

OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

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OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

TUESDAY, MAY 20, 2014

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

The subcommittee met, pursuant to call, at 10:30 a.m., in room 2123 of the Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

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

Also present: Representative Yarmuth.

Staff present: Gary Andres, Staff Director; Ray Baum, Senior Policy Advisor/Director of Coalitions; Matt Bravo, Professional Staff Member; Leighton Brown, Press Assistant; Andy Duberstein, Deputy Press Secretary; Gene Fullano, Detailee, Telecom; Kelsey Guyselman, Counsel, Telecom; Sean Hayes, Deputy Chief Counsel, Oversight & Investigations; Grace Koh, Counsel, Telecom; David Redl, Counsel, Telecom; Charlotte Savercool, Legislative Coordinator; Macey Sevcik, Press Assistant; Tom Wilbur, Digital Media Advisor; Phil Barnett, Democratic Staff Director; Shawn Chang, Democratic Chief Counsel for Communications and Technology Subcommittee; Margaret McCarthy, Democratic Professional Staff Member; Ryan Skukowski, Democratic Staff Assistant; and Patrick Donovan, Democratic FCC Detailee.

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

Mr. WALDEN. We will call to order the subcommittee on Communications and Technology, and I certainly want to welcome our Members and our witness, the Chairman of the Federal Communications Commission. Mr. Wheeler, we are delighted that you would make time to come and spend with us on this important day with so much going on in the telecommunications world.

Six months ago, this subcommittee met for the very first time with the current complement of FCC Commissioners and welcomed Mr. Wheeler as the new chairman. Today—and let me welcome Mr. Wheeler back—we meet to review the record of action and selective inaction that the Commission has taken under the first 6 months of your leadership. Unfortunately, given some of the most recent

actions out of the Commission, I fear that we may be heading into rough waters.

When we last met I offered two pieces of advice to Chairman Wheeler and his colleagues. First, I urged them to heed the words of Congress where it has spoken and reject calls to act in ways contrary to Congressional intent. Second, I urged them to bear in mind that even seemingly small changes in the Federal Communications Commission's rules can have significant impact on the marketplace. I called upon all the members of the Commission to discharge their duties with transparency, accountability, and a long view of the technological landscape. In sum, my advice was that they must approach their duties with humility and restraint.

Unfortunately, recent actions have hinted that my advice was ignored. In December we had yet to know that the D.C. Circuit Court of Appeals would once again reject the Commission's attempt to regulate the Internet and could only speculate as to whether the Commission under Chairman Wheeler's lead would mount a third attempt. Sadly, we now know the answer. Not only is Chairman Wheeler leading us down this path again, the item the Commission adopted last week tees up the long-dead idea that the Internet is a common carrier. This reinvigorated willingness to consider regulating the Internet under Title II of the Communications Act, rules that find their roots in 19th Century railroad regulation and were designed to regulate the world of a telephone monopoly, harken back to a world in which a twisted copper was the only portal for consumers to the communications network and voice, the only service.

The modern communications landscape bears no resemblance to the world Title II was meant to regulate, and application of Title II to the Internet is, at best, a poor fit. Worse still, the practical consequences of reclassification are to give the bureaucrats at the FCC the authority to second-guess business decisions and to regulate every possible aspect of the Internet. We should all pause and consider the prospect of the FCC as a rate-setting authority over Internet access and what that meant for innovation in the telephone network of yesteryear. We should also be aware that this path opens the door for states to regulate the Internet.

Contrary to any intended effect, the reclassification of broadband service under Title II will harm consumers, halt job creation, curtail innovation and stifle investment. In sum, at a time when the Commission, at Congress's direction, is taking steps toward even greater growth and innovation across Internet access platforms, the Commission is simultaneously contemplating rules that undermine those very efforts and compromise the fundamental approaches of both the Clinton and Bush administrations that laid the foundation for the Internet we know today.

As troubling as some of the actions taken under Chairman Wheeler's watch, the selective inaction of the FCC is equally troubling. Although required under the Telecommunications Act, the Federal Communications Commission has failed to complete its quadrennial review of the limitations on ownership of broadcast properties. It has been 6 years—6 years—since the Commission last fulfilled this statutory mandate. Rather than focus on ensuring that the rules reflect reality, however, the chairman has now an-

nounced that the Commission would essentially scrap the 2010 quadrennial review, and begin in earnest its 2014 quadrennial review.

Notwithstanding this stale record, the FCC also moved forward to make major changes to the regulations that govern media ownership anyway, the adopted changes to its attribution rules that determine how to count stations toward the local television ownership rule. The FCC also stated that it would begin counting certain shared service arrangements toward the local ownership cap. In order to comply with local ownership rules, these pronouncements will likely force broadcasters to divest stations and unwind shared service agreements that are beneficial to ensuring local content in the smaller markets. These changes do not bring benefits to the communities served by these broadcasters drawing into question how this change could serve the public interest.

Finally, FCC process reform has been an ongoing priority of our Subcommittee. It is an issue my colleagues and I are deeply invested in as demonstrated by the unanimous passage in the House of the bipartisan Federal Communications Commission Process Reform Act on March 11 of this year. Unfortunately, after the events of the past few months, I am sad to say I continue to be troubled by the FCC's seemingly flawed processes.

In March, the FCC chose to restrict license transfers involving certain shared service agreements, which had long been implicitly blessed by the Commission. This action was not debated by the commissioners, nor is it subject to any kind of vote. Rather, it was announced by the Chief of the Media Bureau as a fait accompli.

Recent press reports also allege that the chairman's office withheld presentation of revisions to the Open Internet Notice of Proposed Rulemaking from Republicans for as long as 24 hours after having provided the material to the Democratic commissioners and to the press during the run up to the May 15th FCC Open Meeting. The concern raised by these reports is only compounded by revelations that a substantially revised draft of another item scheduled for vote at the Open Meeting was not presented to other offices until the closing minutes of the evening before. According to Commissioner Pai's dissent from the commission's Mobile Spectrum Holdings item, his office received the revised item fewer than 12 hours before the Open Meeting, and the item contained more than 3,000 revisions.

So I find myself channeling Commissioner Rosenworcel who said of the Open Internet NPRM that the "process that got us to this rulemaking today is flawed." The committee has opined in the past that withholding of a revised draft item from other members of the commission until the eleventh hour precludes the scrutiny and analysis necessary for reasoned decision-making. It is my hope that these occurrences were anomalies. Perhaps Chairman Wheeler will want to commit today to providing his fellow commissioners with adequate and equal time to review proposed orders and rules.

The transformative impact of the evolution of technology from analog to digital, from narrowband to broadband, has forever altered our lives. The evolution continues and the Commission has before it the issues I just mentioned and many more, all significant in their impacts on our lives and the economy. You stated in your

written testimony that you are eager to build on the progress of the last 6 months going forward. And I hope working together we can move forward in a direction that protects the success this critical sector of the economy has enjoyed and facilitates its continued growth and job creation unencumbered by regulatory overreach.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

Six months ago, this subcommittee met for the first time with the current complement of FCC Commissioners and welcomed Mr. Wheeler as the new chairman. Today—and let me welcome Chairman Wheeler back—we meet to review the record of action and selective inaction that the commission has taken under the first six months of his leadership. Unfortunately, given some of the most recent actions out of the commission, I fear that we may be heading into rough waters.

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Mr. WALDEN. With that I yield back, and I recognize my friend and colleague from California, Ms. Eshoo, the Ranking Member of the Subcommittee, for her opening statement.

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

Ms. ESHOO. Thank you, Mr. Chairman, and good morning to all of my colleagues, and welcome back to the committee, Chairman Wheeler.

Before we do a deep dive into the specifics of the chairman's proposal as well as so many other major issues that are before the FCC, I think that it would be well for us to step back and appreciate what I believe is one of the most consequential inventions in human history. This was dreamed of and built by disruptors. It is an American story. It is a product of American genius—the Internet, one word but it really takes one's breath away in terms of the arc of history.

It is not only an invention, it has reshaped lives, economies here and around the world, and our thinking and our debate today real-

ly should be viewed, I think, through the prism of a critical step that we are taking now in the 21st Century. The Internet is a continuum of change. It is accessible, it is open and its innovations continue. They empower individuals, entire fields of learning, growing not only our economy but economies around the world and serving humanity in countless ways.

All of this has taken place, and here we are in the second decade of the 21st Century. So this is huge. This is huge. This is not what is behind door number one, door number two, door number three, where the price is right. This is not some guessing game. This is huge. This is something—these decisions are going to affect every single American going forward just as it has in the past, and it will continue to.

So all of us—regulators, innovators, consumers, legislators—we have to get this right. The stakes are very high, and America cannot lose. It has been our leadership that has advanced the digital age, and now is not the time, and actually I don't think there should be ever a time, to unravel the values that have really been the hallmarks and the bulwarks of the Internet.

So the question is, how do we seize the future? At least in my view, that is what the question is. I know what I want to see continue, openness, free, accessible. These are also the hallmarks of our democracy, and that is why this has been such an extraordinary export of our country.

I know what I don't want. I don't want this to become an auction, selling off the best in bits and pieces where some pay for faster lanes, others can't pay. They get stuck in a slow lane—some giant company blocking content and others discriminating so that they can sell their stuff to keep the other guy's stuff stymied. That is not a very pretty description, but it is a street description of what can be at hand.

I want every day to be essentially the 4th of July for American innovation so that it just keeps bursting, it just keeps bursting. And I see it every day in my Congressional district. Looking forward 10 years, 25 years, 50 years, I want this to continue, and we should all be thinking on a grand scale because this growth and this economic driver should be for everyone. We need smart, savvy regulations, regulatory decisions. We need a Congress that is engaged in this and a Congress that is vigilant, and I plan to be.

So what should the FCC do? I think in all the articles you read, there is a debate. Should it be 706 or should it be Title II? I think that we have to have a clear understanding of what has made the Internet what it is today and what basic values need to be protected and preserved and then what that is going to look like.

And there is more on top of all of this. Can anyone here today piece together the effects of a Comcast/Time Warner merger and an AT&T/DirecTV merger on consumers and a free and open Internet? These are massive decisions and massive pieces that are moving forward. And what is going to happen to innovation?

Mr. Chairman, Chairman Walden, I urge you to convene a hearing to examine these issues here. I think they deserve to be examined and to be debated and questions asked. So as I said earlier, every person in the country will be affected by the outcome of these decisions that are before the Commission and before us. And so I

look forward to questioning Chairman Wheeler today. I also ask for unanimous consent to two letters, two very important letters, be entered into the record, one signed by more than 100 venture capitalists and angel investors who support simple, strong, enforceable rules against online discrimination and access fees, and the other signed by more than 100 Internet companies, small and large, mostly small, that support a free and open Internet.

Mr. WALDEN. Without objection.

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

Ms. ESHOO. And I don't know if I have any time remaining. No, I think I have gone over. With that, I will yield back what I don't have.

Mr. WALDEN. Thank the gentlelady for her opening statement and the letters. I will now turn to the Full Committee Chairman, Mr. Fred Upton from Michigan, for opening comments.

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

Mr. UPTON. Well, thank you, Mr. Chairman. Oversight is a critical part of this committee's work to foster a smaller, more nimble government for the innovation age. We have held lots of hearings with all of the FCC's commissioners to address issues of national importance, to keep a close eye on the budget, and to ensure that Commission process focuses on promoting jobs and innovation, and today's oversight hearing with Chairman Wheeler will continue that discussion to ensure that the FCC works in a way that benefits consumers, industry, and certainly the economy, and I thank you for coming today.

There is a lot to discuss. In the 6 months since Mr. Wheeler was confirmed as chair, he has addressed a number of items including media ownership, the IP transition, universal service, and just this past week, of course, the incentive auctions and net neutrality. While I appreciate the chairman's leadership on some of these, I have serious concerns with some others.

As an initial matter, Chairman Wheeler started off his chairmanship with the review of FCC procedure, an issue that this Subcommittee has spent lots of time working to reform in a bipartisan manner. But I was disappointed to see some of the process failures that occurred last week. Media reports of open meeting items being circulated to commissioners as late as midnight the evening before the vote on one item and what seems to be partisan sharing of items with Democrats as much as 24 hours before sharing them with Republicans on another is particularly concerning. Regardless of political affiliation, commissioners must be given adequate and equal time to consider the items on which they are going to vote. Let us all hope that such incidents of favoritism and selective sharing are isolated and not emblematic of the Chairman's new operating procedure.

Additionally, I continue to be concerned with the Commission's ongoing defiance of its statutory obligations to complete the 2010 quadrennial review of media ownership rules. Despite the commission's woefully outdated record on this issue, it has nonetheless moved forward with changes that effectively bar joint sales agreements and change Commission treatment of shared service agree-

ments under its media attribution rules. These actions, in the absence of the statutorily required media ownership review, do raise significant questions about the Commission's commitment to making decisions informed by facts and utilizing sound process.

And lastly, I am troubled by the chairman's insistence on attempting to regulate the Internet under rules that were informed by 19th century railroad regulations and adopted to regulate the monopoly telephone network of the past. The Internet has indeed flourished under the current light-touch regulatory scheme, and subjecting it to burdensome regulations is a leap in the wrong direction. Title II is inappropriate for the Internet, and attempting to reclassify it would be harmful to consumers, businesses, and the future of the Internet as we know it. Nobody wants telephone service to look like it did in 1984, and we certainly shouldn't wish for our Internet access to return to that rotary phone era, either.

The communications sector is vital to our national economy, and Commission action on even small items can have broad impact. I thank Chairman Wheeler for being here today and look forward to working together toward a bipartisan, measured, transparent, and responsible actions that do benefit consumers, job creation and our economy.

[The prepared statement of Mr. Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON

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There is much to discuss. In the 6 months since Mr. Wheeler was confirmed as chairman, he has addressed a number of items—including media ownership, the IP transition, universal service, and just this past week, the incentive auctions and net neutrality. While I appreciate the Chairman's leadership on some of these items, I have serious concerns with others.

As an initial matter, Chairman Wheeler started off his chairmanship with a review of FCC procedure—an issue this subcommittee has spent considerable time working to reform in a bipartisan manner. But I was especially disappointed to see some of the process failures that occurred last week. Media reports of open meeting items being circulated to commissioners as late as midnight the evening before the vote on one item and what seems to be partisan sharing of items with Democrats as much as 24 hours before sharing them with Republicans on another is particular concerning. Regardless of political affiliation, commissioners must be given adequate and equal time to consider items on which they will vote. Let us all hope that such incidents of favoritism and selective sharing are isolated and not emblematic of the chairman's new operating procedure.

Additionally, I continue to be concerned with the commission's ongoing defiance of its statutory obligation to complete the 2010 quadrennial review of media ownership rules. Despite the commission's woefully outdated record on this issue, it has nonetheless moved forward with changes that effectively bar joint sales agreements and change commission treatment of shared service agreements under its media attribution rules. These actions, in the absence of the statutorily required media ownership review, raise significant questions about the commission's commitment to making decisions informed by facts and utilizing sound process.

Lastly, I am troubled by the chairman's insistence on attempting to regulate the Internet under rules that were informed by 19th century railroad regulations and adopted to regulate the monopoly telephone network of the past. The Internet has flourished under the current light-touch regulatory scheme, and subjecting it to burdensome regulations is a leap in the wrong direction. Title II is inappropriate for

the Internet and attempting to reclassify it would be harmful to consumers, businesses, and the future of the Internet as we know it. Nobody wants telephone service to look like it did in 1984, and we certainly shouldn't wish for our Internet access to return to that rotary phone era, either.

The communications sector is vital to our national economy and commission action on even small items can have broad impact. I thank Chairman Wheeler for being here today and look forward to working together toward bipartisan, measured, transparent, and responsible actions that benefit consumers, job creation, and our economy.

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Mr. UPTON. And I yield the balance of my time be split between Mr. Latta and Mr. Barton.

Mr. LATTI. Well, thank you, Chairman, for yielding, and Chairman Walden, I appreciate you holding this hearing today, and welcome Chairman Wheeler. Thanks for being here.

The communications and technology industry is hailed as a vibrant, dynamic, and productive sector of our economy. This is not by accident. As networks and services transition to IP-based platforms, they have had the flexibility to grow, advance and evolve in large part because they have not been subjected to the stifling hand of legacy government regulations.

We have pursued a light-touch regulatory approach to the Internet ecosystem because we have seen time and again that it serves as a catalyst for increased investment, innovation, job creation, and competition. As we look forward to develop policies that would further this growth, we would be remiss to overlook the significance of how regulatory restraint has been a fundamental component of the industry's success. That is why I am concerned with some of the proposals emerging from the FCC, particularly in consideration of reclassifying broadband Internet access services, as a telecommunications service, under Title II of the Communications Act. This policy would be an extreme exercise of government overreach and likely result in failed Web sites, downgraded and poor customer service, less choice and flexibility for consumers, businesses and the stifling of innovation through regulation. Unwarranted attempts to manufacture and shape markets' outcome, propose solutions in search of problems and impose antiquated regulations will frustrate future progress and innovation.

I intend to introduce legislation that prevents the FCC from following through on this misguided regulatory proposal.

Mr. WALDEN. Mr. Chairman, with that I yield back the balance of my time, and I yield to Mr. Barton.

Mr. BARTON. We just welcome Chairman Wheeler, and the question before the committee today is are we soon going to be calling him Mr. Wheeler Dealer? And with that, I will put my statement in the record and in the interest of time yield back to the chairman.

Mr. WALDEN. I thank the chairman. The gentleman yields back. I now turn the gentleman from California, Mr. Waxman, for opening comments.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you, Mr. Chairman, and I want to welcome back Chairman Wheeler. Federal Communications Commission had an historic week last week. You are tackling some of the most complex and pressing issues in the communications sector today. In 2012, Congress gave the FCC a big job, create the world's first incentive auction to ensure that each front low-band spectrum is put to its highest economic value, and you established the ground rules for this crucial auction last week. You had a hard job because you needed to balance four potentially conflicting objectives: one, maximizing the amount of spectrum made available for auction; two, promote competition; three, create bands of unlicensed spectrum to spur innovation; and four, raise money. It appears you hit this one out of the ballpark.

I particularly want to commend you for your work to advance unlicensed spectrum. Your plan will create three channels of each front unlicensed spectrum throughout the Nation. The vision of new super Wi-Fi can now become a reality. I also want to commend you for promoting competition by reserving spectrum for competitive carriers. It would be an enormous setback for innovation and consumers if the incentive auction turns the wireless market into a duopoly, dominated by Verizon and AT&T. This auction is the best and possibly the last chance the FCC has to invigorate competition.

I would have preferred if you reserved even more spectrum for competitive carriers, but I recognize the pressures you are under and your need to secure three votes.

By the way, you may hear arguments today from Republicans on this committee that you lack the authority to promote competition. These claims are nonsense and contradict the express language of the statute.

Last week you also launched the FCC's third attempt in 8 years to protect the open Internet. You didn't hit this one out of the park, but you didn't need to, either. You made a wise decision to solicit comment on a wide range of options. As I wrote you, the time has come to end the legal gymnastics and stop the lobbying games being paid by the big broadband providers. In 2010, Verizon, AT&T, and Comcast pled with the FCC not to use its undisputed authority under Title II of the Communications Act, and then after FCC did what they wanted, Verizon sued the agency for lacking authority when the FCC agreed with the company. This time, you need a different approach. You should use your Title II authority as a backstop authority to protect the open Internet. If you want to proceed under Section 706 as your main legal theory, that is fine, but you shouldn't water down the open Internet rules to fit Section 706. Instead, you should get the substance right and invoke Title II as an independent basis of authority.

The FCC has already lost two rulings in court over the open Internet. You don't have to choose between weak rules and a weak legal case. You can issue strong rules and have a strong legal case if you use a belt-and-suspenders approach to the next rule-making.

I look forward to exploring this issue with you further in the question period.

In the meantime, I would yield the balance of my time to my friend and colleague, Congresswoman Matsui.

Ms. MATSUI. Thank you very much, Ranking Member Waxman, for yielding me time, and welcome, Chairman Wheeler. The FCC certainly has a lot on its plate. The Commission is considering net neutrality rules, rules on the broadcast incentive auction, the AWS-3 auction, USF and E-Rate reforms and two very significant mergers. I am confident the FCC will be able to demonstrate that it can walk and chew gum at the same time.

This Subcommittee should also do its part. For one, I join in calling for the chairman to hold oversight hearings on the two proposed mergers between Comcast and Time Warner and on AT&T and DirecTV. Those are some of the largest mergers in our Nation's telecommunications history.

Americans, including many in my district of Sacramento are seeing the trends toward consolidation, content impairing deals and how they hear phrases like paid prioritization and wondering what is going on. What does all this mean for them, for competition and for the economy? It has been encouraging that so many Americans are speaking up in support of protecting an open Internet. I was one who thought the FCC should have taken more time to deliberate on what net neutrality rules the Commission should propose. But we are where we are. The proposal has certainly proved over the last few weeks it is still far from perfect. I support a ban on paid prioritization deals. We can't afford a two-tiered Internet system.

I look forward to hearing from you today, and I yield back the balance of my time.

Mr. WALDEN. The gentlelady yields back the balance of her time, and with that, you have heard from us or at least a few of us up here, Mr. Chairman. And now we are delighted to have you here, and we look forward to your opening statement and comments. And thank you again for the work you are doing. Go ahead.

STATEMENT OF HON. TOM WHEELER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. WHEELER. Thank you, Mr. Chairman, and members of the committee. As you have pointed out, it has been about 6 months since we last sat down, and what I wanted to do was to highlight some of the things we have done in that period and then engage in a dialogue with you with whatever topics that you would like to address.

As has been evidenced by a lot of these comments up here, one of the principal responsibilities of the Commission is dealing with the spectrum crunch, and we have taken a significant step forward in terms of getting more spectrum out to the market. We had the H-Block auction which raised \$1.5 billion for 10 megahertz spectrum. We have opened a new, 100 megahertz swath in the 5 gigahertz band which is already being referred to as "gigabit-Wi-Fi" because of the incredible through-put that it enables. We have begun a proceeding on spectrum sharing at 3.5 gigahertz, and we announced yesterday that in accord with the mandate of this Com-

mittee and Congress to auction off AWS-3 spectrum, that we will begin the auction on November 13, and we will finish as per your mandate February—we will license by February 22, 2015.

We have also, as some of the Committee had noted, established a new set of mobile spectrum holding rules which have been praised by everybody from public interest groups to small operators to large operators, as was commented on by Mr. Waxman, “Hitting the ball out of the park.” And we have begun the incentive auction process. You mandated us, as you have said, with a non-trivial task, and we have taken the first important steps to that.

On the question of Universal Service and what is going on there, we have fulfilled the pledge that I made to this Committee last time we were together to eliminate the infamous Quantile Regression Analysis, and we are seeking comments on what its replacement should be.

We have funded the Connect America Fund to provide connectivity to 5 million more Americans who do not have access to broadband today. That is about $\frac{1}{3}$ of the total, and a significant bite out of that. And we are seeking input on multiple additional issues, a through-put standard. Should we—as technology increases and bandwidth increases, do we need to think about higher bandwidth that is supported by the Connect America Fund? How do we best deal with the mobile component of broadband delivery in Connect America and how best to support broadband for rate-of-return carriers? Those are all proceedings that we have under way.

We have made some significant strides also in the area of public safety. We took a good chunk out of the FirstNet \$7.5 billion with the H-band auction. I expect, obviously, that the AWS-3 auction will do more, and I wouldn’t be surprised if we show up at the incentive auction having met the requirement, or at least taken a huge bite out of the requirement, for funding FirstNet.

We had rule-making on text-to-911. You know, phones aren’t used just for talking anymore but also texting. And so, if you want to text to an emergency service provider, we had a rule-making on that. The major carriers stepped up and literally in the last couple of days, they all met their goals for the implementation on that, which is a terrific step forward. And we have also issued a Further Notice on location accuracy, because as wireless usage increases, and particularly, as it replaces wire line connections inside and as GPS usage has increased, there has been a fascinating reality that location accuracy has actually declined. And we have got a Notice going on, how do we address that, because that is literally a matter of life and death.

As you mentioned, we began the 2014 Quadrennial Review on media issues with an expedited delivery date. We closed a loophole that was being exploited to get around the ownership rules using Joint Services Agreements, and we brought competition back to the retransmission consent negotiations.

We have also continued to press on the reform issues that so many of you and I share in common as being important. Last time we were together I told you we stood up a task force to deal with this. That task force came back with 154 recommendations. About $\frac{3}{4}$ of those are now well along their way to being in process. They kind of break into two parts: there are procedural issues that you

might associate with the Administrative Procedure Act and things like this, and there is also just how you make the agency more efficient.

And last week, as many have discussed, we opened a Notice of Proposed Rulemaking on preserving and protecting the open Internet. It is important to recognize that there are no protections for an open Internet in place today. The January court decision affirmed the Commission's authority under Section 706 to deal with the open Internet and identified what I call a "roadmap" for how to achieve that. And what I proposed is a method that follows that roadmap.

I understand that there is a great debate on this issue. I heard the debate here this morning between those who say there is no need and those who say it ought to be a regulated utility. What we have tried to do is to follow the court's direction, the roadmap, the blueprint, and to come up with a proposal that stops blocking, that prohibits anything that degrades a consumer's access, including prioritization, that asks a broader question about prioritization as to whether it should be banned outright, and if so, how, and then engages in the discussion that we have heard already this morning about Title II versus 706 and collecting a broad scope of learned information on that.

I have consistently said that there is only one Internet. There is not a fast Internet and a slow Internet. There is not a special services Internet. There is one Internet, and when the consumer buys access to the Internet, they are buying access to the full Internet. And that is what our rules attempt to protect.

This has become a debate about legal approaches. It is a healthy debate. It is a debate that our Notice of Proposed Rulemaking furthers with multiple requests for input. But my position has been similar to that of the Consumer Federation of America and that is that we ought to explore the powers that are granted in the '96 Act, specifically Section 706, keep asking how Title II fits in, but develop a regulatory policy that looks forward, not backward, because what we need is a regulatory plan for the 21st Century. And I look forward to discussing that with you, Mr. Chairman, and members of the Committee.

[The prepared statement of Mr. Wheeler follows:]

**Statement of
Tom Wheeler
Chairman
Federal Communications Commission**

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

**Hearing on
“Oversight of the Federal Communications Commission”**

May 20, 2014

I. INTRODUCTION

Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee, I appreciate the opportunity to appear before you again regarding oversight of the Federal Communications Commission.

It has been about six months since we last were all together, and, befitting the fast-moving communications sector, much has happened since that time. Last December, I shared my guiding principles for how the Commission should approach the vast array of issues we face. These priorities – promoting economic growth and U.S. leadership; protecting the Network Compact; and ensuring networks work for everyone – are infused throughout the actions we have taken and the public interest-minded priorities we have set.

Thanks to a highly capable team of public servants at the Commission – including my fellow Commissioners Clyburn, Rosenworcel, Pai and O’Rielly - we have hit the ground running. I am very proud of our accomplishments over the past six months, and am eager to build on that progress going forward.

II. PROMOTING ECONOMIC GROWTH AND U.S. LEADERSHIP

Technological innovation, growth and national economic leadership have always been determined by our networks. Competition drives the benefits of those networks, and we have a responsibility to see the expansion of those networks, including the appropriate allocation of adequate amounts of spectrum.

A. Spectrum Policy

Consumer demand for mobile broadband is exploding. There are more connected mobile devices in the United States than people, and more than 60 percent of U.S. wireless subscribers now use data-hungry smartphones. With increased consumer demand comes increased demand for spectrum – a finite resource that is in short supply.

In the past six months, we have made considerable progress toward meeting this demand and making spectrum available for wireless broadband – from establishing the ground rules for the first-ever Incentive Auction, to promoting spectrum sharing, including allowing more unlicensed use. Underlying all of this work, as a baseline to how and why we do what we do, continues to be my favorite mantra: Competition, Competition, Competition.

Incentive Auction

Few FCC policies have generated as much attention as the upcoming Incentive Auction. Such attention is warranted. This first-in-the-world auction could revolutionize how spectrum is allocated. By marrying the economics of demand with the economics of current spectrum holders, the Incentive Auction will allow market forces to determine the highest and best use of spectrum, while providing a potentially game-changing financial opportunity to America's broadcasters.

Getting the Incentive Auction right will be a tremendous challenge. The Commission has to create a marketplace that enables us to buy spectrum, re-band it, and then re-sell it, and to do these three things simultaneously. I've likened the auction to a Rubik's Cube, with a big difference being that you can't pull up a How-To-Solve-The-Incentive-Auction video on YouTube.

The FCC staff has been working tirelessly to design the auction ever since Congress authorized it in February 2012. Last week, the Commission adopted a Report and Order that set out the ground rules for the auction.

The Commission will make additional decisions to implement details pertaining to the Incentive Auction in the coming months as we prepare for this historic auction in mid-2015. But reaching this stage is a major accomplishment, and was only possible thanks to the outstanding work of public servants from across the FCC.

I am also committed to taking actions to encourage broadcaster participation, which is essential to the auction's success, including providing more information about the auction timeline and potential opening bid amounts.

Mobile Spectrum Holdings

The Commission is not only committed to making available more spectrum for mobile broadband, it is also committed to promoting competition in the mobile marketplace. That's why, in conjunction with the launch of our Incentive Auction rulemaking in September 2012, the Commission initiated a proceeding to update our mobile spectrum holdings policies. Last week, the Commission adopted a reasonable, balanced Report and Order updating those policies to ensure a healthy mobile marketplace with clear rules of the road for spectrum aggregation. In particular, the Order will help ensure competitive access to "low-band" spectrum that we will make available in the Incentive Auction, which is better suited for transmitting wireless communications over long distances and through walls.

Our new approach to mobile spectrum holdings is pro-consumer and aimed at fostering a competitive marketplace with many providers capable of offering Americans a choice of comparable services no matter where they live. Our approach is pro-innovation and investment, offering wireless providers additional certainty about the rules of the road. And our approach is pro-public safety – waiving the spectrum aggregation screen when carriers partner with FirstNet and ensuring that our public safety broadband network will be fully funded.

H Block

One of the most notable developments of the past six months is that the spectrum pipeline has re-opened. In February, the Commission concluded its first major auction of mobile broadband spectrum since 2008, repurposing 10 MHz in the so-called H-Block. The Commission succeeded in putting this spectrum to work in the marketplace and raised more than \$1.5 billion, much of which will be put to use toward the deployment of FirstNet's nationwide public safety broadband network. I applaud Commissioner Clyburn for her wisdom and leadership in scheduling this auction for January 2014 and the FCC staff for their successful execution.

AWS-3 Auction

This March, the Commission adopted a Report and Order establishing service rules for AWS-3, which moves us closer to holding an auction for 65 megahertz of spectrum in November. Yesterday, the Wireless Bureau released a Public Notice setting the start date and proposing the reserve price for the auction. This auction represents a step forward in spectrum policy. Some of the spectrum being auctioned is already available in the Commission's inventory. But 40 megahertz of the spectrum to be auctioned is used nearly exclusively by federal agencies today.

A long, candid and purposeful discussion among federal and commercial users about how to enhance spectrum efficiency through both clearing and sharing has brought us to this point. I commend NTIA, DOD, DOJ, and the White House for their leadership in enabling commercial use of the 1755-1780 MHz band. NOAA has shown important leadership through its efforts to help make the 1695-1710 MHz band available for commercial use. And I commend the Members of this Subcommittee for your leadership, including your convening of informal roundtable meetings, which have been instrumental in keeping our collective efforts focused on encouraging communication, overcoming obstacles and achieving real results.

Unlicensed Use (5 GHz)

The Commission is working to make available not only licensed spectrum, but unlicensed spectrum, which has enabled breakthrough innovations like Wi-Fi and Bluetooth.

In March, the Commission adopted an order to take 100 MHz of unlicensed spectrum at 5 GHz that was barely usable – and not usable at all outdoors – and transform it into spectrum that is fully usable for Wi-Fi. This is a big win for consumers who will be able to enjoy faster connections and less congestion, as more spectrum will be available to handle Wi-Fi traffic.

As contemplated by the Middle Class Tax Relief and Job Creation Act, the Incentive Auction Report and Order adopted rules to permit unlicensed use of technically reasonable guard bands required to protect licensed services in the new 600 MHz band, in addition to Channel 37 and remaining TV White Spaces. This action will make available a significant amount of low-band spectrum for unlicensed use, much of it on a consistent, nationwide basis.

We are actively participating in ongoing efforts with the Department of Transportation and industry to resolve technical issues in the ITS band currently used for vehicle-to-vehicle communications and with the Defense Department to resolve issues in a band used for military radar. Resolving these issues could make 195 MHz of spectrum available for broadband. We hope and expect parties to engage productively, and we will be watching closely.

Citizen's Broadband Service (3.5 GHz)

Incentive auctions are not the only game-changing spectrum policy innovation being advanced by the Commission; spectrum sharing has similar potential to transform spectrum management. Last month, the Commission took another significant step toward turning the spectrum sharing concept into reality, adopting a Further Notice of Proposed Rulemaking to enable innovative spectrum sharing techniques in the 3.5 GHz band. Our three-tiered spectrum access model, which includes federal and non-federal incumbents, priority access licensees, and general authorized access users, could make up to 150 MHz of spectrum available for wireless broadband use

B. Broadband Investment and Competition

The private sector must play the leading role in extending broadband networks to every American. That's why the FCC is committed to removing barriers to investment and to lowering the costs of broadband build-out. Google has developed a checklist for cities that want to participate in their Google Fiber project of steps that can be taken to ensure easier access to existing infrastructure and to make construction speedier and more predictable. The FCC should be asking similar questions about our own rules, cutting red tape wherever possible.

Promoting competition is another critical tool for spurring investment in broadband infrastructure. For many parts of the communications sector, there hasn't been as much competition as consumers and innovation deserve. Given the high fixed costs and consequent scale economies, this isn't especially surprising. But that makes it all the more important that we knock down existing barriers to competition and avoid erecting new ones. We must use all the tools at our disposal to encourage competition wherever it is possible. One place where it may be possible to encourage competition is municipally-owned broadband systems. I understand that the experience with community broadband is mixed, that there have been both successes and failures. But if municipal governments want to pursue it, they shouldn't be inhibited by state laws that have been adopted at the behest of incumbent providers looking to limit competition. I believe the FCC has the power – and I intend to ask the Commission to exercise that power – to preempt state laws that ban competition from community broadband.

III. PROTECTING THE NETWORK COMPACT

Changes in technology may occasion reviews of our rules, but they do not change the rights of users or the responsibilities of network providers. This civil bond between network providers and users has always had five components: access, consumer protection, interconnection, public safety and national security. The Commission must protect the Network Compact.

A. Universal Service

Universal service and accessibility are two cornerstones of the FCC's mission. Considering that access to broadband is increasingly necessary for full participation in our economy and democracy, this goal is more important than ever. Our universal service programs remain essential to ensuring consumers have access to technology – whether that's at the home, at work, in schools or libraries, or when seeking assistance from a rural healthcare clinic. The Commission must ensure that our programs keep up with the changing technologies, are well-managed and efficient, while limiting waste, fraud and abuse. And we must of course make sure that the infrastructure supported by the Commission is available to ALL, including low-income Americans, individuals living on Tribal lands, and individuals with disabilities. What most of us take for granted on a daily basis, should be available to all.

Supporting Infrastructure in Rural America – Connect America Fund (CAF)

While the private sector must play the leading role in extending broadband networks to every American, there are some areas where it doesn't make financial sense for private companies to build. That's why the Commission modernized our Universal Service Fund to focus on broadband, establishing the Connect America Fund. Already, the Connect America Fund has made investments that will make broadband available to 1.6 million unserved Americans.

Just last month, the Commission voted to move forward with Phase II of the Connect America Fund. In addition to the great work of the Wireline Competition Bureau in finalizing the Connect America Fund cost model, the Commission decided a number of outstanding issues to enable the Commission to move forward later this year with CAF Phase II. The result will be another 5 million Americans getting access to broadband for the first time. Recognizing that broadband speeds offered to consumers in urban areas continue to increase, one open issue we are going to look at is whether we should increase the minimum downstream speed requirement for those entities that receive Connect America support. The statute requires rural Americans to have access to services that are reasonably comparable to services in urban areas. I am cognizant of the fact that we must make sure that we do not stand idly by and allow a new digital divide to open up in rural America as urban and suburban areas increasingly gain access to gigabit connections.

The Commission's action last month also took several steps to improve the climate for broadband investment in areas served by incumbent rate-of-return carriers. First, as I promised I would do in this same seat last December, we eliminated the Quantile Regression Analysis

(QRA) benchmarks rule because it was not serving its intended purpose. Second, in a Further Notice of Proposed Rulemaking, we proposed to establish a Connect America Fund for rate-of-return carriers and sought comment on how to support the deployment of broadband-capable networks by rate-of-return carriers within the current budget for the program.

Related to the actions taken in April, I am also pleased to report that in January the FCC initiated an experiment to inform our policies to build next-generation networks in rural America. We invited American enterprises, communities and groups to tell the FCC whether there is interest in constructing high bandwidth networks in high cost areas, and to tell us how it could be done. We issued an invitation, and the response has been astounding. To date, we have received more than 1,000 expressions of interest from all parts of the country. Proposals have come from rural telephone companies, from rural electric co-ops, from cable and wireless service providers, from Tribal entities, from communities, and more. The proposals are varied, and geographically and technologically diverse, yet all have a common theme. They are expressions of a desire to deliver better, more robust Internet access service; to deliver faster speeds to communities in rural areas. Later this summer we intend to establish a budget and selection criteria, and to invite formal rural broadband experiment proposals which will be very informative as the Commission moves forward with efforts to connect all Americans to robust broadband networks.

IP Transition

The move from the circuit-switched networks of Alexander Graham Bell to the new networks of the Internet Revolution is all around us – with expanded deployment of fiber, with new forms of wireless, with bonded copper and coaxial cable. These transitions – plural – are a good thing because IP networks are more efficient, which can enable better products, lower prices, and massive benefits for consumers.

But so far, the transitions are all about the voluntary adoption of new supplemental services. Now, America's largest telecommunications providers have said that they want to engage in a very different kind of transition – they want to turn off their legacy networks. This is a momentous pivot point in the history of our networks. We want providers to deploy next generation networks, and we want consumers to be able to enjoy the benefits of those next generation networks. The best way to make sure that happens is to protect the core values that have defined the relationship between network operators and those who use the networks – competition, consumer protection, public safety and national security, and universal access. Protecting and promoting those values is the surest path to successful transitions.

With that in mind, this past January, the Commission unanimously adopted an Order inviting service providers to propose voluntary experiments designed to assess how the transition to IP impacts network users and initiating targeted experiments. We have already begun receiving submissions for experiments, which are important steps in the Commission's effort to determine how the IP transition can be conducted in a manner that preserves the enduring values. We are examining those submissions and working with the providers that filed them to make sure that these experiments will provide useful data to help inform our decision-making.

B. Consumer Protection

The “public interest” is what we always refer to when discussing why the Commission does what it does. As I have said before, I view my role as Chairman to be an advocate for the American people as we work to achieve the goals I have outlined above. I have often stated that the best consumer protection is competitive choice. I also believe a multi-stakeholder process where industry rapidly adopts processes and procedures can be faster and more nimble than the regulatory process. But, at certain points, having regulation is necessary.

Protecting and Preserving the Open Internet

For over a decade, the Commission has struggled with the idea of net neutrality. There has been a bipartisan consensus, starting under the Bush Administration with Chairman Powell, on the importance of an open Internet to economic growth, investment, and innovation. But today we do not have any rules in place to protect the open Internet. In January, the U.S. Court of Appeals for the D.C. Circuit ruled that the Commission has the legal authority under Section 706 of the Telecommunications Act of 1996 to craft enforceable rules to preserve a free and open Internet as a level-playing field for all Americans. I immediately set the Commission on a path to do just that, committing to putting in place enforceable rules by the end of the year. And in April, I circulated specific proposals to my fellow Commissioners in a Notice of Proposed Rulemaking.

Last week, the Commission adopted that Notice of Proposed Rulemaking, beginning the process of crafting rules to protect and promote the open Internet. The focus of the proposals we put forward and the questions we ask in this Notice is on maintaining a broadly available, fast and robust Internet that serves as a platform for economic growth, investment, innovation, free expression, and competition. I believe that the Section 706 framework set forth by the Court of Appeals in *Verizon* is sufficient to give us the authority to adopt and implement robust rules that will accomplish this goal. At the same time, the Notice we adopted asks whether the best path forward is under Title II. The entire purpose of an NPRM is to give Americans the ability to express themselves and provide analysis and guidance.

I look forward to a broad and thoughtful debate on the record. We have specifically created a means by which Americans who may not otherwise participate in an FCC proceeding can make their voice heard through our new Open Internet email address: openinternet@fcc.gov. And to ensure sufficient opportunity for broad public comment, we have provided for a comment and reply period that will give everyone an opportunity to participate.

Cell Phone Unlocking

Consumers who fulfill the obligations of their mobile phone contracts should be able to take device to a network of their choosing without fear of criminal liability. In December, the FCC secured an industry commitment to adopt voluntary industry principles for consumers’ unlocking of mobile phones and tablets. The voluntary agreement sets out six unlocking principles regarding postpaid and prepaid devices, transparency, notice to consumers, response

time and deployed military personnel. We will continue to monitor to ensure that agreement terms are being met for consumers.

This voluntary deal is an excellent example of what I call the “regulatory see-saw:” the more industry acts to meaningfully regulate itself, the less that has to be done by FCC.

Cell Phone Kill Switch

Mobile devices today offer amazing opportunities – the iPhone in my pocket has more computing power than the lunar module that got our astronauts to the moon. But these devices are also increasingly a target for criminals, creating a risk not just to property, but to physical well-being. Consider, for example, that 50 percent of all robberies in San Francisco involve the theft of smart phones, and a quarter of all robberies involving cell phones in San Francisco involve guns and knives.

In 2012, Chairman Genachowski launched the PROTECTS Initiative, a series of practical, meaningful solutions to discourage cell phone theft by preventing re-use. Last month, CTIA announced the Smartphone Anti-Theft Voluntary Commitment. Under this commitment the nation’s largest wireless carriers agreed to offer a free anti-theft tool that is preloaded or downloadable to devices. These are constructive steps that should help, but we need to do more.

Deterring thefts of mobile devices is a multi-faceted challenge that requires close coordination with law enforcement, carriers, handset manufacturers, consumers, resellers, and the international community. For this reason, next month we will be convening a workshop at the FCC to discuss real, practical consumer-oriented technical solutions that build on the FCC’s previous efforts and the recent CTIA anti-theft commitments. Working together, I am confident we can solve this problem.

C. Public Safety

Public Safety is one of the primary and essential missions of the Commission, and it cannot be left behind in this technological revolution. Consumers rightfully expect to be able to reach emergency responders, and those responders need to be able to locate those in need, as well as be able to communicate between themselves. The Commission has taken steps toward these goals.

Text-to-911

In certain circumstances, such as domestic violence or kidnapping situations, texting 911 may be the only practical way to get help. In almost all circumstances for people who are deaf or hard-of-hearing, texting is the primary means for reaching out for emergency assistance. But, as hard as it may be to believe in 2014, most Americans still can’t reach 911 via text.

This January, the Commission adopted a policy statement that all text providers should support text-to-911, and a Further Notice that proposes that this be accomplished by the end of 2014. The Further Notice includes proposals that would allow industry voluntary agreements to

fit into rules in order to keep regulatory action in this area at a minimum. To that end, I am heartened by the fact that the four nationwide wireless carriers recently reported that they have met their commitment to be ready to deliver text-to-911 to any requesting PSAP within their service territories. But we still need to be ready to act if others in the marketplace fail to deliver on this critical public safety effort, and our proposal gives us the flexibility to do just that.

E-911/Location Accuracy

Our E911 location accuracy rules were written when wireless phones were a secondary means of communication, and were mostly used outside. Today, more and more consumers use wireless phones as their primary means of communication, and more and more 911 calls are coming from wireless phones, from indoors. In February, the Commission adopted a Further Notice of Proposed Rulemaking to modify our E-911 location accuracy rules to reflect the new realities of the ever-increasing mobile world.

The proposals are simple – when wireless customers call 911, the location information delivered to the PSAPs must be delivered to the PSAP as accurately and expeditiously as possible regardless of whether the call is made from inside a 50-story high-rise or outside at a public park. Consumers already have that expectation when it comes to the commercial apps they use every day – if Google Maps can find them in a mall within a couple of meters, 911 should be able to find them, too. I look forward to reviewing the record that is generated by this Notice, and moving quickly to adopt rules.

IV. MAKING NETWORKS WORK FOR EVERYONE

The value of our communications networks come from what they enable. How networks enable a 21st century educational system, enable the expansion of capabilities for Americans with disabilities, and promote diversity, localism and speech are basic underpinnings of the FCC's responsibilities.

A. E-Rate Modernization

E-rate has been a very successful program for almost twenty years, connecting nearly all schools to the Internet. But it's time to modernize the program. The nature of connectivity in schools and libraries has changed dramatically in recent years. What was once provided through a 33.6K dial-up modem now demands high-speed broadband and in-class WiFi. Yet despite the clear need for speed, only about half of the E-rate's funds today go for broadband connectivity. And far less than half of E-rate funds is used for the kind of 100 mbps and higher speeds necessary for today's learning environment. Most disturbing in an era when WiFi is at every burger joint and coffee shop, is how the E-rate program is not helping to put WiFi in all classrooms.

Technology has changed; the needs of schools and libraries have changed; how E-Rate funds are distributed, however, has not. We are in the midst of a rulemaking to address and correct this reality, with a focus on three proposed program goals: (1) ensuring that schools and libraries have affordable access to modern broadband technologies that support today's digital

learning tools and techniques; (2) ensuring E-Rate funds are distributed more equitably and cost-effectively; and (3) streamlining the administration of the E-rate program. While the details of E-rate modernization remain in flux, the goals are clear. For modernization to be successful, the updated program must be:

- Focused on delivering faster -speeds to schools and libraries and WiFi throughout;
- Predictably funded and future-proofed;
- Fiscally responsible and fact-based; and
- Friendly to use.

The Commission is currently developing an order to modernize the program consistent with these goals. As the Commission prepares to take such action, I am pleased to report that steps have already been taken by Commission staff to speed the E-rate application review process. Our streamlining efforts have already yielded E-rate funding commitments for Funding Year 2014 that are four times as much as our first commitment wave last year. Even more importantly, these commitments include over \$400 million in funding for broadband requests. That's six times more broadband funding than we had processed at this point last year. Put another way: over \$350 million in additional early broadband funding. These funding commitments are going to allow schools and libraries across the country to bring higher speeds to their students and patrons beginning July 1.

B. Accessibility

Closed Captioning Quality Standards

Reliable and consistent access to news and information for deaf and hard-of-hearing communities is not a luxury, it is a right. In February, the Commission adopted rules in February to provide standards for better quality closed captioning on TV programming. Members of the deaf and hard-of-hearing community, alongside industry—NCTA, NAB, and MPAA—stepped up to the plate to help craft a set of rules that moves us toward improving captioning quality, while also assuring that vital news and other types of programming provide captioning. This is a good example of not only the value of public-private collaboration, but also how FCC actions directly impact the lives of Americans living with disabilities.

C. Media Ownership

Promoting competition, localism, and diversity within the media marketplace is a centerpiece of our democracy. For many years, the Commission has applied limits on ownership concentration in order to achieve these goals. I am committed to ensuring that the Commission has the data that we need in this evolving marketplace to ensure those limits are appropriate and well-placed. Having said that, we have an on-going responsibility to enforce our rules, including to close loopholes and to ensure that those who play by the rules are not disadvantaged.

Quadrennial Review

This March, the Commission initiated the quadrennial review of its media ownership rules to determine if they need to be modified to serve the public interest, building on a record it has amassed over the years. I am committed to completing this review and having final recommendations by June 2016.

Past reviews have resulted in court remands, and the Commission is exploring how best to craft rules that can survive judicial review. We are also reviewing diversity issues to see how best we can promote a diversity of voices, including women and minorities. We have also invited comment on elimination of the existing radio-TV cross-ownership rule; and modification of the existing Newspaper-Broadcast Cross-Ownership prohibition.

Joint Sales Agreements

While our quadrennial review is underway, our existing rules remain in place. In March, the Commission closed a loophole in our attribution rules for TV Joint Sales Agreements (JSAs) that had been exploited by some to circumvent our local TV ownership limitation. By prohibiting arrangements that have the full effect of common ownership – by stations' own admission in their SEC filings – we will protect viewpoint diversity and competition goals. We have also been clear to point out, however, that where we find that an agreement serves the public interest, we will waive our rule and do so through an expedited process. We recognize the Subcommittee's particular interest in ensuring that broadcasters found to be out of compliance with our rules have sufficient time to unwind the arrangements, and we look forward to working with you as these rules go into effect. I would also note that the new rules apply only to JSAs, not Shared Services Agreements (SSAs). The Commission sought additional comment on how to define SSAs and whether to require disclosure.

Retransmission Consent

Congress created the retransmission consent regime over 20 years ago. Since that time, we have witnessed significant changes in the marketplace and been able to observe how parties have operated in the process, while cable prices have steadily risen. Congress intended TV stations would negotiate retransmission consent agreements on their own. Increasingly, though, stations in a local market that are separately owned have banded together to negotiate for retransmission consent fees, even though they otherwise would compete against each other for those fees.

In March, the Commission adopted new rules to prohibit joint retransmission consent negotiations by same market TV stations that are both ranked in the Top 4 in order to level the playing field and to potentially keep such agreements from unfairly increasing cable rates for consumers. I recognize that the Subcommittee has taken similar action as part of the STELA reauthorization process, and appreciate your support for these common sense reforms.

V. PROMOTING OPERATIONAL EXCELLENCE

I will close with the topic that I started with back in December, because it remains a priority – to both you on this Subcommittee, and to me personally – not to mention that all of which I have mentioned above relies on it: Process Reform. In order to keep up with the rapid pace of change in the industries that we oversee, we must hold ourselves to a high standard to be as agile, efficient, and transparent as possible.

In January, a Staff Working Group presented a Process Reform Report to the Commission as an important first step, and we sought comment from the public on the recommendations that were identified within that Report.

As we review the record developed, we are moving forward with changes to streamline how the Commission functions so we are better able to serve the entities we regulate, as well as the American public. Some of the more visible activities include the use of a Consent Agenda at Commission meetings to facilitate quick action on non-controversial items that require a Commission vote, a shift to all-electronic distribution of documents, and the elimination and modification of outdated rules. Addressing some of the other recommendations involve more time and resources – such as streamlining license processing and reworking our consumer complaint process. In particular, we need to upgrade our IT infrastructure; we have more than 200 relic IT systems that are costing the agency more to service than they would to replace over the long term. But I believe these investments are essential and will payback in dividends with the increased efficiency gained.

VI. CONCLUSION

Again, thank you for having me here today. As I noted in December, my goal is to have an open and productive relationship with the Subcommittee members as we work together to address the challenges – and opportunities – in the 21st Century telecommunications and communications marketplaces.

Mr. WALDEN. Mr. Wheeler, Chairman, thank you for being here. We appreciate your work and your willingness to come and spend some time with us and respond to our questions.

I want to pick up on the Middle Class Tax Relief Act which, as you know, was designed to create a forum where broadcasters could volunteer their spectrum up for auction for mobile broadband use. It has never been done quite like proposed, and we all knew that going in. But it seemed like a good balance. The critical term in all of this was that the broadcasters would volunteer to put their spectrum up. They wouldn't be forced into it. That was the agreement. Yet many of the actions that we have seen coming out of the Commission would lead some to believe that the FCC might be bullying broadcasters into giving up spectrum without providing hard data and clear models so that the broadcasters can thoroughly and thoughtfully deliberate and choose to participate or not in this first-of-a-kind auction.

Let me tell you what I am thinking here—for example, the joint sales agreements that are now outlawed. These agreements essentially offer broadcasters a viable business model in small markets that would otherwise suffer from lack of service. You are considering increasing the attribution value of UHF stations such that more broadcasters could end up in violation of the national cap under the Broadcast Ownership Rule. And the FCC has failed to process broadcasters' petitions for allocation changes from VHF to UHF even though the petitions were filed prior to the Middle Class Tax Relief Act.

And finally, you are seeking to use the modified version of OET-69. I am hearing about this to repack broadcasters. This will likely result in reduced coverage for broadcasters that choose to stay in the business, making the business itself less viable. So the very people you are trying to incentive—to put spectrum up so that it would be available for auction, I think are concerned about where the Commission is headed in a number of areas.

Can you explain to me how these actions will actually encourage broadcasters to participate in this auction?

Mr. WHEELER. Thank you, Mr. Chairman. You know, I think the goal here that we have been trying to follow is not to discourage or to encourage but to follow through with our responsibilities, and that means enforcing and updating our rule—

Mr. WALDEN. Do you think any of the things I have just cited encourage broadcasters to participate more? If you don't have broadcasters showing up with spectrum—

Mr. WHEELER. So as I said, Mr. Chairman, I don't think that—we have an important, as you said, an important and historic role. This is an incentive auction.

Mr. WALDEN. I am aware of that, yes.

Mr. WHEELER. What we have tried to do in the Mobile Spectrum Holdings Rule, for instance, is to encourage broadcasters—encourage, I am sorry, wireless carriers to buy which creates the incentive. The interesting thing, there was a report by one of the Wall Street analysts last week who said we expect the greatest risk to this auction, broadcasters not showing up, just dropped. Because the fact that AT&T suggested that they are ready to bid between \$9 and \$18—

Mr. WALDEN. Right.

Mr. WHEELER [continuing]. Billion for 20 to 40 megahertz, this analyst said should send positive signals to broadcasters. So our—

Mr. WALDEN. All right but—

Mr. WHEELER [continuing]. Goal is to create this marketplace, and we are not trying to take regulatory action—

Mr. WALDEN. All right. Well—

Mr. WHEELER [continuing]. In unrelated areas that would—

Mr. WALDEN. But you are taking lots of regulatory actions, and it does have an effect on the marketplace. I mean those two are fact, the quadrennial review not complete, new decisions being made on ownership. Without these things are out there. If we don't have these broadcasters coming to the table voluntarily, there won't be spectrum available.

So I want to steal a line from the distinguished gentleman from Michigan, and this one I refer to as Mr. Dingell, to see if I can get to sort of some yes or noes here. Will you commit that the FCC will not score television stations based on their enterprise value?

Mr. WHEELER. On their enterprise value? That is not our intention, sir.

Mr. WALDEN. So that is a no. Or that is a yes, actually, that you will commit that you will not score. Is that correct?

Mr. WHEELER. Yes.

Mr. WALDEN. Yes. You will commit the FCC will ensure that broadcasters' costs to reallocate are covered by the \$1.75 billion relocation fund?

Mr. WHEELER. We believe that that fund will be adequate.

Mr. WALDEN. OK.

Mr. WHEELER. That is what Congress told us to spend, period.

Mr. WALDEN. And will you commit to completing frequency coordination with Canada and Mexico before the auction?

Mr. WHEELER. I think the issue there is what is the term "complete?" As you know, on the DTV transition, it never came down to actual signing on paper, but we understood where each other was. And I am very confident that we will be at that kind of a point.

Mr. WALDEN. Because that is critical. And will you commit to revoking only those low-powered TV and translator licenses that are necessary to complete the auction?

Mr. WHEELER. Yes.

Mr. WALDEN. Thank you. And I think I am out of time. So with that, I will now yield to the gentlelady, my friend from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman. A lot of things to discuss, but I want to bore down or bore into some of the particulars on your recent proposal relative to the Internet on net neutrality.

I have argued, many advocates for net neutrality have argued, that paid prioritization represents a fundamental departure from the Internet as we know it, just kind of restating what is obvious. But I think that when you have hundreds of thousands of people communicating from across the country to you on it, that it is important to raise.

Now, as a policy, not as a legal question, do you think that paid prioritization should be blocked outright?

Mr. WHEELER. So I have said, Congresswoman, that I don't believe there ought to be haves and have-nots—

Ms. ESHOO. No, no, just answer my question.

Mr. WHEELER [continuing]. That—

Ms. ESHOO. Just tell me. Do you think that it should be blocked outright?

Mr. WHEELER. We have asked that question in the rulemaking, and what I have said is that I believe that under Section 706, anything that is anti-competitive or anti-consumer is competitively unreasonable and therefore can, and should be, blocked. And that becomes the trigger with how you deal with paid prioritization.

Ms. ESHOO. Yes. Now, what happens—

Mr. WHEELER. And on the question, per se, that you have asked, we specifically asked, how and whether.

Ms. ESHOO. Now, what happens if the FCC determines if there is no way to create an outright ban on these paid agreements under 706? Where does that leave you? Where does that leave the country?

Mr. WHEELER. So when the court gave us our instructions, they talked about what they called a "virtuous cycle," and that is that that content drives the need for conduit which then creates the opportunity for content and that this cycle is what is our responsibility to protect. And that's what 706 authorizes us to protect.

And so what my proposal is is that we take them up on that and we say if there is something that interferes with that virtuous cycle, which I believe paid prioritization does, then we can move against it.

Ms. ESHOO. All right. But now let us move over to Title II. Title II is described—it depends on who is describing it. It is either a scourge—it has been compared to the early railroad regulations in our country—to being the flip side, the savior title. I talked about in my opening statement about one of the imprimaturs of the Internet has been consistent innovation, and while there are those that—and I understand why people would move to Title II because they want the Internet protected and these values, they are worth protecting. But I also believe that there is room in Title II for heavy-handed regulation. And I don't think that—well, let me put it this way. I think that we need a light but strengthful legal touch in this because the values are so essential, and people across the country and in the world—I mean, I am hearing from people from different parts of the world as well—are calling for these protections.

How would you envision, how would you handle constraint under Title II—

Mr. WHEELER. Well—

Ms. ESHOO [continuing]. In terms of being the chief regulator?

Mr. WHEELER. So as you know—

Ms. ESHOO. Have you give thought to this?

Mr. WHEELER. Pardon me?

Ms. ESHOO. Have you given thought to this?

Mr. WHEELER. Yes, ma'am.

Ms. ESHOO. OK. Go ahead.

Mr. WHEELER. And as you know—

Ms. ESHOO. As some people say, share it with me.

Mr. WHEELER. As you know, Title II—there is nothing in Title II that prohibits paid prioritization. As a matter of fact, we have all kinds of paid prioritization—

Ms. ESHOO. You are worrying me by bringing that up first. But anyway, go ahead.

Mr. WHEELER. So the question, because it goes to you—I think the root question of yours, which is, “How do you forebear from that,” OK? And so it is possible to go through and say, “Yes, we will not do this, we will not do this, we will not do this.” In the wireless context, interestingly enough, Congress created wireless as a common carrier, but then specifically said, “But this doesn’t apply, and this doesn’t apply, and this doesn’t apply, and this doesn’t apply.” We can do that as a Commission as well. It has been proposed that that is an approach to take.

There are also those who throw up their hands in great concern over that because they say, “OK, well, this Commission may do this but what about the next Commission?” And you can’t bind a future of Commission by making those kinds of determinations.

So what we have done in this NPRM is to ask the specific question about “Here is Section 706, here is Title II, let us compare them and contrast them with each other and tell us what the pluses and minuses and the best ways to get through this are.” And I think that leads us to the kind of answer that you are asking for today.

Mr. WALDEN. The gentlelady’s time is expired. We will go now to the gentlelady from Tennessee, Ms. Blackburn, the Vice Chair of the Full Committee, for her questions.

Mrs. BLACKBURN. Thank you, Mr. Chairman, and Mr. Wheeler, we thank you for taking the time to come and be with us.

Mr. WHEELER. Thank you.

Mrs. BLACKBURN. You have got a feisty term going over there at the FCC, and in Tennessee we would say you are kicking up a little dust, and it is causing concern. Many of our content creators have a tremendous amount of concern about your approach, and many of our healthcare innovators who are looking at apps and telemedicine concepts and things of that nature are also expressing concern. And I think that probably your actions have inserted a good bit of uncertainty into the innovation sector that is looking at how we best utilize all things Internet for quality of life and access for economic development, for healthcare, for innovation.

And I have got just a couple of simple questions for you. First of all, on cost-benefit analysis—and I thank you that last night your team sent a letter over to us on that question. But what concerned me was that in the letter you say that this is just a tool. Cost-benefit analysis is just one of many tools that would go into your decision, and your NPRM does not include an initial cost-benefit analysis. And your predecessor, Mr. Genachowski, in this committee, came before us and assured us he was going to use this, and I am actually going to read you his statement that he gave to us. He said, “During my tenure, I brought particular focus to this process including by directing the early involvement of our chief economist in the analytical process of rule-making and by having

FCC staff consult with the staff of the Office of Information and Regulatory Affairs on best practices in conducting cost-benefit analysis.”

And I think that it is an incredibly important component of this to look at what the cost of net neutrality rules would be to the consumer and also to industry. So I want to know from you, are you going to give us a commitment right now that you will conduct a thorough and extensive cost-benefit analysis of the actual cost to the consumer and to industry on these rules?

Mr. WHEELER. Thank you, Ms. Blackburn. I agree that cost-benefit analyses are crucial to decisionmaking, and in this rule-making, we specifically ask what are the costs of one approach or another and what are the benefits, one or another, so that we can collect that information and have that kind of analysis. I agree with the importance of cost-benefit analysis.

Mrs. BLACKBURN. OK. Let me ask you this also. You know, the Commission’s funding really comes from those that are regulated by the FCC, but we have some that are not—they are impacted by this but they are not regulated in paying those fees.

So in the net neutrality context, for example, companies like Google and Netflix want the FCC to act on their behalf and petition or visit the agency, if you will, in support of those efforts, but they free-ride because they are not paying the fees and bearing that part of the regulatory burden. So since they seem so ready and willing to rely on regulation to help them with their business models, how would you recommend that those entities share in the cost, pay their part of the cost of funding the agency?

Mr. WHEELER. With all respect, that is above my pay grade. That is a decision that this Committee and the Congress can make and setting those rules as to—

Mrs. BLACKBURN. I am asking what your—

Mr. WHEELER [continuing]. Who we can collect from.

Mrs. BLACKBURN [continuing]. Recommendation would be. They come and they lobby you, and they are pushing the net neutrality rules. And while they may like what you are saying because they want you to step in, we have a lot of people out there who are paying the fees that are not in favor of what you are doing, and we have a lot of innovators who are not in favor of what you are doing. And your door has the name chairman on it. So I am asking, what is your perspective?

Mr. WHEELER. So our effort in all of this is to represent the American people, not Company A or Company B. We have been told by the Congress from whom we can collect regulatory fees, and we do. If there is a decision that we should collect regulatory fees from somebody else, that is something we obviously will take. If there is a decision that we should expand regulatory authority over other entities, that is obviously something we should do. But that is a decision that is out of our hands.

Mrs. BLACKBURN. I yield back.

Mr. WALDEN. The gentlelady yields back. The chairman recognizes the gentlelady from California, Ms. Matsui, for her questions.

Ms. MATSUI. Thank you, Mr. Chairman. Mr. Chairman, I would like to understand, given the success of the Internet in the absence of prioritization, precisely what types of paid prioritization you be-

lieve would speed the deployment and adoption of broadband Internet access services? Given that paid prioritization agreements would be used as a barrier of entry to start-ups and small business, what prioritization arrangements specifically would be better for the Internet than the no prioritization norm we have today?

Mr. WHEELER. What we are trying to do in this item is to say that anything that affects that virtuous cycle that the court talked about and I talked about before, is not appropriate, is unlawful, and that would include paid prioritization. Now, the court told us to look at this on a case-by-case basis. We have asked the question in the rule-making as to whether we should look at it generically and say it is all out, and we are soliciting comments on that.

But you know, the concept of paid prioritization, when I buy Internet access, I am buying the full pipe. I am buying access to everything that is out there. And if somebody comes along and says, "oh, no, you can't get this unless you pay more," that is unreasonable, and should be banned. If somebody comes along and says to a content provider, "You can't get on unless you pay more," that is unreasonable, and that would not be permitted.

Ms. MATSUI. OK. Well, as for my part, other than public safety, I believe paid prioritization should be banned.

I also think another concern here is a last-mile equivalent we are seeing appearing. The fact that there is so much uncertainty with paid prioritization is troublesome. If this concept moves forward, we could inadvertently block the next Google or Amazon from the market without even knowing it. I am concerned that your hands may be tied here. Even if the Commission wanted to ban anti-competitive paid prioritization deals, you may not have the authority or the tools to do so.

Chairman Wheeler, if you were to explain to my constituents what is occurring in the market right now with the two mergers, content peering agreements and now paid prioritization could be legitimized under a commercially reasonable standard, what would you tell them, not just what it means for them but also for competition and for economy as a whole?

Mr. WHEELER. I would tell them that I felt that paid prioritization was commercially unreasonable and therefore could be dealt with. And on the question of peering, that that is a separate issue that the Commission needs to look at and will be looking at. But I would emphasize that I am a strong supporter of the open Internet, and I would also tell them a story that when I was an entrepreneur, I was shut out of cable systems because they were closed networks. And I would come with a new product and couldn't get on. And then when I was a venture capitalist before taking this job, that the companies that I was backing, had to have access to the Internet, could only succeed if they had access to the Internet.

So I would say to them that I believe in an open Internet. I have experienced closed networks and the harm they cause to innovation and that I want to protect and preserve an open Internet.

Ms. MATSUI. You know, I think this is a very critical time. When I have ordinary people practically off the street coming to me and asking me about all these things they have heard because people today really depend on the Internet, ordinary citizens, the entre-

preneurs who are concerned about this and who else we might not know out there. So it is very concerning to all of us that there is a potential that we may have a situation where we won't have an open Internet.

And I would also like you to consider some of these mergers. I mean, we feel like we are kind of in the Wild West of the digital economy now, and now with mergers coming forward—but can you commit to us these large mergers that are before us, they may be different from each other, but can you commit to us here that the FCC will carefully scrutinize these deals with a focus toward public interest?

Mr. WHEELER. Without hesitation and with complete affirmation.

Ms. MATSUI. OK. Thank you. Mr. Chairman?

Mr. WALDEN. The chair now recognizes the former chairman of the Full Committee, Mr. Barton, for his questions.

Mr. BARTON. Thank you, Mr. Chairman, and I want to echo the last question you asked, Chairman Wheeler, about low-power television. You and I are working on a bill hopefully to give them some protection. We understand under current law they don't have standing when they repackage, but we hope to give them some at least priority or help if and when we do do these repackaging of the spectrums. So I want to commend you for that last question.

I have listened, Chairman Wheeler, to my friends on the Democratic side repeatedly talk about the open Internet and whether you should try to regulate it under Section 706 or Title II. I think you are asking a false question. The Internet is open. The question is what does the FCC do in terms of monitoring to make sure that it stays open?

And the analogy I am going to use is not perfect, but I think it is instructive and educational. The airways that we fly back and forth from Washington to our districts are open, but they are regulated and monitored for a number of reasons by the FAA. If I call up American Airlines and I say I want to go from Washington Reagan to DFW and they quote me a price, let us say it is \$350 one way. Well, when I show up with my ticket, I get one seat on that plane. I don't get to take 100 of my friends and put them on the plane with me because I happened to buy the ticket first and show up first.

So it is obvious that it would be great for \$350 if I could fill the plane. But we allow the airlines to price by volume. You want one ticket? It is \$350. You want two tickets? It is \$700. Maybe if you want to buy the whole plane, they do give you a discount. It is only \$250. But we don't let the first person to buy the ticket use the whole plane for \$350.

And for all the bold talk about open access, what people are really trying to do is, you know, I want to pay a minimum price and get all this broadband and I want to download everything from Netflix and I don't want to pay if I download every movie they rent or vice versa. Netflix pays a basic price, and they can service 10 million people instead of whatever it would be.

So you know, the broadband providers who have spent billions and billions of dollars and have networked this country and provided access through the competitive market principles are not going to somehow all of a sudden decide as long as the FCC under

your chairmanship make sure that it stays a competitive model. They are going to continue to provide an open Internet, but they may want to provide based on volume of use some sort of a pricing system that allocates if it is in a limited spectrum.

I see no reason to try to shoehorn some sort of a regulatory approach into either Title II or Section 706. You know, explain to me why my approach which is what we have been doing which works is the wrong approach?

Mr. WHEELER. Let me see if I can respond to both parts of your question. First, , as I said to the Chairman, we did not want to move those whoon LPTV don't have to be moved as a part of it. We also believe that there are opportunities to go to digital and the new efficiencies that that brings, just like it did in the Class A stations. And thirdly, we are opening a new rule-making to specifically deal with that because we agree with the importance of low power and translators.

To the second part of your question, let me take the Chairman's hat off and put my consumer hat on for a second because two weekends ago I called my ISP and increased my capacity because I wanted faster through-put. And they said for another \$10 a month, we will give you another, what turned out to be like, 20 Meg. That is a marketplace transaction. That is something that is accepted now. That is not something that is part of the open Internet rules.

What the open Internet rules are trying to say is that when I buy that capacity, I have bought that ride to every place on the Internet, that somebody can't turn around and say, "Oh, but you can't say that," or somebody can't turn around and say, "Well, you can deliver that, Tom, but you have got to pay me an extra fee."

And so the concept of the open Internet is that I have bought this broad pathway, and I have the right to use it unfettered on an open basis and that is what we are trying to deliver in this rule-making.

Mr. BARTON. I am not trying—my time is expired. I am not trying to oppose that, but if you want—you are looking at it from the consumers' standpoint, and I accept that, that everybody should have access. But if you are a provider of content, you should be willing to pay more based on the number of items you are going to put at any given time on the open Internet so that everybody has access to it. Because if you have a constrained pipeline, somebody has to make a decision how you put things into the pipeline, whether it is the airplane, whether it is the airwaves or the Internet.

With that, Mr. Chairman, I yield back.

Mr. WALDEN. The gentleman yields back. The chair now recognizes the former chairman on the Democratic side, Mr. Waxman, for his questions.

Mr. WAXMAN. Thank you, Mr. Chairman. Chairman Wheeler, I commended your leadership earlier in my opening statement about the spectrum auction, so I want to ask questions about a different subject and that is net neutrality.

Mr. WHEELER. Yes, sir.

Mr. WAXMAN. I commend you for tackling this issue and for seeking comment on a broad range of issues. But I have serious concerns about some proposals that have been discussed.

You have said that there would be presumption against broadband providers like Verizon, AT&T and Comcast, entering into arrangements that give exclusive advantages to their affiliates. Is that right?

Mr. WHEELER. Yes, sir.

Mr. WAXMAN. OK. What I don't understand is why this presumption against exclusive arrangements would be limited to affiliates. Suppose Netflix entered into an exclusive arrangement with AT&T or Comcast for faster speeds for its videos that block competitors like Amazon Prime from getting similar services. I think that would be a serious threat to competition and an open Internet, yet your proposal does not create a presumption against these exclusive arrangements.

Why would you allow any exclusive arrangement that guarantees some content providers faster speeds than competitors can access?

Mr. WHEELER. Thank you, Mr. Waxman. This goes back to this virtuous cycle that the court talked about. You know, it was interesting. Yesterday in the Wall Street Journal there was an article that interviewed a bunch of infrastructure manufacturers about the impact of net neutrality, and they flat-out said that if you offer fast lanes for some, you are going to degrade service for others. I think that is at the heart of what we are talking about here. That would be commercially unreasonable under our proposal.

Mr. WAXMAN. OK. The problem with exclusive arrangements is that they would let some companies block their competition from similar advantages. In markets where there is no or only limited choices of broadband providers, that would stifle openness in competition. I just want to say to you that I am opposed to any form of paid prioritization. Paid prioritization divides the Internet into the haves and the have-nots, and it will entrench the big companies at the expense of start-ups. My understanding is that you have asked comment on a multi-factored test for determining when paid prioritization is permissible and when it would be prohibited. My concern is that this will create a lot of ambiguity and a lot of litigation. I believe right lines would be much better for the market and for innovation.

So I am going to ask you to consider a presumption against all paid prioritization as you develop final rules. Will you agree to consider this option?

Mr. WHEELER. Absolutely, and we have asked in the NPRM specifically whether and if so, how do you accomplish it. So that is a ripe debate that is in the NPRM right now, sir.

Mr. WAXMAN. My understanding is that the reason you have proposed a complicated, multi-factored test is concern about the court ruling, and I agree that if you are limited to acting under Section 706, your options could be limited. But if you are not limited to Section 706, you could establish a presumption against paid prioritization under Title II. And that is why it is so important for you to use your Title II authority as backstop authority. You don't have to settle for weak open Internet rules if you exercise your full powers, and I am glad you are looking at that possibility.

Let me close by thanking you for seeking comment on the backstop proposal in the proposal adopted last week. I am committed to working with you to ensure the Commission adopts strong and open Internet protections for consumers and innovators while encouraging continued investment in the online content and services we all rely on and enjoy today. I think it is important that we get the substance right. We have tried three times, we meaning you at the FCC, because of the concern that the consumer have full access to what is on the Internet and full access to be able to use the Internet to its greatest maximum potential. And I would hate to see that net neutrality in any way be diminished if we have an opportunity under the law as we look at it to make sure that we get the substance right.

Mr. WHEELER. Thank you, Mr. Waxman.

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

Mr. WALDEN. The gentleman yields back his time. I now turn to the distinguished gentleman from Ohio, the vice chair of the Subcommittee, Mr. Latta.

Mr. LATTA. Well, thank you very much, Mr. Chairman, and again, Chairman Wheeler, thanks very much again for being here. There has been some discussion on Title II, and I would like to follow up on some of that questioning.

The central premise of Title II regulation has always been that the regulation was a substitute for competition. And two parts for the question then. What types of findings has the Commission made to justify entertaining the idea of Title II regulation of the Internet? And then do you believe the FCC should have to make a specific showing that of a market failure before imposing rate regulation or reporting requirements that are the precursor to rate regulation?

Mr. WHEELER. So again, these are the kinds of questions that we have tried assiduously not to decide on but to ask about in this rule-making. We are going to have to make a decision on exactly those questions at some point in time, but what we want to achieve is a record that gives everybody the opportunity to opine on that so that we can be appropriately informed.

Mr. LATTA. Well, let me ask, what is your timeline on that then?

Mr. WHEELER. So we have got 60 days for comments and then 45 days for reply comments.

Mr. LATTA. OK. So are you saying then that you are not ruling out rate regulation?

Mr. WHEELER. I am saying we have asked the question about Title II and the full panoply of Title II, yes, sir.

Mr. LATTA. OK. Well, let me ask you this. What have you been hearing from the communities thus far, especially when you are saying that you are going to be asking those questions? What have you been hearing out there?

Mr. WHEELER. Well, we have heard very little on the record thus far. There has been a great outpouring of people speaking to us through the press, people speaking to us through letters and this sort of thing. And as I indicated at the outset, there are two diametrically opposed positions. One is that you should not do anything and the other is that it should go all the way to being regulated like a public utility. And our job is to find that which is best

for consumers and best for encouraging investment in the Internet which itself is best for consumers.

Mr. LATTA. Let me go on with this question. While you have resolved some of the issues in the 5 gigahertz rule-making, there are a number of issues outstanding that have the potential to open up another 195 megahertz of spectrum for unlicensed use. What is the FCC's and your plan for tackling that open issue?

Mr. WHEELER. In 5 gig?

Mr. LATTA. Right.

Mr. WHEELER. So there is—you actually think about 5 gig in 3 bits. The first bit we have dealt with, that is the lower end of 5 gigahertz. In the middle component of 5 gigahertz, there are lots of national defense kinds of activities, radar and this sort of thing. And the question is, how can you work out sharing arrangements there, and we are working with those parties.

On the upper end is where you have spectrum that has been identified for intelligent traffic, ITFS, kinds of activities, and that is based around the 802.11 standard. There are strong feelings about the need to protect that. I believe that it is possible to work together to meet both sets of needs since it is based around a common 802.11 standard.

Mr. LATTA. And in my remaining time, I want to ask this last question. The FCC's 2011 Universal Service Transformation Order requires phone companies to set minimum prices that they can charge the consumers if the provider wants to continue receiving the same amount of funds from the USF program to support the high cost of its business. So as a result, many rural consumers, a lot that I represent out there, will see the rate floor go from \$14 to about \$20.46. And while the Communications Act requires rural rates to be reasonably comparable to rates in urban areas as affordable, reasonable comparable does not necessarily mean that the rural rate should be exactly the same as the urban rate when the rural customer might be able to call only a few thousand people locally while an urban customer can call many times more than that.

Should the rate be the same in the rural areas where the average income is significantly lower, then it might in fact not be as affordable. The rate floor continues to be a concern for many of our telecommunications providers in my district and others servicing rural America. While I understand that the FCC has agreed to phase-in the increase at \$2 per year and postpone that start date until after 2015, can you explain why the FCC interpreted the reasonably comparable rates to mean exactly the same rates between urban and rural areas considering the smaller population of rural calling areas and the fact that what is affordable in the largest urban areas is not what is also affordable to consumers in the rural?

Mr. WHEELER. Thank you. I am glad you asked that question. It is an important question. So as you stated, we are supposed to make sure that things are reasonably comparable. The reason for that is to make sure that the subsidies that some Americans are paying to deliver service to other Americans don't end up being subsidies that some Americans are paying to reduce the bills of other Americans but to overcome the high cost of getting to them.

In some instances, it has been, unfortunately, the former. In 16 states there are situations where some consumers are paying \$5 a month for telephone service because they are being subsidized by people in your district and other districts. We need to get our arms around that. So what we have done is to say, OK, step one goes into effect January 15. Then what we are going to do is—and that can't be more than \$2 by the way. And then what we are going to do is go back out with another survey that hits the kind of granularity you were talking about in terms of service and including long distance and all these kinds of things so that we have a better understanding of exactly what comparable means, and then look at that issue again.

Mr. LATTI. Thank you. Mr. Chairman, my time is expired, and I yield back.

Mr. WALDEN. The gentleman yields back. The chair now recognizes the chairman emeritus of the committee, the gentleman from Michigan, Mr. Dingell.

Mr. DINGELL. Mr. Chairman, I thank you for your courtesy. I commend you for holding this hearing. I would like to welcome our old friend, Mr. Wheeler, back; fine public servant, and we are looking forward to good things from him.

Mr. Chairman, at last week's open meeting, the Commission adopted a number of big-ticket items including a new net neutrality NPRM and draft rules for the upcoming incentive auction of broadcaster spectrum. Concerning the former, I commend you for your efforts to keep the Internet open and will be watching the matter closely as it goes forward. It is my hope the Commission will work with this committee to ensure that any final action it takes to conform to its statutory authority, especially concerning Title II, reclassification.

Now, with respect to the incentive auction, I am interested in what the Commission intends to do about treating broadcasters fairly. My questions will require a simple yes or no answer.

Mr. WHEELER. Yes, sir.

Mr. DINGELL. Mr. Chairman, I would like to begin with a parochial matter. Section 6403(b)(1) of the Middle Class Tax Relief and Job Creation Act specifies that the Commission may, subject to international coordinates along the border with Mexico and Canada, reassign and relocate and reallocate broadcast frequencies. Is that correct?

Mr. WHEELER. Yes, sir.

Mr. DINGELL. Now Chairman Wheeler, in the Commission's July 2013 response to my letter of inquiry about the reverse auction, Gary Epstein, head of the Commission's Incentive Auction Task Force stated the following. The language used in Section 6403(b)(1) of the Act is "identical to that used by the Commission in describing its handling of the earlier DTV transition in which the Commission adopted our proposed allotments for these stations subject to our continuing negotiations with Canada, notwithstanding the broadcasters' requests to the contrary." One here could reasonably assume based on the statement that the Commission may reassign and reallocate broadcast frequencies pursuant to the Act while in negotiations with Canada and Mexico are still ongoing. Is that correct?

Mr. WHEELER. Yes, sir.

Mr. DINGELL. I am going to ask you to submit for the record how you are going to assure protection to the broadcasters and the viewers in that process.

Mr. WHEELER. Yes, sir.

Mr. DINGELL. Now, Mr. Wheeler, does the Commission believe that concluding negotiations with Canada and Mexico prior to commencing the reverse auction will give broadcasters, particularly in border regions, greater certainties and likely to increase their willingness to participate in such auction? Yes or no.

Mr. WHEELER. Yes, sir.

Mr. DINGELL. Now, Mr. Wheeler, does the Commission expect to conclude negotiations with Canada and Mexico prior to commencing the reverse action next year? Yes or no.

Mr. WHEELER. The expectation is it is the goal.

Mr. DINGELL. You may not make it is what you are saying.

Mr. WHEELER. It is the goal, and I answered you in your previous question—

Mr. DINGELL. Will you notify this committee as soon as that becomes likely or dangerous?

Mr. WHEELER. Yes, sir.

Mr. DINGELL. Now, in this matter, Mr. Chairman, I would like to state for the record that it is my understanding based on exchange with counsel at the Energy & Commerce Subcommittee on Communications and Technology, December 1, 2011, markup of the act that border negotiations are to be completed before the Commission reassigns broadcast channels. I hope that Chairman Wheeler will honor that understanding. I hope, Mr. Chairman, you understand I have great apprehensions about that because of the impacts it could have on the broadcasters and also on my constituents.

Mr. WHEELER. Mr. Chairman, this is—I share your deep concern about this, not only because of the very legitimate concern you have about your constituents and other Americans getting service along the border but also that the cantilevering effect, if you will, as spectrum allocation then goes into the middle of the country.

I can assure you this is an incredibly high priority. I can also assure you that our Canadian colleagues have been very forthcoming and very helpful.

Mr. DINGELL. I would like to have this submitted for the record in response to correspondence. Now, Mr. Chairman, I note that the Commission proposes to use a method called “scoring” to set individual prices for each broadcast station participating in the reverse auction. Is that correct? Yes or—

Mr. WHEELER. It is one of the things we are considering. We have not made the final decision yet.

Mr. DINGELL. There are others?

Mr. WHEELER. We are looking at others. Scoring—

Mr. DINGELL. I am going to ask that you submit in response to correspondence a proper answer on that particular point.

Mr. WHEELER. Yes, sir.

Mr. DINGELL. Now, Chairman Wheeler, is the Commission concerned that scoring as opposed to competitive bidding will decrease

broadcasters' willingness to participate in the reverse auction? Yes or no.

Mr. WHEELER. No.

Mr. DINGELL. Chairman Wheeler, in general, do you intend to work in good faith with broadcasters as the Commission refines the rules for reverse auction in order to see to it that their needs are met as the act specifies to the best of your abilities? Yes or no.

Mr. WHEELER. Absolutely.

Mr. DINGELL. I want to quote Admiral Rickover, who once observed, "The devil is in the details but so is salvation." I am hoping that you are going to see that the salvation is there and not just that we are going to find ourselves amidst trouble because of carelessness, not by you, but by some of your overenthusiastic and less-than-competent predecessors.

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

Mr. LATTI [presiding]. The gentleman's time is expired and has yielded back. The chair now recognizes the gentleman from Illinois, Mr. Shimkus, for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman, and Chairman Wheeler, welcome. I am going to try to get this through three pretty quick points if I can. As you know, there is a lot of concern on this side of the dais on this Title II debate.

Mr. WHEELER. Yes, sir.

Mr. SHIMKUS. And the basic premise is, for me, how do you build out? We want more, not less. Does a regulated monopoly incentivize more build-out, more pipelines? Or does a competitive, capital-intensive incentivize market-driven process? I believe the second. We have gone from copper to cable, coaxial cable, satellite, cellular, fiber, a lot of different ways for data to now flow, and we want to encourage that. And I think only—I kind of like the idea of incentivizing people who want to use more, making them pay more, to incentivize those who carry so someone may want to build out more. So that is where I kind of where I come from. My position is more pipes, not less. More pipes, not regulated pipe. Competitive markets versus controlled markets.

Because here is an example of a recent—on May 16, a Wireline Competition Bureau released a public notice seeking comment on state regulation of dial-up Internet traffic. Dial-up? I mean, this is a dinosaur. It is hardly used.

You want to talk about uncertainty for the state and for the providers when we are still in this process more than 15 years after the FCC first discussed the treatment of dial-up, we are now to this process? That is just kind of a statement. That doesn't create certainty. Would you agree?

Mr. WHEELER. Well, what we are trying to do, Mr. Shimkus, is to create an environment that assures consumers and those who rely on the Internet that there is openness, while at the same point in time encouraging investment and—

Mr. SHIMKUS. Well, let us just go back. I get that. But this is dial-up.

Mr. WHEELER. So if we are dealing with the dial-up issue, I mean, that is really—that is a different topic—

Mr. SHIMKUS. Well, it is but it is not because it is the whole debate about certainty, and we actually have a dinosaur application that—why are we even—

Mr. WHEELER. So we still have 40 percent of our consumers on dial-up telephone lines. One of the challenges that we have is, how do we evolve that into an all-IP environment which would be an Internet-like environment? And one of the things that I have said to this Committee is that we believe that this IP transition is a crucial part in helping to make sure—

Mr. SHIMKUS. OK. I get it. I am going to try to move—

Mr. WHEELER. OK. Sorry, sir.

Mr. SHIMKUS. And one deals in both of our sweet spot is kind of the public service, 911—

Mr. WHEELER. Yes, sir.

Mr. SHIMKUS [continuing]. The Spectrum Act called for the creation of the Do Not Call Registry and the automatic dialing issue. The Commission keeps saying there is not enough money to do this. I would ask you to check into that. I think there is a lot of money in the FCC because obviously, this automatic dialing freezes up lines and it is a public safety concern, and I would hope that we would work together to try to—you would take this—

Mr. WHEELER. I would look forward to that, sir.

Mr. SHIMKUS [continuing]. Under consideration.

Mr. WHEELER. Let me get back, and I will come—

Mr. SHIMKUS. And you know, myself and the ranking member have been better involved in these issues—

Mr. WHEELER. Right.

Mr. SHIMKUS [continuing]. As you have in the early days also. The last thing I want to, from rural America, is kind of there seems to be a de facto freeze on this shared service agreements, and this is in the broadcast sector, as you know, the local. When you represent $\frac{1}{3}$ of the State of Illinois as I do now, 33 counties, these shared agreements are now helping to provide—and we have got real-world cases—better local service to the local folks than less. And I guess the basic question in my last minute is, what is your plan to ensuring that the FCC action on television transfer application is predictable, consistent, fair and timely?

Mr. WHEELER. Thank you, Mr. Shimkus. What we have done is to put out a Public Notice on how we look at transfers, and I consider this to be a procedural reform because the way it used to be was broadcasters would come together in some kind of a merger situation, and they would come to the Commission which was a black box that was constantly changing—“Well, we will look at it this way, we will look at it that way.” And what I wanted to do was to say, “OK, what are the things that we will look at?” So that everybody has notice, everybody understands, and it is not a black box. And that is the process that we have now established to be able to make those kinds of decisions.

Mr. SHIMKUS. Thank you. I know my time has expired. I appreciate it if you would keep me in mind as these things move forward. It would be helpful.

Mr. WHEELER. Yes, sir. Thank you.

Mr. LATTA. The chair now recognizes the gentlelady from Colorado, Ms. DeGette, for 5 minutes.

Ms. DEGETTE. Thank you, Mr. Chairman. I want to follow up, Chairman Wheeler, on this discussion about the open Internet NPRM. Leading up to the Commission's vote last week, there was a robust public exchange among ISPs and edge providers and others about the impact of paid prioritization on their business models, and as Ms. Matsui said, we have been hearing from a lot of our constituents about this as well. Now, you talked very briefly a few minutes ago about what the FCC is doing in its review process to look at the effect of paid prioritization on consumers' broadband bills. I was wondering if you can comment about what you think the proposed open Internet rules will have on access to new and innovative content on line? Because that is one reason why we are concerned about these proposed rules.

Mr. WHEELER. They each should be encouraging of new and innovative programming because of the fact that it assures that they will be able to reach the consumer unfettered and without having to pay special fees.

Ms. DEGETTE. And what impact do you think that the rules will have on average broadband speeds, network investments and overall quality of service?

Mr. WHEELER. That is a terrific question.

Ms. DEGETTE. Thank you.

Mr. WHEELER. I am glad you asked it. You know, one of the fascinating things is that in 2010, when the open Internet rules were first proposed, since then there has been hundreds of millions of dollars of broadband investment made. So the rules don't seem to have a chilling effect. And speeds have been doing this, going up. And this is what the court was talking about when they talk about this virtuous cycle because everything—in the Internet ecosystem, everything adds to everything else.

Ms. DEGETTE. So what do you think that the new rules, what effect will they have on these issues?

Mr. WHEELER. I believe—

Ms. DEGETTE. You just talked about what has been happening.

Mr. WHEELER. Yes, we are—

Ms. DEGETTE. What about your rules?

Mr. WHEELER. We believe that the rules that we have designed will continue to encourage investment in broadband, continue to encourage increases in through-put, and as a result continue to encourage innovation from edge providers.

Ms. DEGETTE. And so are you saying also then average broadband speeds will increase?

Mr. WHEELER. Yes, ma'am.

Ms. DEGETTE. And overall quality of service will increase?

Mr. WHEELER. Yes, ma'am. They need to.

Ms. DEGETTE. All right. OK. One last thing no one has raised yet is the issue of industry consolidation, and this year we have seen two major merger proposals in the telecom industry. Now, clearly the industry is going through a period of significant technological and economic change, and some folks think that consolidation is the best approach to this.

So all things being equal, do you think industry consolidation is good or bad for the consumers?

Mr. WHEELER. So I read the other day that this is probably—in the last decade the biggest year for telecom mergers. And what we are doing is opening a record on each of them, and we will make that decision based on the record that is developed for each—

Ms. DEGETTE. So you don't have an opinion at this point?

Mr. WHEELER. I would not want to prejudge the record.

Ms. DEGETTE. OK. And as you know, Congress has recognized the importance and unique character of the telecommunications marketplace by giving the FCC the authority to review mergers under the public interest standard. Do you think the conditions the FCC placed on the Comcast/NBC U merger were effective at promoting the public interest?

Mr. WHEELER. Oh, wow. That is something that, a decision that my predecessor made. I know that it had an impact. My goal is to look at the record that is presented before me and my colleagues and make a decision based on that.

Ms. DEGETTE. Do you think it promoted the public interest? Yes or no.

Mr. WHEELER. I think that there were multiple things in it that promoted the public interest.

Ms. DEGETTE. And what other lessons do you take away from the Commission's previous attempts to promote the public interest by placing conditions on mergers as you go forward?

Mr. WHEELER. That it is an important role that the Commission has. You know, there is a lot of discussion as to why should there be any authority at the FCC to look at public interest obligations. I strongly believe that there is a big difference between the kind of statutory rigidity that the Justice Department is required to look at mergers with and the kind of broader public interest issues that you have raised that the statute asks the FCC to look at.

Ms. DEGETTE. Mr. Chairman, I would just ask if you could supplement your testimony with some specific takeaways that this has given you.

Mr. WHEELER. Great.

Ms. DEGETTE. Thank you very much. Thanks, Mr. Chairman.

Mr. LATTA. The gentlelady yields back. The chair now recognizes—

Mr. WALDEN. Would you yield a second?

Mr. LATTA. The chair recognizes the chairman.

Mr. WALDEN. I just wanted to clarify one thing, make sure I heard it right.

Mr. WHEELER. Yes, sir.

Mr. WALDEN. Did you say 40 percent of Americans are still using dial-up for Internet access?

Mr. WHEELER. No, I am talking about dial-up phone service at large.

Mr. WALDEN. All right, because I was thinking it is more like 3 percent.

Mr. WHEELER. No, dial-up phone service at large.

Mr. WALDEN. Thank you much.

Mr. LATTA. Thank you for clarifying that, sir. The chair now recognizes the gentleman from Nebraska for 5 minutes, Mr. Terry.

Mr. TERRY. Well, it is good to know that my 82-year-old is in those 3 percent. That makes him very elite. I am trying to talk him out of that, but that is a work in progress.

Mr. WHEELER. We all remember those days when we were thrilled to get 56 KB, right?

Mr. TERRY. So switching gears just a little bit, I want to ask about quantile regression analysis progress, and I do think that you have probably captured its deficiencies better than anyone else has, and I appreciate that work. I was glad to see the Commission's follow-up by repealing the QRA formula.

Mr. WHEELER. Yes, sir.

Mr. TERRY. So congratulations. I appreciate that. I am curious on your thoughts of how it should be replaced, and if you could walk me through what factors are going to be used in any decision-making and timetables and process.

Mr. WHEELER. I respect the question, but I can't really answer it right now because we are in the process of—there are several proposals. We are in the process of looking at what the best components of each are, and I don't want to hip shoot here, but we do have proceedings under way to say, "OK. What is it we replace QRA with?"

Mr. TERRY. Where are we within the process of those?

Mr. WHEELER. I think that we are probably heading into something that you would see before fall.

Mr. TERRY. Before fall?

Mr. WHEELER. Early fall.

Mr. TERRY. OK.

Mr. WHEELER. Football season.

Mr. TERRY. Well, I don't want to get distracted.

Mr. WHEELER. Well, if you joined the Big 10—

Mr. TERRY. Do that when we play McNeese State, and I would appreciate it.

Mr. WHEELER. Yes, sir.

Mr. TERRY. For the rest of you, that was humor. Now, let me go to a broadcast question since we succinctly dealt with one I thought would take all of 5 minutes. The spectrum bill that was authorized and incentive auction and passed through the committee was a bipartisan bill. Unfortunately, the order that recently removed the FCC was not bipartisan, and some Commissioners, particularly Republicans, stated that the order treats TV broadcasters that choose not to participate in the auction unfairly, and that has me concerned. Congress set aside the 1.75 to reimburse broadcasters forced to move. Part of the incentive auctions are aimed to fully recover their expenses. Why did the FCC not adopt the number as its repacking budget and ensure that broadcasters would not have to go out of pocket when forced to the FCC to move?

Mr. WHEELER. Thank you. Congress said \$1.75 billion is the max that can be spent on repacking. We think that will be sufficient. There have been broadcasters who have expressed a concern that it might not be sufficient. So we have said, "OK, we don't think that's going to happen, but we will put in place a process that will have a structure in place if and when that should happen." Sir, I don't expect that we are going to get there.

Mr. TERRY. All right. I will yield back my time.

Mr. WHEELER. Thank you, sir.

Mr. LATTA. The gentleman yields back, and the chair now recognizes the gentleman from Utah, Mr. Matheson, for 5 minutes.

Mr. MATHESON. Thanks, Mr. Chairman, and Mr. Wheeler, thanks for your testimony. I appreciate your candor and your articulate way you answer questions.

Mr. WHEELER. Thank you, sir.

Mr. MATHESON. I just want to commend you on your efforts to open up more spectrum for unlicensed uses. The FCC took an important step last month by opening up the 100 megahertz spectrum for unlicensed uses in the 5 gigahertz band, and I am pleased to see in your testimony that the FCC is actively participating in ongoing efforts to free up additional unlicensed spectrum in the 5 gigahertz band. Can you provide an update on where things currently stand with resolving the technical issues in the ITS band currently used for vehicle-to-vehicle communications and the parts of the band used by the DOD for military radar?

Mr. WHEELER. Yes. So as we talked earlier, there are three slices to 5 gigahertz. There is the lower slice that we took care of. The middle, as you suggest, is DOD. We are having ongoing discussions with them. I have been personally involved in those discussions about a wide range of spectrum issues including this. There are strongly held beliefs on both sides, sir. I continue to believe, however, that people of good faith can find answers if you sit at the table long enough, and that is the goal.

Insofar as the high band in 5 gig, yes, that is intelligent transportation, which offers such great opportunities. We have seen the Google smart car and all this sort of thing. The thing that is really encouraging is that that is an 802 type of standard. It is not a dissimilar reality, however, where we need to make sure that people are sitting around the table looking for commonalities rather than looking for differences.

Mr. MATHESON. Something we ought to do around Congress a little more.

Mr. WHEELER. But you have a little experience. You have a little experience.

Mr. MATHESON. It's an editorial—on my part, yes.

Mr. WHEELER. But that's the goal of what we are trying to do here.

Mr. MATHESON. Do you have a timeframe for when this additional spectrum could be freed up?

Mr. WHEELER. I wish I did. I would be misleading you, sir, if I gave you a date right now.

Mr. MATHESON. I understand. Another issue I wanted to mention, the administration's Connect Ed Program—

Mr. WHEELER. Yes, sir.

Mr. MATHESON [continuing]. The goal to bring 100 megabit broadband to every school in the United States. To the extent that this initiative is implemented through the E-Rate program, what can the Commission do to maximize efficiency and get the most bang for the buck?

Mr. WHEELER. Wow. Thank you. Great question. There were multiple challenges in that. One is that we need to spend our money, the people's money, on 21st Century high-speed broadband

solutions, not 20th Century solutions like dial-up telephone service and long distance. Right now about half of the \$2 billion, \$2.4 billion that is being spent is spent for old stuff.

Mr. MATHESON. Not today?

Mr. WHEELER. Today. Today. Second part is that we have to design a system that helps schools and library administrators find their way through the maze that is telecom. We put them in those jobs to educate students, not to be telecom wizzes. So we are trying to develop a process that says, here is what you ought to be paying. Here is what somebody next door is paying. Here is like situated—so that they can go in and understand where their bargaining position is. We are going to be talking about being able to have longer contracts because buying it on a monthly basis as we all know is the worst way to buy. So let us talk about several years. We are going to be encouraging consortia so that you can buy in bulk and get better prices, and I just think that there are a myriad of things that we can do to get more efficiency out of the existing bucks, and we intend to do that.

Mr. MATHESON. That is great. Does the FCC plan on using the national broadband map to identify fiber that is already in place in a given community so it could be leveraged toward these Connect Ed goals?

Mr. WHEELER. Absolutely, and we have now taken over ownership of the broadband map, so yes, sir.

Mr. MATHESON. OK. I appreciate that. I will yield back, Mr. Chairman.

Mr. LATTI. Well, thank you very much. The gentleman yields back the balance of his time, and the chair now recognizes the gentleman from New Jersey, Mr. Lance, for 5 minutes.

Mr. LANCE. Thank you very much, and good afternoon to you. I believe that some of my colleagues on the other side of the aisle would prefer a Title II reclassification, and if the Commission were to decide to proceed in that direction, I am concerned that it might trigger a lot of ill-fitting regulations that might not make sense in the context of these services.

In your opinion, Chairman, would the process of going through forbearance to separate the wheat from the chaff, could it be a messy exercise and might it lead to more years of litigation and uncertainty is my real concern, sir?

Mr. WHEELER. Thank you, Congressman. That is one of the things that gets teed up in the NPRM when we ask about Title II versus Section 706. And I presume that that will be exhaustively discussed in the responses. And that is exactly the kinds of questions that we are asking.

Mr. LANCE. Thank you. One concern has been raised about the proposed net neutrality rule, making the protections that would be afforded companies who use a carrier who is providing the same service as another carrier. For example, the large carriers are beginning to bundle services that go well beyond phone service, the Internet and television, to include smart home services such as temperature control, home health monitoring, which of course is important to another subcommittee of this committee, as well as alarm services such as monitoring of home intrusions and fires, video surveillance or personal emergency response systems. What

protections will the FCC provide to ensure that a carrier does not give its service provider a preference over a company using them as a broad-based carrier?

Mr. WHEELER. I am not sure I exactly understand what—your concern is will there be preferences—

Mr. LANCE. Yes.

Mr. WHEELER [continuing]. Among providers of those services?

Mr. LANCE. Yes, Chairman.

Mr. WHEELER. That is contrary to the concept of an open Internet.

Mr. LANCE. Can you assure us and through us, the American people, that that will not be the case as these other services are provided moving forward?

Mr. WHEELER. Let me give you an example personally.

Mr. LANCE. Yes, sir.

Mr. WHEELER. I just switched out ADT in my home security system for another company, and I was able to access both of them over the Internet and both of them over my mobile device. And there should be no interference with my ability to move from ADT to the other provider.

Mr. LANCE. Thank you. And that is the goal of the Commission and you will assure us that that is how we will proceed moving forward?

Mr. WHEELER. It is open. There needs to be open access for all providers.

Mr. LANCE. Well, thank you. I look forward to working with you. I understand you are a proud graduate of Ohio State.

Mr. WHEELER. You bet. Yes, sir.

Mr. LANCE. Please be gentle with Rutgers now that Rutgers has entered the Big whatever-it-is, the Big 16 or whatever it is.

Mr. WHEELER. It is the Big 10 that can't count.

Mr. LANCE. The Big 10 that can't count. I defer back to the chairman the balance of my time, a proud representative from Ohio.

Mr. LATTI. Well, thank you very much for the gentleman yielding back the balance of his time. The chair now recognizes the gentleman from North Carolina, Mr. Butterfield, for 5 minutes.

Mr. BUTTERFIELD. Thank you very much the gentleman for yielding time, and thank you, Chairman Wheeler, for your service and thank you for your testimony today.

Mr. WHEELER. You are welcome.

Mr. BUTTERFIELD. I especially thank you for your clarity. I told you that the first time that I met you, and whenever I hear you speak, it is unambiguous, at least until the subject of your home security system comes up. And then you are a little ambiguous on who the new provider is. But thank you so very much.

Mr. Chairman, in the Communications Act, Congress mandated that the Commission ensure diverse participation in media and telecom, and that includes participation of minority and women-owned businesses. The quote from the statute basically says that the mandate is “to promote economic opportunity and competition by disseminating licenses among a wide variety of applicants including small businesses, rural telecoms and businesses owned by members of minority groups and women.”

It seems to me that the response of the Commission to judicial criticism of the FCC's inaction in this area and the lack of meaningful study in progress as well as the low level of minority and women-owned participation in media and telecom licensing, that the Commission it seems to me is not committed to these diversity goals. And if I am wrong about this, I would ask that you correct me.

On May the 14th, members of the Congressional Black Caucus including Congressman Rush and myself, addressed these diversity concerns in a letter to you. I suppose the letter may not have made its way to your desk yet, but I ask that you look at it very carefully when you do.

Question, what precisely do you need beyond the congressional directives and judicial criticism to get the Commission to make progress in creating opportunities for diverse communities?

Mr. WHEELER. Thank you, Congressman, and I got the letter this morning, so thank you.

Mr. BUTTERFIELD. OK.

Mr. WHEELER. First of all, I agree that we have a mandate to have a broad swath of opportunity for all Americans to participate in all aspects of telecommunications. I can assure you that that is a goal of mine. Now, let us talk about some specifics. Number one, I think what we did on the JSAs in the broadcast space actually opens up opportunities for minority and small operators. That is why it was supported by more than a dozen representative minority groups.

Secondly is we are going to move on the AWS-3 auction to make sure that there are appropriate steps taken to assure that minorities can participate through waivers and other kinds of processes in that auction.

Thirdly, we are going to have, and I should pause in all of these to call out Commissioner Clyburn who has been the constant pusher on all of these issues. There will be rules for the incentive auction that will create bidding credits for appropriate designated entities. And I very much take to heart, both as an institutional responsibility and as a personal responsibility, the language that you read.

Mr. BUTTERFIELD. And so when the spectrum is auctioned, you are making a commitment that diversity will be an overriding concern of the Commission?

Mr. WHEELER. So what we want to do is make sure that there are opportunities for designated entities to get bidding credits so that, for instance, they can bid with 75-cent dollars against AT&T and Verizon's 100-cent dollars.

Mr. BUTTERFIELD. All right. Let me get this last one in if I can, Mr. Chairman. In light of the demographic changes occurring in our country and the growing number of mergers in the communications industry, how is the Commission encouraging companies to partner with diverse businesses in the secondary market?

Mr. WHEELER. We have been doing that, both formally and informally, there are great opportunities when there are transactions for minority companies. Green Telecom, for instance, comes to mind which is now operating spectrum, I believe, for both AT&T and Verizon, which they purchased as a part of some settlements

with the Commission. And those kinds of opportunities are important and worthwhile.

I also believe that there can be new opportunities in the broadcast space, particularly after the auction in terms of being able to share spectrum and offer other kinds of services.

Mr. BUTTERFIELD. Thank you, Mr. Chairman.

Mr. LANCE [presiding]. Thank you very much. The chair recognizes the gentleman from Kentucky, Mr. Guthrie.

Mr. GUTHRIE. Thank you, Mr. Chairman. Thank you for coming today. I know you had a busy week, so your time is appreciated. My colleague from California, Ms. Matsui, and I have spent a lot of time on spectrum, spectrum issues, and we founded Congressional Spectrum Caucus—

Mr. WHEELER. Yes, sir.

Mr. GUTHRIE [continuing]. With the goal of looking with different ideas of how we can move forward on spectrum. And I appreciate the efforts that you have done to move the incentive auction forward, and I have a couple of questions about the guard bands in the 680 megahertz band.

It appears to me that the band plan for spectrum cleared in the broadcast incentive auction carefully considered the importance of maximizing license spectrum and adhered to the technically reasonable standard set by Congress for creating a duplex gap, and I applaud the Commission for its work in this regard.

Two questions. One, how do you foresee going forward with unlicensed spectrum in the duplex gap? As you know, it will be important for those who have been on adjacent license spectrum to have assurance there will not be interference. And are you confident the FCC will have technical guidelines to provide assurance to those who bid for license spectrum, there will be no interference in the duplex gap from—

Mr. WHEELER. Yes, sir. I think you just—the answer to both—identified technical standards. And so for instance, we are going to have a technical standards proceeding for wireless mics and others who would be using the unlicensed spectrum, so yes, sir.

Mr. GUTHRIE. OK. Thank you. And we have been using social media to reach out to interested Americans, and we said we are here representing the American people. And one came from Kelly on Facebook, and Kelly asked this question. Well, Kelly submitted through Facebook, user name Kelly, who would like to ask you the question about your plans for future spectrum policy. And can you give Kelly a brief answer to her question about future spectrum policy overall?

Mr. WHEELER. Thank you, Kelly. The answer is that, they are not making it no more. And so what we have to do—I believe that we are today on the cusp of the new horizon on spectrum policy with two things that we are doing. One is the incentive auction that you all created because when you boil everything down, it ultimately comes to economics. And if you can address the other person's economics, you can probably go a long way to solving your economics issue. And that's what the auction does.

The other component is spectrum sharing, and the days of "Here, this is all yours, you can use it," are over. And fortunately, digital allows that kind of sharing. Think about going into a Starbucks

and everybody is sharing that Wi-Fi spectrum. You put those two together, and that is I think the answer to Kelly's question as to where is spectrum policy going. And we are in the middle of making both of those work right now, which is why what we are doing is so terribly important.

Mr. GUTHRIE. Yes, to use a metaphor, it is a very simple metaphor compared to a complex physics in this, but we don't have special highways for ambulances or fire trucks. We get out of the way when they need to go down the highway. So sharing that, that is kind of a simple way to look at the metaphor.

There is something in one of your statements—and I am putting on my hat as a former state legislator, I was the state Senator in Kentucky before here, and there are some convincing concerns of places like Utah and Oregon where there has been municipal broadband deployed—

Mr. WHEELER. Right.

Mr. GUTHRIE [continuing]. In the projects that failed in areas where there were competitive providers. And these projects have resulted in putting millions of dollars of taxpayer funds in municipal bonds, proper tax and sale and franchise taxes at risk. And I believe the iProvo was sold to Google for a dollar and leaving city taxpayers on the hook for repayment of tens of millions of dollars.

My understanding is five states or so have passed laws saying that cities can't do this because the states usually—

Mr. WHEELER. About 20 states.

Mr. GUTHRIE. Like in our area, if something happens to a city, the state is on the hook for it as well. And I believe in your prepared, written testimony, you have said that you believe the FCC can do prevention in this area over the state law? I wanted you to clarify that.

Mr. WHEELER. Yes, sir.

Mr. GUTHRIE. And why you think Washington could have a better view of this than Frankfort, for example, in Kentucky?

Mr. WHEELER. So there about 20 states that have put some kind of restrictions in place. And I can see it through just exactly the opposite end of the telescope, with all due respect, that if the citizens of a community want to organize through their local government to say, to bring competition in broadband provision, they should not be inhibited.

Mr. GUTHRIE. Not be inhibited by their elected—

Mr. WHEELER. They should not be inhibited by the fact that the incumbents have been urging the adoption of legislation that would ban it. And if we believe in competition, we ought to let competition flourish. So what I have said is that I am following again Judge Silverman's comments in his dissent, nonetheless, in the open Internet case in which he said if there is ever an example where 706 would apply, it is in the ability to say to states, you cannot get in the middle of this "virtuous cycle" and prohibit consumers from being able to have access to a competitive service.

Mr. GUTHRIE. So your protection is the governments are doing that because of incumbents or because they don't want to be on the hook for an iProvo type situation?

Mr. WHEELER. So the—again, I go back to first principles, that is, this is a decision that ought to be made by the people of the

community and that—but if they want to take the risk, if they own it themselves—but you don't have to own it yourself. It is also—the gentleman from Utah has left, but for instance, in Utah, there is a group of cities that have banded together to solicit bids for somebody else to own that they would have a participation in, that kind of structure. If the people say, "That is what we want, we want this kind of competition," then I think they ought to be encouraged to get it. And competition has clearly been shown to be the best tool.

Mr. GUTHRIE. Well, I don't disagree with you on that, but my time actually is expired. I know the chairman is ready to gavel me down, so I will yield back. Thank you.

Mr. LANCE. Thank you very much. The chairman would never do that to the gentleman from Kentucky. The chair recognizes the gentleman from Vermont, Mr. Welch.

Mr. WELCH. Thank you very much, Mr. Chairman. Mr. Wheeler, I have five questions. We have 5 minutes, so we can go lickety-split.

Mr. WHEELER. Yes, sir.

Mr. WELCH. The first thing, Bob Latta and I started the Rural Caucus. We so appreciated you coming in. Enormous concern in rural America that we get access to the Internet. It is essential for our future. Net neutrality is a big deal. That is the big topic. You have been getting comments. There is an enormous amount of concern that if we make the wrong decision, the big guys are going to get the fast lane, the little guys, many in rural America, are going to get the breakdown lane.

Can you give us some reassurance that at the end of this process we are going to have access on equal terms for folks in rural America to the Internet?

Mr. WHEELER. You want a quick answer?

Mr. WELCH. Yes.

Mr. WHEELER. Yes.

Mr. WELCH. And that is the sentence. You can give a full sentence to reassure all of us, especially rural America—

Mr. WHEELER. I should.

Mr. WELCH [continuing]. That we are going to be driving in the fast.

Mr. WHEELER. There is one Internet. There is not a fast Internet, there is not a slow Internet. There is not an urban Internet, there is not a rural Internet. There is one Internet. Everybody ought to have open, equal access to the capacity delivered by the Internet.

Mr. WELCH. OK. Thank you. Now, getting the Internet, rural America is spread out, and the investors want to put their money where they can make their money. We all understand that. That was true for electricity, but we have got to get that Internet out into rural America so we can be part of the modern economy. And we have a Universal Service Fund with the Mobility Fund. We need to have that, and I am wondering if you could comment on the status of that and what we need to do to make sure that the funds are there to build out that broadband.

Mr. WHEELER. Specifically on mobility? Here is the interesting question that gets raised by mobility. Broadband wireless is LTE. It is being built out across America. Recently just one of the major

carriers announced a new initiative in rural America with LTE. The question becomes that we are wrestling with is should we subsidize something if it is already happening and that prudent fiscal responsibility suggests probably not?

Mr. WELCH. Well, I got three more questions—

Mr. WHEELER. OK.

Mr. WELCH. So we want to work with you on that to make it rational and not have us investing in things that aren't working but invest in things that are going to help rural America get—

Mr. WHEELER. Yes. That is where we are trying to get to.

Mr. WELCH. All right. Third, we have got to work with you and your entire commission, the Republicans and the Democrats, and when you came into our Rural Working Group, you explained a couple of problems you had, ancient IT and also procedures where I guess it is easier to hire a lawyer than an engineer.

Mr. WHEELER. Yes.

Mr. WELCH. I am a lawyer, so maybe I would like that. But I wouldn't be very much use to you. What are the things that this committee can advocate to help your entire Commission, Rs and Ds who want to do the job, so you have the tools you need to do it?

Mr. WHEELER. Thank you for asking. Our IT infrastructure is worthy of the Smithsonian. I came from a business background. The things that you cannot do that are common sense in the business world, the fact that we are still using computers that have known cyber risk associated with them, the fact that we can't organize a consumer complaint process on line for American consumers because our IT system isn't up to it is ridiculous. So we have serious problems there.

And the issue of lawyers versus engineers, far be it from me to take a side on that, but we do need more engineers, sir.

Mr. WELCH. OK. Thank you.

Mr. WHEELER. And economists.

Mr. WELCH. Right.

Mr. WHEELER. And economists.

Mr. WELCH. OK, well, I would like our committee to work with you on that.

Next, Section 706, there is a lot of concern about whether you have the sufficient authority under that section in order to give you the rule-making power to guarantee the outcome being net neutrality. Can you comment on that? Do you still feel that that is sufficient and the court gave you a roadmap forward?

Mr. WHEELER. I think that we do have sufficient authority, and when the court talked about this virtuous cycle and they said anything that interferes with that virtuous cycle is a violation of 706, that is a very broad grant of authority.

Mr. WELCH. OK. My last question in 26 seconds, retrans consent and blocking online content. We have seen that in the broadcast area where there is a dispute and people can't get access to the signal. Now that is starting to migrate into the online content. Is this the beginning of the cablization of the Internet?

Mr. WHEELER. Sir, I think it is the right question. Our authority goes to retransmission consent, good faith negotiations, and program access. I think there is reason to be concerned when because I happen to subscribe to an ISP who is in a dispute with a program

provider, that the program provider blocks all access from IP addresses coming from that ISP, I think that is something that is of concern and that we all should worry about.

Mr. WELCH. OK. I yield back. Thank you very much, Mr. Wheeler.

Mr. WHEELER. Thank you, sir.

Mr. LANCE. Thank you very much. The chair recognizes the gentleman from Kansas, Mr. Pompeo.

Mr. POMPEO. Thank you, Mr. Chairman. Thank you for being here today. I don't want to spend a lot of time on net neutrality. We have different views. I view it as nothing more than a price control. I think we have seen how that works in creating supply, and I think it is a very dangerous path that you are headed down.

I do want to ask a couple of process questions related to that. Have you spoken to anyone at the White House or OMB in the last month regarding net neutrality?

Mr. WHEELER. Only to keep them apprised. They have been assiduous in their recognition that we are an independent agency.

Mr. POMPEO. And did you call them or did they call you?

Mr. WHEELER. I called them.

Mr. POMPEO. And has anyone else on your staff spoken to folks at the White House or OMB in the last month in addition—

Mr. WHEELER. Well, the answer is I am not sure. On this issue, I don't know, but I can assure you from my discussions with everybody, from the President on down, the recognition of the independence of our agency, and I will go further and assure you that never have I or to my knowledge anyone on my staff felt any pressure to decide any issue.

Mr. POMPEO. I appreciate that. Thank you. I want to follow up on something Representative Guthrie was saying. You believe the FCC has the power to preempt state laws to ban competition from community broadband?

Mr. WHEELER. Yes, sir.

Mr. POMPEO. Under Section 706?

Mr. WHEELER. Yes, sir.

Mr. POMPEO. Do you believe that states have the same authority?

Mr. WHEELER. The issue that I believe is do we have the authority to preempt? That raises the question of what is the authority of the state, and I think we have preemptory authority. I think we will probably end up having this answered in court.

Mr. POMPEO. I just read the statute. The states have the same authority that the FCC does. The language is identical. It says whatever authority it is, you have and they have.

Mr. WHEELER. Well, in state Commissions.

Mr. POMPEO. Right.

Mr. WHEELER. Well, yes.

Mr. POMPEO. The states—

Mr. WHEELER. It says that we have preemptory authority over state Commissions.

Mr. POMPEO. So state commissions have the same authority that you do? You would agree with that?

Mr. WHEELER. No—

Mr. POMPEO. It is a simple statute. I mean, it just says the same thing.

Mr. WHEELER. No, I think that it says that both of us have authority but that we have preemptory authority on this issue, and I think that is what Judge Silverman was saying in his dissent in that Verizon case.

Mr. POMPEO. Right, in that law, dissent. Well, the FCC's media bureau recently issued new and they call them processing guidelines for broadcast transactions, and these broadcast—it talks not only about future broadcast transactions but also pending applications. I have three questions with respect to that. First, how many applications have been singled out for close scrutiny since the new guidelines have been issued? How many have been approved in those 2 months? And when might those broadcasters see the resolution of their applications?

Mr. WHEELER. I don't know the answer to any of those three off the top of my head, but I will be happy to get it for you for the record.

Mr. POMPEO. OK. You can understand these are pending applications submitted under a set of rules. You have now moved the goal posts on them.

Mr. WHEELER. Yes, sir, I understand your point. What we are trying to do is not move the goal posts but to open up the process so that everybody knows what the rules are.

Mr. POMPEO. But that is what you did. That is what you did. You changed the rules with respect to applications already submitted under a preexisting set of standards. But I don't know how you could describe that as anything but moving the goal post.

Mr. WHEELER. With all respect, sir, we had a series of transactions that were in place, and in the decisions on those transactions, we said, "Note, going forward there will be a new look at what financial structures are in transactions, not in these transactions that we are approving." Then we put out a Public Notice that said here is how we are going to open up this black box, and here is what is going to be going on. And it is that standard. So there was notice as a part of a decision that was not affected. Then there was notice through a Public Notice. And now those that the Bureau is reviewing are subject to both of those.

Mr. POMPEO. And my last 20 seconds, with net neutrality there are also cyber security issues. Do you plan to explicitly give network providers liability protections in their efforts to protect their network from cyber security as part of your rule-making for net neutrality?

Mr. WHEELER. It was not considered as a part of the rule-making to have that.

Mr. POMPEO. Mr. Chairman, I yield back my time.

Mr. LANCE. Thank you very much. The chair recognizes the gentleman from New Mexico, Mr. Lujan.

Mr. LUJAN. Mr. Chairman, thank you very much. Chairman Wheeler, thank you so much—

Mr. WHEELER. Mr. Lujan.

Mr. LUJAN [continuing]. For being here as well. Chairman Wheeler, 2 weeks ago this committee added my amendment calling on the FCC to conduct a study on reforming the designated market area system to the STELA reauthorization bill. As you know, DMAs are currently defined by a map drawn by Nielsen, a for-prof-

it marketing research company based upon the reach of television broadcast antennas. This network of antennas is based upon technology deployed back in the '40s and '50s. Americans could have a multitude of viewing options via technology such as cable, broadband and wireless Internet, but current DMA rules prevent the viewership of much of that content.

I believe that a system embraced by these technologies could revitalize television broadcasting with new affiliates reaching viewers who have more in common than their placement on Nielsen's old map. It is my hope that the Commission takes this study seriously and brings the policy into the 21st Century, Mr. Chairman, so I hope that we might be able to work—

Mr. WHEELER. Thank you for your leadership on this, Mr. Lujan, and I assure you that we will take it seriously.

Mr. LUJAN. Thank you, Mr. Chairman. And Mr. Chairman, it wasn't too long ago that a company would not allow access to another company's apps. There was a question a few years ago with AT&T and Facetime in an Apple product.

Mr. WHEELER. Yes, sir.

Mr. LUJAN. As I talk about fixed versus mobile, they defended it by saying it was allowed under the FCC's net neutrality rules. Granted, this was under 3G. Section 62 of the proposal suggests the no blocking rule was applied in different standard to mobile broadband Internet access, and mobile Internet access service was excluded from the unreasonable discrimination rules. We are seeing mobile getting faster now and with the new spectrum options, even faster than fixed. I appreciate and I agree with you that we are talking about one Internet with open and equal access. With my colleagues in rural areas, I have shared with you before if there is a conversation about taking phone calls with bandwidth capabilities as well as streaming of content on airplanes, in rural America we should be able to get the same treatment. I don't understand why we are not there yet. But nonetheless, it is coming.

So I am hopeful that as we have this conversation, that we are able to have equitable treatment. I know that as I read in the proposal that there are elements of asking for a look into this—

Mr. WHEELER. Right.

Mr. LUJAN [continuing]. In the rule, but I am certainly hopeful that this will be treated with the same scrutiny and level of attention and again, as I talked about an old, antiquated rule within the '40s and '50s, we talked about dial-up, that this is another area that we are going to have equitable treatment as well, especially with new gigabit access as well.

Mr. Chairman, in another area I know that there is a number of my colleagues who join me in their concern for recent reports of interconnection deals, particularly the one between Comcast and Netflix. You stated that peering is not a net neutrality issue, that there is a matter of the open Internet and there is a matter of the Internet connection among the various disparate pathways that become the Internet. And while I understand that net neutrality refers only to the behavior of Internet service providers blocking or throttling the speeds of certain Web sites, my question is how is interconnection an agreement that essentially throttles content substantially different?

Mr. WHEELER. Thank you, sir. That is a very good question. You can think of the Internet in three parts, actually four parts. There is somebody like Netflix getting on the Internet and then riding so-called middle-mile providers to a “peering point,” which is just a fancy word for interconnection, where they then have access to Comcast, Verizon, whoever the case may be.

The consumer buys from their computer up to the peering point. Traditionally, peering has been an “I will take mine, you take yours,” back and forth kind of a thing. And for free. That has begun to change over time.

Mr. LUJAN. Mr. Chairman, if I may, I apologize. My time is going to elapse, and maybe what I will do is—if we could get that into the record. All that I would add is once upon a time peering agreements didn’t have an exchange of money. People found a way to work with each other—

Mr. WHEELER. Exactly right.

Mr. LUJAN [continuing]. And I am hoping that we can get some certainty with the treatment of fixed versus mobile, in that area. And lastly I would like for the record, if there is any way that you might be able to provide us more specifics and details with what has been talked about as commercially reasonable—

Mr. WHEELER. Good.

Mr. LUJAN [continuing]. As well as we talked about not putting smaller companies at a disadvantage. I apologize to cut you off, Mr. Chairman. I could always sit and visit with you. And the last thing that I would say is President Obama is in support of an open Internet, and I would encourage you to speak with him. So thank you very much for that as well.

Mr. WHEELER. Let me just—Congressman, so am I.

Mr. LUJAN. Thank you.

Mr. LANCE. Thank you very much. The chair recognizes the gentleman from Louisiana, Mr. Scalise.

Mr. SCALISE. Thank you, Mr. Chairman, for having the hearing, and thank you Chairman Wheeler for being here today and answering our questions. I know as we look at the potential changes that have been proposed, a lot of us that want to continue to maintain a free and open Internet want to make sure that we are going about it the right way. I know I have got some concerns with the fact that the FCC would even consider going the Title II route in terms of reclassifying broadband. A lot of us had reached out to our constituents to have them also give us suggestions on things that they would like to ask you as well. And a lot of the comments that we got, I know that I got in my district, were just concerns about maintaining that open Internet and keeping the government out of regulating it and trying to make sure that the government doesn’t impede the ability for the innovations that we have seen, which have been so dramatic and revolutionized not only the country but revolutionized the entire world. And it is a lot of innovation that is made in America, and we want to continue to see that innovation thrive.

When you look at going into the reclassification, and it is a proposal that is out there, I know, like I said, I have got concerns about that. But in your written statement you assert that the private sector must play the leading role in extending broadband net-

works to every American. If it were to be reclassified under Title II, who would pay for extending those networks if they are subject to common carrier regulations?

Mr. WHEELER. Private sector.

Mr. SCALISE. But then when you look at the Title II route, would the FCC have the authority to regulate broadband pricing?

Mr. WHEELER. So in the vastness of Title II, that is conceivable. One of the reasons that we are asking for Title II versus Section 706 comments in this proceeding is to be able to specifically zero in on what are issues such as that, what are the—

Mr. SCALISE. So you think you may have the ability to regulate broadband pricing? Is that something you think would be an open possibility for the FCC?

Mr. WHEELER. Should a full Title II regime be chosen, which it has not been, we are proposing—

Mr. SCALISE. But you are making the proposal.

Mr. WHEELER [continuing]. Section 706.

Mr. SCALISE. Right.

Mr. WHEELER. No, we are not—what we are doing is we are proposing Section 706 as the approach and then we have asked questions about Title II. And these are the kinds of issues that come up, will come up in that discussion and that are going to warrant serious consideration.

Mr. SCALISE. But if you deem them telecommunication services, because that puts broadband into a different realm than it is today. It is not there right now. If you do choose to try to put it there, would state public utility—in our state we have got a public service commission—would those state public service commissions and other related entities in the states be able to regulate broadband at that point?

Mr. WHEELER. So what we have proposed is not Title II. It is Section 706. What we have asked is for a discussion of Title II and those kinds of issues. But our proposal, for which I have taken a lot of heat, is not Title II. I have said—

Mr. SCALISE. You don't have to go forward with the proposal.

Mr. WHEELER. I have said—

Mr. SCALISE. You can stop taking the heat right now.

Mr. WHEELER. No, I said that Title II was on the table, that we are looking to look at Title II, and Mr. Waxman has a specific proposal where he thinks that Title II ought to be a backup, and that is a proposal that is important and worth considering. But the proposal that we made is Section 706.

Mr. SCALISE. Let me ask you this because it seems like a one-way street where you are just targeting this toward Internet service providers. There are a lot of content carriers out there, too—a lot of members have used the Netflix example or, Google and other content providers that also have a play in this realm, that you seem to just be targeting this toward Internet service providers. And so I am not sure if there is some axe to grind there, but it just seems like it is a one-sided approach that you are taking even in the review. And I wouldn't recommend going down that road for any of these folks. But I just wanted to point that out.

And one last thing, because I know I am running out of time, in a February report, the FCC, some of your staff I know in a working

group, recommended eliminating some of the reports that are out there, the Orbit report, the International Broadband report, the Modifying Video Competition report and cable prices—some of those things. I have got a piece of legislation we have passed out of the Full House twice now, bipartisan, I think was unanimous earlier—in this Congress called the FCC Consolidated Reporting Act which really tries to take a broad view and to eliminate a lot of the outdated reports, to streamline the reporting process. Something that I think you have seen bipartisan support to do in the House. We are trying to get the Senate to take that up. I am not sure if you have got a comment on what you think should happen there, if that is something you are supportive of generally, especially as it relates to the bipartisan bill in the House trying to move through the Senate to ultimately become law, to streamline the processes as your staff has suggested.

Mr. WHEELER. So, on the Senate side, it is Senator Heller who has been—

Mr. SCALISE. Yes.

Mr. WHEELER [continuing]. Pushing on this, and I know that he and Senator Rockefeller are talking about it in terms of their package of legislation over there.

I definitely agree that there is a plethora of reports and that we are spending a lot of time that could be better organized, shall we say.

Mr. SCALISE. Including competitiveness in the telegraph industry, which is still on the books which we are trying to get rid of in this bill. But I appreciate that and anything you can do to help us advocate for the advancement. I do think that is one area where we found a lot of bipartisan support in the way it passed the House. Hopefully we can get the Heller bill moved through the Senate as well and get that to the President's desk.

Mr. WHEELER. Thank you, sir.

Mr. SCALISE. Thank you very much for your time, and I yield back the balance of my time.

Mr. LANCE. Thank you very much, Mr. Scalise. I do not see any member on the Democratic side. Mr. Kinzinger of Illinois is recognized.

Mr. KINZINGER. Thank you, Mr. Chairman, and thank you for being here today with us. I know it is a long day.

Mr. WHEELER. Thank you for your patience, Mr. Kinzinger.

Mr. KINZINGER. Yes, you are welcome. I might be the end. Wow. But we have a lot of big issues that we want to talk about. I am just going to hit a couple right now. I would like to talk to you a little—I know it was touched earlier about the E-Rate program. I am a big supporter of the intentions of this program and especially its modernization. And I appreciate the Commission putting on the recent workshop on this issue. I have a few concerns I want to address. I represent a rural district with a number of very small schools and libraries, and over the past few months I have reached out to a lot of these entities and asked them what their concern is and asked them about their participation or their lack of participation in the program to see what concerns or issues they have with the program itself.

The number one problem raised in these conversations was the complexity involved in both applying for and eventually receiving the funding necessary to move forward in implementing new technology in their facilities through the E-Rate program.

In hearing this, I actually looked into the issue a little further and found out that the basic application for funding is 17 pages long. And with additional technologies not deemed necessary, it can run even longer, i.e., Wi-Fi. I would actually probably rather punch myself in the face than be the guy that has to fill this out.

So the complexity of the application process has actually caused a number of these schools to spend money on outside consultants to help guide them through this process, and this is money that is no longer being spent on our students and automatically puts many smaller rural schools at a disadvantage as they don't have the funds necessary to pay these outside consultants essentially leaving individuals in a technological desert, if you will.

As the Commission continues its efforts to modernize the E-Rate program, what are your plans to simplify the application process for these small and rural districts? And also, will you commit to working to address the issues faced by these schools who have routinely told me that they simply cannot afford to pursue these funds?

Mr. WHEELER. Congressman, I share your shock and dismay. We are going to fix it.

Mr. KINZINGER. Good. All right. Do you have an idea of a time-frame? How long? This is easy. We are going home.

Mr. WHEELER. Yes, it is going to be part of our E-Rate modernization program that we are bringing forward. There are actually a series of things that we are going to begin administratively even before that rule-making takes place. It is—yes, sir.

Mr. KINZINGER. All right.

Mr. WHEELER. How do we get online? It becomes an interesting challenge. So here we are talking about broadband access for schools and libraries, and we have a 17-page paper process.

Mr. KINZINGER. Right.

Mr. WHEELER. So, unfortunately, it is not something you can solve just like this because as I indicated I think to Mr. Welch, we have awful IT systems. But what I would like to get to is for your schools, and all schools and libraries, to be able to get online, to make their filing, to be able to track that filing and where things stand and to do it less frequently than annually.

Mr. KINZINGER. Right. Well, I appreciate that. I want to touch on one other quick issue in the short amount of time, and again, thank you for your consideration with the E-Rate issue. I am concerned with the process and policy rationale used to change the FCC's treatment of broadcast JSAs for the purpose of the broadcast ownership rules. The decision to count TV JSA's ownership has the effect of tightening ownership restrictions without the comprehensive review of the ownership rules that is required by statute, and your analysis seemed to lack an appreciation for the public interest benefits fostered by JSAs.

In Rockford, for instance, an area I represent, without these agreements, the Fox station produces actually a Hispanic news cast, and they have said that they will not be able to produce that

Hispanic news cast, for instance. While I don't believe my local TV station should have to fight for a waiver, and we can have a broader issue on the whole discussion in general, I do want to say in light of your rule, are you going to make sure that these stations can take advantage of waivers and will there be clear, transparent standards for applying for waivers in this process?

Mr. WHEELER. Thank you, Congressman, because you have raised a really important point about waivers. The reality as to why we had to deal with JSAs is there was becoming a cottage industry in this town, down on K Street, of lawyers figuring out creative ways to get around the ownership rules that the Commissions had in place forever. And JSAs were a favorite way of doing that.

What we have said is that you have to have attributable ownership as you indicated but that there is a waiver process to address exactly what you are talking about in Rockford. And yes it is an expedited process. And it is a situation, unfortunately, where the process took over and perverted the underlying rules and the basic concepts of ownership.

Mr. KINZINGER. And we can have that broader discussion when I have more time. My time is expired. But I will say, I have heard a lot of concerns from local TV stations even in my district, and I hope that, you know, while we disagree with the rule, I hope that you make it very clear how they can apply for these waivers and how they can get this taken care of.

Mr. WHEELER. Yes. Thank you.

Mr. KINZINGER. Mr. Chairman, I yield back. And thank you.

Mr. LANCE. Thank you very much. On behalf of Mr. Matheson and of myself, thank you, Chairman Wheeler, for your testimony this morning. We look forward to working with you in the future, and the hearing is now adjourned.

[Whereupon, at 1:04 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF HON. LEE TERRY

I would like to state for the record that I oppose the reclassification of broadband services as Title II telecommunications services. We are fortunate to see wireline broadband speeds continue to increase, whether over cable or telecommunications networks. A regulatory framework set up in the 1930's to ensure every consumer receives the same voice service for a reasonable price is ill-suited for a communications platform that we rely on to deliver varied services from video and voice to 3-D printing. I should note that I am concerned about the proposal to use Section 706 as well, and believe that however the Federal Communications Commission proceeds, it should be done very, very carefully. That said, there is no viable path forward with Title II, and I believe that should be crystal clear.

Federal Communications Commission
445 12th Street, SW
Washington D.C. 20554

May 7, 2014

Dear Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O'Rielly:

We write to express our support for a free and open internet. Over the past twenty years, American innovators have created countless Internet-based applications, content offerings, and services that are used around the world. These innovations have created enormous value for Internet users, fueled economic growth, and made our Internet companies global leaders. The innovation we have seen to date happened in a world without discrimination. An open Internet has also been a platform for free speech and opportunity for billions of users.

The Commission's long-standing commitment and actions undertaken to protect the open Internet are a central reason why the Internet remains an engine of entrepreneurship and economic growth.

According to recent news reports, the Commission intends to propose rules that would enable phone and cable Internet service providers to discriminate both technically and financially against Internet companies and to impose new tolls on them. If these reports are correct, this represents a grave threat to the Internet.

Instead of permitting individualized bargaining and discrimination, the Commission's rules should protect users and Internet companies on both fixed and mobile platforms against blocking, discrimination, and paid prioritization, and should make the market for Internet services more transparent. The rules should provide certainty to all market participants and keep the costs of regulation low.

Such rules are essential for the future of the Internet. This Commission should take the necessary steps to ensure that the Internet remains an open platform for speech and commerce so that America continues to lead the world in technology markets.

Sincerely,

Amazon
Cogent
Dropbox
Ebay
Etsy
Facebook
Foursquare
Google
Kickstarter
Level 3

LinkedIn
Lyft
Microsoft
Netflix
Reddit
Tumblr
Twitter
Vonage Holdings Corp.
Yahoo! Inc.
Zynga

2600hz, Inc.	Contextly	Instapaper
2redbeans	Coursera	inXile Entertainment
4chan	CrowdTilt	Kaltura
8x8, Inc.	Cube, Co	LawGives
Addy	dasData	LeafLad
AdviserDeck	Digg	LendUp
Agile Learning Labs	Distinc.tt	Linearair
Airdroids	DuckDuckGo	Linknovate
AirHelp	Duolingo	littleBits
AnalyticsMD	DynaOptics	Lucifer.net
Appar	Embedly	MDDHosting LLC
Apportable	Fandor	Medium
AppRebates	Floor64	Meetup
Apptology	Flowroute	Meteor Development Group
Assembly Made, Inc.	Flurry	Minds + Machines
Authentise	Fonebook	Misk
Automattic/WordPress.com	Funeral Innovations	MixRank
BadgerMapping	Gandi	MobileWorks
Bitnami	Gawker	Motionry
BitTorrent	General Assembly	MozartMedical
Blu Zone	Github	Mozilla
CBeyond	Grid	NOTCOT Inc
Chirply	Handy Networks	O'Reilly Media
Clef	Haystack.tv	OfficeNinjas
CloudFare	Heavybit Industries	Open Materials
Codecademy	HelloSign	Open Spectrum
CodeCombat	HeyZap	OpenDNS
CodeHS	iFixit	Opera Software ASA
CodeScience	iLost	PayTango
Colourful Rebel	Imgur	Pocket/ReadItLater

Poll Everywhere, Inc	UberConference
Printrobot	UltiMachine
Publitas.com	Ustream
Rallyware	Vidmaker
Recrout	Volary Foundation
Redbubble	Voys Telecom
Rewheel/Digital Fuel Monitor	Waxy
Reylabs	Worldly
Rogue Labs	Xola
Shapeways	Yanomo
Sidecar	
Sift Science	
Simpolaris	
SketchDeck	
Skytree	
SlidePay, Inc	
Socialscope	
Solidoodle	
SpiderOak	
SpoonRocket	
Spotfront	
StackExchange	
StartX Stanford	
Statwing	
Tastemaker	
The Next Web	
Triggit	
Tsumobi	
Tucows	
Twilio	

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

May 8, 2014

Dear Chairman Wheeler:

We write to express our support for a free and open Internet.

We invest in entrepreneurs, investing our own funds and those of our investors (who are individuals, pension funds, endowments, and financial institutions). We often invest at the earliest stages, when companies include just a handful of founders with largely unproven ideas. But, without lawyers, large teams or major revenues, these small startups have had the opportunity to experiment, adapt, and grow, thanks to equal access to the global market. As a result, some of the startups we have invested in have managed to become among the most admired, successful, and influential companies in the world.

We have made our investment decisions based on the certainty of a level playing field and of assurances against discrimination and access fees from Internet access providers. Indeed, our investment decisions in Internet companies are dependent upon the certainty of an equal-opportunity marketplace.

Based on news reports and your own statements, we are worried that your proposed rules will not provide the necessary certainty that we need to make investment decisions and that these rules will stifle innovation in the Internet sector.

If established companies are able to pay for better access speeds or lower latency, the Internet will no longer be a level playing field. Start-ups with applications that are advantaged by speed (such as games, video, or payment systems) will be unlikely to overcome that deficit no matter how innovative their service. Entrepreneurs will need to raise money to buy fast lane services before they have proven that consumers want their product. Investors will extract more equity from entrepreneurs to compensate for the risk. Internet applications will not be able to afford to create a relationship with millions of consumers by making their service freely available and then build a business over time as they better understand the value consumers find in their service (which is what Facebook, Twitter, Tumblr, Pinterest, Reddit, Dropbox and virtually other consumer Internet service did to achieve scale).

Instead, creators will have to ask permission of an investor or corporate hierarchy before they can launch. Ideas will be vetted by committees and quirky passion projects will not get a chance. An individual in dorm room or a design studio will not be able to experiment out loud on the Internet. The result will be greater conformity, fewer surprises, and less innovation.

Further, investors like us will be wary of investing in anything that access providers might consider part of their future product plans for fear they will use the same technical infrastructure to advantage their own services or use network management as an excuse to disadvantage competitive offerings. Policing this will be almost impossible (even using a standard of "commercial reasonableness") and access providers do not need to successfully disadvantage their competition; they just need to create a credible threat so that investors like us will be less inclined to back those companies.

We need simple, strong, enforceable rules against discrimination and access fees, not merely against blocking.

We encourage the Commission to consider all available jurisdictional tools at its disposal in ensuring a free and open Internet that rewards, not disadvantages, investment and entrepreneurship.

Sincerely,

Puneet Agarwal, True Ventures

Sam Altman, Y Combinator

Kristian Andersen, Gravity Ventures

Sherman Atkinson, Miramar Digital Ventures

Lynne Bairstow, MITA Institute

Phineas Barnes, First Round Capital

John Battelle, Angel Investor

Woody Benson, IoT Works

Phil Black, True Ventures

Brady Bohrmann, Avalon Ventures

Mike Brown, Jr., Bowery Capital

Douglas W. Burke, Angel Investor

Brad Burnham, Union Square Ventures
Jeffrey Bussgang, Flybridge Capital Partners
John Buttrick, Union Square Ventures
Jon Callaghan, True Ventures
Jeff Carter, Hyde Park Angels
Joe Chung, Redstar Ventures
Michael Collett, Promus Ventures
Tony Conrad, True Ventures
Ron Conway, SV Angel
Fred Coulson, Five Elms Capital
Owen Davis, NYC Seed
Tej Dhawan, Nestmint and Plains Angels
Gil Dibner, DFJ Esprit
Roger Dickey, Rocket Street Ventures
Chris Dixon, Andreessen Horowitz
Liam Donohue, .406 Ventures
Bob Dorf, Investor and Entrepreneurial Educator
Bill Draper, Draper Richards
Nicholas Eisenberger, Pure Energy Partners
Roger Ehrenberg, IA Ventures
Brad Feld, Foundry Group
Stephen Findlay, Angel Investor
Ryan Floyd, Storm Ventures
Chris Fralic, First Round Capital
Christopher Forbes, Angel Investor
David Frankel, Founder Collective
Christie George, New Media Ventures
Rob Go, Next View Ventures
Matt Golden, Golden Venture Partners

Matthew Greenfield, Rethink Education
Nick Grossman, Union Square Ventures
Bruce Hallett, Miramar Digital Ventures
Bradley C. Harrison, Scout Ventures
Rick Heitzmann, FirstMark Capital
Troy Henikoff, TechStars
Eric Hippeau, Lerer Ventures
Bob Holmen, Miramar Venture Partners
Rob Hutter, Learn Capital
Nabeel A. Hyatt, Spark Capital
Mark Jacobsen, OATV
Deborah Jackson, Angel Investor
Jodi Sherman Jahic, Aligned Partners
Boyd Jones, PreAngel Partners
Nikhil Kalghatgi, Vast Ventures
Mitch Kapor, Kapor Capital
Jon Karlen, Atlas Venture
Josh Kopelman, First Round Capital
Manu Kumar, K9 Ventures
David Lee, SV Angel
Kenneth Lerer, Lerer Ventures
Robert Levitan, Angel Investor
Adam Lilling, Plus Capital
John Lilly, Greylock Partners
Howard Lindzon, Social Leverage
Trevor Loy, Flywheel Ventures
Om Malik, True Ventures
Kanyi Maqubela, Collaborative Fund
Raj Mehta, Kilowatt Capital

Jason Mendelson, Foundry Group
Josh Mendelsohn, Hattery
Aaron Merriman, Eurovestech PLC
Ann Miura-Ko, Floodgate
Blake Modersitzki, Pelion Venture Partners
Howard Morgan, First Round Capital
Dave Morin, Slow Ventures
Dave Moylan, Yenni Capital
Kevin Murphy, Angel Investor
David J. Namdar, SolidX Partners
Farzad (Zod) Nazem, Angel Investor
Jason Neal, Jumpstart Capital
Jerry Neumann, Neu.vc
Tim O'Reilly, OATV
Alexis Ohanian, Initialized Capital
David Pakman, Venrock
Eric Paley, Founder Collective
Andrew Parker, Spark Capital
Massimiliano Pellegrini, Angel Investor
William Peng, Red Swan Ventures
Matt Penneycard, PCB Capital
Perry Rahbar, Rahbar Angel
Sameer Rashid, Pure Energy Partners
Naval Ravikant, AngelList
Eric Ries, Angel Investor & Author
Neil Rimer, Index Ventures
David Ristow, Eurovestech PLC
Bryce Roberts, OATV
James Robinson, RRE Ventures

John Ruffolo, OMERS Ventures
Chris Sacca, Lowercase Capital
Ahsun Saleem, Clippership International
Ted Sapountzis, Angel Investor
Eric Satz, TNCV Fund
Toni Schneider, True Ventures
Andrew Schoen, New Enterprise Associates
Jason Schoettler, Shea Ventures
Christopher M. Schroeder, Venture Investor
Jonathan Seelig, Globespan Capital Partners
Rishi Shah, Jumpstart Ventures
KJ Singh, Techstars
Jim Stewart, True Ventures
Tim Streit, Huron River Ventures
Mike Stubler, Draper Triangle Ventures
Brad Svrluga, High Peaks Venture Partners
Mark E. Swanson, Lane Five Ventures
Brett Topche, MentorTech Ventures
Brent S. Traidman, Fenox Venture Capital
Hunter Walk, Homebrew
Matt Walters, Ardent Capital
Dan Weisman, Advance Publications
Andrew Weissman, Union Square Ventures
Albert Wenger, Union Square Ventures
Boris Wertz, Version One Ventures
Andy White, Vegas Tech Fund
Fred Wilson, Union Square Ventures
Josh Wray, Angel Investor
Sam Yagan, Corazon Capital LLC

Namek Zu'bi, Silicon Badia

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

August 1, 2014

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20536

Dear Chairman Wheeler:

Thank you for appearing before the Subcommittee on Communications and Technology on May 20, 2014, to testify at the hearing entitled "Oversight of the Federal Communications Commission."

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

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on August 15, 2014. Your responses should be mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Charlotte.Savercool@mail.house.gov.

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

Sincerely,


Greg Walden
Chairman
Subcommittee on Communications and Technology

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

Attachment



Office of the Director

Federal Communications Commission
Office of Legislative Affairs
Washington, D.C. 20554

August 28, 2014

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

Dear Chairman Walden:

Enclosed please find responses to the Questions for the Record submitted for Chairman Tom Wheeler regarding his appearance before the Subcommittee on May 20, 2014, at the hearing entitled, "Oversight of the Federal Communications Commission."

If you have further questions, please feel free to contact me at (202) 418-0095.

Sincerely,

A handwritten signature in cursive script that reads "Sara W. Morris".
Sara W. Morris

Enclosure

cc (with enclosure): The Honorable Anna Eshoo, Ranking Member
Subcommittee on Communications and Technology
Committee on Energy and Commerce

**Responses of Chairman Tom Wheeler to
Additional Questions for the Record
May 20, 2014, Hearing on "Oversight of the Federal Communications Commission"**

The Honorable Greg Walden

1. In light of the Commission's proposed deferral of the Skilled Nursing Facility pilot program designed to increase access and connectivity for rural health providers, how does the Commission plan to ensure that skilled care facilities (SNFs) will be able to benefit from access to Universal Service Funds? More specifically, can you outline the FCC's current efforts to: (1) increase access to broadband for health care providers, particularly SNFs that serve rural areas; and (2) foster the development and deployment of broadband health care networks and the Commission's plans to incorporate SNFs and other long-term care providers into those programs?

RESPONSE:

In 2012, the Commission released a *Report and Order* that created the Healthcare Connect Fund to reform, expand, and modernize the Rural Health Care Program. The Healthcare Connect Fund provides support for high-capacity broadband connectivity to eligible health care providers and encourages the formation of state and regional broadband health care provider networks. In adopting the Healthcare Connect Fund, the Commission also established a three-year, \$50 million SNF Pilot to test how to support broadband connections for skilled nursing facilities.

As you note, implementation of the SNF Pilot was deferred pending the Commission's consideration of health care related proposals outlined in the *Technology Transitions Order*. Although ineligible for funding under Healthcare Connect, skilled nursing facilities may still be part of a network in the Healthcare Connect Fund and take advantage of the economies of scale that are driven by bulk buying and competitive bidding. The Commission has been working with the skilled nursing facility community to educate them about how they can utilize the Healthcare Connect Fund, and I welcome further dialogue with you and other stakeholders about how we can ensure they are aware of this opportunity.

2. The Consumer & Governmental Affairs Bureau has pending before it a number of petitions seeking clarification of the Commission's rules promulgated under the Telephone Consumer Protection Act ("TCPA"). Several of these have been filed by businesses seeking clarity of the rules to ensure that they may contact customers with whom they have an established relationship without violating the law. Please update us on the current status of these petitions.

RESPONSE:

Multiple issues are raised in the petitions, including calls and texts to wireless telephone numbers, autodialed or prerecorded telemarketing calls, and fax advertisements, among other matters. The petitions present a wide variety of specific questions about the application of the TCPA and the Commission's implementing rules, including what types of equipment are covered by the statute, how callers can obtain consent from consumers

for calls and texts to wireless numbers, and which parties are liable for TCPA violations. To build a full record on which to base resolution of such issues, the Consumer and Governmental Affairs Bureau routinely issues *Public Notices* seeking comment on all TCPA petitions. We are reviewing the records for these petitions and plan to have many of them resolved within the next several months. Our strategy for efficiently and effectively resolving the petitions includes grouping petitions together where there are common issues. This approach will likely include an order currently under active consideration that is intended to resolve more than one-third of the pending TCPA petitions.

3. We understand that there are nearly 40 petitions for eligible telecommunications carrier (ETC) designation in the federal jurisdiction states that have been pending with the Commission for up to 4 years. Please provide a status update on:
- the number of pending petitions,
 - how long each has been pending, and
 - the plan and time frame for resolving this backlog.

RESPONSE:

There are 40 pending ETC petitions. Almost all of these petitions concern carriers that are seeking ETC designations in order to resell Lifeline services only (as opposed to seeking designation to provide high-cost and low-income services, including Lifeline). The two oldest petitions were filed on December 30, 2009 and December 29, 2010; 8 petitions were filed in 2011, 19 in 2012, and 11 in 2013. A list of petitions with the filing date is below:

Petitioner	Date Filed
Consumer Cellular, Inc.	12/30/2009
Boomerang Wireless, LLC	12/29/2010
OneLink Wireless, LLC	2/8/2011
Nexus Communications, Inc.	4/5/2011
Budget PrePay, Inc.	4/18/2011
TAG Mobile, LLC	6/7/2011
TerraCom, Inc.	6/13/2011
PlatinumTel Communications, LLC	8/5/2011
Cintex Wireless, LLC	8/29/2011
True Wireless, LLC	12/22/2011
Q Link Wireless, LLC	1/5/2012
Kajeet, Inc.	3/12/2012
Total Call	3/16/2012
Global Connection Inc. of America	4/4/2012
Telrite Corporation	4/4/2012
IM Telecom dba Infiniti Mobile	4/16/2012
SI Wireless, LLC	4/23/2012
Tempo	4/27/2012

Petitioner	Date Filed
EZ Reach Mobile, LLC	5/10/2012
Blue Jay Wireless, LLC	5/21/2012
Linkup Telecom, LLC	5/22/2012
You Talk Mobile -Federal, LLC	6/19/2012
Tele Circuit Network Corporation	7/6/2012
Airvoice Wireless, LLC	8/6/2012
Free Mobile, Inc.	9/13/2012
LTS of Rocky Mount, LLC	10/31/2012
Prepaid Wireless Retail, LLC dba Odin Wireless	12/10/2012
Flatel Wireless, Inc. dba ZING PCS	12/14/2012
Telscape Communications Inc.	12/19/2012
Assist Wireless, LLC	1/4/2013
Talk N Text Wireless, LLC dba TNT Wireless	1/4/2013
TelOps International, Inc., dba AmTel	1/18/2013
FedLink Wireless, Inc.	1/28/2013
Amerimex Communications Corp.	2/22/2013
U-Phone, LLC	4/4/2013
Millennium 2000, Inc.	4/5/2013
Vast Companies, LLC dba Vast Communications	4/5/2013
American Broadband and Telecommunications Company	6/6/2013
Buffalo-Lake Erie, Wireless Systems Co. dba Blue Wireless	8/16/2013
Sage Telecom Communications, LLC	12/18/2013

In 2008, the Commission made changes to the Lifeline program which allowed a substantial number of ETCs into the market. As soon as the Commission became aware that additional protections were necessary, we shifted resources away from facilitating Lifeline market entry towards reforming the Lifeline program to eliminate waste, fraud, and abuse. These efforts culminated in the *2012 Lifeline Reform Order and FNPRM* that mandated significant reforms to the Lifeline program with the goal of saving the Fund \$2 billion by the end of 2014. The Commission has been focused on implementing those reforms and is on track to meet the \$2 billion savings target. One of the major reforms was to establish a database to address the problem of duplicative support in the Lifeline program. The implementation of the National Lifeline Accountability Database (NLAD) was a cornerstone piece of the 2012 Lifeline reforms. The process of eliminating duplicative subscribers detected by the NLAD during the loading process is now nearly complete.

With those reforms well underway, the program is now on firmer footing and the Commission can direct resources toward examining the pending ETC petitions more closely. The Commission is now actively working on plan to review these petitions in an expeditious manner.

The Honorable Lee Terry

1. Chairman Wheeler, in your testimony, you indicated that the FCC should preempt states that either limit or prohibit municipal broadband networks. Nebraska law generally prohibits municipal broadband except public power utilities can provide wholesale services under limited conditions. As the FCC's own National Broadband Plan cautions, "municipally financed services may discourage investment by private companies." We can agree that the deployment of broadband networks involves substantial up-front investment costs. Why should the FCC preempt the determination by a state like Nebraska that the potential benefits of municipal broadband are outweighed by its potential to harm private investment?

RESPONSE:

The deployment of advanced broadband networks is critical to our Nation's future. Broadband is a powerful platform that encourages economic growth and facilitates improvements in education, health care, public safety and other key policy areas. This is particularly true for small and rural communities, where the availability of high quality broadband can be the difference between economic decline and a vibrant future.

Private sector incumbent telephone and cable companies have invested billions of dollars in broadband deployment in the past decade. That investment has been of great benefit to our Nation in many ways. However, that investment has not reached every corner of America. Around the country, communities have focused on the importance of ensuring that their citizens receive the benefits of broadband, and some have concluded that investing in their own broadband efforts - or authorizing others to invest on their behalf - will provide more competition and the economic and social benefits that accompany competition for their residents and businesses.

Section 706 of the Communications Act charges the Commission with ensuring that broadband is being deployed to all Americans in a reasonable and timely fashion. I believe that competition is a strong means to achieving that critical goal. Many states have enacted laws that place a range of restrictions on communities' ability to make their own decisions about their future. There is reason to believe that these laws have the effect of limiting competition in those areas, contrary to almost two decades of bipartisan federal communications policy that is focused on encouraging competition.

I respect the role of state government in our federal system, but when state laws come into direct conflict with critically important federal law and policy, it is a long-standing principle of Constitutional law that state laws can be subject to federal preemption in appropriate cases. I do not view federal preemption as a matter to be undertaken lightly. Such action must be premised on careful consideration of all relevant issues. Any Commission decision on community broadband issues will be made only after a full opportunity for comment by all interested parties in an open proceeding and a careful analysis of the specific factual, policy, and legal issues involved, including any evidence presented regarding the potential impact of community broadband on private investment. I assure you that the final decision on these issues will be based on a careful analysis of the full record in agency proceedings.

2. Mr. Chairman, the Public Assistance Reporting Information System is an information exchange system designed and operated by the Administration for Children and Families within the U.S. Department of Health and Human Services. This database helps state public assistance agencies validate applicant data for Federal assistance programs. In its Report No. 01-935 entitled 'PARIS Project Can Help States Reduce Improper Payments,' the Government Accountability Office endorsed PARIS as a model system for validating Federal assistance applicants. Why hasn't the FCC advocated for PARIS to be used to validate Lifeline program applicants?

RESPONSE:

Since the release of the *2012 Lifeline Reform Order & FNPRM*, the Commission has been working closely with its Federal and State partners to establish an electronic means for verifying Lifeline program applicants. Much of the data necessary to determine who qualifies for Lifeline is housed at the State level. Commission staff has encouraged State efforts to establish an electronic means for verification of Lifeline applicants. As part of its work with Federal agencies, the Commission earlier this summer released a joint letter with the United States Department of Agriculture (USDA) in which the USDA designated Lifeline as a "Federal Assistance Program" pursuant to Section 11(e)(8)(A) of the Food and Nutrition Act. By taking this step, state Supplemental Nutrition Assistance Program (SNAP) administrators are now required to disclose SNAP information to Eligible Telecommunications Carriers (ETCs) and state Lifeline administrators for the purposes of verifying Lifeline eligibility.

In the *2012 Lifeline Reform Order and FNPRM*, the Commission identified the Public Assistance Reporting Information System (PARIS) as a database that could potentially provide assistance in verifying the eligibility of Lifeline applicants. The Commission is working alongside the Administration for Children and Families (ACF) and other agencies to explore whether PARIS and any other federal databases may help in developing an electronic means for verifying Lifeline subscriber eligibility.

3. At the FCC budget hearings for FY 2015 several weeks ago, Chairman Wheeler, you mentioned "heads on a pike" in the context of Lifeline abusers. You also stated that you "created a strike force focused on attacking 'waste, fraud and abuse' and the need for 'more muscular enforcement,' with investigators and auditors rather than simply lawyers." Several companies have been issued Notices of Apparent Liability (NALs), and it is my understanding that these NALs were based on the In Depth Validation (IDV) process. How does the IDV process work, and is this process driven by the Universal Service Administrative Company (USAC) or the FCC? Are you looking at ways to enhance the review methods, or are they working as they are currently structured?

RESPONSE:

The Commission has worked diligently to eliminate duplicative subscriptions in the Lifeline program. Earlier this year, the Commission and USAC together launched the National Lifeline Accountability Database (NLAD). Now that the database is on-line, no Lifeline provider can enroll a new subscriber without first confirming that no one in a prospective subscriber's household, including the prospective subscriber, is already receiving Lifeline service.

Prior to the establishment of the NLAD, the Commission directed USAC to conduct IDVs to identify and resolve instances where consumers received multiple Lifeline benefits from one or more ETCs, in violation of Commission rules. As part of the IDV process, USAC would send a letter to the ETCs requesting subscriber data and analyze the data to determine whether there were any duplicate subscribers. If USAC determined that the same subscriber had multiple Lifeline benefits from several ETCs, USAC would then send a letter to the consumer to provide them with an opportunity to select one ETC. If USAC determined that a subscriber was the recipient of multiple Lifeline benefits from the same ETC, USAC sent a letter to the ETC identifying the instances of intra-company duplicative support, sought recovery, and notified the ETC that it must de-enroll those intra-company duplicates. In addition, the Commission's Enforcement Bureau will continue to investigate potential violations of the Lifeline program rules, and to impose forfeiture penalties on ETCs that have improperly claimed Lifeline support for ineligible subscribers or have failed to de-enroll consumers who no longer qualify for the program. These enforcement actions can be based on information from individual USAC audits, tips submitted to the Bureau's dedicated Lifeline Fraud voicemail and email tip lines, and other sources identifying possible fraud in the Lifeline program.

With the NLAD in place, there is no need now for continuing these types of IDVs. Both the Commission and USAC will continue to monitor the NLAD to protect the Lifeline program from waste, fraud, and abuse.

The Honorable Brett Guthrie

1. Last week, CTIA and NTCA filed a joint proposal related to the AWS-3 auction in which they asked the Commission to make clear in its auction procedures Public Notice that down payment and final payment dates for the auction will be in early 2015. The proposal noted that uncertainty around when payments will be due could complicate bidders' financial planning for the auction and their management of cash outlays. For some small players, the financial impact of this decision could even affect their ability to finance their participation in the auction. While the Commission recently put forward additional information regarding the auction, this information has yet to be released. Do you have any update on their request or indication on when the payment dates will be for the AWS-3 auction?

RESPONSE:

On July 23, 2014, the Wireless Telecommunications Bureau released the auctions procedures *Public Notice* for the AWS-3 spectrum auction (Auction 97). The Public Notice details the timing and payment schedules for any entity participating in the AWS-3 spectrum license auction scheduled to begin on November 13, 2014. The Commission recognizes that certainty for capital planning purposes is important to participants in the auction; therefore the *Public Notice* states that the down payment deadline will be the later of January 7, 2015 or ten business days after the release of the auction closing public notice. Further, the *Public Notice* sets the final payment deadline as the later of January 21, 2015 or ten business days after the applicable deadline for submitting down payments.

The Honorable Cory Gardner

1. Colorado Telehealth Network (CTN) is a consortium of health care providers that administers the FCC's Healthcare Connect Fund in Colorado. Under the Healthcare Connect Fund Order issued by the Commission on December 21, 2012, the Commission ordered the Universal Service Administrative Company (USAC) to begin funding certain organizations on July 1, 2013 that met certain eligibility criteria. While the Colorado Telehealth Network has fully met that criteria, USAC's portal is still not fully functional which necessarily delays CTN's critical path over the next 12-18 months. Without the full deployment of this critical functionality, which is essential for CTN's strategic plan to double the number of connected health care sites in Colorado from 200 to 400, CTN does not possess the ability to move ahead with strategic network expansion and operations.

Now approaching one year after its strategic target date for execution, Colorado's safety net health care providers stand at risk by being unable to apply for critical funds that could greatly benefit patients and communities due to ongoing delays with USAC's online portal. While CTN has clearly demonstrated a willingness to work with USAC staff in addressing functionality issues, CTN has been provided no timeline when they can expect full functionality of USAC's online portal nor is CTN receiving updates as to the progress USAC is making in this regard. Further, USAC has had a lack of leadership without a CEO for many years, thus compromising the efficacy of programs like the Rural Health Care Program.

- o When will the portal be fully functional? Until that time, what plan does USAC have in place for working with CTN to provide updates on this process?
- o Does USAC or the Commission have a plan in place to reduce the unreimbursed administrative burden on consortium leader participants as mandated by the Order? How does the proposed plan accomplish this? What avenue for redress do participants have if the proposed plan is not accomplished?
- o How does the Commission intend to reform its supervision of USAC? When will a new permanent CEO be in place?

RESPONSE:

While the USAC on-line portal did have some initial operational difficulties, as of late spring 2014, Healthcare Connect Fund (HCF) applicants/participants have been able to file all required forms via the portal. In fact, CTN's recent HCF Form 460 was revised via the portal in July and approved in July as well. As of August 11, 2014, no CTN funding request forms or invoicing forms were pending with USAC.

USAC continues to enhance its portal to enable applicant and service provider ease of use. USAC sends updates about its portal via e-mail to HCF subscribers. Starting in June 2014, this information was also posted to the latest news section of USAC's HCF website.

One of the goals behind promoting the consortia concept in the HCF was to enable many small healthcare sites that might not otherwise have the resources to seek HCF funding

pool their resources through participation in consortia, and obtain the economies of scale and scope that stem from being part of a larger group. The Commission and USAC continue to monitor for opportunities to streamline the HCF application process, and Commission staff are in constant communication with USAC as part of our oversight of the Universal Service Fund, including the rural health care programs, to ensure that processes are working as intended, consistent with the Commission's rules and requirements.

Finally, I am pleased to note that USAC recently appointed Chris Henderson to be its CEO. I fully support this selection. The USAC Board of Directors conducted an extensive and thoughtful search process. And Chris's background and qualifications are ideally suited to working with the Commission as we continue to modernize the universal service fund programs.

The Honorable Anna Eshoo

1. Last summer during the CBS/Time Warner Cable dispute, I raised concerns about a troubling trend in which content providers block otherwise freely available online content to customers of select ISPs as leverage during retrans negotiations. Now, once again, we're seeing this anti-consumer practice play out in a dispute between Viacom and several small cable operators. Should programmers be allowed to selectively block freely available, online content during programming negotiations?

RESPONSE:

It is a matter of concern that consumers are often caught in the middle of carriage disputes between content providers and video programming distributors - regardless of whether the disputes are for broadcast station retransmission rights or for the carriage of video programming networks. The recent development of some content providers blocking all users of a particular ISP during a carriage dispute - regardless of whether the consumer is a subscriber to the video service of that distributor - is particularly troubling. We will continue to actively monitor these disputes. As in the past, where warranted, we will not hesitate to weigh in with parties to urge them to negotiate in good faith, and keep consumers' best interests at the forefront.

2. Broadband providers who oppose Title II suggest it would curtail investment and lead to market uncertainty. But as more than 100 venture capitalists and angel investors wrote to you in a May 8th letter, Section 706 and the use of an ambiguous "commercially reasonable" standard could have the same chilling effect on innovative Internet startups. How do you propose to balance these competing views?

RESPONSE:

The Commission has struggled for over a decade with how best to protect and promote an open Internet. While there has been bipartisan consensus, starting under the Bush Administration with Chairman Powell, on the importance of an open Internet to economic growth, investment, and innovation, we find ourselves today faced with the worst case scenario: we have no rules in place to protect and promote the open Internet. The *status quo* is unacceptable.

The Commission has a responsibility to provide certainty, guidance and predictability to the marketplace as we protect and promote the open Internet. I believe that the Section 706 framework set forth by the court provides us with the tools we need to adopt and implement robust and enforceable Open Internet rules. Nevertheless, the Commission is also seriously considering moving forward to adopt rules using Title II of the Communications Act as the foundation for our legal authority. The *Notice of Proposed Rulemaking* adopted by the Commission in May seeks comment on the benefits of both Section 706 and Title II, including the benefits of one approach over the other, to ensure the Internet remains an open platform for innovation and expression.

The proposals and questions in the *Notice* are designed to elicit a record that will give us a foundation to adopt strong, enforceable rules to protect the open Internet and prevent broadband providers from harming consumers or competition. The *Notice* also proposes clear rules of the road and aggressive enforcement to prevent unfair treatment of consumers, edge providers and innovators. Small companies and startups must be able to reach consumers with their innovative products and services, and they must be protected against harmful conduct by broadband providers.

The *Notice* is the first step in the process, and I look forward to comments from all interested stakeholders, including members of the general public, as we develop a fulsome record on the many questions raised in the *Notice*.

3. It's my understanding that the FCC's open Internet rules were never intended to alter a broadband providers' responsibility to support emergency or public safety communications. In fact, the proposed rules you put out for comment last week speak to this very point. So do you agree that banning anti-competitive pay for priority schemes has nothing to do with public safety? Hasn't the FCC already demonstrated that you can make an exemption to ensure emergency communications, including 9-1-1 are protected?

RESPONSE:

I am especially sensitive to concerns about paid prioritization arrangements, and the potential such arrangements have for creating an Internet that is fast for a few, and slow for everyone else. Let me be crystal clear: prioritization that harms consumers or competition, or that impairs the virtuous cycle of innovation that has made the Internet such a powerful platform, is unacceptable. The *Notice* addresses this issue head-on, even asking if paid prioritization should be banned outright.

The Commission's 2010 Open Internet rules expressly did not alter broadband providers' rights or obligations to address the needs of emergency communications or law enforcement, public safety, or national security authorities. *See* 47 C.F.R. § 8.9; *Open Internet Order*, 25 FCC Rcd at 17963-64, paras. 108-10. The Commission further established that the rules did not prohibit broadband providers from making reasonable efforts to address transfers of unlawful content and unlawful transfers of content. *See* 47 C.F.R. § 8.9; *Open Internet Order*, 25 FCC Rcd at 17964-65, para. 111. We have proposed to retain this approach without modification. The *Notice* seeks comment on this tentative conclusion.

4. Through Twitter, one of my constituents asks - what are implications of the FCC's proposed net neutrality rules on political advertising?

RESPONSE:

The proposals and questions in the *Notice* are designed to elicit a record that will give us a foundation to adopt strong, enforceable rules to protect the open Internet and prevent broadband providers from harming consumers or competition, regardless of content or viewpoint. A key goal of our proceeding is ensure that the Internet remains open for all voices.

5. I commend you for the steps you've taken to rebalance the playing field during retrans negotiations, but in light of the 127 blackouts that occurred last year, I believe much more needs to be done. Should consumers be guaranteed a refund when programming they pay for goes dark?

RESPONSE:

As you note, it is our hope that the modifications we made in March to our good faith rules to prohibit joint retransmission consent agreements between two Top-4 stations in the same market will help prevent parties from obtaining undue leverage by eliminating competition between them and will potentially reduce instances of blackouts. We will continue to actively monitor when there are disputes and weigh in, as warranted, to urge the parties to reach an agreement for the benefit of consumers. With regard to the issue of refunds, I can understand the frustration of consumers when they are paying for programming that they cannot access due to a dispute between their MVPD and the programmer. I encourage video programming distributors to consider providing refunds where appropriate, especially for prolonged outages. Indeed, I believe some distributors have done this as a matter of good business practice.

6. In December, you brokered an agreement with the wireless industry that allows consumers to unlock their wireless phones and use them on any carriers' network. This agreement was applauded as pro-consumer and pro-competition. Consistent with Section 629, shouldn't consumers be able to do the same with their cable set-top box? What steps are you taking to ensure there is a successor to the CableCARD that guarantees consumers will have a choice of devices to access their pay-TV programming?

RESPONSE:

As you may know, Comcast and TiVo recently announced a partnership to collaborate on a successor technology that will support two-way and video-on-demand services and that, they suggest, can be used in other retail devices. It is my hope that the industry will work together to establish the kind of open standards that are necessary to promote a competitive market for retail devices. The Commission remains committed to the goal of Section 629 to ensure a retail market for navigation devices, and we intend to watch closely to see how the market addresses the standards issue and will take action as appropriate.

7. Earlier this year, I wrote to you regarding the use of below-the-line fees on the monthly bills of consumers. The letter stemmed from an inquiry I launched last year with several Members of this Subcommittee where we found that the combination of such charges can add as much as 42 percent to a consumer's monthly bill. Do you agree this is a problem and will the FCC take action?

RESPONSE:

In my response to your letter, I noted that I take such problems seriously and want to ensure that consumers have the protections, tools, and knowledge necessary to know, understand, and control the costs associated with their bills. The Commission has twice adopted Truth-in-Billing rules to empower consumers in the marketplace in order to further these objectives. The Commission staff is continuing to actively look into current billing practices, including the evolving issues with below-the-line fees. Once the Commission determines the best path forward to address ongoing and evolving problems, we will act appropriately to protect consumers.

The Honorable Henry Waxman

1. During the hearing concerns were raised about over 3,000 last-minute changes made to an item at midnight before the Commission voted. You never were specifically asked about those statements, however. Would you please explain?

RESPONSE:

I appreciate the opportunity to respond to these assertions. To preface, my goal is to have efficient processes at the Commission when we are making our decisions, and we can always do a better job. To help facilitate discussions and negotiations, I maintain regularly-scheduled meetings with each Commissioner to discuss the variety of issues before the full Commission and to seek their input. I also regularly discuss issues with my fellow Commissioners outside of those regular meetings. It is the prerogative of every Commissioner to weigh in with his or her views and have them considered as we discuss issues – no matter what time of day or night it is.

The assertion you reference in your question related to the Mobile Spectrum Holdings item that was adopted at the May agenda meeting. Indeed it is accurate that discussions among Commissioners and their staffs continued well past normal working hours on this high-profile and comprehensive item. I also can confirm that there were substantive edits and suggestions offered during those late-night discussions. However, by no means did the total number of substantive changes rise to the asserted *thousands* of edits.

Specifically, the 3,268 “changes” cited, and as enumerated by the Microsoft Word “reviewing pane” function, counted separately every single insertion, deletion, move, and formatting change – including changes to font, capitalization, spacing, and numbering. *E.g.*, replacing one character with another was counted as two changes – an insertion and a deletion. The vast majority of those “changes” were non-substantive staff edits. For example:

- Approximately 600 “changes” were due to changing the date and adding the official FCC number to the header of every page in the document.

- Approximately 500 “changes” were due to changes in the paragraph numbering in the table of contents and throughout the document.
- More than 1600 “changes” were due to filling in footnote citations.

Other edits included summaries, citations, and responses to arguments raised in the record during the three-week white copy period before the agenda meeting. During the three-week period prior to the meeting, there were 66 substantive new filings, representing approximately 350 pages. Staff worked diligently to reflect those filings in the final item on which the Commissioners voted.

I am committed to improving the way the Commission functions, and will continue to seek the counsel of my fellow Commissioners.

