

**NOMINATIONS OF
JESSICA ROSENWORCEL AND AJIT PAI
TO THE FEDERAL COMMUNICATIONS COMMISSION**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

NOVEMBER 30, 2011

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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**NOMINATIONS OF JESSICA ROSENWORCEL
AND AJIT PAI TO THE
FEDERAL COMMUNICATIONS COMMISSION**

WEDNESDAY, NOVEMBER 30, 2011

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

The Committee met, pursuant to notice, at 2:38 p.m. in room SR-253, Russell Senate Office Building, Hon. John D. Rockefeller, Chairman of the Committee, presiding.

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

The CHAIRMAN. Welcome. Senator Hutchison and I will give our statements and Senator Kerry will soon be here. Senator DeMint will have a statement.

If others want to do it, we would encourage brevity because we have not only two very fine introducers, but we have the two candidates and a plethora of children.

[Laughter.]

Senator HUTCHISON. Who love speeches.

The CHAIRMAN. Good afternoon, anyway. Welcome and congratulations to you both. I'm not talking about you two, I'm talking about them two.

[Laughter.]

The CHAIRMAN. Being a Commissioner at the Federal Communications Commission, I think, has to be one of the toughest and most cerebral jobs in Washington. Everybody in this room knows the incredible scope of the FCC, how much they are involved in so many ways. Actually their involvement in so many ways will prevent our nominees from having to answer some questions today about potential mergers, because they can't do that. So I just sort of make that clear. It's a very, very tough job and we have two candidates.

I believe that Jessica Rosenworcel, the President's nominee to be FCC Commissioner, is up to the task, to say the very, very least. She currently serves as senior counsel for the U.S. Senate Subcommittee on Communications Technology. She is essential to all of us in both parties, and she has done that for us. She spent nearly 15 years working on communications issues, and I believe there is no better qualified person for this position. She has a lot of experience at the FCC.

She has earned the respect of both Democrats and Republicans. She is very calm. She's brilliant, and she is very hard to defeat in an argument of any sort.

[Laughter.]

The CHAIRMAN. Those of you who have worked with Jessica know that she is meticulous, that she's sharp, and above all else she is professional.

And joining her on the FCC, I hope, is Ajit Pai, an attorney, and like Jessica, has also worked at the FCC. He is a native of Parsons, Kansas.

Now that makes a difference, not just to Pat Roberts and Senator Moran, but to me, because there is an automatic rural prejudice built into your DNA, and on telecommunications I like that a whole lot.

This is very important to me and to the people of my state. Mr. Pai is a highly distinguished nominee with the experience and knowledge necessary to fill this post with distinction.

Both of these nominees are very devoted public servants. They are very excellent people. Both have a background at the FCC, as I indicated, and then Congress and also in the private sector. So they have pretty much done it all.

And that allows them to have a deep understanding of communications policy and the impact that it has on people around this country and in different parts of the country. That sensitivity cannot be simply picked out of the air.

And I expect both nominees to focus on closing the digital divide that exists in our country and bring much needed expanded access to all Americans, including rural Americans, who currently are underserved.

I am not going to make this lengthy, because I don't think we need to. I think you are both going to swim right home. I look forward to your testimony. I am very pleased that I can heartily support you both, and I hope we will do our work efficiently.

I turn now to what I refer to as the Vice Chair of the Committee.

**STATEMENT OF HON. KAY BAILEY HUTCHISON,
U.S. SENATOR FROM TEXAS**

Senator HUTCHISON. Thank you, Mr. Chairman. And I am pleased that we are finally going to fill the two empty seats on the FCC, and I think that both of the nominees have the required experience.

I will say that sometimes nominees come before us and for a variety of reasons they have been nominated, but I have never seen two who had the requisite experience that these two both have on the FCC, on the Senate staffs, understanding the processes of the Senate, and as well the FCC processes.

So, that goes a long way. There is no question that we have some philosophical differences with certainly Ms. Rosenworcel, my differences with the Chairman as well on the subject of net neutrality, but also we have had common experiences on the broadband issue.

Which I am pleased to say, Mr. Chairman, I think we are going to be able to have the broadband bill that we have worked so hard for, because it seems that the House is now going to value the public sector block D.

And I think that is a great thing and due in large measure to you and the nominee today. So I am very appreciative of that philosophy that we do share.

I do want to say that I have had disagreements with the FCC on the amount of regulation that they are doing. I believe if the communications laws are short of addressing policy issues, it is the responsibility of Congress to update the laws, and not the FCC's job to contort outdated statutes to fit the Commission's desire to impose new regulations.

I think the overregulation that we are seeing is going to stifle innovation in the most dynamic sector of our economy today, which is the tech sector.

So I am going to watch closely but I am certainly appreciative of the professionalism and the experience that we have in our nominees and certainly look forward to working with them going forward in the future.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Kerry is not here. Senator DeMint is.

**STATEMENT OF HON. JIM DEMINT,
U.S. SENATOR FROM SOUTH CAROLINA**

Senator DEMINT. Thank you, Mr. Chairman. Mr. Chairman, thank you for holding this important hearing today. I believe we have before us two well-qualified nominees to serve at the FCC and I hope and expect that we can move them through the full Senate before we break for the holidays.

Before I make my comments about the nominees, though, I would like to make a brief request of you, Mr. Chairman, that the record for this hearing remain open for at least 1 week. We recently had the hearing for the FTC Chairman's renomination and that record was closed after 48 hours. I feel that decision was unnecessary and may yet prove to be a hindrance to completing the confirmation process.

The CHAIRMAN. Unless I hear a lot of grumbling and shouting directly behind me, I am perfectly happy to grant that.

Senator DEMINT. Thank you, Mr. Chairman.

The last few days and months have reminded us that the biggest threat to our economy is not a particular phone company, but an army of government lawyers and bureaucrats that create uncertainty. And the biggest threat to investment and innovation is not a private Internet service provider but a public agency hell-bent on over-regulating at any cost.

Ms. Rosenworcel and Mr. Pai, I certainly hope you go on to the FCC with a mindset of humble public servants and not activist agents seeking to expand the authorities of the Commission and manipulate the marketplace to your preferred ends. And I don't think you will.

We cannot predict the future, especially in the communications market. Unfortunately, our telecom laws and regulations presume that we can predict the future, and these laws and regulations are littered with policies that lock in paradigms that are now 15, 20, even 80 years old. Many of our current telecom policies are better

suited for more static industry structures like railroads, aviation, and pipelines.

We need to be moving toward a comprehensive update of our communications laws and regulations. If we simply continue the rigid structure we know today, we will not have the innovation, the investment, and the competition that we could have in this industry, and we won't see the subsequent jobs and growth in our broader economy.

I have previously introduced, and plan to reintroduce, a Digital Age Communication Act as a template, an example of how we need to reform the regulatory structure. It is not an attempt to manage economic functions within a particular industry, but an attempt in effect to create a framework for freedom to thrive. Within that framework, if there is damage or harm done, or if there is anti-competitive activity going on, it gets addressed.

What we have today is a structure that is complex, rigid, and expensive to navigate. In fact, it seems designed more to help particular companies and business models than actual competition. It creates a structure that forces private enterprise to conform rather than innovate. It creates uncertainty and benefits those with the most lawyers and lobbyists instead of encouraging innovators.

Innovation and entrepreneurship flourish when we have people developing ideas for millions of consumers who can make their own individual decisions. And when we have competitors and millions of people making their own decision, that creates vibrant economies. That's what the American economy at its best is all about.

But the American economy is in jeopardy today as we look at this expanding regulatory state. And that is why your roles at the FCC are going to be critically important during the next several years.

Some people in this room see communications as a government utility, something the government should operate, something the government should manage. Some honestly believe the government can efficiently manage economic functions.

History has proven many times that this is a false utopian dream. We simply cannot do it, particularly in a dynamic industry like communications.

I hope you both help to move America back towards a free-market economy. We must believe in the power of individual freedom and private enterprise to create a vibrant marketplace and improve the American economy.

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

The CHAIRMAN. Thank you very much, Senator DeMint. I would like to proceed to the introducers unless I hear a chorus of complaint.

Senator WICKER. How about one? Oh, I'm sorry. Go ahead.

[Laughter.]

The CHAIRMAN. That is my "go" signal. We are very honored to have Senator Roberts here. He represents Kansas, as does Senator Moran, and they are going to colorfully, with distinction and eloquence, introduce one of our candidates.

Please go ahead.

**STATEMENT OF HON. PAT ROBERTS,
U.S. SENATOR FROM KANSAS**

Senator ROBERTS. All right, Mr. Chairman. I don't know if this is on. Mr. Chairman, can you hear me?

The CHAIRMAN. Technology.

Senator ROBERTS. Frank, can you hear me? Jim, can you hear me for the first time?

[Laughter.]

Senator ROBERTS. Mr. Chairman, Ranking Member Hutchison, and members of the Committee, my colleagues. This is a real privilege for me to introduce Ajit Pai, who is a native of my home state of Kansas—Parson, Kansas, America, for his nomination to be a member of the Federal Communications Commission.

After meeting with Mr. Pai and examining his accomplishments, I think any of my colleagues who have had this opportunity would be hard pressed to find a more qualified candidate to fill this position.

Now, stick with me, because I have the résumé opportunity. My colleague and good friend, Jerry Moran, has the character part of this presentation. But in terms of the unprecedented accomplishments of this young man, stick with me here.

His professional background both in government and the private sector has provided him with an expansive understanding, to say the least. Before starting his impressive career in telecommunications law, he earned his Bachelor of Arts from Harvard. He went on to receive his law degree at the University of Chicago, where he served as Editor of the school's law review.

Then he completed a one-year clerkship upon graduation with U.S. District Judge Martin L.C. Feldman. After completing his Federal clerkship, Mr. Pai accepted a position as Trial Attorney with the U.S. Department of Justice Antitrust Division Task Force.

Years later he would return to the Department of Justice, Office of Legal Policy, as Senior Counsel working on national security and judicial administration as well as communications.

He also led the implementation of Executive Order—a rather famous one, 133–53, establishing the President's board on safeguarding Americans' civil liberties.

He has also spent a significant time in the U.S. Senate as counsel on the Judiciary Committee, where he earned the reputation of being able to work with all staffers in a collegial manner, even if they were on the opposite side of the issue. Whatever he has in terms of talents in that respect maybe we could use a spoonful or two ourselves.

In 2003 while on the Judiciary Committee, Mr. Pai served as the Deputy Chief Counsel for the Subcommittee on Administrative Oversight and the Courts, where he primarily served as Lead Counsel on constitutional and communications and antitrust issues.

In 2005 he returned to the Senate Judiciary Committee as the Chief Counsel for the Subcommittee on Constitutional and Civil Rights, Property Rights, taking the lead on communications, Internet regulations and antitrust issues.

He also has firsthand experience and understanding telecommunications from the industry perspective. That should be helpful, to say the least.

From 2001 to 2003 he was Associate General Counsel for Verizon. His major accomplishments while working for Verizon including drafting the amicus brief to the Supreme Court in *National Cable and Telecommunications Association v. Gold Power Company*, and working with engineering and business teams to establish wireline broadband standard setting organization.

He then went on to spend over 3 years working at the FCC, which I highlight because his work there undoubtedly provides him with the knowledge and experience necessary to be an effective Commissioner.

From 2007 to 2011, he served as Associate General Counsel, Deputy General Counsel, and later Special Adviser to the General Counsel, where he was extensively involved in matters involving the Internet, cable, wireless and other FCC-related issues.

Most notably, during his time at the FCC, he successfully argued before and prevailed in the U.S. Court of Appeals for the D.C. Circuit—no small accomplishment—in case of *National Cable and Telecommunications Association v. The FCC*.

He is currently a partner at Jenner & Block, where he represents the communications industry. He is someone we are extremely proud to call a Kansan.

And because of his background growing up in our state, he is sensitive to the importance of communications services for rural Americans, as the Chairman has pointed out the importance of that perspective.

I am sure you can all agree after meeting personally with him as you prepared for this hearing, or in his capacity as a former staffer, that he has forward vision for the FCC and his very wide experience and understanding of the law will allow him to fairly and objectively carry out his duties as Commissioner.

In closing, Mr. Chairman, he has done it all, and he has done it well. I cannot think of a more qualified person to serve as a Commissioner of the Federal Communications Commission, and I ask my colleagues to fully support his nomination.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Roberts. That is high praise. Senator Moran?

**STATEMENT OF HON. JERRY MORAN,
U.S. SENATOR FROM KANSAS**

Senator MORAN. Mr. Chairman, and Ranking Member, thank you very much for the opportunity to join you here today. This is my first opportunity as a member of the U.S. Senate to serve the role of introducing. I am pleased to see that Chairman Rockefeller has complete control of his committee. I got seriously nervous that my opportunity was going to be short-circuited when you asked if there was any opposition to hearing from either Senator Roberts or I, and glad that was not the case, because this is a real honor for me to introduce and to support Ajit Pai.

Senator Roberts and I consider him a friend, and a fellow Kansan. He is the son of immigrants and his parents are here. Ajit is

a humble and hard worker, just what you would expect from a native Kansan. He is the type of person that you would like to have as your neighbor.

He is only the second Kansan to ever be nominated to serve on the Federal Communications Commission and the first since Bob Wells served on the Commission from 1969 to 1971.

The issues before the FCC today are critically important to America's economic and global competitiveness. I don't know, in my 14 years in the House and now 10 months as a United States Senator, that there has ever been a time in which I have spent more effort at trying to determine what the FCC is doing and what it means to Kansans, to rural America, and to our country.

These issues range from how we manage and promote the efficient use of spectrum resources, crafting policies that will expand broadband access to more Americans and connect more schools, more libraries and more hospitals.

The FCC's decisions will help define how we encourage competition, promote innovation, create jobs and drive our economy into the future.

In order to succeed, the Commission requires smart, talented policy leaders, leaders who respect free markets and understand the regulations should be balanced with pro-growth economic principles. Ajit Pai is one of those leaders.

The FCC also needs Commissioners who are committed to the needs of all Americans including those who live in rural America, so it also can innovate and be competitive in marketplaces along with those who live in suburban and urban areas.

A native of Parsons, Kansas, Ajit will bring an understanding of the challenges facing our part of the country at this vital time for the future of telecommunications. His broad range of legal and policy experience at the FCC, at the U.S. Senate on the Judiciary Committee, at the Department of Justice, and in the private sector will be tremendous assets as he seeks to balance the regulatory role of the FCC with the need to encourage competition and free-market principles.

Ajit Pai is a public servant of the highest caliber and a man with the highest level of integrity and character. Senator Roberts and I are proud to recommend his swift and unanimous confirmation as a Commissioner of the FCC by the full Senate.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator, very much. And that also constitutes very high praise. I thank both of you for your courtesy, not only to the nominee but to this committee. You were succinct, eloquent, and I emphasize succinct.

[Laughter.]

The CHAIRMAN. At this point, I would like to call Jessica Rosenworcel and Ajit Pai forward.

And Ms. Rosenworcel, so I would ask you to speak first. Ajit Pai after that. I hope that you will both introduce family members and relatives or anybody that you might like sitting behind you.

**STATEMENT OF JESSICA ROSENWORCEL, NOMINEE TO BE
COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION**

Ms. ROSENWORCEL. Good afternoon, Chairman Rockefeller, Ranking Member Hutchison and the distinguished members of this Committee.

Thank you for the opportunity to appear before you today as a nominee for Commissioner of the Federal Communications Commission. For nearly 5 years, I have had the privilege of serving this Committee as Senior Communications Counsel, so I am accustomed to these halls, this room, and the deliberations of this body, but I can assure you that sitting at this table today is a different experience altogether.

I would like to start by introducing my family. Sitting behind me is my terrific husband of 11 years, Mark Bailen, and until very recently, sitting beside him, were our children Caroline Frances, age five and Emmett Joseph, age two.

[Laughter.]

Ms. ROSENWORCEL. Like the parents the world around, they are our pride and joy. And though they are not here today, I would also like to note my parents, Elliott and Willa Rosenworcel. They are at home in Hartford, Connecticut.

I like to think that a commitment to public service runs in my family. My father served in the Air Force, going on to a career as a nephrologist in Hartford. For three decades, he also ran the city clinic for hypertension and kidney failure. My mother has spent the last two decades helping run a soup kitchen in Hartford. And my grandfather before them served in the United States Customs Service here in Washington. My great grandfather before that served the public in a different way—he swept the streets of New York.

It is a great honor to have been nominated by President Obama to serve as a Commissioner on the Federal Communications Commission.

Communications technologies are a source of tremendous opportunity. They support our commerce, they connect our communities, and they enhance our security. They help create good jobs.

And by unlocking the full potential of broadband, we will alter the way we educate, create, entertain and govern ourselves. This reminds us of the great sweep of FCC authority and its impact on what every American reads, sees, and hears.

But communications technology is changing at a brisk pace. Laws and regulations struggle to keep up. The challenge for the FCC is identifying how to inspire the best in communications in a world where change is a constant and innovation can invert what we think we know.

In approaching this challenge, I believe a little humility helps.

At the same time, it's absolutely essential that the FCC honor the values that are at the core of the Communications Act.

That means the safety of our people is paramount. New communications technologies should facilitate our security and promote the safety of life and property.

That means universal service, no matter who you are or where you live in this country, you should have access to first-rate communications service. To prosper in the twenty-first century, all of our communities, urban, rural and everything in-between, need

this access. Our communications networks and the access they provide should be the envy of the world.

This means competitive markets. They are the most effective means of facilitating innovation and ensuring the public reaps its benefits.

This means a fierce commitment to consumer protection. Communications technology and media are growing more complex. It is vitally important to get consumers the information they need to make good choices. We should strive too to help parents and families navigate the bewildering digital world of media and communications.

These values derive from the law. If confirmed, they will inform my efforts going forward.

If confirmed, it will be an honor to continue to work with the Members of this Committee. I pledge to listen to you, the Congress, those with business before the FCC, and above all, the American people.

If confirmed, it will be an honor to work with the talented members of the Commission today: Chairman Genachowski, Commissioner McDowell and Commissioner Clyburn. Though I have only recently made his acquaintance, if confirmed I believe it will also be a pleasure to work with the individual sitting next to me today, Mr. Pai.

Finally, I believe the FCC is blessed to have a staff of uncommon skill. If confirmed, I know it will be a pleasure to work with them day-in and day-out.

In closing, Chairman Rockefeller and members of the Committee, thank you again for the opportunity to appear before you today. I look forward to answering your questions.

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

PREPARED STATEMENT OF JESSICA ROSENWORCEL, NOMINEE TO BE COMMISSIONER,
FEDERAL COMMUNICATIONS COMMISSION

Good afternoon, Chairman Rockefeller, Ranking Member Hutchison, and the distinguished members of the Committee.

Thank you for the opportunity to appear before you today as a nominee for Commissioner of the Federal Communications Commission. For nearly five years, I have had the privilege of serving this Committee as Senior Communications Counsel. So I am accustomed to these halls, this room, and the deliberations of this body. But I can assure you that sitting at this table today is a different experience altogether.

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Finally, I believe that the FCC is blessed to have a staff of uncommon skill. If confirmed, I know it will be a pleasure to work with them day in, and day out.

In closing, Chairman Rockefeller and members of the Committee, thank you again for the opportunity to appear before you today. I look forward to answering your questions.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Jessica Rosenworcel.
2. Position to which nominated: Commissioner, Federal Communications Commission.
3. Date of Nomination: November 1, 2011.
4. Address (List current place of residence and office addresses):
 - Residence: Information not released to the public.
 - Office: Hart Senate Office Building, Room 428, Washington, DC 20510.
5. Date and Place of Birth: 7/12/71; Boston, Massachusetts.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).
 - Spouse: Mark Bailen, Partner at Baker & Hostetler.
 - Children: Caroline Bailen (5); Emmett Bailen (2).
7. List all college and graduate degrees. Provide year and school attended.
 - Wesleyan University, BA, 1993.
 - New York University School of Law, JD, 1997.
8. List all post-undergraduate employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.
 - Senior Communications Counsel, U.S. Senate, Committee on Commerce, Science and Transportation.

Senior Legal Advisor, Office of Commissioner Michael J. Copps, Federal Communications Commission.

Legal Advisor, Office of Commissioner Michael J. Copps, Federal Communications Commission.

Legal Advisor to the Bureau Chief, Wireline Competition Bureau, Federal Communications Commission.

Attorney-Advisor, Wireline Competition Bureau, Federal Communications Commission.

Attorney, Drinker Biddle & Reath.

9. Attach a copy of your resume. A copy is attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years: None.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last five years: None.

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

Federal Communications Bar Association
Chair, Cable Practice Committee (2007–2008)
Chair, Legislative Practice Committee (2009)

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt: No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

\$1,000 Donation to Barack Obama Campaign in 2008.

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

White Prize for Excellence in Economics (Wesleyan University)
Special Act Award for Contributions to Common Carrier Bureau (Federal Communications Commission)

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

I co-authored the following article:

“Assessing the Effectiveness of Section 271 Five Years After the Telecommunications Act of 1996,” Jessica Rosenworcel & Daniel Shiman, Chapter 7, *Communications Policy and Information Technology: Promises, Problems, Prospects*, MIT Press (2002).

As Senior Communications Counsel at the U.S. Senate Committee on Commerce, Science, and Transportation, I have spoken on panels at a variety of events, including the following:

May 27, 2010 Panel on “The FCC’s Authority Over Broadband Access,” sponsored by the Berkman Center for Internet & Society and the Wharton School, Washington, D.C.

March 2, 2010 Panel on legislative issues at the “National Association of Broadcasters State Leadership Conference,” Washington, D.C.

May 14, 2009 Panel on “Changing Media: Thinking Across the Issues, Part 2,” sponsored by the James L. Knight Foundation and Free Press, Washington, D.C.

March 31, 2009 Panel on legislative issues at the “National Association of Broadcasters State Leadership Conference,” Washington, D.C.

April 2, 2009 Panel on Congressional issues at “The Cable Show,” sponsored by the National Cable and Telecommunications Association, Washington, D.C.

February 29, 2009 Panel on “Implementing the Broadband Stimulus: Maximizing Benefits and Monitoring Performance,” sponsored by Columbia University Institute for Tele-Information and Georgetown University McDonough Business School, Washington, D.C.

January 5, 2009 Panel on “The Future of the FCC as an Institution,” sponsored by the University of Colorado Silicon Flatirons and Public Knowledge, Washington, D.C.

September 23, 2008 Panel on communications issues at policy conference sponsored by the Association for Maximum Service Television, Washington, D.C.

March 13, 2008 Panel on digital television transition issues at National League of Cities Congressional Conference, Washington, D.C.

March 5, 2008 Panel on emergency communications at policy conference sponsored by the E-911 Institute, Arlington, VA.

January 28, 2008 Panel on Congressional issues at “Alaska Telephone Association Winter Convention,” Lihue, HI.

September 17, 2007 Panel on Congressional issues at “Future of Music Policy Summit,” Washington, D.C.

June 8, 2007 Panel on communications issues at “Pike and Fisher’s Broadband Policy Summit,” Arlington, VA.

As an employee of the Federal Communications Commission, I spoke on panels at a variety of events, including the following:

April 5, 2005 Panel on “Consenting Advisors: The FCC Legal Experts,” at “The National Show,” sponsored by the National Cable and Telecommunications Association, Las Vegas, NV.

January 17, 2005 Panel on “The State of Regulation: A Preview of Key Issues Facing Commissions in 2005,” sponsored by the National Regulatory Research Institute, New Orleans, LA.

October 19, 2004, Panel on communications issues at “VON Telecom Policy Summit,” Boston, MA.

October 11, 2004 Panel on communications issues at United States Telecommunications Association conference, Las Vegas, NV.

January 29, 2004 Panel on communications issues at National Consumer League roundtable, Washington, D.C.

December 4, 2003 Panel on communications issues at ALTS Business and Policy Conference, Washington, D.C.

October 28, 2003 Panel on Online Communications Practice Committee, sponsored by the Federal Communications Bar Association, Washington, D.C.

December 11, 2000 Panel on communications issues at “DSL Summit,” La Quinta, CA.

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony: None.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I have nearly a decade and half of experience in communications policy. I have worked on communications matters from a wide variety of positions in both the private and public sector. Specifically, I have worked at a law firm, as an advisor at the Federal Communications Commission, and on Capitol Hill as Senior Communications Counsel at the Senate Committee on Commerce, Science, and Transportation.

I believe that this range of experiences is unique. They provide the substantive knowledge and practical savvy that help make an effective Commissioner.

I wish to serve in this position because I believe I can use my background to make a positive contribution to communications policy-protecting consumers, promoting access to new services, and fostering investment and innovation.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

All government officials operate in positions of trust and have a duty to ensure that the organization where they work has proper management and accounting controls.

I have experience managing rulemaking proceedings at the Federal Communications Commission, and managing the office of a Commissioner.

20. What do you believe to be the top three challenges facing the department/agency, and why?

Protecting consumers. As technologies evolve, one thing is paramount consumers should be the ultimate beneficiaries of policy choices by the Federal Communications Commission.

Securing access. As technologies evolve, it is imperative that all people in this country, no matter who they are or where they live, have access to the communications services that are necessary for 21st century opportunity, safety, and economic security.

Growing economy. Digital services are being a more and more important feature of our economy. Providing certainty to companies is an essential part of promoting investment, fostering innovation, and creating jobs.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

None. My financial interests are disclosed on SF-278.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain: None.

3. 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. My husband is a partner at the law firm Baker & Hostetler. His practice involves commercial litigation and does not include advocacy before the Federal Communications Commission.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten 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.

5. Describe any activity during the past ten years in which you have been 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.

I served in a variety of positions at the Federal Communications Commission and in these capacities worked on regulatory matters that involved communications policy.

I presently serve as Senior Communications Counsel at the Senate Committee on Commerce, Science, and Transportation. In this capacity, I regularly advise Senate offices on communications policy and legislation.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

In the unlikely event that conflicts of interest arise, I will resolve them by contacting the agency's Designated Agency Ethics Official. I will follow his guidance, as well as the advice of other ethics officials in the FCC's Office of General Counsel, to ensure that I am in compliance with all ethics laws, regulations and policies applicable to employees of the Executive Branch.

C. LEGAL MATTERS

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

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain: No.

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

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

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain: No.

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

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by Congressional committees? 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, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. 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.

RESUMÉ OF JESSICA ROSENWORCEL

Legal and Policy Experience

United States Senate

Committee on Commerce, Science, and Transportation, Washington, D.C.

Senior Communications Counsel, 2009–Present

Develop and implement communications policy agenda for the Democratic members of the Committee on Commerce, Science and Transportation, under the leadership of Senator Jay Rockefeller (D–West Virginia). Organize hearings regarding the National Broadband Plan, universal service and rural communications, Children’s Television Act, future of journalism, wireless service, communications accessibility for the disabled, retransmission consent for video programming, satellite television, public safety spectrum and oversight of the Federal Communications Commission and National Telecommunications and Information Administration. Develop and work to secure passage of legislation, including the Broadband Technology Opportunities Program in the American Recovery and Reinvestment Act, DTV Delay Act, Satellite Television Extension and Localism Act, 21st Century Communications and Video Accessibility Act and Public Safety Spectrum and Wireless Innovation Act.

Senior Communications Counsel, 2007–2008

Developed and implemented communications policy agenda for the Democratic members of the Committee on Commerce, Science and Transportation, under the leadership of Senator Daniel K. Inouye (D–Hawaii). Organized hearings regarding the digital television transition, broadband deployment and adoption, universal service, media ownership, media violence and indecency, network neutrality, online privacy and oversight of the Federal Communications Commission and National Telecommunications and Information Administration. Developed and worked to secure passage of legislation, including the Broadband Data Improvement Act, Child Safe Viewing Act, and New and Emerging Technologies 911 Improvement Act.

Federal Communications Commission, Washington, D.C.

Senior Legal Advisor to Commissioner Michael J. Copps, 2006–2007

Advised Senior Democratic Commissioner on television, radio and cable policy issues arising under the Communications Act and Cable Television and Consumer Protection Act. Developed office positions and strategy for advancing telecommunications, Internet, wireless and media policy priorities. Managed office staff. Provided legal analysis and voting recommendations for Commission decisions. Drafted speeches, editorials and press statements. Coordinated policy decisions with Congressional offices, state and local officials and industry representatives.

Legal Advisor to Commissioner Michael J. Copps, 2003–2006

Advised Senior Democratic Commissioner on competition policy and universal service issues arising under the Telecommunications Act. Developed policy positions on broadband deployment, Internet access, rural communications, public safety networks, E–Rate and VoIP. Provided legal analysis and voting rec-

ommendations for Commission decisions. Drafted Senate testimony, speeches and press statements. Coordinated policy decisions with Congressional offices and state regulatory authorities.

Legal Counsel to Bureau Chief, Wireline Competition Bureau, 2002–2003

Advised Bureau Chief on universal service and broadband policy. Coordinated wireline policy with Wireless Telecommunications Bureau, Cable Services Bureau and International Bureau. Taught World Bank telecommunications workshops for the Economic Ministry of Latvia.

Attorney Advisor, Policy Division, Common Carrier Bureau, 1999–2002

Managed teams drafting decisions concerning broadband deployment and competitive entry into local and long distance markets. Recipient of Special Act Award for policy contributions to the Common Carrier Bureau in 2000.

Drinker Biddle & Reath, Washington, D.C.

Communications Associate, 1997–1999

Drafted merger documents for privatization of state-owned telephone company. Prepared Bureau of Export Administration license application for cable modem encryption technology.

Reboul, MacMurray, Hewitt, Maynard & Kristol, New York, NY

Summer Associate, 1996

Drafted securities purchase agreements for venture capital and buyout firm transactions.

United States Attorney's Office, Brooklyn, NY

Summer Fellow, Criminal Division, 1995

Researched and drafted motions on issues of evidence, criminal law and criminal procedure.

Skadden, Arps, Slate, Meagher & Flom, New York, NY

Legal Assistant, 1993–1994

Managed litigation documents.

Education

New York University School Of Law, New York, NY—JD, 1997

Honors: *Annual Survey of American Law*, Editor

Wesleyan University, Middletown, CT—BA, Economics and English, 1993

Honors: White Prize for Excellence in Economics

Publication

“Assessing the Effectiveness of Section 271 Five Years After the Telecommunications Act of 1996,” Jessica Rosenworcel & Daniel R. Shiman, Chapter 7, *Communications Policy and Information Technology: Promises, Problems, Prospects*, MIT Press, 2002.

Bar Association Activity

Chair, Cable Practice Committee, Federal Communications Bar Association, 2007–2008

Chair, Legislative Practice Committee, Federal Communications Bar Association, 2009

The CHAIRMAN. Thank you, Ms. Rosenworcel. These are huge nominations and they have vast effect on the future of our country, for better or for worse.

I think it is hard to overstate the importance of the Federal Communications Commission and its reach. So I want that very clearly understood.

Mr. Pai, I would welcome your statement.

**STATEMENT OF AJIT PAI, NOMINEE FOR COMMISSIONER,
FEDERAL COMMUNICATIONS COMMISSION**

Mr. PAI. Thank you, Mr. Chairman. Chairman Rockefeller, Ranking Member Hutchison, members of the Committee. Thank you very much for giving me the opportunity to appear before you today. I appreciate as well the many courtesies you have extended

to me during this process. I have enjoyed my meetings with you and your staff. And if confirmed, I look forward to continuing that productive dialogue as well as serving with my distinguished counterpart, Ms. Rosenworcel.

I also would like to thank Senators Roberts and Moran for their very kind introductions. Their support of me has been as gracious as their service on behalf of the people of Kansas has been outstanding.

Last but certainly not least, I would like to thank the President for nominating me. I am deeply humbled by the honor. And if confirmed by the Senate, I will do my best to be worthy of the privilege of serving the American public in this capacity.

With the Committee's indulgence, I would like to introduce the members of my family who are in attendance. This might take awhile, hence the word "indulgence." Supporting me today and all days is my wonderful wife, Janine. My son, who has absconded for reasons—well, he wanted to make a contribution to the record, unfortunately. Alexander, who just turned 3 months old this past—

The CHAIRMAN. Can I ask if those who you identify if they at least raise their hands?

[Laughter.]

The CHAIRMAN. Thank you.

Mr. PAI. My parents, Radha and Varadaraj Pai. My mother-in-law and father-in-law, Marianne and Bob Van Lancker. My brother-in-law, Bob Van Lancker. My cousin Dinesh Pai and his mother, Meera Pai. My cousin Vaishali Kamath and her husband Praveen, and members of my extended in-law family, Jan and Rod Gaumer, Deborah Nicholson, who took my son Alexander outside the room, and Agnes Butsko, who is probably the most technologically savvy one of us at 80-something years of age.

I also wish to remember on this day, my late grandparents. They never could have imagined that their sacrifices and the sacrifices of their children would have culminated in this proceeding worlds and a century away.

As my introducers pointed out, I am the child of immigrants. My parents came to the United States from India exactly 40 years ago, with about ten dollars in their pockets and a willingness to work very hard and a belief in the American Dream. They settled in Parsons, Kansas in the late 1970s.

Just to give you a sense of the geographic scope of the place, Parsons is a town of about 10,000 people, approximately 150 miles south of Kansas City. After settling in Parsons, my parents began serving the community as doctors at the county hospital. They still work there to this day.

I can say that I am glad I grew up in rural Kansas. The friends I made and the experiences I had gave me valuable perspective on life. And as I grow older I find that I appreciate that perspective ever more.

Now, as a child in rural Kansas, I remember that it was expensive to make long distance calls using our bulky telephone, especially to relatives abroad. So our conversations tended to be efficient more than expansive. I recall also that we only could choose among three channels on the manual dial of our television.

Now cable television was unavailable to us at that time, but we did eventually have a satellite dish installed in our backyard. The dish was approximately ten feet across and with it we could watch non-broadcast programming if we typed in the channel coordinates into a set-top box and then waited a minute or two for the satellite dish to reposition itself.

In sum, the products and services offered by the communications industry, at least from my youthful vantage point, were rather limited.

Suffice it to say of today's communications landscape that we are not in the Kansas of my childhood anymore. Today we see convergence as cable, telephone, satellite and wireless companies compete against each other to provide traditional and novel services.

We see an explosion in content and the development of ever new ways and faster ways for people anywhere in the world to access that content. And we see personal communications devices that are as powerful if not more powerful than computers that once filled up an entire room.

Now, I believe that these developments have made our lives better, richer and in some cases even longer. And for this the private sector deserves the lion's share of the credit. After all, private companies and entrepreneurs took risks, they raised and invested capital, they brought new products and services to the marketplace, and they employed millions of people along the way.

But I think it is also important to recognize the role that the Federal Communications Commission, the Nation's premier communications agency, has played in this technological revolution.

When it prioritizes competition and innovation, the FCC allows the private sector to deliver to the American public rapid, efficient nationwide communications services at reasonable prices, precisely the charge that Congress gave the Agency in the first section of the Communications Act of 1934.

Now, speaking of 1934, a prominent national newspaper that year profiled the very first Commissioners to be appointed to the FCC. The title of the article referred to them as—and I quote—"Rulers of the Air."

Now were I fortunate to be confirmed to the same position, my ambition would be far more modest. I would not bring an ideological mission to the Agency. I would hold no favor for or prejudice against any company, segment of the industry, or technology.

Instead, on each matter, my approach would be the same. I would review the record closely. I would stay within the bounds of the Commission's authority as set by Congress, and I would work collegially with the Chairman, my fellow Commissioners and Agency staff to come up with solutions carefully calibrated to solve common problems.

Now I want to say as well that my decisionmaking process would incorporate and reflect a respect for others outside of the Agency. For example, I would seek to build a collaborative relationship with Congress, including the Members and staff of this Committee. Similarly, I would consult as appropriate with the private sector, Executive Branch agencies, state and local governments, consumer groups, and others impacted by the Commission's agenda.

I believe a good Commissioner must be a good listener. If I am fortunate to be confirmed, I will do my best to hear what all stakeholders have to say. In discharging my responsibilities, I always would be mindful of the implicit goal of communications policy to maximize the benefits of competition and innovation for all American consumers, whether they live in a big city or in rural Kansas. Or to put it in more personal terms, to enable my son, when he is my age, to marvel at how far communications services have come in his lifetime.

Chairman Rockefeller, Ranking Member Hutchison, members of the Committee, thank you once again for giving us this opportunity. I look forward to your questions and I request that my full statement be made a part of the record.

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

PREPARED STATEMENT OF AJIT PAI, NOMINEE TO BE COMMISSIONER,
FEDERAL COMMUNICATIONS COMMISSION.

Chairman Rockefeller, Ranking Member Hutchison, and members of the Committee, thank you for giving me the opportunity to appear before you today. I am grateful to you for taking the time out of your busy schedules to consider my nomination to the Federal Communications Commission. I appreciate as well the many courtesies you have extended to me during this process. I have enjoyed my meetings with you and your staff, and if I am fortunate enough to be confirmed, I look forward to continuing our productive dialogue.

I also would like to thank Senators Roberts and Moran for their very kind introductions. Their support has been as gracious as their service on behalf of the people of Kansas has been outstanding.

Last but certainly not least, I would like to thank the President for nominating me. I am humbled by the honor. If confirmed by the Senate, I will do my best to be worthy of the privilege of serving the American public in this capacity.

With the Committee's indulgence, I would like to introduce members of my family who are in attendance. Supporting me today and all days are my wonderful wife, Janine; my son, Alexander, who turned three months old this past weekend; my mother and father, Radha and Varadaraj Pai; my mother-in-law and father-in-law, Marianne and Bob Van Lancker; my brother-in-law, Bob Van Lancker; my cousin, Dinesh Pai, and his mother, Meera Pai; my cousin, Vaishali Kamath, and her husband, Praveen; and members of my extended in-law family, Janet and Rod Gaumer,

Deborah Nicholson, and Agnes Butsko, the last of whom may well be the most technologically savvy of all of us at eighty-something years of age. I also wish to remember my late grandparents, who never could have imagined that their sacrifices and those of their children would culminate in this proceeding, a world and a century away.

As my last comment suggests, I am the child of immigrants. My parents came to the United States from India exactly 40 years ago with about \$10 in their pockets, a willingness to work hard, and a strong belief in the American dream. In the late 1970s, they moved to Parsons, Kansas. Parsons is a town of about 10,000 people located approximately 150 miles south of Kansas City. After settling in Parsons, my parents began serving the community as doctors at the county hospital. They still work there today. My sister, Sheila, and I received quality educations in the local public schools. I am glad I grew up in rural Kansas. The friends I made and the experiences I had gave me a valuable perspective on life, and I have grown to appreciate that perspective ever more as I get older.

As a child, I remember having a bulky telephone, which was connected by a thick wire to a jack in the wall. It was expensive to make long-distance calls, especially to relatives abroad, so our conversations were efficient rather than expansive. I recall that we only could choose among three channels on the manual dial of our television. Cable television was not available, but we ultimately got a satellite dish installed in our back yard. The dish was approximately 10 feet across. With it, we could watch non-broadcast programming if we typed the channel coordinates into a set-top box and waited a minute or two for the satellite to reposition itself. We had ready access to just two newspapers: the local daily, which usually covered national news with snippets from wire reports, and a paper devoted to agricultural

issues. In sum, the products and services offered by the communications industry, as far as I could tell from my youthful vantage point, were rather limited.

Suffice it to say of today's communications landscape that we are not in the Kansas of my childhood anymore. We see convergence as cable, telephone, satellite, and wireless companies compete against each other to provide traditional and novel services. We see an explosion in content, and the development of new and faster ways for people anywhere in the world to access that content. We see personal communications devices that are more powerful than computers that once filled up a room.

Perhaps the best concrete example of innovation in communications is the smartphone that I routinely carry in my pocket. On this one platform, I have watched videos of television shows, read not just articles from various national newspapers but entire books, and listened to radio stations from across the country. The device also has allowed me to do things that either didn't exist back when I was a child or have nothing necessarily to do with communications. For instance, I have e-mailed and sent text messages to my friends and family. I have taken pictures and created videos of my son, and immediately have shared them with people as far away as Australia. I have navigated the roadways, bought airline tickets, made restaurant reservations, and even installed a cabinet using an application that turns the device into a leveler. I—and perhaps you too—usually take functionalities like this for granted.

But can you imagine my reaction had I been handed this device three decades ago? I and most Americans surely would have been astonished by the full range of communications technologies that consumers enjoy today. These technologies have made our lives better, richer, and in some cases, even longer. For this, the private sector deserves the lion's share of the credit. After all, companies and entrepreneurs took risks. They raised and invested capital. They brought new products and services to market. And they created millions of jobs along the way. But it also is important to recognize the role that the Nation's premier communications agency, the Federal Communications Commission, has played in this technological revolution. When it has prioritized competition and innovation, the FCC has allowed the private sector to deliver to the American people rapid, efficient, nationwide communications services at reasonable prices—the very charge Congress gave the agency in the first section of the Communications Act of 1934.

Speaking of 1934, a prominent national newspaper that year profiled the very first Commissioners to be appointed to the FCC. The title of the article referred to them as "Rulers of the Air." Were I fortunate to be confirmed to the same position, my ambition would be far more modest. I would not bring an ideological mission to the agency. I would hold no favor for or prejudice against any particular company, segment of the industry, or technology. On each matter presented to the full Commission, my approach would be the same. I would study the record closely. I would stay within the boundaries of the Commission's authority, as set forth by Congress. And I would work collegially with the Chairman, my fellow Commissioners, and agency staff to come up with solutions carefully calibrated to solve problems. My aim would be to help the FCC establish a regulatory framework that enables the communications sector to achieve even greater heights.

My decisionmaking process also would reflect a respect for those outside the agency with an important interest in the FCC's work. I would seek to build a collaborative relationship with Congress, including the members and staff of this Committee. Having worked in the Senate, I will bring to the Commission a firsthand understanding of and appreciation for congressional prerogatives. Similarly, I would consult as appropriate with the private sector, Executive Branch agencies, consumer groups, state and local governments, and others impacted by the Commission's agenda. A good Commissioner must be a good listener, and if confirmed, I will do my best to make sure that I hear what all stakeholders have to say.

In discharging my responsibilities, I always would be mindful of the implicit goal of communications policy: to maximize the benefits of competition and innovation for all American consumers, whether they live in a big city or rural Kansas. Or to put it in more personal terms: to enable my son to marvel, when he is my age, at just how far communications services have come in his lifetime.

Chairman Rockefeller, Ranking Member Hutchison, and members of the Committee, thank you once again for affording me an opportunity to testify today. I look forward to your questions.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Ajit Varadaraj Pai.
2. Position to which nominated: Member, Federal Communications Commission (FCC).
3. Date of Nomination: November 1, 2011.
4. Address (List current place of residence and office addresses):
 Residence: Information not released to the public.
 Office: Jenner & Block LLP, 1099 New York Avenue, N.W., Suite 900, Washington, D.C. 20001-4412.
5. Date and Place of Birth: January 10, 1973; Buffalo, New York.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).
 Spouse: Janine Van Lancker, Assistant Professor of Medicine, Allergy and Sinus Center, Medical Faculty Associates, George Washington University Medical Center, 2150 Pennsylvania Avenue, N.W. Washington, D.C. 20037-3201.
 Child: Alexander Madhav Pai, born August 26, 2011.
7. List all college and graduate degrees. Provide year and school attended.
 Harvard University, B.A. (1994)
 University of Chicago, J.D. (1997)
8. List all post-undergraduate employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

Post-Undergraduate Employment

Jenner & Block LLP. Partner (April 2011 to present).
 Federal Communications Commission, Office of General Counsel. Special Advisor to the General Counsel (March 2010–April 2011); Deputy General Counsel (December 2007–February 2010); Associate General Counsel (July 2007–December 2007).
 U.S. Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights, and Property Rights. Chief Counsel (February 2005–June 2007).
 U.S. Department of Justice, Office of Legal Policy. Senior Counsel (May 2004–February 2005).
 U.S. Senate Judiciary Committee, Subcommittee on Administrative Oversight and the Courts. Deputy Chief Counsel (March 2003–May 2004).
 Verizon Communications Inc. Associate General Counsel (February 2001–March 2003).
 U.S. Department of Justice, Antitrust Division, Telecommunications Task Force. Trial Attorney, Attorney General's Honors Program (December 1998–February 2001).
 Hon. Martin L.C. Feldman, U.S. District Court, Eastern District of Louisiana. Law Clerk (September 1997–September 1998).
 Kirkland & Ellis. Summer Associate (June 1997–September 1997). Latham & Watkins. Summer Associate (June 1996–September 1996).
 Lathrop & Norquist (now Lathrop & Gage LLP). Summer Associate (August 1995–September 1995).
 Hon. Kathryn H. Vratil, U.S. District Court, District of Kansas. Summer Law Clerk (June 1995–July 1995).

The management-level jobs I have held include Deputy General Counsel and Associate General Counsel at the Federal Communications Commission; Partner at Jenner & Block LLP (my current position); Chief Counsel at the U.S. Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Property Rights; and Deputy Chief Counsel at the U.S. Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts.

The non-managerial jobs I have held which relate to the position for which I have been nominated include Special Advisor to the General Counsel at the Federal Communications Commission; Senior Counsel at the U.S. Department of Justice, Office of Legal Policy; Associate General Counsel at Verizon Communications Inc.; and

Trial Attorney at the U.S. Department of Justice, Antitrust Division, Telecommunications Task Force.

9. Attach a copy of your resume. A copy is attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years: None.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last five years.

Partner, Jenner & Block LLP (April 2011 to present).

Co-Trustee, Radha V. Pai Children's Trust (entire time period).

Co-Trustee, Varadaraj S. Pai Children's Trust (entire time period).

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

Kansas Bar. Member during entire reporting period.

District of Columbia Bar. Member (December 3, 2001–September 30, 2003, June 18, 2004 to present). Member, Nominations Committee (November 2010 present).

Federalist Society for Law and Public Policy Studies. Member during entire reporting period; Member, Executive Committee, Administrative Law Practice Group (January 2011 to present).

South Asian Bar Association-District of Columbia. Member during entire reporting period; Member of the Board (2001–02).

Federal Communications Bar Association. Member (2008–09).

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt: No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

I have not contributed \$500 or more to any individual, campaign organization, political party, political action committee, or similar entity over the past ten years. I have not held any offices with any state or national political party, political action committee, or campaign committee during the same period. Between November 6–8, 2006, I served as a volunteer for the Republican National Committee in Montana.

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

Marshall Memorial Fellowship, awarded by the German Marshall Fund of the United States (2011).

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

Article, "Congress and the Constitution: The Legal Tender Act of 1862," 77 Oregon Law Review 535 (1998).

Comment, "Should a Grand Jury Subpoena Override a District Court's Protective Order?," 64 University of Chicago Law Review 317 (1997).

I have not given any speeches on topics relevant to the position for which I have been nominated.

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

I have not done so.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for ap-

pointment to the position for which you have been nominated, and why do you wish to serve in that position?

With respect to my background, first and foremost, I have extensive Commission experience. I worked in the agency's Office of General Counsel (OGC) for almost four years on a wide variety of communications law issues and administrative matters. Because OGC's Administrative Law Division (which I supervised for a time as Deputy General Counsel) reviews virtually every significant proposed Commission decision, I had a broad and deep view of the agency's overall docket, and worked on a wide variety of media, wireline, wireless, spectrum, and public safety issues. Over time, I also interacted with Commission-level leadership and every Bureau and Office, and I became quite familiar with agency personnel and procedures. Knowledge of the agency's law, rules, and people is indispensable for Commissioners charged with primary responsibility for decisionmaking.

Second, my other professional experience has given me a good understanding of law, government, and business. From my years on Capitol Hill, I learned about the intricacies of the legislative process and gained a respect for members' prerogatives and perspectives. My time at the U.S. Department of Justice's Office of Legal Policy taught me about the importance of inter-branch consultation and inter-agency coordination. My work at Verizon gave me a better understanding of how the regulatory landscape affects corporate strategy and execution and how the communications industry operates. During my service in the Telecommunications Task Force at the U.S. Department of Justice's Antitrust Division, I helped to evaluate a number of telecommunications transactions, large and small, and to assess requests for regulatory relief following the enactment of the Telecommunications Act of 1996. Finally, as a law clerk to Judge Martin Feldman of the Eastern District of Louisiana, I obtained an in-depth education in the judicial process and the importance of timely, thorough resolution of claims. In sum, I believe my experience in all three branches of government, an independent agency, and a large company give me a good foundation to serve on the Commission.

Third, I have management experience. My most significant management role was as Deputy General Counsel in OGC, as described in more detail in response to the next question. I also served as Chief Counsel of the U.S. Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Property Rights. In this position, I managed the Subcommittee's agenda, worked with members and staff of both parties, and led then-Senator Brownback's team in evaluating everything from Supreme Court nominations to immigration legislation. I believe such management experience would help me run an office as an agency principal.

Finally, throughout my professional career, I have always done my best to work with colleagues in a collegial manner and to reach cooperative solutions to problems. Even if the person with whom I am dealing has an irreconcilably opposing view on an issue, I try to disagree agreeably. Fortunately, the bulk of the Commission's work proceeds by consensus; most votes are unanimous, and the agency has a collaborative culture. But on those rare occasions when divisions arise on a Commission-level item, my approach would be one of constructive engagement and then, if necessary, respectful disagreement.

I wish to be a Member of the Federal Communications Commission for two basic reasons. First, I believe in public service. For most of my career, I have worked for the United States, and my client has been the public interest. It would be a privilege once again to contribute to the FCC's mission, especially in a decision-making role. Second, the communications industry has brought tremendous benefits to the American economy generally and American consumers in particular. Perhaps more than any other, it is characterized by innovation and change. I would welcome the opportunities to serve as a Member at the agency that plays an important role in this dynamic field and to do my best to ensure that the communications industry continues to contribute to economic growth and the welfare of consumers.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

The Chairman of the FCC is the agency's chief executive officer. Nevertheless, were I fortunate enough to be confirmed as a Commissioner, I would take as active a role as possible in ensuring that the agency was managed properly. The most important way a Commissioner can do this is by fully and timely participating in Commission proceedings, especially proposed items that the Chairman has placed on a meeting agenda or on circulation. Helping the Commission reach and issue a final decision in a timely manner not only reflects good government, but also gives parties to a particular proceeding the resolution they deserve.

In terms of administrative issues, I would work to improve agency management in several ways. Most importantly, I would urge the Chairman, other Commis-

sioners, and staff to take full advantage of the Commission's February 2011 order amending various Part 0 and Part 1 rules of agency organization, practice, and procedure (for which I was the primary drafter while I was at the Commission and which is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0211/FCC-11-16A1.pdf by broadening the use of electronic filing; terminating more dormant proceedings; expanding the number of docketed proceedings; issuing more electronic and fewer hardcopy notifications of new filings or other changes in a particular docket; and dismissing plainly defective petitions for reconsideration on the staff level (rather than at the Commission level, in order to conserve scarce resources). In addition, there are a number of areas relatively removed from public attention where agency processes could be improved. For instance, Commission procurement is particularly important at a time of fiscal constraint, and I would seek to make sure that Commission procurement processes were consistent with the Federal Acquisition Regulation, as well as basic principles of accountability and proper stewardship of Federal funds. Finally, I would work to maintain good relations with Congress by, among other things, keeping the door open to members and staff with an interest in agency issues and urging the timely completion of reports required by statute to be submitted to Congress.

The best example of my experience managing a large organization would be my service as Deputy General Counsel at the Commission. In that role, I led a team of approximately 40 lawyers in OGC's Administrative Law Division. As described on its website, the Division "reviews all draft Commission decisions for legal sufficiency. Division staff provide legal advice to the Commission concerning a wide array of statutes, regulations, and procedures, including, for example, the Communications Act of 1934, as amended by the Telecommunications Act of 1996, the Administrative Procedure Act, the Freedom of Information Act, the Privacy Act, the Regulatory Flexibility Act, the Paperwork Reduction Act of 1995, the Government in the Sunshine Act, the Contract with America Advancement Act of 1996, negotiated rulemaking and alternative dispute resolution, the Commission's procedural rules, procurement issues, the agency's ex parte and ethics rules (including receipt of gifts by the Commission and its employees, reimbursed travel expenses, and lobbying disclosure)." See <http://www.fcc.gov/encyclopedia/administrative-law-division-office-general-counsel>.

Given the importance, breadth, and sheer volume of the matters that came through the Division for review, careful management was necessary to ensure that the Commission—from Commissioners' offices to the staff in agency Bureaus and Offices—could function in a timely, appropriate manner. Accordingly, as supervising head, it was crucial to keep abreast of all activities of the lawyers within the Division. To this end, I provided as much detailed feedback as possible on items the team leaders sent to me for review, and I made affirmative efforts to become more knowledgeable in areas of law in which they were subject matter experts. Similarly, I communicated promptly to Division leaders the policy choices and requests for legal advice made by Commission and Bureau leadership. I also held a weekly meeting that was attended by the Division Chief, the two deputy chiefs, the six assistant general counsels who served as team leaders for different areas, and representatives from the Office of General Counsel's Transactions Team and Litigation Division. Prior to each meeting, the assistants circulated a report detailing all pending and recently resolved business in the areas within their purview. At the meeting itself, I offered updates on upcoming Commission meetings or other issues affecting the Division. I then asked each attendee to discuss any substantive or administrative matters with the group. This process allowed me to ensure that the Division's work was proceeding smoothly and allowed team leaders a better sense of how to manage their team members with respect to ongoing and future projects. I also consulted frequently with the Division Chief and/or individual team leaders one-on-one in order to resolve more sensitive issues not suited for group-wide discussion. I offer this detailed description of my work as Deputy General Counsel to demonstrate that my management style was, and would be, engaged, efficient, and collegial.

20. What do you believe to be the top three challenges facing the department/agency, and why?

I believe the top three challenges facing the Federal Communications Commission are as follows:

- (1) Optimizing private sector incentives to invest in, create, and maintain cutting edge communications networks, products, and services. As mentioned above, the hallmarks of the communications industry are innovation and change. And generally speaking, consumer welfare is maximized when the marketplace offers improved technology at competitive prices. When the Commission acts, it should be mindful of the importance of the communications indus-

try to our international competitiveness, economic growth, and Americans' quality of life.

(2) Solving the "big" problems. The Commission should resolve important matters that have long simmered on its dockets without final resolution. Chairmen and Commissioners of both political parties have struggled with these issues, and often for good reasons. However, industry and the public would benefit from decisive Commission action. Uncertainty about the rules of the road poorly serves carriers and, ultimately, consumers. I would make a sincere commitment to help the agency make difficult but necessary policy choices in important matters were the Senate to afford me the privilege of serving as a Commissioner.

(3) Adopting spectrum policies that meet the demands of the broadband age. American consumers' greater use of increasingly sophisticated communications technology is putting unprecedented demands on communications networks and spectrum. In particular, mobile broadband data usage is exploding as more consumers use their mobile devices to watch videos, surf the Internet, and more. Given these trends, the Commission will need to allocate and establish service rules for the spectrum within its jurisdiction in ways that ensure efficient, technically feasible use (consistent with statutory guidelines).

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

During my employment at Verizon Communications Inc., I contributed to a 401(k) plan (with a proportionate matching amount contributed by the company). That plan, over which I still have control, is managed by Fidelity Investments, and all funds are invested in diversified index funds.

I currently receive a monthly stipend from Jenner & Block LLP, where I am a non-equity Partner in the Litigation Department, which would stop were I to be confirmed. I also participate in the Firm's Profit Sharing Plan (401(k)), which is also managed by Fidelity Investments. All funds are invested in a diversified index fund.

I do not have any other financial arrangements with the Firm.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain.

I have no commitment or agreement to maintain my affiliation with the District of Columbia Bar (where I serve as a Member of the Nominations Committee) or the Federalist Society for Law and Public Policy (where I serve as a Member of the Executive Committee for the Administrative Law Practice Group). As set forth in the ethics agreement I signed on October 24, 2011, should I be confirmed, I will resign from my positions as a Member of the Nominations Committee and a Member of the Executive Committee for the Administrative Law Practice Group respectively.

3. 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.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten 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 do not believe my employment at Verizon Communications Inc. between 2001 and 2003 would give rise to an actual or potential conflict of interest (or the appearance of such) with my prospective appointment to the Federal Communications Commission, but I list it here given that it is an entity subject to regulation by the agency.

Since beginning at Jenner & Block LLP on April 25, 2011, I have done a limited amount of work for a few clients. Out of an abundance of caution, the complete list of my clients is as follows: AOL, Inc.; Cablevision Systems Corp.; Cerberus Capital Management, L.P.; Charter Communications, Inc.; General Dynamics Corp., C4 Systems; Guggenheim Partners, LLC; The Nielsen Company; and Securus Technologies, Inc. During this time: (1) I have not appeared before the Federal Communications Commission, Executive Branch agencies, Congress, or any court in connection with my work for these clients; (2) my name has not appeared on any comments, briefs, or any other written work submitted on their behalf; and (3) to preclude conflicts, my firm has established a screen as appropriate to prevent my colleagues from discussing specific matters with me.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modifica-

tion of any legislation or affecting the administration and execution of law or public policy.

- During my tenure at the Federal Communications Commission (between 2007 and 2011), I was asked very occasionally to review proposed legislation. I was not asked to recommend the passage, defeat, or modification of such proposals so much as to explain their likely effects. Unfortunately, I cannot recall which specific bills I was asked to review. Additionally, the bulk of my work within the Office of General Counsel at the Commission involved analysis of proposed agency actions—or, in a few cases involving litigation, final agency actions—for consistency with substantive communications laws as well as general administrative laws.
- My employment at the U.S. Senate Judiciary Committee during 2003 and 2004 and again between 2005 and 2007 required frequent involvement in the legislative process on issues as varied as compensation for asbestos-related injuries and immigration reform. I also staffed the Senators for whom I worked at oversight hearings of Executive Branch agencies, such as the U.S. Department of Justice and the Federal Bureau of Investigation.
- My work in the Office of Legal Policy at the U.S. Department of Justice between 2004 and 2005 also involved legislative analysis and advocacy, primarily with respect to national security; for instance, I met with staff for Senator Dianne Feinstein in 2004 to discuss the reauthorization of sixteen expiring provisions of the USA PATRIOT Act, and I helped draft a letter to the Senator explaining the purpose and importance of those provisions.
- Finally, in 2001, while I was working at Verizon Communications Inc., Senior Vice President and Deputy General Counsel John Thome and I met one time with House Energy and Commerce Committee staff to discuss the company's views on H.R. 1542, the Internet Freedom and Broadband Deployment Act.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

Should I be confirmed as a Member of the Federal Communications Commission, I would resolve potential conflicts of interest by (1) identifying the proceeding(s) to which the potential conflicts pertain and gathering all relevant facts; (2) discussing the nature of the potential conflicts with and seeking guidance from the Designated Agency Ethics Official and other attorneys responsible for ethics issues in the Office of General Counsel; and (3) taking the appropriate action to ensure compliance with applicable ethics laws and regulations, as set forth by Congress, the agency, and the bar, respectively.

C. LEGAL MATTERS

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

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain: No.

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

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

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain: No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

I am a member of the Kansas and District of Columbia bars, admitted on October 13, 1998 and December 3, 2001, respectively. In the late summer of 2003, after I became a staffer for Senator Jeff Sessions on the Senate Judiciary Committee, I received a notice (possibly a second notice) from the Kansas Bar informing me that my bar dues had not been paid. Thereafter, I sent the Kansas Bar a check for the requisite amount. Unfortunately, the check arrived several days after the deadline for payment had passed (per a notation made by the Kansas Bar on the letter that I had sent and that was returned), and on October 6, 2003, my Kansas license was suspended. Similarly, my District of Columbia license was suspended for non-payment of dues, effective September 30, 2003. After this time, I recall having a conversation with Senate Ethics staff in which I described these circumstances and

was told that Senate staffers doing policy work exclusively were not required to maintain an active bar license. I also was informed by Senator Sessions' office that the office did not require that lawyers on staff maintain an active bar license.

Nonetheless, I sought to reinstate both licenses in late 2003. According to the Kansas Bar's instructions for reinstatement, one requirement was that I submit an application for reinstatement. Similarly, in order to get my District of Columbia bar license reinstated, I had to take and certify completion of the Course on the District of Columbia Rules of Professional Conduct and District of Columbia Practice, and I also had to submit a statement that I was not suspended by any disciplinary authority. See D.C. Bar Bylaws, Art. III, §3(a), available at www.dcbar.org/inside-the-bar/structure/bylaws/article03.cfm#sec3. I took the required District of Columbia Bar course; submitted all necessary forms; paid all applicable fees and charges; and finished the remaining steps needed in order for the respective bars to accept my applications for reinstatement. On June 10, 2004, my Kansas license was reinstated to active status, as was my District of Columbia license on June 18, 2004. I was a member in good standing of each bar before September 30, 2003, and without exception, I have been a member in good standing of each bar since June 18, 2004. However, I greatly regret the oversight that resulted in the administrative suspensions between those dates and will not allow such an oversight to happen again.

I also would note that on March 26, 2009, the Kansas Bar informed me that the suspension of a license under these circumstances is an administrative matter that does not involve a reprimand, a breach of ethics, or any other kind of disciplinary sanction. On the same day, the District of Columbia Bar confirmed that this was an administrative suspension only, and that my work during this time did not constitute the unauthorized practice of law because I did not appear in court, sign legal briefs, or do other work typically done by lawyers performing traditional legal functions. (In connection with the background check requisite for nomination to this position, I proactively conveyed the information above to the Federal Bureau of Investigation.)

D. RELATIONSHIP WITH COMMITTEE

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

I would do everything within my power as a Commissioner to ensure that such deadlines are met.

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?

I would do everything within my power as a Commissioner to ensure that Congressional witnesses and whistle blowers are protected from reprisal.

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

4. 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.

RESUMÉ OF AJIT V. PAI

Experience

Jenner & Block LLP. Partner (April 2011 to present). Member of Litigation Department and Communications Practice.

Federal Communications Commission, Office of General Counsel. Special Advisor to the General Counsel (March 2010–April 2011); *Deputy General Counsel* (December 2007–February 2010); *Associate General Counsel* (July 2007–December 2007). Led team of over 40 lawyers in handling wide variety of matters involving the cable, Internet, wireless, media, satellite, and other industries. Also was responsible for non-communications legal matters, including fiscal law, intellectual property, and environmental law. Finally, argued before and prevailed in the U.S. Court of Appeals for the D.C. Circuit in *National Cable & Telecomms. Ass'n. Inc. v. FCC*; briefed the Court in *CTIA-The Wireless Ass'n v. FCC*; drafted comprehensive revision of agency rules and procedures; and led Commission response to broadest Congressional investigation in recent history.

U.S. Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights, and Property Rights. Chief Counsel (February 2005–June 2007). Managed all Subcommittee business, budget, and staff; was lead counsel on Supreme Court nomina-

tions, constitutional law, national security, communications, media, Internet regulation, antitrust, and other issues; and served as general counsel for Senator's personal office, handling full range of personnel and ethics matters.

U.S. Department of Justice, Office of Legal Policy, Senior Counsel (May 2004–February 2005). Worked on issues and initiatives relating to national security, communications, and judicial administration; assisted in consideration of judicial and executive nominations; handled Department's implementation of Executive Order 13,353, establishing the President's Board on Safeguarding Americans' Civil Liberties; and counseled Associate Attorney General in his representation of the Department at American Bar Association's annual meeting.

U.S. Senate Judiciary Committee, Subcommittee on Administrative Oversight and the Courts, Deputy Chief Counsel (March 2003–May 2004). Served as lead counsel on national security, constitutional, communications, antitrust, and other issues.

Verizon Communications Inc. Associate General Counsel (February 2001–March 2003). Drafted amicus brief to the Supreme Court in *National Cable & Telecomms. Ass'n, Inc. v. Gulf Power Co.*, 534 U.S. 327 (2002); helped draft Federal and state court briefs, *see, e.g., Verizon New Jersey Inc. v. Ntegrity Telecontent Servs., Inc.*, 219 F.Supp.2d 616 (D.N.J. 2002); conducted depositions; counseled business executives on variety of critical competition issues; worked extensively with business and engineering teams to establish wireline broadband standard-setting organization; ran antitrust compliance training program; submitted comments to Federal Communications Commission in connection with proposed rulemaking; and prepared general counsel for Congressional hearing on communications and antitrust issues.

U.S. Department of Justice, Antitrust Division, Telecommunications Task Force, Trial Attorney, Attorney General's Honors Program (December 1998–February 2001). Worked on proposed transactions and requests for regulatory relief, including the then-largest proposed merger in history and the first successful petition for long-distance market entry following enactment of the Telecommunications Act of 1996. Responsibilities included drafting application for temporary restraining order to enjoin prospective merger; interviewing and second-chairing depositions of telecommunications executives; evaluating Section 271 petitions for regulatory approval; drafting motions, affidavits, third-party communications, and other documents for use in regulatory proceedings and litigation; reviewing documents produced by parties pursuant to "second requests" and other compulsory antitrust process; and coordinating regulatory review with Federal Communications Commission, Federal Trade Commission, and other antitrust agencies.

Hon. Martin L.C. Feldman, U.S. District Court, Eastern District of Louisiana, Law Clerk (September 1997–September 1998). Conducted research, drafted orders, and assisted in preparation for trial in admiralty, antitrust, bankruptcy, employment discrimination, and other cases.

Kirkland & Ellis, Los Angeles, CA. Summer Associate (June 1997–September 1997). Permanent offer extended.

Latham & Watkins, Los Angeles, CA. Summer Associate (June 1996–September 1996). Permanent offer extended.

Education

University of Chicago Law School J.D., 1997.

- *University of Chicago Law Review. Editor* (1996–97); *Staff Member* (1995–96).
- *Semifinalist*, Hinton Moot Court Competition (1997). Winner of Thomas J. Mulroy Prize.
- *Harvard University. B.A. with honors in Social Studies*, 1994.

Harvard Speech and Parliamentary Debate Society. Member (1990–94); *Vice President* (1992–93). *Quarterfinalist*, World Debate Championships, Melbourne, Australia (1994).

Publications

Comment, "Should a Grand Jury Subpoena Override a District Court's Protective Order?," 64 U. Chi. L. Rev. 317 (1997). *Proposal adopted, In re Grand Jury Subpoena*, 138 F.3d 442,445 (1st Cir. 1998), *cert. denied*, 524 U.S. 939 (1998); *In re Grand Jury*, 286 F.3d 153, 162–63 (3d Cir. 2002).

Article, "Congress and the Constitution: The Legal Tender Act of 1862," 77 Oregon L. Rev. 535 (1998). Originally drafted during law school and nominated by University of Chicago Law School faculty for Casper Platt Award, which recognizes the most outstanding student paper (1997).

Miscellaneous

- Member in good standing of Kansas and District of Columbia Bars.
- Awarded the 2011 Marshall Memorial Fellowship by the German Marshall Fund of the United States.
- Member of District of Columbia Bar Association (Member, Nominations Committee) and Federalist Society (Executive Committee Member, Administrative Law Practice Group).

The CHAIRMAN. And it will be so. Thank you very much, Mr. Pai. And you have a very warm way of talking, too, a very inclusive way. So when you say that you are a good listener, I truly believe that. And I also think it is incredibly important.

Mr. PAI. Thank you, Mr. Chairman.

The CHAIRMAN. FCC is a very complex organization. And it deals in such cerebral matters and technical matters that the human relations aspect of it, within the FCC and then also reaching out to the public becomes very important. Because most people don't know what you do and if they do, they are probably afraid of you. And so those personal skills are incredibly important.

I would like to start the questioning with a question to each of you. It is a question which Jessica Rosenworcel has heard many times before, because I always ask it as the very first question.

Senator Olympia Snowe and I were responsible for establishing a program which we are very fond of, called the "e-Rate", and a lot of other people helped. It has done a fantastic job in helping with closing the digital divide. I thought at the time that, when it passed, that California would be way out, a high number in the percentage of classrooms which were covered. And in fact it was only 15 percent. On the other hand, Houston, which I figured might have had a lower, they went wireless and within 2 days they were at 100 percent.

So I mean there is this vast variation. In West Virginia the numbers were very low. Now they are very high, as they are across the country. But also, the e-Rate program is not just making a connection, but keeping that connection current, and having the technology to keep it so, so it can continue to close the digital divide.

So, my question is very simple but profoundly important to me. Will you both promise me that you will support the e-Rate program?

Ms. ROSENWORCEL. Yes.

[Laughter.]

The CHAIRMAN. That's one.

Mr. PAI. Senator, if confirmed, I look forward to working with you on the e-Rate program and I support the program.

The CHAIRMAN. Good.

[Laughter.]

The CHAIRMAN. One of the reasons I say that is that there is a tendency sometimes with the FCC to look at e-Rate-related money, which is for the moment fungible, and then to apply that to things which have nothing to do with the e-Rate. Or others will try to make that grab of money.

That is something which causes me vast heartache. So I am going to incorporate that in your "yes" answer, that you will keep your eye out for that.

The second question would be also an obvious one. And Senator Kay Bailey Hutchison gave me some very good news today. But I was really kind of shocked that we started a couple of years ago to draw up a bill to honor the 9/11 Commission's last unfulfilled request, and that is that we have a national wireless broadband connectivity so that everybody in the country would hold virtually the same device, so that they were instantly in touch with each other, that they were not like, you know, when the military invaded Kuwait and the Marines and the Navy—nobody could talk to each other because they had different ways of talking to each other, and they couldn't talk to each other. And that was extremely embarrassing.

That has been overcome but it remains very much the case in terms of our first responders in America, and that would be firefighters and policemen and all kinds of people who do a variety of work and who have to be connected and have to be able—for example, a firefighter has to be able to not just be able to take a photograph of the building that he is going into, but it may be a building-penetrating photograph, in which he can locate an injured person, when he goes into the building, apprise the nature of the problem the injured person has and then shoot that right to the emergency room at the local hospital.

All of these things have to work together. And the Congress—there was an enormous amount of support for us, absolutely every imaginable public group, and absolutely nothing happened. It passed this Committee by a vote of 21 to 4. It might have been a higher vote if we had taken it at a different time. But 21/4—not very much passes 21 to 4. So it was right there. Everybody was for it. The Vice President was all over it, and nothing happened.

So obviously in something like that, you don't give up. You continue on. It made voluntary giving back of spectrum to the FCC and nobody believes that it is voluntary, but it is in the law. It is voluntary. People do not have to do it. But a lot of people want to do it.

And therefore there would be a lot of money, many billions of dollars coming back into the FCC, a lot of which could be used for deploying this system across the country to every part of the country. Every part of Alaska, every part of everywhere.

And also to making sure that the hardware was there. And then in the end there would be money left over for deficit reduction, about 5.6 billion dollars.

So, it's getting pretty hard to argue that this is a bad idea. And it doesn't cost the taxpayer a single dime.

So, I would ask each of you again if you will be supportive of the Committee's efforts with respect to this legislation.

Ms. ROSENWORCEL. Yes.

[Laughter.]

Mr. PAI. Yes, Mr. Chairman.

The CHAIRMAN. I am happy, and my time is up.

Senator Hutchison?

Senator HUTCHISON. Thank you, Mr. Chairman.

First, I think that you pretty much answered, Mr. Pai, in your opening statement, but I wanted on the record that you have recently joined a law firm, Jenner & Block, which does have business

before the FCC, including one of the sides in a potential merger between AT&T and T-Mobile, which has been abandoned but not necessarily permanently.

So my question is, do you have any possible conflicts of interest, would you recuse yourself if there were a conflict between your previous law firm and business that comes before the FCC?

I would like to know exactly how you would plan to handle that.

Mr. PAI. Thank you, Senator Hutchison, for the question. I do not believe that my short period of employment at Jenner & Block would preclude me from being an effective Commissioner or from robustly participating in Commission proceedings.

I was aware, starting literally on my first day at the firm, that I was under consideration for this position. Accordingly, my during my time at Jenner, I have not represented any clients before the FCC. My name has not appeared on any comments or pleadings that are submitted to the FCC, and the firm, in appropriate cases, has instituted a screen to preclude me from discussing or otherwise handling or knowing about particular matters.

Senator HUTCHISON. And you would not feel any prejudice in favor of a client of your former firm?

Mr. PAI. Not at all, Senator.

Senator HUTCHISON. All right.

I would like to ask Ms. Rosenworcel. As you know, last year the FCC opened a proceeding to consider regulating broadband Internet services as a common carrier under Title II of the Communications Act to impose net neutrality restrictions.

The FCC did abandon that approach when there was a bipartisan outcry from Congress and did go forward on net neutrality under Title I.

But Chairman Genachowski has said that he will keep the Title II reclassification docket open. Do you think that there is any value in keeping this proceeding open when a bipartisan group in Congress has so clearly opposed it?

Ms. ROSENWORCEL. I know that now for nearly a decade the FCC has chosen to look at these broadband services as Title I services. I recognize that the Supreme Court has upheld that decision, and that the Agency has tried to use its ancillary authority to provide consumer protection under Title I.

The scope of that is under consideration and review in the D.C. Circuit right now. And, as a Commissioner, if confirmed, I would clearly abide by any decision that that court reaches.

Senator HUTCHISON. And, Mr. Pai, on that same question to you?

Mr. PAI. Thank you, Senator. Obviously, this is an issue that closely divided the Commission and closely divided this body. I think, nonetheless, it has been healthy to have this debate because it has identified for the public the various positions on either side.

Proponents obviously argued that it is important to preserve an open and free and vibrant Internet for consumers and opponents have argued that it is important for Internet service providers to be able to reasonably manage their network in order to promote an open and vibrant experience for everybody.

As my colleague has pointed out, this decision is under review in the D.C. Circuit, and depending on what the court says about the

scope of the Commission's authority, I as a Commissioner, if I were fortunate to be confirmed, would abide by that decision as well.

Senator HUTCHISON. On merger conditions—this is a question for both of you, as well. Sometimes in recent years the FCC has imposed merger conditions on companies that seem extraneous to the transaction and could be seen as attempts to achieve policy goals that it would not otherwise be able to impose through its regulatory rulemaking.

How do you feel about the role of the FCC in these merger applications and putting extraneous diversions or requirements for jettisoning part of their portfolios? How do you feel about that approach to a merger approval or disapproval? Both of you.

Ms. ROSENWORCEL. Thank you for the question, Senator. The FCC's authority for merger review is largely under Title II and Title III of the statute. They have a DD to assess whether transactions and specifically the transfers or licenses are in the public interest, convenience and necessity.

It is my opinion that any conditions that apply to that standard should at least be rationally related to the transaction.

Senator HUTCHISON. But not more than that? Are you saying that you would limit to that nexus?

Ms. ROSENWORCEL. I think if they were rationally related to the harms in the transaction and remedy those harms and increase consumer benefits, that's justifiable under the statute and I would clearly adhere to the statute.

Senator HUTCHISON. What would be your position, Mr. Pai?

Mr. PAI. Senator Hutchison, my approach to merger review would—under the public interest standard that my colleague has outlined, would be simply to evaluate whether the merger would benefit competition and benefit consumers.

Now to the extent that in the course of reviewing a merger the Commission found that a competitive harm would arise, I would be open to considering merger conditions that were, in the parlance, “merger-specific.” That is, conditions that directly related to the competitive harm that had been identified by the Agency. I think part of the difficulty that arises when “extraneous” as you put it, conditions are considered, is that the merger review process becomes a vortex for a variety of concerns that don't necessarily have to do with the merits of the transaction, even if those particular conditions might be good ideas, or might be good policies for the FCC to pursue in a generalized rulemaking.

So, my approach would be to limit conditions to merger-specific types.

Senator HUTCHISON. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Hutchison. Senator Kerry, of course, is Chairman of the Subcommittee which is responsible for all of this, and he was detained at the White House, which is probably a pretty good place to be detained at. But he arrived here late. But we are calling on him, as I did on Senator DeMint, to speak. He hasn't had that chance, so I told him he that could take a couple of extra minutes in his questioning period and use that however he wished to make some points or whatever.

**STATEMENT OF HON. JOHN F. KERRY,
U.S. SENATOR FROM MASSACHUSETTS**

Senator KERRY. Mr. Chairman, thank you very much. I certainly was not detained there in the way I had originally intended, but I was otherwise detained.

[Laughter.]

Senator KERRY. Mr. Chairman, I know it's very gratifying to see a member of one's staff receive this kind of recognition. I also know it is very hard to let a talented member of your team go. I think all of us here on the Committee are unbelievably familiar with Jessica Rosenworcel's work, with her passion for service and her commitment to the public interest, and especially her encyclopedic knowledge of communications law. And I think she has served us all on this Committee with great distinction. And we thank you very much for that.

I am less familiar with Mr. Pai's work in a direct way, but I know of his reputation in the community of professionals that serve us all in this effort, and of his previous service in the Senate, which is commendable.

And I personally look forward to supporting both of your nominations.

Senator Rockefeller in his comments a few moments ago said this is big nomination, these are big nominations. And I just want to second that in a very real way.

You guys are the protectors of our democracy. You are the protectors of the viability of thought and communication and ideas being able to freely move across and around, in and throughout our entire social fabric.

And if it gets too "conglomeratized" and too narrow in ownership and in capacity to move, our—really our freedom is challenged. Our democracy is lesser, I think.

Both of you are widely recognized for your temperament and for your intellectual capacity. And I think given the nature of the marketplace that you are going to be regulating—overseeing, you are going to need those skills enormously.

Big monied interests are going to lobby you to gain tactical advantage, public interest groups will push you to adhere to their sense of what is moral, and your every word is going to receive attention in the trade press and among investors who are trying to read the tea leaves of where the Commission is headed and what it means for the market.

And I know that both of you understand your ultimate responsibility is to the American people and to the broader interest as you have described in answer to the first questions.

I also know that as staffers you have felt some of this pressure before, but I am confident that as Commissioners you are going to feel it on a new scale. So, you have to listen to your conscience and do what is most consistent with the law and the public interest.

As all of us on this committee know, this is a remarkable, extraordinary time, an exciting time in communications generally in this entire field. We are in the early stages of an exciting, socially networked, location-aware, mobile-device-driven communications revolution. And satellite companies compete with cable and telephone companies to deliver multichannel TV service, broadcasters

have entered the digital age and they are delivering critical services in all of our communities in different ways.

And the descendants of monopoly telephone company are competing to win business for wired and wireless service at home and at work. And all of that is great but—and there is a “but”. But even as these opportunities are presenting themselves, the markets in each of these sectors continue to concentrate power in the hands of fewer and growing larger corporate conglomerates.

And that concentration, I think at least, and I think some others join me in this concern, threatens the competition that we contemplated when we wrote the 1996 Act: diversity of ownership, voices, representations in the media and communications is what a healthy democracy needs.

And the fervor against the role of government in our society by some on one extreme has reached the point that every time the Agency acts to protect consumers or competition, incumbent companies push Members of Congress to attack the Commission chairs and the members. I think you are aware of that.

So the challenges that you are going to face at the FCC are pretty significant, and I just want to make sure as you approach this that you come to it with a clarity that the value of open networks and of how unlicensed and licensed spectrum can complement each other, and how to best ensure that the market is opened to new entrants and to innovation.

And so I would simply open by asking you to generally comment on this sense of—this perhaps divergence from where we were in the 1996 Act and what is happening and what you see happening in the marketplace today.

Ms. Rosenworcel, do you want to go first, or—

Ms. ROSENWORCEL. Sure. As I mentioned in my opening statement, technology is changing at a very fast clip and it is very challenging for legislators and regulators alike to keep up. So, it’s important to approach that task with some humility, but also with some recognition that there are some core values, many of which you mentioned that are in the Communications Act. Fostering the public interest, promoting competition, universal service, privacy, public safety, and I think those are the things that should animate the deliberations of the Commission going forward.

Senator KERRY. Do you both agree—you haven’t answered yet, but I want to add to that question because time is running tight. Do you both agree that we need to free up some of our spectrum in order for broadband to be able to be competitive, to create jobs, and to maintain our economic ability, capacity?

Why don’t you answer while you—go ahead and answer the first question and the second and then she can come back.

Mr. PAI. OK. Thank you, Senator. With respect to the first question, I find it difficult to improve upon my colleague’s answer. I would point out, as well, that whatever Congress decides to do in terms of reforms to the Act in order to update the Act to reflect current marketplace and technological realities is something that I would faithfully implement were I fortunate to serve at the Commission.

With respect to the second question, I do think it is important to deploy broadband to open up networks, to really free up the

spectrum for competition, innovation and investment. I think that is the key to—not just to help the economy, but frankly, as you pointed out in your question, a healthy democracy.

As I pointed out in my opening statement, I think when the Commission and when the Congress focus on competition and innovation, consumers benefit and the body politic benefits.

Ms. ROSENWORCEL. On your second question, the answer is yes. We do need more spectrum available for the services that we all make use of, using the wireless airwaves. The problem is that we have got less in the pipeline than many of our international counterparts.

At the same time, I think it would foolhardy if we only focused on spectrum and making spectrum available for auction. I think we are going to have to work hard also at improving the efficiency of existing spectrum with technologies that can help us do that.

Senator KERRY. Mr. Chairman, I would simply ask that some additional questions be made part of the record.

The CHAIRMAN. Absolutely.

Senator KERRY. Thank you, sir.

The CHAIRMAN. And I thank you.

I now turn to Senator DeMint. And after him, it's in order of arrival. So, just to give people warning. I don't know if Senator Isakson is coming back. But Senator Blunt would follow Senator DeMint, then Senator Udall, then Senator Toomey, then Senator Lautenberg and Senator Klobuchar, Cantwell and Ayotte.

Senator WICKER. Will I be allowed to ask questions?

[Laughter.]

The CHAIRMAN. Yes. I didn't say Snowe?

Senator SNOWE. Not at all.

Senator HUTCHISON. She came in last.

Senator DEMINT. Thank you, Mr. Chairman—

The CHAIRMAN. Well, no, Jim. I've got to eat some crow here.

[Laughter.]

The CHAIRMAN. Senator Snowe—

Senator DEMINT. It's too late.

[Laughter.]

Senator HUTCHISON. Do you remember when you came in, Roger?

Senator WICKER. I just came in.

Senator HUTCHISON. OK. You are after Olympia.

Senator WICKER. I just missed being mentioned.

[Laughter.]

The CHAIRMAN. The situation is under control.

[Laughter.]

Senator DEMINT. OK. We OK to go?

The CHAIRMAN. Yes.

Senator DEMINT. Thank you, Mr. Chairman. Ms. Rosenworcel, again, thank you for being here today and the courtesy of coming by my office.

Let me ask for a minute about mobile broadband, we were touching on that just a minute ago. As you know, the broadband competition report does not include mobile broadband when it shows build-out, which suggests that we have problems in areas that we might not if you count mobile broadband. A few years ago there was not a lot of capacity in the mobile market for broadband. Now

we're at 4G. I'm sure we'll be at 5 or 6G soon, and I suspect at some point we will have a stronger—well, through mobile, we will be able to get just anything we need on broadband.

But do you consider wireless broadband to be part of our broadband system, and do you think it should be included in the broadband competition report?

Ms. ROSENWORCEL. I think we are seeing increasing convergence across all sectors. And I think over time it will grow to be a more robust substitute, a near-perfect substitute for traditional service.

At the same time, I think what you pointed out is a real challenge for the Agency. They have got a lot of reporting duties, and those reports often reflect frameworks that are a little bit dated. And in an era of convergence, it is worth trying to identify how to update them, so they better reflect technology and the way consumers use them.

Senator DEMINT. Well, as you know, this is a very important point because often here we'll look at a statistic, like we have 80 percent build-out in rural areas, and suggest some new subsidy while we've got companies already competing for mobile broadband in an area. So the failure to recognize different technologies as viable alternatives, and certainly mobile broadband is at a point now where it is better than DSL in some cases and certainly growing in capacity, is ultimately harmful to competition.

So we need our Commissioners to recognize all existing technologies as well as try to imagine potential technologies because once we start subsidizing one technology, we may be eliminating another—and I hear it in South Carolina and in rural areas where you have someone trying to collect investment funds to do some type of build-out—it may be a wireless build-out in a rural area—only to find a competitor coming in with some government subsidy to compete with them with another technology.

So your answer is pretty important here, that we push not only as a Congress but as an FCC, that the competition reports that we look at are actually accurate.

Ms. ROSENWORCEL. They should reflect the way that consumers are using their service.

Senator DEMINT. Mr. Pai?

Mr. PAI. Senator, I also think that to the extent that mobile broadband is seen by consumers as an acceptable substitute to wireline and other broadband technologies, that the FCC would do well to take note of that.

Senator DEMINT. I would like to hear you both comment on the Universal Service Fund, how it affects broadband and specifically, Ms. Rosenworcel, I'll start with you.

Do you think the FCC has the authority to expand the contribution base for Universal Service Fund to Internet Service Providers?

Ms. ROSENWORCEL. Under the Communications Act, the Commission has authority to assess on interstate telecommunications services, but it has discretionary authority to also assess on telecommunications services, which are a component of information services, which could be described as broadband. So I think that is the state of the current statute and I would certainly commit to abide by the statute.

Senator DEMINT. So you think Internet services fall under telecommunications?

Ms. ROSENWORCEL. I think a portion of it could. I think at present the system is subsidized by Internet—excuse me—by interstate telecommunications services. I think the challenge going forward is making sure that the revenue base is strong enough to support the type of universal service reforms that the Agency just adopted last month.

Senator DEMINT. So you think FCC now has the authority to assess fees on Internet Service Providers to fund universal service fund?

Ms. ROSENWORCEL. It has the authority under the statute to assess on telecommunications, not information services.

Senator DEMINT. OK. Can you really divide an Internet Service Provider that provides both? You are talking about assessing fees to part of their services and not to others? Is—

Ms. ROSENWORCEL. I apologize. I am getting fairly “legal” on you right now.

Senator DEMINT. Yes.

Ms. ROSENWORCEL. So why don't I just say more simply that the current system is supported by telecommunication services. Long distance services, as we commonly know them.

Senator DEMINT. Right.

Ms. ROSENWORCEL. I think the challenge going forward is making sure that we have a system that can support universal service in rural areas. I think that the Agency is going to need to look at new systems, like the ones that were proposed in the last administration that involve connections and not necessarily Internet or broadband services, but connections.

Senator DEMINT. Connections. Mr. Pai, any thoughts on the subject?

Mr. PAI. Senator DeMint, I can scarcely improve upon my colleague's recitation of the legal context for this question, but I would say, of course, that with the Commission having recently released the universal service order and indicated that it intends to look at the contribution mechanism next year, I do think the Commission should take a very close look at the nature of its statutory authority before assessing fees in the manner you suggest.

Senator DEMINT. I know I am running out of time, but just a quick question about the Cable Act, which is now nearly 20 years old. It reflects a monopoly status for video services in most areas, which has totally changed.

Do you believe the laws and regulations that we currently have regarding video services should be reassessed and updated?

Ms. ROSENWORCEL. That's a very broad question. But I think as a general matter there is a lot in the Communications Act, including the Cable Act, that is old and could be benefited by taking a fresh look.

Senator DEMINT. OK. Mr. Pai, any last comment here?

Mr. PAI. I agree with Ms. Rosenworcel, and just to give you one example. The FCC recently released a Notice of Proposed Rule-making regarding retransmission consent and, in it, it identified a number of factors where it sought comment on ways to clarify exactly where the Commission's authority was, given that the mar-

ketplace has changed. And that is something that I would definitely take a look at if I were fortunate to serve at the Commission. Senator DEMINT. Thank you both.

The CHAIRMAN. Thank you very much. Senator Blunt.

**STATEMENT OF HON. ROY BLUNT,
U.S. SENATOR FROM MISSOURI**

Senator BLUNT. Thank you, Chairman. Thank you, Chairman, I have a statement for the record that I will submit for the record. [The prepared statement of Senator Blunt follows:]

PREPARED STATEMENT OF HON. ROY BLUNT,
U.S. SENATOR FROM MISSOURI

We have before us today, two highly qualified nominees for the Federal Communications Commission. I hope that these nominees will make it a point of priority to address FCC process issues to ensure the type of fair treatment that we should expect from a Federal agency that has so much authority over such a vast swath of our economy.

On Wednesday afternoon of last week, AT&T voluntarily withdrew the pending applications to transfer the radio licenses associated with its proposed merger with T-Mobile. The withdrawal was in full compliance with FCC rules and under these circumstances, the FCC was required by its rules to dismiss the applications, without prejudice.

On Tuesday of this week, the FCC did issue an order dismissing the applications as it was required by its rules to do. However, in addition, the FCC contemporaneously released a preliminary staff report evaluating the merger. The matter and the FCC's involvement in it, in my view, should have ended with the order of dismissal required by the FCC's rule on the subject. No further action was required or warranted, but the FCC took further action, however, by also releasing a staff draft that recommended that the FCC designate the proposed transaction for an administrative hearing. The recommended hearing will not now take place—so why release the report at all.

The CHAIRMAN. It will be included.

Senator BLUNT. I do have a couple of questions. And first of all, I would preface those by saying, as I think we all had a chance to talk about as you both were nice enough to visit the office. Thanks for your service.

Ms. Rosenworcel, thanks for your real understanding of these issues. All you've done for the Committee.

And, Mr. Pai, thanks for your service in the Senate, even if it did include a substantial amount of time with my chief of staff, Glen Chambers.

[Laughter.]

Senator BLUNT. You worked for Senator Brownback.

And I am glad you are both willing to be here today and willing to make yourself available for these important jobs.

You know, one of the challenges I think the FCC has faced and will continue to face, as the Congress also faces it—is this is an area that changes so quickly that I've believed for a long time that the odds that you will actually solve a problem while it's still the problem are pretty slim.

And the odds that you'll create a greater problem by trying to solve a problem that's passed you by are greater than that.

I remember when we did the Telecommunications Act when I was on the Commerce Committee in the House in the late nineties, I guess it was, when we did that. And then came back to that 5 years later, nothing that we thought was important was still im-

portant. I remembered all the things we divided up on, and all the debates we had and all the friction—none of it mattered any longer, 5 years later.

I also remember the many times I've asked my staff, what is the definition of net neutrality this month?

[Laughter.]

Senator BLUNT. Because it was a constantly moving target, and, you know, one of the issues that Senator Hutchison brought to the floor recently was, let's look at the net neutrality position that the Commission has taken.

And my view and view of many others is that if you regulate too much here, you'll slow down the development of these services rather than speed them up. And as you slow them down, you'll make them more difficult and maybe even more expensive, not less expensive. And those are issues I hope you'll think about a lot.

Mr. DeMint talked about—one other topic is that, as Commissioners—and my belief is that you'll both become Commissioners—the Commission has never been able to fully define, at any place I've been with the Commission, “underserved” and “unserved.” And there is a big difference. And there is a particular difference when somebody has come in and created a network with their own money and then somebody in the government decides, well, to speed of that network isn't quite quick enough, so we are going to subsidize somebody to come in and compete.

I think we need to be extraordinarily careful with that. And assuming you both go on the Commission, I suspect one of the first questions I will ask when we meet again is, what's the difference between “unserved” and “underserved” and what are you doing about it.

And I have a much different view of what the Congress should do for “unserved” areas of the country than I do ill-defined “underserved” areas of the country.

Now for two quick questions. One is, I don't want you to comment on the proposed merger that has been out there for awhile between AT&T and T-Mobile. But I was concerned yesterday when the Commission staff released their view of that merger, even though the merger request had been withdrawn.

So I guess my question is does the Commission speak through the Commission or does it speak through the staff and how do you view the actions of the Commission as a Commissioner and you may or may not say anything about the idea that staffers will either be directed to or just decide that they are going to, on their own, announce their view of issues that may or may not be before the Commission.

Mr. Pai, do you want to start?

Mr. PAI. Thank you, Senator, for that question. Obviously, the Chairman is the manager of the full Agency, usually in consultation with other Commissioners, and if I were fortunate to be on the Commission and consulted about a question like this, my recommendation to him, as it would be to the staff, would be simply to abide by the Commission's rules to look at any past precedent to make sure that whatever the Commission was proposing to do was consistent with those rules and with that practice.

Senator BLUNT. And what if there is no Commission action pending? Should the Commission gratuitously put information out there?

Mr. PAI. I haven't had an opportunity to explore the staff report you are referring to or, frankly, even news articles and it just broke while yesterday while I was meeting with a number of the Members of the Committee.

But I will say that I view the Commission's discretion as one that should be exercised very carefully and to the extent that the release of a staff report along those lines in the context of a proceeding that doesn't currently exist—to the extent that aggravates people in the industry or people on the Hill that that's something that I would take into account.

Senator BLUNT. And I believe, Ms. Rosenworcel, my question—by the time I got done Mr. Pai had two—but was, does the Commission act through its actions or through the staff?

Ms. ROSENWORCEL. I would have a very hard time improving upon the answer from my colleague. I think that what occurred yesterday was—the Chairman who directs the Agency chose to release that report. I believe it's within his statutory authority to do that, although I will acknowledge it is probably unprecedented.

Senator BLUNT. My second question is, you know, 30 years ago when there was much less media than there is now, there was a doctrine called the Fairness Doctrine. I would be opposed to seeing that doctrine put back in place. And, as Commissioners, I am asking what your view would be on that. Mr. Pai?

Mr. PAI. Senator, I would share your view. And I believe Chairman Genachowski does as well. He recently took action to remove that regulation from the books, given that it had somehow stayed on the books for sometime.

Senator BLUNT. Ms. Rosenworcel?

Ms. ROSENWORCEL. I do not support returning the Fairness Doctrine.

Senator BLUNT. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

Now we will have Senator Toomey, to be followed by Senators Lautenberg, Klobuchar, and—so that you're aware. Please.

**STATEMENT OF HON. PATRICK J. TOOMEY,
U.S. SENATOR FROM PENNSYLVANIA**

Senator TOOMEY. Thank you, Mr. Chairman. And thanks to both of you for joining us today. Welcome to the Committee. Congratulations on your nomination and thanks for your willingness to serve. This is a tough job that you are heading toward and so I commend you for that.

I just have one quick question. As we all know, December a year ago the Commission adopted the Open Internet order, currently a subject of litigation. I think it is before the D.C. Circuit Court of Appeals.

In the event that the Commission loses that case, which is a possibility, of course, would you each comment on whether or not you would support the idea of reclassifying broadband as a telecommunications service under Title II of the Act?

Ms. ROSENWORCEL. As I noted earlier, the Commission has had a practice during the past decade of treating those services as information services pursuant to Title I. The Supreme Court upheld that approach. I think there has been a fair amount of reliance on it.

But I think the ultimate decision will depend upon the findings of the D.C. Circuit, and I would certainly as Commissioner if confirmed agree to abide by that.

Senator TOOMEY. Mr. Pai?

Mr. PAI. Senator, if I were fortunate to be confirmed, I would have some concerns about reclassification to the extent that the imposition of those types of common carrier regulations might dampen economic investment, the willingness to take risks, and that is something that ultimately might harm consumers. And so to that extent, I would be a little hesitant, especially if it came as posed in your hypothetical, in the wake of two court of appeals decisions that the Commission lacks authority elsewhere to pursue that route.

Senator TOOMEY. Now, Ms. Rosenworcel, if I could just followup. I guess what I am trying to understand is, if the court decision does not provide guidance on this specific question, if it's silent on this question of whether it is appropriate to reclassify broadband under Title II, do you have a personal opinion about whether Title II is an appropriate regulatory framework?

Ms. ROSENWORCEL. I think these are new areas in the law, and I think that we would just have to follow the decision of the court.

Senator TOOMEY. OK. Thanks. Thank you, Mr. Chairman.

The CHAIRMAN. Could you repeat that, please, Ms. Rosenworcel? And also, pull that mike a little bit closer. Some of your words are—

Ms. ROSENWORCEL. Sorry about that. I would just say that these are some new areas in the law and we would be duty-bound, were I to serve at the Commission, to follow that decision of the court.

The CHAIRMAN. Thank you, Senator Toomey.

Senator Lautenberg, to be followed by Senator Klobuchar, and then Senator Begich.

**STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. Thank you very much, Mr. Chairman. And thank each of you for bringing your incredibly vast experience at a fairly tender time in life, to agreeing to serve in the capacity that you're being reviewed here for.

And I would start, Ms. Rosenworcel. Broadcasters have to fulfill a public interest obligations in exchange for using the public airwaves. In your view, does a broadcaster need to provide local news coverage of the community it's licensed to serve in order to satisfy these public interest obligations?

Ms. ROSENWORCEL. Broadcasters are trustees of the airwaves and they receive licenses in communities and they have a duty to serve that local community. And part of that should include things like providing locally relevant programming like news and information.

Senator LAUTENBERG. Do you share that view, Mr. Pai?

Mr. PAI. I do, Senator.

Senator LAUTENBERG. I would ask each of you to respond to this question. In 2007, the FCC held a hearing in Newark, New Jersey, on the license renewal of WWOR television. New Jerseyans testified about the station's failure to cover New Jersey news and events. Four years later. Four years later, this station is still operating under an expired license, and there is evidence that its service to New Jersey has gotten even more limited.

Now if you're confirmed, and I address this to each of you, would you review the record in this case thoroughly so—can I count on you to review this four-year lapse in getting a decision on whether or not this license ought to be renewed?

Mr. PAI. Senator, you have my commitment to doing so.

Ms. ROSENWORCEL. Yes. Absolutely.

Senator LAUTENBERG. For each of you, again. New Jersey is a net contributor of close to \$200 million a year to the universal service fund. And, as the USF has kept growing, the burden on New Jersey and other donor states has kept getting bigger and bigger. And as the FCC considers reforming the USF, can I count on you to work to bring some fairness and balance into the distribution of the funds that come in? New Jersey contributes \$5 for every dollar it gets in services.

So, can I ask you each to respond to the question. Will you insist on a look at the equity here?

Mr. PAI. Senator, as I mentioned in response to an earlier question, the Commission did indeed tee-up the contribution side of the universal service fund for consideration next year. And if I am fortunate to be confirmed, I would dig into the record very carefully and make sure that the appropriate reforms are taken to the universal service fund on the contribution side.

Ms. ROSENWORCEL. I agree with my colleague. The universal service system needs to be a fair one.

Senator LAUTENBERG. Very few media outlets are focused first and foremost on New Jersey. The state-owned television station, NJN, recently went through a dramatic change and is now operated by a company from New York.

Now, once again, I ask you, can I get your commitment to watch the new NJN situation closely to make sure that it lives up to the obligations to the people in our state?

Mr. PAI. Yes, Senator.

Ms. ROSENWORCEL. Yes.

Senator LAUTENBERG. I will ask you one more question, please. And that is, some have criticized giving additional spectrum capacity to the public safety community on the basis that the commercial sector may need this spectrum in the future to address customer and network demand.

What do you see by way of network demands and new technology needs that the public safety also faces?

Mr. PAI. Senator, I think, as the Chairman pointed out, a decade after 9/11, it is not acceptable that we are still wrestling with the question of whether and when public safety personnel arrive at the scene of an accident or a tragedy and whether they will be able to communicate.

The question of how to revolve that question, of course, is entrusted to Congress in the first instance, and if I were fortunate to be confirmed, I would respect and would faithfully implement Congress' decision appropriately.

Ms. ROSENWORCEL. Thank you for the question, Senator. One of the facts that I have heard discussed in this room several times is that the average 16-year-old has more functionality in their handheld phone than our police and firefighters do today.

Providing them with better spectrum, which can lead to better devices, can actually lead to all or our safety being improved, as well as their safety, so I would be supportive.

Senator LAUTENBERG. On 9/11, Mr. Chairman, New Jersey lost 700 people. The toll that 9/11 took was over 3,000 people, larger that day than the landing at D-Day, larger that day than Pearl Harbor. The situation was worsened by the fact that there was little or no communication between those who rushed into that building to save other people's lives and paid for it by giving their own. And the one thing that we have to do is make sure that we have the operability that's required for us to be responsible in a way that is efficient and its being.

Thank you very much.

The CHAIRMAN. Thank you, Senator. Senator Klobuchar, to be followed by Senator Begich, Senator Snowe, and Senator Wicker.

**STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Congratulations to both of you on your nominations. You both are very impressive.

And I did want to report, Ms. Rosenworcel, that your children—I visited them when I had a meeting. They are eating apples, they are coloring, and they are most shocked that you are on TV.

[Laughter.]

Senator KLOBUCHAR. And I don't think that we need to tell them that it wasn't network, that it was just the closed instead, and we will make them think it was a big deal.

I had my first question—and Mr. Pai, by the way, your family is so engaged in these questions, I'm afraid they are going to answer them in a minute.

[Laughter.]

Senator KLOBUCHAR. So they have your back.

Mr. PAI. They are more than welcome to sit in the hot seat, Senator.

[Laughter.]

Senator KLOBUCHAR. OK. Very good.

My first question, on competition. As you know, one of the main goals in passing the Telecom Act of 1996—by the way, I practiced in this area at that time—was to open up the communications market to competition. And still the national broadband plan found that a vast majority of Americans can only choose between at most two broadband providers and there are still challenges.

What role do you think the FCC should play to ensure adequate competition in the communications market?

Ms. ROSENWORCEL. I think that increasingly we are going to see more and more intermodal competition, so making sure more wireless spectrum is available, so that there can be more competition from wireless is a good place to start.

Senator KLOBUCHAR. OK.

Can you add anything?

Mr. PAI. Senator, I would build upon that answer simply by saying that to the extent that the Commission can do so, it should make sure that the rules of the road don't differentiate between the particular technology that is used.

I think a lot of times the Commission is dealing with regulations that apply to telecommunications carriers but not to cable providers, to cable providers but not to wireless providers. And to the extent that those industries are competing in the same space, I think it is important to have technological neutrality with respect to the Commission's rules in order to ensure that everyone is competing on a level playing field, and ultimately consumers benefit.

Senator KLOBUCHAR. Very good. You mentioned wireless right off the bat, and as you know, I have been very involved in some of the consumer protection issues there, particularly focused on early termination fees. We have seen some changes and improvements, but I still hear about it at home.

What role do you think the FCC needs to play in the wireless consumer protection area?

Ms. ROSENWORCEL. I think when consumers have grievances, it is the duty of the FCC to pay attention. They should continue to monitor the early termination fee situation you describe and also look at newer issues like bill shock, on which there has been recent progress.

Senator KLOBUCHAR. Very good. The incentive auctions. As you know, Chairman Rockefeller has been working very hard to get our bipartisan bill through for the interoperable public safety broadband network. Some other Senators have referenced that. I have one particular thing I just wanted to bring to your attention.

As you know, Minnesota is on the Canadian border. We are always used in the TV ads for the coldest place to test cars and things like that. Well, some broadcasters in our state have raised this issue, that Minnesota—that they will have to coordinate not only with the FCC but also the Canadian government.

And I understand that as part of the DTV transition northern Minnesota broadcasters have been working to find new TV channel allocations but have faced delays in getting their applications approved.

And I just wanted to know, if confirmed, if you'll work with us and with them to make sure that we can address these issues if they may arise as part of any voluntary auction process.

Ms. ROSENWORCEL. Yes.

Senator KLOBUCHAR. OK.

Mr. PAI. Yes, Senator.

Senator KLOBUCHAR. That will require you to go there in January. So I am glad you took that on.

[Laughter.]

Senator KLOBUCHAR. I am Chair, along with Senator Burr, of the E-911 Caucus, and that is also obviously a—always an issue and

always a challenge for all of this and we know that there's a number of issues with E-911, particularly more and more households are cutting the cord and relying exclusively on wireless, raising all kinds of opportunities as well but also challenges.

And almost one-third of all Americans just have wireless devices. Wireless calls present different challenges in determining the location of a citizen. I have heard all kinds of crazy stories about people stuck when their snowmobiles break down, but we won't go into that. And I understand the FCC is working to close the accuracy gap between mobile and landline 911 calls.

Do you believe in sharing location accuracy is an important priority as we look at implementing E-911?

Mr. PAI. Senator, I do believe it is an important priority and if confirmed I would look forward to working with you and the other Members of the Committee to ensure that that goal is met.

Senator KLOBUCHAR. Very good.

Ms. ROSENWORCEL. Yes, Senator.

Senator KLOBUCHAR. OK. Thank you.

Just two other things I wanted to mention and then I will—we have many people waiting to ask questions.

Senator Warner and I are later this week reintroducing our Dig Once bill and we look forward to working—the idea is, if you are digging up for Federal highway projects that you also try to put the cable in. Very appealing to states that have short highway construction time periods, like Alaska and others.

And so I hope that you will look at that. It was incorporated in the national broadband plan, but we are hoping that we can work further on that as we go forward.

And the second thing is, obviously, the importance of universal service reform and I will ask you that maybe in writing.

But we're run out of time, but that is clearly the way to go as we move forward with broadband.

So, thank you very much to both of you.

Mr. PAI. Thank you, Senator.

The CHAIRMAN. Thank you, Senator, very much.

And Senator Begich.

**STATEMENT OF HON. MARK BEGICH,
U.S. SENATOR FROM ALASKA**

Senator BEGICH. Thank you, Mr. Chairman.

A couple of quick questions. First, obviously, thank you both for visiting my office. Thank you for your willingness to serve, and once you have gone to the balmy Minnesota, I would expect that you would have come to Alaska, where it was 42 below in Fairbanks last week.

[Laughter.]

Senator KLOBUCHAR. He always has to one-up.

[Laughter.]

Senator BEGICH. And that wasn't even above the Arctic Circle, so.

But I do want to invite both of you—I know you have already been there—I don't think you have been——

Mr. PAI. Yes.

Senator BEGICH. You have been.

But I would like to invite you both back as Commissioners. Is that something obviously you would be willing to do? We don't care what time of the year. You get credit if you come in January.

[Laughter.]

Ms. ROSENWORCEL. Yes. Forty-two below, I'm hearty.

Mr. PAI. Senator, I will do everything within my power to clear my calendar in July and August.

[Laughter.]

Senator BEGICH. Good. Honesty goes a long ways.

Let me thank you again for being here. Let me ask you kind of a philosophical question on universal service fund.

I heard your answers to Senator Lautenberg. And to be frank, and you've heard me say this, when I hear the word "fair" system, usually that means, to be very frank with you, Alaska gets kind of left out, because there is no other state like it, in the sense of its vastness. Eighty percent of our communities are not connected by roads. Our highways are in the air—literally.

And broadband and wireless is a critical component to our long-term economic health or our ability to educate folks in rural communities as well as deliver health care and medicine.

So, let me—if you could, either one, whoever wants to start—give me your sense. Let me preface it by saying I understand—let me ask you this way.

How do you see the resources of the universal service fund being used, and what are those priorities?

Understanding there's revenue issues, but the idea of universal means some pay more to benefit the whole system.

So, with that premise, give me your thoughts on how you would prioritize utilization of the universal service funds. Whoever wants it.

Ms. ROSENWORCEL. The fund—as you know, it is not infinite. And so I think when I said "fair" before what I meant was "smart".

What we have now are data that tell us where broadband is and where broadband isn't. And I think it's incumbent on the Agency to use that data to be smart about where those funds flow.

And in rural communities where is no service today, that should be our first goal, to try to address those problems, Alaska included.

Mr. PAI. And, Senator, I would associate myself with those remarks. I would also add that having gone to Alaska as we discussed at our meeting, I think I would take a personal appreciation of the uniqueness that the problem has in Alaska, having gone from Denali to Kenai to Glacier Bay. It's hard to imagine when you look on a map, but I saw a little smidgen of the state. So I have a personal appreciation of how important it is for the fund to take account of the unique circumstances in which your state citizens find themselves.

Senator BEGICH. That latter statement, would you agree with there's a little bit of uniqueness of what Alaska has to deal with in its area?

Ms. ROSENWORCEL. Absolutely. As we spoke in your office a few days ago, I have spent time in Alaska communities that are not on the road system, on gravel runways that count as the airport.

So I am familiar with its uniqueness, yes.

Senator BEGICH. Right. Very good.

Let me ask you again, in regard to—as we build out, one of the challenges I mentioned to both of you, in our state because have to use such a variety of systems in order to create communication networks, in this process of reform to universal service fund, you also have these smaller companies, these co-ops, these companies that invested, built-out hardware and now they are trying to transition to wireless. But their transition period may not be as long as maybe—or as short as the FCC would like, to make these transitions.

How do we deal with that? Because they put these capital investment in to build out, to meet a communication need that didn't exist and now is important for us, recognizing they are shifting toward, you know, more broadband wireless systems. How do we address that, knowing that you are FCC and you are not over here, but at the end of the day, all of these resources funnel through the Federal Government in some form or another?

Who wants to take on that little—

Ms. ROSENWORCEL. Well, let me provide you with two answers. In the first instance, difference arms of the government should be talking to each other about this. That will create—

Senator BEGICH. Do you think the FCC does enough of that now?

Ms. ROSENWORCEL. I think they could do more.

Senator BEGICH. OK.

Ms. ROSENWORCEL. And the second point I would make is that there should be no flash cuts. We should recognize that many of those companies had an honest reliance on a government commitment, and we should find a way so that they can slowly navigate to whatever new frameworks the Commission adopts.

Mr. PAI. And, Senator, I also think that a reliance interest and consideration of the important value that those carriers provide to citizens of Alaska is something the FCC should definitely take into account if and when it goes about reforming the fund.

Senator BEGICH. Very good. Well, first, again thank you very much and I appreciate the time to ask you some questions. I'll have some I'll probably submit for the record, just some followup.

But again, thank you. I look forward to seeing you in Alaska, maybe July or August—or January.

[Laughter.]

Senator BEGICH. Thank you very much.

Mr. PAI. Thank you.

The CHAIRMAN. Thank you, Senator Begich.

The two nominees should understand that history has been made here today. It is the very first time that Senator Begich has ever referred to Alaska as being maybe more needful of attention than other states, all of which are very small and far away.

[Laughter.]

The CHAIRMAN. So he has overcome his shyness today and it is quite remarkable. You should be very proud.

[Laughter.]

The CHAIRMAN. Senator Snowe.

**STATEMENT OF HON. OLYMPIA J. SNOWE,
U.S. SENATOR FROM MAINE**

Senator SNOWE. Thank you. And I want to welcome both of you. You certainly represent such an impressive array of talent and expertise and experience and they will be fortunate to have you on the Commission.

Second, I appreciate your unequivocal, indisputable support for the e-Rate in your response to The Chairman: Correct answer.

One of the first issues I wanted to raise was regarding comprehensive spectrum inventory. I happen to think that in order to have a true analysis of what exists in the spectrum, who is using it, by whom, how much is available, that we should have an inventory of the spectrum, and that is the legislation that Senator Kerry and I have introduced over the last several years, which we think is absolutely essential. There is no—really any way to discern exactly what is available.

What is your response to that, Ms. Rosenworcel and Mr. Pai, in terms of what you think would be necessary to establish a complete analysis of what exists for spectrum?

Second, Chairman Genachowski in his response to a letter that I submitted concerning this issue indicated that they had conducted a baseline inventory. But as I could understand it, it really essentially didn't examine the breadth of what existed and whether or not they had followed up with licensees in terms of how they are using spectrum, who is using spectrum, and to what degree they were using it.

So, would you think that a baseline inventory is sufficient to accomplish the goal of a comprehensive spectrum inventory?

Ms. ROSENWORCEL. As you know, spectrum is a scarce but valuable resource. And I think it's incumbent on the Federal Government to constantly be assessing how it's allocated, how it's assigned, and how it's used. So I agree wholeheartedly with your desire to see a robust spectrum inventory.

I recognize the FCC has done some work on its spectrum dashboard. I think that over time the goal should be to make that a much more robust inventory.

Senator SNOWE. But don't you think that we should do an analysis now at the forefront of this process?

Ms. ROSENWORCEL. Yes. Although I don't think that we will have the luxury of time to make this all sequential. I think our international counterparts have more spectrum in the pipeline than we do. I think the demand for the wireless airwaves is tremendous. So we are going to have to operate on multiple fronts all at the same time.

Senator SNOWE. Mr. Pai?

Mr. PAI. Senator, as much as I hate piggy-backing shamelessly on my colleague's answer, I find it hard to improve upon it. I would say simply as a general matter, it is difficult for the Commission or frankly any other agency to make the use of spectrum more efficient and to allocate it more effectively if we don't know who is using it. And so that's certainly a concern that I would take, were I fortunate to serve on the Commission.

Senator SNOWE. With respect to how you improve upon the technological innovations and the reusing opportunities, one of the

issues, of course, is incentive auctions. And obviously I think that there has been a disproportionate reliance on incentive auctions and to provide—I understand that the FCC believes it will yield up to 24 percent of 500 megahertz.

On the other hand, that's just a very small amount of what's going to be required by 2020, in terms of the demand and the explosive growth in wireless broadband.

So, how best to develop these technological innovations? What should be done in order to establish a better approach than otherwise just relying on incentive auctions?

Ms. ROSENWORCEL. Thank you for the question. I know that you've done a lot of work on this. And I would say that we have a real demand for spectrum but we would be foolish if all we did was rely on things like incentive auctions and the auctioning of spectrum.

We have to start devoting our intelligence and our resources toward developing better technologies that use spectrum more efficiently and also studying the topology of networks so that we can be more efficient with the networks we do have today.

Senator SNOWE. But in what time-frame should that happen?

Ms. ROSENWORCEL. It should happen immediately.

Senator SNOWE. Can it happen immediately?

Ms. ROSENWORCEL. If confirmed, I can tell you that I would certainly make it a point of trying to do my best to do so.

Senator SNOWE. Thank you. Mr. Pai?

Mr. PAI. Senator, I also think that, if I were confirmed, I would urge the Commission to do whatever it could to create a regulatory framework that incentivizes that development as quickly as possible.

Senator SNOWE. Well, I think it is critical because otherwise obviously we understand what's going to happen here. In terms of incentive auctions, obviously there is a drive in that respect because it yields revenues.

On the other hand, I think it's clearly important to do everything we can to maximize the availability of spectrum. And, as you say, you can only reallocate or redistribute it. We can't manufacture it. So we've got to figure out the best way to enhance our opportunities to know what is available and how to best to utilize it.

One other issue, if—a couple of other issues, if I might, Mr. Chairman.

One is on the question on the management of the spectrum in terms of who has the ultimate decisionmaking authority.

The Government Accountability Office, the GAO, has issued several reports over the last decade suggesting that one of the real difficulties is, is that you've got two different authorities, the FCC and the NTIA that oversees spectrum policy between the government and non-government users, and that ultimately—that to have less confusion that it would be best to have one ultimate decisionmaker or authority over the spectrum.

Do you agree or disagree?

Ms. ROSENWORCEL. I think that's a fair point. I think that historically they have not coordinated as much as they could, and as spectrum grows more and more valuable, I think it's more essential that they coordinate and work closely together.

Senator SNOWE. Mr. Pai?

Mr. PAI. Senator, I agree that they should coordinate more closely as well. The question of how, if at all, to merge or—the respective agencies' authority, of course, lies within the province of Congress and that is something that I would look to this Committee for guidance on.

Senator SNOWE. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Snowe. Senator Wicker.

**STATEMENT OF HON. ROGER F. WICKER,
U.S. SENATOR FROM MISSISSIPPI**

Senator WICKER. Thank you, Mr. Chairman. I have a brief statement for the record.

[The prepared statement of Senator Wicker follows:]

PREPARED STATEMENT OF HON. ROGER F. WICKER, U.S. SENATOR FROM MISSISSIPPI

Thank you Chairman Rockefeller and Ranking Member Hutchison for holding this hearing in such a timely manner. With all the important issues across the telecommunications and technology landscape that need to be considered, now more than ever, it is important that we have a fully-staffed Federal Communications Commission. To that end, I am glad to see two such qualified nominees before us today. Welcome to you both.

As a Senator representing a rural state, a primary concern of mine is that our Nation's rural areas have the same access to the economic benefits of broadband as those in urban areas. Over the past few years, both Congress and the FCC have worked to put forward initiatives to enhance the widespread availability of broadband, from releasing more spectrum in the marketplace, to updating the Universal Service Fund. And there is still more work to do in both those areas.

As we continue to consider these issues, it is important that we in Congress—and Commissioners at the FCC—ensure the policies we put forward are technologically neutral. This means not favoring one sector of industry over another and having a level regulatory playing field that will enhance competition, innovation, and ultimately options for the American consumer.

Both nominees before us today have extensive experience both on the Hill and at the FCC, and are more than qualified to handle not only the challenges of expanding broadband availability and competition, but also the myriad of other topics the Commission considers daily.

Thank you again Mr. Chairman, I look forward to hearing from our nominees.

The CHAIRMAN. We will put it in the record.

Senator WICKER. I want to commend these nominees, and observe that by this point in the hearing you're probably feeling pretty good about your chances for confirmation.

[Laughter.]

Senator WICKER. Let me just say, my brief statement mentions that I'm from a state that has quite a bit of rural area to it, and a great concern of mine is that our Nation's rural areas have the same access to the economic benefits of broadband as those in the more populated areas.

In that regard, Ms. Rosenworcel, with regard to the FCC's recent USF order dealing with competitive wireless, a number of people feel that wireless was unfairly and illogically targeted in this order.

What do you say to that and what effect do you think the FCC's order will have on broadband competition, particularly in rural areas, such as Alaska and West Virginia and Mississippi?

Ms. ROSENWORCEL. I think the FCC's recent order is at attempt to aggregate the data we have about where service is and is not. And I think it is an effort to try to take scarce resources in the uni-

versal service fund and then direct them to places where service is not today.

But I think that the Agency will need to continually evaluate how those funds are spent to make sure that we actually do reach unserved areas in Mississippi, Alaska, West Virginia and any other state across the country.

Senator WICKER. Mr. Pai?

Mr. PAI. Senator, I would add Kansas to that tally. Having grown up in rural Kansas, I am keenly sensitive to the importance of preserving universal service to all areas of the country, especially to rural areas. I readily confess that, although the order is a scant 759 pages, I have not have the opportunity to dig into all its particulars, but I do know that the Commission is going to be actually considering these issues in the next year, and if confirmed, I certainly would take your concern to heart as the Commission moves forward.

Senator WICKER. OK. Well, I appreciate that and I do hope so.

Let me move to device interoperability which remains a top priority of mine.

As we continue to transition to a broadband world, device interoperability becomes more important. Are you familiar, Ms. Rosenworcel, with the correspondence that Senator Rockefeller sent to the Agency stressing the importance of interoperability as a requirement to support public safety, as well as foster innovation?

Ms. ROSENWORCEL. Yes, Senator.

Senator WICKER. And what do you think the FCC can do to implement these principles, and specifically, how do you think interoperability can be achieved within the 700 megahertz? I know you are familiar with this.

Ms. ROSENWORCEL. Yes. It's a big, complex question. I would say it's also a very important question, because interoperability is so essential to communications. Small rural carriers that have spectrum in the 700 megahertz band may find that their customers are unable to actually use their devices when they leave home and need to roam on other networks.

And that's a real problem. So I think something needs to be done to address this, while also recognizing that there are real technological challenges and costs associated with addressing it.

I do know that industry standard-settings bodies are looking into this issue and I think the FCC should follow up on their work.

Senator WICKER. You don't have any question, do you, that the technological challenges can be addressed and overcome?

Ms. ROSENWORCEL. I am an optimist that they can be worked on.

Senator WICKER. And, Mr. Pai, I'll let you take a stab at that issue.

Mr. PAI. Thank you, Senator, for the question. I agree that it's an important balance to be struck. I think interoperability is a topic that has consumed a lot of this Committee's attention and for good reason. It's critical for consumers. It's critical for public safety personnel and other constituencies.

And with respect to the particular question with respect to 700 megahertz, that's an issue that obviously the Commission is going to have to grapple with. And I would take the concerns of some of

the smaller carriers you refer to into account as the Commission figures out what to do about that issue.

Senator WICKER. Thank you, I appreciate that, and I do hope so. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Wicker. And now Senator Thune.

**STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Thank you, Mr. Chairman. And I want to congratulate our nominees on being with us today, your nominations to the FCC, both to Mr. Pai and Ms. Rosenworcel. Thank you for being here and we'll look forward to working with you.

There are lots of issues that are going to fall under your jurisdiction and I think all of us have benefited enormously from just the advances that we have seen in technology.

People today conduct business, communicate with friends, pay bills—there are so many things that we do with technology today and it's important that in a knowledge-based economy and society that we live in that we have broadband service that's available to everyone because it has become literally an absolute necessity in terms of getting anything done.

And so I'm very enthusiastic about the substantial growth that we've seen in the telecommunications sector of our economy, but I am also concerned that there are areas in the country that are underserved and continue to lag behind the rest of the American population when it comes to the deployment of broadband.

I believe it's important in USF reform that it help give all Americans, including those in tribal areas and rural areas, access to broadband service. So, I hope that if confirmed you will both continue to monitor the reform efforts to ensure that USF is not only fiscally responsible but also sustainable over the long run.

And ultimately an economically sound USF is going to create fairness and certainty in the competitive marketplace. And I know, Mr. Pai, you're from Kansas. Ms. Rosenworcel from—I think from Connecticut. Is that right?

So you probably have some experience in your states with some of the more rural areas, but I certainly would welcome you to travel to South Dakota as well, to gain a perspective on how these issues play in rural areas of the country. So I would like to extend that invitation to you today.

Another important topic in my state is the issue of telecom mergers and the associated divestiture packages. I am concerned about the effect the divestitures on rural states like South Dakota have had and I would also ask you if confirmed to look into that issue to make sure that those packages are truly preserving competition and not negatively impacting certain regions of the country.

And to that point, and I have raised that with Mr. Pai, we had—in my state of South Dakota when Verizon acquired Altel back in 2009, the Justice Department permitted the merger to go forward on the condition that a divestiture take place that ultimately allowed AT&T to take over Altel's assets in South Dakota.

As a result, Altel's customers suddenly found themselves in dead spots where there hadn't been any before. And now AT&T, of

course, is reportedly floating a package of divestitures in an attempt to obtain Justice Department approval of its merger with T-Mobile. And I have concerns about how those proposed mergers might impact my state.

And so I wonder if you might be able to comment on that issue, sort of your perspective on it, and how you intend to deal with those issues as they come before you.

Mr. PAI. I can take this one, Senator. Senator, thanks for the question. As a general matter, I would take a case-by-case look at every transaction to determine whether or not a divestiture were in the public interest. And to the extent that I believe that a divestiture actually would harm consumers rather than benefit them, that is not something that I would support.

I think the very purpose of a divestiture is to address a competitive harm that would be presented by the consummation of a merger and so it seems, as highlighted in the article that you mentioned from South Dakota, it seems counterintuitive then that the FCC or the Department of Justice would insist on a divestiture that ultimately did not redound to consumer benefits.

So, whether it's in Deadwood or Detroit, I think, the FCC should be very careful about imposing conditions of that type.

Ms. ROSENWORCEL. Divestiture is a traditional tool of antitrust in order to make sure that a transaction maintains competitive markets. But I do think it is fair in a divestiture situation to first ask if that divestiture will harm or benefit consumers.

I am familiar with the article you are talking about, from the *Wall Street Journal*, and it makes some interesting points. And I think it should be studied further.

Senator THUNE. But I hope that you will, it's something that you will pay close attention to, is those issues—as you deal with those issues in the Commission.

As I travel around my state and around the country, one of the reasons that employers say they are not hiring people is because of economic uncertainty caused, in some cases, by Federal regulatory actions, and whether that's health care reform, regulations coming out of EPA, Dodd-Frank, you can kind of go down the list.

And I guess I would be interested in knowing, one, your thoughts on whether or not excessive regulation is a contributing factor to high unemployment. And if confirmed, how you would use your positions to limit the types of harmful regulations that limit economic growth and kill jobs, and furthermore, how would you promote the kind of economic certainty that I think businesses are looking for out there today?

I just think dealing in a world of uncertainty makes it very difficult for people to make investments and for our economy to create the types of jobs that are necessary to get people back to work.

I know it's a fairly broad question. So feel free to approach it however you would like, but I am interested in your sort of overall perspective.

Ms. ROSENWORCEL. Well, Senator, I think that clear rules of the road inspire investment. And investment creates economic growth. So if I were confirmed, I would certainly try to make sure that in my position as FCC Commissioner that I contributed clarity in any regulatory policy.

Mr. PAI. And, Senator, I agree with that completely. I think uncertainty disserves the parties to a transaction, the parties in the rulemaking proceeding, and ultimately consumers. Because if companies feel reluctant to invest in next generation networks and other technologies, ultimately economic growth suffers and consumers suffer.

I would also suggest, with response to your second question, I think it was, were I fortunate to be confirmed, I would urge the Commission, either explicitly or implicitly to really view whatever proposed order or proposed action it was taking through the prism of job creation and economic growth.

I think obviously these are very difficult times for Americans. Millions of people are out of work. The unemployment rate is much higher than we would like it to be, for a longer period than it ever has been.

The telecommunications sector by some measures represents one-sixth of the American economy and I think our recent experience is that it has been one of the more dynamic areas of the economy. So to the extent that the Commission can adopt a regulatory framework that incentivizes the industry to continue to be dynamic, to continue to be vibrant, to continue to create jobs, I think that's something that I would find valuable, both as a consumer, frankly, but also as a Commissioner at the Agency.

Senator THUNE. Good. Thank you. Appreciate that answer. Thank you, Mr. Chairman. My time has expired.

The CHAIRMAN. Thank you, Senator. I have an announcement to make, a couple of announcements to make.

Actually I have one more question because nobody has even come close to asking this question. So I am going to use my prerogative. I have been around long enough as Chairman to go ahead and ask it. And I know everybody wants to get out.

But I think not in some ways, again because of the largeness of this decision. And I think that you both have been absolutely superb witnesses. Senator Thune says it's been inspiring, and he is quite right.

Senator DeMint wants to keep the record open until December 6, and I agreed to that. On the other hand, as for questions, I would like to be able to have all questions provided as quickly as possible, hopefully by tomorrow. Questions that Members and their staffs being here will circulate that, the questions that they might have wanted to ask, or some came and actually left because they felt they were too far down the list and we did it after myself and Kay Bailey Hutchison and the sub-committee folks. We did it by order of appearance.

So some left but they probably had questions and we want you to have a chance to see those questions, and I want them to have a chance to get those to us by tomorrow.

I have always been, and Ms. Rosenworcel knows this—this is a commerce committee, but it has taken on in the last several years, very much of a consumer orientation. And we spend a lot of time worrying about, let's say, insurance companies and health care and scamming and cramming all kinds of things which we simply had not done before.

Obviously, the media landscape is changing enormously. And this is especially true for children, which is what I want to ask you about.

Our children have been watching programming primarily over a television multimedia universe switch and it's often interactive. Cable television and the Internet inundate kids today with images, social networks, multiplayer games, that many parents don't understand and have absolutely no idea how to work a controlling remote or a remote control. They simply have no idea.

So there is always the possibility that things can be controlled, that things can be cutoff. But there is a greater probability that they will not be, because the parents will either not be there or they will not understand.

And I've had many of these meetings around West Virginia, and parents are deeply concerned about content. I think the diversity of media is very exciting but it's very hard for parents and very available for their children.

I personally believe that there has been a substantial coarsening in the media that children watch. It has been dumbed down. And I think that is true of news and I think that is true in—kids don't watch that quite as much, but in programming in general, it's more obscene, it's more violent, it's more promiscuous, it's more whatever you want that isn't good, than it was before.

And I think that's really bad. Everybody yells First Amendment so you never really get much done about it. On the other hand, you do have recourse at the Federal Communications Commission—not to do all things, but to do some things.

And so I just put before you this question that the legal landscape is very difficult and I understand that. But so is the problem of what it is the children now watch and you get depressed by it.

I'm not a great fan of Facebook. Everybody else is—750 million people certainly are, around the world, but I'm not. Because I think what it does essentially—and not just them but others—it leads children to expose themselves, thinking that they are just doing it to—making a comment to a friend, but then it is available to all of Indonesia, and all of China and all the world, and then you get bullying and you get picking on. You get sort of cyber-suicide-type thoughts. And there are examples of this.

Children have been mortified by this system that they can't penetrate, what their parents have no idea how to penetrate, what it does to them. And then they can't do anything about it because they are caught up in it, their humiliation. And they can do harm to themselves and to others and some, of course, make it a practice to make sure that they have a chance to do that. And do this to children.

It makes me very angry. And I think it should make all of America angry, First Amendment or not.

So my question to you simply is I do recognize that the legal climate is constrained, but I can't believe that two nominees of your distinction wanting on the FCC, one of whom quite obviously has two children who are here, but not yet probably television-watching.

Senator WICKER. They are back watching TV, Mr. Chairman.
[Laughter.]

The CHAIRMAN. But I am interested in what can be done to protect children and parents.

Mr. PAI. Senator, having recently joined the ranks of parents, I have a firsthand concern about the images that my son sees, the words that he hears over any type of media, whether it's television, radio, or frankly even a video on a smart phone.

And so I think it is important for the Federal Communications Commission to do what it can to give parents knowledge about the technologies that are out there, about the tools that are at their disposal to prevent their children from viewing inappropriate content or viewing inappropriate content or hearing inappropriate words.

Obviously, as you pointed out, the legal landscape is a little uncertain. The Supreme Court is going to consider a constitutional challenge to the entire framework of the Commission's rules in this area. Depending on how the court rules, of course, I would be duty-bound to implement the statute that Congress has said the Commission has said it should enforce, and I would do that to the best of my ability, mindful of the concerns you have expressed.

The CHAIRMAN. Well, you said "what I can." That's what I took from your answer.

Mr. PAI. Yes.

The CHAIRMAN. And that is not wholly sufficient to me. I remember extensive conversations—and I apologize for the time here—but with Chairman Martin over "Saving Private Ryan."

And the question was—there was some—obviously that was a wartime situation and there was a question of—if somebody said an obscenity, who could say it and who couldn't say it. And sort of his rule was if the soldier said it, it was OK, but if a commentator on the situation said it, it was not OK. I mean, to that level that he, at least, was willing to immerse himself.

Now, this is not the time or the cultural desire to face these issues, except that it is. Except that that is exactly what parents want and exactly what children need. And the courts will rule—I don't think—Jessica Rosenworcel, do you want to tell me that the FCC is so constrained that you can't think of anything that might possibly happen to alleviate this problem?

Ms. ROSENWORCEL. Well, I should start by saying that I appreciate that Members have come in and updated me about what my children are doing and what they are watching back there.

[Laughter.]

Ms. ROSENWORCEL. But leaving that aside, video programming is really powerful stuff. And at its best, it can entertain and even educate. But some of it is not so enlightening and not so healthy.

Traditionally, the FCC has had authority to limit indecent and profane language and content. But the legal landscape, as my colleague here mentioned, is probably changing. What is not changing is that this is very important.

And I think it is incumbent upon the FCC and frankly all of us to make sure that we both provide quality content, foster it and stimulate it—the good stuff for kids—and that we also help parents be good parents by providing them with the tools to protect their children.

The CHAIRMAN. That is a good answer. And we'll leave it at that.

I am very serious about this and I worry about it greatly. I think that there are a lot of wonderful things to be said about the Internet and a lot of wonderful things to be said about telecommunications, but people are talking to each other less, they don't have to take responsibility for what they put on Facebook or other such social networks because it doesn't come back to haunt them. It's usually somebody else except when it's them and then they are mortified. And it has an enormous effect.

So, just hear me on that and we will work together to see what can be done. You have both been absolutely wonderful. You have done yourself proud, you have done your families proud and you make us proud.

So I think, as was indicated, you should feel pretty good about your chances and I thank you for your testimony.

We stand adjourned.

[Whereupon, at 4:37 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. JIM DEMINT, U.S. SENATOR FROM SOUTH CAROLINA

Mr. Chairman, thank you for holding this important hearing today. I believe we have before us two well-qualified nominees to serve at the FCC, and I hope and expect we can move them through the full Senate before we break for the holidays.

The last few days and months have reminded us that the biggest threat to our economy is not a phone company, but an army of government lawyers and bureaucrats that create uncertainty. And the biggest threat to investment and innovation is not a private Internet service provider, but a public agency hell-bent on over-regulating at any cost.

Ms. Rosenworcel and Mr. Pai, I sincerely hope you go to the FCC with the mindset of humble public servants and not activist agents seeking to expand the authorities of the Commission and manipulate the marketplace to your own preferred ends.

We cannot predict the future, especially in the communications market. Unfortunately, our telecom laws and regulations are littered with policies that locked in paradigms that are now 15, 20, and even 80-year old. Many of our current telecom policies are better suited for more static industry structures like railroads, aviation, and pipelines.

We need to be moving toward a comprehensive update of our communications laws and regulations. If we simply continue the rigid structure we know today, we will not have the innovation, investment, and competition that we could have in this industry, and we won't see the subsequent jobs and growth in our broader economy.

I have previously introduced, and plan to reintroduce a Digital Age Communications Act as a template, an example of how we need to reform the regulatory structure. It is not an attempt to manage economic functions within a particular industry but an attempt to, in effect, create a framework for freedom to thrive. Within this framework, if there is damage or harm done, or if there is anti-competitive activity going on, it gets addressed.

What we have today is a structure that is complex, rigid, and expensive to navigate. In fact, it seems designed more to help particular companies and business models than actual competition. It creates a structure that forces private enterprise to conform, rather than innovate. It creates uncertainty and benefits those with the most lawyers and lobbyists instead of encouraging innovators.

Innovation and entrepreneurship flourish when we have people developing ideas for millions of consumers who can make their own individual decisions. And when we have competitors and millions of people making their own decisions, that creates vibrant economies. That is what the American economy, at its best, is all about. But the American economy is in jeopardy today as we look at our expanding regulatory state.

And that is why your roles at the FCC are going to be critically important during the next several years. Some people in this room see communications as a government utility, something the government should operate, something the government should manage. Some honestly believe that the government can efficiently manage economic functions. History has proven many times that this is a false utopian dream.

I hope you both help to move America back toward a free market economy. We must believe in the power of individual freedom and private enterprise to create a vibrant marketplace and American economy.

Thank you, Mr. Chairman.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO
JESSICA ROSENWORCEL

Question 1. What are the guiding principles you will rely on if you have to consider whether the owner of a daily newspaper should be licensed to operate a television station or radio station in that same market?

Answer. Localism, competition, and diversity are the principles that have long-informed FCC media policy. If confirmed, these principles will inform my review, as will the statute, rules, precedent, and the record. Finally, it is important to note that while Americans can seek news online, newspapers and broadcast stations are still the primary source of local news and information in most communities. As a result, in any deliberation, the impact on local news should be given attention.

Question 2. In some markets broadcasters are coordinating their activities through contractual and other arrangements to get around the FCC's local television ownership rules. These arrangements include shared services agreements, local marketing agreements, and joint operating agreements. Such arrangements typically lead to layoffs of station staff, more consolidated local news gathering and programming, and reduced competition for audiences and advertisers. It also changes the leverage in retransmission agreements negotiated with cable and satellite providers. Do you believe that these types of contractual arrangements are intended to circumvent the FCC's local television ownership rules?

Answer. The record before the FCC reflects that there are an increasing number of sharing agreements, including Local Marketing Agreements, Shared Services Agreements, and Joint Sales Agreements. While it is not clear if such arrangements are pursued in order to circumvent the FCC's local television ownership rules, it is important for the agency to study them further to determine if in practice they have that effect. To date, the FCC has acknowledged that these arrangements may be "at odds with the purpose and intent of rules against duopoly operations." In addition, critics charge that they can result in increased rates for retransmission consent, which can lead to raised rates for customers of multichannel video programming distributors. At the same time, supporters contend that they result in economies of scale that support better programming.

If confirmed, I will review the law, the rules, and the record to assess if these arrangements are intended to circumvent the FCC's rules, and more broadly what their impact is on the public.

Question 2a. Do you believe that these types of contractual arrangements require the FCC to define what an independently owned and operated television station is for purposes of its media ownership rules?

Answer. I believe the FCC should consider this issue in its ongoing quadrennial review of its media ownership rules.

Question 3. Unlicensed spectrum is an integral part of the Nation's wireless network. It is estimated that by 2015 over half of all mobile traffic will be offloaded to Wi-Fi networks. Today, in Washington state, Wi-Fi mesh networks connected to fiber support economic development in places such as Stevenson, located along the Columbia Gorge. The local economy is supported by visitors who come for the rugged beauty of the mountains and the recreational opportunities of the Columbia River but who want to stay connected. In addition, as more types of devices become Internet enabled, they too will need unlicensed spectrum to enable device-to-device communications and the development of new products and offerings. Do you support policies that that will make more unlicensed spectrum available?

Answer. Yes. Spectrum policy requires a mix of licensed and unlicensed services. Licensed services provide reliability and interference protection. Unlicensed services can stimulate innovation because they have low barriers to entry. As you note, they also can assist with network congestion and facilitate rural deployment. Both are important components of communications policy.

Question 3a. As you know I have long supported use of the broadcast white spaces for unlicensed fixed wireless and personal portable devices. Obtaining additional spectrum for unlicensed so-called super Wi-Fi is key to providing new and innovative broadband offerings in addition to more cost effectively providing broadband in rural areas. There is work that needs to be done at the FCC to make these exciting new devices and services commercially possible. Progress seems to move in fits and starts. Do you support policies, like the FCC's "White Spaces" orders, that make spectrum available for unlicensed use below 1 gigahertz band?

Answer. Yes. I support the FCC's efforts to make unused white spaces available for unlicensed fixed wireless and personal portable devices. At the same time, I believe that additional efforts should be made with respect to databases and sensing

technologies, to reduce any interference associated with their use for broadband purposes.

Question 3a. Can I count on your support in getting the Commission's bureaus to focus on completing its work on the white spaces in a timely manner?

Answer. Yes. If confirmed, I will strive to vote in a timely way on all issues, including those involving white spaces. To this end, I believe it is important for the FCC to complete its work on pending petitions for reconsideration. I also believe that the agency's Office of Engineering and Technology should continue to work with database administrators to verify that their efforts comport with FCC rules. I believe the same office should also work with manufacturers that submit devices for certification to ensure that these devices comply with FCC rules.

Question 4. Assume Chairman Rockefeller's S. 911 becomes law. The D-block goes directly to public safety. There are going to be incentive auctions. The FCC is then going to repack the broadcast television channels into a narrower band.

One of the challenges I see in repacking broadcasters operating in markets on our northern border is that coordination with Canada is required. I imagine it is similar on our southern border. There is a formal role for the State Department to play through treaty modifications. I believe FCC coordination with its Canadian counterpart will go a long way to ensure that channel repacking goes smoothly for television stations operating along the northern border. If confirmed, will you commit to working with your Canadian counterparts to ensure a smooth repacking of television stations after any incentive auction?

Answer. Yes. In the first instance, any repacking of stations that may occur will be governed by new legislation authorizing voluntary incentive auctions. If confirmed, I will follow the direction in this legislation and will work with the FCC's Canadian counterparts to ensure that the process for any repacking is smooth.

Question 5. A constituent contacted my state office and told my staff that after twice being informed by his Internet Service Provider that he had exceeded his monthly data cap, he was blacklisted from receiving broadband Internet service for a year. He said he was streaming video and audio. He also backed up two decades of high-resolution photographs and music files onto a cloud-based storage application. He is clearly what is known as a power user.

Even so, my understanding is that the data cap is only somewhat linked to managing network congestion. At certain times of the day, excessive bandwidth use by an individual consumer may impact the quality of service experienced by other broadband users. At other times of the day though, it is not so clear. If large amounts of data is uploaded or downloaded to remote servers in the middle of the night, I have my doubts whether it will really interfere with the functioning of the network.

More broadly, I am concerned that data caps are becoming the broadband industry norm—particularly for the 4-G wireless broadband services. If you work out the numbers between the download speeds and the data cap on many plans, consumers will not be able to take advantage of the 4-G features for very long. Do you believe that data caps are becoming more of a standard industry practice for all residential and wireless broadband providers?

Answer. Yes. Many, but not all, broadband subscriber connections in the United States are now limited by some kind of data cap.

Question 5a. Do you believe there is a strong linkage between data caps and managing network congestion?

Answer. I believe there is some link between the use of data caps and the management of network congestion. I believe further study is necessary to determine whether that link is a strong one.

Question 5b. Do you believe there is a need for the Commission to look into the nature, purpose, and impact of data caps on consumers?

Answer. Yes. On the one hand, if data caps are transparent and address real network capacity concerns, they can be a legitimate tool to manage congestion. On the other, if they are set only to generate fees for exceeding the caps, this can reduce incentives for robust broadband deployment. Consequently, I believe the FCC should consider monitoring the development of these caps and their impact on consumers.

Question 6. Our communications network is transitioning from circuit switched to Internet Protocol (IP) and the FCC has begun to discuss the possibility of sunseting the public switched telephone network. As the network transitions, innovators are offering consumers new and interesting ways to communicate. For example, there are a variety of VoIP products including some that replace telephone services, supplement telephone service, or provide conveniences as click to call offerings. As IP services evolve, it remains important that policy makers refrain from regulating

them too quickly and instead proceed with a light touch enabling these new IP based service to emerge and flourish. Do you support a light touch approach when addressing public policy issues concerning IP services?

Answer. Yes. I believe a light-touch approach is an essential part of ensuring that nascent communications services have the chance to develop and thrive. Moreover, I believe this kind of approach can facilitate new services, and the ability to realize innovation on a large scale. At the same time, it is important to recognize that as these services grow to become full substitutes for traditional telephony, it may be necessary to reassess some aspects of this approach. For instance, I believe it is important that services that market themselves as a substitute for basic voice service provide the ability for their user to make emergency calls.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL TO
JESSICA ROSENWORCEL

Question 1. The FCC has a pending NPRM that would make changes in the administration and eligibility requirements of the Lifeline and Link-Up programs, which provide telephone service for low-income people. There have been increased allegations of potential fraud in the programs, particularly around eligibility documentation and people receiving multiple phones. This is disturbing because we need to ensure that people who need the services are getting it rather than directing funds to those who may be cheating the system.

GAO issued a report in October, 2010, on the low-income programs. The report stated that the FCC has not taken sufficient steps to develop performance goals and measures for the programs and has limited insight on the intent of the program and what it is accomplishing. GAO has not specifically looked into potential fraud that may be occurring in the programs.

The NRPM appears to be taking some steps to address the problems in the programs, including limiting phones to one per household, requiring better documentation for eligibility and creating a national database to track customers. I am pleased that the FCC is taking these steps. In your view, what is the core purpose of these programs and who should they primarily serve? What are the most important benefits of the programs? Do you think the programs in their current form may need reform or to be narrowed?

Answer. For decades, the Lifeline and Link-Up program has provided qualified, low-income subscribers with assistance setting up and receiving basic telephone service. It is part of a long-standing FCC effort to support telephone service for low-income households. After all, having access to telephone service is essential for calling 911, being able to secure a job, take care of loved ones, and manage routine interactions with government and health care providers.

Today, the Lifeline and Link-Up program is one of four universal service programs that is run by the FCC. Historically, the program only provided support for traditional wireline telephone service. But during the last Administration, it was expanded to wireless services, and notably pre-paid wireless services. As a result, the program has grown substantially. Last year, it provided roughly \$1.3 billion in support—an historic high.

On the one hand, this might mean that more low-income people have the telephone service they need to conduct and manage their daily lives. This is a good thing. But on the other hand, this tremendous growth deserves attention and focus.

I understand that the FCC is studying this growth and considering reforms. If confirmed, I will fully support these efforts. For the program to be successful, it must be free of waste, fraud, and abuse.

Question 2. In your view, is the NPRM going far enough to address the fraud that may be occurring? Do we need GAO or the FCC IG to do a more thorough review and/or audit to determine how much fraud there is?

Answer. The NPRM is a good start. Additional study from the GAO or FCC Inspector General is also always appropriate.

Question 3. The disbursements on these programs have doubled since they were opened up to wireless phones in 2008. Much of the potential fraud appears to be growing in the wireless use, particularly with duplicate phones being used at the same household. Why do you think the FCC has not taken a stronger approach in monitoring eligibility for the programs when they can see their rapid growth? Since these programs have no caps on the disbursements, don't we need to get a better handle on how they are managed so that we can help direct funding to those who really need it and avoid fraud? Will you commit to providing this issue increased attention and ensuring more is done to prevent fraud, waste and abuse in the program?

Answer. I do not have insight into why the FCC has not taken a stronger approach in monitoring eligibility for Lifeline and Link-Up, in light of recent growth. But I note approvingly that in June 2011 the FCC took action to address waste associated with duplicative payments, and is contemplating taking additional steps. Going forward, it is necessary for the agency to continue to study this program carefully to ensure it is free of waste, fraud, and abuse. If confirmed, I commit to supporting these efforts.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO
JESSICA ROSENWORCEL

Question 1. Digital Divide on Tribal Lands. The mission of the Federal Communications Commission is to make communications services available to all the people of the United States. However, the first people of the United States—Native Americans—face a significant digital divide on Tribal lands.

Most people probably cannot imagine life without a telephone. Yet today more than 30 percent of households in Indian Country do not have access to basic telephone service. Broadband access is much worse with probably more than 90 percent lacking broadband. These statistics do not truly convey the hardships created by this lack of telecommunications service. Imagine not being able to call an ambulance when you or someone you love is in medical danger. Phones and broadband also help keep friends and family members in touch when they are far apart. Imagine not being able to speak with a loved one who is serving in the military and won't be home this holiday season.

Although Tribal lands are among the least connected, this is precisely where modern communications technologies can help the most. By overcoming physical distances and geographic isolation, broadband can help improve economic development, education, and access to health care.

I am pleased that the Commission is paying particular attention to this challenge. There is a new Office of Native Affairs and Policy to help work with Tribes on a government-to-government basis. The recent Universal Service order proposes a Tribal Mobility Fund to expand wireless access. It will also require engagement with Tribes. These are welcome steps in the right direction. So, I would like to ask that, if confirmed, will you seek to ensure that the Commission continues to work with Tribes and telecommunications carriers to tackle the digital divide facing so many Native American communities?

Answer. Yes. I have traveled to tribal communities. Consequently, I am aware that telecommunications deployment in Indian Country for both basic and advanced services lags the rest of the country. This is a troubling problem that requires attention. If confirmed, I will support the FCC Chairman's creation of the Office of Native Affairs and Policy. Specifically, I will support this office's work to ensure that Native voices are heard on matters that affect Indian Country. I also believe that universal service reform of the high-cost fund may assist with further deployment of service in Indian Country. If confirmed, I will strive to make sure that the implementation of universal service reform proceeds in a way that can help address the important needs of our tribal communities.

Question 2. Support for Telemedicine. New Mexico is a rural state where many rural communities are not only underserved when it comes to in communications, but also underserved in health services. We have some great folks at the University of New Mexico and in our hospital systems who are working hard to improve rural healthcare by using new innovative tele-health technologies.

The Government Accountability Office has criticized the FCC's management of the Rural Health Care Program. Some of the telemedicine proposals contained in the FCC's National Broadband Plan also seem to be on hold at the moment. I realize that the FCC is engaged in substantive reform in areas such as universal service. But tele-health is another area that should be a priority. Can you assure me that, as Commissioners, you will support efforts to improve and increase telemedicine opportunities, especially for rural communities?

Answer. Telemedicine offers tremendous opportunities to improve health care access for patients, especially in rural areas. It can bring world-class expertise to people far from urban centers, cut costs, and help improve health care results.

For this reason, if confirmed, I believe the FCC's rural health care program deserves a fresh look. The legacy program provides discounts to rural health care providers for telecommunications and Internet access services to ensure that eligible providers are paying no more than their urban counterparts for services. The pilot program has provided, for a limited time, support for the construction of a state or regional broadband network assisting rural health care providers. As you note, how-

ever, the Government Accountability Office has suggested that performance management weaknesses exist in these programs.

I believe the challenge for the FCC is identifying a way to make the rural health care mechanism more effective within the agency's statutory authority. It also must do this conscious of the fact that—like all universal service programs—the rural health care fund is supported by a line item on everyone's telephone bill. This line item is growing, making the cost of reform difficult. But the importance of this issue is also growing—as is the good it can do, if properly conceived. Consequently, as noted above, if confirmed, I will support efforts to rethink and reinvigorate this program.

Question 3. Support for Low-income People. The Commission recently published its proposals for reforming how universal service funds will support building out broadband networks in rural areas.

But we know that having broadband available where you live is not the only aspect to tackling the digital divide. People need to see the value of having it. And they need to be able to afford to pay for it.

The universal service Life Line and Link Up initiatives have helped many people with low incomes get basic telephone service. In rural Tribal areas, Enhanced Life Line and Link Up help not just with adoption rates but also service deployment to some high cost areas where many potential customers could not afford phone service.

In addition to the Commission's efforts, some cable and phone companies have committed to offering reduced price broadband options for certain low income families. Could you share your thoughts on how the Commission can use universal service initiatives, and also work with private companies, to increase broadband adoption, particularly among people with low incomes?

Answer. The broadband challenge in this country has two fronts—supply and demand. With respect to supply, recent reforms of the universal service high-cost fund are designed to increase broadband deployment in areas where service is not available today. It is essential that the FCC implement and carefully monitor these reforms. If confirmed, I pledge to do so.

With respect to demand, the problem is equally challenging. Studies from the Pew Internet and American Life Project have demonstrated that adoption is lower in low-income households than in the population at large. If this continues, over time the cost of this digital exclusion could grow, as more forms of commerce, education, and government interaction occur online.

For this reason, I believe recent commitments private companies have made to support low-cost broadband service for low-income households are promising. In addition, I believe more research is necessary to identify what programs and outreach efforts lead to sustainable broadband adoption.

Finally, it is important to note that the National Broadband Plan recommended expansion of the Lifeline and Link-Up program to include not only basic telephony, but also broadband service. This merits consideration. However, ongoing efforts to reduce waste, fraud, and abuse in the existing program should proceed first.

Question 4. Importance of Broadcast TV and Radio. Today, there is a lot of excitement about mobile broadband, which puts the power of the Internet into the palm of your hand. I am amazed by what new smartphones and tablets like the iPad can do.

Yet, with all the excitement about new mobile technologies, it is easy to forget that broadcast TV and radio are truly the first “wireless” technologies. They continue to play a valuable role today. Not everyone can afford cable or satellite TV. Not everyone has access to the Internet at home.

Free broadcast TV and radio are especially important in times of emergency. For example, this year when northern New Mexico faced severe winter storms and summer forest fires, people turned to their local broadcasters for the latest weather and safety information. Outside of emergencies, local businesses also appreciate how advertising on local broadcast stations can help them reach customers in their communities. Can you share your views on the value of over-the-air broadcasting and the importance of its role in an evolving telecommunications landscape?

Answer. Millions of Americans rely on free, over-the-air television as their primary source of news, information, and entertainment. Even in a world where technologies are evolving, and information is plentiful online, the Pew Internet and American Life Project has found that 78 percent of the population surveyed still relies on local television for local news.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK WARNER TO
JESSICA ROSENWORCEL

Question 1. Interoperability issues have become more important over the last few years. I am concerned about interoperability problems that seem to limit the ability of smaller players, in particular, to be competitive. This problem appears to be particularly acute for smaller companies and markets. This concerns me for several reasons. First, if future auction participants do not know they will be able to acquire devices, then they are less likely to bid on spectrum licenses. Second, the proliferation of band classes means that device chipsets have to cover more band classes in order for a device to be able to traverse an entire band. Third, I worry that a lack of predictability regarding interoperability may have led some companies to withhold investments which would benefit the economy and potentially foster more innovation. Can you provide me with an explanation of your views on interoperability requirements?

Answer. I understand that the FCC currently is reviewing the interoperability of mobile devices that make use of spectrum in the 700 MHz band. Some critics, including small wireless providers, charge that the market is developing in ways that are at odds with interoperability—and the public interest. As a result, there is concern that some consumers will not have access to up-to-date devices and may not be able to roam on other networks when they travel from home. At the same time, others suggest that an overly broad obligation could result in technical difficulties and unnecessary costs.

Interoperability is an essential component of a diverse communications system. It is important that consumers are not stranded without service. It is also important that our networks are not unreasonably balkanized by devices that cannot speak with one another. Consequently, the FCC should carefully monitor the work of industry standards-setting bodies regarding this issue. If those technical bodies fail to make progress, the agency should study its authority and identify how to improve interoperability in the 700 MHz band.

Question 1a. Issues in the 700 MHz band plan have been raised in this committee over the past year. Should the FCC take a serious look at this issue? If not, why not? If so, what do you think the FCC could do to make sure the benefits of interoperability are fully realized?

Answer. As noted above, I believe that the FCC should carefully monitor the work of industry-standards setting bodies. If those technical bodies fail to make progress, the agency should study its authority and identify how to improve interoperability in the 700 MHz band.

Question 2. With regard to the Commission's ongoing USF reform efforts, do you believe the Commission is doing all it should to promote access and availability of broadband, particularly wireless broadband, to our Nation's non-urban areas? If not, what else should the Commission do?

Answer. The FCC recently adopted a collection of high-cost universal service fund reforms. These reforms transition the high-cost system from its earlier focus on voice telephony to a new focus on broadband. In addition, these reforms include the first set of funds dedicated exclusively for wireless services.

This is the most substantial set of reforms to this system in over a decade. In addition to implementing these reforms carefully, it is incumbent on the FCC to monitor their development. To this end, if confirmed, I will do my part to make sure that the FCC regularly reviews data regarding broadband and wireless deployment to determine if universal service resources are targeted and effective at providing service in communities in rural and high-cost areas of the country.

Question 3. As carriers continue to migrate to IP networks, the direct interconnection of voice networks remains vital to ensure competition, innovation, and lower prices. The FCC, in its recent USF order, stated that the duty to negotiate interconnection agreements in good faith "does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise." What is your view of duty to interconnect under the 1996 Telecom Act? Would you agree that the Act is "technologically neutral" regarding interconnection?

Answer. I believe interconnection is a critical part of communications policy. Historically, it has facilitated competition, and the associated benefits of increased innovation and reduced prices.

Increasingly, however, it is a complex area of the law. Interconnection, for instance, in Section 251 of the Communications Act, as amended by the Telecommunications Act, is largely dependent on the provision of telecommunications service by telecommunications carriers. At the same time, in its recent universal service reform decision, the FCC made a point of noting that its new rules will promote the

deployment and use of IP networks, and that interconnection between such providers is also critical. Complicating this situation further, voice roaming obligations for wireless carriers are built on common carrier authority in Section 201 and 202. In contrast, the FCC based its recent decision to support data roaming on commercially reasonable terms on its authority in Title III of the Communications Act to manage spectrum and modify license and usage conditions in the public interest.

This legal patchwork provides essential interconnection, and in practice can promote technological neutrality, but it is undeniably complex.

Question 4. Media cross-ownership rules have generated great interest over the past several years. Can you share your views on the current newspaper/broadcast station cross-ownership rule? Do you think it should be relaxed?

Answer. I believe the media landscape is changing. In many ways, this is good news. Information is now more plentiful than ever before. Similarly, the range and variety of commentary has grown substantially. Everyone with Internet access has his or her own digital printing press. But the news is not all good. The ranks of journalists in this country have thinned considerably. More than 13,000 newspaper jobs have been shed in the past 4 years. Many local television stations produce excellent news. But others are producing less than just a few years ago.

It is against this background that the FCC's review of media ownership rules is occurring. If confirmed, I believe it is necessary to take these trends into consideration. But I also believe they need to be balanced with the principles of diversity, localism, and competition that have always informed these rules, including the newspaper/broadcast cross-ownership rule.

In addition to the regular quadrennial review, the newspaper/broadcast cross-ownership rule is the subject of a remand from the Third Circuit Court of Appeals. If confirmed, my review of this rule will take into account the statute, the record, the principles noted above, and the changing nature of news production.

Question 5. In the last two FCC Mobile Competition Reports, the Commission was unable to certify the industry as competitive. What steps would you recommend taking to enhance competition within the mobile industry?

Answer. To enhance competition in the mobile industry, additional spectrum for auction is important. At the same time, it is important to devote efforts to making use of existing spectrum more efficient and more competitive. This includes the development of spectrum sensing technologies, "dig once" initiatives, and small cell deployment that facilitates the efficient reuse of spectrum.

Question 6. The President set an aggressive goal of releasing an additional 500 MHz of spectrum over the next 10 years. In the past year, Federal efforts to make more spectrum available have been mixed at best. NTIA released a preliminary report in January 2011 which identified 115 MHz of spectrum, but only 15 MHz would not need to be shared with Federal users. An updated report is expected to be released any day now. What do you think needs to happen, particularly over the next 2-3 years, to help us achieve this goal?

Answer. Radio spectrum is a scarce but valuable resource. The proliferation of wireless devices and growing demand for wireless data services puts new pressures on the use of our airwaves. The goal of releasing an additional 500 MHz of spectrum over the next 10 years is an aggressive effort to meet this growing need. Reaching this goal will require a variety of efforts. This includes broad-based efforts to provide incentives to Federal Government users to use their spectrum more efficiently, with resources for planning, and rewards for relinquishing its use, if feasible. In addition, more attention will need to be paid to sharing technologies, including spectrum sensing, and also small cell deployment, which can facilitate the efficient reuse of spectrum.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK BEGICH TO
JESSICA ROSENWORCEL

Question 1. Even with the current FCC focus on rural broadband deployment to the remote regions of Alaska most of Alaska's rural communities still depend on free local over the air Television and Radio to receive emergency information and critical news programming. Early in November a Bering Sea Superstorm of hurricane proportions wreaked havoc on the western part of the state jeopardizing villages and lives with historic weather conditions. Local broadcasters effectively kept everyone in the storm's path aware of the latest conditions. Can you tell us the role that broadcasters will play in 21st century telecommunications policy?

Answer. Millions of Americans rely on free, over-the-air television as their primary source of news, information, and entertainment. Even in a world where tech-

nologies are evolving, and information is plentiful online, the Pew Internet and American Life Project has found that 78 percent of the population surveyed still relies on local television for local news.

Question 2. Many Senators have spoken about how rural markets aren't like other markets, and I would add Alaskan rural markets aren't like lower 48 rural markets—in many cases, they aren't effective markets at all. What are your thoughts on how we give providers incentives to build and operate in places where investment is hard to come by? Is the “carrier of last resort” concept important in those places, in your view?

Answer. With respect to communications deployment, I generally believe that the private sector should proceed first. But, as a Nation, I believe we need to be honest about markets in this country that the private sector alone will not reach—including some locations in Alaska. For this reason, I support narrowly tailoring regulatory policies to extend networks so that they reach all of our communities. This includes, but is not limited to, policies like universal service that support deployment in high-cost and rural communities.

In the 21st century all of our communities will need access to modern communications to prosper. Alaskan communities are no exception. I have traveled to remote communities in Alaska, including Dillingham, Manokotak, and Aniak. I have seen first-hand how hard it can be to secure quality communications service, and how essential it can be to improving the quality of life for residents.

Carrier-of-last resort responsibilities have an important place in communications law. Without these duties, there never would have been deployment in many rural areas in this country. As communications technologies evolve, it is essential to remember the role these responsibilities play.

Question 3. Another important issue to rural consumers is interoperability. I wrote a letter with Chairman Rockefeller, and Senator Wicker urging Chairman Genachowski to bring a proceeding to ensure consumers have access to mobile devices operating on the next generation networks that use 700MHz spectrum. Interoperability between networks is important, not only to public safety, but to consumers who have rural wireless providers and travel between various commercial networks and should be able to utilize these networks. If confirmed, how will you address this important issue?

Answer. I understand that the FCC currently is reviewing the interoperability of mobile devices that make use of spectrum in the 700 MHz band. Some critics, including small wireless providers, charge that the market is developing in ways that are at odds with interoperability—and the public interest. As a result, there is concern that some consumers will not have access to up-to-date devices and may not be able to roam on other networks when they travel from home. At the same time, others suggest that an overly broad obligation could result in technical difficulties and unnecessary costs.

Interoperability is an essential component of a diverse communications system. It is important that consumers are not stranded with service. Consequently, the FCC should carefully monitor the work of industry standards-setting bodies regarding this issue. If those technical bodies fail to make progress, the agency should study its authority and identify how to improve interoperability in the 700 MHz band.

Question 4. The FCC is currently considering a proposal to reform the Lifeline program that would limit eligibility for the Lifeline program to one per residential address. The Lifeline program in Alaska has been extremely beneficial to many Alaskans. In fact, since the program came on board 17 years ago penetration among disadvantaged populations has increased dramatically. It is critical eligible low-income adults have access to Lifeline-supported phone services. This is important for the safety of many Alaskans, including those in rural Alaska who don't always have a public safety officer in their village and are prone to extreme weather conditions and may need emergency services. I ask for your commitment to work with me to ensure benefits of this program continue to be available and serve disadvantaged populations.

Answer. The Lifeline and Link-Up program is an important part of keeping everyone in this country connected. It is part of a long-standing FCC effort to support telephone service for low-income households. Having access to telephone service is essential for calling emergency services, being able to secure a job, take care of loved ones, and manage routine interactions with government and with health care providers.

Today, the Lifeline and Link-Up program is one of four universal service programs that is run by the FCC. Historically, the program only provided support for traditional wireline telephone service. But during the last Administration, it was expanded to wireless service, including pre-paid wireless service. As a result, the pro-

gram has grown substantially. On the one hand, this is a good thing, because it means more people have the telephone service they need to conduct and manage their daily lives. On the other hand, this tremendous growth deserves attention.

I understand that the FCC is studying this growth and considering reforms. For this program to continue to be successful, it must be free of waste, fraud, and abuse. At the same time, it is imperative that reforms under consideration do not pose unnecessary hardships for those who could truly benefit from its support. If confirmed, I will work to make sure that this program is run capably and also capable of distributing support to those disadvantaged populations that need it.

Question 5. The process at the FCC is very complicated and I feel is not as transparent as it could be. I would like to see this process improved to be more transparent so companies and consumers do not have to live in limbo for weeks after a vote before an order is published. If nominated what would you do or recommend to help this process along?

Answer. If confirmed, I will strive to vote all decisions in a timely way, without unnecessary delay. I believe the agency should make all reasonable efforts to release decisions contemporaneously with agency voting. To the extent that this is not feasible, I believe decisions should be released within a week of voting.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO
JESSICA ROSENWORCEL

Broadband Expansion and Adoption

It has been over a year and a half since the FCC released its National Broadband Plan, which was to be a blueprint to achieving affordable, high-speed broadband to all Americans. However, there has been criticism the agency has not acted quickly enough to implement the numerous recommendations outlined in it. While the Commission has issued several public notices related to recommendations and goals highlighted in the Plan, some organizations have estimated only about 10–20 percent of the recommendations in the Plan have actually been implemented/completed.

This is somewhat concerning given how many Americans still lack broadband service. Thirty-five percent of American adults, or 80 million people, do not have high-speed Internet access in their homes. In addition, a 2008 Pew Internet & American Life Project survey found that approximately 62 percent of dial-up users said they weren't interested in switching to broadband. That same survey also found that 33 percent of non-Internet users say they are not interested in using the Internet. So two digital divides (one with supply and one with demand) continue to linger while much of the National Broadband Plan goes unimplemented.

Question 1. Do you believe the FCC has been as active as it needs to be in implementing the recommendations in the National Broadband Plan?

Answer. Broadband access is essential for prosperity in the 21st century. Given the significance of broadband to our economic competitiveness, there is always room for the FCC to do more to facilitate broadband deployment and access.

To be clear, many of the recommendations in the National Broadband Plan fall outside of the scope of traditional FCC authority. Some involve other Federal agencies and authorities, state authorities, and even the Congress. However, for those initiatives outlined in the plan that are well-conceived and within the agency's authority, I would support taking further steps to implement them, if confirmed.

Question 2. What outstanding recommendations in the Plan would you prioritize to help spur the expansion of broadband availability?

Answer. I believe the FCC should devote additional resources to facilitating efficient spectrum use. Spectrum is a major input for provision of broadband service. With only a limited amount in inventory, more effort needs to be made to free up additional airwaves and also promote technologies that make more efficient use of spectrum, generally.

I believe the FCC also should consider ways to improve its E-rate and rural health care programs. The E-rate is a very successful program. At the time of enactment of the Telecommunications Act of 1996, only 14 percent of classrooms had access to the Internet. Today, that number is over 90 percent. Much of this is due to the support of the E-rate. But great programs do not thrive without continued attention and care. The FCC already has taken steps to remove barriers to off-hours community use of E-rate funded resources. The agency should continue to look for ways to improve this program, and use the resources it brings to schools and libraries to spur additional broadband deployment in adjacent communities.

The FCC's rural health care program holds great promise, but has not been as widely used as the E-rate. The FCC should study how, within existing law, to make this a more effective program—for the patients and healthcare providers that use it, and also for the communities that benefit from the provision of service.

Question 3. What specific initiatives/proposals do you believe would be beneficial to achieving that goal of consumer awareness and education?

Answer. As the numbers in the Pew survey indicate, the broadband challenge in this country is on two fronts—supply and demand. With respect to supply, ongoing efforts with universal service fund reform are designed to help support deployment in high-cost communities. With respect to demand, however, the answers are also important—and also complex.

To this end, I am aware that the Broadband Technology Opportunities Program, which was enacted as part of the American Recovery and Reinvestment Act, provided support for some broadband adoption programs. These programs include digital literacy training and outreach campaigns, with the goal of expanding consumer awareness and education about the relevance of broadband in our everyday lives.

These programs have not yet concluded. When they do, I believe it would be prudent to study them carefully. It is important to understand what practices yielded results and what programs contributed most to sustainable broadband adoption in a variety of communities. This information should be used to develop further efforts designed to increase consumer awareness and education.

More Timely Decision Making

While the FCC has a self-imposed shot clock of 180 days for merger reviews, it rarely adheres to it. Many recent merger reviews by the Commission have surpassed the 180 day benchmark—the NBC-Universal Comcast merger review took 234 days, the XM-Sirius merger review took 412 days, and the CenturyLink and Qwest merger review took 294 days.

The agency also has a poor record in timely decisions on other matters before it. At one point, the FCC had a backlog of over 5,000 petitions and more than 4,000 license applications pending. And technical proceedings at the FCC have been, what Mitch Lazrus, a well respected telecommunications lawyer, calls “dismally slow.”

In a letter I sent to Chairman Genachowski back in January 2010, I highlighted several outstanding spectrum proceedings I urged the Commission to conclude to release more spectrum for wireless broadband. One of the concerns I had about the proceedings I mentioned was that all had been open for 3 years or longer, and another related proceeding¹ to WCS-SDARS had been pending for over a decade.

I am concerned that this lack of action hinders innovation and causes significant uncertainty to small start-up companies that are critical to job creation.

Question 4. What steps will you take with respect to regulatory reform so that the agency can be more nimble in the very dynamic telecommunications industry and not be a bottleneck to innovation and job creation due to inaction or delays on petitions and applications?

Answer. If confirmed, I will strive to vote decisions in a timely way, without unnecessary delay. Communications is a dynamic sector in our economy, and the agency should, within its resources, make decisions in a way that facilitates investment and expedites the opportunity for consumers to benefit from new and innovative services. This is especially important for small businesses, which are so essential to job creation.

To facilitate more timely decisionmaking, I believe the agency should explore how to make greater use of Administrative Law Judges. I also believe the FCC should study the source of delay. If regulatory inertia is responsible, that needs to be addressed. If the technical expertise necessary to render a timely decision is not available, that likewise needs to be addressed. If, however, applicants are resolving disputes on their own, that is generally preferable to regulatory intervention. Similarly, if delays are the result of ongoing litigation, that is a right that should be respected by the agency decision-making process.

Question 5. What criteria will you use when reviewing future wireless mergers and petitions? Will you strongly push for more timely decisions on pending mergers given the dynamic nature of the industry?

Answer. If confirmed, I would follow the statute. The Communications Act, in Sections 214 and 310, prohibits the transfers of licenses absent a finding by the FCC that the public interest, convenience, and necessity will be served thereby. This analysis traditionally involves weighing both the benefits and harms of a proposed transaction. The agency should, within its resources, make these decisions in a time-

¹ IB Docket No. 95-91.

ly way. It should be conscious that its process, if unnecessarily delayed, could impede investment and slow the opportunity for consumers to benefit from new and innovative services.

Question 6. As you know, section 5(c) of the Communications Act² authorizes the Commission to delegate most of its functions to “a panel of commissioners, an individual commissioner, an employee board, or an individual employee” to ensure proper functioning of the Commission as well as prompt and orderly conduct of its business. Do you believe the FCC has made effective use of this provision in the statute?

Answer. Ministerial decisions, that are not controversial and are wholly within the scope of existing precedent, can and should be made on delegated authority by, for instance, Bureau officials at the agency. At the same time, decisions of first impression, significant market effect, or with substantial policy consequence, can and should be made by the full Commission.

Question 7. Another section³ in the statute, Section 7, requires the FCC to act within 1 year on petitions or applications on new technologies or services. But it is my understanding the FCC has never implemented rules to administer this section so it has gone unutilized. What will you do to see that either the intent of Congress here is followed or the Commission requests a modification to the statute?

Answer. Section 7 of the Communications Act states that it is the policy of the United States to encourage the provision of new technologies and services to the public. I wholeheartedly agree with the sentiment in this provision.

It also directs the FCC to determine whether any new technology or device proposed in a petition or application is in the public interest within 1 year after such petition or application is filed. On the one hand, this provision appears to expedite the provision of new technologies and services by directing the agency to address issues within 1 year. On the other hand, it puts the FCC in the awkward position of approving an undefined scope of new technologies and services, that if applied across the board, could become an unnecessary regulatory hurdle for companies with new and innovative ideas.

I am aware that the Institute of Electrical and Electronics Engineers-USA (IEEE-USA) has asked the FCC to provide additional guidance. To this end, the IEEE-USA notes that many wireless innovations would appear to be subject to the terms of Section 7 of the Communications Act. In addition, the IEEE-USA notes that other, similarly broad provisions of the law, including merger review and forbearance petitions, are the subject of FCC guidelines.

As a result, I believe a continuing dialogue on this is needed. While additional regulatory guidance is important, it is equally important that any process to resolve Section 7 petitions does not unnecessarily increase regulatory obligations, becoming an impediment for the deployment of new technologies and services.

FCC Technical Expertise

Engineers at the FCC play an essential role in regulatory matters by providing technical consultation on policy matters, managing spectrum allocations, and creating new opportunities for competitive technologies. However, as I highlighted in letters last year to the FCC Chairman and President Obama, over the past several decades there has been a significant depletion of engineer staff at the Commission. In 1948, the FCC had 720 engineers on staff; today, it has fewer than 270—an astonishing 63 percent reduction—even though the FCC now must face more technical issues concerning the Internet, advanced wireless communications, commercial cable and satellite industries, and broadband.

A December 2009 report by the Government Accountability Office (GAO-10-79) found that the agency “faces challenges in ensuring it has the expertise needed to adapt to a changing market place.” More recently, the National Research Council released a 2011 Wireless Report that suggested the FCC would benefit from “enhancing its technology assessment and engineering capabilities” due to “entering an era in which technical issues are likely to arise on a sustained basis.”

If the agency doesn’t have both the legal and technical expertise, it could cause the FCC to implement poor policy and regulation because the agency doesn’t have the sufficient technical knowledge to understand the implications that proposed regulations have on emerging technologies. Even more concerning is the lack of technical resources hampers innovation and job creation due to excessive delays to businesses that have applied for technical waivers, experimental licenses, and filed petitions at the agency and there aren’t enough engineers to review this issues.

² 47 U.S.C. 155.

³ 47 U.S.C. 157.

Question 8. Do you share these concerns the technical community has about the lack of technical aptitude at the Commission and what specific commitments can you provide to helping resolve this glaring deficiency of technical resources that can hinder this Nation's technical leadership and innovations in communications as well as hinder job creation of businesses that are waiting for approval of waivers or applications at the Commission?

Answer. Yes. Today, there are less than 300 engineers working at the FCC. It puts great pressure on those who are employed as engineers at the agency, because, as the National Research Council suggests, we are entering an era in which technical issues are likely to come up with greater frequency.

However, it is also critical to consider how these individuals have an opportunity to contribute to the decisionmaking of the agency. To this end, I believe they should assist with technical review, play a consulting role in major decisions, and also contribute to idea generation and policy development within the agency. In addition, the experts in the Office of Engineering and Technology should be freely available to every part of the FCC, including the Commissioner offices.

Finally, I would like to note that the agency has run an attorney honors program. This two-year employment and training program is designed to introduce new and recent law school graduates to the field of communications law and policy. I am not aware that the agency has difficulty attracting bright young lawyers. Consequently, I believe the agency should consider developing a similar honors program for recent engineering graduates. Such a program could introduce young people with engineering backgrounds to how their technical expertise can be used to inform public policy at the FCC.

Question 9. The FCC deals with a complex agenda of technical and nontechnical issues. How do you intend to staff your office to deal with such a mix? As you may know, prior to 1982, the statute required each Commissioner to appoint a legal assistant and an engineering assistant.⁴

Answer. If confirmed, I will consider the appropriate mix of expertise necessary to inform my office. I recognize the benefit of having individuals with diverse backgrounds and experience.

Wireless Device Performance

The escalating demand for spectrum presents significant challenges. As more entities use spectrum to provide services to consumers and citizens, the ecosystem becomes more crowded and efforts among users to coexist become more difficult. As a result, disputes among licensees regarding potential harmful interference are occurring with greater frequency. Just in the past few years, interference disputes have arisen between various parties such as MVDDS/DBS, AWS-1/AWS-3, WCS/SDARS, and, more recently, with LightSquared/GPS.

One of the problems contributing to the recurrence of these interference disputes is the lack of clear receiver performance guidelines. Legislation that I have introduced with Senator Kerry promotes more spectral efficiency and interference immunity of device receivers and tasks the FCC and NTIA to conduct an interference sensing study to provide greater predictability in the determination of harmful interference. Taking these steps or similar ones will help mitigate, and even prevent, future interference disputes meaning a quicker time to market for new companies and lower probability of disruption of existing services.

In a recent letter I sent to the FCC Chairman on spectrum policy I included a comment from Michael Gallagher, the former Assistant Secretary for Communications and Information, who once stated "receiver standards mean less interference and more available spectrum." So if more spectrum is to be made available, receiver performance must be included in any general spectrum policy discussion and as part of the equation to prevent a spectrum shortage.

Question 10. Do you believe the FCC should promote spectral efficiency and interference immunity of device receivers? How would you recommend the FCC do that?

Answer. The FCC should consider how it can promote spectral efficiency through receiver standards. As noted above, they can mean less interference and more available spectrum. This, in turn, can reduce disputes regarding harmful interference, increasing the potential for development of new and innovative services, while reducing the probability of disruption for existing services.

The authority of the FCC to proceed to regulate receiver standards was last addressed by the agency in a 2003 Notice of Inquiry regarding the Interference Immunity Specifications for Radio Receivers. The record reflects some dispute about the

⁴http://transition.fcc.gov/Bureaus/OSEC/library/legislative_histories/248.pdf (pg 2, second paragraph).

agency's ability to impose receiver standards under the Communications Act. The proceeding was subsequently terminated in 2007. Regardless, I believe it is time for the FCC to take a fresh look at this issue, and if confirmed, would support efforts to do so.

Question 11. Do you believe the FCC and NTIA should more clearly define what "harmful interference" constitutes?

Answer. Radio spectrum is a scarce but valuable resource. The demands placed on it are only going to grow over time. Reducing harmful interference is an essential part of making more efficient and more reliable use of our limited spectrum resource.

As a general matter, clear regulation can inspire confidence and investment. To this end, further definition for harmful interference may yield some benefit. At the same time, however, I believe additional guidance also could result in rigid application over time, denying necessary flexibility, and stifling the ability to innovate. Consequently, I believe the FCC and NTIA should monitor this issue carefully, before determining if additional guidance is useful.

Piracy and Network Neutrality

As you may know, I have been a long-time champion of network neutrality and providing fundamental protections to ensure that the inherent openness and freedom of the Internet remain intact so users can leverage the uninhibited power and benefit it has to offer. While I have serious reservations with the FCC's Open Internet order and question their authority to implement such rules, in light of the last year's D.C. Court Comcast decision, I have concerns with how such rules will impact network management and piracy.

There has to be an appropriate level of flexibility for network operators to effectively manage their networks to ensure quality of service (QoS) to all customers as well as to combat the growing problem of piracy that plagues the Internet. According to the International Federation of the Phonographic Industry (IFPI), *40 billion songs were illegally downloaded in 2008 worldwide and that 95 percent of online music downloads are completed illegally.*

In addition, the website *Torrentfreak.com* reported that *more than 52.5 million copies* of the top 10 most pirated movies on the Internet were illegally downloaded in 2008. Obviously this illegal traffic attributes to the congestion that some broadband consumers experience when surfing the web and there is also a dollar value associated with transportation of this illegal traffic, which increases the operational cost to network operators, not to mention the lost revenue to the owners of that content.

Question 12. Do you have concerns about the growing problem of piracy? How should the FCC balance its efforts ensure the openness and freedom of the Internet with our concerns that ISPs must be able to manage their networks in an appropriate way to maintain QoS and to protect against unlawful activities such as piracy and child pornography?

Answer. Yes. It is my understanding that FCC network neutrality policy applies only to the transmission of lawful content. I support this approach. I also acknowledge this is a complex issue, and piracy is a growing problem. On the one hand, Internet Service Providers are in a unique position to limit online piracy. They control facilities over which infringement occurs. On the other hand, this is a task that is traditionally the province of courts and law enforcement. Finding a way to balance the openness and freedom of the Internet with the need for reasonable network management and adequate protection against unlawful activities is critically important.

Universal Service Fund Contribution Factor

Both the industry's ABC proposal and the FCC's current reform of the Universal Service Fund deal primarily with the distribution side of the program and don't really address reforming the contribution mechanism of USF. However, the contribution factor has increased from 5.6 percent in 2000 to over 15 percent present day (*Appendix A—figure 1*), in part due to the shrinking contribution base that is assessed. To illustrate, the adjusted contribution base for the 4th Quarter of 2011 is \$14 billion compared to a contribution base of \$17 billion for the 4th Quarter of 2007 (*Appendix A—figure 2*). So if no changes are made to the contribution mechanism, the financial burden to consumers could continue to increase due to a continued decrease in interstate and international revenue.

As the statute stipulates, companies must pay a percentage of their interstate and international telecommunication service revenues to the Universal Service Fund, intrastate revenues are excluded as well as information services such as broadband

Internet access. A key recommendation within the National Broadband Plan is to broaden the USF contribution base.⁵

Question 13. Should the contribution base for USF be expanded to: (1) lessen the financial burden on consumers and (2) make such assessment more equitable but done so in a way that doesn't expand the overall size of the fund?

Answer. The FCC should be studying ways to lessen the financial burden of universal service on consumers. Similarly, the agency should be studying ways to make assessment more equitable, while constraining the fund from unnecessary growth. If confirmed, these concepts will inform my thinking about contribution methodology reform.

Question 14. If you agree the contribution base should be expanded, what suggestions of reform do you have to meet the previous questions criteria?

Answer. I believe the FCC should consider replacing the current system, funded by an assessment on interstate telecommunications services, with a connections-based system. I believe this would be a more stable system over time and also lessen the financial burden on consumers. However, the complexities of contribution methodology reform are significant. While this is my preference, further review may lead to a different result. If confirmed, I will study the record and the Communications Act and strive to support an outcome that is fair to consumers and also honors the essential principles of universal service that inform the law.

Advanced Technology Deficit

The United States has run an advanced technology deficit every month since June 2002, meaning we consistently import more advanced technology than we export. For 2010, our advanced technology deficit totaled an astounding \$80.8 billion. And one of the most significant technology gaps related to this deficit is with information and communications technologies (ICT)—for the month of August 2011 alone, we imported over \$10.5 billion more in ICT products and services than we exported. This deficit weakens the Nation's 21st Century high-tech job market, the long-term health of our economy, and our ability to remain competitive globally.

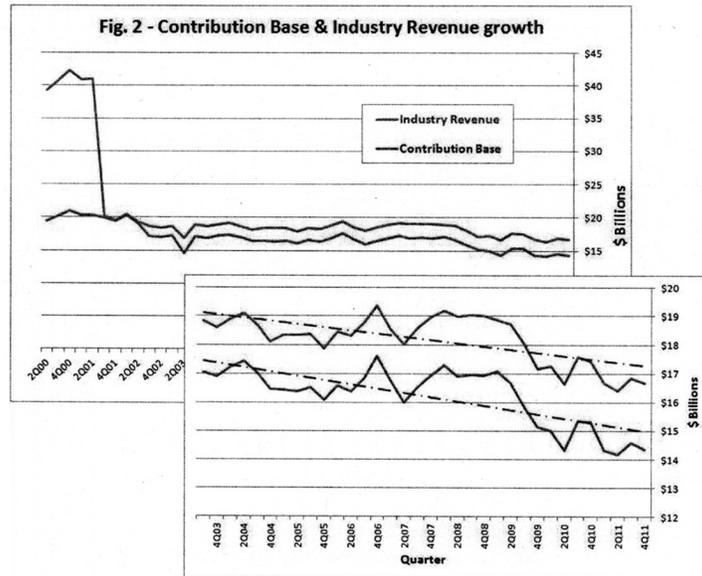
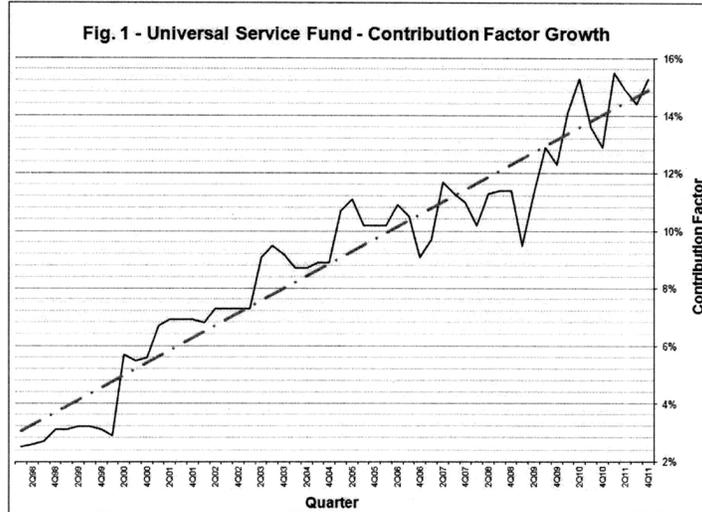
A recent *BusinessWeek* article about the deficit pointed out that, as demand for innovative products continues to increase here domestically, the production benefits are primarily felt overseas. In addition, the Bureau of Labor Statistics estimates that employment in Computer and Electronic Product sector is expected to decline 19 percent over the 2008–18 period.

Question 15. Given how important ICT is to our economy and society and the role the agency plays in regulating communications, what can the FCC do to help reverse this trend in such an important sector of our economy? Improving this deficit would mean more jobs not just in manufacturing but also research and development and engineering—the very high-tech jobs we need to be more competitive in this global economy.

Answer. I believe that the long-term health of our economy, ability to remain competitive, and facilitate job and wage growth depends, in critical part, on innovation. As a result, the FCC should consider all of its policies in light of the importance of innovation. In addition, the agency should develop processes that facilitate smart and swift decision-making. This can, in turn, speed the deployment of new technologies and services. Finally, the FCC should engage in dialogue with other government authorities as well as business leaders, to make sure that government efforts, across the board, promote economic growth.

⁵Recommendation 8.10: *The FCC should broaden the universal service contribution base.*

Appendix A.—Contribution Factor & Base Historical Charts



RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JIM DEMINT TO JESSICA ROSENWORCEL

Question. If confirmed, would you support closing the FCC’s June 17, 2010, Notice of Inquiry (GN Docket No. 10–127), in which the Commission, among other questions, asks “for comment on the legal and practical consequences of classifying Internet connectivity service as a “telecommunications service” to which all the requirements of Title II of the Communications Act would apply”?

Answer. I do not believe all the requirements of Title II of the Communications Act should apply to all new services. Regulations designed for the era of basic telephony are not uniformly appropriate for the technologies and services of the dig-

ital age. At the same time, I believe it is important to recognize that there are values in the Communications Act that endure, including the importance of public safety, universal service, competition, and consumer protection.

Communications technology changes at a fast pace. This, on occasion, puts the FCC in the difficult position of identifying where services fit best in the existing regulatory framework. It is not an easy task, and is best approached with humility. If confirmed, my deliberations would be governed by the statute, available precedent, and a survey of the record.

In light of this, I believe that the choice to close the docket should be considered in conjunction with the upcoming decision from the United States Court of Appeals for the District of Columbia Circuit, in *Verizon v. FCC*. I also recognize that the Congress ultimately has the authority to legislate in this area, and it is the duty of the FCC to faithfully implement any such legislation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DEAN HELLER TO
JESSICA ROSENWORCEL

Question 1. Do you believe a bipartisan majority of Commissioners should be allowed to meet in private for collaborative discussions, subject to appropriate disclosure requirements and oversight and should a bipartisan majority of Commissioners be able to place an item on the Commission's agenda?

Answer. The Government in Sunshine Act requires Federal agencies headed by a body of two or more members to hold regular public meetings. Agencies are required to provide the public with advance notice that the meeting will take place. The agenda for this meeting must be made public at least 1 week before the meeting. In practice, this law also prohibits more than two of the five FCC Commissioners from deliberating with one another to conduct agency business outside of the context of the public meeting.

Over the last decade, there have been calls for reform of the Government in Sunshine Act, specifically as it applies to the FCC. On the one hand, reform would facilitate discussions among Commissioners. This could expedite the agency decision-making process. On the other hand, this would reduce transparency, as it diminishes incentives for open dialogue at regular public meetings.

While I could support such reform, I believe the conditions you note are essential, namely that any meeting is bipartisan and that there are appropriate disclosure requirements. In addition, because the Government in Sunshine Act applies to many Federal agencies, I believe it would be prudent to study its operation in other contexts, before determining what changes, if any, are required at the FCC.

Finally, I believe the idea of allowing a bipartisan majority of Commissioners to place an item on the Commission's agenda merits further thought. Specifically, I believe additional study of how such a process works in other government agencies would be prudent before making this change at the FCC.

Question 2. As you know, President Obama's Executive Order 13563 on regulatory reform cannot compel independent agency compliance on important matters such as performing cost-benefit analyses. While Chairman Genachowski may comply, it does not guaranty the FCC will follow the exact same methodology as required by Executive Branch agencies, nor does it bind the actions of future chairmen. Do you feel the use of cost-benefit analyses in the development of rulemakings is important enough that the Commission should adopt a rule requiring its use, at least with respect to major rulemakings?

Answer. I support the objectives of Executive Order 13563. Cost-benefit analysis can be a useful tool for evaluating the relative merits of any particular policy. In many cases, balancing benefits with costs can help identify efficient outcomes and facilitate good public policy.

At the same time, as analytical method, it may not always be fully compatible with the statutory direction in the Communications Act. It would be complex, for instance, to integrate cost-benefit analysis with the six principles governing universal service policy that are enumerated in the law. It would be similarly complex to use cost-benefit analysis to evaluate obligations under the Communications Assistance for Law Enforcement Act, which defines the duty of carriers to cooperate in the interception of communications for law enforcement purposes.

As a result, the utility of cost-benefit analysis must be considered in light of other objectives in the law. However, with this caveat, I believe it is a useful analytical tool that the agency may use in its decision-making process in major rulemakings.

Question 3. When considering approval the transfer of control of licenses, which is what the Commission is really doing when it reviews a merger, the FCC often attaches conditions not relevant to the transaction, but which allow the FCC to pur-

sue a policy goal without benefit of a public rulemaking. How would you approach the FCC's consideration of such transfers of control?

Answer. If confirmed, I would follow the statute. The Communications Act, in Sections 214 and 310, prohibits the transfers of licenses absent a finding by the FCC that the public interest, convenience, and necessity will be served thereby. This analysis traditionally involves weighing both the benefits and harms of a proposed transaction. Any conditions should be rationally related to the transaction.

Question 4. In 1993, Congress voted to fund the FCC entirely through fees levied on regulated entities. Congress directed the FCC to adopt a funding mechanism that would adjust automatically to reflect changes in the agency's workload, its staffing in particular bureaus, and economic shifts in regulated communications sectors. To my knowledge a requirement that the FCC provide annual updates on its efforts to develop a fair & adjustable fee system existed and I do not believe any such report has ever reached Congress. Would you add your voice to those of other commissioners and chairmen who earlier have pledged to finally bring the agency into compliance and rationalize the fee system?

Answer. In 2008, the FCC released a Further Notice of Proposed Rulemaking regarding regulatory fee reform. This led to a change in the bearer circuit methodology for calculating regulatory fees, the elimination of two regulatory fee categories, and the conversion of UHF and VHF stations from analog to digital television. By the end of this calendar year, the agency has committed to initiate another rulemaking to update the record on regulatory fee rebalancing, as well as expand this inquiry to include issues and services not covered by the 2008 proceeding. If confirmed, I would support this effort. I also would support any efforts to keep Congress fully informed of agency deliberations regarding these issues.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO
AJIT PAI

Question 1. What are the guiding principles you will rely on if you have to consider whether the owner of a daily newspaper should be licensed to operate a television station or radio station in that same market?

Answer. I believe that the Commission's media ownership regulations should promote the core values of diversity, localism, and competition while taking account of the changing nature of the media and technological landscape. If I am fortunate enough to be confirmed, I would study closely the updated record to be compiled by the Commission in the current media ownership rulemaking proceeding prior to reaching any firm conclusions on these issues.

Question 2. In some markets broadcasters are coordinating their activities through contractual and other arrangements to get around the FCC's local television ownership rules. These arrangements include shared services agreements, local marketing agreements, and joint operating agreements. Such arrangements typically lead to layoffs of station staff, more consolidated local news gathering and programming, and reduced competition for audiences and advertisers. It also changes the leverage in retransmission agreements negotiated with cable and satellite providers. Do you believe that these types of contractual arrangements are intended to circumvent the FCC's local television ownership rules?

Answer. Before reaching a conclusion on this issue one way or the other, I would need to review an appropriately developed record. However, to the extent that any Commission licensee or regulatee engages in conduct that violates the Commission's rules, I would support appropriate enforcement action against such a licensee or regulatee.

Question 2a. Do you believe that these types of contractual arrangements require the FCC to define what an independently owned and operated television station is for purposes of its media ownership rules?

Answer. Before reaching a conclusion on this issue, I would need to review the record compiled by the Commission in the current media ownership rulemaking proceeding. In particular, I would look at the impact that such contractual arrangements have on diversity, localism, and competition.

Question 3. Unlicensed spectrum is an integral part of the Nation's wireless network. It is estimated that by 2015 over half of all mobile traffic will be offloaded to Wi-Fi networks. Today, in Washington state, Wi-Fi mesh networks connected to fiber support economic development in places such as Stevenson, located along the Columbia Gorge. The local economy is supported by visitors who come for the rugged beauty of the mountains and the recreational opportunities of the Columbia River but who want to stay connected. In addition, as more types of devices become Inter-

net enabled, they too will need unlicensed spectrum to enable device-to-device communications and the development of new products and offerings. Do you support policies that that will make more unlicensed spectrum available?

Answer. The innovation that has occurred in the context of unlicensed spectrum has provided great benefits to American consumers. As suggested in your question, Wi-Fi is perhaps the best example of ingenuity in this area. Were I fortunate to be confirmed, I would work with my colleagues at the Commission to find ways to promote technically and economically feasible innovation using unlicensed spectrum.

Question 3a. As you know I have long supported use of the broadcast white spaces for unlicensed fixed wireless and personal portable devices. Obtaining additional spectrum for unlicensed so-called super Wi-Fi is key to providing new and innovative broadband offerings in addition to more cost effectively providing broadband in rural areas. There is work that needs to be done at the FCC to make these exciting new devices and services commercially possible. Progress seems to move in fits and starts. Do you support policies, like the FCC's "White Spaces" orders, that make spectrum available for unlicensed use below 1 gigahertz band?

Answer. Were I fortunate to be confirmed, I would work with my colleagues at the Commission to find ways to promote technically and economically feasible innovation using unlicensed spectrum. With respect to the "White Spaces" order specifically, I understand that there is a pending petition for reconsideration before the full Commission, as well as a judicial appeal before the U.S. Court of Appeals for the District of Columbia Circuit. If confirmed, I will review the record compiled in response to the petition for reconsideration and take appropriate action.

Question 3b. Can I count on your support in getting the Commission's bureaus to focus on completing its work on the white spaces in a timely manner?

Answer. If I am confirmed, you would have my support in that endeavor.

Question 4. Assume Chairman Rockefeller's S. 911 becomes law. The D-block goes directly to public safety. There are going to be incentive auctions. The FCC is then going to repack the broadcast television channels into a narrower band.

One of the challenges I see in repacking broadcasters operating in markets on our northern border is that coordination with Canada is required. I imagine it is similar on our southern border. There is a formal role for the State Department to play through treaty modifications. I believe FCC coordination with its Canadian counterpart will go a long way to ensure that channel repacking goes smoothly for television stations operating along the northern border. If confirmed, will you commit to working with your Canadian counterparts to ensure a smooth repacking of television stations after any incentive auction?

Answer. If confirmed, I would commit to working with my Canadian counterparts to ensure a smooth repacking of television stations after any incentive auction.

Question 5. A constituent contacted my state office and told my staff that after twice being informed by his Internet Service Provider that he had exceeded his monthly data cap, he was blacklisted from receiving broadband Internet service for a year. He said he was streaming video and audio. He also backed up two decades of high-resolution photographs and music files onto a cloud-based storage application. He is clearly what is known as a power user.

Even so, my understanding is that the data cap is only somewhat linked to managing network congestion. At certain times of the day, excessive bandwidth use by an individual consumer may impact the quality of service experienced by other broadband users. At other times of the day though, it is not so clear. If large amounts of data is uploaded or downloaded to remote servers in the middle of the night, I have my doubts whether it will really interfere with the functioning of the network.

More broadly, I am concerned that data caps are becoming the broadband industry norm—particularly for the 4-G wireless broadband services. If you work out the numbers between the download speeds and the data cap on many plans, consumers will not be able to take advantage of the 4-G features for very long. Do you believe that data caps are becoming more of a standard industry practice for all residential and wireless broadband providers?

Answer. While it is my impression that data caps have become more prevalent, I have not had the opportunity to study recent FCC or other detailed analyses of industry practice with respect to data caps on residential and wireless broadband users. If confirmed, I will examine the record in current, relevant proceedings to ascertain whether the practice has become standard.

Question 5a. Do you believe there is a strong linkage between data caps and managing network congestion?

Answer. While there is a link between data caps and managing network congestion, I would need to study industry policies more closely before reaching any firm conclusion as to the strength of that link.

Question 5b. Do you believe there is a need for the Commission to look into the nature, purpose, and impact of data caps on consumers?

Answer. The Commission should take note of any policies, including data caps, that impact consumers.

Question 6. Our communications network is transitioning from circuit switched to Internet Protocol (IP) and the FCC has begun to discuss the possibility of sunseting the public switched telephone network. As the network transitions, innovators are offering consumers new and interesting ways to communicate. For example, there are a variety of VoIP products including some that replace telephone services, supplement telephone service, or provide conveniences as click to call offerings. As IP services evolve, it remains important that policymakers refrain from regulating them too quickly and instead proceed with a light touch enabling these new IP based service to emerge and flourish. Do you support a light touch approach when addressing public policy issues concerning IP services?

Answer. As a general matter, I support a light-touch regulatory approach in order to incentivize private investment and innovation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO
AJIT PAI

Question 1. Digital Divide on Tribal Lands. The mission of the Federal Communications Commission is to make communications services available to all the people of the United States. However, the first people of the United States—Native Americans—face a significant digital divide on Tribal lands.

Most people probably cannot imagine life without a telephone. Yet today more than 30 percent of households in Indian Country do not have access to basic telephone service. Broadband access is much worse with probably more than 90 percent lacking broadband. These statistics do not truly convey the hardships created by this lack of telecommunications service. Imagine not being able to call an ambulance when you or someone you love is in medical danger. Phones and broadband also help keep friends and family members in touch when they are far apart. Imagine not being able to speak with a loved one who is serving in the military and won't be home this holiday season.

Although Tribal lands are among the least connected, this is precisely where modern communications technologies can help the most. By overcoming physical distances and geographic isolation, broadband can help improve economic development, education, and access to health care.

I am pleased that the Commission is paying particular attention to this challenge. There is a new Office of Native Affairs and Policy to help work with Tribes on a government-to-government basis. The recent Universal Service order proposes a Tribal Mobility Fund to expand wireless access. It will also require engagement with Tribes. These are welcome steps in the right direction. So, I would like to ask that, if confirmed, will you seek to ensure that the Commission continues to work with Tribes and telecommunications carriers to tackle the digital divide facing so many Native American communities?

Answer. If confirmed, I will work with my fellow Commissioners and agency staff to ensure that the Commission continues to work with tribes and telecommunications carriers on communications issues involving Native American communities.

Question 2. Support for Telemedicine. New Mexico is a rural state where many rural communities are not only underserved when it comes to in communications, but also underserved in health services. We have some great folks at the University of New Mexico and in our hospital systems who are working hard to improve rural healthcare by using new innovative telehealth technologies.

The Government Accountability Office has criticized the FCC's management of the Rural Health Care Program. Some of the telemedicine proposals contained in the FCC's National Broadband Plan also seem to be on hold at the moment. I realize that the FCC is engaged in substantive reform in areas such as universal service. But telehealth is another area that should be a priority. Can you assure me that, as Commissioners, you will support efforts to improve and increase telemedicine opportunities, especially for rural communities?

Answer. If confirmed, I will work with my fellow Commissioners and agency staff to find ways to improve and increase telemedicine opportunities, especially for rural communities.

Question 3. Support for low-income people. The Commission recently published its proposals for reforming how universal service funds will support building out broadband networks in rural areas.

But we know that having broadband available where you live is not the only aspect to tackling the digital divide. People need to see the value of having it. And they need to be able to afford to pay for it.

The universal service Life Line and Link Up initiatives have helped many people with low incomes get basic telephone service. In rural Tribal areas, Enhanced Life Line and Link Up help not just with adoption rates but also service deployment to some high cost areas where many potential customers could not afford phone service.

In addition to the Commission's efforts, some cable and phone companies have committed to offering reduced price broadband options for certain low income families. Could you share your thoughts on how the Commission can use universal service initiatives, and also work with private companies, to increase broadband adoption, particularly among people with low incomes?

Answer. I believe that it is important for the Commission to continue its efforts to update the Universal Service Fund (USF) to meet the needs of the 21st century. In particular, USF reform should focus on ways to promote the greater deployment and adoption of broadband, including through the Lifeline and Link Up programs. This can have a particular impact on people with low incomes, whose adoption rates are relatively low. While I have not yet had the chance to review in detail the Commission's recent 751-page order reforming the USF, I understand that it has taken some steps to reform the program in this direction. I also understand that the Commission is currently looking at ways to reform the Lifeline program. If confirmed, I would work with my fellow Commissioners and agency staff on ways to ensure that the USF addresses this important issue.

Question 4. Importance of broadcast TV and Radio. Today, there is a lot of excitement about mobile broadband, which puts the power of the Internet into the palm of your hand. I am amazed by what new smartphones and tablets like the iPad can do.

Yet, with all the excitement about new mobile technologies, it is easy to forget that broadcast TV and radio are truly the first "wireless" technologies. They continue to play a valuable role today. Not everyone can afford cable or satellite TV. Not everyone has access to the Internet at home.

Free broadcast TV and radio are especially important in times of emergency. For example, this year when northern New Mexico faced severe winter storms and summer forest fires, people turned to their local broadcasters for the latest weather and safety information. Outside of emergencies, local businesses also appreciate how advertising on local broadcast stations can help them reach customers in their communities. Can you share your views on the value of over-the-air broadcasting and the importance of its role in an evolving telecommunications landscape?

Answer. I believe that over-the-air broadcasting has provided valuable benefits to the American people. From educational television programming to emergency-related radio broadcasts, over-the-air services have improved our quality of life. If confirmed, I will work with my fellow Commissioners and agency staff to ensure that over-the-air broadcasting continues to be a positive presence in the communications landscape.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK WARNER TO
AJIT PAI

Question 1. Interoperability issues have become more important over the last few years. I am concerned about interoperability problems that seem to limit the ability of smaller players, in particular, to be competitive. This problem appears to be particularly acute for smaller companies and markets. This concerns me for several reasons. First, if future auction participants do not know they will be able to acquire devices, then they are less likely to bid on spectrum licenses. Second, the proliferation of band classes means that device chipsets have to cover more band classes in order for a device to be able to traverse an entire band. Third, I worry that a lack of predictability regarding interoperability may have led some companies to withhold investments which would benefit the economy and potentially foster more innovation. Can you provide me with an explanation of your views on interoperability requirements?

Answer. I believe that consumers benefit from interoperability and that interoperability requirements can bolster the competitive standing of smaller providers. On the other hand, it has been argued that such requirements may impose techno-

logical challenges on manufacturers and carriers as well as costs that may be passed along to consumers. If confirmed, I will carefully study the record before the Commission before making any decision in this area.

Question 1a. Issues in the 700 MHz band plan have been raised in this committee over the past year. Should the FCC take a serious look at this issue? If not, why not? If so, what do you think the FCC could do to make sure the benefits of interoperability are fully realized?

Answer. Earlier this year, the FCC convened a workshop to explore commercial and technological issues related to 700 MHz interoperability. I believe that the FCC should continue to study such issues carefully, and if confirmed, any conclusion I reach regarding interoperability requirements in the 700 MHz band will be based on my own thorough review of the Commission record.

Question 2. With regard to the Commission's ongoing USF reform efforts, do you believe the Commission is doing all it should to promote access and availability of broadband, particularly wireless broadband, to our Nation's non-urban areas? If not, what else should the Commission do?

Answer. While I have not yet had the chance to review in detail the Commission's recent 751-page order reforming the Universal Service Fund (USF), I am pleased that the Commission is focused on modernizing the USF to prioritize the deployment of broadband. If confirmed, I will work with my colleagues on adapting the USF to serve the communications needs of the 21st Century. Apart from reforming the USF, I believe that the Commission must work to create a regulatory environment that encourages the private sector to innovate and to invest in communications infrastructure for rural America. Finally, when auctioning spectrum, build-out requirements can play an important role in ensuring that service is provided to non-urban areas.

Question 3. As carriers continue to migrate to IP networks, the direct interconnection of voice networks remains vital to ensure competition, innovation, and lower prices. The FCC, in its recent USF order, stated that the duty to negotiate interconnection agreements in good faith "does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise." What is your view of duty to interconnect under the 1996 Telecom Act? Would you agree that the Act is "technologically neutral" regarding interconnection?

Answer. Section 251 of the Communications Act specifies, among other things, that telecommunications carriers have "the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." When discussing interconnection, this provision neither mentions any particular technology that may be used by a telecommunications carrier nor distinguishes between telecommunications carriers using different technologies.

Question 4. Media cross-ownership rules have generated great interest over the past several years. Can you share your views on the current newspaper/broadcast station cross-ownership rule? Do you think it should be relaxed?

Answer. If I am fortunate enough to be confirmed, I would study closely the updated record to be compiled by the Commission in the current media ownership rulemaking proceeding prior to reaching a firm conclusion on this issue. I believe that the Commission's media ownership regulations should promote the core values of diversity, localism, and competition while taking account of the changing nature of the media and technological landscape. These are the principles that will guide my assessment of any proposal to change the newspaper/broadcast station cross-ownership rule.

Question 5. In the last two FCC Mobile Competition Reports, the Commission was unable to certify the industry as competitive. What steps would you recommend taking to enhance competition within the mobile industry?

Answer. The FCC should create a regulatory environment that both enhances competition within the mobile industry and encourages investment. Right now, the most important steps that the Commission could take to enhance competition and encourage investment in the wireless industry are to allocate additional spectrum for mobile broadband and provide regulatory certainty.

Question 6. The President set an aggressive goal of releasing an additional 500 MHz of spectrum over the next 10 years. In the past year, Federal efforts to make more spectrum available have been mixed at best. NTIA released a preliminary report in January 2011 which identified 115 MHz of spectrum, but only 15 MHz would not need to be shared with Federal users. An updated report is expected to be released any day now. What do you think needs to happen, particularly over the next 2-3 years, to help us achieve this goal?

Answer. The National Telecommunications and Information Administration recently prioritized the evaluation of various bands of spectrum (encompassing 1,500 MHz of spectrum in total) to see whether they could be made available for mobile broadband. The Federal Government must quickly assess all of these bands in a coordinated fashion and identify those that can be most easily and effectively repurposed for mobile broadband. Once a band has been prioritized in this fashion, the FCC must work to complete necessary allocation and service rulemakings in an expeditious manner and then rapidly take steps to place that spectrum in use, for example through auctions.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK BEGICH TO
AJIT PAI

Question 1. Even with the current FCC focus on rural broadband deployment to the remote regions of Alaska most of Alaska's rural communities still depend on local over the air Television and Radio to receive emergency information and critical news programming. Early in November a Bering Sea Superstorm of hurricane proportions wreaked havoc on the western part of the state jeopardizing villages and lives with historic weather conditions. Local broadcasters effectively kept everyone in the storm's path aware of the latest conditions. Can you tell us the role that broadcasters will play in 21st century telecommunications policy?

Answer. I believe that broadcasting has a vital role to play in 21st century telecommunications policy. As indicated in your question, when emergencies occur, Americans often rely on broadcasters to provide them with critical news and information. If confirmed, I will work to ensure that the United States continues to benefit from a vibrant broadcasting industry and that broadcasters continue to provide important services to their communities.

Question 2. Many Senators have spoken about how rural markets aren't like other markets, and I would add Alaskan rural markets aren't like lower 48 rural markets—in many cases, they aren't effective markets at all. What are your thoughts on how we give providers incentives to build and operate in places where investment is hard to come by? Is the "carrier of last resort" concept important in those places, in your view?

Answer. In order to give providers incentives to build and operate in rural markets, the Commission must continue to reform the Universal Service Fund to prioritize effective broadband deployment in rural America. We must also create a regulatory environment that encourages the private sector to invest in communications infrastructure for rural America. Finally, build-out requirements can be an important mechanism for ensuring that carriers provide service to those in rural areas. Carrier of last resort obligations require a carrier to provide service to any customer who requests it in a given geographical area and thus can be important in ensuring that all consumers in that area have access to communications services.

Question 3. Another important issue to rural consumers is interoperability. I wrote a letter with Chairman Rockefeller, and Senator Wicker urging Chairman Genachowski to being a proceeding to ensure consumers have access to mobile devices operating on the next generation networks that use 700 MHz spectrum. Interoperability between networks is important, not only to public safety, but to consumers who have rural wireless providers and travel between various commercial networks and should be able to utilize these networks. If confirmed, how will you address this important issue?

Answer. Earlier this year, the FCC convened a workshop to explore commercial and technological issues related to 700 MHz interoperability. The FCC should continue to study such issues carefully, and if confirmed, any conclusion I reach regarding interoperability requirements in the 700 MHz band will be based on my own thorough review of the Commission record.

Question 4. The FCC is currently considering a proposal to reform the Lifeline program that would limit eligibility for the Lifeline program to one per residential address. The Lifeline program in Alaska has been extremely beneficial to many Alaskans. In fact, since the program came on board 17 years ago penetration among disadvantaged populations has increased dramatically. It is critical eligible low-income adults have access to Lifeline-supported phone services. This is important for the safety of many Alaskans, including those in rural Alaska who don't always have a public safety officer in their village and are prone to extreme weather conditions and may need emergency services. I ask for your commitment to work with me to ensure benefits of this program continue to be available and serve disadvantaged populations.

Answer. I have appreciated the opportunity to learn from you during our private meeting and the public hearing about the impact that FCC policies can have on Alaskans, especially disadvantaged and rural residents. If confirmed, I commit to working with you to ensure that that the Lifeline program meets the goal of serving disadvantaged populations.

Question 5. The process at the FCC is very complicated and I feel is not as transparent as it could be. I would like to see this process improved to be more transparent so companies and consumers do not have to live in limbo for weeks after a vote before an order is published. If nominated what would you do or recommend to help this process along?

Answer. I agree that it is extremely important for the FCC to be transparent. Once a vote on an order is taken, I do not believe that the Commission should wait for weeks to release it publicly. If confirmed, I will work to shorten any delays in releasing Commission decisions. One step that would minimize delays would be for the language of an item to be finalized before the Commissioners cast their votes.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO
AJIT PAI

Broadband Expansion and Adoption

It has been over a year and a half since the FCC released its National Broadband Plan, which was to be a blueprint to achieving affordable, high-speed broadband to all Americans. However, there has been criticism the agency has not acted quickly enough to implement the numerous recommendations outlined in it. While the Commission has issued several public notices related to recommendations and goals highlighted in the Plan, plan, some organizations have estimated only about 10–20 percent of the recommendations in the Plan have actually been implemented/completed.

This is somewhat concerning given how many Americans still lack broadband service. Thirty-five percent of American adults, or 80 million people, do not have high-speed Internet access in their homes. In addition, a 2008 Pew Internet & American Life Project survey found that approximately 62 percent of dial-up users said they weren't interested in switching to broadband. That same survey also found that 33 percent of non-Internet users say they are not interested in using the Internet. So two digital divides (one with supply and one with demand) continue to linger while much of the National Broadband Plan goes unimplemented.

Question 1. Do you believe the FCC has been as active as it needs to be in implementing the recommendations in the National Broadband Plan?

Answer. I believe that the Commission deserves credit for implementing many of the recommendations set forth in the National Broadband Plan. Nevertheless, not all of the benchmarks for implementation of the National Broadband Plan have been met in a timely manner, so the Commission has much more work ahead of it. If confirmed, I look forward to working with my colleagues to make further progress in expanding broadband availability and adoption.

Question 2. What outstanding recommendations in the Plan would you prioritize to help spur the expansion of broadband availability?

Answer. I would prioritize implementation of the recommendation that 500 MHz of additional spectrum be made available for mobile broadband use by 2020. Wireless broadband will play an important role in expanding broadband availability, and there is a long way to go to meet the 500 MHz objective set forth in the National Broadband Plan. I also believe that we need to prioritize the improvement of data and transparency regarding spectrum allocation and utilization. This objective must be met in order to enhance spectrum policymaking by the Commission, other government agencies, and Congress.

Question 3. What specific initiatives/proposals do you believe would be beneficial to achieving that goal of consumer awareness and education?

Answer. In order to improve broadband adoption, it is obviously necessary for educational efforts to stress the numerous benefits that come with broadband access. It is also necessary, however, for such initiatives to address the concerns that many Americans have about going online. For example, some individuals fear that they will be victimized by financial crimes or privacy intrusions because of their online activities. Some parents are also concerned their children will be exposed online to those that wish to harm them. It is important for both the private sector and the government to provide Americans with the information that will allay their concerns and allow them to feel comfortable about adopting broadband.

More Timely Decision Making

While the FCC has a self-imposed shot clock of 180 days for merger reviews, it rarely adheres to it. Many recent merger reviews by the Commission have surpassed the 180 day benchmark—the NBC-Universal Comcast merger review took 234 days, the XM-Sirius merger review took 412 days, and the CenturyLink and Qwest merger review took 294 days.

The agency also has a poor record in timely decisions on other matters before it. At one point, the FCC had a backlog of over 5,000 petitions and more than 4,000 license applications pending. And technical proceedings at the FCC have been, what Mitch Lazrus, a well respected telecommunications lawyer, calls “dismally slow.”

In a letter I sent to Chairman Genachowski back in January 2010, I highlighted several outstanding spectrum proceedings I urged the Commission to conclude to release more spectrum for wireless broadband. One of the concerns I had about the proceedings I mentioned was that all had been open for 3 years or longer, and another related proceeding¹ to WCS–SDARS had been pending for over a decade.

I am concerned that this lack of action hinders innovation and causes significant uncertainty to small start-up companies that are critical to job creation.

Question 4. What steps will you take with respect to regulatory reform so that the agency can be more nimble in the very dynamic telecommunications industry and not be a bottleneck to innovation and job creation due to inaction or delays on petitions and applications?

Answer. I share your view that the FCC must make decisions in a timely manner and that the Commission’s record in this area can be improved. Among other things, delays in Commission decisionmaking can slow broadband deployment, stall innovation and investment, and impede job creation. If I am fortunate enough to be confirmed, I will work with my fellow Commissioners to try to address this problem. In particular, I believe that the Commission should consider flagging in a systematic manner those petitions and applications that have the greatest potential to lead to innovation, investment, and job creation and then place the greatest priority on deciding those petitions and applications.

Question 5. What criteria will you use when reviewing future wireless mergers and petitions? Will you strongly push for more timely decisions on pending mergers given the dynamic nature of the industry?

Answer. Yes, I will push for the Commission to make timely decisions in merger proceedings. I support the Commission’s 180-day shot clock and believe that it is important for the Commission to comply with it.

As for the criteria I will use to review future wireless mergers and petitions, I will evaluate whether they are in the public interest by looking at the effect of any proposed transaction on competition, consumers, innovation, and investment.

Question 6. As you know, section 5(c) of the Communications Act² authorizes the Commission to delegate most of its functions to “a panel of commissioners, an individual commissioner, an employee board, or an individual employee” to ensure proper functioning of the Commission as well as prompt and orderly conduct of its business. Do you believe the FCC has made effective use of this provision in the statute?

Answer. Based upon my experience in the FCC’s Office of General Counsel, I believe that the Commission does rely extensively and, for the most part, effectively on the ability to delegate power granted by Section 5(c) of the Communications Act. In fact, the bulk of Commission action is taken on delegated authority; the full Commission simply does not have sufficient resources to review and render judgment on the countless petitions, applications, and other items that require agency action. Thus, section 0.5(c) of the Commission’s rules provides that “Pursuant to section 5(c) of the Communications Act, the Commission has delegated authority to its staff to act on matters which are minor or routine or settled in nature and those in which immediate action may be necessary.” 47 C.F.R. § 0.5(c). The rules go on to grant the various Bureaus and Offices over which the full Commission has supervisory responsibility the power to perform a wide variety of functions. See 47 C.F.R. §§ 0.231, 0.241, 0.251, 0.261, 0.271, 0.283, 0.291, 0.311, 0.314, 0.331, 0.351, 0.361, 0.371, 0.391, and 0.392. (The Commission’s rules also permit a party aggrieved by a decision made on delegated authority to seek review by the full Commission by filing an application for review. See 47 C.F.R. § 0.5(c).) The frequent exercise of delegated authority by the Commission’s Bureaus and Offices enables agency decision-making to be much more prompt and efficient than it otherwise would be. All this said, I am not aware of any recent cases in which the full Commission has delegated authority to a Commissioner or panel of Commissioners pursuant to 47 C.F.R. § 0.218

¹ IB Docket No. 95–91.

² 47 U.S.C. 155.

(permitting individual Commissioner or Commissioners to be designated as presiding officers in hearing proceedings and to review initial decisions in hearing cases).

Question 7. Another section³ in the statute, Section 7, requires the FCC to act within 1 year on petitions or applications on new technologies or services. But it is my understanding the FCC has never implemented rules to administer this section so it has gone unutilized. What will you do to see that either the intent of Congress here is followed or the Commission requests a modification to the statute?

Answer. I am not aware of any Commission rules specifically implementing Section 7 of the Communications Act. However, should a party file a petition or application relating to a “new technology or service” and invoke Section 7, or should the Commission initiate its own proceeding under Section 7, I will work with my fellow Commissioners and agency staff to ensure that the Commission meets the one-year statutory deadline.

FCC Technical Expertise

Engineers at the FCC play an essential role in regulatory matters by providing technical consultation on policy matters, managing spectrum allocations, and creating new opportunities for competitive technologies. However, as I highlighted in letters last year to the FCC Chairman and President Obama, over the past several decades there has been a significant depletion of engineer staff at the Commission. In 1948, the FCC had 720 engineers on staff; today, it has fewer than 270—an astonishing 63 percent reduction—even though the FCC now must face more technical issues concerning the Internet, advanced wireless communications, commercial cable and satellite industries, and broadband. A December 2009 report by the Government Accountability Office (GAO-10-79) found that the agency “faces challenges in ensuring it has the expertise needed to adapt to a changing market place.” More recently, the National Research Council released a 2011 Wireless Report that suggested the FCC would benefit from “enhancing its technology assessment and engineering capabilities” due to “entering an era in which technical issues are likely to arise on a sustained basis.”

If the agency doesn’t have both the legal and technical expertise, it could cause the FCC to implement poor policy and regulation because the agency doesn’t have the sufficient technical knowledge to understand the implications that proposed regulations have on emerging technologies. Even more concerning is the lack of technical resources hampers innovation and job creation due to excessive delays to businesses that have applied for technical waivers, experimental licenses, and filed petitions at the agency and there aren’t enough engineers to review this issues.

Question 8. Do you share these concerns the technical community has about the lack of technical aptitude at the Commission and what specific commitments can you provide to helping resolve this glaring deficiency of technical resources that can hinder this Nation’s technical leadership and innovations in communications as well as hinder job creation of businesses that are waiting for approval of waivers or applications at the Commission?

Answer. I believe that it is invaluable for the Commission’s decisions to be informed by technical experts, particularly where important technical matters are at issue. If confirmed, I therefore commit to informing both my fellow Commissioners and Congress if I ever conclude that the agency does not have enough staff with technical expertise to discharge its responsibilities in an effective and prompt manner and then to working with them on meaningful solutions to such a problem.

Question 9. The FCC deals with a complex agenda of technical and nontechnical issues. How do you intend to staff your office to deal with such a mix? As you may know, prior to 1982, the statute required each Commissioner to appoint a legal assistant and an engineering assistant.⁴

Answer. Should I be fortunate to be confirmed, I would seek to hire staff capable of addressing all of the FCC’s complex agenda of technical and nontechnical issues. In particular, I would endeavor to have staff members that have different strengths and backgrounds so that my staff as a whole would be well versed on all aspects of the Commission’s work. As appropriate, I would also consult with technical experts in the Commission’s Office of Engineering and Technology (OET) to aid my understanding of issues facing the Commission.

³ 47 U.S.C. 157.

⁴ http://transition.fcc.gov/Bureaus/OSEC/library/legislative_histories/248.pdf (pg 2, second paragraph).

Wireless Device Performance

The escalating demand for spectrum presents significant challenges. As more entities use spectrum to provide services to consumers and citizens, the ecosystem becomes more crowded and efforts among users to coexist become more difficult. As a result, disputes among licensees regarding potential harmful interference are occurring with greater frequency. Just in the past few years, interference disputes have arisen between various parties such as MVDDS/DBS, AWS-1/AWS-3, WCS/SDARS, and, more recently, with LightSquared/GPS.

One of the problems contributing to the recurrence of these interference disputes is the lack of clear receiver performance guidelines. Legislation that I have introduced with Senator Kerry promotes more spectral efficiency and interference immunity of device receivers and tasks the FCC and NTIA to conduct an interference sensing study to provide greater predictability in the determination of harmful interference. Taking these steps or similar ones will help mitigate, and even prevent, future interference disputes meaning a quicker time to market for new companies and lower probability of disruption of existing services.

In a recent letter I sent to the FCC Chairman on spectrum policy I included a comment from Michael Gallagher, the former Assistant Secretary for Communications and Information, who once stated “receiver standards mean less interference and more available spectrum.” So if more spectrum is to be made available, receiver performance must be included in any general spectrum policy discussion and as part of the equation to prevent a spectrum shortage.

Question 10. Do you believe the FCC should promote spectral efficiency and interference immunity of device receivers? How would you recommend the FCC do that?

Answer. As a general matter, I believe that the FCC should take appropriate action to promote spectral efficiency and minimize interference. If I am fortunate to be confirmed, I would look forward to working with you and Senator Kerry to explore ways in which the Commission can meet these goals with respect to device receivers.

Question 11. Do you believe the FCC and NTIA should more clearly define what “harmful interference” constitutes?

Answer. I believe that the FCC and NTIA should provide as much clarity as possible as to what constitutes harmful interference. Lack of guidance on this question creates regulatory uncertainty, which can inhibit innovation and investment, ultimately harming consumers. If I am fortunate to be confirmed, I would look forward to working with you and Senator Kerry to explore ways in which the concept of harmful interference can be more clearly defined.

Piracy and Network Neutrality

As you may know, I have been a long-time champion of network neutrality and providing fundamental protections to ensure that the inherent openness and freedom of the Internet remain intact so users can leverage the uninhibited power and benefit it has to offer. While I have serious reservations with the FCC’s Open Internet order and question their authority to implement such rules, in light of the last year’s D.C. Court Comcast decision, I have concerns with how such rules will impact network management and piracy.

There has to be an appropriate level of flexibility for network operators to effectively manage their networks to ensure quality of service (QoS) to all customers as well as to combat the growing problem of piracy that plagues the Internet. According to the International Federation of the Phonographic Industry (IFPI), *40 billion songs were illegally downloaded in 2008 worldwide and that 95 percent of online music downloads are completed illegally.*

In addition, the website *Torrentfreak.com* reported that *more than 52.5 million copies* of the top 10 most pirated movies on the Internet were illegally downloaded in 2008. Obviously this illegal traffic attributes to the congestion that some broadband consumers experience when surfing the web and there is also a dollar value associated with transportation of this illegal traffic, which increases the operational cost to network operators, not to mention the lost revenue to the owners of that content.

Question 12. Do you have concerns about the growing problem of piracy? How should the FCC balance its efforts ensure the openness and freedom of the Internet with our concerns that ISPs must be able to manage their networks in an appropriate way to maintain QoS and to protect against unlawful activities such as piracy and child pornography?

Answer. I am concerned about the problem of piracy. Broadband service providers must be able to take appropriate actions to prevent their networks from being used to facilitate unlawful activities. For example, I am pleased that the Commission has

said that there should be no doubt that broadband providers may block transfers of child pornography. I also believe that broadband service providers must have the ability to manage their networks in an appropriate way in order to preserve the quality of service offered to their customers. From my perspective, network congestion can impede openness and freedom on the Internet since such congestion can hamper customers' ability to access the content on the Internet that they wish to access.

Universal Service Fund Contribution Factor

Both the industry's ABC proposal and the FCC's current reform of the Universal Service Fund deal primarily with the distribution side of the program and don't really address reforming the contribution mechanism of USF. However, the contribution factor has increased from 5.6 percent in 2000 to over 15 percent present day (*Appendix A—figure 1*), in part due to the shrinking contribution base that is assessed. To illustrate, the adjusted contribution base for the 4th Quarter of 2011 is \$14 billion compared to a contribution base of \$17 billion for the 4th Quarter of 2007 (*Appendix A—figure 2*). So if no changes are made to the contribution mechanism, the financial burden to consumers could continue to increase due to a continued decrease in interstate and international revenue.

As the statute stipulates, companies must pay a percentage of their interstate and international telecommunication service revenues to the Universal Service Fund, intrastate revenues are excluded as well as information services such as broadband Internet access. A key recommendation within the National Broadband Plan is to broaden the USF contribution base.⁵

Question 13. Should the contribution base for USF be expanded to: (1) lessen the financial burden on consumers and (2) make such assessment more equitable but done so in a way that doesn't expand the overall size of the fund?

Answer. I believe that the contribution methodology for the Universal Service Fund needs to be reformed and that the Commission should tackle this issue next year. In particular, I am concerned about the growth of the contribution factor and am interested in exploring ways that we can reduce the financial burden on consumers while still advancing the important objective of universal service.

Question 14. If you agree the contribution base should be expanded, what suggestions of reform do you have to meet the previous questions criteria?

Answer. The Commission should develop a full record that addresses various proposals for reforming the USF's contribution methodology. If confirmed, I will study that record closely before endorsing any specific reforms.

Advanced Technology Deficit

The United States has run an advanced technology deficit every month since June 2002, meaning we consistently import more advanced technology than we export. For 2010, our advanced technology deficit totaled an astounding \$80.8 billion. And one of the most significant technology gaps related to this deficit is with information and communications technologies (ICT)—for the month of August 2011 alone, we imported over \$10.5 billion more in ICT products and services than we exported. This deficit weakens the Nation's 21st Century high-tech job market, the long-term health of our economy, and our ability to remain competitive globally.

A recent *BusinessWeek* article about the deficit pointed out that, as demand for innovative products continues to increase here domestically, the production benefits are primarily felt overseas. In addition, the Bureau of Labor Statistics estimates that employment in Computer and Electronic Product sector is expected to decline 19 percent over the 2008–18 period.

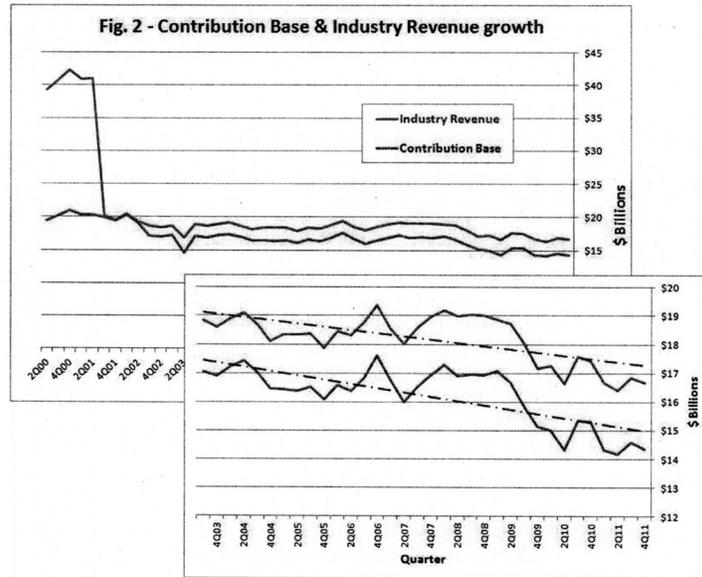
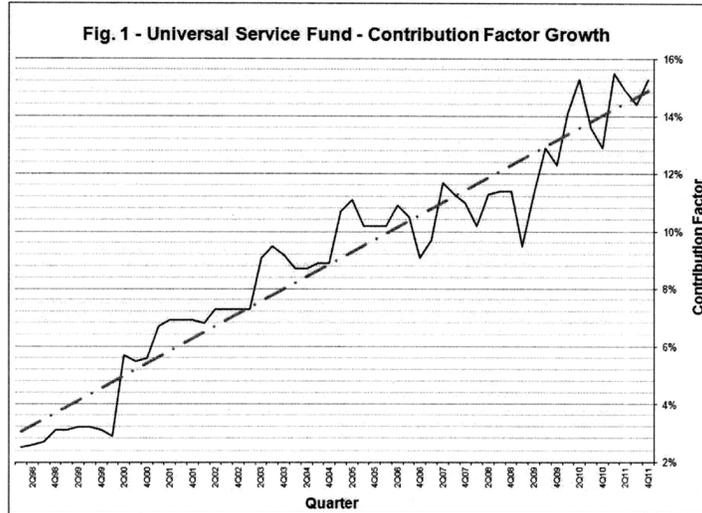
Question 15. Given how important ICT is to our economy and society and the role the agency plays in regulating communications, what can the FCC do to help reverse this trend in such an important sector of our economy? Improving this deficit would mean more jobs not just in manufacturing but also research and development and engineering—the very high-tech jobs we need to be more competitive in this global economy.

Answer. I agree that ICT is vitally important to our economy. The largest part of our trade deficit in ICT is with China, and generally stems from broader economic and trade issues that the FCC does not have the ability to solve alone. The FCC, however, should promote innovation, investment, and job creation in our Nation's communications industry, and one of the most crucial things the FCC can do to promote these goals is to eliminate unnecessary regulation wherever possible. Such reg-

⁵ *Recommendation 8.10: The FCC should broaden the universal service contribution base.*

ulation can inhibit investment and job creation, and lead innovators to seek more hospitable environments abroad.

APPENDIX A.—CONTRIBUTION FACTOR & BASE HISTORICAL CHARTS



RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JIM DEMINT TO AJIT PAI

Question. If confirmed, would you support closing the FCC’s June 17, 2010, Notice of Inquiry (GN Docket No. 10–127), in which the Commission, among other questions, asks “for comment on the legal and practical consequences of classifying Inter-

net connectivity service as a “telecommunications service” to which all the requirements of Title II of the Communications Act would apply”?

Answer. If I am fortunate to be confirmed, I would support closing the FCC’s June 17, 2010 Notice of Inquiry (GN Docket No. 10–127).

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DEAN HELLER TO
AJIT PAI

Question 1. Do you believe a bipartisan majority of Commissioners should be allowed to meet in private for collaborative discussions, subject to appropriate disclosure requirements and oversight and should a bipartisan majority of Commissioners be able to place an item on the Commission’s agenda?

Answer. I believe that allowing a bipartisan majority of Commissioners to discuss agency-related matters in private, subject to appropriate disclosure requirements and oversight, would improve Commission decisionmaking and could be implemented without compromising principles of transparency and accountability. Many have suggested that current law has the unintended effect of impeding collaboration and collegiality among Commissioners, and I sympathize with that view. If confirmed, I would pledge to review Commission-level administrative policies and procedures in order to ascertain whether it would be useful to permit a bipartisan majority of Commissioners to place an item on the Commission’s agenda.

Question 2. As you know, President Obama’s Executive Order 13563 on regulatory reform cannot compel independent agency compliance on important matters such as performing cost-benefit analyses. While Chairman Genachowski may comply, it does not guaranty the FCC will follow the exact same methodology as required by Executive Branch agencies, nor does it bind the actions of future chairmen. Do you feel the use of cost-benefit analyses in the development of rulemakings is important enough that the Commission should adopt a rule requiring its use, at least with respect to major rulemakings?

Answer. I agree with the principle set forth in Section 1 of Executive Order 13563 that the benefits of a regulation should justify its costs. I also believe that the Commission must have a clear understanding of both the benefits and costs of any proposed regulation before deciding whether to adopt it, especially in major rulemaking proceedings. Indeed, one could argue that implicit in the “public interest” standard is the notion that the benefits of Commission action should outweigh its costs. My understanding is that Chairman Genachowski recently initiated a comprehensive regulatory review in response to Executive Order 13563, and if confirmed, I would support him in efforts to apply cost-benefit analysis to existing regulations. It is also my understanding that he has directed agency staff to comply with Executive Order 13563 on a going-forward basis, and I support that decision as well.

Question 3. When considering approval the transfer of control of licenses, which is what the Commission is really doing when it reviews a merger, the FCC often attaches conditions not relevant to the transaction, but which allow the FCC to pursue a policy goal without benefit of a public rulemaking. How would you approach the FCC’s consideration of such transfers of control?

Answer. By statute, the Commission must consider whether the transfer of licenses serves “the public interest, convenience, and necessity.” I would approach the consideration of a license transfer by determining, after a thorough review of the record, whether this standard is met. I would approach the consideration of merger conditions in particular by asking two basic questions. First, has the agency identified with particularity a harm that would specifically result from consummation of the transaction? Second, is there a merger-specific condition that is narrowly tailored to address that harm? The Commission runs risks when it adopts conditions that do not directly remedy transaction-specific harms. For instance, the merger proceeding can become an unwieldy forum in which all types of issues not specifically related to the transaction are pressed before the agency. This not only decreases agency efficiency, but it also inhibits transparency because merger conditions are not subject to the same notice-and-comment requirements as industry-wide regulations are. Additionally, public confidence in the public interest standard diminishes to the extent that the public believes the agency is simply trying to achieve through piecemeal adjudication what it properly should do through a generally-applicable rulemaking. Thus, even if a non-merger-specific condition is a good idea as a policy matter, I believe that the appropriate context for considering that condition is in a rulemaking proceeding, rather than an adjudicatory proceeding applicable only to specific parties.

Question 4. In 1993, Congress voted to fund the FCC entirely through fees levied on regulated entities. Congress directed the FCC to adopt a funding mechanism that would adjust automatically to reflect changes in the agency's workload, its staffing in particular bureaus, and economic shifts in regulated communications sectors. To my knowledge a requirement that the FCC provide annual updates on its efforts to develop a fair & adjustable fee system existed and I do not believe any such report has ever reached Congress. Would you add your voice to those of other commissioners and chairmen who earlier have pledged to finally bring the agency into compliance and rationalize the fee system?

Answer. If confirmed, I would commit to working with Congress and my fellow Commissioners to make sure that the regulatory fee system is fair and to ensure that the Commission meets its statutory reporting obligations.

Question 5. Does the fact that the FCC's budget is a function of regulatory fees that it collects from the industry mean that the FCC has too big of an incentive to increase, or at least maintain, its regulatory authority? If the FCC imposed fewer regulations and regulated fewer entities, would that mean it would have to be a smaller agency?

Answer. If confirmed, I would commit to reviewing the extent to which the current regulatory fee structure provides an incentive to increase regulatory burdens. Generally speaking, I believe the Commission's regulatory fee structure should be fair and that the agency should be no larger or more active than is necessary to fulfill its obligations under the Communications Act.

