, in many ways the best years, were working with Senator Hollings from 1970 to 1985. I am enormously grateful to him, not only for the support he has given me, but for

the knowledge and wisdom that he has imparted, the experiences he shared, and the lessons he taught.

When I think of public service at its best, I think of Senator Hollings and the intelligence and the commitment he has brought to his long and productive service to the people of South Carolina and to the Nation. It is not only his tremendous record of accomplishment that I admire, but equally I admire the respect in which he holds public service and the effort he has made to bring credibility and the restoration of pride to the honorable calling that is public service.

I could never find the words to begin to express the admiration and the respect and the appreciation that I feel for him.

Mr. Chairman, my 15 years working here in the Senate imparted a deep and lasting loyalty to the Legislative Branch of our government. So when I say to you how much I look forward to working with you and your colleagues if confirmed, I am saying something that comes not just from my brain, but comes from my bones. I cannot imagine being effective in this job without having a close and an ongoing and a cooperative relationship with each of you, this Committee, and your congressional colleagues.

The FCC is the creation of Congress. Its mission is to carry out the responsibilities conferred upon it by the Congress. It is always politic to talk cooperation, I know that, but I just do not believe that this country can accomplish what it needs to accomplish in communications or in anything else without this kind of open communication. I have worked to build close relationships with Congress in every capacity I have served in this city and I look forward, if confirmed, to implementing the laws the Congress has passed with just as thorough an understanding of congressional intent as I can possibly muster.

My pledge to you, to my fellow Commissioners, to the entire FCC team, to telecom's industries, telecom's workers, and all of telecom's many stakeholders is to work tirelessly and inclusively and with the best judgment I can garner to get the job done. I want to help bring our people, and I mean all of our people, the best, the most accessible, and the most cost-effective telecommunications system in the world. Each and every citizen of this great country should have easy access to the wonders of telecommunications. I would hope that at the end of my term, if I am lucky enough to serve, that people will say that I helped move the ball downfield toward that goal.

Mr. Chairman, I appreciate your including the rest of my remarks in the record and with that I will conclude my statement.

[The prepared statement and biographical information of Dr. Copps follow:]

PREPARED STATEMENT OF MICHAEL J. COPPS, PH.D., COMMISSIONER-DESIGNATE,
FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman, Senator Hollings, Members of the Committee, thank you for granting us this hearing so soon after our nominations. We know how crowded the Committee's docket is, and we appreciate your prompt attention in bringing us together. Thank you also to the many Senators with whom I have been privileged to meet over the past few weeks since my nomination by President Bush. These discussions have been invaluable to me in learning more about your priorities and about the many issues with which, if confirmed, I will be grappling at the Commission. I look forward to many more such meetings with each of you and your fine staffs.

Permit me a moment to thank my mentor and my friend, Senator Hollings, for his warm and generous introduction. The formative years of my career in Washington, and in so many ways the best years, came in working with Senator Hollings from 1970 to 1985, and I am enormously grateful to him not only for the support he has given me, but for the knowledge and wisdom that he imparted, the experiences he shared and the lessons he taught.

When I think of public service at its best, I think of Senator Hollings and the intelligence and commitment he has brought to his long and productive service to the people of South Carolina and the Nation. But it is not only his tremendous record of accomplishment that I admire. Equally, I admire the respect in which he holds public service and the effort he has made to bring credibility and the restoration of pride to the honorable calling that is public service. I could never find the words to express the admiration and the appreciation that I feel for him.

Mr. Chairman, my 15 years working here in the Senate imparted a deep and lasting loyalty to the Legislative Branch of our government, so when I say to you how much I look forward to working with you and your colleagues if confirmed, I am saying something that comes not just from my brain, but from my bones. I cannot imagine being effective in this job without having a close, ongoing and cooperative relationship with each of you, this Committee and your Congressional colleagues. The FCC is the creation of Congress whose mission is to carry out the responsibilities that have been conferred upon it legislatively. It's always politic to talk cooperation, I know, but I just don't believe this country can accomplish what it needs to accomplish, in telecommunications or anything else, without this kind of communication. I have worked to build such relationships with Congress in every capacity I have served in this city. I look forward, if confirmed, to implementing the laws Congress has passed, with as thorough an understanding of Congressional intent as I can muster.

Mr. Chairman, I am humbled at this nomination by the President and the support I have received from so many Senators. And I am enormously excited at the possibility of serving as Commissioner. To be an active participant in the deliberations of the FCC as the telecommunications revolution transforms our lives and remakes our world is a privilege few are given. I believe that in telecom, we haven't seen anything yet. I believe that telecommunications will transform this nation of ours more in the next 50 years than it did over the past 50 remarkable years. We will work differently, learn differently, play differently, perhaps even govern ourselves differently, because of the transformative power of telecommunications.

I know that many of the issues presently before the Commission are highly contentious. If they were easily resolved, they would have been resolved already. And who knows what new and presently unforeseen issues we will be dealing with just a year or two hence? But I'm an optimist. (Some have told me I will need this sense of optimism if I make it to the Commission!) I believe that we can do a better job of working together, industry and government and all the many other stakeholders in the Communications Revolution, to make sure that our nation and our people continue to lead and prosper from this exciting revolution. I enjoy bringing people together, working with stakeholders, and, together, finding workable solutions for tough problems. This is what I focused on during my eight years at the Department of Commerce and it is what I would hope to focus on if I am confirmed for the Federal Communications Commission.

I am pleased to be getting to know my fellow Commissioners-designate, Kathleen Abernathy and Kevin Martin, and I know we all look forward to working with Chairman Powell, Commissioner Tristani and the excellent team at the FCC to help turn our national vision, as enunciated by Congress, into reality. My pledge to you, to them, to telecom industries and telecom workers, and to all of telecom's stakeholders, is to work tirelessly and inclusively and with the best judgment I can garner to get this job done. I want to help bring to our people—and I mean *all* our people—the best, most accessible and cost-effective telecommunications system in the world. Each and every citizen of this great country should have easy access to the wonders of telecommunications, and I would hope that at the end of my term, if I am lucky enough to serve, people will say that I helped move the ball downfield toward that goal.

I value, and I enjoy, public service. As you Senators know better than I do, it is a demanding life. And upon no one do the demands fall more heavily than the members of one's own family. I am many times blessed in this regard, and very grateful to each member of my family for the support and patience and encouragement I have received over the years. My wife Beth, who I talked into marriage in 1970 only after assuring her we were moving to Washington for only a couple of years, is my nominee for the world's best partner, best friend, and best mom, too. We are the

proud parents of five children, ranging in age from 29 to 13, and most of them are here with us today. They are their parents' pride and life's sweetest reward.

Mr. Chairman, this concludes my brief statement. Thank you very much.

A. BIOGRAPHICAL INFORMATION

1. Name: Michael Joseph Copps.
2. Position to which nominated: Commissioner, Federal Communications Commission.
3. Date of nomination: May 1, 2001.
4. Address: Not released to the public.
5. Date and place of birth: April 23, 1940 in Milwaukee, Wisconsin.
6. Marital status: Married to the former Elizabeth Catherine Miller.
7. Names and ages of children: Robert Edmund Copps, 29; Elizabeth Copps Von Hagen, 26; Michael Albert Copps, 22; William Thomas Copps, 15; Claire Louise Copps, 13.
8. Education: University of North Carolina, Chapel Hill, NC., 1963–1967, Ph.D.; Wofford College, Spartanburg, SC., 1959–1963, BA; St. Petersburg Jr. College, St. Petersburg, FL, 1959; Northeast High School, St. Petersburg, FL 1958–1959, Diploma; Oconomowoc High School, Oconomowoc, WI, 1954–1958.
9. Employment record: 1998–2001: Assistant Secretary of Commerce for Trade Development, U.S. Department of Commerce, Washington, DC; 1993–1998: Deputy Assistant Secretary of Commerce for Basic Industries, U.S. Department of Commerce, Washington, DC; 1989–1993: Senior Vice President for Legislative Affairs, American Meat Institute, Arlington, VA; Dec. 1988–Jan. 1989: Manuscript Editor, The Whalen Company, Washington, DC; 1985–1988: Director of Government Affairs, Collins & Aikman Corporation, Washington, DC; 1974–1985: Administrative Assistant to U.S. Senator Ernest F. Hollings, U.S. Senate, Washington, DC; 1970–1974: Special Assistant to U.S. Senator Ernest F. Hollings, U.S. Senate, Washington, DC.; 1967–1970: Assistant Professor of History, Loyola University of the South, New Orleans, LA.
10. Government Experience: Member, Agricultural Trade Advisory Committee, USDA/USTR-cleared private sector advisor, 1992–1993.
11. Business relationships: Institute for Innovation, Creativity & Capital, University of Texas (Austin, TX). Served as “Washington Fellow, unpaid advisor, 1989–1993; University of North Carolina (Chapel Hill, NC), Graduate School Advisory Board. Served as unpaid advisor on ways to enhance graduate education at UNC., 1997–1998.
12. Memberships: Business-Government Relations Council, Washington, DC, 1985–1993; Association of Former Administrative Assistants, U.S. Senate, Washington, DC, 1985–Present; Gonzaga College High School Fathers Club, Washington, DC, 2000–Present; St. Mary's Elementary School Home & School Association, Alexandria, VA, 1977–Present; Meat Industry Trade Policy Council, Washington, DC, 1989–1993. Served 1 year as unpaid coordinator of this multi-trade association industry advisory group; U.S. Meat Export Federation, Denver, CO, 1989–1993. Served 2 years as unpaid *ex officio* member of Board of Directors; Capitol View Club (Hyatt Regency Hotel, Washington, DC) 1986–1993. Private dining club; Little Hunting Park, Alexandria, VA, 1980's–Present. Nearby neighborhood swimming pool and tennis courts; American Association of Retired Persons, 1995–Present; Phi Beta Kappa, inducted in 1963.
13. Political affiliations & and activities: (a) Party offices held: None. (b) Offices held and services rendered to political parties and election committees during last 10 years: No offices held. Volunteered brief personal leave time (2 days) for 1998 U.S. Senate election in South Carolina in behalf of U.S. Senator Ernest F. Hollings. Volunteered brief personal leave time (4 days) in behalf of Democratic slate in 2000 Federal election campaign in Milwaukee, WI. (c) Political contributions of \$500 or more during the past 10 years: DNC Federal Account, \$1000. October, 2000 Hollings for Senate Committee, \$1000. 1998 Hollings for Senate Committee, \$1000, 1992.
14. Honors and Awards: Phi Beta Kappa; Pi Gamma Mu (national scholastic fraternity); Secretary of Commerce citation for coordinating record-breaking Department-wide charitable Combined Federal Campaign (CFC) in 1997. Various U.S. Senate and Department of Commerce citations for service.
15. Published writings: January, 1982 op-ed in the *Washington Post* entitled “Defending FDR's Legacy.”
16. Speeches: As both Deputy Assistant Secretary and Assistant Secretary of Commerce, I delivered numerous speeches on international trade. I do not have copies of most of these, but the general format was similar. I attach a December, 2000,

speech focusing on trade and information technologies which is relevant to the position for which I am being nominated. I attach also copy of a speech I presented shortly after leaving the Department of Commerce earlier this year and presenting an overview of our work.

17. Selection: (a) Do you know why you were chosen for this nomination by the President?

I believe I was selected because those who supported my nomination believed that I could make a meaningful contribution to the work of the Federal Communications Commission.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I served most recently as Assistant Secretary of Commerce for Trade Development, where I was responsible for promoting U.S. exports, with significant emphasis on telecommunications, information technologies and e-commerce. While there, I oversaw a reorganization of Trade Development to include creation of a new Deputy Assistant Secretarial Office of Information Technologies Industries, including Telecom, IT and e-commerce divisions. I also, advocated internationally for the creation of independent telecommunications regulatory regimes, transparent legal and regulatory regimes for telecom and IT, and investor-friendly commercial climates.

Additionally, I have over 30 years of rather unique Washington experience, having served as a chief of staff in the U.S. Senate for over a dozen years and as a senior Department of Commerce official for 8 years. My experience also includes senior executive positions with a Fortune 500 company and a major national trade association. I believe I understand government and how Washington works, and I have dedicated myself in each of these positions to developing creative public sector-private sector partnerships to achieve positive bottom-line results.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? I have no such connections to sever as of April 2001.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

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

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

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

As Assistant Secretary of Commerce, I testified on three occasions before Congress. In 1999, I testified twice on our Department's efforts to confront and combat the Y2K problem, appearing both times before the Special Senate Committee established for this issue and chaired by Senator Robert Bennett. Also in 1999, I testified before the House Committee on Government Reform's Criminal Justice, Drug Policy and Human Resources Subcommittee, chaired by Congressman John Mica, to explain the operation of our International Trade Administration's trade promotion programs. More informally, during each year that I was at the Commerce Department, I met with staff of the House and Senate Appropriations Committees to answer questions relative to our budget requests. I also met infor-

mally with staffs of the various Committees with authorization oversight of the International Trade Administration.

As an employee of the American Meat Institute, I testified on April 9, 1992, before the Subcommittee on Agricultural Research and General Legislation of the U.S. Senate Committee on Agriculture, Nutrition, and Forestry to discuss a U.S.-European Union trade dispute involving meat products.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.) I have no such conflicts nor do I envision any. Should any develop, however, I would immediately take whatever steps are required to eliminate the conflict as well as the appearance of any conflict of interest.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No, not to my knowledge.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

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

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

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. I have nothing material to add to the information already submitted.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information. Yes, insofar as the relevant decision-making authority resides in the position to which I have been nominated.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes, insofar as relevant decisionmaking authority resides in the position to which I have been nominated.

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

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress. Before such regulations are issued, I will have subjected them, wherever feasible, to rigorous discussion among the various stakeholders who stand to be affected by them. I will also have discussed them thoroughly with the professionals working at the Commission, and will have sought the advice and counsel of my fellow commissioners. I will have looked at them cognizant of the laws Congress has passed, in an effort to make sure that the proposed regulations track the letter and the spirit of said statutes, and will have sought the direct advice and counsel of Members of Congress and/or their professional staffs as appropriate.

5. Describe your department/agency's current mission, major programs, and major operational objectives. Since I have not served at the Federal Communications Commission, I assume the Committee does not wish an extensive description of current agency programs from my perspective. Very briefly, I view the FCC as an independent regulatory agency carrying out critically important responsibilities and priorities conferred upon it by Congress. The Commission confronts the ongoing challenge of helping to expedite to the American people—all of them—the best, most efficient and cost-effective telecommunications service in the world. It should work toward this objective in continuing dialog with all its many stakeholders. The Commission has seven operating bureaus and ten offices each concerned with important aspects of the policies, laws and regulations governing interstate and international

telecommunications activities. The range of FCC programs is wide because the industry with which the Commission works is so vast and so integral to the future progress and prosperity of the American people. The Commission's specific responsibilities include, inter alia, spectrum allocation; the processing of applications for licenses, approvals and various other filings; the formulation and implementation of rules to further industry competition and consumer protection; enforcement; conducting investigations; dealing with stakeholder complaints; education and outreach to stakeholders; and the development and implementation of numerous regulatory and other programs. The Commission has a number of current specific initiatives, including, among many others, innovative programs for the delivery of telecommunications services to under-served populations and regions, 3G wireless, broadband access, disability rights, enhanced 911, and children's television. The Commission is on the front-line on many of the most exciting opportunities and challenges confronting our country today.

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

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualified you for the position for which you have been nominated? My professional experience has given me a 30-year long involvement in government affairs, including service in the Legislative and executive branches, and in the private sector working for both a major company and a national trade association. I believe that I have a background both broad and deep in how government policy and programs are shaped and implemented. In addition, I have the benefit of knowing, and having worked with, many people in both the public and private sectors in this city, and throughout the country, who are intimately involved with public policy formulation and execution. As to my education, it conferred a sense of history, an appreciation for the accomplishments of this great country, and a profound dedication to the belief that unless we as Americans progress together, we progress not at all. These convictions would accompany me to the Federal Communications Commission.

2. Why do you wish to serve in the position for which you have been nominated? I wish to serve in this position because our future progress and prosperity as a people and as a Nation depend so heavily on successfully meeting the telecommunications challenges confronting us today. Telecommunications will transform the Nation more in the next 50 years than it did over the past 50 remarkable years. I believe that my experience, judgment and integrity will enable me to make a meaningful contribution to meeting the nation's telecom challenges.

3. What goals have you established for your first 2 years in this position, if confirmed? My goal would be to assist, both pragmatically and imaginatively, in the implementation of the telecommunications legislation passed by Congress and enacted into law. The next few years will be a watershed in our nation's telecommunications development and in our public policy toward that development. Communications technologies are converging in new and undreamed of ways, presenting new challenges to regulators as well as to policymakers: Never before have so many citizens been stakeholders in an industry, not just as investors but, more importantly, as users and consumers. I believe the Commission must enhance its already impressive efforts at stakeholder input and educational outreach. I want to be heavily involved in this effort. Similarly, our success here at home depends upon progress in the international arena. I want to use the experience I have had in the international arena over the past decade to help build a more effective global climate for telecommunications. Finally, I believe the FCC itself must be constantly adapting itself—its organization and its people—to new technologies, new stakeholders and new opportunities. FCC Chairman Powell has expressed his desire to address this challenge and I look forward to working with him in this important endeavor.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills? Many skills apply to mastery of so complex an industry. No one individual could possibly master them all: regulator, student of the law, engineer, technology maven, student of government, student of entrepreneurship, educator, public relations specialist, consumer affairs specialist, and even a visionary, I will be looking, early on, for intensive exposure to the specifics of telecommunications law and its detailed legislative history and to enhancing my knowledge base on evolving telecommunications technologies. I am confident that I will be able to amass needed information from the skilled professionals who populate the FCC and externally from among the many stakeholders involved in telecommunications programs.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when should society's problems be left to the private sector, and what standards should be used to determine when a government program is no longer necessary. I would begin with the old adage that government exists to accomplish those things for our citizens which the people individually are not able to accomplish. Our government was founded over 200 years ago to establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty. The people's representatives establish the policy and enact the laws to achieve these great public purposes, all the while loosening those restraints which for so many centuries in so many lands hobbled the creative energies and freedoms of the people.

Through the years, and against the backdrop of an historically unique American consensus, competing philosophies have tugged this way and that way on the question of when it is proper and productive for the government to involve itself in the nation's development. These issues are generally sorted out and hopefully resolved at the ballot box or in the assemblies of the people's representatives, so that Federal regulators and government bureaucracies view the process from a distance.

We in the United States pride ourselves on individual freedoms and unleashing the spirit of enterprise. There are times, however, when we invoke government to confront a major challenge, and sometimes these challenges are economic and developmental. Government participated in, and provided incentives for, many of the great economic enterprises in our nation's history. Incentives for land ownership, river and harbor improvements, the construction of roads and turnpikes, the building of the great transcontinental railroads, are some of the major enterprises that come quickly to mind. Similarly, government has involved itself historically in providing the legal underpinnings for incorporation, and in designing tax and tariff policies to promote America's economic success. Many laws had to be passed for all this to happen, and the same number of laws had to be implemented, sometimes mandating varying levels of regulatory oversight. In the contemporary age, telecommunications has become a dominant economic and commercial driver, involving the creative energies of millions of individuals and the active involvement of the people's representatives, too. Striking just the right balance is the continuing challenge confronting the industries concerned, the country's lawmakers, the government's regulators, and all the many other stakeholders combined.

Government programs can and do become obsolete. Perhaps the challenge is overcome. Perhaps new technologies change the industrial and the regulatory landscape. Perhaps the problem itself has altered, so that the solution also must change. Or, perhaps an old regulation remains on the books simply because no one bothers to go back to study if it still has any reason for being. I believe that an efficient regulatory agency will look at all these criteria, and more, to assess the effectiveness of what it is doing.

6. In your own words, please describe the agency's current missions, major programs, and major operational objectives. Very briefly, the FCC is an independent regulatory agency charged with carrying out critically important responsibilities conferred upon it by Congress. The Commission confronts the ongoing challenge of helping to provide to the American people—all of them—the best, most efficient and cost-effective telecommunications service in the world. It should work toward this objective through continuing dialog with all its many stakeholders. The Commission has seven operating bureaus and ten offices, each concerned with important aspects of the policies, laws and regulations governing interstate and international telecommunications activities. The range of FCC programs is wide because the industry with which the Commission works is so vast and so integral to the future progress and prosperity of the American people. The Commission's specific responsibilities include, inter alia, spectrum allocation; the processing of applications for licenses, approvals and various other filings; the formulation and implementation of rules to further industry competition and consumer protection; enforcement; conducting investigations; dealing with stakeholder complaints; education and outreach; and the development and implementation of numerous regulatory and other programs. The Commission has a number of current specific initiatives, including, among many others, innovative programs for the delivery of telecommunications services to under-served populations and areas, 3G wireless, broadband access, disability rights, enhanced 911, and children's television. The Commission is on the front-line of many of the most exciting opportunities and challenges confronting our country today.

7. In reference to question No. 6, what forces are likely to result in changes to the mission of the agency over the coming 5 years? In no particular order, I would

list: burgeoning technological innovation; judicial decisionmaking; Congressional direction; and non-traditional stakeholder input.

8. In further reference to question No. 6, what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three challenges facing the department/agency and why? I believe that lack of innovative stakeholder outreach, especially to non-traditional stakeholders, could imperil the agency's effectiveness in the years just ahead. I also believe that significantly enhanced communication and coordination between Federal and State regulators is essential if the mission of the FCC is to be accomplished.

Finally, I believe that a more regular and ongoing dialog between Congress and the Commission is needed in order for the agency to implement the powers it has been delegated by statute.

9. In further reference to question No. 6, what factors in your opinion have kept the department/agency from achieving its missions over the past several years? I believe that the FCC has compiled an admirable record over the past several years. It has performed credibly in facilitating profound changes mandated by the Telecommunications Act of 1996. It has worked against a backdrop of technological innovation that can only be described as revolutionary. And it has had to respond to a significantly enlarged stakeholder world wherein ever more groups are interested in the decisions that the Commission takes. So while much remains to be accomplished, the Commission is making, I believe, a viable effort to deal with the challenges of a far different telecommunications environment than existed even 5 years ago.

10. Who are the stakeholders in the work of this agency? The various industries, such as telephone, broadcast, wireless, cable and numerous others, come first to mind. The nation's lawmakers, in Congress, and the states, are key players, as are members of the Executive branches of governments at various levels. Consumers, individually and through many fora, are of course pivotal. Increasingly, international governments, industries and other stakeholders wish to be, and are, heard. The press is intensely interested in the work of the Commission.

11. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question No. 10? The Federal Communications Commission is an independent regulatory government agency. It is privy to both business confidential and occasionally governmentclassified information, so that it must always protect such data. It must always act to preserve and protect its independent stature, mandating at times something of an arms-length distance compared to, say, a Cabinet department or other agency of a Presidential administration. A Commissioner must be constantly vigilant of the responsibilities attending his position in an independent agency. All this being granted, however, this nominee believes that there is still more than ample room for the Commission to expand and extend its stakeholder dialogs and to engage in partnership-building with these stakeholders.

12. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector.

(a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls? My responsibility as a Commissioner would be to work closely with FCC administrative and management personnel to encourage a clean audit every year. I would also hope to work closely with FCC Chairman Powell as he seeks to develop organizational plans for the optimal utilization of Commission resources. Finally, I would administer those personnel and financial resources directly under my purview with diligence and continuing scrutiny.

(b) What experience do you have in managing a large organization? In my most recent job as Assistant Secretary of Commerce for Trade Development, I was responsible for the management of a unit consisting of 400 employees. My assignment immediately prior to that, as Deputy Assistant Secretary of Commerce for Basic Industries, entailed supervision of 90 employees.

13. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals.

(a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals. Setting mission-oriented performance goals focuses the attention and energies of a department/agency on its priorities. A requirement to report on an agency's success, or lack thereof, in achieving these objectives provides strong discipline toward the realization of targeted results. This whole process also has the effect of reassuring stakeholders that the agency is implementing results-oriented strategies.

(b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs? Congress is the best judge in deciding upon appropriate actions to take in the face of an agency's failure to-realize its objectives. Often, the exercise of continuing Congressional oversight has provided mid-course corrections enabling a department for agency to achieve its goals. While such options as agency or program elimination, privatization, downsizing or consolidation are always available to Congress, history seems to indicate that very often the efficacy of continuing oversight and good communication between an agency and Congress makes such drastic action unnecessary.

(c) What performance goals do you believe should be applicable to your personal performance, if confirmed? A definitive response to this question would have to await my immersion into the FCC's actual work. Overall objectives would likely include a successful, and hopefully quantifiable, contribution to processing the Commission's work load in such measurable tasks as licensing, rulemaking and related endeavors. Making a significant contribution to FCC organizational adjustments in the important months just ahead would comprise another performance measurement. I am also of the opinion that efforts at private sector-public sector partnering and in community and stakeholder outreach are important performance objectives that should be counted in measuring the success of an FCC Commissioner.

14. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you? Open doors for two-way communication, candid and regular discussion of an employee's performance, and employee participation in helping to establish agency strategies and tactics are all part of the model I would follow at the FCC. I also believe that in almost every government agency, insufficient resources are available for employee training and self-improvement programs. Such training and programs are especially important to an agency like the FCC that deals every day with a world of rapid technology innovation and change. Without more training and self-improvement opportunities, professional employees will be unable to meet the new challenges coming at them. Finally, agency turnover accelerates as training opportunities dissipate. Given the rather dismal projections on government retirement in the years just ahead, we should be working to enhance the attractiveness of public sector employment. In response to the last part of the query, I have not been the object of a formal or informal employee complaint.

15. Describe your working relationship, if any, with Congress. Does your professional experience include working with committees of Congress. If yes, please describe. As mentioned earlier, I worked as a senior staffer in the office of U.S. Senator Ernest F. Hollings for nearly 15 years, more than a dozen of those years as his Administrative Assistant and Chief of Staff. In that capacity, I worked closely with the several committees on which Senator Hollings served. I have also testified before Congress and met informally with Members and staff throughout the years since I left the Senate in 1985.

16. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector general or your department/agency. I believe that the Office of Inspector General should focus on enhancing the efficiency, effectiveness and integrity of the agency to which it is attached. As one of the five Commissioners responsible for the FCC, I would, if confirmed, seek to develop contact and good communication with the OIG at the outset of my tenure, rather than waiting for problems. to develop. I would not only familiarize myself with the objectives of the OIG, but also those under my supervision and, indeed, all the members of the FCC team. I would also seek to be promptly responsive to the reports and other communications emanating from the Inspector General and his staff.

17. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress. My approach would be to start early and "keep at it." To the maximum extent possible, I would want to vet the approach being considered with the Committee, other interested lawmakers, and all the relevant stakeholders. There is no substitute for open dialog, beginning at the earliest stages, and continuing through until the maximum amount of underbrush has been cleared away. Because the telecommunications industry and telecom technology are so critically important to the future of American workers and businesses, the decisions of the Federal Communications Commission are often of very great importance to very many people. The Commission's credibility can only be enhanced by this kind of give-and-take. Once regulations are issued, the Commission must have the resources and enforcement capacities to administer them comprehensively. And review mechanisms must be built into the process to provide for adjustments and correc-

tions to new regulations and for terminating regulations that are no longer necessary.

18. In areas under the department's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views. I would not be comfortable at this stage in suggesting legislative actions regarding the Federal Communications Commission. The agency is still searching for the best ways in which to administer the substantial changes contained in the Telecommunications Act of 1996. Since my personal reaction to this question has been solicited, I will express the hope that Congress will continue to be attentive to the resource needs of the Commission as it confronts so many new and far-reaching challenges and changes.

19. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a timeframe for their implementation. Yes. If confirmed, I will request a budget briefing at the outset of my tenure, including information on where the Commission is in planning its budget submission for Fiscal Year 2003, as well as information on opportunities for input as the Fiscal Year 2002 budget process moves toward completion. I would expect, if confirmed, to meet with my fellow Commissioners early on to address these issues and to establish allocations based on national priorities.

The CHAIRMAN. Thank you, Dr. Copps.
Mr. Martin.

**STATEMENT OF KEVIN J. MARTIN, COMMISSIONER-
DESIGNATE, FEDERAL COMMUNICATIONS COMMISSION**

Mr. MARTIN. Thank you, Mr. Chairman and all the members of the Committee. It is a great privilege to have the opportunity to appear before you today. I am honored to have been nominated by the President to be a member of the FCC. I had the distinct pleasure of serving at the FCC as legal adviser just a few short years ago and prior to that practiced before the Commission for several years.

I have the utmost respect for the agency, its mission, its staff, and certainly its new Chairman, who has brought great energy and leadership to the Commission. I am humbled, but truly excited, by the prospect of serving at this important agency in an era of such extraordinary innovation and change in the communications sector. I sincerely thank President Bush for believing I can make a valuable contribution there.

If confirmed, I look forward to working closely with Congress, with the Chairman, and with my fellow Commissioners to tackle the important issues facing the industry today and in so doing, to help to administer the policies that will guide this vibrant industry, so vital to our national economy and the American people we are entrusted to serve.

Again, thank you for inviting me here today and I look forward to answering any questions.

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

**PREPARED STATEMENT OF KEVIN J. MARTIN, COMMISSIONER-DESIGNATE, FEDERAL
COMMUNICATIONS COMMISSION**

Thank you, Mr. Chairman and members of the Committee, it is a great privilege to have the opportunity to appear before you today.

I am honored to have been nominated by the President to be a member of the Federal Communications Commission. I had the distinct pleasure of serving at the FCC as a legal adviser just a few years ago, and prior to that practiced before the Commission. I have the utmost respect for the agency—its mission, its staff, and

certainly its new Chairman, who has brought great energy and leadership to the FCC. I am humbled, but truly excited, by the prospect of serving at this important agency in an era of such extraordinary innovation and change in the communications sector. And I sincerely thank President Bush for believing I could make a valuable contribution.

Over the past several weeks, I have met with many of you to discuss your thoughts about the Commission—what it is doing well, and where it should improve. I very much appreciate the time that you have spent with me talking about the FCC and communications policy. If confirmed, I look forward to continuing to hear from you. I recognize that the FCC is a creation of Congress, and its highest priority is to implement the will of Congress.

It is news to no one here that these are times of unprecedented opportunity, yet also daunting challenge, in our telecommunications and information industries. We are witnessing the digitalization of communications, the dawning age of broadband, and the harvesting of new, more efficient uses of spectrum. In turn, business models are in flux as technologies converge, existing markets merge, and new markets are created. And all this occurs against a backdrop of unpredictable consumer demand, protracted legal uncertainty, and, of late, both shrinking capital markets and growing investor apprehension.

The pieces of the puzzle are many, and their successful resolution will be critical to the health of our economy and the welfare of our people. New advanced services hold the promise of changing the way Americans communicate, learn, work, socialize, and entertain themselves. Fulfilling that promise will depend, in part, on decisions made by the FCC. Not surprisingly, however, the same factors that have injected such complexity into the marketplace also have created significant policy challenges for the Commission. Over the course of the coming years, the FCC will need to resolve key issues such as:

- How to apply distinct regulatory regimes to converging technologies;
- How to do so in a manner that fosters vigorous competition in these rapidly changing markets;
- How to manage spectrum with optimal efficiency as new technologies are developed and markets become ever more global; and
- How to facilitate the deployment of new services while advancing the goal of universal service—that no American be left out of the technological revolution sweeping the country.

These are weighty tasks, but tasks that I would approach with enthusiasm, dedication, and an open mind.

If confirmed, I look forward to working closely with Congress, with Chairman Powell, and with my fellow commissioners to tackle these issues and, in so doing, help administer the policies that will guide this vibrant industry so vital to our national economy and the American people we are entrusted to serve.

Again, thank you for inviting me here today. I look forward to answering any questions.

A. BIOGRAPHICAL INFORMATION

1. Name: Kevin Jeffrey Martin.
2. Position to which nominated: Commissioner of the Federal Communications Commission.
3. Date of nomination: April 30, 2001.
4. Address: Not released to the public.
5. Date and place of birth: December 14, 1966; Charlotte, NC.
6. Marital status: Married to Catherine Jurgensmeyer Martin.
7. Names and ages of children: Not Applicable.
8. Education: Charlotte Catholic High School, 1981–1985; High School Diploma; University of North Carolina at Chapel Hill, 1985–1989, Bachelor of Arts; Duke University, 1989–1990, Masters in Public Policy (Received Degree in 1993); Harvard School of Law, 1990–1993, Juris Doctorate.
9. Employment record: Intern, Southern Finance Project, Charlotte, NC; Summer 1990; Summer Associate, Robinson, Bradshaw & Hinson, PA, Charlotte, NC, Summer 1991; Summer Associate, Smith Currie & Hancock, Atlanta, GA, Summer 1991; Summer Associate, Alston & Bird, Atlanta, GA, Summer 1992; Summer Associate, Robinson, Bradshaw & Hinson, PA, Charlotte, NC, Summer 1992; Summer Associate, Akin, Gump, Strauss Hauer & Feld, LLP, Washington, DC, Summer 1993; Summer Associate, Kennedy Covington Lobdell & Hickman, LLP, Charlotte, NC,

Summer 1993; Judicial Clerk for United States District Judge William M. Hoeveller, Miami, FL, 1993–1994; Associate, Wiley, Rein & Fielding, Washington, DC, 1994–1997; Associate Independent Counsel, Office of the Independent Counsel, Washington, DC, 1997; Legal Advisor to Commissioner Harold Furchtgott-Roth, Federal Communications Commission, Washington, DC, 1997–1999; Deputy General Counsel, Bush for President, Austin, TX, 1999–2000; Deputy General Counsel, Bush-Cheney Transition Team, Washington, DC, 2000–2001; Special Assistant to the President for Economic Policy, Executive Office of the President, Washington, DC, 2001–Present.

10. Government experience: None.

11. Business relationships: Member, Board of Trustees of the University of North Carolina at Chapel Hill, 1988–1989; Member, Board of Directors for UNC Alumni Association, 1988–1989; Partner, JDJR Investments (Family Investment Club), ended participation in 1997.

12. Memberships: American Bar Association, Member; Florida Bar, Member; DC Bar, Member; Federal Communications Bar Association, Member; Federalist Society, Vice-Chair for the Telecommunications Committee; Sigma Nu Fraternity, Member; Lincoln's Inn Society (Harvard Law School Fraternal Organization), Member; Board of Student Advisors to Harvard Law School, Member.

13. Political affiliations and activities: (a) None. (b) Deputy General Counsel, Bush for President, 1999–2000; Counsel to the Platform Committee, Republican National Convention, 1996; (c) Bush for President, \$1,000.

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

15. Published writings: None.

16. Speeches: I have appeared on several panels and given a few informal speeches over the last 5 years. My remarks were informal and based on outlines. I do not have copies of my remarks.

17. Selection: (a) I am not aware of the specific reason why I was selected to be nominated to the Federal Communications Commission by the President. I believe I was selected to serve as the President's nominee because of my legal background and experience in the telecommunications area; (b) I served as a Legal Advisor to Commissioner Furchtgott-Roth. Prior to joining the Commission, I practiced telecommunications law for several years.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers. Administaff 401 K (Bush for President campaign; no further contributions being made); Baron Asset Fund; Fidelity Contrafund; Fidelity Diverse International; Fidelity Fund; Spartan U.S. Equity Index; Steptoe & Johnson 401K (Spouse's 401 K); no further contributions being made); City National Global Growth Fund; City National U.S. Stock Fund.

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

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated? I served as an asso-

ciate from 1994 to 1997 at Wiley Rein & Fielding, which practices before the Federal Communications Commission.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. In my law practice, I advised various clients on the implications of the Telecommunications Act of 1996.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.) To the extent that a conflict of interest arises of which I am not currently aware, I plan to consult with agency ethics counsel and comply with all appropriate laws and regulations.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

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

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

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

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

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. Not Applicable.

E. RELATIONSHIP WITH COMMITTEE

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

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

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

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress. If confirmed as a Commissioner, I would carefully review regulations within the framework of the applicable statute to ensure that they comply with the spirit of the law and with Congressional intent. In addition, I would work with Members of Congress and their staff to maintain open communications regarding the spirit and intent of relevant laws.

5. Describe your department/agency's current mission, major programs, and major operational objectives. The Federal Communications Commission is an independent Federal regulatory agency created by Congress to develop and implement policy concerning interstate and international communications by radio, television, wire, wireless, satellite and cable. Its mission is to encourage competition in all communications markets and to protect and promote the public interest. With Congress, the Commission works to ensure that all Americans have access to a world-class communications system. One of its primary objectives remains the implementation of the Telecommunications Act of 1996.

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

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualified you for the position for which you have been nominated? I believe an effective FCC commissioner will need a clear understanding of the laws Congress charged the Commis-

sion with implementing. After graduating from Harvard Law School, I practiced communications law for several years and later served at the Commission as a legal advisor. This experience has helped prepare me for the central task of clearly understanding and faithfully implementing the will of Congress as expressed in the communications laws it has enacted.

A successful commissioner also will need a broad understanding of public policy, including how to anticipate the consequences government actions may have on consumers and the economy. In earning a Masters in Public Policy from Duke University, and particularly through my service at the Commission, I gained an appreciation for how sound public policy is formulated and implemented that I believe could help me make more informed policy decisions.

Finally, beyond an understanding of the relevant law and public policy, an FCC Commissioner also will need to understand the many challenges confronting the communications industry. During my years in private practice and at the Commission, I learned about various sectors of the communications industry and developed substantial knowledge and technical grounding that should offer a helpful foundation for analyzing complex regulatory issues affecting the industry.

2. Why do you wish to serve in the position for which you have been nominated? The challenges facing the communications industry in the 21st century are daunting, and their successful resolution will be critical to the welfare of our people and the health of our economy. Congress has charged the FCC with the important role of implementing the laws that govern this industry, and I view the opportunity to help lead this agency as an exciting and meaningful way to serve our country.

3. What goals have you established for your first 2 years in this position, if confirmed? If confirmed, my goals as Commissioner would include:

- Implementing communications policy in a manner that serves the public interest by providing a clear and sound regulatory framework that promotes competition and enhances the ability of all Americans to enjoy the benefits of new technology and services;
- Supporting deregulation where such action would further competition, foster innovation, and enhance consumer choice and welfare; Encouraging more timely agency decisionmaking; and
- Playing a constructive role in defining and implementing needed reforms to make the FCC (as Chairman Powell has stated) more efficient, effective, and responsive.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills? Over the last several years, I have worked on a broad range of communications issues and developed a working knowledge of various technical issues. However, I believe that a more detailed understanding of the engineering underlying today's—and tomorrow's—technologies would strengthen my appreciation of the potential and the limitations of a given technology, thereby allowing me to make more fully informed decisions affecting telecommunications policy. I am confident that the many technical experts within the Commission could aid me in this endeavor.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when should society's problems be left to the private sector, and what standards should be used to determine when a government program is no longer necessary. Government should be carefully limited, but forceful within the bounds of its responsibilities. Government should help create an environment that promotes innovation and preserves equal opportunity for all Americans.

I believe policymakers should pursue a prudent, pro-competitive, pro-consumer approach to regulating the communications sector that holds such promise for every American. My view is that market-driven forces are the best method of delivering the benefits of choice, innovation, and affordability to our nation. However, government regulation is appropriate—indeed, can be critical—when the structure of a given market is such that the consumer benefits of competition are clearly impeded.

Accordingly, regulators must remain aware of how quickly markets in this sector can change, standing ready to evaluate both the marketplace and their existing regulations on a regular basis to ensure that existing rules and policies continue to achieve their intended objective in the most effective and efficient manner possible. If and when existing rules or policies fail this test, regulators should act quickly to determine whether those rules should be altered or repealed.

6. *In your own words*, please describe the agency's current missions, major programs, and major operational objectives. The FCC is an independent agency created by Congress to develop and implement communications policy concerning interstate

and international communications by radio, television, wire, wireless, satellite, and cable. Its mission, as set forth in statute, is to encourage competition in all communications markets and to protect the public interest.

One of the FCC's primary objectives remains the implementation of the Telecommunications Act of 1996, in which Congress set forth the ground rules and incentives for a communications industry that would be governed more by market forces than detailed regulations, yet would continue to ensure universal service. The FCC is to use its expertise to govern the communications sector in a manner that encourages competition, fosters the development of technology, and promotes the deployment of services to all consumers.

Congress also has instructed the FCC to efficiently manage spectrum—a task that has grown more complex as new technologies are developed and as markets become more global. The FCC must continue to allocate this valuable resource in a way that maximizes efficient use, encourages investment, spurs innovation, and accelerates deployment of new services to consumers.

From an operational perspective, the FCC must vigorously and consistently enforce existing regulations. It also should strive to work closely with Congress in implementing the laws Congress has passed and the priorities Congress communicates in its continuing oversight of the agency.

7. In reference to question No. 6, what forces are likely to result in changes to the mission of this agency over the coming 5 years? The FCC's fundamental mission—to promote and protect the public interest—has not (and, I expect, will not) change. However, forces that could contribute to a changing focus at the agency include rapid advances in technology, newly discovered uses of spectrum, further technological convergence across traditional regulatory lines, and significant marketplace developments.

8. In further reference to question No. 6, what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three challenges facing the department/agency and why? Though outside forces certainly could make agency progress more difficult, I do not foresee any forces that would prevent the agency from accomplishing its mission of promoting and protecting the public interest.

Given the pace of change, the importance of promoting competition, and the great promise of the communications services at stake, I believe the agency's top challenges are: (1) encouraging the development and deployment of advanced services while remaining committed to the principle of universal service; (2) fostering competition in local and long distance telecommunications markets; and (3) managing the spectrum in a manner that fosters the efficient deployment of services.

9. In further reference to question No. 6, what factors in your opinion have kept the department/agency from achieving its missions over the past several years? I believe that among the most important factors that may, at times, have frustrated the ability of the FCC to achieve its mission was a failure to maintain an effective relationship with Congress. It is incumbent on the FCC to seek and listen to the guidance of Congress as the agency shapes policies designed to fulfill its statutory mandates and serve the public interest.

10. Who are the stakeholders in the work of this agency? The ultimate stakeholders in communications policy are the American consumers. Congress establishes the statutory framework through which the FCC pursues policies that foster the public interest, and vital to this framework is, of course, listening to all interested and affected parties, be they governments, businesses or consumers.

11. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question No. 10? If confirmed, my fundamental role as an FCC Commissioner would be to protect the public interest, as instructed by Congress—that is, I would work to promote competition and the availability of communications services for all American consumers.

12. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector. (a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls? While the Chairman is the chief executive officer of the Commission, I believe it is the responsibility of all Commissioners to facilitate the efficient management of the agency in order to successfully accomplish the tasks with which Congress has charged it. (b) What experience do you have in managing a large organization? Again, while the Chairman is the member of the Commission appointed to direct management of the agency, as a Commissioner I would draw upon my experience from working within, and analyzing how to reform, the FCC in order to promote its efficient and effective management.

13. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals. (a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals. The determination of goals and the delivery of status reports are useful tools for any organization. They provide focus to an agency and give Congress the opportunity to inform the Commission when the agency appears to be misinterpreting its delegated powers. Periodic status reports also provide interested parties a way to ensure that the FCC is moving forward. Chairman Powell has outlined his plan to integrate a strategic planning process into the annual Federal budget cycle, including a review of the FCC's performance. I understand that he is already working to establish uniform measures of productivity across the agency. If confirmed, I would fully support him in these efforts.

(b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs? If an agency and Congress maintain open and continuous lines of communication, Congress will be able to inform the agency early that it is concerned with its progress in fulfilling the agency's performance goals. If and when Congress is faced with ultimate failure by the agency, it would be appropriate to investigate the causes of the failure and take whatever course of action Congress deems appropriate.

(c) What performance goals do you believe should be applicable to your personal performance, if confirmed? As an FCC Commissioner, I should be expected to implement my statutory obligations consistent with Congressional intent and in a fair and expeditious manner.

14. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you? I believe supervisors should establish individual accountability and an open, collaborative working environment that together provide incentives and opportunities for excellence. I have never been the subject of an employee complaint.

15. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe. I have had the pleasure of working with various Members of Congress and Congressional staff over the course of my professional experience. As a legal advisor at the FCC, I worked with the staff of the Commerce Committee as well as the personal staff of various Members in order to identify their concerns regarding communications policies.

16. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency. If confirmed, I would support the office of the Inspector General and urge cooperation throughout the agency in any and all of its activities.

17. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress. If confirmed, I would place a high priority on the maintenance of an open dialog with the Members of this Committee and their staff. I would endeavor to seek guidance from this Committee as to the letter and spirit of the laws we are working to implement and enforce.

18. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views. If confirmed, I would look forward to establishing a relationship with this Committee that would allow me to better understand legislative priorities and, where appropriate, to offer Commission input into the Committee's legislative agenda. In particular, I would hope for the Commission to be able to approach the Committee with requests for effective but narrowly drawn tools that will give the FCC the ability to accomplish Congressional goals. For instance, I strongly support the Chairman in his request for legislation providing increased enforcement authority such as heightened penalties and lengthened statutes of limitations.

19. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a timeframe for their implementation. If confirmed, I would support the Chairman in efforts to establish appropriate budgetary priorities and processes.

The CHAIRMAN. Thank you very much.

Ms. Abernathy, you will be recused from issues affecting your previous employer?

Ms. ABERNATHY. Yes, Senator, I will be. However, that may become a moot point because they have recently filed for bankruptcy. So I am not exactly sure how many issues I will be precluded from dealing with.

The CHAIRMAN. Thank you.

Senator Hollings.

Senator HOLLINGS. Thank you, Mr. Chairman. I have really no questions, just one comment with respect to the comment made by a Commissioner in recent months that the matter of public interest was so nebulous it was meaningless.

That sort of shocked me, for the simple reason that that is your charge, carrying out the intent of Congress and looking out for the public interest.

The questions about the universal service, the reason we have that is because market forces would not look out for it. No one is going to lay lines or extend communications to costly areas in rural America unless we provide for it by law.

Incidentally, the regulation, the fetish about deregulate, deregulate, deregulate; we deregulated the airlines and messed them up, trucking, now electric power, natural gas. Mind you me, your particular industry asked for the regulations. We had deregulation. We tried it after the Sarnoff experience on top of Wanamaker at the sinking of the Lusitania, and everybody had a wireless radio and they were all jammed. They came to Secretary Hoover as Secretary of Commerce and said: Please regulate us. We had that 1934 Act and updated now with the 1996 Act.

So it is an industry that cannot succeed except by certain government controls and allocations. Just remember that particularly with the fetish about that the idea is that the government is not the solution, the government is the problem, and get rid of the government. I hear that too much around, in particular with respect to all these various governmental commissions, like they are totally useless, they get in the way, and if they would only get out of the way everything would work.

We know right now, for example—you heard my questions about the monopolistic Bells. They would never move, and if I was sitting on the board of a Bell, I would hold onto my monopoly. That is the whole idea, I guess, in business, is to get all the business you possibly can control.

Having said that, thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

I want to say first of all that I really enjoyed the—it was not a long amount of time, but each of the conversations that we had were different and I found each of you to be people of great integrity, some differences, not necessarily with me, but as personalities, smart, and I look forward to voting for you.

I do not often say that kind of thing to either political party, but I just found you very able and interesting, inquiring minds, and I think that is the most important part, except as I now get to my questions, which, of course, predictably will deal with the E-rate, because I want to get you all on record in the same way that I did with Chairman Powell, and hopefully with the same result.

So I would ask each of you just to answer these in turn. That is, do you feel that the E-rate is a part of universal service and are you willing to protect the E-rate as it was laid out in the 1996 Telecom Act?

Dr. COPPS. Well, I can begin. I certainly do. I very much enjoyed the discussion that you and I had in your office about this. As I said in my statement, I am a believer in bringing the kind of telecommunications service that I talked about to all of our people, no matter who they are, no matter where they live. It is absolutely essential if we are going to progress in this country. We will progress together or we will progress not at all.

As for the E-rate program, I share your confidence in it and your belief in it, and I look forward to working with you and to implementing that program to make it the best program that is possible.

Senator ROCKEFELLER. Thank you, sir.

Ms. Abernathy.

Ms. ABERNATHY. Thank you, Senator. The E-rate program has been an extraordinary success. It was a brainchild of Congress. It is something the FCC is committed to. I agree with Chairman Powell that the only role is if we can make it more efficient, more effective. We should always be looking toward that.

But otherwise, you have set forth the parameters and you have designed a program that the FCC has implemented. I am committed to seeing that program continue.

Senator ROCKEFELLER. More efficient within the definitions laid out by Congress?

Ms. ABERNATHY. Absolutely. If ever you can make it easier for the schools, the forms, the application process, that is always a good thing.

Senator ROCKEFELLER. Thank you.

Mr. Martin.

Mr. MARTIN. Senator, the E-rate is an important part of universal service and I am certainly committed to fully implementing it, as we have discussed. It is important, I think, that to the extent that there are some things that could be done, as you and Ms. Abernathy were just discussing, as far as making it more efficient, they have to be within the terms of what Congress has laid out in the statute.

Senator ROCKEFELLER. Thank you very much for that.

Now, the E-rate was intended to provide affordable service to public schools, to private schools, parochial schools—not all private schools. Chairman McCain laid out an amendment which passed 99 to 1, which said, I think, that any private school with an endowment of over \$50 million did not qualify, but any less than that, because we found the private schools were actually less wired up than public schools, which was interesting. So, I think that the whole question of discounts as a way of making sure that we do this fairly and are absolutely fundamental. We have a very clear way of doing that within the FCC and the Joint Board decision, based in part on the school lunch program.

Do you appreciate my view and will you work to follow what the Act says about that, the three of you?

Ms. ABERNATHY. Yes.

Dr. COPPS. Absolutely.

Mr. MARTIN. Yes, Senator.

The CHAIRMAN. Thank you.

The E-rate again is very clear in that it covers telecommunications, Internet, connecting classrooms. This is the law. This is the conference report. As important as teacher training is, as important as software is, as important as hardware is, they are not in that. They are not a part of that. But the three that I mentioned are, and they are a part of universal service.

I need to know that you will stay consistent in your views with the Joint Board and the FCC as that has been determined by Congress.

Mr. MARTIN. Yes, Senator.

Dr. COPPS. Yes, sir.

Ms. ABERNATHY. Yes, sir.

Senator ROCKEFELLER. Thank you. I do not mean to be so literal, but this is such an important program that getting people on the record is important. You understand that.

Finally, just a question about broadband. The 1996 Act explicitly told the FCC: "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and information services, including advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charted for similar services in reasonable areas."

Do you agree with that and do you have any thoughts as to how we can get there?

Mr. MARTIN. Well, Senator, I certainly agree with it. I think that one of the great insights of the 1996 Telecommunications Act was its use of an evolving definition of "universal service," which makes sure that no area of the country is left behind. I think that universal service and the rural components of it are somewhat like a tool. It is a rubber band with one end wrapped around the urban areas and one end around the rural, that makes sure that when the urban area gets too far out ahead, the universal service mechanism can pull the rural areas back up, to make sure they do not get left behind. I am certainly committed to that.

Ms. ABERNATHY. Absolutely. I think that a critical piece of the Act, is how do you ensure broadband deployment, not simply to urban areas, but to rural areas. Based on my last year's experience, I appreciate just how difficult that is when you are coming into a market that is incredibly complex—where competition is tough and deployment is hard.

I know that the Congress is thinking about additional ways to facilitate broadband deployment to rural America and I look forward to seeing where that takes us. I think that the FCC should continue to encourage this kind of deployment. Unfortunately, it is just taking longer than any of us thought that it would.

Dr. COPPS. Senator Rockefeller, I certainly concur with your views. That is the statutory instruction to the FCC from the Congress and my intention would obviously be to implement that. I think there are lots of other things we can do. Of course, the market, as Kathleen was saying, has something to do with how we roll

out broadband, but so does the Commission in establishing predictable and prompt rules of the road. So does the Commission from the standpoint of devising an adequate program of spectrum allocation and spectrum management.

So I think there are lots of things we can be doing and I imagine this will be occupying a tremendous amount of all of our time if we are lucky enough to go to the Commission.

Senator ROCKEFELLER. All three of you would agree that the paragraph that I read is legally binding upon you?

Ms. ABERNATHY. Absolutely.

Mr. MARTIN. Yes, sir.

Senator ROCKEFELLER. I appreciate very much your answers and look forward to voting for you.

I thank you, Mr. Chairman.

Senator HOLLINGS. Senator Burns.

Senator BURNS. Thank you. I have more of a statement than anything else. When we start talking about spectrum and spectrum management, this is an historical occasion as far as the FCC is concerned, because this is the first time we have had a clatter of folks all going on at the same time. Spectrum and spectrum management is something that I think you are going to have to be around a little while to fully understand the management and the challenges that we have in front of us. So I think it would be unfair right now to go down that road.

But I look forward in working with all of you on the Commission, as with the Chairman, as we move that issue down the field, because I feel it is very, very important at this time.

So I am going to ask unanimous consent that my statement be made part of the record.

[The prepared statement of Senator Burns follows:]

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

Thank you, Mr. Chairman.

Today's hearing is a truly historic occasion, given the scope of the mission of today's nominees for the Federal Communications Commission. While numerous issues of immense impact will be faced by the next Commission, I would like to focus on three items of particularly critical importance—spectrum management, E-911 implementation and enforcement of the 1996 Telecommunications Act.

The United States is the unquestioned leader in the Internet and we have a vibrant commercial wireless industry. At a time of economic uncertainty, it is increasingly important that the United States maintain its leadership in the high-tech market. If the United States is to stay ahead of the pack in E-commerce, then we must ensure that we are leaders in advanced wireless services that will support the mobile Internet.

Efficient spectrum management is key to maintaining American leadership in this area. The U.S. Government must take action to develop a comprehensive and rational spectrum policy, and it should do so in a way that provides long-term benefits rather than merely realizing short-term revenue gains. With this goal in mind, yesterday Sen. Kerry, Sen. Hollings and I requested that the GAO undertake a comprehensive, top-down review of all aspects of spectrum allocation policy. We specifically asked the GAO to look at whether a more coordinated approach for addressing the needs of both Federal and commercial stakeholders would be more efficient than the current patchwork system.

The FCC certainly has a vital role to play in spectrum management, but first it must revamp its outdated facilities and hiring practices. Chairman Powell has recognized this need and has requested funding to modernize the FCC's spectrum lab in Columbia, Maryland and to create an incentive program to hire qualified engineers. I have already spoken with Sen. Gregg about this matter and he indicated that he is fully supportive of this request.

Mobile connection to the Internet will play a key role in realizing the vision of a fully networked America in which people have access to information and services when and where they need them. The American public must have access to the Internet at data rates that allow them to take true advantage of Internetbased services.

I would like to comment on an area of literally life-or-death importance—that of E-911 implementation. The number of emergency calls from wireless phones is growing rapidly. Nationally, over half the calls for 911 for emergency services are now made over wireless phones. That ratio of wireless emergency calls will continue to increase dramatically in the future. With more and more people depending upon wireless access to 911, it is particularly important for the FCC to support the speediest possible deployment of E-911 service to all parts of the country, rich and poor, urban and rural.

Requests for Phase Two implementation of the FCC's E-911 rules, which would provide Public Service Answering Points (PSAPs) an emergency caller's exact location have come in from states, cities and rural communities all across the country. This technology will literally save thousands of lives. One thing the FCC can do to ensure this happens sooner, rather than later, is stick to the Commission's own mandated October 1, 2001 deadline for initial deployment of E-911 technologies. The integrity of the E-911 system and the welfare of the numerous people who will depend on it for their very lives from that day forward are at stake.

Finally, I would like to touch on the issue of the implementation of the Telecommunications Act of 1996 and the constructive role that the Commission has to play in enforcement. Chairman Powell has requested that the Commission's enforcement authority be expanded, its fining levels increased and that it be allowed to award punitive damages and attorneys fees to harmed businesses. I think this request is entirely reasonable and I will work with the Chairman to make sure that the Commission is given the ability to go after any bad actors who don't follow the competitive provisions of the Act.

Clearly, the many challenges which will face our nominees are immense, but I have no doubt that they are up to the task—in fact, I fully support each of them and am confident that the next Commission will be the most talented and productive ever. I thank the nominees for their commitment to public service and I look forward to working with them on these crucial public policy issues.

Thank you Mr. Chairman.

Senator BURNS. Also, I want to advise you that any questions that you have from Senators or the Committee, if you could respond to them by Tuesday of next week to the individual Senators and to the Committee, as we go to mark-up, I think on the 24th, something like that. So we look forward to that.

Other than that, I congratulate you for stepping forward for public service. The FCC has become and will be the center of the economic engine in this country for the next 25 or 30 years, because that is where our future—and we are also in a global. It is just not the United States. We have to take into consideration on the international and the global markets. So we have a great challenge in front of us.

I congratulate each and every one of you and look forward to working with you.

With that, if there is no more questions, the hearing is closed.
[Whereupon, at 12:11 p.m., the hearing was adjourned.]

A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GORDON SMITH TO
KATHLEEN Q. ABERNATHY

Question 1. The price a local exchange carrier charges in rural areas is artificially low and kept low because of our universal service policy. For competition to develop, a business needs to attract that customers. How do we attract companies to compete with the local exchange carriers and build out advanced services to rural areas when the price normally charged is kept universally low?

Answer. This is one of the most difficult issues facing the FCC and I do not know the answer. Normal business incentives combined with the portability of USF contributions thus far have failed to attract wireline competition to rural areas. The answer may be greater reliance on wireless and satellite technologies. I am also aware that Congress is exploring various alternatives to encourage greater deployment to rural areas. In the interim, I think the FCC should continue to encourage the growth and development of competition and the growth and development of new technologies.

Question 2. As broadband continues to be deployed in the urban technology communities in Oregon, I am hearing from Oregonians in some of these lesser populated areas that they are afraid that their communities are going to be passed by. Our largest local exchange carriers in Oregon are Qwest, Verizon and Sprint, and they are all working with the Oregon Public Utility Commission to build out their infrastructure throughout the state. What concerns me, is that rural deployment is not being made as rapidly, or as broadly in our rural areas, as I would like to see. When I raise this issue with the local exchange carriers who serve many of these communities with telephone service, they say that the regulatory policies that were designed to promote competition in their telephone business are being extended to include these new advanced services, and these regulatory costs slow down the investment available to bring advanced services to rural areas. So while I fully support the notion that competition in telephone service has been good for our urban business communities, I am concerned that those same policies, when applied to these new advanced services, are making it harder for my rural constituents to gain access to these new technologies. Would you discuss your approach to the regulatory role for these advanced new services, and whether you view the increased costs for the local exchange carriers to be a problem for rural America?

Answer. As stated previously, the costs of deployment has resulted in an economic model that at this time has discouraged some companies from significant investment in rural markets but newer technologies such as wireless and satellite may hold promise. I do not know to what extent regulatory costs affect the economic analysis. I look forward to further discussions with you and your staff about the various alternatives that may be available to address this problem.

Question 3. These advanced new services called "broadband", are provided with a variety of new technologies. The "local exchange carriers" have DSL service, cable companies have cable modems, and satellite and wireless carriers are also in the market, and maybe others will be entering that we don't even know about. All have some sort of government regulation whether local, state or federal. Do you think our policy should be technology neutral, or do you think we should continue our current policies which apply different regulatory policies to each competitor based on the technology used to provide the broadband access?

Answer. One of the most difficult challenges facing the FCC is keeping pace with the rapidly changing state of the technology to ensure regulations are appropriate, symmetrical, and effective and that decisions are not delayed. In addition, companies should not design their business plans to accommodate regulatory structures that may be outdated. Therefore, I support Chairman Powell's decision to engage in a comprehensive FCC reform project.

Question 4. When I look at the telecommunications market that has evolved in this country during the past five years, it appears to me that the most successful sector of the market in terms of growth, attracting investment, deploying new technologies, and providing new services to amazing numbers of Americans, both rural and urban, is wireless communications. It seems that real customer demand has "pulled" the wireless investment and new technologies into the marketplace, not only here, but around the world. Even in areas where they have never had any communications network. On the other hand, these "pro-competitive regulatory policies" as applied to the telephone companies seem to be slowing down investment and de-

laying technological innovation, in their attempts to “push” competition into the marketplace. As a regulator, do you think the role of government should be to “push” competition through regulatory policies, or to allow deregulated markets to “pull” the investments create competition? Do you see any disparity between wireless and wireline in bridging the digital divide?

Answer. Regulatory policies should be designed to allow the market to flourish, where possible, since that best ensures multiple choices and reduced prices for consumers. To the extent a market is not yet competitive and regulations can encourage the growth of competition, that is also a good thing. But it is not wise to establish regulatory policies that create an “artificial” kind of competition that can never be supported by the market. With regard to the differences between wireless and wireline technology, thus far it appears that wireless technology has been more effective at serving rural America because it does not face the same deployment hurdles as those companies seeking to compete using wireline technology. This may be due to the fact that wireless telephony was effectively born in the 1990s when our national spectrum policy permitted multiple providers to enter the marketplace on a relatively equal footing. In contrast, wireline telephony evolved through a regulated monopoly model, that even today we are striving to adapt to the market and technological world of 2001.

Question 5. Given the largely rural make up of the Eastern part of my state of Oregon, the timely deployment of broadband technologies to these areas is of great interest to me. I am concerned that imposing technology-based restrictions on access to the local loop would undermine our objective of promoting broadband competition in rural areas. What is your view on such restrictions?

Answer. I am not yet familiar with such restrictions and therefore I can offer no opinion at this time. If confirmed I commit to learning more about whether any FCC regulatory policies may inadvertently create a hurdle for broadband deployment to rural areas.

Question 6. The transition to digital television continues to be an issue of great importance. In fact, this Committee held a very informative hearing on this issue just a few months ago. What are your thoughts on how this transition can be done more efficiently and effectively?

Answer. My primary background is in the area of telecommunications and I am not as familiar with the pending broadcast proceedings. Having said that, I am aware of the need to ensure a smooth transition for digital television and I am excited about the range of new digital services that are now or will soon become available to the public. In order to encourage this transition, the FCC has an obligation to ensure its rules are clear. In addition, it may also be appropriate for the FCC to provide a forum for the resolution of controversial issues that may delay the transition. Although some of the factors affecting the transition are out of the control of the FCC, whenever the FCC can have an impact on the process, such as through its regulatory review process, it should move quickly to provide clear, definitive guidance to the industry.

Question 7. Deregulation has significantly affected the broadcasting industry. As we all know, the marketplace has become more competitive over the past several years. What are your thoughts on what can be done in order to keep the broadcast industry competitive in the marketplace today? What about in the smaller and medium sized markets?

Answer. At this time I have no specific suggestions regarding action the FCC should take to ensure the continued existence of a competitive broadcasting industry but this is certainly an area I intend to learn more about should I be confirmed. Clearly, diversity of voices and the need to ensure effective competition will be key elements in any discussion regarding broadcast ownership. In addition, free over the air broadcasters play a very significant role in the marketplace, particularly in small and medium sized markets. Again, since I have limited experience in this area I look forward to further discussions with you and your staff to further my understanding of the challenges affecting the broadcasting industry.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO
KATHLEEN Q. ABERNATHY

Question 1a. The responsibilities reposed in the Commission demand that its Commissioners understand that their job will require their full time and undivided attention to the matters before them and affirmatively agree to undertake these responsibilities in that manner.

Will you devote your full time and attention to your duties as a Commissioner?
Answer. Yes

Question 1b. Are there any activities in which you are now engaged, or in which you expect to be engaged, which would divert your full time and attention from your duties as a Commissioner?

Answer. No

Question 1c. Is there anything in your background, in your previous endeavors, or in your current plans, that would make you unsuitable for this responsibility?

Answer. No

Question 2. The FCC is an independent regulatory agency. Please describe how you view the appropriate relationship between the FCC and the Congress, and between the FCC and the Administration.

Answer. It is the FCC's responsibility to administer and implement communications policy as set forth by Congress. The FCC also works cooperatively with the National Telecommunications and Information Administration (NTIA) to develop national telecommunications policies and that agency is the representative of the Administration.

Question 3. The Washington Post recently said, "the modern-day FCC holds sway over much of the so-called New Economy." As Commissioners, you will therefore have a tremendous impact on the economy and will play a crucial role in shaping policy for the digital age. Given this responsibility, I would like to know what your general regulatory philosophy will be, what set principals will guide you in your decision making, and what will be your priorities as a member of the Commission.

Answer. My past experience with both large and small telecommunications companies and in government and private practice has molded and shaped my regulatory philosophy. First and foremost, the FCC must be faithful to the Telecommunications Act as written by Congress. Where the statute grants the Commission discretion, I generally trust that competitive markets free of regulatory distortions benefit consumers. Thus, fewer rules allow companies to respond to consumer demand more quickly and cost effectively and this usually translates into more choices and lower prices. Nevertheless, I realize that every rule has its exceptions. There are certainly instances where competition is so limited that companies need not be responsive to consumer demands and in those instances the government must stand ready to respond to protect the public interest. There are also instances where the government has articulated broad public policy goals that can not be furthered absent direct government oversight. Therefore, while my general philosophy is deregulation I appreciate the critical role that government plays in protecting consumer interests. If confirmed, and under the guidance of Congress, I hope to provide quick, decisive answers to industry questions, thereby avoiding regulatory uncertainty, and to closely adhere to the mandates of the Telecommunications Act in an effort to enhance the credibility of the FCC in the eyes of Congress and the Courts.

Question 4. Each year consumers pay more for cable television service. A recent USA Today article points out that cable rates are up 32 percent since the passage of the 1996 Telecommunications Act. Additionally, the FCC's February 2001 Report on Cable Industry Prices indicates that cable rates increased 5.8 percent over a 12-month period ending July 1, 2000. What, if any, further actions should the Commission take to encourage the development of competition in the provision of multi-channel video programming services?

Answer. I am certainly well aware of the concerns consumers express regarding the prices charged for cable television service. While I believe that the FCC has a somewhat limited role to play when it comes to rate regulation of cable companies, I do understand that it maintains and collects data regarding cable rates and I believe that data is critical to analyzing the scope and scale of the problem. In addition, the FCC can certainly implement policies that encourage and promote alternative forms of competition as a means of putting downward pressure on cable rates. I look forward to further discussions with you and your staff regarding the extent of this problem and the various regulatory options that may be available.

Question 5. How do you view the relationship between Universal Service and competition in the local exchange residential market?

Answer. Congress in the 1996 Act sought to promote competition while at the same time ensuring the preservation and advancement of universal service. Therefore, it is very important for the FCC to achieve a careful balance between maintaining affordable rates and promoting competition.

Question 6. We have heard a lot recently about increased demands for the allocation and reallocation of spectrum. What is your opinion of the current spectrum management and allocation process and what reforms, if any, would you propose?

Answer. At this time I will need to hear more about the various proposals suggested to reform the U.S. spectrum allocation process but I am aware that it is difficult to manage the process efficiently and effectively when a variety of different government agencies are involved in the process. Given that there are numerous,

competing demands for spectrum and that government controls the allocation process, it is critical that the FCC implement policies that ensure spectrum is available for new technologies while continuing to protect current users from harmful interference. I look forward to working with Chairman Powell in cooperation with NTIA and the Administration to develop a comprehensive spectrum policy that recognizes the importance of spectrum as a valuable, national resource.

Question 7a. What are your views on auctions as a means of assigning spectrum?

Answer. Congress has directed the FCC to use auctions as a means for assigning some parts of the spectrum and I believe the auction process is an important and effective licensing tool for the FCC. While it is not an appropriate licensing mechanism in all instances, for example where spectrum is assigned to public safety, it appears to have improved the FCC's ability to allocate licenses.

Question 7b. Are there instances in which auctions are currently used, but in your view they should not be?

Answer. The decision as to whether to utilize an auction for licensing various parts of the spectrum is fundamentally a legislative decision. Nor am I familiar enough with the current auction mechanisms to offer an opinion as to whether its use should be curtailed or expanded. I am anxious, however, to engage in further discussions with you or your staff regarding ways to improve the FCC's auction processes.

Question 7c. Are there instances in which auctions should be used, although they currently are not?

Answer. As stated previously, I am not familiar enough with the current auction mechanisms utilized by the FCC to offer an opinion but I am anxious to learn more about the impact auctions have on the FCC's licensing process.

Question 8. As The Wall Street Journal recently stated, "[It has been] five years since the passage of the Telecommunications Reform Act, [and] huge segments of the industry are in dire straits. Intended to spur competition, the law has left long-distance companies struggling with low profits, the Bell local phone companies still angling to get into long distance, cable-TV rates on the rise, and many phone and high-speed Internet service start-ups on the verge of collapse. Consumers, many say, aren't much better off than before." Where do you feel the 1996 Telecommunications Act has worked and where it hasn't?

Answer. I continue to believe that the Communications Act laid out an appropriate blueprint for the development of competition and we should stay the course. It now appears that many of the predictions made at the time of the passage of the Act were overly optimistic and it also appears we expected too much too soon from technology and the industry. The Act did not change normal business cycles nor did it ensure immediate mass availability of certain new technologies. That being said, I remain confident that we are headed in the right direction.

Question 9. Last year, I introduced legislation regarding low-power FM radio service. Low-power FM is supported by many national and local organizations who seek to provide the public with increased sources of news and perspectives in an otherwise increasingly consolidated medium. This legislation would have struck a fair balance by allowing non-interfering low-power FM stations to operate while affecting only those low-power stations that the FCC finds to be causing harmful interference in their actual, everyday operations. You don't have to comment on my legislation, but what is the best way to balance existing incumbents, while allowing new technology to move forward?

Answer. It is important to continue to encourage the development of new technology, especially those that are spectrum efficient. At the same time, the FCC must continue to ensure that existing licensees are protected from harmful interference. Therefore, the FCC should similarly engage in a balancing process by continuing to implement policies that encourage new applications and technologies while also clearly articulating the rules of the road when it comes to interference standards.

Question 10. As you know, this Committee has held several hearings on the transition to digital television. Several witnesses have testified before the Committee that the transition to digital television will not occur by the deadlines set by Congress. What can be done to facilitate the DTV transition?

Answer. My primary background is in the area of telecommunications and I am not as familiar with the pending broadcast proceedings. Having said that, I am aware of the need to ensure a smooth transition for digital television and I am excited about the range of new digital services that are now or will soon become available to the public. In order to encourage this transition, the FCC has an obligation to ensure its rules are clear. In addition, it may also be appropriate for the FCC to provide a forum for the resolution of controversial issues that may delay the transition. Although some of the factors affecting the transition are out of the control of the FCC, whenever the FCC can have an impact on the process, such as through

its regulatory review process, it should move quickly to provide clear, definitive guidance to the industry.

Question 11. In light of the dramatic changes in the telecommunications marketplace over the last several decades, how do you plan to approach review of the FCC's broadcast ownership rules in the next biennial review?

Answer. As required by Congress, it is important for the FCC to continually evaluate its rules to ensure they continue to benefit the public interest and to ensure they remain relevant and appropriate in the rapidly changing telecommunications marketplace. I will keep an open mind when it comes to reviewing these rules with the understanding that the need to ensure effective competition will be a key element of such an analysis.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO
KEVIN J. MARTIN

Question 1a. The responsibilities reposed in the Commission demand that its Commissioners understand that their job will require their full time and undivided attention to the matters before them and affirmatively agree to undertake these responsibilities in that manner.

Will you devote your full time and attention to your duties as a Commissioner?

Answer. Yes, I will.

Question 1b. Are there any activities in which you are now engaged, or in which you expect to be engaged, which would divert your full time and attention from your duties as a Commissioner?

Answer. No, there are not.

Question 1c. Is there anything in your background, in your previous endeavors, or in your current plans, that would make you unsuitable for this responsibility?

Answer. No, there is not.

Question 2. The FCC is an independent regulatory agency. Please describe how you view the appropriate relationship between the FCC and the Congress, and between the FCC and the Administration.

Answer. The FCC was created by Congress to develop and implement communications policy concerning interstate and international communications. The FCC is, in effect, an arm of Congress and is responsible for implementing the will of Congress as expressed in statute. The agency should maintain an open and cooperative working relationship with Congress, seeking guidance as to the letter and spirit of the laws the FCC implements and enforces.

The Commission is, of course, an independent agency. It is appropriate for the Administration to express its policy views to the Commission, consistent with the FCC's role as an independent regulatory agency.

Question 3. The Washington Post recently said, "the modern-day FCC holds sway over much of the so-called New Economy." As Commissioners, you will therefore have a tremendous impact on the economy and will play a crucial role in shaping policy for the digital age. Given this responsibility, I would like to know what your general regulatory philosophy will be, what set principals will guide you in your decision making, and what will be your priorities as a member of the Commission.

Answer. I believe the FCC should ensure that American consumers continue to enjoy the benefits of the best communications system in the world. The Commission should create an environment that fosters competition while preserving and enhancing the ability of all Americans to enjoy the benefits of new technology and services. Where the marketplace is working, competition can serve to maximize consumer choice, access and affordability. When the marketplace is not working, however, it is incumbent on the FCC to take concrete steps to protect consumers and open markets.

If confirmed, my priorities as a member of the Commission would be: (1) to provide a clear regulatory framework that promotes competition and enhances the ability of all Americans to enjoy new technology and services; (2) to support streamlining regulations where it would further competition, foster innovation, and enhance consumer choice; and (3) to play a constructive role in defining and implementing needed reforms to make the FCC more efficient, effective, and responsive.

Question 4. Each year consumers pay more for cable television service. A recent USA Today article points out that cable rates are up 32 percent since the passage of the 1996 Telecommunications Act. Additionally, the FCC's February 2001 Report on Cable Industry Prices indicates that cable rates increased 5.8 percent over a 12-month period ending July 1, 2000. What, if any, further actions should the Commission take to encourage the development of competition in the provision of multi-channel video programming services?

Answer. The Commission should indeed strive to encourage increased competition among multichannel video programming services. I look forward to reviewing further action the FCC could take to foster the deployment of new, video-capable technologies to remove entry barriers and obstacles to full multichannel competition for existing video technologies, and to vigorously enforce the Commission's existing rules to these ends.

Question 5. How do you view the relationship between Universal Service and competition in the local exchange residential market?

Answer. In 1996, Congress codified the long-held view that all Americans should be able to enjoy the benefits of access to affordable communications services. Congress also directed the FCC to make previously implicit subsidies explicit and competitively neutral. As a result, providers should be able to offer services at a rate that is affordable for consumers to purchase while still earning a competitive return on its investment—thereby creating the incentive for providers to enter, and compete in, high-cost markets.

Question 6. We have heard a lot recently about increased demands for the allocation and reallocation of spectrum. What is your opinion of the current spectrum management and allocation process and what reforms, if any, would you propose?

Answer. Spectrum management is an issue of global competitiveness and might well prove the most important trade issue of this decade. Allocation decisions have become increasingly complex as technology advances, user demand grows, competitors increase, and international considerations become more prominent. The FCC needs to respond to these challenges by improving its spectrum management and allocation process. Sound, efficient spectrum management must strike a balance between the desire to facilitate deployment of innovative technologies that make new and more efficient uses of spectrum, and the potential for harmful technical interference to existing licensees.

Question 7a. What are your views on auctions as a means of assigning spectrum? Are there instances in which auctions are currently used, but in your view they should not be?

Answer. I am a firm supporter of auctions as a useful tool to efficiently assign spectrum, while enabling taxpayers to benefit from the sale of this public property. It is important, however, that the auction process remain at its core a means of assigning spectrum, not simply a means of raising revenue absent consideration of communications policy. I have not yet had the opportunity to study whether there are specific instances in which auctions are currently used but should not be.

Question 7b. Are there instances in which auctions should be used, although they currently are not?

Answer. Again, I have not yet had the opportunity to study whether there are instances in which auctions are not currently used but should be. As I stated above, however, I believe auctioning spectrum can promote efficient assignment and I support the use of this tool wherever appropriate.

Question 8. As The Wall Street Journal recently stated, “[It has been] five years since the passage of the Telecommunications Reform Act, [and] huge segments of the industry are in dire straits. Intended to spur competition, the law has left long-distance companies struggling with low profits, the Bell local phone companies still angling to get into long distance, cable-TV rates on the rise, and many phone and high-speed Internet service start-ups on the verge of collapse. Consumers, many say, aren't much better off than before.”

Where do you feel the 1996 Telecommunications Act has worked and where it hasn't?

Answer. The 1996 Act was the first major review of the Act since 1934, and it succeeded in affirming and refining a course towards convergence, competition across and within markets, and deregulation. Although it is probably too soon to declare the Act a success or failure in most areas, it is clear that competition in local residential markets has not taken hold as quickly as most observers in 1996 hoped for or anticipated.

The Act has been more successful in the area of wireless services. Recognized and building upon the then-emerging innovation in mobile wireless technology, the 1996 Act set forth policies that have fostered competition and continued growth.

Question 9. Last year, I introduced legislation regarding low-power FM radio service. Low-power FM is supported by many national and local organizations who seek to provide the public with increased sources of news and perspectives in an otherwise increasingly consolidated medium. This legislation would have struck a fair balance by allowing non-interfering low-power FM stations to operate while affecting only those low-power stations that the FCC finds to be causing harmful interference in their actual, everyday operations. You don't have to comment on my legis-

lation, but what is the best way to balance existing incumbents, while allowing new technology to move forward?

Answer. Promoting the deployment of new technology can enhance the public interest in a rich diversity of services if this can be done on a viable basis free of harmful interference. The Commission should always work to efficiently use spectrum by fostering the use of services that will not cause such interference, and by promptly investigating and acting upon claims of harmful interference.

Question 10. As you know, this Committee has held several hearings on the transition to digital television. Several witnesses have testified before the Committee that the transition to digital television will not occur by the deadlines set by Congress. What can be done to facilitate the DTV transition?

Answer. The DTV transition is well underway, and I am excited about the range of new digital services that are becoming available to the public. But conversion from analog to digital television is one of the most complex undertakings the broadcast industry has ever pursued, and the DTV transition clearly has been slower and less certain than expected. To help facilitate the ongoing transition, the FCC should provide effective leadership by coordinating and expediting necessary regulatory determinations while ensuring that the various parties involved continue working toward resolution of the key remaining issues.

Question 11. In light of the dramatic changes in the telecommunications marketplace over the last several decades, how do you plan to approach review of the FCC's broadcast ownership rules in the next biennial review?

Answer. As instructed by Congress in the 1996 Telecommunications Act, I would closely review the record to determine whether the FCC's broadcast ownership rules "are necessary in the public interest as the result of competition." Diversity of voices and competition will continue to be key elements in such an analysis. This analysis must be rigorous, based on a strong record and well reasoned, if the FCC's decision is to withstand judicial scrutiny.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GORDON SMITH TO
KEVIN J. MARTIN

Question 1. The price a local exchange carrier charges in rural areas is artificially low and kept low because of our universal service policy. For competition to develop, a business needs to attract that customers. How do we attract companies to compete with the local exchange carriers and build out advanced services to rural areas when the price normally charged is kept universally low?

Answer. Successfully implementing a policy that promotes competition and preserves universal service is not just a statutory requirement, it is essential if all Americans are to enjoy the benefits of new technologies and services. Congress established a structure that would keep services in high cost areas affordable, but also would grant providers in these markets subsidies that would be explicit, sufficient, and competitively neutral. As a result, providers should be able to offer services at a rate that is affordable for consumers to purchase while still earning a competitive return on its investment—thereby creating the incentive for providers to enter, and compete in, high-cost markets.

Universal service issues are complex, but progress is being made to fulfill the statutory mandates of Section 254—providing reasonably comparable services at reasonably comparable prices for rural areas. For the Commission to get the answers right, it must achieve a careful balance between maintaining affordable rates and promoting competition and the deployment of services.

In addition, advances in technology hold the promise of being able to provide services to rural areas in more efficient and cost effective manner. Fixed wireless technologies, for instance, hold particular promise for these underserved areas.

Question 2. As broadband continues to be deployed in the urban technology communities in Oregon, I am hearing from Oregonians in some of these lesser populated areas that they are afraid that their communities are going to be passed by. Our largest local exchange carriers in Oregon are Qwest, Verizon and Sprint, and they are all working with the Oregon Public Utility Commission to build out their infrastructure throughout the state. What concerns me, is that rural deployment is not being made as rapidly, or as broadly in our rural areas, as I would like to see. When I raise this issue with the local exchange carriers who serve many of these communities with telephone service, they say that the regulatory policies that were designed to promote competition in their telephone business are being extended to include these new advanced services, and these regulatory costs slow down the investment available to bring advanced services to rural areas. So while I fully support the notion that competition in telephone service has been good for our urban busi-

ness communities, I am concerned that those same policies, when applied to these new advanced services, are making it harder for my rural constituents to gain access to these new technologies. Would you discuss your approach to the regulatory role for these advanced new services, and whether you view the increased costs for the local exchange carriers to be a problem for rural America?

Answer. In the 1996 Act, Congress created an evolving definition of universal service to ensure that rural areas received reasonably comparable services at reasonably comparable prices to urban areas. Congress also provided the FCC with great flexibility in Section 706 to encourage the deployment of advanced services to all Americans by price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

I do believe that the cost for local exchange carriers in rural America to provide advanced services is a deep concern for all of us, and I would examine the existing situation closely in order to make an informed judgment about whether additional action is needed.

Question 3. These advanced new services called “broadband”, are provided with a variety of new technologies. The “local exchange carriers” have DSL service, cable companies have cable modems, and satellite and wireless carriers are also in the market, and maybe others will be entering that we don’t even know about. All have some sort of government regulation whether local, state or federal. Do you think our policy should be technology neutral, or do you think we should continue our current policies which apply different regulatory policies to each competitor based on the technology used to provide the broadband access?

Answer. One of the biggest challenges facing the Commission today is technological convergence, which has resulted in comparable services being regulated differently depending on the nature of the underlying technology. The Commission’s proper role is not to pick winners and losers among competing technologies. Rather, it should strive to adopt policies that are technologically neutral. There are constraints on its ability to accomplish this task, however, for the Communications Act and historical precedent treat various technologies differently, subjecting them to separate and distinct regulatory regimes.

Question 4. When I look at the telecommunications market that has evolved in this country during the past five years, it appears to me that the most successful sector of the market in terms of growth, attracting investment, deploying new technologies, and providing new services to amazing numbers of Americans, both rural and urban, is wireless communications. It seems that real customer demand has “pulled” the wireless investment and new technologies into the marketplace, not only here, but around the world. Even in areas where they have never had any communications network. On the other hand, these “pro-competitive regulatory policies” as applied to the telephone companies seem to be slowing down investment and delaying technological innovation, in their attempts to “push” competition into the marketplace. As a regulator, do you think the role of government should be to “push” competition through regulatory policies, or to allow deregulated markets to “pull” the investments create competition? Do you see any disparity between wireless and wireline in bridging the digital divide?

Answer. I believe the role of the FCC is to ensure that American consumers continue to enjoy the benefits of the best communications system in the world. The Commission should promote an environment that fosters competition while preserving and enhancing the ability of all Americans to enjoy the benefits of new technology and services.

In the 1996 Act, Congress instructed the FCC to foster competition by implementing specific deregulatory and market-opening provisions. Where the marketplace is working, competition rather than regulation will help maximize consumer choice, access and affordability. When the marketplace is not working, however, it is incumbent on the FCC to take concrete steps to protect consumers and open markets.

I believe continued deployment of both existing and advanced wireline and wireless services will be critical to enabling consumers in rural areas to enjoy services and prices that are reasonably comparable to that provided in urban America. The FCC needs to ensure it is creating a legal framework that encourages investment in new technologies that could facilitate deployment to underserved areas. Fixed wireless, for instance, hold particular promise as a means of providing service to rural areas in a more efficient and cost effective manner.

Question 5. Given the largely rural make up of the Eastern part of my state of Oregon, the timely deployment of broadband technologies to these areas is of great interest to me. I am concerned that imposing technology-based restrictions on access

to the local loop would undermine our objective of promoting broadband competition in rural areas. What is your view on such restrictions?

Answer. The timely deployment of broadband services to rural areas should be a priority concern. The goal should be to facilitate investment while removing unnecessary regulatory barriers. In such respects, technology-based restrictions need to be examined to see if they are outdated or counterproductive.

Question 6. The transition to digital television continues to be an issue of great importance. In fact, this Committee held a very informative hearing on this issue just a few months ago. What are your thoughts on how this transition can be done more efficiently and effectively?

Answer. The DTV transition is well underway, and I am excited about the range of new digital services that are becoming available to the public. But conversion from analog to digital television is one of the most complex undertakings the broadcast industry has ever pursued, and the DTV transition clearly has been slower and less certain than expected. To help facilitate the ongoing transition, the FCC should provide effective leadership by coordinating and expediting necessary regulatory determinations while ensuring that the various parties involved continue working toward resolution of the remaining issues.

Question 7. Deregulation has significantly affected the broadcasting industry. As we all know, the marketplace has become more competitive over the past several years. What are your thoughts on what can be done in order to keep the broadcast industry competitive in the marketplace today? What about in the smaller and medium sized markets?

Answer. We have witnessed a dramatic expansion in the video marketplace over the last several years. New entrants using a variety of technologies have increased both the number of voices and diversity of viewpoints. The role of the FCC is to review this market on an ongoing basis to ensure that its actions encourage competition, not impede it. More specifically, Congress has instructed the FCC, in the context of a biennial review, to assess the impact that recent mergers and other factors have had on the media marketplace, and to determine whether these market changes demand a corresponding change in the FCC rules in order to ensure that such rules continue to serve the public interest. Of course, diversity of voices and competition will continue to be key elements in such analysis. The impact may vary based upon the size of the market, and the FCC should consider this factor in its assessment.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO
KEVIN J. MARTIN

Question 1. The FCC has taken action to reform Universal Service funding for both large and small carriers. It is also in the process of reforming access charges for small carriers, and has opened a proceeding to review the existing structure of intercarrier compensation. In addition, I expect that voice traffic will increasingly migrate to the Internet, potentially bypassing the access charge regime. With that said, what role do you believe the FCC has with respect to balancing the need to ensure that the universal service fund remains sufficient to address the needs of consumers in high cost areas as well as ensuring that rates across the country remain affordable?

Answer. Universal service is a critical component of U.S. communications policy. Congress has enacted into law our desire as a society that all Americans should be able to access and afford communications services. Yet, universal service issues are as challenging as they are important. The FCC must ensure that there are sufficient funds to fulfill the statutory mandates of Section 254—that is, to ensure that rural areas have access to reasonably comparable services at reasonably comparable rates as urban areas. In so doing, the FCC must achieve a careful balance between preserving ubiquitous universal access, maintaining affordable access to communications services across the country, and promoting the deployment of services to all Americans. This balance requires the FCC to review continually its universal service policies as technology and the marketplace develop, in order to be sure that its statutory mandate and the underlying policy goals continue to be met.

Question 2. Mergers continue to take place in the broadcast industry. The FCC also plans to review the various broadcast ownership rules including the 35 percent cap and the newspaper cross ownership rules. Are you concerned about the increasing consolidation of the TV industry, and the already highly consolidated radio industry? Are you concerned about the impact this consolidation will have on diversity of programming, viewpoint, and ownership?

Answer. I am concerned about consolidation and concentration in the broadcast industry and with preserving a diversity of voices. I am also concerned about maintaining a competitive broadcast industry. Indeed, these are key elements underlying the Commission's ownership rules. If confirmed, as part of the FCC's next requisite biennial review of the broadcast industry regulations, I will closely review the record to assess the impact that recent mergers and other factors have had on the marketplace. Without question, the diversity of voices and the remaining levels of competition will continue to be key elements in this analysis. To satisfy our statutory obligations and meet the standards established by reviewing courts, this analysis must be rigorous and whatever conclusions are reached must be clearly articulated and justified with the record before the Commission.

Question 3. Over the past few years, the issues that are critical to the digital transition have been split into several separate FCC proceedings handled by different bureaus. Currently, digital biennial review issues, carriage issues, interoperability issues, and spectrum reallocation issues—to name a few—are being handled in different bureaus within the Commission. Thus, when decisions are made, they are made incrementally and possibly without considering the larger picture of what the DTV transition should look like. This creates a great deal of uncertainty in the industry about what regulatory standards will apply, making it difficult to create effective business plans to bring the wonders of DTV to the American public. What vision of the DTV transition will you bring to the Commission and how would you ensure that decisions are made comprehensively, fairly and with finality?

Answer. The DTV transition is well underway, and I am excited about the range of new digital services that are becoming available to the public. But conversion from analog to digital television is one of the most complex undertakings the broadcast industry has ever pursued, and the DTV transition clearly has been slower and less certain than expected. To help facilitate the ongoing transition, the FCC should provide effective leadership by coordinating and expediting necessary regulatory determinations while ensuring that the various parties involved continue working toward resolution of the remaining issues.

Question 4. In 1999, the FCC determined that no single wireless provider can possess more than 45 MHz of spectrum in most markets, and more than 55 MHz in rural markets (out of 180 MHz available). This cap is designed to preserve multiple wireless competitors in individual markets and limit the amount of consolidation that can occur in any one market. The existence of the cap has helped create markets with four to seven major competitors. Some wireless companies note that the wireless markets are sufficiently competitive and that lifting the spectrum caps would allow them to provide third generation wireless service. However, some smaller and more recent entrants are concerned that lifting of the cap would result in larger cellular carriers purchasing them. I am concerned that changes with respect to the spectrum caps may adversely impact competition in the wireless marketplace. Do you believe that it is important to maintain a competitive wireless marketplace?

Answer. Yes, I believe that promotion and maintenance of a competitive wireless marketplace is not just important, but essential to the successful development and deployment of affordable services to all Americans. Clearly, though, the Commission should approach any review of its spectrum cap with a full appreciation of the vital role a competitive wireless industry will play in ensuring no Americans are left behind in today's technological revolution. The Commission also should look to see whether its rules promote or impede these goals and should assess their effect upon innovation and the availability of improved services to the public.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BARBARA BOXER TO
KEVIN J. MARTIN

Question 1. As interactive television becomes a common method for accessing the web over the next few years, are you concerned that companies who are cable providers, own channels, and have websites might discriminate against the content of their competitors?

Answer. Interactive television is an emerging arena promising an array of new services and challenges. The Commission recently issued a Notice Of Inquiry seeking comment on some of the issues related to interactive television. The FCC compiled a record of comments that reflect a variety of viewpoints, including such concerns about possible discrimination as well as cautions against premature regulation of nascent technologies. I look forward to closely reviewing the record, if confirmed.

Question 2. I understand that the FCC has put out for comment a proposal to change the E-rate funding plan for year 4 of the program, to not allow those who participated in the program in year 3 (the current year). While I understand that

it is important to spread the program around, would it not be better to make this change at the beginning of the next application phase than at the end of the current application phase? Isn't this changing the rules in the middle of the game?

Answer. I am always concerned about, and hesitant to make, a change to the rules in the middle of the game, but I would need to review the proposed change and the supporting rationale for it in order to determine whether circumstances warrant such action in this situation. I am not familiar with the FCC's reasons for suggesting this change and thus am not able to make a determination of the merits. I fully agree, however, that implementation of the E-rate program must be fair and nondiscriminatory to all schools and libraries.

Question 3. There has been consistent RBOC (Regional Operating Bell Companies) failure to meet the Section 271 metrics imposed in Texas and NY. The current penalty system is not acting as a deterrent to this behavior. Do you intend to initiate formal Commission review of merger condition violations and "backsliding" following Section 271 approval?

Answer. If confirmed, I will support effective enforcement of merger conditions and our Section 271 authority to promote competitive and open local markets. If claims of violations and "backsliding" are best addressed in the context of a formal FCC review, I would support such action.

Question 4. Do you support Chairman Powell's view that penalties and forfeitures for violations of the FCC's rules and orders need to be substantially increased so that they deter conduct rather than be viewed as another cost of doing business?

Answer. Yes, I strongly support this initiative.

Question 5. To ensure that new market entrants are not impeded by poor RBOC performance and that the actual injured party is compensated, would you support the development of national performance standards and penalties for ordering, provisioning, maintenance and repair for all RBOCs, irrespective of 271 status, and direct payment to the injured party?

Answer. Local competition lags well behind the levels anticipated by Congress and the FCC, and the Commission should make the promotion of local competition a top priority. The development of national performance standards and penalties is an interesting idea and, if confirmed, I look forward to exploring the merits of the proposal. Obviously, any such evaluation would have to look at the Commission's statutory authority and the appropriate relationship with state public utility commission policies.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MAX CLELAND TO
KEVIN J. MARTIN

Question 1. I am a former Army Signal officer. I know that in order to deliver communications, you need spectrum over which those signals travel. What role do you believe the FCC has in promoting smart spectrum policy? How do you envision developing a relationship with the National Telecommunications & Information Administration (NTIA) to ensure good communications between the public and private spectrum managers?

I would also like your comments on how the U.S. compares to Europe and Asia as far as domestic spectrum policy for each of these areas is concerned.

Answer. Spectrum management is an issue of global competitiveness and might well prove to be the most important trade issue of this decade. Allocation decisions have become increasingly complex as technology advances, user demand grows, competitors increase, and international considerations become more prominent. The FCC needs to respond to these challenges by establishing a clear, smart spectrum policy that strikes a balance between the desire to facilitate deployment of innovative technologies that make new and more efficient uses of spectrum, and the potential for harmful technical interference to existing licensees. As you suggest, the Commission also needs to ensure an effective relationship with NTIA based on an open and ongoing dialogue about public and private spectrum needs. This collaboration is not just statutorily required, but it also is increasingly important to promote the efficient use of spectrum.

U.S. spectrum policy is in fact an amalgamation of the policies of the FCC and NTIA, for it must reflect the needs of the private sector and government while ensuring our national security is not compromised. Although I have not yet had the opportunity to become closely familiar with the spectrum policies of Europe and Asia, my understanding is that the spectrum management responsibilities in many governments of Europe and Asia are not as widely shared as they are in the U.S. While these systems may yield a higher level of efficiency in decision-making in some cases, the U.S. has achieved significant innovation, in part, because of the var-

ious interests that participate in our spectrum policy process. Again, it is important for the U.S. to strive for a continuing balance between the need for full participation and the need for timely, forward-looking decision-making.

Question 2. I strongly support free over-the-air television, and I know that without the must carry obligation, many broadcasters would not reach their audiences. A few years ago, Congress acted to level the playing field between multi-channel broadcasters by requiring direct broadcast satellite (DBS) systems to comply with the same must carry regulations as the cable industry. The satellite industry has subsequently challenged this provision in the federal courts.

In Georgia, for instance, we are served by 11 local television "Designated Market Areas." The DBS operators carry some local channels in two markets: 10th-ranked Atlanta and 35th-ranked Greenville-Spartanburg, which primarily serves the Carolinas. But in the other markets, DBS providers carry no Georgia stations.

The NAB and local broadcasters, including three stations in GA—WPXA (Rome, GA—PAX); WBSG (Brunswick, GA—PAX); and WRDW (Augusta, GA—CBS)—have filed comments with the FCC supporting the opportunities of Northpoint Technology and its Broadwave affiliates. The broadcasters point out that Northpoint may be able to carry local channels on a must carry basis in all 210 television markets. Could you discuss local-into-local implementation and the potential opportunities presented by Northpoint technology?

Answer. Congress carefully crafted a structure for DBS must-carry that is analogous to, but distinct from, cable. The FCC has taken steps to implement this framework, and, if confirmed, I will work to ensure its efficient implementation and enforcement.

My understanding is that the Northpoint matter is now pending before the Commission following detailed engineering studies. The issues appear to be technical and policy in nature, raising questions of interference and whether the spectrum should be auctioned. If confirmed, I certainly will take a hard look at the merits of this matter and encourage timely action by the agency.

Question 3. Does the FCC see unbundled network element platform (UNE-P) as a legitimate vehicle for providing competitive service to residential and small business customers? For multi-location business customers?

Answer. Although I am not able to speak for the current FCC, clearly, residential and business customers alike could benefit from further competition in local exchange services. If confirmed, I will make the enhancement of local competition a priority and will study the merits of UNE-P as a means to that end in the residential and business markets generally, and in the multi-location business market in particular.

Question 4. As you know local phone service competitors have been working hard to gain more customers. Is there a particular segment of the population—residential, small business, medium business, large business, urban, suburban, and rural—that in your opinion has received the majority of the benefits of competition in the local phone market? Where is more work needed?

Answer. Many observers believe that businesses have enjoyed the most competition among local exchange providers, but that there is less competition for residential consumers. The goal should be to promote an environment that fosters competition in all markets for local phone service—particularly those in rural areas.

Question 5. There has been much talk about revamping the FCC. I would like to get your comments on this. Are there changes you would make? If so, what are they?

Answer. Having worked at the Commission, I have great respect for the agency and its staff, but also an appreciation for ways in which the FCC clearly could benefit from reform. If confirmed, I will support the efforts initiated by Chairman Powell to spearhead a comprehensive FCC reform project, and I look forward to working with the Chairman and my colleagues on this critical effort to enhance the efficiency, expertise, and effectiveness of the agency.

Question 6. Several states have established their own policies on certain issues. For example, Pennsylvania, New York, and Texas has established their own directives on UNE-P. What role do you see the state public service commissions serving in shaping and complementing federal communications policy?

Answer. Federal communications law makes clear that state public service commissions have an important role in shaping communications policy and are a complement to federal regulation and policy. Indeed, it is important that the FCC cooperate with state PUCs in several areas, most notably competition in local exchange markets. Important formal and informal mechanisms exist to facilitate the exchange of views between states and the Commission, and I look forward to participating actively in this dialogue.

Question 7. What do you see as the role of the FCC in the merger review process?

Answer. In reviewing proposed mergers, the FCC must ensure that the transfer of licenses serves the public interest, convenience and necessity. This review requires a fact-specific inquiry. Each merger presents unique issues and I would evaluate each on its own merits.

Question 8. Currently, an Internet service provider (ISP) opens the entire world wide web to its user. However, there are some who are concerned that broadband capability, whether via a computer or television, will allow an ISP to limit consumers' access or prohibit their accessing certain sites. I would like to get your comments on the capability to, and fairness of, limiting access.

Answer. Technology exists that allows ISPs some level of ability to limit access to content. This ability could be used to the benefit of consumers; for instance, parents with young children may prefer an ISP that limits access to adult content. On the other hand, if ISPs use technology to limit access in a way contrary to what consumers desire, customers will surely look elsewhere. If alternative providers do not exist, however, this could indeed raise concern. The Commission must be vigorous in protecting consumers, but I am optimistic that the marketplace for ISPs will develop in a manner that will continue to promote consumer choice.

Question 9. When we passed the Telecommunications Act in 1996, we intended that all American consumers, including those in rural areas, would benefit from competition through more choices, lower prices, and new and innovative services. Since that time, there hasn't been much competitive entry in rural areas. What specific steps can the FCC take to bring local competition to all areas of the country?

Answer. As we have witnessed over the last five years, bringing local competition to all Americans is not a simple task. The FCC must work to create a regulatory environment that provides incentives to invest in new technologies and to enter new markets, particularly in rural and underserved areas. Establishing this framework will require the FCC to be vigilant in policing discriminatory conduct and identifying and removing entry barriers. It must also ensure that the universal service program strikes the right balance between maintaining affordable rates and promoting competition and the deployment of services.

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

Question 1. The Communications Act gives the FCC authority to act based on the public interest. This authority provides an FCC commissioner with an ability to balance the issues before them based on the "greater good." I believe this authority is important and necessary in developing communications policy and ensuring such factors as rates, competition, quality of service, and consumers are protected. What importance do you place on the FCC's public interest authority?

Answer. The FCC's public interest authority is the cornerstone of the FCC's power to establish and implement communications policy that helps ensure American consumers continue to have access to the best communications system in the world.

Question 2. There have been many mergers and substantial consolidation in the marketplace. How can the FCC ensure that rates, service, innovation, and competition are not undermined by consolidation?

Answer. Congress and the Commission together establish the framework and implementing guidelines for the degree of permissible consolidation in regulated communications industries. This regulatory structure incorporates a review of many factors, including the impact of mergers on the marketplace, in terms of the effect on rates, service, innovation, competition, and diversity. Through this regulatory process and by reviewing individual mergers, the FCC ensures that the transfer of control of an FCC license serves the public interest.

Question 3. Congress passed the 1996 Telecommunications Act outlining a structure to introduce competition into the local markets. Under the Act, the FCC is required to oversee a section 271 process. From your perspective, how important is it for our local markets to be open to competition?

Answer. It is extremely important that our local markets be open to competition. Doing so is both a statutory requirement and an essential predicate to bringing the benefits of choice and affordable access to all Americans.

Question 4. Congress often hears from competitors in the marketplace about difficulties in gaining access to the phone networks of incumbent carriers. Chairman Powell recently stated that Congress should increase the FCC's enforcement authority including increasing its forfeiture authority. Do you believe that the FCC should more vigorously pursue violators of its local competition rules?

Answer. Yes, I support Chairman Powell's proposal and desire to vigorously enforce rules aimed at increasing competition.

Question 5. For many years, the FCC crafted policies to integrate the so called "off-shore" points, including Hawaii and Alaska, into the structure of telecommunications rates and services prevailing in the Mainland states. Historically, long distance rates to these states were often greatly in excess of those prevailing in the Mainland states. Indeed, at one point these were treated as "international points" for purposes of the carriers' rate structures. Also, the FCC encouraged the averaging of rates so as to assure that all Americans, including residents in rural and remote areas, had the benefit of reasonably priced telecommunications. This was perceived as essential to the social and economic integration and development of these areas. In the Telecommunications Act of 1996, Congress added Section 254(g) to the Communications Act of 1934. This provision codified and expanded these FCC policies. Both at the FCC and in Congress, these steps were deemed necessary even with increased competition in telecommunications in order to assure that all Americans benefitted from the changes in the telecommunications market. Subsequently, the FCC issued rules implementing the statutory mandate, which are included in the Commission's rules as 47 CFR 64.1801.

Are you familiar with these policies? Are you familiar with the telecommunications issues facing rural and remote areas? Do you agree with the policies set forth in the FCC's rate integration and geographic averaging policies and the Congressional mandate?

Answer. I am familiar with these policies and am very concerned about the telecommunications issues facing rural and remote areas. I believe that the rate integration and geographic averaging policies are consistent with the governing statute and, if confirmed, I will faithfully implement the Congressional mandate to promote competition in all areas of America and to ensure that rural areas have access to reasonably comparable services at reasonably comparable rates as urban areas.

Question 6. For many years, direct broadcast satellite (DBS) providers did not serve residents of the States of Alaska and Hawaii. This prompted the FCC to adopt rules in 1996, which mandated DBS service to the States using all DBS orbital locations with a clear view of the States. Some limited service was provided starting late in 2000, however, this service is not equivalent to the service available in the continental United States in terms of price, quality, or quantity of programming. Are you familiar with the FCC's policies governing the provision of DBS services to Hawaii and Alaska? Do you agree that the FCC should take steps to assure that residents in these states have available the DBS services that are substantially equivalent to those provided on the Mainland?

Answer. I generally agree that we must work in a cooperative manner to make sure that no one is left behind and that all Americans enjoy access to new services such as DBS. I am not specifically familiar with the FCC's policies governing the provision of DBS services to Hawaii and Alaska, but I am eager to see all Americans enjoy the benefits of competition among multiple video programming services. If confirmed, I will examine this issue to ensure that providers comply with all applicable statutory and regulatory provisions.

Question 7. On several occasions over the past twenty years, we have adopted legislation and made findings to the effect that the FCC needs to ensure that minorities and women enjoy every reasonable opportunity to seek work in the broadcast and cable industries on the basis of merit. Our concern is that these industries use public spectrum and rights of way worth billions of dollars, and these industries play a special role in the socialization of children, the formation and dissemination of culture, and the effectuation of democracy; thus, race and gender exclusion is unacceptable. Assume that the FCC will implement equal employment opportunities policies in a manner that meets constitutional standards.

Do you favor FCC intervention to ensure, at a minimum, that broadcast and cable companies analyze their recruitment efforts periodically to be sure that they are reaching the entire community? Do you favor FCC intervention to ensure that these companies take steps to ensure that they also recruit minorities and women?

Answer. I am concerned about ensuring a fair opportunity for all Americans to participate in the media at every level. If confirmed, I would encourage effective minority outreach programs implemented in a manner that meet constitutional standards.

Question 8. Since at least 1977, there has been a broad consensus among FCC commissioners that policies to foster minority ownership of broadcast and cable facilities serve the public interest. FCC Chairmen Wiley, Ferris, Fowler, Patrick, Sikes, Lee, Quello, Kennard and Powell have endorsed these efforts, as have the National Association of Broadcasters and the National Cable Television Association, among many others. As far as we are aware, only one FCC commissioner since 1977 has ever opposed these policies. Currently, according to NTIA, only about 3 percent of broadcast properties are owned by minorities; the Minority Media and Tele-

communications Council estimates that these properties account for only about 1 percent of broadcast industry asset value.

Assuming that the FCC's policies are operated in a manner that satisfies the constitutional standards, do you think it is good policy for the federal government to take pro-active steps to foster minority media ownership? In the past, the FCC has utilized such policies as tax incentives and bidding credits. What kinds of policies should the FCC pursue in fostering minority media ownership?

Answer. Diversity is an important value and I would welcome federal government actions that foster minority media ownership. I am, however, cognizant of where courts have spoken on this issue and would support such actions that are taken in Constitutionally permissible ways.

I would support the FCC's pursuit of policies that would serve the public interest and promote minority media ownership consistent with Constitutional requirements.

Question 9. When the FCC recently voted to allow one of the four major television networks to own UPN or WB, a majority of the Commission held that on the facts of that case it was more important to preserve diversity of content than diversity in the number of voices expressing that content. The FCC agreed with the argument of minority groups that it was important to rescue UPN so as not to have just one over-the-air network that targets minority audiences. As a general matter, do you favor FCC intervention to preserve diversity of voices, diversity of content, or both?

Answer. Diversity has long been a core principle in the FCC's definition and promotion of the public interest. I am hopeful we would not have to make a choice between diversity of voices and diversity of content. I am optimistic we could preserve both, and I would work to do so.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN F. KERRY TO
KEVIN J. MARTIN

Question 1. The FCC has proposed to change its rules for distributing E-rate funding to schools and libraries when the requests for funding exceed the available funds. Specifically, the FCC has proposed to exclude any school or library that received a commitment for internal connections in the previous year from receiving funds the next year. In my opinion, there are two problems with this proposal. First, the FCC would be changing its rules after the Year 4 applications have been filed, causing disruption and delay in funding. Second, there are likely to be a number of unintended consequences of these new rules. For example, even a school that received a very small amount of funding last year could be excluded this year. Also, a school that received funds for its internal connections last year could be barred from receiving the maintenance funds needed to keep its network running. If you are confirmed to be an FCC Commissioner, will you commit to taking a hard look at this and consider the disruption and delay that would result from changing the E-rate rules at the 11th hour?

Answer. Yes, I will.

Question 2. The Boston Public Schools is implementing a long-range plan to construct a technology infrastructure throughout each of its 137 school buildings. It is a phased approach that brings technology to schools and classrooms when administrators and teachers are ready to use it. Over two years ago, 17 schools went through an extensive design process to bring technology wiring to every classroom, followed by bids from electrical contractors last fall, leading to signed contracts just prior to the E-rate filing deadline for Year 4. Last year these same schools received a small amount of E-rate funds, mostly for maintenance and equipment, for the operation and maintenance of the existing small networks (4–8 classrooms per school plus a lab and library) that were installed in all 137 schools in the fall of 1998. If the proposed rule change goes into effect, none of the 17 schools, all of which qualify for the highest discount because at least 75 percent of the students qualify for the free and reduced school lunch program, would be eligible for internal connection funds this year. Boston's technology upgrade program will be disrupted and delayed because of this last minute E-rate rule change. Boston will be penalized for developing and implementing a long-range technology plan for its schools. If you are confirmed to be an FCC Commissioner, will you commit to taking a hard look at this and consider the disruption and delay that would result from changing the E-rate rules at the 11th hour?

Answer. Yes, I will.

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

Question 1. I have proposed the use of tax credits to provide incentives for the deployment of current generation capability to rural and underserved areas and to accelerate the deployment of next generation broadband capabilities to all residential subscribers. What authority does the Commission have to accelerate the deployment of current generation to rural and underserved areas and next generation to all residential areas? Even if the Commission does not have the authority to use tax credits specifically, what is your view regarding use of credits and other tax incentives to accelerate deployment?

Answer. I generally believe the FCC should be doing all it can to encourage the deployment of advanced telecommunications capability on a reasonable and timely basis to all Americans, especially those in rural and underserved areas. While tax policy is within the purview of Congress, I believe the idea of using tax incentives to accelerate deployment of broadband is an idea worth exploring. Ultimately, however, this remains a decision for Congress to make.

Question 2. Under the current E-rate program structure, where schools and libraries apply directly to the Schools and Libraries Division for discounted telecommunications services, the inclusion of private, religious schools has not been challenged. Changing the program into a formula grant program administered through the state education agency could raise concerns regarding the equitable participation of private, religious schools, in my view. How will you protect such equity?

Answer. If confirmed, I would support fair and nondiscriminatory administration of the E-rate program consistent with FCC strict statutory authority and parameters. Any proposed changes to the E-rate program should be carefully considered, taking into account the impact on all schools and libraries. I generally believe the government should consider the impact its policies may have on the equitable participation of private, religious organizations and should avoid disincentives wherever possible.

Question 3. Currently, libraries and public and private schools all receive equal consideration through a direct application process. If E-rate funds are administered in a manner similar to ESEA programs, private schools would have to navigate a maze of different public school bureaucracies to ensure they receive the right amount and type of telecommunications services they need. If the goal is to provide affordable access to schools, with the greatest help to the neediest, shouldn't we make certain the application process remains fair and equitable for all schools and libraries?

Answer. Yes, I believe the E-rate application process should be fair and equitable for all schools and libraries.

Question 4. Given that under the current E-rate program structure:

- The discount formula emphasizes the neediest recipients while still providing some benefit for all applicants.
- The need-based E-rate program has brought the public and private school communities together because discounts are not contingent on competition with public schools.
- Due to frustration with dealing with LEA there is greater private school participation in E-rate than ESEA.
- And, the direct application process gives private schools the flexibility to request services that meet their needs.

Since, at its core, the E-rate program is meeting the needs of the private school community. Rather than restructuring the program shouldn't we be looking at ways to improve the process to build on our current success?

Answer. I certainly agree that the FCC should build on its current successes as part of any effort to reform the E-rate program.

Question 5. Libraries are the number one point of public access to the Internet for people without access at home, work or school. Much of the access that libraries are able to offer is a direct result of the E-rate program. What steps will you take to ensure that libraries become a fully saturated market and are able to maintain Internet access for the continuing educational needs of many of our nation's most needy?

Answer. Bringing affordable Internet access to libraries is an integral part of the E-rate program as set forth by Congress, and, if confirmed, I will work to ensure that all of universal service is sufficiently funded.

Question 6. Much of the data about E-rate discounts is aggregated to the point where it is difficult to illustrate the full impact of the E-rate for libraries. Are there any plans to provide more data specific to libraries?

Answer. I am not aware of any plans regarding the collection of such data. The collection of data specific to libraries could be helpful, but I would want to make sure no additional and unnecessary burdens were placed on libraries.

Question 7. More than 95 percent of public libraries offer Internet access to their users. However, the demand for access in individual library buildings far exceeds the level of service most libraries are currently able to provide. There are long lines and strict time limits. How will you ensure that libraries are able to continue to use the E-rate program to improve library services and meet the demands of the American public?

Answer. Libraries—and their users—are important beneficiaries of the E-rate program. If confirmed, my role as an FCC Commissioner will be to administer the E-rate program consistent with statutory requirements. As long as those requirements continue to incorporate libraries into the program, libraries—and their many users—will continue to enjoy the benefits of affordable access.

Question 8. Libraries are the primary point of public access to the Internet for all Americans. They are one of the only institutions already asking what user needs are. Are there any plans to assess the unmet national demand for access to the Internet or other advanced technologies for ongoing educational needs?

Answer. I am not familiar with any plans to assess these unmet national demands, but, if confirmed, I would support exploring the merits of initiating such a study.

Question 9. The Telecommunications of 1996 emphasized the importance of the E-rate program in assisting all Americans to have access to advanced telecommunications services and applications. The Act recognizes the critical role of libraries and schools in providing that access. How do you envision reaching this goal, especially for libraries, the largest provider of public access?

Answer. Reaching this goal of greater access requires a careful balancing of universal service costs and funding needs. The 1996 Telecommunications Act recognizes the critical role that schools and libraries play in providing access to advances services to many Americans.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO
HON. MICHAEL POWELL

Question 1a. The 1996 Telecommunications Act requires that the FCC review the need for its rules every two years, beginning in 1998, and to eliminate unnecessary measures.

Do you see this as an opportunity or a potential problem?

Answer. The biennial review provisions of the 1996 Telecommunications Act are important tools and present the Commission with a tremendous opportunity to validate its rules to make sure they are still necessary.

Question 1b. What is your personal philosophy regarding this kind of systematic “attic-to-basement” regulatory review?

Answer. This kind of review exercise compels the Commission to review whether market conditions justify continued prospective, prophylactic regulations of the telecommunications and broadcast industries. For example, in the 1996 Telecommunications Act, Congress explicitly and unabashedly directed the FCC to review its ownership rules every two years and to repeal or modify any regulation that is “no longer in the public interest as a result of meaningful economic competition.” In mandating that we review the ownership rules, Congress was primarily concerned that the Commission adjust or eliminate these rules if, as anticipated by the Telecommunications Act, sufficient robust competition developed. I believe that the FCC has a duty to take a hard look at its rules in light of the present and likely state of competition and to ask and answer whether, in light of changes in competitive conditions, the rules are still valid. I also believe that the burden should be on the FCC to re-assess and re-validate the rules under review. We must be prepared, if this is what the record evidence shows, to make a compelling and convincing case that the rule must be kept. If we cannot, or if the evidence in support of the rule is lacking, we must modify or eliminate it and rely on competitive market forces or other mechanisms, such as the antitrust laws.

Question 2. In the Telecommunications Act of 1996, Congress specifically prescribed the extent to which the FCC could preempt local and state government decisions in areas such as zoning, right-of-way management and compensation, cable television franchising, and other telecommunications matters.

What are your views on when, if ever, the FCC should preempt local and state government authority and decisions?

Answer. I believe the FCC should be cautious in using its authority to preempt local and state government authority and decisions. There are, however, situations where preemption is appropriate. The Commission should exercise preemptive authority in instances where Congress has expressed a clear intent to preempt state law. Section 253 of the Communications Act directs the Commission, for example, to preempt state and local regulations that prevent new telecommunications providers from entering a market. The Commission should also preempt in situations where a state or local law clearly frustrates federal policy. Although I believe the bar for making such a finding is fairly high, in those instances where the local regulation crosses the line, I believe the Commission should act to protect federal policy.

Question 3. Just as competition is getting off of the ground for video services, one provision of the program access rules is about to sunset unless the FCC acts. The prohibition of exclusive contracts will cease to be effective on October 5, 2002, unless the FCC determines during 2001 that continuing the provision beyond the termination date is necessary for competition. Exclusive contracts by vertically integrated entities—especially for sports programming—can stop competitors in their tracks as they attempt to enter new markets.

Do you intend to launch a rulemaking this year to examine this issue and its possible effect on consumers?

Answer. As you know, pursuant to Section 628 of the Communications Act, the prohibition on exclusive contracts ceases to be effective 10 years after October 5, 1992 unless the Commission finds “in a proceeding conducted during the last year of such 10-year period” that the prohibition continues to be necessary. In accordance with this provision, the Commission intends to commence a proceeding to examine the issue and make a determination as to whether the prohibition “continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.” I anticipate that this proceeding will be commenced during the latter part of 2001.

Question 4a. We all know that local residential telephone rates have been subsidized for years in this country under a policy called universal service. The basic idea of this policy is to ensure that any residential customer would have access to telephone service at affordable prices, regardless of the actual cost of providing that service to any particular customer.

Do you agree with that policy?

Answer. Yes. I fully support the goal of universal service, as set forth in section 254, to ensure that consumers in all regions of the Nation have access to telecommunications service at affordable rates.

Question 4b. What do you think the intent of Congress was in preserving affordable residential telephone service for all Americans?

Answer. I believe that, in adopting section 254, Congress delegated to the Commission the task of preserving affordable residential service throughout the Nation, while also ensuring that the universal service fund grows no larger than is necessary to accomplish this purpose. Through section 254, Congress established clear and explicit principles for the preservation and advancement of universal service in an increasingly competitive telecommunications marketplace. Although the cost of providing telephone service can vary dramatically depending on the geographic area being served, Congress wanted to ensure that rates remain reasonably comparable and affordable for all Americans. Congress presumed that when rates are kept at affordable levels, the maximum number of people remain connected to the network, and all Americans benefit as a result.

Question 5a. You have indicated that you want to increase the agency’s enforcement efforts. Do you think that increased enforcement affects the need for prophylactic regulation?

Answer. I believe that prophylactic rules, by their nature, can be both over-inclusive and under-inclusive, and, as a result, we must be diligent in reviewing their effectiveness. However, I believe that effective enforcement is important to the implementation of the Commission’s rules, overall, and for meaningful implementation of the Act.

Question 5b. What improvements can the FCC make and what can Congress do to assist you?

Answer. I have emphasized that the Commission should vigorously enforce the Communications Act and Commission rules, and do so in a prompt manner. I believe, however, there is more that we can do with the help of Congress. First, Congress should consider increasing the forfeiture caps that apply to common carriers from the current \$1.2 million to at least \$10 million to enhance the deterrent effect of Commission fines and to make sanctions more meaningful. Second, Congress should consider extending the statute of limitations for forfeiture actions by the Commission against common carriers from its current one year to two years of the

date of the alleged violation. The longer limitations period would allow the Commission thoroughly to investigate alleged violations without running the risk of statute of limitations expiring. Finally, Congress should consider other mechanisms to compensate harmed CLECs and enhance deterrence. For example, Congress could give the Commission the authority to award punitive damages, attorneys fees, and costs in formal complaint cases filed under Section 208 of the Communications Act, or require that interconnection agreements include liquidated damages provisions.

Question 6. One of the ways Congress intended to encourage deregulation was to strengthen the statutory language allowing the FCC to forbear from regulating. Under the statutory provisions, the FCC can initiate regulatory forbearance. Can you please give the Committee your views on when the agency should forbear and when they should not?

Answer. Forbearance authority is one of the most important deregulatory tools that Congress has provided to the FCC. In many cases forbearance can eliminate the unnecessary burdens and red tape that impede the development of competition, innovation and infrastructure investment. I do not believe the Commission should be shy about using this tool where appropriate. For example, under certain circumstances, it would be appropriate to refrain from applying legacy regulation to emerging services and technologies, especially when such regulations may impede the continued development and deployment of new services to consumers. It is also most appropriate to forbear from regulating industry segments that have or will experience significant levels of competition among providers. In such circumstances, market forces tend to replace the need for over-reaching prophylactic regulation, adopted originally during a time when the industry was comprised of one or two players.

Question 7. I am aware that the U.S. may be in danger of losing its rights to international Ka-band satellite orbital locations that are due to expire beginning in 2004. While this may still be a few years away, given the long lead time necessary to design, fund and launch a satellite system, and the potential of satellite systems to deliver broadband data services nationwide—can you assure me that you will keep the FCC's prior commitment to industry to issue these licenses by this summer?

Answer. I agree that satellites—particularly those satellite systems proposed in the Ka-band—have great potential to deliver broadband data services nationwide. Presently, the International Bureau is working diligently to meet its commitment to issue licenses for geostationary satellites (“GSOs”) in the second Ka-band processing round this summer. The licensing process is complicated by the fact that the number of CONUS locations requested (providing coverage of the contiguous United States) exceeds the number of locations available for assignment.

As you may be aware, in the first processing round, the applicants were able to reach an agreement regarding assignments to specific orbital locations. In spite of numerous discussions, the second round applicants were not able to reach such an agreement. Consequently, the Bureau's staff is working on an orbital assignment plan that it believes creates a fair result for new entrants as well as other applicants. To that end, a team of staff has implemented a specific work plan that ensures all second-round GSO authorizations will be released with ample time for the licensees to construct, launch and operate their Ka-band systems. For the majority of orbital locations available, the “brought into use date” to protect the date priority of U.S. ITU filings is June 2005. Because it generally takes two to three years to launch a satellite, we believe that issuing licenses this summer will allow entities to meet the ITU dates without undue difficulty.

Question 8. We have heard a lot recently about increased demands for the allocation and reallocation of spectrum. What is your opinion of the current spectrum management and allocation process and what reforms, if any, would you propose?

Answer. As you know, the demand for spectrum for both existing and new services has increased dramatically over the past few years, and the supply of spectrum especially in the more desirable portions of the radio frequency is limited. Some examples of how the FCC's task of managing and allocating the spectrum under its jurisdiction is becoming more difficult include: (1) efforts to allocate adequate spectrum for advanced wireless services (including “third generation” wireless systems); (2) proposals to share the direct broadcast satellite spectrum by new terrestrial and satellite services; (3) proposals to use mobile satellite spectrum for terrestrial service; (4) reclaiming broadcast television spectrum for auction in a timely and certain manner; and (5) authorizing new technologies such as ultra-wide band and software-defined radios.

Other challenges stem from the fact that much of the spectrum resource is used or authorized for use by other Federal governmental agencies, such as the Departments of Defense and Transportation (FAA), through the Department of Commerce

(NTIA). Further complicating matters are mandatory auction dates and specific spectrum re-allocation schemes enacted by Congress as a component of appropriations or budget legislation. These circumstances affect the Commission's flexibility to make sound spectrum policy decisions. Furthermore, the spectrum management decisions, whether made by the Congress, FCC or NTIA, are done on an ad hoc basis with no reference to any broader plan or guiding principles.

Therefore, I believe we need a national plan for spectrum management. Too often in the past, spectrum policy has been driven by budget policy. We also need an effective means to balance national security and economic priorities. Given the importance of the spectrum resource to both our nation's defense mission and its economic growth, I would suggest that these issues need to be addressed at the highest levels of the Federal government. I have initiated a dialogue with Commerce Secretary Evans to discuss next steps on how, working with the Congress, we might begin to formulate and implement a national spectrum plan.

Notwithstanding the challenges noted above, I believe that the FCC's own spectrum management decisions have been generally heading in the right direction. For example, the Commission's approach to spectrum allocation has been to provide for significant service and technical flexibility while at the same time ensuring interference is avoided. Market-based approaches permit licensees to provide the kinds of services demanded by their customers and to employ the technology that is most appropriate to their needs without government micro-management of their business plans. The FCC's successful use of competitive bidding has also helped ensure that parties that value the spectrum the most provide the kinds of services that consumers want in an efficient and effective manner. In addition, the Commission is pursuing new ways to make spectrum available through the development of more effective secondary markets, which could permit more efficient use of the spectrum resource by enabling parties, for example, to acquire (or lease) the spectrum for short term or special uses. A key aspect of this initiative is the examination of frequency agile radio technology such as software defined radios. We are also exploring ways to create incentives for using spectrum more efficiently.

Question 9. My experience suggests that interference disputes are one of the most common barriers to the introduction to new telecommunications services. When new services are proposed, users of incumbent technologies frequently object, claiming that the new service will cause interference.

Some parties have proposed to introduce a new service typically called Ultra Wide Band. Many believe that Ultra Wide Band technologies may provide new and innovative services. However, some users of existing GPS systems claim that UWB will cause harmful interference to GPS transmissions—a claim that UWB proponents vigorously dispute. Obviously, respect for business plans and consumers dictates that this type of dispute be resolved quickly and fairly. Please comment on the priority the Commission should give to the resolution of this type of interference issue.

Answer. Resolution of this issue is a high priority. As your question points out, the FCC has been presented with a highly technical dispute about whether new UWB technology will cause interference to existing services. There is particular concern regarding interference with GPS. Licensees and equipment vendors in the Personal Communication Service (PCS) and Digital Audio Radio Service (DARS) have also raised concerns. I agree that it is the job of the Commission to resolve these types of technical matters as fairly and as quickly as possible. As you know, I have called for increasing and strengthening the Commission's engineering and technical expertise so we will be better able to address and resolve the technical matters before the Commission.

On May 10, 2000, the Commission adopted a Notice of Proposed Rule Making (NPRM) in ET Docket No. 98-153, proposing to permit low power, unlicensed operation of UWB devices under Part 15 of our rules. In the NPRM, the Commission encouraged parties to perform testing in order to develop technical data on the potential for interference between UWB and other services. Several parties submitted technical studies and test reports in response to the NPRM. The National Telecommunications and Information Administration (NTIA) tested potential interference to GPS and evaluated potential interference to other government systems. The Department of Transportation (DOT) through Stanford University also tested potential interference to GPS. Time Domain, an entity developing UWB technology, through the University of Texas and the John Hopkins Applied Physics Laboratory, also submitted testing with regard to interference to GPS. In addition, Qualcomm submitted a technical analysis of potential interference to personal communications services (PCS). NTIA and others have indicated that further studies may be submitted.

We have dedicated substantial engineering resources to analyzing the test results and public comments. Our Office of Engineering and Technology (OET) is currently

reviewing all of the studies and comments submitted in order to develop a recommendation on UWB. Our staff is also participating in numerous meetings to ensure that the views of all concerned parties are fully taken into account. It is currently anticipated we will be able to address this matter before the end of the year.

Question 10. As you know, this Committee has held several hearings on the transition to digital television. Several witnesses have testified before the Committee that the transition to digital television will not occur by the deadlines set by Congress. What can be done to facilitate the DTV transition?

The transition to digital television is a tremendous undertaking, which is well under way. There are now close to 200 stations on the air with digital television signals. There are, however, a number of challenges ahead. While the FCC has taken several steps to facilitate the transition to DTV, some of the most significant challenges are outside of the Commission's direct purview.

As an initial matter, the FCC should continue to provide broadcasters with regulatory and licensing certainty. For example, after extensive testing and analysis, we recently re-confirmed the 8-VSB transmission standard. We also recently clarified the level and timing of service that DTV broadcasters must provide to their communities of license. We should continue to clarify potentially ambiguous requirements to ensure that the rules of the digital road are clearly marked. In that regard, we have in place a DTV periodic review mechanism to examine issues that arise on an ongoing basis and to provide guidance to licensees as early as possible in the build-out process. On licensing matters, we have granted and will continue to grant all applications that generally conform to the DTV Table of Allotments, and have expedited processing for any applicant that has expressed a readiness and a willingness to build DTV facilities.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GORDON SMITH TO
HON. MICHAEL POWELL

Question 1. The price a local exchange carrier charges in rural areas is artificially low and kept low because of our universal service policy. For competition to develop, a business needs to attract customers. How do we attract companies to compete with the local exchange carriers and build out advanced services to rural areas when the price normally charged is kept universally low?

Answer. This is an issue of critical importance to both rural consumers and to the nation as a whole. In general, I believe that market forces should determine whether competitors decide to offer telecommunications services in a given marketplace. Thus, with respect to high cost rural areas, I have been a proponent of alternative technologies—such as satellite and wireless facilities—which might be able to provide service in a more efficient and less-costly manner than traditional wireline facilities. High initial capital costs might, however, make the deployment of such technologies in rural areas cost prohibitive. As a result, I support efforts to lower the costs of wireless services to rural and remote areas.

I also believe that competitors should have the same financial incentive to compete in rural areas as incumbent local exchange carriers. Therefore, I support the Commission's policy of providing competitive eligible telecommunications carriers with access to portable high-cost universal service support. Under the Commission's portability rules, a competitive eligible telecommunications carrier receives the same

per-line level of high-cost support as the incumbent for lines that it captures from an incumbent carrier, as well as any new lines it serves in high-cost areas. Our current rules also allow wireless telecommunications providers to become eligible for portable high-cost universal service support. Consistent with Congress's mandate in section 254 of the Act, I believe that such policies ensure the preservation and advancement of universal service in an increasingly competitive marketplace.

I should add, moreover, that the federal government will need to address this issue in partnership with state and local governments and private entities. Some states have taken steps on their own. For example, I applaud the efforts of some local government and private entities to aggregate rural demand for advanced services and to take other steps to promote rural broadband deployment.

Question 2. As broadband continues to be deployed in the urban technology communities in Oregon, I am hearing from Oregonians in some of these lesser populated areas that they are afraid that their communities are going to be passed by. Our largest local exchange carriers in Oregon are Qwest, Verizon and Sprint, and they are all working with the Oregon Public Utility Commission to build out their infrastructure throughout the state. What concerns me, is that rural deployment is not being made as rapidly, or as broadly in our rural areas, as I would like to see. When I raise this issue with the local exchange carriers who serve many of these communities with telephone service, they say that the regulatory policies that were designed to promote competition in their telephone business are being extended to include these new advanced services, and these regulatory costs slow down the investment available to bring advanced services to rural areas. So while I fully support the notion that competition in telephone service has been good for our urban business communities, I am concerned that those same policies, when applied to these new advanced services, are making it harder for my rural constituents to gain access to these new technologies. Would you discuss your approach to the regulatory role for these advanced new services, and whether you view the increased costs for the local exchange carriers to be a problem for rural America?

Answer. The Commission has a statutory duty, under section 706 of the Telecommunications Act, to encourage the deployment of advanced services to all Americans on a reasonable and timely basis. In carrying out this charge, the statute requires us to use "price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." To that end, the Commission, in 1997, began a yearly inquiry in which it is carefully monitoring whether advanced services are actually being deployed to all areas of the country, including rural America. To the extent that this inquiry reveals clear evidence of a lack of advanced services deployment in rural areas, I would urge my colleagues to consider appropriate deregulatory solutions.

In addition, it is our duty to question the continuing applicability of existing regulations. To the extent that certain regulations are disproportionately impacting rural incumbent LEC incentives to deploy broadband infrastructure, I would again urge my colleagues to consider whether the Commission should exercise forbearance authority under section 10 of the Act.

Question 3. These advanced new services, called "broadband," are provided with a variety of new technologies. The "local exchange carriers" have DSL service, cable companies have cable modems, and satellite and wireless carriers are also in the market, and maybe others will be entering that we don't even know about. All have some sort of government regulation whether local, state or federal. Do you think our policy should be technology neutral, or do you think we should continue our current policies which apply different regulatory policies to each competitor based on the technology used to provide the broadband access?

Answer. The problem is that each of these technologies grew up differently with separate and distinct purposes, and at different times. In turn, each technology, for various policy reasons, tended to be subject to different regulatory treatment. Now that convergence of "broadband" services is happening on parallel tracks and riding on all these technologies, it would seem that the regulation (or de-regulation) of "broadband" should be technology agnostic. But, legacy regulatory models and the current statutory structure have placed each technology into its own regulatory "bucket." I believe that technological neutrality in policy making is a laudable principle and that we must strive to harmonize regulatory treatment in a manner consistent with converged technology and markets. At the same time, however, because these technologies (and their regulation) evolved differently and some essential facilities are still owned by entities with substantial market power, policymakers should closely examine whether the facilitation of broadband deployment can be accomplished by regulatory and technological neutrality alone. For example, economic considerations, cost and deployment issues as well as consumer demand should con-

stantly be evaluated along with regulatory policies. Therefore, while technological neutrality is one important principle, government policymakers should also strive to: (1) consider incentives that promote innovation; (2) rely on de-regulation and competitive markets; (3) recognize that the convergence involves every segment of the communications industry and reject their examination in isolation; and (4) develop a deeper understanding of technology, innovation theory, economic incentives and capital markets.

Question 4. When I look at the telecommunications market that has evolved in this country during the past five years, it appears to me that the most successful sector of the market in terms of growth, attracting investment, deploying new technologies, and providing new services to amazing numbers of Americans, both rural and urban, is wireless communications. It seems that real customer demand has “pulled” the wireless investment and new technologies into the marketplace, not only here, but around the world. Even in areas where they have never had any communications network. On the other hand, these “pro-competitive regulatory policies” as applied to the telephone companies seem to be slowing down investment and delaying technological innovation, in their attempts to “push” competition into the marketplace. As a regulator, do you think the role of government should be to “push” competition through regulatory policies, or to allow deregulated markets to “pull” the investments create competition? Do you see any disparity between wireless and wireline in bridging the digital divide?

Answer. The role, and effect, of government in the marketplace should be limited. Government is not going to create markets, innovative technologies or jobs. Only profit-maximizing entities, acting together with consumers, will make the investment and take the risk that results in competition in the marketplace. In the long run, de-regulated markets versus a heavy-handed central planning model almost universally produce better results. I would therefore likely subscribe to the “pull” analogy in your question. The ability of regulators to “push” competition or innovation into the marketplace is substantially limited in that regulators cannot control many of the other variables in the market such as capital market fluctuations and consumer acceptance. The limited role of regulators is to foster an environment in which innovation and capital investment can flourish unimpeded.

As to a disparity between wireless and wireline in bridging the so-called “digital divide,” I do see the potential for huge advantages of wireless technologies; mainly cost advantages. Some developing countries have almost completely by-passed the development of a wireline infrastructure in favor of less-costly wireless technologies. As a general matter, in less densely populated areas, wireless communications, including satellite, can be deployed in a more cost efficient manner. Wireless also has the potential to provide last-mile broadband connectivity to homes and businesses in direct competition with wireline, including cable, providers. The only “disparity” that I am aware of that may impact wireless negatively is the difficulty of wireless carriers in some states to become eligible to receive universal service funds. Without this funding source, wireless providers may lack the incentive to deploy their systems in high-cost areas. The FCC is working to rectify these difficulties where it has jurisdiction to do so and will encourage the states to closely examine wireless alternatives.

Question 5. Given the largely rural make up of the Eastern part of my state of Oregon, the timely deployment of broadband technologies to these areas is of great interest to me. I am concerned that imposing technology-based restrictions on access to the local loop would undermine our objective of promoting broadband competition in rural areas. What is your view on such restrictions?

Answer. To date, the Commission has generally declined to place any restrictions on the use of the unbundled local loop. Section 251(c)(3) permits requesting telecommunications carriers to use unbundled network elements in the provision of any telecommunications service, including broadband telecommunications services. In interpreting this provision, the Commission has held that when competitors purchase access to the unbundled local loop, they obtain access to every feature, function, and capability of that loop. These policies were intended to foster innovation in technologies and the creation of new services. Specifically, the Commission’s rules have permitted competitors to use network elements, such as the local loop, to provide consumers services that the incumbent does not. For example, most incumbent LECs provide customers with one flavor of xDSL service, ADSL, while competitors may seek to provide customers with a variety of xDSL services. Thus, the absence of use restrictions has allowed competitors to offer new and innovative services and to differentiate themselves from the incumbent. Although there may be other effective approaches, particularly in light of the unique circumstances of rural areas, I believe that the Commission’s interpretation of the statute has helped to stimulate the development of competitive xDSL services.

Question 6. The transition to digital television continues to be an issue of great importance. In fact, this Committee held a very informative hearing on this issue just a few months ago. What are your thoughts on how this transition can be done more efficiently and effectively?

The transition to digital television is a tremendous undertaking, which is well under way. There are now close to 200 stations on the air with digital television signals. There are, however, a number of challenges ahead. While the FCC has taken several steps to facilitate the transition to DTV, some of the most significant challenges are outside of the Commission's direct purview.

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Question 7. Deregulation has significantly affected the broadcasting industry. As we all know, the marketplace has become more competitive over the past several years. What are your thoughts on what can be done in order to keep the broadcast industry competitive in the marketplace today? What about in the smaller and medium sized markets?

Answer. The broadcast industries—television and radio—face competition not only from within their industry, but from a growing number of non-broadcast competitors, including programming delivered by cable, DBS and the Internet. Moreover, these communications services are either inherently digital or are increasingly turning to digital formats, giving them extraordinary capacity and flexibility in their product offerings. From a regulatory perspective, two key issues that directly affect broadcasters' ongoing ability to compete in this environment are critical.

First, broadcasters must be afforded a path to a robust and flexible digital platform that will allow them to provide high-quality and diverse services. Congress and the Commission have developed this platform for television broadcasters by adopting digital television transmission standards, providing an additional television channel to all existing television licensees and developing service and technical rules for the service. Digital television (DTV) will allow today's television broadcasters to better compete with new technologies in the digital age. The FCC's rules permit broadcasters to provide ancillary or supplementary services on their DTV channel. These services—including the transmission of data, paging or other wireless services—may be provided by the broadcaster or by a lessee who uses the broadcaster's DTV spectrum. It is up to DTV licensees to develop creative and competitive uses of this flexible resource.

Despite substantial progress, there remain significant challenges ahead in the transition to digital television service [see response to Question #6 above]. And there is an increasing concern that small market television stations may encounter difficult financial problems in building and operating digital facilities while they con-

tinue to operate their analog stations. Although these stations were afforded additional time to build their digital stations, there is growing evidence that the current deadline of May 2002 may be difficult to meet. The Commission will address whatever problems arise in this connection on a case-by-case basis.

Radio broadcasters are not as far along in their transition to digital service as their television counterparts. However, a promising “in-band, on-channel” (IBOC) approach to affording radio licensees with a digital alternative is currently being tested. The Commission expects results from these studies and an evaluation of the data by the National Radio Systems Committee to be available sometime in the fall. Once this information is provided to the Commission, appropriate rulemaking steps can be taken to review and, if warranted, implement an IBOC digital radio service.

Second, the Commission through its biennial review process will subject its broadcast ownership rules to rigorous review. In light of the dramatically changed competitive landscape in which broadcasters operate today, it is critical for the Commission to examine whether the existing ownership rules impede the broadcasters’ ability to compete effectively in this radically changed environment. That review will commence sometime this year.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, DC, May 21, 2001

Hon. JOHN EDWARDS,
U.S. Senate,
Hart Senate Office Building.
Washington, DC.

DEAR SENATOR EDWARDS: After my confirmation hearing last week, I realized that it may be helpful if I clarified my response to your questions regarding wireless location privacy during the hearing. I would like, for the record, to make sure that you are provided a complete and accurate response.

First, as I stated during the hearing, I agree with many of your concerns regarding consumers’ ability to be fully informed and empowered with regard to their ability to control private information about them, including location information. I believe that current law addresses these concerns, and the FCC is currently engaged in balancing them against others raised by recent amendments to the Communications Act and by the courts.

Congress enacted the Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286, in October 1999 with the purpose of enhancing public safety by facilitating the prompt deployment of a nationwide emergency communications infrastructure, including wireless. It also amended the customer proprietary network information (“CPNI”) provision of the Telecommunications Act of 1996, 47 U.S.C. 222, to further protect the privacy of wireless callers. Under the 1999 amendment, wireless location information is further restricted from use or disclosure by a carrier without the “express prior authorization of the customer,” except in specified emergency situations to respond to a wireless user’s emergency call or in the transmission of automatic crash data. These statutory protections are self-effectuating and enforceable today. However, the wireless industry has asked the Commission to adopt rules to implement the E-911 Act’s CPNI provision. The FCC staff is evaluating the comments filed in response to the rulemaking petition.

Also, as you mentioned at the hearing, the FCC also has before us a remand from the U.S. Court of Appeals for the 10th Circuit, *U.S. West v. FCC*, 182 F.3d 1224 (10 Cir. 1999), that struck down our prior CPNI rules that provided for an “opt-in” approach. We will soon be considering a further notice of proposed rulemaking to respond to the court’s first amendment concerns.

Thank you for the opportunity to clarify the record.

MICHAEL K. POWELL,
Chairman, FCC.