

**NOMINATIONS TO THE FEDERAL TRADE
COMMISSION AND THE FEDERAL
COMMUNICATIONS COMMISSION**

HEARING

BEFORE THE

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

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

SEPTEMBER 18, 2013

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



U.S. GOVERNMENT PUBLISHING OFFICE

93-949 PDF

WASHINGTON : 2015

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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CONTENTS

	Page
Hearing held on September 18, 2013	1
Statement of Senator Rockefeller	1
Statement of Senator Thune	3
Statement of Senator Blunt	25
Statement of Senator Chiesa	26
Statement of Senator Cantwell	28
Statement of Senator Pryor	29
Statement of Senator Ayotte	32
Statement of Senator Scott	34
Statement of Senator Markey	35
Statement of Senator McCaskill	37

WITNESSES

Michael P. O’Rielly, Commissioner-Designate, Federal Communications Commission	5
Prepared statement	6
Biographical information	7
Terrell McSweeney, Commissioner-Designate, Federal Trade Commission	13
Prepared statement	14
Biographical information	15

APPENDIX

Response to written questions submitted to Terrell McSweeney by:	
Hon. Maria Cantwell	45
Hon. Amy Klobuchar	46
Hon. John Thune	47
Hon. Roger F. Wicker	50
Hon. Dan Coats	51
Response to written questions submitted to Michael P. O’Rielly by:	
Hon. John D. Rockefeller IV	52
Hon. Barbara Boxer	60
Hon. Maria Cantwell	63
Hon. Mark Pryor	65
Hon. Amy Klobuchar	66
Hon. Mark Begich	66
Hon. John Thune	68
Hon. Roy Blunt	70
Hon. Dean Heller	70
Hon. Dan Coats	70
Hon. Ted Cruz	72
Hon. Deb Fischer	73

**NOMINATIONS TO THE FEDERAL TRADE
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COMMUNICATIONS COMMISSION**

WEDNESDAY, SEPTEMBER 18, 2013

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

The Committee met, pursuant to notice, at 2:42 p.m. in room SR-253, Russell Senate Office Building, Hon. John D. Rockefeller IV, Chairman of the Committee, presiding.

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

The CHAIRMAN. We're going to have a full house. Well, virtually do have a full house. But we're going to have lots of people, but they're all coming a little bit late, following my example. This committee has several items on our agenda today. Our most important agenda is to take testimony from two nominees who are facing me: Mr. Michael O'Rielly, who is a nominee for the Federal Communications Commission; and Terrell—is it "Ter-RELL" or "TER-rell"? Ms. MCSWEENY. "TER-rell."

The CHAIRMAN. "TER-rell" McSweeney, who graduated from Harvard—I forgive her for that—and went right down to one of the least populated counties in West Virginia and worked on small weekly newspapers, the *Pocahontas Times*. You probably worked with—was NPR, that whole station, going?

Ms. MCSWEENY. Yes, sir, the Allegheny Mountain Radio Network, and it's still there today.

The CHAIRMAN. Yes, yes.

So anyway, and she's a nominee for the Federal Trade Commission.

But before we hear from these nominees, we have to take care of a little bit of necessary business, which has to do with our Committee's spending resolution that will carry us through to the end of the 113th Congress. You will remember that Senator Schumer and the Rules Committee instructed us to do a budget, but only through the end of this fiscal year. So we've got to do it for the rest of this year and 2014, the first 5 months of the Congress.

Back in early 2013, the appropriations situation was so uncertain that Senators Schumer and Roberts, the Chair and Ranking Member of the Rules Committee, asked us to pass, as I indicated, a short-term, seven-month budget. That seven-month budget will expire at the end of this month.

When we have a quorum present, Senator Thune is going to move to pass a new budget with new spending levels that the Rules Committee recently provided to us. It is not a pretty picture. Like the rest of the Federal Government, this committee is being asked to do its job with less money.

I hope and do ask members to support this motion, not because I think that cutting close to 18 percent of our budget is wonderful news—it is not—but because it's the best thing we can do in the current budget climate. So we have to do that.

I'd like to turn now to the much more pleasant topic of our two nominees. They are both dedicated public servants who would bring a wealth of experience from both the Legislative and the Executive branches to their new jobs. During his more than 20 years of experience working in the House and the Senate, Mr. O'Rielly, with whom I spent good time yesterday, has become an expert on communications issues. That would be important. And if you are confirmed, Mr. O'Rielly, you will be joining the FCC at an extraordinarily critical, somewhat contentious time. You'll have the opportunity to help shape the future of our Nation's telephone network, public safety, communications—the D Block situation we talked about—and the wireless, broadband, and video industries, all of them active and eager.

But just as importantly, you will have the job of protecting consumers and preserving the public interest in the communications marketplace. Yes, technology is quickly changing, but the FCC's role in guaranteeing universal service, clearly laid out in the original legislation—universal service, big cities, little towns—and protecting, guaranteeing competition, guaranteeing consumer protection, and the other important values embedded in our communications law, should not be left aside.

As I discussed with you earlier this week, Mr. O'Rielly, there are two current rulemakings at the FCC that are of the utmost importance to me. The first is implementation of the voluntary incentive spectrum auction, which is very complex. But its success ultimately will be judged on its ability to fund the public safety broadband network.

The second is the FCC's ongoing effort to update and strengthen the bipartisan E-Rate program. We had a good discussion about that. The program has been hugely successful, but the technology demands of the schools and libraries continue to increase and we need to modernize the program to meet these broadband connectivity and infrastructure needs. We cannot afford to underinvest in our most important resource, that being our children, or to risk them falling farther behind their global peers in science and math, even farther behind.

Our FTC nominee, Ms. McSweeney, has an extensive public policy background. She worked here in the Senate for then-Senator Biden and more recently she has worked in the White House and as an antitrust lawyer at the Department of Justice. The most important thing you need to know about Ms. McSweeney, however, I've already told you: that she started her career in West Virginia working as a reporter, as an education advocate.

It's a four and a half hour drive, Co-Chairman Thune, from Washington, D.C., to Pocahontas County. And I think your family roots are in Hillsboro?

Ms. MCSWEENEY. Yes, sir, and I'm pleased that my family from Hillsboro is here today as well.

The CHAIRMAN. They're here? Wow. All right. Well, they're going to have to stand up at some point.

So if you are confirmed, Ms. McSweeney, you will help direct one of the most important law enforcement agencies in the United States. For almost 100 years the FTC has been enforcing our anti-trust laws and protecting consumers from unfair and deceptive commercial practices. There was a period during the Dodd-Frank bill when I was afraid they were going to be eliminated, because in the Dodd-Frank bill they were eliminated, and all the attention went to what was going to be attached to the Federal Reserve System.

The FTC is really tough and smart. The National Gallery of Art wants their building, and they're not going to get it. I convinced Chris Dodd that two pairs of eyes is better than one, which is generally true in life, and so there it is, waiting for you.

Over the years, FTC has protected Americans from a litany of anti-consumer scams, from misleading marketing campaigns, to abusive debt collection schemes, to privacy violation, to negligent data security practices.

Ms. McSweeney, the FTC has a well-earned reputation for thorough deliberation, collegiality, and bipartisanship. I am confident that you will be able to serve on the Commission with this same spirit. I look forward, obviously, to hearing from both of you, and even more from our distinguished Ranking Member, Senator Thune.

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

Senator THUNE. Thank you, Mr. Chairman. You've made a visit to Pocahontas County sound pretty attractive. It sounds like that's something—we all ought to make an excursion out there.

I want to thank you for holding this hearing to consider the nomination of Michael O'Rielly to be Commissioner at the Federal Communications Commission and the nomination of Terrell McSweeney to be Commissioner at the Federal Trade Commission.

Mr. O'Rielly and Ms. McSweeney, thank you very much for your willingness to serve the Nation in these important positions of responsibility. I've had the privilege of being one of five members for whom Mr. O'Rielly has worked for in the Senate: John Sununu, John Ensign, myself, John Kyl, and most recently John Cornyn. I think you detect a pattern there. He has worked for—he has been around a lot of Johns.

[Laughter.]

Senator THUNE. But Mike did excellent work at the Policy Committee—Mike did excellent work at the Policy Committee and he has been a dedicated public servant in Congress for nearly 20 years. Much of Mike's Senate work focused on the Nation's communications landscape and I'm sure he will continue to serve our

country with distinction in his new role at the FCC should he be confirmed.

As I've said before, it's clear we're living in the middle of a digital revolution, which is being powered in large part by the huge investments made by the broadband industry. There's enormous potential for job creation and innovation in the broadband, Internet, and technology sectors.

Both the FCC and the FTC are regulatory agencies that oversee various aspects of the interactions between consumers and industry in these important sectors of our economy, whether it is mobile technology privacy issues, which the FTC is actively investigating, or the FCC's critical efforts to increase the availability of private sector spectrum to keep pace with exploding demand. Those who are a part of these independent agencies must possess sound judgment so they can find the right balance between intervening in the marketplace to correct market failures, and applying restraint from taking actions that could overburden industry, harm innovation, and stifle economic growth.

I believe we as a committee must focus on establishing modern legal and regulatory structures that serve the purposes of our 21st century economy, whether it's reviewing the authorities of the FTC under Section 5 of its statute regarding unfair methods of competition and unfair and deceptive acts or practices, or seeking to modernize and streamline our telecom laws to better reflect today's converging marketplace.

It's time for our technology and communications sectors to be governed by laws written in the 21st century that reflect today's reality and allow for tomorrow's advances, rather than laws established long before the Internet was invented. I hope that the nominees before us today will work with us in Congress, should they be confirmed to seek to amend the law where it may be inadequate or outdated.

In addition to these efforts, we must also be mindful of the rural areas of our Nation. Universal service is of course very important to rural America. Universal Service Fund reforms put in place by the FCC in the fall of 2011 are unfortunately creating a great deal of uncertainty and unpredictability for many rural carriers. As the FCC continues implementing these reforms, I hope that a full slate of FCC commissioners will look to apply them in a way that is more predictable for rural carriers and customers.

Rural Americans are also facing significant call completion problems. I'm troubled by one study indicating that during the period between 2011 and 2012 the incompleteness rate was 13 times higher in rural areas than in non-rural areas. Calls that fail to be completed result in rural businesses losing customers and family members in rural areas being cutoff from each other.

I was pleased to see the FCC take action yesterday by issuing an order and notice of proposed rulemaking that seeks to enhance the agency's ability to investigate this problem by taking steps to improve the performance of calls made to rural America. Sadly for impacted customers and businesses in rural areas, including South Dakota, this has taken far too long to remedy.

I would be remiss if I did not extend an open invitation to both of you to visit South Dakota. There's no substitute for seeing first-

hand the challenges that are unique to rural communities and the value that new technology holds for Americans living in rural areas. I want to make sure that all consumers, including those in rural communities, are able to enjoy the economic and societal benefits of the digital economy.

With regard to the nominations process for Mr. O’Rielly, I’m mindful that the President’s nominee for chairman of the FCC is awaiting floor action and I hope, Mr. Chairman, that we can quickly process Mr. O’Rielly’s nomination and that we can ultimately have a full slate of FCC commissioners by the time Congress breaks for the recess currently scheduled for mid-October.

Mr. Chairman, thank you again for holding this important hearing and I look forward to hearing the testimony from our witnesses.

The CHAIRMAN. Thank you, Senator Thune.

We’re now in the awkward situation of waiting for five souls to arrive and place themselves in their seat. So anybody want to sing a country song?

Senator BLUNT. Probably we could ask them questions.

The CHAIRMAN. They’ve got to give their testimony. I always make that mistake. I just start asking them questions.

Senator BLUNT. Can they do that without a quorum?

The CHAIRMAN. Yes, they can, if you want to ask them. I mean, I don’t mind.

Are you OK with that?

Senator CANTWELL. Mr. Chairman, however you want to proceed is okay with me.

The CHAIRMAN. That’s the kind of forthright answer.

All right. Well, let’s just—why not? There’s no rule against it. So somebody proceed with a question.

Senator CANTWELL. As opposed to a statement?

The CHAIRMAN. Oh, go ahead with the testimony, oh. That’s big time.

Mr. O’RIELLY. Mr. Chairman, I’m happy to go. What would you like to do?

The CHAIRMAN. I want you to impress the five people that have yet to come.

Why don’t you just go right ahead.

**STATEMENT OF MICHAEL P. O’RIELLY, COMMISSIONER-
DESIGNATE, FEDERAL COMMUNICATIONS COMMISSION**

Mr. O’RIELLY. Yes, sir. Thank you, Mr. Chairman, Senator Thune.

I’m joined by my sister, Debra Keyes, my girlfriend Sarah Goss, and three of my closest friends, Christine Huber, Peter Bryan, and Lisa Piantanida. I thank them for being here today.

I submitted a lengthy opening statement and I was hoping to expedite things by making four general points instead of reading from it, if I could. Point one: The power of the Internet. I believe the Internet is the greatest human invention we’ll see in our lifetimes. It is extremely disruptive technology and it changes every market it touches. Industry and regulators would be wise to embrace it rather than trying to control or manage it.

Point two: Changing technologies. By the time regulations are implemented, technology has a tendency to go in a totally different direction. Accordingly, I believe regulators can have difficulty getting ahead of technology developments, so the regulatory hand must be extremely light.

Three: If I'm lucky enough or fortunate enough to be approved by this committee and the Senate as an FCC Commissioner, I would focus on three things: One, implementing and enforcing the applicable statutes enacted by Congress; two, work with my colleagues to address the pressing issues and bring certainty to the market; and three, look for opportunities to reduce unnecessary regulations and those that impose excessive financial burdens.

Point four: I know it's not a beloved group right now, but I think it's appropriate to talk about a number of Congressional staff that I have worked with over the years and a shout-out to them. I've worked with some amazing people over the last 20 years and I want to express my thanks to them for their assistance along the way.

[The prepared statement and biographical information of Mr. O'Rielly follow:]

PREPARED STATEMENT OF MICHAEL P. O'RIELLY, COMMISSIONER-DESIGNATE,
FEDERAL COMMUNICATIONS COMMISSION

Thank you, Mr. Chairman and Ranking Member Thune. I am honored to be before this Committee—one of the truly great Committees in the United States Senate—for the consideration of my nomination to be a Commissioner to the Federal Communications Commission (FCC). It has been an interesting path that has led me here today, and I should start by extending my deep appreciation to Senate Republican Leader McConnell, Senate Commerce Committee Ranking Member Thune, and President Obama for the trust placed in me for selection to this role.

As the Members of this Committee know well, it takes a team of people for any one individual to succeed in Washington. Unfortunately, my mother is unable to be here today, as she doesn't travel well; my father passed away three years ago and is inurned across the river at Arlington National Cemetery. I am blessed, however, to be joined by my sister, Debra Keyes, representing my family; my girlfriend, Sarah Goss, representing my future; and a host of friends, representing my extended D.C. "family." Without them, I would not be here today.

By way of background, I was born and raised in a small city located on the Erie Canal, just outside Buffalo, New York. Growing up, it was a heavily union-based area, with General Motors being its largest employer. The people of Lockport are hearty, hardworking, holders of strong faith, and fans of the Buffalo Bills. They accept the hard winter weather and lack of sun as a badge of honor. I hope to have retained many of the qualities of my large family, now scattered across our nation, and the people of my hometown, as I am sure these qualities will come in handy in the future.

It has been a distinct honor to work in the United States Congress for the last 20 years, with a little under half of the time being spent in the House of Representatives and a little over half being spent in the United States Senate. I have enjoyed every minute of my time in this distinct body; and potentially leaving for the FCC is bittersweet. To say that the United States Senate is the greatest deliberative body in the world does not do it justice. It represents the genius of our founding fathers, often having the last say on the consequential legislative matters of our day. I am in awe of this institution—and its Members—every day that I walk into work.

One doesn't hold the views I do about the U.S. Congress without working for some amazing individuals. I have had the fortune of working for a number of legislative visionaries and I thank them all, including Ranking Member Thune and Senate Republican Whip Cornyn, for providing me such extraordinary opportunities. I would like to mention three for special appreciation:

- *Tom Bliley and James Derderian*—Former House of Representatives Commerce Committee Chairman Tom Bliley and his trusty strategist, J.D., were my first

employers, my mentors and remain inspirational figures. They taught me how to be a Virginian Gentleman, how to object without being personally objectionable, how to negotiate in good faith, and how to be a grounded family man in the messy environment that is D.C.

- *John E. Sununu*—There are not enough words to express fully my appreciation for the opportunity and pleasure of working for former Senator Sununu. He epitomizes what I believe Senators should be and how they should conduct themselves. I have never met another politician with greater intellect, insight, vision, or courage. He has been described as “independent and principled, a great dad, big-hearted, funny and kind” and I couldn’t agree more. He also comes from New Hampshire, a near-magical place where the people adopted me as one of their own and where I only had one really bad day in six years.

Like many, I believe that America is far and away the greatest country that has ever existed in the history of the world. This is in part because of our strong free market system and our faith in American capitalism—true pillars of our democracy, setting us apart from our international counterparts. In today’s global economy, American companies are the most innovative and consumer-driven. As a nation, we achieve the greatest outcome when we allow our companies to freely compete and fight for consumers’ attention and approval. Thomas Jefferson stated it well: “The policy of the American government is to leave their citizens free, neither restraining nor aiding them in their pursuits.” Those companies that understand how to offer the best products, the best services, and/or the best prices to meet consumer demand should flourish. Conversely, those that do not should be allowed to fail.

Generally, it is my view that the American communications industry is competitive, and our carriers should be free from undue government intervention. Accordingly, I tend to favor a smaller governmental role. This is not an absolute, as the government can play an important function in certain instances. In the particular case of the communications policy, establishing and enforcing clear rules of the road can help consumers and industry participants alike. I subscribe to former President Reagan’s belief: “Government exists to protect us from each other. Where government has gone beyond its limits is in deciding to protect us from ourselves.” Depending on the circumstances, effective and efficient FCC rules—grounded in statutory provisions and sound policy—can bring benefits to the overall marketplace.

If I were fortunate enough to be approved by this Committee and the Senate as an FCC Commissioner, I would focus on implementing and enforcing the applicable statutes enacted by Congress, work with my colleagues to address the pressing issues and bring certainty to the market, and look for opportunities to reduce unnecessary regulations or those that impose excessive financial burdens.

It may be a bit premature, but I want to take this opportunity to mention the persistent problem of Americans using their wireless phones when driving. While our Nation’s wireless companies are spending considerable resources and energy to get the message out, more needs to be done on the education side of the equation. Let me lend my voice to this issue: Absolutely no one should try to call, text, or search the Internet while driving a car. People need to put their phone down, keep their eyes on the road, and focus on driving.

I stand ready to answer any questions of the Committee.

Stay Strong For Freedom.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Michael Patrick O’Rielly.
2. Position to which nominated: Commissioner, Federal Communications Commission.
3. Date of Nomination: August 1, 2013.
4. Address (List current place of residence and office addresses):
Residence: Information not released to the public.
Office: Office of the Republican Whip, U.S. Senate, S208, The Capitol, Washington, D.C. 20510.
5. Date and Place of Birth: July 8, 1971; Lockport, New York.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage). None.
7. List all college and graduate degrees. Provide year and school attended.
University of Rochester, Bachelor of Arts, Political Science, 1993.

8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

- A. Office of the Republican Whip, Senator John Cornyn, Policy Advisor, 1/13 to present.
- B. Office of the Republican Whip, former Senator Jon Kyl, Deputy Chief of Staff and Policy Director, 4/12–1/13.
- C. Office of the Republican Whip, former Senator Jon Kyl, Advisor, 7/10–4/12.
- D. Republican Policy Committee, Senator John Thune and former Senator John Ensign, Policy Analyst, 1/09–7/10.
- E. Former Senator John E. Sununu, Legislative Director, 1/07–1/09.
- F. Former Senator John E. Sununu, Senior Legislative Assistant, 1/03–1/07.
- G. House Energy & Commerce Committee, former Chairman W.J. “Billy” Tauzin and former Chairman Tom Bliley, Professional Staff Member, 1/98–1/03.
- H. House Energy & Commerce Committee, former Chairman Tom Bliley, Telecommunications Policy Analyst, 1/95–8/98.
- I. Former Representative Thomas J. Bliley, Jr., Legislative Assistant, 1/94–1/95.

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

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

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

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

A. Member, St. Thomas Apostle Catholic Church (Jan. 2013 to present); membership is based on a person holding the Catholic faith.

B. Member, St. Joseph’s on Capitol Hill Catholic Church (Feb. 2008 to Dec. 2012); membership is based on a person holding the Catholic faith

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

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

Political Contributions

John McCain for President, 2008, \$1,250

Services Rendered

- John Sununu for Senate, 2007–8, Political Fund Designee, as provided for under U.S. Senate Rules
- Lisa Murkowski for Senate, 2004, Volunteer
- Conrad Burns for Senate, 2006, Volunteer
- John Sununu for Senate, 2008, Volunteer
- Linda McMahon for Senate, 2010, Volunteer
- George Allen for Senate, 2012, Volunteer
- Republican National Committee, 2012, Volunteer, National Platform Committee, Subcommittee on Health, Education, and Crime

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements: None.

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics related to the position for which you are nominated.

evant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed: None.

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

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

For almost 20 years, I have been involved in—and in many instances led—nearly every issue involving communications policy and participated in extensive oversight of the Commission’s work in this area. Given the dramatic changes facing American communications, I look forward, if confirmed, to bringing sound policy perspectives to the Commission and ensuring consumer freedom is not reduced.

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

The Commission must have strong internal controls to ensure the American people are receiving the greatest results and functionality from the Commission and its staff. While a significant portion of this responsibility rests with the Commission’s Chairman and the people he/she appoints to certain positions, individual Commissioners have a role in ensuring the Commission complies with current law, its own rules and sound practices. In my career, I have overseen and managed extensive coalitions to move and pass legislation; this experience will be exceptionally helpful in meeting the needs of the Commission. In addition, I have overseen numerous staff in various capacities during my tenure on Capitol Hill, including as serving as legislative director for former Senator John E. Sununu and as Deputy Chief of Staff and Policy Director for the Office of the Republican Whip, U.S. Senate.

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

A. Completion of the Incentive Auction

The Commission has numerous obligations and responsibilities under the Middle Class Tax Relief and Job Creation Act of 2012, including the timely completion of an auction of spectrum now utilized by certain commercial broadcasters. The complex auction structure necessary to carry out a successful auction will require a number of items to go exceedingly well, including the voluntary participation of broadcasters in appropriate markets.

B. Changing communications technology

The communications industry is transforming and digitizing at an exciting pace with the further development, utilization, and capabilities of the Internet. It is important that old regulatory models and requirements not stifle this transformation. Failure to properly restrain from imposing unnecessary regulations could harm innovation, technological advancement, economic growth, and overall job creation.

C. Reforming and reshaping Universal Service

The Commission is in the process of implementing reforms to the structure and interworking of its Universal Service programs but much work remains, including reforms to the collection mechanism and greater attention to unserved markets. The challenge will be to ensure that the Commission makes further reforms in a way that brings certainty to the marketplace, creates greater overall balance to the various programs, and reduces the overall costs for American ratepayers, many of whom are struggling in the current economy.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts. None.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the FCC's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the FCC's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the FCC's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the FCC's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

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

In various roles during my career in the U.S. Senate, I have engaged directly and indirectly in influencing legislation and affecting the administration and execution of law or public policy on behalf of various Members of the U.S. Senate. This is one of the central functions of a staff member for the Senate.

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the FCC's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the FCC's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

C. LEGAL MATTERS

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

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

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

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

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

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

D. RELATIONSHIP WITH COMMITTEE

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

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

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

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

RÉSUMÉ OF MICHAEL P. O'RIELLY

Professional Experience**Republican Whip Office—U.S. Senate***Policy Advisor—January 2013 to present**Deputy Chief of Staff and Policy Director—April 2012 to January 2013**Advisor—July 2010 to April 2012*

- Oversee and manage an expansive portfolio of issue areas to provide policy analysis to the Republican Senate Whip operations.
- Evaluate complex substantive policy matters to determine position of Republican Senators, maintain cohesion, and determine necessary changes in tactics, strategy and message.
- Advocate and negotiate on behalf of Republican Whip's policy positions and substantive goals, including:
 - Lead Senate Republican negotiator for the Public Safety Communications and Electromagnetic Spectrum Auctions provisions contained in the Middle Class Tax Relief and Job Creation Act of 2012.
- Construct and lead coalitions involving Senate leadership, congressional committees, diverse business interests, and consumer groups.

Republican Policy Committee—U.S. Senate*Banking, Technology, Transportation, Trade & Commerce Analyst—January 2009 to August 2010*

- Provided in-depth policy analysis and advice to Republican Senators on a broad array of issues, including political and substantive implications of actions.
- Created policy alternatives, substitutes and strategic options for Republican Conference.
- Prepared issue papers and background materials for key votes and controversial issues.
- Presented Republican message and positions before industry and media.

Former Senator John E. Sununu—U.S. Senate (R-NH)*Legislative Director—January 2007 to January 2009**Senior Legislative Assistant—January 2003 to January 2007*

- Supervised 11-person legislative staff in preparing and executing legislative priorities, including content management, time allocation and project completion.
- Led Senator's aggressive technology-focused agenda, including:
 - Internet Tax Moratorium expansion and extension
 - Voice Over Internet Protocol (VoIP) legislation
 - Internet video regulatory treatment legislation
 - Satellite Home Viewer Reauthorization
 - Unlicensed spectrum in TV White Spaces
 - Digital television conversion legislation
 - Wireless spectrum policy reform
- Served as the policy director for the Senator and staff for Senate floor procedure and strategy.
- Functioned as sole liaison on all staff relations with Senate leadership and floor staff.

Committee on Energy and Commerce—U.S. House of Representatives*Telecom and E-Commerce Professional Staff Member—August 1998 to January 2003**Telecom Legislative Analyst—January 1995 to August 1998*

- Devised, coordinated, and oversaw telecommunications and electronic commerce issues.
- Active role in every technology bill and issue considered by Committee, including:
 - The Telecommunications Act of 1996
 - Electronic signatures and records legislation

- International Satellite Reform
- Electronic commerce and privacy
- Satellite Home Viewer Act Reauthorization
- FCC Reform and Reauthorization
- NTIA Reform and Reauthorization
- Drafted legislation, prepared and designed legislative hearings, oversaw committee mark-ups, and conducted conference committee staff meetings.

Former Congressman Tom Bliley (R-VA)—U.S. House of Representatives

Legislative Assistant—January 1994 to January 1995

Education

University of Rochester, Rochester N.Y., 1989–1993

Bachelor of Arts, magna cum laude in political science, May 1993

The CHAIRMAN. I hate to interrupt. It's they who are beloved. It's the Senators who are not beloved.

[Laughter.]

Mr. O'RIELLY. Sometimes it's mixed, sir.

[Laughter.]

Mr. O'RIELLY. To name just a few, I'd like to thank the Senate Republican Whip team, the Cornyn personal office, the Kyl personal office, the men and women of the Republican Policy Committee, Team Sununu, the professionals at the Energy and Commerce Committee. In addition, there were countless individuals that I've worked with from other offices, including the Republican Leader's Office, the many staff of the members here today, the many former staffers in the audience, and the plethora of people that have moved on to other challenges. I thank you one and all.

This concludes the points I'd like to make at this time. I stand ready to answer your questions. Stand strong for freedom.

The CHAIRMAN. Ms. McSweeney, is your testimony a little bit longer perhaps?

[Laughter.]

Ms. MCSWEENEY. Senator, I can try to make it a little bit longer. I was actually hoping to be as succinct and witty as Mr. O'Rielly. So we'll see what I can do, though.

The CHAIRMAN. Do you remember when the rumor was that the Federal Government was going to come in and build a huge dam?

Ms. MCSWEENEY. I do.

The CHAIRMAN. And you remember it was northern Pocahontas County versus southern Pocahontas County, and it was never going to happen. No matter how many times I said that to my northern Pocahontas County friends, they never believed it, until it didn't happen.

Ms. MCSWEENEY. I think I covered quite a few public meetings where that was discussed.

The CHAIRMAN. Yes.

Ms. MCSWEENEY. It's still an ongoing concern.

I'm happy to proceed.

The CHAIRMAN. Please.

**STATEMENT OF TERRELL McSWEENY, COMMISSIONER-
DESIGNATE, FEDERAL TRADE COMMISSION**

Ms. McSWEENY. I want to start by thanking you, of course, Mr. Chairman and Ranking Member Thune and members of the Committee, for the opportunity to appear here today. This is a special moment for me, not just because I served in the Senate as staff, but because the Senate is where I first got a taste for public service as a 16-year-old Senate page. It was amazing to watch first-hand some of the giants of the Senate— public servants like Senator Dole and Senator Byrd and Senator Pryor—work together to do what's best for the country, and it's a lesson that has inspired me every since and the sense of purpose that I hope to bring to the FTC if I am confirmed.

I'd note that the page program not only inspires that commitment; it also fosters lifelong friendships, and I'm pleased that my friend Leigh Hildebrand, who I was a Senate page with, is here today. She's your Senior Assistant Parliamentarian now.

If I may, I also wish to thank my family for being here today: my husband Ralph Burns, my children Warren and Madeleine, my parents Bill and Dorothy McSweeney, my sister Kate, and my in-laws Dick and Ruby. Without their love and support, it wouldn't be possible for me to be here today. So I really appreciate it, and all of the friends and colleagues that have come today.

During these recent weeks I was privileged to meet with a number of Senators and their staffs, and I thank you for the opportunity to exchange views. These meetings reinforced to me that the mission of the FTC, protecting consumers and keeping the marketplace free from fraudulent, deceptive, and anticompetitive conduct, isn't a partisan one. Indeed, one of its greatest strengths is its bipartisanship.

I'm honored that Chairwoman Ramirez and Commissioner Ohlhausen are here today and I'm grateful to both of them, as well as to Commissioners Wright and Brill, for their insights during this process. Each of them has been generous with their time, and if I'm confirmed I hope to continue the tradition of collegiality and consensus-oriented decisionmaking that has been a hallmark of the FTC.

It's a tradition that's celebrating its 100th anniversary next year. Since Congress passed the Federal Trade Commission Act in 1914, much has changed in our economy and our country. One could only imagine what Teddy Roosevelt or Woodrow Wilson would make of smartphones or the apps that are on them.

As the country has changed, so has the agency. But the core mission has not—enforcing the laws that protect consumers and promote competition, making sure that markets are free and fair, vital and dynamic. It's something that is vital to our economy, which is built on free and fair markets, and is what's powered the growth of the United States for the past 100 years and will for the next 100 years. It's what has allowed us to build a strong middle class and deliver the economic security of consumers.

Over my career here in the Senate, at the White House and the Department of Justice, the economic security of the middle class has been my focus, and I have appreciated how the FTC has worked closely with Congress to contribute to the well-being of

America's families. The benefit to consumers from competition and protection from fraud and deception are well established. Competition leads to better prices, more and better choices, and innovation. Stopping fraudulent and predatory practices ensures that the playing field isn't tilted against consumers.

In particular, I believe the FTC's work protecting those that are most targeted by scams or deception, groups such as seniors, veterans, the financially distressed, children, is very important. My work shows a commitment to these issues and I will continue to work on them at the Commission if I'm confirmed.

It's an honor and a privilege to be considered for the position of Federal Trade Commissioner and I look forward to answering your questions. Thank you very much.

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

PREPARED STATEMENT OF TERRELL MCSWEENEY, COMMISSIONER-DESIGNATE,
FEDERAL TRADE COMMISSION

Chairman Rockefeller, Ranking Member Thune and members of the Committee, thank you for the opportunity to appear today.

This is a special moment for me not just because I've served in the Senate as staff but because the Senate is where I first got a taste for public service as a 16-year-old Senate page. It was amazing to watch first-hand the giants of the Senate—public servants like Senator Dole and Senator Byrd—work together to do what's best for the country. It's a lesson that has inspired me ever since—and a sense of purpose that I hope to bring to the FTC, if I am confirmed.

If I may, I also wish to thank my family for being here today: my husband, Ralph Burns, my children Warren and Madeleine, my parents, Bill and Dorothy McSweeney, my sister Kate, and my in-laws Dick and Ruby Burns. I am grateful for their love and support.

During these recent weeks, I was privileged to meet with a number of Senators and their staffs and I thank you for the opportunity to exchange views. Those meetings reinforced to me that the mission of the FTC—protecting consumers and keeping the marketplace free from fraudulent, deceptive, and anticompetitive conduct—is not a partisan one. Indeed, one of its greatest strengths is its bipartisanship. I'm honored that Commission Chairwoman Ramirez and Commissioner Ohlhausen are also here today. And I'm grateful both to them, and to Commissioners Wright and Brill, for their insights. Each of them has been generous with their time. If I'm confirmed, I hope to continue the tradition of collegiality and consensus-oriented decision making that has been a hallmark of the FTC.

It's a tradition that is marking its 100th anniversary next year. Since Congress passed the Federal Trade Commission Act in 1914, much has changed in our economy and our country. One could only imagine what Teddy Roosevelt and Woodrow Wilson would make of smartphones—much less the apps on them. And as the country has changed, so has the agency. But the core mission has not: enforcing the laws that protect consumers and promote competition, making sure that markets are free and fair, vital and dynamic. Our economy, built on a free and fair market, is what has powered the growth of the United States these past hundred years—and will for the next hundred years. It's what has allowed us to build a strong middle class and deliver the economic security of consumers.

Over my career, here in the Senate, at the White House, and at the Department of Justice, the economic security of the middle class has been my focus. And I have appreciated how the FTC has worked closely with Congress to contribute to the well-being of America's families.

The benefit to consumers from competition and protection from deception and fraud are well established. Competition leads to better prices, more and better choices, and innovation. Stopping fraudulent and predatory practices ensures that the playing field isn't tilted against consumers.

In particular, I believe the FTC's work protecting those that are most targeted by scams or deception—such as seniors, veterans, children, the financially distressed—is important. My work shows a commitment to these issues and I will continue to work on them at the Commission, if I am confirmed.

It is an honor and a privilege to be considered for the position of Federal Trade Commissioner. I look forward to answering your questions. Thank you.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Terrell Pierce McSweeney (sometimes I am referred to by my husband's last name, generally as Terrell McSweeney Burns—although I have not legally changed my name).

2. Position to which nominated: Commissioner, Federal Trade Commission.

3. Date of Nomination: June 24, 2013.

4. Address (List current place of residence and office addresses):

Home: Information not released to the public.

Office: U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.

5. Date and Place of Birth: June 13, 1975; Washington, D.C.

6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).

Spouse: Ralph Warren Burns, Deputy Associate Director, Mass Transit Officer, District of Columbia Department of Transportation (DDOT); Commissioner, District of Columbia Taxicab Commission; children: Warren Maverick Burns, age 5; Madeleine Abselle Burns, age 2.

7. List all college and graduate degrees. Provide year and school attended.

AB, Harvard University, 1993–1997.

JD, Georgetown University Law School, 2001–2004.

8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

- Chief Counsel for Competition Policy, U.S. Department of Justice, Antitrust Division, (Feb. 2012 to present)*
- Deputy Assistant to the President, Domestic Policy Advisor to the Vice President, Office of the Vice President, (Jan. 2009–Feb. 2012)*
- Vice President's Domestic Policy Advisory, Presidential Transition, (Nov. 2009–Jan. 2009)
- Issues Director, Obama for America, (Sept. 2008–Nov. 2009)
- Deputy Chief of Staff, Policy Director, Senator Joseph R. Biden Jr., (Deputy Chief of Staff April 2008–Sept. 2008; Policy Director, Dec. 2005–Sept. 2008)
- Counsel, Committee on the Judiciary, Subcommittee on Crime and Drugs, United States Senate (Dec. 2005–Sept. 2008)
- Associate, O'Melveny & Myers LLP (Jan. 2005–Dec. 2005) (also worked as a paralegal and law clerk at O'Melveny & Myers LLP during law school June 2001–Sept. 2003, Mar. 2004–Jan. 2005)
- Deputy Director of Policy, Clark for President (Sept. 2003–Feb. 2004)
- Assistant to the National Spokesman, Gore/Lieberman 2000 Inc. (May 2000–Dec. 2000)
- News Director, Allegheny Mountain Radio Network (Feb. 1998–May 2000)
- Director of Development, Instructor, High Rocks Educational Corporation (June 1997–May 2000)

*Denotes management or non-management position related to the position for which I have been nominated.

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

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

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

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fra-

ternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

Member, West Virginia Bar (currently inactive status) 2005 to present.

Member, DC Bar (active status) 2005 to present.

Member, St. David's Episcopal Church, Washington, D.C. 2001 to present.

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

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

I worked for the Gore/Lieberman campaign (as Assistant to the National Spokesman and Deputy Press Secretary during the Recount), Clark for President campaign (as Deputy Policy Director), and Obama for America campaign (Issues Director for the Vice President). I volunteered for the Kerry-Edwards campaign.

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

Ford Foundation (received undergraduate merit scholarship award for study, Summer 1995).

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

I have done my best to identify books, articles, columns, publications or relevant speeches, including a thorough review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

Columns

I worked as a local reporter in West Virginia 1997–2000. During that time, I authored numerous articles for the local weekly papers on local news and events. These were primarily published in *The Intermountain* newspaper and the *Pocahontas Times*.

Law Review Articles

- Tania Brief and Terrell McSweeney, *Corporate Criminal Liability*, 40 Am. Crim. L. Rev. No. 2, Spring 2003 (Note).
- Chris Salter and Terrell McSweeney, *SEC Proposes Soft Dollar Interpretation*, Wall Street Lawyer, vol 9, no 7, Dec 2005.

Blogs

- *Why There Is No Time to Waste In Putting Cops Back on the Beat*, post on whitehouse.gov, Oct. 21, 2011.
- *The Importance of Equal Pay for Women*, post on whitehouse.gov, November 17, 2010.
- *Workplace Flexibility at the White House*, post on whitehouse.gov, April 1, 2010.
- *Support for Caregivers in Health Care Reform*, post on whitehouse.gov, March 29, 2010.
- *Work-Family Juggling*, post on whitehouse.gov, February 12, 2010.
- *A Budget That Helps Middle Class Families*, post on whitehouse.gov, February 1, 2010.
- *Helping Middle Class Families with Soaring Child Care Costs*, post on whitehouse.gov, January 29, 2010.
- *Caring for Caregivers*, post on whitehouse.gov, January 28, 2010.
- *Vice President Biden Leads Discussion on Middle Class Families in DC*, post on whitehouse.gov, Nov. 9, 2009.
- *Going Green—And Saving You Money*, post on whitehouse.gov, Oct. 19, 2009.
- *Retrofitting and the Middle Class*, post on whitehouse.gov, Oct 17, 2009.

- *Saving and Paying for College—Back to School*, post on *whitehouse.gov*, Sept. 9, 2009.
- *More Stable and Secure Health Care for Seniors*, post on *whitehouse.gov*, July 16, 2009.
- *Blogging to the Middle: Improving Food Safety*, post on *whitehouse.gov*, July 7, 2009.
- *Blogging to the Middle: Simplifying Financial Aid Applications*, post on *whitehouse.gov*, June 23, 2009.

Speeches/Panels

- Speech, Addressing Issues Facing Working Families, Corporate Voices for Working Families, March 31, 2010.
- Panel Discussion, Economic Costs of Alzheimer's and an Elder Boom: The Price Paid by Governments, Families, and Employees and Employers, Center for American Progress, October 18, 2010.
- Speech, Public Safety Communications, IAFF Redmond-Barbera Crossroads, August 25, 2011.
- Panel Discussion, Building Blocks for Innovation: Historical and Economic Perspectives, University of Colorado Law School, Silicon Flatirons, September 23, 2011.
- Panel Discussion, The Intersection of Patent Law and Competition Policy, University of Colorado Law School, Silicon Flatirons, October 3, 2012.

Research Assistant

- *Bounty Hunters on the Prowl*, John Beisner, Jessica Davidson Miller, Terrell McSweeney paper for *instituteforlegalreform.com*, May 2005.

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

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

I wish to serve as an FTC Commissioner because I strongly believe that two critical and intertwined missions of the FTC—competition enforcement and consumer protection—are crucial to insuring that markets are healthy and functioning well and to the economic security of the middle class. I have an extensive policy background in many of the areas that are a focus for FTC, such as innovation, intellectual property, privacy, health care, and energy.

As Chief Counsel for Competition Policy for the Department of Justice Antitrust Division my work has focused on effective antitrust enforcement and on advocating for policies that are pro-competitive, pro-consumer and pro-innovation. Since I have worked in the FTC's sister competition agency, I believe I am well qualified to also help the Department of Justice and FTC work efficiently together—which is important for effective competition enforcement.

My policy work over the last decade in the Senate and the Executive Branch has focused primarily on issues related to middle class economic security—such as consumer protection, women's rights, health care, innovation and competition. Through this work, I have gained an understanding of the important role the FTC can play in all of these areas as well as the need for balanced, fact-based decision making at the agency.

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

Each of the five Commissioners on the Federal Trade Commission has an obligation to insure the proper management of the agency and that resources are being used effectively and efficiently. In my current role as Chief Counsel for Competition Policy of the Antitrust Division I am on the management team overseeing the Department of Justice Antitrust Division's enforcement and competition advocacy work—including managing antitrust civil cases and investigations. I believe four things are crucial to good management of an enforcement agency: (1) clear priorities and expectations; (2) transparent and balanced decisionmaking based on facts and evidence; (3) consistent communication between management and case teams; and (4) efficient use of time and resources. It is essential that the important work of en-

forcing our consumer protection and antitrust laws is conducted in a way that protects consumers and competition without unduly burdening businesses.

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

I believe the top three challenges facing the Federal Trade Commission are: (1) maintaining effective and efficient operations within the current budget constraints; (2) making consensus-oriented bipartisan decisions; and (3) protecting consumers and competition in rapidly evolving sectors such as technology markets and health care.

First, like all Federal agencies, the FTC must insure that it can maintain its mission in a challenging budget environment. I look forward to working closely with the Chairwoman and other Commissioners to make sure the agency is using its resources efficiently and effectively to protect consumers and competition.

I strongly believe that it is crucial for the Democratic and Republican Commissioners to find common areas of agreement when possible and to continue to work toward consensus in decision making. In my experience, the best results come from processes in which all views are discussed and understood. The nature and structure of the Commission requires this type of engagement and I have been impressed with the positive track record of bipartisanship at the Commission. If confirmed, I will be committed to maintaining effective working relationships with the other FTC Commissioners.

Finally, I believe that the FTC plays an important role in identifying and, if necessary, taking action to address competitive and consumer harm in several sectors—including two that are undergoing rapid change: technology and health care. I think it is important that the FTC take a balanced and fact-based approach to enforcement in these sectors—and make sure that it is using multiple tools—such as research and consumer education—to understand and address issues as they arise.

B. POTENTIAL CONFLICTS OF INTEREST

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

I continue to participate in a 401(k) retirement plan via my former employer O'Melveny & Myers LLP. The plan is independently managed by Fidelity. My former employer has not made (and will not in the future make) contributions to this account since my departure from the firm.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Federal Trade Commission's Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Ethics Official and that has been provided to the Committee. I am not aware of any other conflicts of interest.

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Federal Trade Commission's Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official and that has been provided to this Committee. I am not aware of any other conflicts of interest.

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

For the past ten years I have been involved, through my work in the Senate and subsequently in the Obama Administration, in legislative and public policy debates on a wide range of issues including: criminal justice, domestic violence, human trafficking, immigration, equal pay, work/family balance, education, health care, energy/

environment, telecommunications, intellectual property and Internet policy. I did not lobby.

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

Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official and that has been provided to this Committee.

C. LEGAL MATTERS

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

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

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain.

Yes—I am currently involved in an DC administrative proceeding because I am contesting a \$75 fine I received from the DC Department of Public Works for solid waste not properly stored in the alley behind my house. I am disputing the ticket, because the trash was not mine. I am currently awaiting a decision by the administrative judge. Case No: 2012–DPW K518960

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

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

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

D. RELATIONSHIP WITH COMMITTEE

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

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

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

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

RÉSUMÉ OF TERRELL MCSWEENY

Work Experience

U.S. Department of Justice, Antitrust Division, Washington, D.C.

Chief Counsel for Competition Policy, Feb. 2012–Present

Manage antitrust merger and conduct investigations and enforcement actions in a variety of sectors including: Telecommunications, transportation, financial services and health care. Additional responsibilities include: Managing the division's policy section, overseeing competition advocacy projects (such as participation in other agency rulemakings, speeches, appellate filings), leading the division's intergovernmental and Congressional relations, and representing the Antitrust Division at conferences and speaking engagements.

Office of the Vice President, Washington, D.C.

Deputy Assistant to the President, Domestic Policy Advisor to the Vice President, Jan. 2009–Feb. 2012

Advised the President and Vice President on domestic policy; worked on administration policy development, legislative negotiations and implementation in domestic and economic areas including: Health care, innovation, privacy, telecommunications/Internet, intellectual property, criminal justice/law enforcement/drug policy, energy, immigration, education, rural policy, women's issues and middle class economic security (work/family, retirement, labor); coordinated with communications team on

message development; managed domestic and economic policy office for the Vice President; TS clearance.

Obama for America, Chicago, Illinois

Issues Director for the Vice President, Sept. 2008–Jan. 2009

Travelled with Vice Presidential candidate Joe Biden to advise him on the campaign's domestic and economic policies; assisted with speeches and debate prep. Managed domestic and economic policy for the Vice President-elect Biden during the Presidential Transition.

Senator Joseph R. Biden Jr., United States Senate, Washington, D.C.

Deputy Chief of Staff and Policy Director, Dec. 2005–Sept. 2008

Managed staff in Senate Biden's personal offices in Washington, D.C. and Delaware; supervised communications, legislative and policy agenda in wide range of areas including: middle class economic security, education, health care, energy and environment, IP/IT and criminal justice.

Committee on the Judiciary, United States Senate, Washington, D.C.

Counsel, Dec. 2005–Sept. 2008

Served as counsel to Senator Joseph R. Biden Jr. in several areas including: criminal justice, civil rights, domestic violence, human trafficking, intellectual property, immigration, environmental crime, and judicial nominations; assisted in writing several pieces of legislation including some that were enacted such as the Second Chance Act, the Violence Against Women Act, and the Trafficking Victims Protection Act.

O'Melveny & Myers LLP, Washington, D.C.

Associate, June 2001–Sept. 2003 (law clerk), Mar. 2004–Dec. 2005 (associate)

Worked primarily with Strategic Counseling Practice Group on representations including: defending Congressional investigations; representing clients in antitrust matters before EU and U.S. regulators; counseling for non-profit advocacy organizations; guiding clients through election law and ethics restrictions on political activities; drafting issue briefings and articles.

Clark for President, Little Rock, AR

Deputy Director of Policy, Sept. 2003–Feb. 2004

Responsible for policy development for General Wesley Clark on a wide range of issues including: energy and environment, poverty, civil rights, civil justice reform, crime, immigration, women's issues, education, and child care. Prepared General Clark for public appearances and debates.

Gore/Lieberman 2000 Inc., Nashville, TN

Gore/Lieberman Recount Committee, Tallahassee, FL

Deputy Press Secretary/Assistant to National Spokesman, May 2000–Dec. 13, 2000

Managed press requests for Tallahassee-based recount legal team; briefed media; booked and staffed media interviews for legal team leaders and surrogates; coordinated press conferences. Coordinated with the Vice President's policy and message teams to write guidance and talking points on policy issues for daily briefings; assisted in drafting press releases and communications materials.

Allegheny Mountain Radio Network, Dunmore, WV

News Director, Feb. 1998–May 2000

Produced and directed local news for network of four public radio stations; freelance producer for state-wide public radio affiliate, West Virginia Public Radio; wrote and produced daily news programming for AMR network; anchored one-hour daily local news program and weekend news talk show; supervised AMR network public relations and outreach; and reported for local newspapers.

High Rocks Educational Corporation, Mill Point, WV

Director of Development/Instructor, June 1997–May 2000

Developed an after-school and summer leadership program for teenage girls from south eastern West Virginia; designed and implemented an after-school program for elementary and middle school students in partnership with public schools; managed fundraising and financial planning for HREC, a 501(c)3 non-profit.

Clinton-Gore '96, Washington, D.C.

Assistant to Director of Scheduling and Advance, June–Nov. 1996

Coordinated communications between message team, advance teams and scheduling desks for campaign events for the President, First lady, and Vice-President.

United States Senate, Washington, D.C.

Director, Summer Senate Page Program, Summer 1993 & 1994/*Senate Page* 1991–1992

Supervised summer Democratic Senate page program; assisted majority floor staff and Democratic Cloakroom staff in communicating with Senators and answering procedural questions.

Education

Georgetown University Law School, Washington, D.C.

JD; *cum laude*, December 2004

Executive Editor, American Criminal Law Review

Admitted to practice: West Virginia, District of Columbia

Harvard University, Cambridge, MA

AB, *magna cum laude*, American Folklore & History and Literature, June 1997

References available upon request.

The CHAIRMAN. Thank you very much.

We have a massive calling people operation going on right now. Committee staff is headed in all directions, with ropes and chains and all kinds of things, to get people over here. This is embarrassing to the Committee not to have them here.

Senator Thune, do you want me to go ahead and shall we start questioning? I mean, it's sort of like really shutting those other five out.

Senator THUNE. Your call, Mr. Chairman. I think I'm certainly happy to proceed.

The CHAIRMAN. OK. See, bipartisan.

Kay Bailey is in town. She wants to drop by.

Mr. O'Rielly, even though you failed to ask your girlfriend to stand, I'm going to forgive you for that.

[Laughter.]

The CHAIRMAN. I think that one's blown.

[Laughter.]

The CHAIRMAN. You know from our conversation that I care an awful lot about the E-Rate program. Olympia Snowe, Republican Senator not with us now—she didn't run again—we started that in the mid-90s and it was opposed on all fronts. I wrote every telecommunications company asking them not to delay the E-Rate program or to take it to court. As a result of my letter, all of them took it to the Supreme Court, and they were all defeated, on perfectly acceptable and solid grounds.

But any program that starts out trying to reach everybody in the country, one, isn't going to do so. But we're now up to—we're in the 90 percent, but that leaves out still millions of young people and adults and libraries. The reason we put in libraries is because you can't very well get adults into schools, and the libraries turn out to have long waiting lines of people trying to get online information about jobs that are available. It's very, very important, the libraries.

I care very deeply about the future of this. Earlier this year I received public commitments from all of the current sitting commissioners to work with me, us, to update and strengthen the E-Rate program. So today I ask the same question to you that I asked of them: Mr. O'Rielly, if confirmed would you commit to working with me, us, to protect E-Rate's accomplishments and to update the program to meet the present and future needs of our schools and libraries? You can answer that with a yes or a no, or you can—

Mr. O'RIELLY. Thank you, Mr. Chairman. Yes.

The CHAIRMAN. I like that.

We discussed yesterday, did we not, that the original language, not only of the bill—and you expressed, as you did in your testimony, the desire to follow the law. Back in that original telecommunications bill, there was a lot of flexibility built in. They understood that things were going to be difficult and we would have to make adjustments as we went along.

Ms. McSweeney, as Chairman of the Commerce Committee, consumer protection is one of my absolute priorities. In fact, it's almost the main one. This used to be a little bit different kind of a committee. We spent more time on railroads than we did on people. We've changed that now. We have an investigation committee with the power of subpoena and we play it tough. We're very aggressive in terms of insurance companies and telecommunications companies that are trying to take advantage of consumers. We've actually had some effect on that.

Some people—I think the FTC has to always remain vigilant and aggressive in taking on people who unfairly or deceptively profit from American consumers. Some people say, however, that the FTC should defer to industry self-regulation whenever possible, even if these voluntary regulations are insufficient to protect consumers, in concept as well as in carrying out perhaps. This is a debate we are having right now with Internet advertisers about consumers' online privacy.

Ms. McSweeney, what is the FTC's role in protecting consumers and what role does industry self-regulation play in protecting consumers?

Ms. MCSWEENEY. Mr. Chairman, as you said, the Federal Trade Commission is the premier consumer protection enforcement agency in the country, and I think its enforcement mission is vital to protecting consumers' privacy on line. I think it has a good recent track record of using that authority and I look forward to working with my fellow commissioners to continue to do so.

I understand the frustration that you're expressing, particularly in the privacy space, of efforts toward self-regulation, and I think I'm hopeful that those kinds of multi-stakeholder processes can continue to inform and guide policymaking in this area, which I think is very important in making sure that consumers have meaningful privacy protections on line.

The CHAIRMAN. Thank you.

Senator Thune.

Senator THUNE. Thank you, Mr. Chairman.

Ms. McSweeney, you were a co-author of the Justice Department's *ex parte* submission filed in the FCC's Mobile Spectrum Holdings proceeding and, as you may know, I've been somewhat critical of that filing. Like many of my Republican colleagues, I believe the FCC should allow all qualified and interested parties to participate freely in spectrum auctions, rather than micromanaging auction rules in an effort to predetermine individual winners and losers.

I'm wondering if while preparing the *ex parte* submission, did you and other DOJ staff review previous FCC spectrum auctions to analyze what effects the participation of certain carriers has had on the participation of others. Then a second question: Did the DOJ find any positive correlation between auction participation and greater bidding restrictions in past spectrum auctions?

Ms. MCSWEENEY. Senator, thanks for the question. We at the division do from time to time comment on issues related to competition and competition policy in other agency rulemakings, and the FCC Mobile Spectrum Holdings comment that the Antitrust Division filed was a part of that competition advocacy.

As an expert agency in competition and markets, the comment's focus is mainly on flagging the potential impact on competitive dynamics of Spectrum Holdings. We do believe that spectrum is a key input in the wireless space and the comment that the division wrote, which I was involved in drafting along with the experts in our Telecommunications Section and our Economics Section and others at the Department, was focused on flagging that competition concern and suggesting the FCC think about it in designing its Mobile Spectrum Holdings rule.

In that context, we didn't take a careful review of how to design the auction. I think the Department of Justice Antitrust Division doesn't hold itself out to be an expert in auction design, merely an expert in competition. So the thrust of the comment is really to focus on the impact on competition and consumers. So that's primarily what we were articulating there.

Senator THUNE. So you didn't look at the correlation in past auctions, spectrum auctions, between participation and bidding restrictions?

Ms. MCSWEENEY. I did not personally, no.

Senator THUNE. Mr. O'Rielly, you've observed FCC spectrum auctions for nearly two decades. I think we all tend to agree that most successful auctions are those that maximize bidders, maximize revenue, and most importantly maximize deployment of the spectrum. These goals maintain a competitive market, provide American taxpayers a return for the use of a public resource, and deliver modern communications to all Americans, including those in rural areas such as my home state of South Dakota.

Given your experience and based on what has actually happened in previous auctions, can you identify any traits that make an auction successful and have you observed traits that reduce bidders' revenue or deployment?

Mr. O'RIELLY. Thank you, Senator, for the question. Let me address the second part, and that is that in my experience—and I've followed these spectrum auctions exceptionally close for, as you highlighted, 20 years—when the Commission has tried to micro-manage or manipulate the spectrum auctions, it has often been problematic.

Second, when they have done such actions it has led to a situation down the road where the person who has obtained the license at either a discount or at the benefit of someone else being excluded winds up flipping the license to another participant. Therefore the taxpayer, the ratepayer, the benefit has been lost to the Federal Government.

So I'm cautious as we enter the space to want to impose any kind of obligations on bidding eligibility.

Senator THUNE. I'm going to shift gears for just a minute, but again a question for you, Mr. O'Rielly. Congress has required that passenger railroads and freight railroads carrying certain hazardous materials install positive train control technology by Decem-

ber 31 of the year 2015. In their efforts to meet this deadline, railroads have discovered that they're going to need to construct thousands of new communications towers in order to install positive train control.

Since each of these towers has to be approved by the FCC, this could be a very lengthy process unless the FCC is able to streamline that effort. In fact, the FCC is reportedly so overwhelmed by the coming influx of PTC-related applications that it's advised railroads not to proceed with any applications until the Commission can come up with an expedited protocol for processing these applications. As the Government Accountability Office reported in August, the impact of halting construction on the towers may result in additional delays in railroads' timeframes for implementation of PTC.

Let me first just ask the general question: Are you aware of this issue?

Mr. O'RIELLY. Thank you, Senator. I would suggest I'm not an expert in trains, but I am aware of this issue and how it interacts with the responsibilities of the Federal Communications Commission and the need for additional tower siting.

Senator THUNE. And if confirmed would you commit to working with Congress, with the FRA, and with passenger and freight rail industry to help implement PTC, which faces a number of technical challenges that are no doubt going to require an extension of the looming deadline that most, if not all, railroads are going to be unable to meet?

Mr. O'RIELLY. Yes, sir. I would want to work with all stakeholders, and especially this committee, on working through the issues on tower siting for the PTC going forward.

Senator THUNE. I would just be curious—and this is more of a general question. But as you know, the so-called IP transition issue's going to be one of the top challenges facing the FCC over the coming years. I'm wondering, if confirmed, how you would approach this important issue and what impact you think the IP transition will have on rural areas like South Dakota? In addition, what benefits do you see the IP transition providing to communications providers and consumers in rural areas?

Mr. O'RIELLY. Thank you. I have difficulty when people use the word "transition" for IP. As I highlighted in my testimony, I think the Internet is a very disruptive technology and that's to the benefit of consumers. So it's difficult to manage and control. However, the Commission has explored the opportunity of running or testing a number of trials in this space and I would be supportive of looking at what public policy issues may come from such trials and I'd be open to that.

I do believe that the IP transition has an opportunity to have benefits in all corners of our Nation, especially in rural America, where it can lower the cost for operating, especially in far-reaching rural districts.

Senator THUNE. Mr. Chairman, my time has expired. Thank you.

The CHAIRMAN. And thank you, Senator Thune.

Senator Blunt.

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

Senator BLUNT. Thank you, Chairman. It could be that our attendance is, just looking at people who are coming in today, these two nominees are both extraordinarily well qualified and have great backgrounds that many people in the Senate were already familiar with, and that may explain part of the reason that some of our members thought this was not the most pressing hearing that we've ever had. These are two really good nominees and I'm glad to see them here.

Mr. O'Rielly, one of the questions that's come up recently, and it came up with the chairman nominee on decency as it relates to broadcasting—I think there have been no enforcement actions by the FCC on this topic in the last 4 years. When the FCC proposed changes there were almost 100,000 comments, almost all of which objected to the changes. So apparently people that comment don't want to change the policy and the FCC hasn't wanted to enforce it.

Do you have a view on that?

Mr. O'RIELLY. Thank you, Senator, for the question. I would commit to you that I will do everything I can to help parents and families protect their children from unwanted material. There are some limitations in this space, given technology development and also Supreme Court precedent.

The issue you cite is an item that the Commission has initiated, the former Chairman initiated, in terms of a public notice whether they should change the rules and opening up that for a comment cycle. It was not an actually NPRM. So it's the start of the process, and my understanding, hearing from a number of members in this committee and also from a number of folks on the outside, they do not see the interest in changing the standard. I certainly am aware of those concerns.

In terms of the number of complaints that have been dismissed, I'd want to look at the record and see what the reasons are for the dismissal. There were a number of different reasons given, but I want to work with the Commission and understand exactly how those dismissals went about.

Senator BLUNT. Do you have a view that the current rules are unenforceable?

Mr. O'RIELLY. I think the Commission has an obligation to enforce the statute and its rules fully and I would commit to that.

Senator BLUNT. On one of your comments, one of your principles that I agree with particularly as it relates to the Congress, and only slightly less to the Commission, is the idea with the change, rapid changes in technology, the likelihood that we would actually pass a law that would solve a problem while it was still the problem is almost zero in my view.

Having gone through a couple of telecommunications bills, every time we did one in the House I noticed by the time we got to the second one none of the things we argued about in the previous debate were even at issue any more.

Do you want to expand on that just a little bit on how you think that same obstacle can be overcome or better dealt with or looked at by the Commission?

Mr. O'RIELLY. Thank you for your question. I would say that I am always open and deferential to the Committee. So if the Committee seeks to pass legislation, I will enforce it. But to your point, Senator, and the point I made in my opening statement, there is a difficulty in trying to write laws for technology that's changing at a very rapid pace. The Internet is not something that stops and waits for either the Congress or for the FCC. Therefore, in some instances it's writing legislation or FCC regulations that are flexible and also with a very light touch.

Senator BLUNT. Thank you.

Ms. McSweeney, I would assume the that same principle to some extent creates a new challenge at the FTC, where the way people communicate information, how quickly they communicate it, how hard it is to capture all of it, is a challenge there, too. Any thoughts about how to meet that challenge?

Ms. MCSWEENY. Senator, I think you're right. I think it can be a very complicated task to keep up with highly dynamic sectors, such as the ever-evolving communications sector and activity on the Internet. I do think, though, that the FTC, which is primarily an enforcement agency, is up to that task by taking each case and looking at the evidence before it and proceeding judiciously on a case by case basis.

Senator BLUNT. The only other question I have for you, and I may submit more later, would be on the use at the FTC of consent decrees for individual companies as opposed to a formal review and rulemaking process or going through the court system itself. Would you explain your views on the use of consent decrees and when it is appropriate for the FTC to enter into them?

Ms. MCSWEENY. I understand the concern and certainly look forward to learning more about it if I am confirmed and to speaking with all of my fellow commissioners about it. I would say in my experience at the Antitrust Division and with antitrust enforcement particularly, the FTC is operating the way Congress designed it—that is through the process Congress designed. I think it's important that the Commission proceed judiciously and use all the resources available to it in enforcing both competition and consumer protection law.

Senator BLUNT. Thank you.

Thank you, Chairman.

The CHAIRMAN. Thank you, Senator Blunt.

Senator Chiesa.

**STATEMENT OF HON. JEFF CHIESA,
U.S. SENATOR FROM NEW JERSEY**

Senator CHIESA. Thank you, Mr. Chairman.

Good afternoon to both of you. Congratulations on your nominations and congratulations to your families. It's a special day for you.

Ms. McSweeney, in your opening statement you talked about particularly vulnerable people who get picked on and defrauded. The elderly was a group that you mentioned. You also discussed some other groups. What are the things, both from an enforcement standpoint and from potentially an educational standpoint that you can take to both protect these victims and—in my state we know,

and there are so many of these, and it's especially with the elderly, I think because of the—it's OK. She may have a question.

[Laughter.]

Senator CHIESA. I know that because of the sophistication and unfamiliarity with some of the technology that exists, our elderly population in New Jersey and I'm sure in other states get targeted. So I want to know your thoughts both from an educational standpoint and an enforcement standpoint, things that you think you can do in your new position?

Ms. MCSWEENY. Senator, I do think focusing on vulnerable groups is incredibly important, and I'd add children to that list as well. Thank you for your patience with mine.

I'd say the issue that you're raising is a very important one, and I'm glad you mentioned education as a part of it. When Congress created the FTC, they did envision, in addition to the enforcement mission, an education component to that as well. I think the FTC has been doing this well, but I want to continue to make sure that we keep focused on it.

It's important to work with sister agencies that may have jurisdiction that is helpful, and I think it's equally important to work with states and state Attorneys General in particular to make sure that we are not only getting information in real time about scams that are out there, but we're getting the material to seniors and their caregivers as quickly as possible that explains what those scams are.

And of course, the enforcement piece of this is also important. To the extent groups are being targeted by fraudsters, we should be as much as possible prioritizing enforcement against them.

Senator CHIESA. I think the state Attorneys General would be a great resource for you because they're at the front line. A lot of them have consumer protection as part of their obligations in their states.

Are there any steps being taken now—and I'm showing some of my unfamiliarity—on the educational component? In other words, you're not in a position to meet, but is there a way for you to coordinate with the state Attorneys General or other consumer protection advocates in the states so that this information can get out?

I talk about the older population just because, as I said, in my experience in trying to enforce consumer protection laws, we know that that's where they go. It's all kinds of horrible ways. One of the scams that I remember was getting a call in the middle of the night from someone claiming to be your grandchild—your grandchild's friend saying: I'm in jail, your granddaughter's in jail; we need you to send us a money order right now, because, as you know, it's much harder to get—once that money's out the door, it's gone.

Many people are on fixed incomes. Many people have limited resources. Certainly the personal heartache that goes along with that is indescribable.

So I'm wondering if you've—I'd just ask this more as a request, that you talk to your colleagues and you make every effort to get that information out, because when you start to arm people with the information to make those decisions and to understand what might be coming, they're in a much better position to defend them-

selves, because it's very hard to unwind those situations once they've occurred.

Ms. MCSWEENEY. Absolutely, Senator, I commit to doing that certainly, and I look forward to working with you more to make sure that we're getting the information out quickly.

Senator CHIESA. Terrific. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Cantwell.

**STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman, and thank you for holding this important hearing on these two nominees.

Ms. McSweeney, we had a chance to talk a little bit about the new authority that the FTC was given as it relates to market manipulation on fuel prices. Obviously, the West Coast has been hit by high fuel prices and refinery shutdowns. So I wanted to get a sense from you if you will work to ensure that the FTC uses this authority of anti-manipulation to investigate anomalous gas prices and to make sure that the markets are safe from manipulation and anticompetitive behavior.

Ms. MCSWEENEY. Yes, Senator, absolutely. I think it's very important. As we discussed, fuel and energy costs really hit consumers directly in their pocketbook very quickly. So I think it's a very important priority.

Senator CANTWELL. What do you think that you can bring to the FTC to get them to understand this shift in policy? What can they do to work with other agencies, even in a task force environment, to accomplish this kind of oversight?

Ms. MCSWEENEY. I certainly understand the benefit of interagency collaborations. We do that at the Antitrust Division and the Department of Justice to combat fraud. I think it's very important, and I'd be happy to commit to working with our sister independent commissions as well as other agencies with expertise. I look forward to learning more about what the FTC is doing and I will speak with all of my fellow Commissioners about that as well if I'm confirmed.

Senator CANTWELL. How big of an issue do you think the issue of gas prices are for consumers?

Ms. MCSWEENEY. I'm not an expert on that question, but I am a consumer and I appreciate that energy costs can be very significant. I have worked on middle class economic security policies for most of my career and understand how very real that pressure can be on families, particularly when they have tight budgets. So I think it's a very important issue and I understand your concern with it.

Senator CANTWELL. Thank you.

Mr. O'Rielly, in your area of policy the issue of media ownership is one that residents of my state are very interested in and have continued to be interested in for a long period of time. Do you think that in some of these individual markets the broadcasters are abusing this ability; they have these joint agreements and effectively are getting around what is currently there to set limits on media

ownership? You know, they'll basically come in and virtually work together on all the activities except for 15 percent as a way to say, OK, well, we're not crossing that line, but in reality they are.

Mr. O'RIELLY. Thank you, Senator, for the question. I would say first the Commission has an obligation to complete its media ownership proceeding, as required by the deadline as established by the Congress, and it has not done so. So we're long past the question of answering a number of different media ownership limitations and whether they should be relaxed or kept the same.

That gets to the part of your question, are companies using a number of different arrangements to get around those situations, given that the rules have not been relaxed? I would say that there are situations where companies are trying to work within the current environment of the media landscape, that they would like to do things if the Commission would move forward on its proceeding.

Senator CANTWELL. Well, how do you look at the issue overall, given that they haven't completed it, but yet here's a Congress in a bipartisan fashion that have said you have to have a diversity of voices and your current rulings haven't achieved that? What would you bring to the—

Mr. O'RIELLY. I would want to look at the complete record in the situation. There have been a number of studies done by the Commission. The commission just concluded one study by an outside party on this question, and I would want to look at the entire record. I am open to exploring, given what the record would suggest, relaxing some of the media ownership rules, but I'd want to look at the entire record and hear from all stakeholders.

Senator CANTWELL. Well, I'm very concerned about relaxing the ownership rules and having a consolidation of voices. So I'm impressed by your statement now twice about the Internet and understanding that it moves a lot faster than we do. So I'm glad you get and understand that. That means a lot of policies that we could pass will be moot by the time they're actually implemented.

At the same time, I think a lot of people in the media space are trying to use the Internet as an excuse to say we ought to have a concentration of voices. And I can guarantee you, because Seattle will turn out thousands of people on a moment's notice to debate this issue, that they don't like to be force-fed by a concentration of media that says, this is what you're going to hear, or this is what you're going to listen to. We wouldn't have the alternative music scene, we wouldn't have a lot of different things in Seattle, if we didn't have a lot of diversity. So I hope that you will look at that issue the same way you're looking at this Internet issue and come to grips with the fact that concentration even the courts are saying is a big problem.

Mr. O'RIELLY. Yes, Senator, I commit to you I will.

Senator CANTWELL. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Cantwell.

**STATEMENT OF HON. MARK PRYOR,
U.S. SENATOR FROM ARKANSAS**

Senator PRYOR. Thank you, Mr. Chairman.

I first want to thank Ms. McSweeney for mentioning my father. I appreciate that. He obviously loved working with the chairman of this committee and they were Governors together and in the Senate together. So thank you for mentioning him.

Mr. O'Rielly, I have a question for you and I really want to pick up on the last thing you said during your testimony, where you said "Stay strong for freedom." I'm curious what you mean by that and how that applies to your position at the FCC?

Mr. O'RIELLY. Sure. And I have intertwined and interwoven it into my opening statement that's a lot longer. I think, as I highlighted regarding the Internet, I think the Internet is an opportunity to bring greater freedom to our citizens, expanding the number of voices on the Internet, expanding the number of media opportunities. To Senator Cantwell's point, in terms of some instances they're reduplicative of existing voices. In other instances it provides a new opportunity for voices, an opportunity to express throughout the globe things that can't be done today or in the past. You look at what's happening in foreign circumstances, say whether it's in Egypt or Syria or a number of instances, where the opportunity the Internet brings to our people is—well, it's overwhelming.

I think that freedom itself is intertwined to our overall goals. I had an opportunity to look back at the Gettysburg Address and in two instances—it's very short, 270 words—Lincoln highlights liberty and freedom, in two separate—the opening and the closing. So I think those are some of our general charges.

Senator PRYOR. So from your standpoint is freedom and liberty just about the Internet, or is it about all the other things you do at the FCC?

Mr. O'RIELLY. I think it works with everything in the FCC. I think there's an opportunity to—as I highlighted in my statement, there's an opportunity to reduce regulations that may be too burdensome, but there's an opportunity still to protect consumers, as we've highlighted before. So it's intertwined to everything we do.

Senator PRYOR. The other thing I noticed in your statement—and I appreciate you mentioning the staff and I appreciate that, I really do, because the staff works very hard around here and they get very little credit for what they do. But you also basically—you know, the vast majority of the stuff that you thanked were Republicans. Do you also work with Democrats?

Mr. O'RIELLY. Well, actually I highlighted that I worked with many staff on this committee extensively. I worked with a number of staff, including your staff on a number of projects. So I hope I didn't—I was highlighting a number of offices that I worked with and then I highlighted all the other staff that were not part of people I worked with, but including the staff on this dais, the staff in the audience, the plethora of staff that have gone on to other challenges. So I did not mean to suggest that it was just Republicans.

Senator PRYOR. I guess the more important question is whether you'll work with Democrats on the FCC.

Mr. O'RIELLY. Absolutely. I've had an opportunity to meet with the members of the Commission and I look forward to working with them on a number of items. As I pledged to you in my opening statement, I think it's my obligation to work with the Commission to address the pressing issues and bring certainty to the market-

place, and I will certainly work with all my colleagues on that charge.

Senator PRYOR. I just think that it's important for all of us as Senators when we're thinking about confirming nominees to think about how they will conduct themselves as commissioners. And the last thing we need on these commissions is partisan divide. I've seen that in a few commissions. I don't want to see that in the FCC. I don't want to see more of it in other commissions.

I want to just hear your thoughts on how you can ensure that there's not partisan divide at the FCC?

Mr. O'RIELLY. I believe my experience has highlighted a number of instances where I've worked across the aisle in a number of different forums. I worked extensively with the members of this committee on the spectrum auction item that's very important to the chairman. We worked in a bipartisan manner to in some regards fight back some ideas in the House.

In other instances I've worked with a number of the members of this committee on behalf of my former boss, Senator Sununu, worked with your office on a number of items. I've worked with Senator Cantwell on low power FM. I worked with her staff extensively on unlicensed spectrum. So I think I have a history of working both sides of the aisle on issues in communications policy.

Typically, communications policy is not overtly partisan. There are a couple issues that do bleed in that space, but there are very few and far between in my experience.

Senator PRYOR. It shouldn't be overly partisan. But just in hearing your testimony, it raised a red flag with me about how non-partisan you can be as a Commissioner.

I'm about out of time here. I have several questions that I'll submit for the record. But let me just ask about urban America versus rural America on broadband. You know, this has been a challenge, whether it was with electricity back in the old days or telephone back in the old days. But now it's rural broadband.

How can we increase the deployment and the take rate for rural America for broadband?

Mr. O'RIELLY. Yes, Senator, thank you for the question. The commission has an open proceeding as part of its reform of universal service. It provides a number of funding opportunities for subsidies to provide broadband in rural America and increase its take rate. We're going to continue to make modifications, if I'm lucky enough to be confirmed, to make modifications to those to address—in meeting with a number of the Senators of this committee, there were a number of items pointed and problems that were highlighted with the Commission's current reform item. I'd want to work with the members of this committee and the Commission and all stakeholders to correct any deficiencies that may exist, so that broadband is provided throughout our Nation.

Senator PRYOR. Mr. Chairman, I'm out of time. I do have several questions for the record. But I do want to just note that Mr. O'Rielly came in last week in my office and I had to be in Arkansas for a funeral. I'm sorry I was unable to sit with you.

Thank you.

The CHAIRMAN. Thank you, Senator Pryor.

Before I go to Senator Ayotte, I thought your question was really good, because in my experience here you get nominees and it's a little bit like, number one, what they're saying has to be approved by OMB, and the general public doesn't know that. But we know that and they know that. So that's a little bit of a pullback maybe.

Second, it's just fascinating and very polite and very sort of winsome that whenever we ask a question you always say "Thank you for that question." And there's almost never a witness, a nominee, that doesn't say that, "Thank you for that question," which is smart because it's warm and it's whatever. But I also have seen people who have given testimony which is fairly specific and then they get nominated and they get approved and then they go to their positions, and then they become different people.

I think that's a little bit what Senator Pryor was getting at, is that we really do expect to hear what it is you want to do in response to our questions, but also that you would actually live up to that, as opposed to get through the hearing and get nominated, which you're going to get.

Senator Ayotte.

**STATEMENT OF HON. KELLY AYOTTE,
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator AYOTTE. Thank you, Mr. Chairman.

First of all, let me just say I appreciate both of you being here and you're both very qualified individuals. Obviously, Mr. O'Rielly, you have a strong connection with New Hampshire, having worked for Senator Sununu, I really appreciate the work that you've done for a Senator that I respect, having served the state of New Hampshire.

Ms. McSweeney, you have the most adorable children who are in the back there, and they're doing really well, and I told them their mom was doing a great job. So I appreciate it. It's great to be with you.

I wanted to ask—first of all, Mr. O'Rielly, when we met one of the issues that has really been of deep concern to me and really coming off of what Senator Pryor said is the Universal Service Fund, New Hampshire gets ripped off under it. There's no other way to put it, where in 2011 New Hampshire payers paid in \$38 million and only got \$14 million in return.

So people in New Hampshire are only receiving essentially 37.5 cents on the dollar for the Universal Service Fund. Yet I think you know from having worked for a Senator from New Hampshire that we have great needs on broadband and that we have very rural parts of our state where this would make a very big difference to our economic development.

So what thoughts do you have on how we can reform this fund in a way that makes it more equitable and really gets to the core purpose of it, which is to help rural areas across America?

Mr. O'RIELLY. Senator, thank you for your question. To your point, the Commission's reform effort in universal service does provide a different approach to those areas like New Hampshire where they haven't traditionally received a large amount of money from universal service. They have provided additional funding in phase

one of round two, \$300 million, \$358 million to be more specific, that's going to provide some additional funding in New Hampshire.

I was looking at the maps of New Hampshire off the FCC's website and highlighting that Fairpoint has applied for about \$900,000 to reach broadband to 18 towns in New Hampshire where they don't have broadband today. So that is one thing that they're trying to do, is expand broadband to areas that don't have it today, and that is a good development.

Senator AYOTTE. It is good, but I really think we can go much further in terms of how we're using the Universal Service Fund dollars. It's just hard for me to justify to my constituents the amount they are contributing. It would be one thing if New Hampshire didn't have any needs in this area, but we know that New Hampshire has great needs in the northern part of the state for economic development.

One other issue that I'm very focused on—I serve also on the Armed Services Committee—is the issue of spectrum. I'm sure many of my colleagues also raised this issue with you. But obviously we have a need for greater spectrum. Much of it is being held by our government. How do we come to a resolution where we are taking some of that spectrum, while still protecting our national security, but making sure that we're also driving economic growth by making that spectrum available to the private sector?

Mr. O'RIELLY. The Federal Government in my opinion does hold too much spectrum, and there is need for an audit to look at what spectrum that they're currently using as opposed to what they're actually holding, so we can try and determine if there's a greater opportunity to migrate spectrum from the Federal side to the commercial side.

We've had success over the many years and there's greater need for this as we go forward, since we have what many people would agree is a scarcity problem in spectrum, and therefore it gets to the larger issue of how much spectrum can we allocate for the commercial side of the equation.

So working with this committee, and in your work on the Armed Services Committee, there's an opportunity to provide greater spectrum for the commercial side of the equation.

Senator AYOTTE. Good. I think it would be important for the government also thinking about economic growth issues that have been such an important sector of our economy.

Ms. McSweeney, I was very privileged recently to have Commissioner Ohlhausen up to New Hampshire and I did a round table with business leaders in New Hampshire. It was very, very helpful. I would encourage you also when you're confirmed to think about getting out to states and to hear directly on consumer issues and business issues as you take on this position.

But one of the things that was raised to me—and I want to use it as an example—is a concern across the board from the private sector of wanting more clarity from the FTC, more clarity on what the rules of the road are. For example, one issue that was raised to me was by auto dealers, that they were exempted from Dodd-Frank, but now there's a rule that the FTC has been playing in reviewing their financing contracts that they're concerned about, that they feel could hurt their ability to thrive and grow.

I just use that as one example. But how do you view your role as a Commissioner in terms of providing clarity and guidance to business and really a set of rules that they could follow so that they know what to do, and at the same time obviously protecting consumers?

Ms. MCSWEENEY. Senator, thank you for the question. I also appreciate your point about getting out of Washington and visiting states, and I hope to come to New Hampshire as well.

Senator AYOTTE. We'd love to have you. It would be great.

Ms. MCSWEENEY. Maybe with Commissioner Ohlhausen if we're allowed to go together. Have to check the sunshine laws.

I appreciate your point.

Senator AYOTTE. We'd be happy to have FCC Commissioners, too.

Ms. MCSWEENEY. I appreciate your point and I do understand that there is a very active discussion going on around clarity. I think the FTC is fundamentally an enforcement agency and I'm familiar on the antitrust side particularly with sometimes the difficulty associated with having very predictive guidelines and guidance and statements in a regime that is fundamentally a case by case, common law regime.

That said, I think it's incumbent on the leadership and the enforcers on both sides, the division and at the FTC, to make sure that they're clearly articulating their reasoning—they can do that in a variety of formats—and to make sure that they are applying the law as it is written and following the case law as well, which I think is very, very important.

I commit to doing that and using the authority judiciously and treating each case really as an individual case, looking closely at the evidence before us.

Senator AYOTTE. Great. Well, thank you very much. I appreciate both of you and your commitment to wanting to serve. Thanks.

Ms. MCSWEENEY. Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Scott.

**STATEMENT OF HON. TIM SCOTT,
U.S. SENATOR FROM SOUTH CAROLINA**

Senator SCOTT. Thank you, Mr. Chairman.

Mr. O'Rielly, thank you for your previous comments to Senator Blunt's questions and comments as relates to the decency standards. We truly appreciate your commitment to pay very close attention to that.

Ms. McSweeney, recently you have stated that protecting consumers in rapidly evolving sectors such as health care is one of the top challenges facing the FTC, and I believe this is a challenge that is about to grow increasingly more difficult as many of those challenges of Obamacare become a reality.

The FTC is already receiving a large volume of complaints about Obamacare-related scams. An FTC spokesman recently stated that these scams are a top priority for the FTC and that many more are expected as the health insurance exchanges get up and under way. Consumers' most personal information will now be in the hands of Obamacare navigators, whose total training requirements have

been reduced from 30 hours to 20 hours, opening up far more possibilities for major privacy challenges.

What are your thoughts about how the FTC will face these challenges?

Ms. MCSWEENEY. Senator, I'm looking forward to learning more about exactly what the FTC is doing and will certainly spend a good deal of time getting up to speed and speaking with my fellow Commissioners if I'm confirmed. As I understand it, I think it's a very important part of the FTC's consumer protection mission to protect consumers from potential fraud and scams. It is common, I think, when there are large changes under way for fraudsters to try to take advantage of that and defraud people, and I believe the FTC as an enforcer has an important role in taking on those issues. I've read that the FTC is also convening a workshop on that this week as well, and I think that's very important and I'd be committed to that.

Senator SCOTT. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

The good Senator Markey, wherever he is. Speak up and enlighten us.

**STATEMENT OF HON. EDWARD MARKEY,
U.S. SENATOR FROM MASSACHUSETTS**

Senator MARKEY. Thank you, Mr. Chairman, very much.

The CHAIRMAN. Probe deeply.

Senator MARKEY. Thank you.

Well, I know Ms. McSweeney's father, who's from Medford, Massachusetts.

The CHAIRMAN. Hey, wait a second. You can't—

[Laughter.]

The CHAIRMAN. She's a West Virginian.

Senator MARKEY. And her father was a writer for the *Medford Mercury*, a reporter, editor for the *Medford Mercury*. So she comes from—and it's not an oxymoron—and I might apply this to Mr. O'Rielly, too, that there is sometimes Irish aristocracy. I think we're seeing it here at the table today. So I've known their family for a very long time.

What I'd like to do with you, Ms. McSweeney, first is just talk a little about privacy and about the protection of children online, especially those 15 and under, so that we can, as we move to this—ever deeper into the new era, that we give those protections to kids. Back in 1998 I was the author of the Child Online Privacy Act, but that was in the BF era, the “Before Facebook” era. So we have to upgrade the rules, the regulations, that we have on the books in order to protect young kids from being exploited.

So I would like to hear your views on that issue, and how you view—Senator Pryor over in the Senate and I were the authors in 2012 of a law to upgrade the laws for the deaf and the blind so that they would have access. I'm interested in how you see at the FTC the role that can be played to protect children against unfair and deceptive practices that try to exploit their vulnerability in the marketplace.

Ms. MCSWEENY. Senator, thank you for that question and thank you for the acknowledgment of our Medford heritage and my dad, who is here today.

I, as was visible a little bit earlier in the hearing, I'm a parent of small children who at three and five are already iPad and app proficient. So I appreciate not only that the space is evolving very rapidly, but that the way our children are using it in many wonderful ways is also evolving very, very rapidly.

I think it's important for policymakers and members of Congress such as yourself to be able to keep pace with that. It's also important for enforcers to keep pace with it as well. I strongly support meaningful privacy protections for all consumers, but particularly for children, and I'm looking forward to working with you on some of the issues related to protecting teenagers who fall outside the COPPA rules.

Senator MARKEY. Could we move on a little bit as well to data brokers. The FTC is beginning to work in that area as well. As we know, we've gone from an era of privacy keepers to privacy and information reapers, just gathering up all the information possible. These data brokers have obviously an incredible amount of power over our lives.

What is your view on that issue?

Ms. MCSWEENY. I'm often struck by how little most of us know about how information is collected and used on line. I think the FTC has an important consumer protection mission as an enforcer, but also potentially an education mission that could be useful in this space. I have followed with interest the vigorous debate over privacy and data legislation and I think it's an important one. I think the various multi-stakeholder processes that have been going on over the last 2 years have also provided a lot of important information that should be accounted for in thinking about the policy. I'm looking forward to continuing to help inform it if I'm confirmed.

Senator MARKEY. Thank you.

I've known Mr. O'Rielly for a long time as well. He began working on the Telecommunications Subcommittee of the House of Representatives when I was the Chairman back in 1994. He worked for Tom Bliley, who became the Chairman of the Committee, and was there for the Telecom Act of 1994, which became the Telecom Act of 1996 after the Senate processes. I didn't understand why it couldn't get passed through the Senate that year, but it waited long enough for Senator Rockefeller to be able to move in the E-Rate over here.

So I was just wanting, if I may, briefly—I don't have much time—to talk about the closed captioning legislation that Senator Pryor and I were able to pass in 2010 and the need to ensure that there is a covering of the captioning of IP-delivered video clips. A very small percentage of it is covered, but yet the deaf and the blind are all basically dependent upon the Internet. We all are now.

The same way ADA made the world wheelchair-accessible, that law was intended to make the Internet, the highway of information for the future, accessible for the deaf and blind as well. Could you talk a little bit about that?

Mr. O'RIELLY. Yes, sir, and thank you for your question. I'm committing to you, as I have in a number of instances, to enforce and implement the statute that the Committee has drafted and enacted. These have provisions in this space. I know the statute does have some technical opportunities for waivers and we want to look at specifically how it gets to the captioning issue in the IP clips. But I do think it's an important issue and we should implement the statute as written.

Senator MARKEY. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Markey.

For those of you who are new to Senator Markey and Senator Rockefeller, we engage in this stuff all the time.

The one and only Senator McCaskill. And everybody batten down the hatches.

Senator MARKEY. I'm sitting between the Boston Red Sox and the Atlanta Braves, and I just want to point out that we also are in first place, Mr. Chairman, just in case you were wondering about the Cardinals, how we were doing.

The CHAIRMAN. I had actually written a note, which I decided not to send because it would have been undistinguished on my part, to thank you for losing quite a number of games at the same time as we were—

Senator MCCASKILL. We like to make it exciting for our fans.

The CHAIRMAN. OK, OK.

Senator MARKEY. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. Please.

Senator MARKEY. Was there any mention that the Red Sox have the best record in baseball at this point?

[Laughter.]

Senator MARKEY. I just wanted to make sure that's on the record.

The CHAIRMAN. No.

**STATEMENT OF HON. CLAIRE MCCASKILL,
U.S. SENATOR FROM MISSOURI**

Senator MCCASKILL. We'll speak again in October.

I want my 50 seconds back, by the way. I need them.

Mr. O'Rielly, you probably are aware that I was solicited to get a free phone in my condominium not far from the Capitol, which began my journey at looking at one of the most fraud-infested programs ever conceived in the Federal Government, and that's the Lifeline Phone program.

Now, keep in mind that the goal here is wonderful and I support it. The goal is laudable and I support it. But this program was so flawed from its inception in the Bush Administration in terms of oversight. I want to ask you a couple of questions about that oversight.

It has come to my attention recently that once again we have discovered fraudulent applications being submitted and the two companies that have been cited by what I believe to be accurate reporting have been the only two companies ever penalized in the Lifeline program. Out of a multi-billion dollar program, they were fined a whopping half a million, \$500,000 apiece.

Now we find this information out, where the reporting indicates that supervisors were telling people: It's OK if you submit fraudulent applications; the more the better.

My first question to you is: If your investigation reveals that reporting to be accurate, would you be advocating for barring those companies from further participation in the Lifeline program?

Mr. O'RIELLY. Senator, thank you for your question. I do believe the Commission has done some good work in trying to improve the Lifeline program. A number of items are still to be implemented, but if—and I am unaware of the circumstances you speak of, but if that's the case that certainly should be on the table for the Commission.

It is the obligation of the Commission to enforce its rules and the statute, and I would fully want that to happen in this case.

Senator MCCASKILL. As an auditor, one of the things that really offends me about this is that the FCC prohibits providers from maintaining records of eligibility, under the auspices of privacy. Now let me see if I get this straight. You're getting a free phone, but we can't keep your records in order to audit later to make sure that you are eligible.

Are you willing to make a commitment at this hearing that you would be advocating for a change in that rule that we could keep records for purposes of auditing eligibility of the people who are participating in the program?

Mr. O'RIELLY. I believe that, notwithstanding the good work of the Commission, problems still exist in the Lifeline program, even though we're going to implement some more changes. I suggest to you that a top to bottom review of the program is in order, and if that's the helpful solution to that issue I would want to look at that very closely.

Senator MCCASKILL. Another problem that is going to never ever—we're never going to get the fraud out as long as you're allowing these companies to incentivize people that they make more money the more people they sign up. It reminds me of when we have found fraud in getting signatures for a petition or for signing up people to vote. When you pay people per person, you're creating an incentive for them to manufacture applications and to duplicate.

They found one person who was selling for two companies, so when he signed up one for one company he signed them up for the other company, because we all know the database isn't there that they can even find duplicates at this point.

Would you be willing to look at a rule that would prohibit companies from incentivizing salespeople based on how many people they sign up for the program?

Mr. O'RIELLY. Yes.

Senator MCCASKILL. Thank you.

Let me also ask you about the shot clock on the approval of the merger for Sprint. Traditionally, the FCC has used a 180-day shot clock as a guideline. That merger has been pending now for far beyond that 180 days. Is that shot clock deadline effective and should it be continued? And what can you do, what would you do, to ensure timely—because sometimes not getting an answer is worse than getting an answer you don't want. The idea that things can linger, especially when there are stakes as high as this for a com-

pany, is really problematic. If you would address that I'd appreciate it.

Mr. O'RIELLY. Senator, I don't want to speak about the specific Sprint situation, but I do agree with you and I would pledge to you my promise to try to comply as best as possible with, whether it's 180 days or maybe we should look at that in terms of shortening that. But I would want to live up to that agreement that we try to complete mergers as soon as possible, because one way or the other—as you say, sometimes getting an answer is more helpful than dragging the situation out.

Senator MCCASKILL. Thank you.

Just because I don't want to leave Ms. McSweeney out: I now chair the Subcommittee that Senator Pryor previously chaired, with jurisdiction over the FTC. You are probably aware of some of the hearings we've done on our need to get at robocalls more effectively with advancing technology. I also have concerns about online privacy, although I come at this from the perspective that I don't think the American public realizes that they're getting content for free because the monetization of the Internet occurred through behavioral marketing, and if we're going to turn that back we've got to make sure that the American people understand that there's going to be some costs associated with that in all likelihood.

But I really wanted to just mention to you deceptive advertising, which I think is an area that the FTC frankly will never have enough resources to go at. But we're going to have a hearing and I would look forward to your cooperation on deceptive advertising. Particularly for those of us that are north of 50 and who continue to struggle with staying fit and healthy, nothing is more irritating to me than green coffee beans.

The notion that there are people that are being told that green coffee beans can not only make them thin, but also make them rich, is like fingernails on a blackboard. It is just one example of so many examples of fraudulent advertising that are out there. I'd like you to briefly address that, if you would, Ms. McSweeney.

Ms. MCSWEENEY. Thank you, Senator. I'm looking forward to working with you on this issue, and I'm also looking forward to, if I'm confirmed, finding out more about it and working with the FTC in ensuring that we're doing as much as possible to go after deceptive conduct in the advertising space as well. I think it's a very important part of the FTC mission.

Senator MCCASKILL. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator McCaskill.

I'm just going to—Senator, if you've got more questions, please.

This has been a very awkward, but yet fruitful, afternoon because we never could get a quorum. We have to have our budget in by the 20th according to the Rules Committee, so that we will be having an off-the-floor markup tomorrow. For the three of us here, I hope we all remember that and the staff gets the word out to the others, because we have to do that.

All members should have questions in by this Friday. Presumably there will be a number of members who do have questions.

I want to just end my part and, Senator Markey, you can go on if you want to, really. When you, Mr. O'Rielly, talked about Internet protocol transition, I got worried because you sort of made

some kind of a relationship between the fact that technology is changing so quickly together with the fact that therefore it isn't really wise to try to regulate what needs to be regulated because tomorrow it will be different.

I have a very, very different view of that. Having watched major changes in industries that move very rapidly, under the radar, who used to get away with all kinds of things—and I'd say the health insurance industry would be one of the top. They were really good at moving things quickly, and we just stopped them cold.

My sister, who doesn't need it—Senator Markey, you'll enjoy this—got a \$200 rebate in the mail. And she called me up and said: What is this? I said: Your insurance company cheated you, over-charged you, and because of the medical loss ratio bill in the Affordable Care Act, sometimes known as Obamacare, but not by me, she got \$200. Billions of dollars gone out to do that.

People will take advantage of any given moment. The faster the change, the faster they'll take advantage of it so as to be able to count on the rapidity to help them take advantage of others.

So I just want to ask you. How does the FCC make sure that the values in the Telecommunications Act are in effect at all times, not just when there are long periods of waiting, but at all times? I think the FCC has to be sure that the IP transition period does not leave rural—and they'll do it—and underserved areas at risk. They will do that, no matter how quickly the technology changes. So I'd like to have you respond to that.

Mr. O'RIELLY. Yes. Yes, Senator. Thank you for your question. I hope—I think I pointed out two parts to my comment earlier. One is that the statute and the regulations need to be flexible and with a light hand as best as possible. So you have a situation where—

The CHAIRMAN. Yes, but those are code words.

Mr. O'RIELLY.—the 1996 Act—

The CHAIRMAN. “Flexible” and “light-handed” to me are code words, code words for—

Mr. O'RIELLY. Well, flexible in the 1996 Act that you were very involved in, the provisions apply—have a long life and apply to a number of different technologies. It's not just an attempt to be technology-neutral so they can live through the next decades as we go forward. So it's how do those provisions—how are they drafted, how are they structured, to address the situations, rather than being specific in one technology area.

The CHAIRMAN. Well, I will take that as your answer, then.

Mr. O'RIELLY. And I would say, the second part, I certainly understand your point regarding rural America and I will pledge to you, as I have to other members, that there are a number of issues before the Commission, including universal service reform and the IP transition, if the Commission moves forward on trials that will look at these specific issues, it is certainly the goal and the requirements—it's not the goal. It is the requirements of the statute to ensure that all Americans have coverage.

The CHAIRMAN. This is the beauty of it. Verizon—every day that you watch television, you see a Verizon ad and you see a large map of the United States with most of it colored red, *i.e.*, covered. So every day that I see that advertisement I see that West Virginia somehow ends up being white, *i.e.*, uncovered. That doesn't mean

it's entirely uncovered, but it's a clear representation of when people don't want to spend money on something which is not going to make a strong return, versus the Telecommunications Act, which says you've got to be everywhere all the time, no excuses.

Mr. O'RIELLY. I understand the point you're making.

The CHAIRMAN. Senator Markey.

Senator MARKEY. Thank you, Mr. Chairman, very much.

Mr. O'Rielly, as you know, our phone network is rapidly transitioning from traditional technology to Internet protocol, and that's just moving at the speed of light. People look back to the 1996 Telecommunications Act and they wonder is its relevance. But of course what we know is that that reason that we're having this revolution is that the 1996 Act has worked so well, that it has created this incredible ongoing, recurring revolution, and we move from not one home having broadband in 1996, when President Clinton signed the bill at the Library of Congress, to having it now be in the minds of every 10-year-old a constitutional right, broadband at inexpensive rates at home.

So that's a pretty rapid revolution, and it was all anticipated. That is, we were going to move from narrowband to broadband, we were going to move from analog to digital. We were going to unleash this incredible revolution.

So I guess what I would like to know from you, because the act's principles, that is the principles that dealt with competition, with consumer protection, with economic growth, were all basically built into that law, and it was meant to basically unleash, which it did, \$1 trillion worth of private sector investment. \$1 trillion. Amazing. That's the largest kind of economic piece of legislation that's gone through Congress in a generation, huge. And it led to probably the largest amount of revenues going into the balancing of the budget in the last nineties. Maybe 30 percent of the revenues came in because of the 1996 Telecom Act and moving over the 200 megahertz of spectrum a couple of years before that.

So I guess my question to you is that, the intent was that the technologies were technology-neutral, that the Act was technology-neutral. So I'd like to hear your comments, if you would, on the values of consumer protection, competition, reliability, universal service, because those are the core principles. The technology itself does not have values. We imbue the technology with our values, and those values are central to ensuring that we do have competition, we do have universal service, we do have consumers who are protected.

So could you give us your sense of, your view of those principles?

Mr. O'RIELLY. Yes, sir. Thank you for your question. As I mentioned to the Chairman in terms of the IP transition, the Commission is looking at potentially setting up a number of trials to examine a number of the issues you just highlighted, including interconnection, consumer protection, disability, to figure out what are the public policy issues going forward as relates to the IP transition, so nobody is left out of the equation going forward.

In terms of the specific principles that you highlighted, I'm committed to those. I think they're ingrained in the statute itself—competition, universal service, and a number of the other items that

you spoke of, consumer protection. I think they are ingrained in the statute and an obligation of the Commission.

Senator MARKEY. Ultimately the purpose of the Act was to create Darwinian paranoia-inducing competition in the marketplace, that would threaten the incumbents, force them to move. Everyone was analog that deep into the technology revolution. So all of a sudden, within 4 years we had a dot-com boom. Everyone figured out digital.

So my goal here is just to make sure that as you move to the FCC that you bring these values with you. These are key. This is really what it's all about. It's not just about a piece of technology. It's about who we are as Americans and what we imbue the technologies with. I think your background at the inception of the legislation, knowing what was in it and giving me the comments that you did right now, reflects your understanding of how central that is to making sure that this law continues to work into the future. So I thank you for that.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Markey, let me just ask a question and then we'll end this. In a way, what you're saying is that if I declare myself a free market solution person, then I'm saying that everything will inevitably get worked out by the free market. You and I both reject that and I think that's a major, major factor in and on the FCC. Do they understand, will they understand, and will they come forth with what will, in fact, fulfil the Telecommunications Act requirements—universal service, universal coverage, everything you talked about.

Senator MARKEY. If the gentleman would yield, yes, that's what I'm saying, that the technology is neither good nor bad. There is a Dickensian quality to that technology. It can enable and enable; it can degrade and debase simultaneously. The determination of what that technology does is made by the people who are here and the people who are at the FCC and the Federal Trade Commission as well. So the privacy of children, the universal access to the technology, its reliability, consumer protection so that fraud is not perpetrated, all of that has to be determined by us, in conjunction with the regulatory agencies, to make sure that while we derive the benefits of the technology that we're also guaranteeing that people are not going to be exploited by it.

I think it's that balance. While we revere the marketplace, we also understand its limitations. So to a very large extent, we did not get this revolution until we broke down the monopolies, which we had to do because they weren't moving fast enough. But even in breaking down the monopolies, you don't get everything, because the values have to attach to it, and only through legislation and regulation can those values be instilled into the technology.

So I agree with you, Mr. Chairman.

The CHAIRMAN. So, Mr. O'Rielly, you have some sense of at least how two members of this committee will be watching.

Mr. O'RIELLY. Yes, sir.

The CHAIRMAN. Look. You've all been ten times more than persuasive. I have to ask a question because two of the absolutely cutest children I've ever seen in my entire life, neither of them

being from the table taller than this (indicating), ran across the back and out. Were they part of either of your families?

Ms. MCSWEENEY. Those may have been my children. I'm not sure where they are.

[Laughter.]

Ms. MCSWEENEY. If there is a rather stunning blonde woman following them, that was my mother.

The CHAIRMAN. OK, all right. They were incredible.

Ms. MCSWEENEY. Thank you, sir.

The CHAIRMAN. I'm into grandchildren, OK.

Senator MARKEY. It was the Medford in them.

[Laughter.]

Ms. MCSWEENEY. It's definitely the Irish in them, and the West Virginian.

The CHAIRMAN. We both have honorable claim.

Again, questions for the record by this Friday. Staff of those Senators who are not here should know that. I hope the questions will be back the following Wednesday—that's not unreasonable—and that we will have a markup on the floor tomorrow, both the budget and the nominees, not all of whom have yet been mentioned, but all of whom are deemed done.

Thank you and this hearing is adjourned.

[Whereupon, at 4:14 p.m., the hearing was adjourned.]

A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO
TERRELL MCSWEENY

Patent Assertion Entities

Question 1. Ms. McSweeney, when you visited with me we spent some time talking about the intersection of competition, innovation, and patent policy and your views on the FTC's role. We talked about the FTC plans to initiate a study under Section 6(b) of the FTC Act to study the role of patent assertion entities in today's economy.

This is an important and timely project. Unsavory PAEs have targeted unsuspecting end users and even threatened lawsuits on the basis of non-existent patents. On the other hand, there is a wealth of evidence showing that PAEs can also foster innovation by creating a vibrant market for patents, which enables innovative firms to access the technology they need to bring new products to market.

What are the principles that you believe should guide the FTC as it undertakes this investigation so that it strikes an appropriate balance?

Answer. I am not privy to deliberations within the Commission about a potential Section 6(b) study focused on patent assertion entities (PAEs). However, if I am confirmed, I am looking forward to speaking with all of the Commissioners and the experts at the FTC so that I can understand whether a study would be an appropriate use of resources. I am aware that many stakeholders have raised questions about whether some PAE conduct may violate antitrust laws. Last year the Department of Justice Antitrust Division and the FTC held a joint workshop with industry participants and experts to explore the impact PAEs are having on competition and innovation. The discussion at the workshop—and in the comments to both agencies following it—centered on the benefits of PAE activity (such as monetization of intellectual property) as well as the potential harms from PAE activity (such as PAE conduct taxing innovation). It is possible that further study would assist enforcers and policymakers in evaluating the impact of PAE activities on consumers, innovation and competition.

Anticompetitive Conduct in Online Technology Markets

Question 2. Ms. McSweeney, while you have been part of the leadership of the Justice Department's Antitrust Division, the Division has brought important cases challenging anticompetitive conduct in online technology markets. The FTC meanwhile, has been far more reticent to challenge dominant firm conduct in online markets.

How will your experience at the Department of Justice inform your approach to evaluating anticompetitive conduct in these important markets at the heart of our economy?

Answer. Online markets are fast-moving and highly innovative. Antitrust enforcers must carefully consider these market dynamics when confronted by potentially anticompetitive conduct.

Fortunately, one of the great strengths of U.S. antitrust law is that it is a common law regime which is sufficiently flexible to allow enforcers and courts to approach the central issue of protecting competition in different factual situations over time. Innovations are constantly transforming the economy—often to the benefit of consumers—so it is important for enforcers at both the Antitrust Division and the FTC to consider each case individually and to thoroughly evaluate the evidence before them in order to assess whether conduct ultimately would prove harmful to competition and consumers.

Online Privacy

Question 3. Ms. McSweeney, as you know, the FTC serves in a key role in helping consumers understand online data collection practices and protecting privacy. Many observers believe that consumers have little understanding of online data collection practice and privacy policies that are often vague to the point of being meaningless.

As a Commissioner, how will you help to ensure that Americans obtain the privacy protections they are entitled to?

Answer. I believe that the FTC's enforcement mission is crucial to ensuring that consumers have the tools to protect their personal information and the information necessary to make informed choices about how personal data is collected and used. The FTC also uses consumer education to raise awareness about privacy issues and ensure that consumers can make informed choices within the marketplace. If I am confirmed, I will work with the other Commissioners to enforce existing laws that protect the privacy of consumers and to provide information to the public regarding these practices.

Question 3a. Do you believe that a failure to provide a meaningful explanation of what data is being gathered and how it is being used could be an unfair or deceptive act or practice?

Answer. I believe that the determination of whether such a failure is unfair or deceptive must be made on a case-by-case basis based on the evidence.

Question 3b. Do you believe that competition among online service providers could be one way to help promote online privacy and responsible data collection practices?

Answer. Yes. I believe competition can lead some companies to provide greater privacy protections than others to gain an advantage in the marketplace. Competition can also yield valuable innovations that provide consumers with additional options to protect their privacy and greater transparency around data collection practices.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO
TERRELL MCSWEENY

Question 1. Ms. McSweeney—Earlier this year, the Federal Trade Commission (FTC) released its annual report on pay-for-delay agreements. It showed that in FY 2012 there were 140 settlements between brand name and generic firms and 40 of them involved pay-for-delay. Senator Grassley and I have introduced bipartisan legislation that would make pay-for-delay agreements presumptively illegal under the antitrust laws.

The FTC hasn't brought a new pay-for-delay challenge since 2009. Now that the Supreme Court has handed down its ruling in *Actavis*, which said these agreements can indeed be scrutinized under the antitrust laws, what do you think the Commission should do with those 40 pay-for-delay agreements? Should some of them be challenged?

Answer. I understand that stopping the use of pay-for-delay agreements has had bipartisan support of the FTC for many years. I believe that it should continue to be a priority. Economic analysis indicates that reverse payment settlements cost consumers billions a year in expenses and increased costs to Medicare and Medicaid. The Supreme Court's decision in *Actavis* provides a helpful path forward to challenging anticompetitive settlements that are likely to cause consumer harm. In light of the *Actavis* decision, I believe it is appropriate for the FTC to review settlements filed pursuant to the Medicare Modernization Act and to investigate agreements that may violate the law. If I am confirmed, I will work with my colleagues to determine how to best use the FTC's resources to continue to protect consumers from anticompetitive agreements.

Question 1a. Do you support our bill? In what ways do you think the FTC would benefit from this change in the law?

Answer. The Commission should continue to make stopping anticompetitive pay-for-delay agreements a priority. The Supreme Court's ruling in *Actavis* is an important victory for consumers and competition. It confirms that traditional antitrust principles should apply in evaluating reverse payment agreements. Federal courts must now evaluate antitrust challenges to reverse payment settlements under the rule of reason standard. Your legislation would create a presumption that reverse payment agreements are anticompetitive unless the parties to them can prove they are not. It is likely that imposing a brighter line test would do more to deter future reverse payment settlements and assist the FTC in its effort to stop the use of these types of settlements. If I am confirmed, I look forward to studying your legislation and working with you and my colleagues at the Commission to protect consumers from anticompetitive practices that limit access to lower cost generic drugs.

Question 2. Ms. McSweeney—As the population ages, more bad actors are emerging to prey on older Americans through financial scams. These schemes include everything from fraudulent investment plans and charity scams to phony sweepstakes and predatory home lenders. And the statistics are staggering, roughly 1 in 5 seniors have already been victimized by fraud or financial abuse. According to a study by MetLife, annual losses from financial fraud targeting seniors reached \$2.9 billion

in 2010, up 12 percent from 2008. That's why I introduced legislation—the Senior Fraud Prevention Act with Senator Susan Collins (R-ME), the Ranking Member of the Senate Committee on Aging, to give seniors and the FTC more tools to prevent scams before they happen. I hope you will take a look at our bill and work with me on these issues.

Will you commit to improving the resources at the FTC to better protect and educate seniors and to working with other law enforcement agencies to bring these criminals to justice?

Answer. Yes. The Commission should continue to place a priority on cracking down on fraudsters who target groups like seniors. Scams aimed at seniors are all too frequent. In addition to pursuing active enforcement against these schemes, it is important that the Commission also work closely with state attorneys general and other law enforcement agencies to combat them. In addition, the Commission should strive to provide important information about scams to seniors and their caregivers as quickly as possible. To ensure that word gets out efficiently and effectively it may be useful for the Commission to deepen its partnerships with other agencies that serve seniors. If I am confirmed, I will review the work the Commission is currently doing to protect seniors and work with the other Commissioners to ensure that the FTC's resources directed at senior fraud prevention are being used as effectively as possible.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO
TERRELL MCSWEENEY

Big Data Privacy Enforcement

Question 1. As the FTC continues to engage on privacy issues, Chairman Ramirez and commission staff have both identified “big data” as an enforcement priority. In a recent speech to the Technology Policy Institute, Chairman Ramirez stated her view that the Commission has the tools it needs to address privacy concerns. Specifically, under the FTC Act, the Commission is able to enforce against both deceptive claims and unfair commercial practices. Recent enforcement actions brought under FTC's deceptive practices authority feature fact patterns where firms have violated their own privacy policies or other commitments to consumers to keep their data confidential. Defendants in such cases are aware both of the commitments they have made, and of their responsibility to honor those commitments. However, cases brought under the Commission's unfairness authority appear less clear cut in terms of what is expected of marketplace actors. These actions, the vast majority of which have resulted in consent order agreements, have produced little in the way of analysis. In your view, what would be the appropriate benchmarks for determining whether an activity regarding data security was unfair?

Answer. I believe the appropriate benchmarks for determining whether conduct involving personal data is unfair are those found in the Commission's unfairness statement and codified in the 1990s by Congress. They are: whether the act or practice causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and not outweighed by countervailing benefits to consumers or competition. Enforcement decisions using this authority should be made based on evidence that these three elements are met.

Question 2. Recently, Chairwoman Ramirez spoke about her vision on regulating Internet companies and issued a warning to companies that create products and services using data. She said: “Thou shall not collect and hold onto personal information unnecessary to an identified purpose. Keeping data on the off chance that it might prove useful is not consistent with privacy best practices.” However, both public institutions and private companies have been able to re-analyze previously collected data to realize important benefits for Americans—for example, Internet companies learned how to filter e-mail spam after realizing that e-mails marked as spam possessed distinctive patterns. And public institutions such as state departments of health have been able to better prioritize services using previously collected data. Retaining data while also respecting a user's privacy often makes government or industry more effective and efficient. As a Commissioner, would you agree with the Chairwoman's approach? Or do you feel such a blanket approach could act as a barrier to innovative products and services for consumers?

Answer. If I am confirmed, I will discuss the question of how to approach unanticipated uses of data with all of the Commissioners. Without additional context, I do not believe it is appropriate for me to opine on the Chairwoman's views on this issue. The FTC is primarily an enforcement agency. As such, the Commission should make enforcement decisions based on the standards of the FTC Act. In all

matters, I believe each Commissioner should carefully review the evidence before determining whether a violation has occurred.

Question 2a. Would you commit to making sure that the FTC instead appropriately focuses its law enforcement efforts on the uses of data that cause real harms for consumers?

Answer. I believe it is appropriate for the FTC to prioritize enforcement efforts around conduct that is either clearly harmful to consumers or deceptive or both. I believe that enforcers must carefully evaluate the evidence in each case. The appropriate benchmarks for determining whether a practice is deceptive are: that it is likely to mislead consumers acting reasonably under the circumstances and likely to affect consumers' decisions regarding the product. In evaluating whether conduct involving personal data is unfair the Commission should adhere to Commission's unfairness statement—which was also codified in the 1990s by Congress. The standard for unfairness is whether the act or practice causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and not outweighed by countervailing benefits to consumers or competition. I believe that these rigorous legal standards must be met in all enforcement actions.

Identity Theft

Question 3. Earlier this summer, the FTC released its Draft Strategic Plan for 2014–2018, recommending that the Commission “target [its] law enforcement efforts on violations that create the greatest amount of consumer harm,” and that its performance should be measured in part by the “percentage of the FTC’s consumer protection law enforcement actions that targeted the subject of consumer complaints to the FTC.” However, this has not been the case at the Commission in the past few years. Records indicate that the FTC has held four times as many round tables on the issue of privacy as the Commission has on data breach and identity theft, despite the fact that identity theft has been the #1 complaint filed with the FTC by taxpayers.

Would you work to refocus the agency’s resources toward responding to this serious crime of identity theft that affects so many Americans, particularly the elderly and members of our military?

Answer. If I am confirmed, I will carefully review how FTC resources are currently directed toward identity theft and deceptive or fraudulent schemes that target groups like seniors, children, veterans, and the financially distressed. I agree that the FTC plays an important role in combating identify theft. The Commission should continue to work closely with other law enforcement partners, such as the Department of Justice and state attorneys general, to crack down on identity theft crimes and to assist victims in their recovery from it. I believe it is also important for the FTC to continue to play the important function of providing valuable education materials and resources which raise awareness regarding consumers’ rights and provide guidance for those assisting victims of identity theft.

Fraudulent Schemes

Question 4. According to the FTC’s most recent survey of fraud in the U.S., during 2011, an estimated 10.8 percent of U.S. adults—25.6 million people—were victims of one or more of the frauds surveyed. The three most common types of fraud, as measured by the number of incidents, were fraudulent weight-loss products (7.6 million incidents), fraudulent prize promotions (2.9 million incidents), and fraudulent work-at-home programs (2.8 million incidents). In your view, what more can the Commission do to prevent these types of scams? Do you believe the FTC’s enforcement actions should mirror the most prevalent types of scams?

Answer. I understand that, particularly in the current budget environment, the FTC must prioritize the use of its resources. If I am confirmed, I look forward to conferring with the other Commissioners and to learning more about how these decisions are made. In setting areas of priority, I believe that the FTC should take into consideration the prevalence of types of scams, the amount of consumer harm from them, and also the emergence of new types of scams that may warrant a prompt and clear response. The high volume of complaints about these types of frauds also suggests how important it is for the FTC to partner with other law enforcement agencies, including the Department of Justice and state attorneys general, to combat these schemes.

Empirical Evidence

Question 5. Do you believe that the Commission currently places enough emphasis on empirical evidence and economic theory in deciding whether to bring an enforcement action?

Answer. I am not privy to information that would allow me to adequately assess the FTC's current level of emphasis on empirical evidence and economic theory in making enforcement decisions. However, I believe empirical evidence and economic theory play a vital role in assessing harm to competition and consumers as well as potential efficiencies. In my experience, antitrust enforcement is most effective when it is analytically grounded, factually supported and consumer oriented.

When Should the FTC Bring a Case?

Question 6. The Commission's standard under the Federal Trade Commission Act for filing an initial complaint against a firm states that the Commission must have "reason to believe that a violation of the law has occurred" before it may file an initial complaint and may only do so if it would serve the public interest. Because neither the FTC Act nor the FTC's rules define the "reason to believe" standard, the question of whether a complaint is appropriate is up to the discretion of each commissioner. How would you decide whether this requirement has been satisfied?

Answer. Each Commissioner should consider the nature and strength of the available evidence in making a decision about whether the standard has been met. While certainty is not required, we must have reason to believe a violation has occurred.

Question 6a. What threshold must be met before the agency may proceed? Is it a low standard that litigation "may" lead to a finding of liability? Or should it be stronger?

Answer. If I am confirmed, I will carefully consult and follow the relevant case law describing when the reason to believe threshold has been met. I have not currently formed an opinion on whether the standard is too low.

Question 6b. In your view, is a more clearly-articulated standard needed?

Answer. I do not presently have a view on this question. If I am confirmed, I will review the relevant case law and confer with the commissioners regarding this question.

Section 5

Question 7. As you know, Section 5 of the FTC Act provides the primary source of authority for the FTC's antitrust and consumer protection missions. The language of this statute is broad, making unlawful "unfair methods of competition" and "unfair or deceptive acts or practices." Chairman Liebowitz, whose seat you have been nominated to fill, openly argued that the Commission's powers under Section 5 are expansive and reach a "broader array of behavior than the antitrust laws." In your view, what are the limits to the FTC's powers under Section 5?

Answer. I believe the central tenets that should guide enforcement decisions are harm to competition and consumers. The Supreme Court has confirmed that Congress intended Section 5 to reach beyond the antitrust laws. Although the precise boundaries have never been squarely articulated, there is generally agreement that Section 5 covers some conduct which is outside the scope of the Sherman and Clayton acts—such as invitations to collude or exchange of competitively sensitive information. Such practices must be anticompetitive in a meaningful sense. The relevant legal standards require antitrust enforcers to have factual support for a credible theory of economic harm to consumers in order to bring a case. I believe the FTC should only use its stand alone Section 5 authority judiciously and after thoroughly considering the evidence, and determining that the practices involved would prove harmful to competition and consumers.

Question 7a. When would it be proper for the agency to file a complaint under its Section 5 authority?

Answer. As noted above, the relevant legal standards require antitrust enforcers to have factual support for a credible theory of economic harm to consumers in order to bring a case. I believe the FTC should only use its stand alone Section 5 authority after thoroughly considering the evidence that the practices involved would prove harmful to competition and consumers.

Question 7b. What types of FTC actions would constitute an overreach of the agency's authority in your view?

Answer. The FTC should hew to the relevant legal standards in making any enforcement decision. I would consider actions that are not supported by evidence of actual or probable harm to competition and consumers an overreach of the agency's Section 5 unfair methods of competition authority.

Antitrust Enforcement in the Tech Sector

Question 8. It is clear that technology markets pose unique challenges for antitrust regulators. Unlike other sectors of the economy that predominated in the prior centuries when our antitrust laws were written, the tech sector continues to spawn new business models that do not necessarily fit cleanly into the existing regulatory

framework. Commissioner Wright has written, for instance, that empirical evaluation of business practices in high tech-markets is complex, in part because these cases involve conduct that can theoretically prove either pro-competitive or anti-competitive. Are antitrust regulators able to benefit consumers with a focus on traditional antitrust metrics (such as price and output) or is it time for a new approach?

Answer. Innovation, especially at the fast pace it occurs in the technology sector, can pose challenges for antitrust enforcers who must fully understand market dynamics when assessing whether mergers or firm conduct are anticompetitive. However, this is not a new issue in antitrust law. Innovations are constantly transforming the economy. From the automobile, to radio, to telephone, to television, to computers, to mobile devices, technological advances have changed how people communicate, travel and conduct business. One of the great strengths of the antitrust laws is their flexibility—which allows enforcers and the courts to approach the central issue of competition in different factual situations over time. Antitrust case law recognizes that competition is vital to innovation and requires enforcers and courts to apply a balanced, fact-based approach to law enforcement. I believe the common law approach of the United States antitrust laws is a strength of our system.

Question 8a. Are there other areas of antitrust jurisprudence that you believe need to be more fully developed?

Answer. In the past year the Supreme Court has clarified two important areas of antitrust law. In *Phoebe Putney Health Services, Inc.*, a unanimous Supreme Court clarified that for the state action doctrine to apply the anticompetitive effect must be the “foreseeable result” of what is authorized by the state. In *Actavis*, the Supreme Court confirmed that traditional antitrust principles should apply in challenges to reverse-payment agreements. Both cases provide important clarifications of the scope of judicially created exemptions from competition law. I believe it will be important to watch carefully how these doctrines evolve in lower courts.

Foreign Acquisition of American Companies

Question 9. Across a number of sectors we have seen instances where foreign companies—sometimes state-owned—seek to acquire American companies. Could you share your views about the past or present acquisition of American companies by foreign, state-owned companies?

Answer. In antitrust law the ultimate ownership of the acquiring company only matters to the extent that it raises competition issues—for example, horizontal concerns may be present if the entity owns another competitor in the industry. In evaluating the impact of a transaction on competition, antitrust enforcers do not consider whether the buyer is domestic or foreign. I believe that is appropriate in order to promote an open global marketplace and that exporting this framework, particularly to countries that are developing antitrust laws, is important.

Question 9a. Do you see any negative implications of these types of mergers and acquisitions on consumers or various elements of American industry?

Answer. Yes, such acquisitions may raise many issues aside from their potential impacts on competition. For example, they may be subject to CFIUS review for potential national security issues and other issues that go beyond antitrust. However, it is important to have an open market for foreign investment—so each transaction should be evaluated on a case by case basis by the relevant enforcement agencies.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROGER F. WICKER TO TERRELL MCSWEENEY

Question 1. You testified that, during your tenure “here in the Senate, at the White House, and at the Department of Justice, the economic security of the middle class has been [your] focus,” and added that you view the Commission’s role in enforcing laws that protect consumers and promote competition as linked in some way to our efforts “to build a strong middle class.” Do you believe that such a role requires the Commission to find substantial economic evidence of consumer harm before it finds an actual or likely violation of Section 5 of the FTC Act? If not, is there some lesser standard of proof the Commission should follow (and if so, what is that lesser standard, and what steps should businesses take to ensure they do not violate it)?

Answer. The Commission’s enforcement decisions should be guided by the legal standards codified in the FTC Act, the case law that has developed around them, and the facts and evidence in each case. In competition and unfairness cases, I believe the central tenets that should guide enforcement decisions are harm to competition and consumers. Factual evidence, empirical evidence, and economic evi-

dence are valuable in assessing whether practices would harm competition and consumers. The primary responsibility of a Commissioner is to ensure that enforcement decisions are made within the bounds of the relevant legal standards.

Question 2. Some commentators, including even some former FTC Commissioners, have called for strengthening the due process rights of those who are investigated and prosecuted by the FTC. Do you believe that the Commission's existing Part 3 enforcement process sufficiently protects the due process and other rights of respondents, and if not, how could it be improved?

Answer. Due process is essential to all investigations. If I am confirmed, I will work with my fellow Commissioners to ensure that the Commission adheres to the procedures that protect the rights of respondents. As I understand it, there are a number of procedural safeguards in place. Moreover, decisions by the Commission are reviewable by Federal courts. I believe these protections are important to respondents and to assuring the integrity of the FTC's investigations.

Question 3. FTC Commissioner Wright observed, in a 2012 academic article, that Commission decisions have a "significantly higher appeal and reversal rate than Federal district judges," and he found "no clear evidence the Commission adds significant incremental value to the ALJ [Administrative Law Judge] decisions it reviews." Do you agree? If the FTC rules require the Commission's own Administrative Law Judge to conduct a trial when there appear to be disputed questions of fact and issues of witness credibility, is it ever appropriate for the Commission to disregard the ALJ's rulings on those issues, and if so, why?

Answer. As I understand it, the Commission is operating as Congress designed it. I believe it is very important for the Commission to be committed to the rule of law. If I am confirmed, I will take seriously the responsibility of each Commissioner to thoroughly review the facts of each case, to judge each matter on its merits, and to hew to the bounds of the authority granted to the FTC by Congress.

Question 4. FTC Commissioner Olhausen has cited the importance of "regulatory humility" as Commissioner, while Commissioner Wright has stated that the "[i]nability of an agency to translate its expertise into high-quality decision-making renders it at best ineffective and at worst costly to society." Do you agree? If not, what is your preferred approach?

Answer. I view the FTC as primarily making enforcement rather than regulatory decisions. I agree that in making enforcement decisions it is incumbent on the FTC to proceed judiciously and make decisions based on the merits of the evidence before it. The FTC's long track record of protecting consumers and small businesses from frauds and deception and combating anticompetitive mergers and practices has helped to ensure that our markets function freely. If I am confirmed, I look forward to working with all my fellow Commissioners to hold the FTC to the standard of excellence it has established as we steward the Commission's important law enforcement mission.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DAN COATS TO
TERRELL MCSWEENY

Question 1. If confirmed to the Commission, share with me your threshold for supporting the initiation of an anticompetitive enforcement action. Do you support an enforcement approach that relies on empirical evidence?

Answer. Yes. I believe empirical evidence plays a valuable role in antitrust enforcement. Antitrust cases must be thoroughly evaluated on a case-by-case basis. Empirical evidence can assist enforcers in assessing the harm to competition and consumers from mergers and conduct as well as potential efficiencies that might justify them.

Question 2. I commend the work the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC) have done in establishing a national Do-Not-Call Registry pursuant to their authorities under the Telephone Consumer Protection Act (TCPA). The registry is nationwide in scope, applies to all telemarketers (with the exception of certain non-profit organizations), and covers both interstate and intrastate telemarketing calls. I have heard concerns from my state regarding the regulation of high volume auto-dialer initiated Voice over Internet Protocol (VoIP) "broadcasted" calls. My understanding is that these calls can put 10,000 calls per minute onto Indiana's landline telephone network, by using VoIP technology, in an attempt to get around Indiana's Do Not Call List. Is this an issue you're aware of, and if so can you share your views on this topic with me?

Answer. While I am not familiar with the specific issue involving Indiana's Do Not Call List, I am aware that there has generally been an increase in consumer

complaints regarding “robocalls” and other practices that circumvent Do Not Call protections for consumers. If I am confirmed, I will support the FTC’s enforcement efforts targeting violations of the Do Not Call rules. I believe it is also important for the FTC to work closely with the FCC, state attorneys general, and industry leaders to develop solutions.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV
TO MICHAEL P. O’RIELLY

Question 1. Prior to the FCC’s adoption of recent reforms to the universal service high-cost fund, I held a hearing in which I pressed the FCC to make sure that those reforms help bring wireless service to rural areas that do not have it now. We also discussed how mountainous terrain and other topographical features can pose additional challenges and costs to wireless deployment in those areas. The Commission has now completed its Mobility Fund Phase One auction to provide support for wireless build-out in rural America. It is my understanding that some prospective bidders faced significant challenges in winning support under the Mobility Fund’s Phase One rules. I know that the FCC is still considering reforms to the method by which it distributes wireless support in the future.

If confirmed, will you commit to a thorough review of this method to be sure that it works effectively for all rural areas, including those areas, like West Virginia, that face topographical challenges?

Answer. Yes.

Question 2. On June 12, I introduced legislation with Senators Klobuchar and Blumenthal aimed at preventing bogus companies from cramming charges onto consumers’ phone bills. Consumers have already lost billions of dollars because of wireline cramming. They cannot afford to lose any more. Could pro-active regulation by the FCC have prevented this massive consumer harm?

Answer. While I wouldn’t foreclose additional Commission regulations in this area, I tend to believe that the best mechanism to prevent and stop cramming is through vigorous enforcement actions. Cramming seems to be an inherently fraudulent, unfair and deceptive practice. As such the Commission’s rules already prevent such activities, as do those of the Federal Trade Commission, which has taken a number of actions in this area.

Question 2a. If confirmed, would you commit to working with me to protect consumers from cramming?

Answer. Yes.

Question 3. As we continue to move to a more wireless world, we cannot let crammers run from one kind of bill to another. That is why in June I wrote letters to the four national wireless providers asking about their policies for protecting consumers against cramming on wireless bills. As I have expressed in the past, it is important for both Congress and the FCC to be proactive on this issue. What should the agency do to make sure cramming does not move to other services, such as wireless?

Answer. As a general matter, I agree that consumers using any type of service should not be subject to charges on their bill for services they did not actually purchase. Before determining what actions the Commission might take to address cramming on wireless or other services I would first want to know the extent that cramming is in fact occurring with such services. As previously noted, I tend to support greater enforcement of existing rules to combat cramming over new Commission regulations, which could increase overall costs on all wireless subscribers. I would be supportive of efforts to focus greater attention by the Commission on this issue and, if confirmed, I will look to the Commission’s staff and industry stakeholders for data on this topic. In addition, the Commission should work in cooperation with the Federal Trade Commission, which has taken enforcement actions in this area.

Question 4. Last year, I held a hearing that explored the future of the video marketplace, including the emergence of online video. The Committee heard that online video has the potential to be truly transformative, and to lead to greater choice, better programming, and lower prices for consumers. That is why I am concerned by recent reports indicating that pay television providers are seeking to foreclose opportunities for online video services to flourish in the marketplace. It is troubling that some cable operators are entering into agreements that seek to require or encourage media companies to withhold their programming from online video services. To the extent legislation is needed to prevent this possible anticompetitive behavior, I am willing to lead that effort. But I also believe the FCC has some existing authority

to combat these practices. Do you believe that online video can ultimately serve as a competitor to broadcast, cable and satellite?

Answer. Yes. It depends how broadly the term “online video” is interpreted, but I think it is a very likely direction the entire video services market may go in the near future.

Question 4a. Do you believe regulatory action can help competition in the video marketplace thrive?

Answer. I believe that removing barriers to the development of online video offerings could be helpful and prudent, so long as such efforts are not discriminatory against current providers, do not provide an unfair advantage, and do not unnecessarily interfere in the marketplace.

Question 4b. If confirmed, would you commit to fostering the development of these innovative services and to make sure that they continue to benefit consumers?

Answer. Yes.

Question 4c. What actions would you take to make sure usage-based pricing by Internet service providers is not a barrier to online video providers?

Answer. I would need further information from all stakeholders and will review developments in this area, but I am not sure that usage-based pricing will develop as a real impediment to online video providers. Today’s video consumers want their video content when, where and how they want it; companies that meet this demand will succeed. Incumbent video providers risk strong alienation from consumers if they stand in the way of consumer demand.

Question 5. In the near future, the FCC will be auctioning spectrum in the 600 MHz band that is voluntarily relinquished by television broadcasters. A number of parties, including potential bidders, have asked the FCC not to allow the same interoperability issues in the 700 MHz band to be repeated in the 600 MHz band. If confirmed, would you commit to making sure that interoperability problems do not occur in the 600 MHz band?

Answer. It is my understanding that the Commission’s Notice of Proposed Rulemaking for the broadcast spectrum incentive auction makes interoperability one of the five key policy goals along with utility, certainty, interchangeability, and quantity. I would need to review the full record in the proceeding, but at this point, these seem like reasonable goals. In some regards, this issue will need to be part of the overall discussion in determining the appropriate band plan and other important components for the incentive auction.

Question 6. Payphones are a vanishing feature of the American communications landscape. Fifteen years ago, we had more than 2 million payphones across the country, but now we have less than a quarter as many. Despite this decline, they remain a primary link to the communications network for American households without any form of household phone. They are a vital part of keeping Americans connected and, as we saw during Hurricane Sandy, can be a lifeline in times of emergency. If confirmed, will you commit to reviewing existing payphone policies at the FCC in order to ensure that the Congressional mandate to compensate each and every completed call is met?

Answer. As you note, the payphone industry is swiftly being replaced by other technologies, such as wireless phones. If confirmed, I would seek to ensure that the Commission complied with the provisions of the law.

Question 6a. Will you commit to work to ensure that disputes over payphone compensation are resolved in an expeditious manner?

Answer. In cases in which the Commission is authorized, the Commission should work to resolve any disputes quickly. I would need further information to determine whether this has been a problem in the past as it pertains to payphone complaints, and if so, the reasons for any delay.

Question 7. As you know, I have long been concerned about the harm caused to kids by violent programming. That is why I have introduced legislation to have the National Academy of Sciences study the impact of violent programming on children’s well-being. I also have long believed that parents must have effective tools to protect their children from questionable content, no matter how it is accessed. I know the FCC previously studied this issue in 2007 and 2009, discovering significant flaws in TV ratings systems and parental controls. Technology has changed dramatically since the FCC’s original studies. Today’s mobile devices and online video platforms offer children access to untold amounts of content and create additional challenges to parental oversight. If confirmed, will you push the FCC to update its 2007 and 2009 reports on media violence and parental control tools, particularly examining the impact of changes in technology on parents’ ability to protect their children from questionable content?

Answer. I would like to do everything I can to provide families and parents the opportunity to protect their children from unwanted material. The good news is that for many media platforms technology provides amazing new tools for parents in this cause, especially the development of Internet applications (or apps). If the Commission determines to initiate another study of media violence, I would want the Commission to take a hard look at all the new technology in this space available to help parents and kids.

Question 8. Cybersecurity is one of the most critical national security challenges facing our Nation. Both the government and the private sector are under almost constant attack. These attacks cost us billions of dollars every year. The majority of our telecommunications network is owned by private companies. But it is in our national interest to defend our country against our adversaries who use this network to steal our business and government secrets. In July, I introduced a bipartisan cybersecurity bill with Senator Thune that would give the National Institute of Standards and Technology authority to facilitate and support the development of voluntary, industry-led cyber standards and best practices for critical infrastructure. If confirmed, how would you promote public-private sector cooperation to improve our ability to stop cyber-attacks?

Answer. The Commission has limited authority in this area beyond being a conduit between the government and the private sector companies that design, develop, operate and maintain the Internet. To the extent the Commission can promote dialogue and cooperation between the parties with differing views, I would be pleased to help facilitate such activities, while maintaining deference to Congress and other Federal entities with greater roles on the issue.

Question 9. As part of the 1996 Telecommunications Act, Congress directed the FCC to regulate media ownership. I remain concerned that broadcast television ownership groups are using arrangements like shared-services agreements to take effective control of TV stations that the FCC's rules say that they cannot own. Reports suggest that these arrangements also affect the marketplace negotiations that set the cost for the carriage of broadcast content. Would you agree that the FCC should take a hard look at these arrangements to determine if they comply with the spirit of the 96 Act and the FCC's regulations?

Answer. Consistent with the requirements of Section 202(h) of Telecommunications Act of 1996, the Commission is obligated to review all of its media ownership rules quadrennially to determine whether such rules are necessary, reflecting added competition in the market, and to repeal or modify any regulation it determines to be no longer in the public interest, and that is what I would do, if confirmed. I would need further information and comment from all stakeholders to ascertain whether any party is circumventing the law.

Question 10. The FCC has been tasked by Congress with ensuring that all parties in retransmission consent negotiations conduct those negotiations in good faith. How would you propose that the FCC judge good faith in such negotiations?

Answer. I believe that the Commission's overall authority in the retransmission consent process is very limited given the provisions of the law. The Commission has a two-part framework to determine violations of the good faith negotiation contained in the statute. The Commission has an open proceeding from March 2011 that seeks comment on a number of suggestions and ideas relating to its good faith negotiations framework. I would need to review the full record before providing additional comment.

Question 10a. Would you agree that setting forth more detailed standards for what is good faith in these negotiations would provide more certainty to the parties negotiating these deals, and would help protect consumers from prolonged blackouts of programming that they pay for each month?

Answer. During my time as a congressional staffer, I have heard from some parties that have advocated for greater requirements on what qualifies as good faith negotiations and what should be permitted under the retransmission consent process. Others have advocated that the Commission take a different course by completely leaving the entire negotiating process to the private sector to resolve. I would need to review the full record of the Commission's open proceeding to provide more information on which perspective would provide greater assistance to consumers and would be consistent with the statute. The issue has generated significant interest from Members of Congress on both sides of the aisle. I would, of course, faithfully implement any Congressional requirements, should Congress pass additional legislation on the topic.

Question 10b. Do you support the FCC requiring that consumers receive refunds when there is a prolonged blackout?

Answer. I would need further information from all stakeholders to make an assessment. Under current procedures, consumers generally pay for multichannel video programming on a per-package basis rather than on a per-channel basis. Beyond whether it is advisable, it may be difficult to determine the value a consumer would be “owed” under a refund policy, if the Commission chose to impose such a requirement.

Question 11. In retransmission consent negotiations, when broadcasters and pay television providers fail to reach agreement, screens go dark, and viewers are stuck bearing the brunt of these corporate disagreements. Under the Communications Act, broadcasters hold their licenses to use the airwaves “in the public interest.” Broadcasters are in a position of public trust. Do you believe broadcasters’ pulling their signal in this way is consistent with the public interest?

Answer. As a consumer myself, I sympathize tremendously with American consumers that are often caught in the middle of negotiations between media companies and content providers. No one supports television screens going dark. While broadcasters have the obligation to act in the public interest, the statute also provides broadcasters with retransmission consent rights. To the extent that broadcasters negotiate in good faith but do not come to contractual agreement with multichannel video program distributors, the statute provides broadcasters with the right to withhold programming. I would welcome further legal analysis on this matter.

Question 11a. During the Time Warner/CBS dispute in August, Time Warner Internet customers were blocked from accessing free programming made available to all Internet users on *CBS.com*. Do you believe this online blocking is in conflict with broadcasters’ charge as part of their FCC licenses to serve the public?

Answer. I would need to hear from all relevant stakeholders on this matter, but I will suggest the blocking of Internet content is extremely shortsighted by content providers, in this case television broadcasters. American consumers are both savvy and fickle when it comes to Internet content. Stunts such as these tend to undermine consumer trust and loyalty that is hard to restore. Moreover, it also raises legitimate questions whether the retransmission consent process is being abused by broadcasters.

Question 12. Several stakeholders have suggested that the FCC’s rules on local broadcast market exclusivity (specifically, the rules on network non-duplication, syndicated exclusivity, and sports blackout) are market altering in the context of retransmission consent negotiations. You have professed support for free competition in the communications market. Do you believe that these rules affect market-based carriage negotiations between broadcasters and pay TV providers?

Answer. I do believe that these rules have an impact on the negotiations. Indeed, the Commission’s open proceeding on retransmission consent seeks input on whether the rules do have an impact on the negotiations, whether the rules are already covered by contract negotiations between television networks, content providers and local broadcasters, and whether elimination of such rules would have any practical impact.

Question 12a. Would you support reforming or eliminating these rules?

Answer. I would want to hear from all stakeholders, but I would welcome the opportunity to consider whether these rules should be eliminated.

Question 13. In Section 628 of the Communications Act, the FCC has been tasked by Congress to monitor and prevent unfair methods of competition or unfair or deceptive acts or practices in the cable marketplace. In your testimony, you state that you favor “clear rules of the road” to help consumers and industry. Is this the sort of instance where you favor the FCC adopting such rules of the road to implement this statutory responsibility?

Answer. Section 628 is part of the statute and I would comply with the law. To the extent there are discussions on how best to change the statute, I would have to defer to Congress on that matter. A number of parties have argued that after 21 years, the 1992 Cable Act provisions should be reviewed.

Question 14. In your testimony you speak of eliminating “unnecessary regulations.” Can you name five such regulations that you believe are unnecessary?

Answer. In my testimony, I stated that, if confirmed, I would focus on implementing and enforcing the applicable statutes enacted by Congress, work with my colleagues to address the pressing issues and bring certainty to the market, and look for opportunities to reduce unnecessary regulations or those that impose excessive financial burdens. I believe it is premature for me to specifically name regulations I would eliminate before arriving at the Commission and having the opportunity to review the intent and effect of existing rules. As a general matter, I believe one area that is an obvious place to start are the numerous and often overlapping

reporting requirements placed on communications providers. I would also look closely at pending requests for forbearance to determine whether such requests have merit and whether the rules for which forbearance is being sought remain necessary. I would want to conduct a comprehensive review of existing rules before providing the Committee with any particular suggestions.

Question 14a. How would you propose that the FCC decide what is or is not a necessary regulation?

Answer. Generally, if a regulation is not squarely within the authority and responsibility of the Commission, has outlived its usefulness, is unneeded to meet the requirements of the statute, or imposes excessive costs then it should be considered for elimination. One test some people have suggested to use is one already contained in the statute. Specifically, Section 11 of the Communications Act of 1934, as enacted as part of the Telecommunications Act of 1996, requires the Commission to conduct a biennial review of all Commission rules relating to telecommunications services and determine if they are no longer necessary. Some parties have sought to extend this review to video services, and I would be very open to exploring this option. In addition, a number of parties have sought to expand the Commission's Initial Regulatory Flexibility Analysis for small businesses and its Paperwork Reduction Act analysis to better incorporate a fuller cost-benefit analysis in the Commission's findings to determine whether a proposed regulation is excessively expensive. Further, some have suggested applying these analyses to Commission rules already enacted to determine a more accurate cost-benefit basis. These are just a few ideas that could further the goal of an efficient and effective Commission.

Question 15. Section 1 of the Communications Act says that one of the fundamental purposes of the FCC is to promote universal availability of communications to all Americans. I firmly believe that this universal service obligation today includes extending access to quality broadband nationwide. I am concerned about how we are going to meet this obligation with consumers in our rural areas, where there is often only one provider with a monopoly on service. What does the universal service principle in Section 1 mean to you?

Answer. Universal service is a fundamental and longstanding principle of communications policy. It is embedded in many provisions of current law, and if confirmed, I commit to faithfully execute and enforce those provisions. I think the Commission's mission to ensure universal service is strong, but it must be done in a thoughtful manner and with recognition to the differences in our vast nation.

Question 15a. How do you expect the FCC to achieve that principle through its regulatory mission?

Answer. The Commission made a number of reforms to its Universal Service funding program for high-cost areas in December 2011. These changes bring the program—now known as the Connect America Fund—better in compliance with the requirements of the statute and remove a number of hidden subsidies. In addition, the Commission focused the program on bringing broadband services to U.S. towns and areas that do not currently have service. Together, it is my view that the Commission can continue push for greater efficiency, stability, and affordability within its Connect America Fund, while keeping rural consumers as its main focus.

Question 15b. The FCC's high-cost fund provides critical support for build out in areas like rural West Virginia and South Dakota. Do you agree that the high-cost subsidy is necessary for broadband deployment in those areas?

Answer. I will seek to faithfully execute and enforce the provisions of the statute, in which the universal service provisions are included. It is my understanding that the Connect America Fund established by the Commission seeks to target funds to areas that would not otherwise have service absent a subsidy, while also removing support in areas that are served by an unsubsidized competitor. This seems like an appropriate framework and, if given the opportunity, I look forward to reviewing the current plans for further implementation of the Connect America Fund to make sure support is utilized in those areas that would not otherwise be served absent Universal Service support.

Question 16. The voluntary incentive auctions created by the Middle Class Tax Relief and Job Creation Act of 2012 are essential to funding FirstNet. Designing those auctions is a complex task, and Congress deferred those decisions to the FCC, the expert agency in spectrum auctions. The FCC has to get the auction right—both to encourage participation and to raise adequate funds for timely construction of the FirstNet network. Do you agree that providing sufficient funding for FirstNet is an essential component of the incentive auctions?

Answer. Yes, Congress assumed the Middle Class Tax Relief and Job Creation Act of 2012 would result in a successful spectrum incentive auction. In fact, Congress prioritized funding received from the incentive auction and other provisions in the

law to include funding for broadcaster relocation costs (\$1.75 billion), state and local implementation grants (\$135 million), FirstNet (\$7 billion), and public safety research (\$100 million).

Question 16a. All three sitting FCC Commissioners have committed to act quickly to begin these auctions and to avoid unnecessary delay. Will you make that same commitment?

Answer. Yes. It is my hope that the spectrum incentive auction can be designed and conducted in the very near term, but conducting the auction *successfully* is more important than a speedy conclusion.

Question 17. There is a strong argument that Section 629 of the 1996 Telecommunications Act fostered the type of set-top box innovation that we saw from companies such as TiVo, which encouraged cable companies to respond with their own digital video recorders. Do you believe that Section 629, and the industry-wide rules the FCC issued pursuant to that section, were an important driver in this innovation?

Answer. I am not in a position at the current time to make this assessment. The provisions of Section 629 of the Communications Act of 1934, with which I am very familiar, have been subject to numerous legal and regulatory challenges since its enactment in the Telecommunications Act of 1996. Separately, one of the greatest advances in the developments of digital video recorders was the successful outcome of legal challenges by various content providers over potential copyright violations.

Question 17a. What should the FCC do today to make the marketplace for set-top boxes even more competitive?

Answer. While it may not be advantageous for the set-top box industry, the advancement of Internet services may be one direction to bring greater benefits to consumers. A number of video providers have examined the option of eliminating set boxes altogether and moving to server based systems. Further, the deployment of over-the-top video offerings—as part of a package of channels, on a per channel-basis, or on a per-program basis—may alleviate the need for set-top boxes.

Question 18. Opponents of the FCC's Open Internet rules have argued that the antitrust laws should be sufficient to police the market in case bad behaviors occur. Is it not true that antitrust laws focus on harm to competition and do not encompass other public interest concerns and that under the Communications Act, Congress has charged the FCC with broader public interest duties including, for example, encouraging deployment of new communications services to all Americans and a diversity of voices?

Answer. I agree that the structure and standards imposed under antitrust law are different than those in the Communications Act of 1934.

Question 18a. Do you believe antitrust litigation under the Sherman Act provides more or less certainty that is crucial to investment and job creation?

Answer. There are pluses and minuses to any particular structure. The Commission's rules are only effective if they are enforced. Moreover, one needs to take into account the overall impact of the Commission's rules, which impose costs on every provider and every consumer versus only going after cases resulting from certain practices.

Question 18b. How do after-the-fact enforcement actions—which can be very costly to the parties—affect investment incentives for small businesses, innovators, and entrepreneurs?

Answer. Depending on the circumstances and if acted on quickly, after-the-fact enforcement actions could be more beneficial to affected participants as they focus on the direct behavior in question rather than attempting to anticipate all of the potential bad behavior that could arise. Moreover, an enforcement model can minimize the one-size-fits-all problem of pro-active Commission rules, which can impose significant compliance costs on all industry participants and their customers.

Question 19. Recent reports suggest that data caps are having a chilling effect on the “over the top” video market. For example, at least one company has reportedly suspended its entry into home video services out of concerns that broadband providers can exempt their own Internet-based video offerings from their data caps. The Department of Justice is apparently looking into this. On the one hand, broadband providers need to manage their networks. And consumers who use more bandwidth capacity should pay more. That's fair. But on the other hand, they can be anticompetitive. If a broadband provider sets these caps really low, they are preventing their customers from watching online video. This makes it harder for consumers to replace their pay television service with new online services. Should the Commission also actively monitor data caps to make sure that they are not employed in an anti-competitive, anti-consumer manner?

Answer. The Commission should keep a watchful eye on developments and changes in the industry, as it should with most issues in the communications area.

Question 19a. Would you support the FCC collecting [simple] data on how Internet service providers implement and administer caps to study any possible consumer harm?

Answer. I have heard from a number of people who have expressed concerns over the Commission's data collection process in many instances. While I wouldn't rule out such data collection, I would be reluctant to endorse added data collection of Internet Service Providers without having an opportunity to discuss with relevant stakeholders or having a detailed cost analysis and an impact analysis on the industry participants.

Question 19b. Should the FCC be concerned about discriminatory data caps, and if so, what steps should the FCC take to prevent these caps from limiting competition?

Answer. In my opinion, it may be too early to know the impact of data caps on consumer behavior, but as stated above, the Commission should keep a watchful eye on developments and changes in the industry.

Question 20. According to the FCC's 2012 Report on Cable Industry Prices, there is evidence that cable rates have risen at a rate in excess of inflation. The report noted that rates for expanded basic cable service increased by 3.7 percent during 2010, compared to an increase of 2.5 percent in the Consumer Price Index. Over time, this increase has been more substantial. In fact, from 1995 to 2010, rates increased 144 percent, compared to the Consumer Price Index increase of 44 percent. One of the main reasons Congress passed the Cable Act 20 years ago was to bring rates down. In your opinion, why, after 20 years and several new pay television entrants, do rates continue their dramatic yearly increases?

Answer. In my opinion cost of video services has increased for a number of reasons, including the increased cost of programming, the expanded channel offerings and the added cost of regulatory requirements.

Question 20a. Some have argued that this continued rapid rise in cable rates suggests that the pay TV market is not sufficiently competitive, and have proposed that the FCC re-examine its "effective competition" standard under Section 623 of the Communications Act. Would you support the FCC taking a fresh look at this standard to make sure it is accomplishing Congress's intent in the underlying statute?

Answer. The fact that prices have increased does not mean necessarily that the market is not competitive. The added competition in this industry segment has also increased the leverage of content providers in their negotiations with video providers, thereby increasing the pressure on prices. Today, most consumers have a number of options for video services from which to choose and new innovative Internet video offerings are developing rapidly. In terms of the FCC's effective competition standard, the statute provides a multi-pronged, detailed definition of effective competition. To the extent the Commission is not complying with the law, I would want to hear from all stakeholders on the matter.

Question 21. Some phone and Internet service providers have suggested that because of the high-cost of deployment of IP networks, rural areas may have to settle for wireless as a solution to IP phone service in the future. Do you think rural Americans are entitled to the same quality of service and prices for voice and broadband as Americans in our cities?

Answer. Generally, yes. I am also mindful of the high cost to deploy service in many remote areas and the lower return on investment for communications providers in areas with very low population density. This is precisely why Congress established the universal service program in Section 254 of the Communications Act. But in establishing that section I note that Congress used very specific language indicating that consumers in rural areas should have access to services that are "reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."

Question 21a. How can the FCC work to make comparable, affordable service in rural areas a reality?

Answer. The need to make services available in rural areas on a reasonably comparable and affordable basis is precisely why the Commission needs to run a very efficient and effective Universal Service high-cost fund (now known as the Connect America Fund).

Question 22. Consumers are forced to pay for so many channels, when they watch only a few. Do you believe cable à la carte legislation would benefit consumers?

Answer. I would have to defer to Congress on legislation, but I have serious concerns that Congressionally-mandated à la carte offerings would result in the desired outcome of lower costs or greater choice for consumers.

Question 22a. Would you support elimination of rules, like the broadcast basic tier requirement, that might inhibit à la carte?

Answer. Yes, I would want to hear from all stakeholders but removing government barriers to the market moving to an à la carte pricing regime seems to make sense. However, this may require a change in current law and would have to defer to Congress on that matter.

Question 22b. What about limiting bundling and tying of video programming, to the extent they prevent market-based à la carte options?

Answer. To the extent that bundling or tying of video programming is done through private commercial contracts it seems something that should be left to the marketplace and not interfered with by government. It is my view that à la carte programming will only develop if the market and consumers are willing to accept it.

Question 23. Requiring disclosure of who is sponsoring broadcast advertisements, both commercial and political, goes back to the 1920s and the Federal Radio Commission. Subsequently this authority was rolled into the FCC when it was established in 1934. Specifically, Section 317 of the Communications Act of 1934 directs the FCC to make sure that all sponsored television content carries with it an on-air disclosure of the entity that paid for such content. In effect, it says that broadcasters have to let their viewers know when somebody has paid to broadcast material on their stations. Telling the viewing public who is paying for advertisements is not a controversial idea, and in fact it is what consumers expect and deserve. And earlier this year, the GAO recommended that the FCC update all of its sponsorship ID rules, given that many of them are decades old and not reflective of the television landscape today. Will you commit to carefully considering this issue once you are confirmed, after consulting with the legal experts at the FCC and not prejudging this issue?

Answer. If confirmed and this issue comes before the Commission, I will consult with appropriate legal experts to comply with the law.

Question 24. As you know, the Telecommunications Act of 1996 was designed to facilitate competition, in order to promote innovation and lower prices for consumers. A critical part of that Act was the requirement, under Sections 251 and 252 of the Communications Act, that incumbent telephone providers must interconnect with new competitive providers on fair terms—with state and Federal regulators looking on—so they would not exploit their monopoly position to obstruct competition. Today, the telecommunications industry is going through dramatic changes. Old, circuit-switched telephone networks are giving way to new, IP-based technologies. The Commission has previously determined that the Congress intended for these interconnection obligations in the Communications Act to be technology neutral in order to preserve the fundamental principles of the Communications Act, which you professed to support during your confirmation hearing. Would you commit to closing the FCC's open rulemaking on IP-to-IP interconnection and establishing clear rules of the road for such negotiations?

Answer. Changes in the form of technology do not change the importance of the need for networks to interconnect. At the same time, historical regulatory constructs in place to ensure interconnection for older technologies do not necessarily make sense as technology progresses. This is an important open issue before the Commission in which many comments have been filed. I look forward to carefully reviewing the record and meeting with stakeholders on this subject. Most recently, the Commission has sought comment on the possibility of initiating a number of trials or pilots regarding the "migration" to IP networks. One of the proposed IP trials the Commission proposed would focus on interconnection of IP networks and the resulting policy issues. I would be supportive of these efforts and would be interested in the outcome of any trials.

Question 24a. Parties have raised concerns that the present free market system for completing peering and transport agreements is not working properly, and that some parties may be refusing to enter into such agreements for anti-competitive reasons. Would you agree that the FCC should monitor these developments closely?

Answer. I would need further information on this to make an accurate assessment. It would seem reasonable to observe such developments closely to the extent such information is publically available.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BARBARA BOXER TO
MICHAEL P. O'RIELLY

Question 1. As you know, there is an ongoing debate regarding whether the contribution base for the Universal Service Fund should be expanded. USAC recently issued a decision that would effectively reclassify certain applications riding over the top of the broadband network and require them to contribute to USF. In light of this decision, I am concerned that USAC may soon begin assessing many types of over-the-top applications. As Commissioner, would you work with Congress on USF contribution reform to ensure that the Commission acts cautiously and deliberately on this issue?

Answer. Yes, you have my commitment to do so. I have deep interest in those services and/or applications that “ride” on the Internet and share your concerns over any effort to capture such providers or innovators.

Question 2. As you know, Congress requires the FCC to review its media ownership rules every four years to determine whether they uphold the core ideals of competition, localism, and diversity of media. These principles are fundamental to our democracy. Increased consolidation of our Nation’s broadcast radio and television stations can lead to less local news coverage and fewer voices participating in the media.

I am particularly concerned that women and ethnic and racial minorities are underrepresented in ownership of broadcast radio and television stations. Women own just 7 percent of broadcast radio and television stations, and ethnic and racial minorities own only 5 percent of television stations and 8 percent of radio stations. What steps would you take to ensure the Commission completes a timely review of its media ownership rules?

Answer. The Commission is obligated by statute to complete its media ownership review every four years and I am deeply disappointed that the Commission has failed to complete its 2010 review. I believe the Commission has not done a good job of always keeping to statutory deadlines, including for the quadrennial review, and if confirmed, I will do everything in my power to ensure that the Commission meets its deadlines as required by Congress.

Question 2a. How would you ensure that the media ownership rulemaking is based on a comprehensive and unbiased examination of the effect the rules have on ownership diversity?

Answer. It is my understanding that prior to releasing its Notice of Proposed Rulemaking pertaining to the 2010 quadrennial review the Commission conducted eleven studies on various aspects relating to media ownership, including studies on competition, diversity, localism, and minority and women ownership. These studies were also subject to a six-month peer review process and the comments from peer review were available for additional critique by all stakeholders, including the American people. To the extent this process is not sufficient or effective, I would be open to suggestions on how to improve it.

Question 2b. The Commission, which was required by the Third Circuit Court in 2011’s *Prometheus Radio Project v. FCC* to complete a study on the effects of consolidation on women and minority ownership, outsourced their work to a third party, the Minority Media & Telecommunications Council. The MMTC delivered its truncated study in May with the caveat that it should only be considered as one element in the Commission’s proceeding, not as dispositive evidence fulfilling the Court’s mandate and not addressing the concerns of the Third Circuit’s opinion. Do you feel that the MMTC study fulfills the Commission’s mandate under the Third Circuit’s opinion or that, as MMTC itself cautioned, it should only be taken as one piece of evidence in the Commission’s deliberation?

Answer. In addition to the MMTC study, it is my understanding the Commission’s conducted a separate study focused on minority and women ownership issues prior to releasing its NPRM as required by the statute. I would need to further information from all stakeholders to make an assessment on the sufficiency of the MMTC study in meeting the court’s directive.

Question 3. Some Internet service providers that have traditionally offered unlimited plans are now implementing pricing schemes that limit the amount of data a customer can use, or charge customers for using data beyond a predetermined amount. Today, more than half of broadband Internet subscribers in the United States are subject to some form of bandwidth cap or usage-based pricing.

Data caps and usage-based pricing have the potential to significantly impact how networks are designed and used. Furthermore, when bandwidth caps are paired with exemptions for certain content providers, the barrier to entry for new services increases, leading to fewer new products and competitors entering the market. Such

exemptions to bandwidth caps may also violate the FCC's Open Internet Order, which established that fixed broadband providers may not unreasonably discriminate against lawful network traffic. Do you feel that the Commission should study the effect that bandwidth caps have on online video providers and consumer choice?

Answer. I tend to agree with former Chairman Julius Genachowski, who argued that a tiered business model for the broadband services may be beneficial. Generally, the Commission should be extremely knowledgeable within reason about all of the services under its authority. I am not sure this situation warrants an official study, but if confirmed, I would have to hear from all stakeholders on the matter.

Question 3a. Is there an approach the FCC could adopt in order to minimize the negative effects of usage-based pricing?

Answer. If confirmed, I would need further information on the possible positive or negative effects of usage-based pricing.

Question 3b. What other actions do you feel the Commission should undertake to promote the open Internet?

Answer. While I welcome the views of others on the matter, I believe the Internet represents the greatest human invention we will ever see in our lifetimes. I do not believe that the Internet—given its dynamic and disruptive tendencies—lends itself well to being managed or controlled, and therefore, regulators should apply an extremely light touch in this space. Of course the Commission's authority to regulate in this area is the subject of ongoing litigation in the DC Circuit and my actions as a Commissioner will be guided by the decisions reached in that case.

Question 4. Increasingly, our Nation's telephone companies are transitioning from traditional copper networks to wireless and Internet-based services. Last year, AT&T asked the FCC for permission to transition to an all IP-based fiber network on a trial basis in certain areas. In addition, Verizon recently filed a request with the FCC to discontinue traditional copper telephone service and offer wireless connectivity instead to certain communities affected by Hurricane Sandy.

At the same time, the Commission has acknowledged that rural consumers are experiencing significant problems receiving long distance or wireless calls on their landline telephones. These problems appear to be attributable to the increased use of IP-based least-cost routing providers. What can the Commission do to ensure that such interconnection and reliability problems do not become more prevalent as our Nation's telephone networks transition to wireless and IP-based services?

Answer. The Commission has sought comments on whether to establish a number of trials or pilots to examine the impact, including the public policy issues, from greater use of IP networks. I would be supportive of such trials and think they could be helpful in understanding the future of communications. It is my understanding that the Commission's Technology Transitions Policy Task Force also recently announced that a public workshop will be held on October 15, 2013, at the FCC looking at these transition issues—specifically the transition from wireline to wireless-only networks and the transition from copper to purely fiber all-IP networks. I look forward to reviewing the results of this workshop, future trials and any other efforts of this Task Force.

Question 4a. Should the reliability, interconnection, and universal service principles that currently apply to traditional phone service also be applied to IP-based voice services?

Answer. It is my hope that if the Commission moves forward with IP network trials, which I would support, the related public policy issues will be fully explored as well. One issue that needs to be examined is whether the Commission needs to expand its telephone rules to IP networks or whether the marketplace, including increased competitive pressures, can best resolve disagreements between commercial entities offering communications services.

Question 5. The E-Rate program, which has furthered the goal of bringing broadband Internet access to schools and libraries all over the country, is underfunded. Last year alone, the program had to turn away more than \$2 billion in applications from schools and libraries nationwide, including many institutions in California. Experts project that demand for E-Rate support will continue to grow as wireless devices are increasingly introduced in the classroom.

Moreover, the President recently announced the ConnectED initiative, which sets the goal of connecting 99 percent of public schools in the United States with next-generation broadband Internet access—at speeds no less than 100 Mbps and with a target of 1 Gbps. The President's proposal tasks the FCC with modernizing and leveraging the E-Rate program to achieve this goal. What would you do as a Commissioner to ensure that the E-Rate program continues to expand and bring affordable, high-speed broadband to schools and libraries?

Answer. I am open to examining mechanisms to modernize the E-Rate program and bring greater broadband Internet access speeds to schools and libraries, and if confirmed, I will work with my fellow commissioners to do so. As part of this process, I think it is important to examine ways to refocus the E-Rate program on Internet access and find a way to offset any additional costs from such modernization.

Question 5a. How would you propose funding and implementing the President's ConnectED proposal?

Answer. The Commission's open proceeding on modernizing the E-Rate program seeks comments on ways to fund any expansion, should the Commission determine to do this, and I would need to review the record and talk with all relevant stakeholders to understand the impacts of any particular reform. The President's ConnectED proposal offers one way to fund any expansion of the process that has raised a number of concerns from outside parties that need to be fully reviewed.

Question 6. Unleashing spectrum for wireless broadband is critical to our economy. However, the incentive auctions exclude many low-power television stations and translator licensees from participating. It is not clear what will happen to translator and low-power broadcast television stations at the conclusion of the repackaging process which will follow the reverse auction. Over four hundred of these stations exist in California and serve a large and diverse portion of the state. How should the rules for the upcoming incentive auctions address the operation of translator and low-power television stations?

Answer. The Middle Class Tax Relief and Job Creation Act of 2012 does not provide any protection or special considerations for translator stations or low power television stations. In the case of low power television stations, those operating such stations have been on notice that their stations are subject to interference, as they operate on a secondary basis. Accordingly, the Commission will have to work with all stakeholders after the incentive auction to try to accommodate as many translators and low power television stations as can be permitted, taking into account the band plan adopted, the amount of spectrum allocated for television broadcasting in any market, and the number and location of broadcasters that remain.

Question 6a. The upcoming spectrum auction also raises issues for stations close to the Mexican border. In 2012, Congress passed a bill requiring that the FCC coordinate with our counterparts in Canada and Mexico to ensure that the same issues that plagued broadcasters during the digital television transition won't happen again. How will the Commission further coordination efforts with their counterparts in Mexico to ensure that our borders will not face interference or signal issues that could potentially disrupt broadcasters' signals and viewers' access to their channels?

Answer. As you note, the Commission is required under the Middle Class Tax Relief and Job Creation Act of 2012 to coordinate with Mexico and Canada to the extent that television broadcasters are repackaged into a smaller spectrum band, and if confirmed, I would ensure the Commission complies with the law. More importantly, failure to conduct such coordination would likely have an impact on the overall success of the incentive auction and the ability of some Americans to view the signals of broadcasters that remain post-auction. The Commission's open proceeding on this matter raises the coordination issue, including seeking comments on when best to conduct and complete the technical components of border coordination.

Question 7. The Rail Safety Improvement Act of 2008 requires the installation of Positive Train Control (PTC)—a collision avoidance technology that relies on radio transmission—on many passenger, commuter, and freight rail lines by 2015. Ensuring the successful deployment of this life-saving technology is a high priority for me. Unfortunately, some rail operators have experienced delays in the FCC's review of their spectrum applications, and many passenger rail operators are struggling to access sufficient spectrum at an affordable cost. How do you propose the Commission work with rail operators to overcome these challenges so that PTC can be implemented nationwide?

Answer. I am aware of a number of issues regarding the implementation of PTC and, while I am not privy to any details, it is my understanding that the Commission is working closely with the railroad industry and Federal partners, including the Federal Railroad Administration (FRA) to resolve the challenges. I would need further information from all stakeholders to make a more accurate assessment and commit to looking into the issue if confirmed.

Question 8. The Commission's Lifeline program allows qualifying low-income individuals and families access to phone services that allow them to stay in touch with their loved ones, employers, and emergency providers. This program has recently come under attack for allowing participants to access wireless as well as wireline

service. Do you believe that the Commission has a role in ensuring that low-income Americans have access to services on mobile devices?

Answer. I support a complete top-to-bottom review of the Lifeline program to ensure that American ratepayers are receiving the greatest consideration for their investment. A number of parties, including many Members of Congress, have supported reform of the program, including whether the entire program should be continued. To the extent that changes are made to the program, I would seek to ensure that they be made in a technology-neutral manner.

Question 9. The last Satellite Television Extension and Localism Act incentivized broadcasters to offer programming options to underserved customers who would otherwise lack access to local news. Congress will have the opportunity over the next year to address shortfalls in the current broadcast market and guarantee that customers have access to reasonably-priced programming that meets their needs. What positive changes would you like to see Congress make when it considers STELA reauthorization next year?

Answer. I defer to Congress on possible legislative changes to STELA, and if confirmed, I would offer my assistance to your office or others interested.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO
MICHAEL P. O'RIELLY

Spectrum Policy

Question 1. Mr. O'Rielly, I have a series of questions on spectrum policy. We hear about the spectrum crunch when it comes to licensed spectrum. Is there also a spectrum crunch when it comes to unlicensed spectrum?

Answer. I have heard and read these concerns from a number of technology companies operating in this space. I would need to further information from all stakeholders to make a more accurate assessment.

Question 1a. Does different propagation characteristics of the 600 megahertz, 900 megahertz, and 2.4, 3.5, and 5 gigahertz spectrum bands enable certain uses and precludes others?

Answer. In general, spectrum bands can have different propagation characteristics based on frequency. I would need further information from all stakeholders to make an accurate assessment to whether unlicensed spectrum users face similar limitations.

Question 1b. If so, given the characteristics and restrictions of these different spectrum bands, is it important for innovators and users to have access to unlicensed spectrum at different frequencies, including spectrum below 1 gigahertz?

Answer. It is important not to underestimate the creativity and innovative capabilities of those developing devices to operate in unlicensed spectrum bands. In my experience, the individuals and companies utilizing unlicensed spectrum have been able to do more with less than other spectrum users and they continue to push the boundaries on what is possible with any particular spectrum band or device.

Question 1c. Do you support the use of the broadcast white spaces for unlicensed use?

Answer. Yes.

Question 1d. Does the Commission have the authority it needs to preserve a sufficient amount of spectrum in the 600 megahertz band for unlicensed use in the guard bands in each and every market?

Answer. It is my understanding that the Middle Class Tax Relief and Job Creation Act of 2012 provides the Commission with sufficient flexibility to allow unlicensed spectrum uses in the 600 MHz band under certain circumstances. In fact, the Commission has proposed as part of its incentive auctions Notice of Proposed Rulemaking to provide a number of opportunities for unlicensed spectrum in the 600 MHz band. In particular, the Commission is taking comments on allowing unlicensed use in channel 37 of the television broadcast band, any so-called "guard bands" created as part of the overall band plan for reallocating the reclaimed broadcaster spectrum, spectrum used by wireless microphones, and any residual spectrum remaining from the band plans conversation from six MHz television channels to five MHz commercial wireless services channels.

Question 1e. The FCC required the development of a geo-location database to minimize the potential interference of unlicensed devices operating in the broadcast white spaces with over-the-air television broadcasts. Do you see geo-location databases being used in other unlicensed bands as a means to facilitate spectrum sharing?

Answer. Geo-location databases now being established and operated for unlicensed use in the white spaces portion of the television bands may be helpful in promoting greater spectrum sharing in other bands in some circumstances. I would need further information from all stakeholders to make a more accurate assessment, but I am open to exploring this issue further with you and your staff.

Question 1f. Do you believe current 3G and 4G wireless devices were designed to operate in a spectrum sharing environments where there may be some interference present from other wireless devices? Going forward, is that something the technology community and standards organizations need to examine and address?

Answer. At this point, it is my understanding that the licenses held by those offering 3G and 4G wireless devices protect from unwanted or unauthorized interference, but I would need further information from all stakeholders to make a more accurate assessment.

Question 1g. Do you believe it is technically and operationally feasible for commercial wireless providers to share several hundred megahertz of spectrum with Federal users?

Answer. Depending on the circumstances, spectrum sharing may help provide additional commercial wireless opportunities in some instances. In general, cleared spectrum for private sector use is preferable to sharing between Federal and non-government users. I would like to see the Commission and the National Telecommunications and Information Administration work to clear additional spectrum now allocated to Federal users without jeopardizing the safety or mission of Federal users.

Question 1h. As a practical matter, does the Commission's spectrum holding proceeding need to be completed before it completes its 600 megahertz auction rules?

Answer. For all practical purposes, yes. To the extent the Commission determines to alter its current spectrum holding review procedures, which it should very carefully consider before placing any increased limitations or restrictions on carriers, it is probably helpful and perhaps necessary to do so before the incense auction rules are finalized to promote a smooth and organized auction.

Native American Broadband

Question 2. The FCC's Office of Native Affairs and Policy was established in 2010 to promote the deployment and adoption of communications services and technology throughout Indian country. Since then the Office has provided technical support and a critical point of contact for Indian tribes nationwide on a variety of FCC initiatives. If confirmed, will you continue to support this Office and its activities in Indian country?

Answer. To the extent the Office of Native Affairs and Policy is determined to be helpful to relevant stakeholders and run in an efficient manner I would open to continuing its service, after consultations my other commissioners, if I am confirmed.

Question 2a. The National Broadband Plan describes how the broadband deployment rate on Indian lands may be as low as 5 to 8 percent. Due to their remote locations many Indian reservations are either unserved or underserved as companies focus broadband deployment efforts on more profitable, densely populated areas. What role do you envision for the FCC in encouraging broadband deployment on unserved and underserved Indian lands? Are there some specific things that might be achieved through the Universal Service Fund?

Answer. I am extremely sympathetic to the problems faced by those living on tribal lands. The Commission's Universal Service Reform Order provides an additional infusion of funding for broadband deployment on tribal lands—separate and apart from its other funding reform efforts. If I am confirmed, I will examine additional ways to improve broadband availability on tribal lands.

Universal Service Fund Reform

Question 3. Mr. O'Rielly, philosophically when it comes to reforming the contribution mechanism of the Universal Service Funds do you think it should be revenue-based or connection-based?

Answer. The Commission has an open proceeding on this issue and is taking comments on the potential of moving away from a revenue-based collection method and moving toward other alternatives. There may be statutory limitations to what the Commission can do without additional legislative authority provided by Congress. I would need further information to analyze all alternative collection-based methods, but I would be concerned by any method that dampens Internet usage or increases overall costs for American consumers.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO
MICHAEL P. O'RIELLY

Question 1. While the FCC has implemented many components of the 21st Century Communications and Video Accessibility Act, there are concerns that some programming still is not fully accessible, including programming such as news and other video clips. How will you work to ensure that this law is fully implemented and all Americans are able to access all forms of communication? Can you make a commitment to ensure that not only do providers meet the letter of this law, but also the spirit by ensuring that closed captions and video descriptions are of sufficient quality?

Answer. I believe the Commission has the obligation to fully and faithfully implement and enforce the provisions of applicable laws enacted by Congress. The 21st Century Communications and Video Accessibility Act is an example of a communications law in which I was not involved. Therefore, I would be open to learning from you and others integrally involved, and all relevant stakeholders, the intent behind certain provisions.

Question 2. The voluntary incentive auctions will be a very large and important undertaking for the FCC. As a Commissioner, what principles would you use in evaluating incentive auction proposals?

Answer. First and foremost, it would be my obligation, if I were confirmed, to follow the statute enacted by Congress. My general approach will be to ensure the process and the auctions are conducted consistent with four basic principles:

- (1) Complete the process as soon as practicable;
- (2) Bring the greatest benefits to American consumers;
- (3) Ensure fairness for all stakeholders involved; and
- (4) Maximize revenues for the Federal Government.

Question 3. What would a successful incentive auction look like to you?

Answer. Consistent with my four principles, a successful incentive auction would: reallocate a significant portion of spectrum allocated to television broadcasting for nationwide commercial wireless services; generate sufficient revenues to meet and exceed our obligations under the law, including the establishment and funding of FirstNet; ease the transition for broadcasters willing to voluntarily return their broadcasting licenses for reverse auction compensation; and provide a smooth repacking process for those broadcasters remaining on the air.

Question 4. As you know, the Communications, Technology, and the Internet subcommittee held a hearing on the state of wireless communications. While the panelists did spar over a few issues, there was consensus that more spectrum is needed for commercial use. To that end, the FCC is preparing to auction several spectrum bands that are currently allocated for Federal use. How would you further efforts at the FCC to ensure more spectrum is made available to the private sector?

Answer. In my experience, the Federal Government can reduce its allocation of spectrum, and therefore it represents the greatest opportunity to identify additional spectrum for commercial wireless services. In addition, there may an opportunity to increase dynamic spectrum sharing, but that in my experience the best path forward is to allocate as much spectrum as possible for flexible commercial use.

Question 5. Do you have any thoughts you would like to share regarding innovative ways, such as financial incentives, to encourage Federal users to make more of their spectrum available for commercial use?

Answer. On behalf of a number of Members of Congress I have drafted various legislative mechanisms over the years to facilitate the reallocation of spectrum from Federal users to commercial spectrum users. I would, of course, defer to Congress on legislation to further this goal, but I believe further action may be in order and would welcome the opportunity to be helpful to you or your staff, if possible. Options include providing financial incentives and/or disincentives for Federal users to hold spectrum that is not necessary to carry out their missions.

Question 6. Your biography shows your long interest in telecommunications issues, and I have heard from both staff members and outside interest groups of your deep knowledge of this subject matter. I also trust that as a staff member, you understand the importance of an agency's responsiveness to Members and staff. Do you have any priorities that you would like to pursue or advance at the FCC?

Answer. You are very kind to indicate the positive comments from internal and external sources. The Commission was created by Congress and should be respectful to the concerns raised by Members. My first priority will be to comply with the applicable laws enacted by Congress, including provisions establishing a spectrum in-

centive auction and ensuring thoughtful implementation of its Universal Service provisions. One area I am particularly interested in is the application layer of Internet services (*i.e.*, those services or applications that “ride” the Internet).

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO
MICHAEL P. O’RIELLY

Question 1. Mr. O’Rielly—Consumers deserve to keep and use cell phones they have already bought—it’s just common sense. That is why I introduced the Wireless Consumer Choice Act with Senators Lee and Blumenthal. This bipartisan legislation directs the Federal Communications Commission (FCC) to take action to ensure consumers can “unlock” and keep their phones when they switch carriers. If they are barred from making that choice because they would have to buy a new phone, it is not true competition. Competition can lead to lower prices, new innovations and improved service. The National Telecommunications and Information Administration (NTIA) also recently filed a petition encouraging the agency to take up this issue. Should you become a Commissioner at the FCC, will you commit to working with consumers, carriers, NTIA, and the Library of Congress to address unlocking?

Answer. Yes. If I am confirmed to be an FCC Commissioner, I will work with all stakeholders to ensure that consumers who have met the obligations of their contracts continue to have the right and ability to unlock their wireless phones. Given that overturning the poor decision by the Librarian of Congress may require a legislative solution, I would defer to Congress on the best mechanism to preserve consumer unlocking.

Question 2. Mr. O’Rielly—Consumers in the U.S. are increasingly reliant on text messages, photos and live video calls as smartphones and tablets continue to dominate the mobile market. However, many are frustrated that these rich means of communications cannot be used to contact authorities in an emergency. The importance of emergency services is why I serve as the co-chair of the Senate NG 911 caucus. The FCC should be commended for the important steps already taken to accelerate the development and deployment of NG 911 technology, but more work needs to be done. I would like to hear your thoughts about what you think the FCC can and should do to pro-actively promote the adoption of NG 911 and advanced emergency services?

Answer. Successful development and deployment of NG 911 will require coordination on a number of important aspects, including funding, research, and educational efforts. The Commission can and should work with all stakeholders in implementing those relevant provisions of law already enacted, provide advice to Congress if additional legislation is warranted, and make appropriate changes to Commission rules—as needed—in a technology-neutral manner that does not stifle innovation. One of the benefits of the Commission’s focus generally on the “transition” to all-IP networks is to explore the policy issues involving NG 911 systems.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK BEGICH TO
MICHAEL P. O’RIELLY

Question 1. Mr. O’Rielly, for several years many members of Congress, myself included, have expressed concerns about the need to improve the FCC’s Transformation Order on Inter-carrier Compensation (ICC) and Universal Service Fund (USF) including the Quantile Regression Analysis model, in order to bring greater regulatory certainty for rate-of-return carriers. How would you go about pursuing such improvements and create reasonable certainty?

Answer. I am aware that the Commission has made several modifications to the USF reform order to address concerns expressed by rural carriers. To the extent that additional modifications or corrections to the FCC’s Universal Service Reform Order are necessary and would provide greater certainty to recipients, I would be open to reviewing any such suggested changes.

Question 2. How would you go about updating the universal service program to ensure that rate of return carriers, like price-cap carriers, are eligible for USF based on the provisioning of broadband services even where customers don’t take legacy voice services?

Answer. The Commission’s Universal Service Reform Order takes a major step to expand the scope of services covered to include broadband services. There are a number of parts to be implemented from that order and my conversations with a number of Members of the Committee highlight the need to take a closer eye with regards to certain aspects of the order, particularly support provided for rate-of-re-

turn carriers. It is my understanding that the Commission's Wireline Competition Bureau recently sought comment on the specific issue you raised, the ability of rate-of-return rural carriers to receive high-cost support for customers who only purchase a broadband connection. Should I be confirmed, I commit to looking into the record on this issue and taking steps to address the concern as appropriate.

Question 3. Are you willing to pursue additional modifications to the USF/ICC waiver process to make it less expensive, more useable and overall more realistically workable for small carriers?

Answer. Yes, the waiver process should work for all stakeholders.

Question 4. Will you commit to work with me to explore alternative approaches to high cost reform that will provide sufficient and predictable support for Alaskans who simply seek equal access to the communications tools available to the lower-48?

Answer. Yes.

Question 5. The main result of USF reform appears to adjust support from states like Alaska, which is a state unparalleled in cost to access, build, and deploy making it uniquely high cost to serve, by shifting support to less costly areas in the Lower 48. Alaska has already lost \$28 million per year in annual high cost USF support as compared with 2011 even though Alaska has the most significant network deployment challenges of any state.

If the FCC continues on its path for mobile support, with nationwide auctions in which Alaska providers compete with the rest of the country on a cost per person or roadmile basis, Alaska could likely see what is currently \$105 million in support for CETC networks fall to about \$5 million per year, based on previous auction results. A 95 percent cut would be disastrous for Alaska and end any hope for comparable wireless voice or broadband service in rural Alaska. As FCC Commissioner will you work with my office to see that the FCC does not reduce Alaska support levels further?

Answer. Yes, Alaska and her people deserve sufficient funding support to meet the goals and obligations contained in the statute, but not one penny more. This must also be done in a manner consistent with the overall size of the Universal Service funds. If confirmed, I would need to understand better the particulars of the data points you highlight and hear from all stakeholders, but I would welcome the opportunity to work with your office on the matter.

Question 6. Do you believe there are any additional steps the FCC can take to ensure greater consistency between its regulations and the regulations or programs of other Federal agencies?

For example, are there things the FCC can do to allow for a more careful consideration of how its proceedings and regulations impact the Rural Utilities Service's financing programs?

Answer. During my time as a congressional staffer working on communications policy, I have been extremely troubled by the lack of coordination between different Federal agencies and their respective rules, especially the interaction and lack of consistency between Rural Utility Service funds and Universal Service funds. This is partly caused by divided congressional committee jurisdiction and the authorization process. This situation should be addressed, but it may require legislation to do so, and I would have to defer to the Congress on that aspect of the equation.

Question 7. Are you willing to pursue modifications to the contribution mechanism that would make all of the Universal Service system's programs more sustainable for the future? Any thoughts on how to do that?

Answer. Yes, the Universal Service program's contribution mechanism needs to be addressed in a manner that is fair for everyone: providers, recipients, and American consumers. The Commission has an open proceeding on this matter and I would need to review and hear from all stakeholders before making further suggestions.

Question 8. Regarding the "IP transition" do you think it's important to preserve the statutory principles relating to the protection of consumers, promotion of competition, and assurance of universal service to all Americans in this process? How do we do that?

Answer. Yes, regardless of the types of technology involved, it is important for the Commission to facilitate principles relating to the protection of consumers, promotion of competition and universal service. However, it is not certain that regulation is necessary to achieve those objectives. It is my hope that if the Commission moves forward with IP network trials, which I would support, the related public policy issues will be fully explored as well. One issue that needs to be examined is whether the Commission needs to expand its telephone rules to IP networks or

whether the marketplace, including increased competitive pressures, can best resolve disagreements between commercial entities offering communications services.

Question 9. How can the Commission best ensure that rates for essential voice and broadband services in the highest cost rural areas remain affordable to consumers?

Answer. The need to make services available in rural areas on a reasonably comparable and affordable basis is precisely why the Commission needs to run a very efficient and effective Universal Service high-cost fund (now known as the Connect America Fund).

Question 10. What are your views on data caps or data tiers on wired and wireless broadband and their impact on the growth of online video?

Answer. I tend to agree with former FCC Chairman Genachowski, who is quoted as stating that “usage-based pricing could be a healthy and beneficial part of the ecosystem.” If confirmed, I would want to keep a watchful eye and keep an ongoing dialogue with stakeholders operating in this space.

Question 11. Federally recognized tribes have provided numerous comments in FCC dockets stating that broadband and advanced telecommunication services on tribal lands are insufficient. As FCC Commissioner will you commit to working to improve access and deployment of telecommunication services on tribal lands? Will you have an open door policy for tribes interested in meeting with you to discuss these issues?

Answer. Yes and yes.

Question 12. What is your level of working experience with tribal nations, and in rural communities?

Answer. During my time as a congressional staffer in the U.S. Senate, I have been exposed to the difficulties in bringing communications to sparsely populated lands in the U.S., such as rural communities or on tribal lands. My work extends outside the communications area, like U.S. farm policy reform, to cover a number of circumstances in which U.S. public policy directly or indirectly impacted rural America. I believe these instances will prove invaluable, if I am confirmed to be a Commissioner to the FCC.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO
MICHAEL P. O’RIELLY

Question 1. Mr. O’Rielly, rural Americans are facing significant call completion problems. I’m troubled by one study indicating that, during one period between 2011 and 2012, the incompleteness rate was 13 times higher in rural areas than in non-rural areas. Calls that fail to be completed result in rural businesses losing customers, and family members in rural areas being cut off from each other. As you can imagine, this is particularly a concern in states like South Dakota. That is why I’m pleased by the Federal Communications Commission’s recent order and notice of proposed rulemaking that seeks to enhance the FCC’s ability to investigate this problem, among other things. This action is overdue. How familiar are you with the call completion problems being experienced in many rural areas of the country, and would you commit to using your authority as a commissioner to address such problems, should you be confirmed?

Answer. While I am not privy to the details of the item, I am aware that Acting Chairwoman Clyburn recently circulated an order and further notice of proposed rulemaking on this matter. I would tend to agree with the comments made by Chairman-designate Wheeler at his confirmation hearing that this issue appears to be one of enforcement. To be clear, I believe that violations of the FCC’s rules should be enforced vigorously and if the Commission needs to take additional enforcement action in this space I would be supportive.

Question 2. Mr. O’Rielly, as you know, like other members of this Committee, I represent a state with significant rural areas, and I am firmly committed to expanding telecommunications opportunities for people in my state. Should you be confirmed as a commissioner, how will you approach the challenges rural America faces with respect to communications issues?

Answer. During my many years working on communications policy, I have seen the importance of expanding communications services to all Americans. Having worked for several Senators in states with very rural areas, I am sympathetic to the challenges faced by rural consumers and will work to ensure the Commission focuses appropriate attention to these issues.

Question 3. Mr. O’Rielly, as you know, Universal Service Fund reforms have had a significant impact on states like South Dakota that have large rural areas. Many

in Congress have expressed concerns about the need to improve the FCC's reforms, particularly with regard to the Quantile Regression Analysis model used to determine recoverable costs for smaller rural carriers, to bring greater regulatory certainty for rate-of-return carriers. Do you believe it is important to provide rural broadband providers with greater regulatory certainty in the USF program? If so, do you have any thoughts on how to achieve that?

Answer. I am aware that the Commission has made several modifications to the USF reform order to address concerns expressed by rural carriers. To the extent that additional modifications or corrections to the FCC's Universal Service Reform Order are necessary and would provide greater certainty to recipients, I would be open to reviewing any such suggested changes.

Question 4. Mr. O'Rielly, as you know, one of the President's key initiatives is to make 500 megahertz of Federal spectrum available for commercial use. While more spectrum is absolutely necessary, I believe that we need to focus on the quality of that spectrum, not just the quantity. In particular, the 1755–1780 megahertz band is one that many of my colleagues and I would like to see opened up for commercial use. Should you be confirmed, will you work with me and this Committee to find ways, along with National Telecommunications & Information Administration (NTIA) and other Federal agencies, to free up more Federal spectrum for commercial use in a timely manner, particularly with regard to the 1755–1780 megahertz band?

Answer. Yes. As I stated during my confirmation hearing, I believe we should examine the use of Federal spectrum to ensure it is being used as efficiently as possible and should look at all possible incentives to achieve this objective. Regarding the 1755–1780 band, the Department of Defense (DOD) has indicated it is able to exit this band and has submitted a transition plan which is currently under discussion with Federal and industry stakeholders. It remains to be seen whether the alternative band DOD identified and would like to utilize is the most appropriate place for relocation. In any event, the Commission should work to auction this band in a pairing with the auction required by statute of the 2155–2180 band.

Question 5. Deployment of communications infrastructure is critical to achieving universal service and economic growth. Congress addressed this reality by providing traditional communications service providers a statutory right to attach to utility poles under Section 224 of the Communications Act. However, the FCC has not provided broadband-only providers the same ability. Do you believe the FCC has authority to extend pole attachment rights to broadband-only providers?

Answer. The FCC's implementation of the pole attachment provision created by the Telecommunications Act of 1996 has generated numerous controversies and legal challenges since enactment. At the same time, they have proven to be valuable in extending certain communications services and competition to more Americans. It is my understanding that the Commission has not squarely addressed its authority with respect to broadband providers and broadband services in this context, so it remains an open question. To the extent that a determination is made that pole attachment rights should be extended to broadband-only providers and the Commission does not have authority to do so, the Commission should seek such authority from the Committee.

Question 6. Should you be confirmed, will you commit to visit South Dakota or a similarly situated rural state within the first year of your tenure as a Commissioner to see firsthand some of the communications challenges facing rural communities?

Answer. If I am confirmed, I would be pleased to visit South Dakota during my term and certainly visit a similarly situated rural state within one year of confirmation.

Question 7. The FCC is the guardian of decency on the public airwaves yet it has not brought an enforcement action against any broadcaster in more than four years. Should you be confirmed, what actions would you take on the Commission to seek to enforce the current decency law?

Answer. The Commission has an obligation to vigorously enforce all of its rules. If I am confirmed, I will work with my fellow commissioners to ensure that occurs, including as it pertains to its broadcast decency rules. I would begin by seeking information on the volume and types of complaints the Commission has recently received as well as a review of comments received in response to the Commission's most recent inquiry on the issue.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. ROY BLUNT TO
MICHAEL P. O'RIELLY

Question. What ability does the Federal Communications Commission have to help identify and procure new bands of spectrum suitable for commercial wireless operations and what should the Commission do to continue to the process of freeing up more spectrum for commercial purposes, especially after the broadcast incentive auctions, AWS-3 and H Block auctions have been completed?

Answer. There are two main mechanisms to free new bands of spectrum for commercial wireless services: (1) the Federal Communications Commission (FCC) can seek to reallocate existing commercial spectrum to ensure such spectrum to is used as efficiently as possible, and (2) the FCC can work with the National Telecommunications and Information Administration (NTIA) at the Department of Commerce to identify spectrum allocated for Federal Government users (*e.g.*, Department of Defense) that can be reallocated to commercial wireless services. In my experience, the Federal Government can reduce its allocation of spectrum, and therefore it represents the greatest opportunity to identify additional spectrum for commercial wireless services. In addition, there may an opportunity to increase dynamic spectrum sharing, but that in my experience the best path forward is to allocate as much spectrum as possible for flexible commercial use.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DEAN HELLER TO
MICHAEL P. O'RIELLY

Question. I have introduced the FCC Consolidated Reports Act in the United States Senate. This bill identifies 16 reports required of the FCC that could be eliminated and it also consolidates 8 separate reports of the FCC into a single report timed to the Congressional calendar. It has passed the House of Representatives by a vote of 415-0.

I believe this is a good government bill, do you agree? Do you believe that this bill would benefit Congress and the FCC? Will you as a Commissioner of the FCC work to encourage Congress to pass this common sense legislation?

Answer. While I defer to Congress on any particular legislation, I am supportive of the ideas contained in the consolidated report bill and would be happy to work with you and others if I can be of assistance. I believe the Commission, Congress and interested parties can benefit from more thoughtful reports from the Commission and the elimination of unnecessary reporting requirements.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DAN COATS TO
MICHAEL P. O'RIELLY

Question 1. The 21st Century marketplace has created a vibrant and competitive communications and technology sector, but the marketplace only works for established players and new entrants if there is transparency and predictability in the Commission's processes. The communications and technology sector continues to innovate, and with their innovation comes job creation. The FCC can stop job growth in this sector dead in its tracks with onerous and unnecessary regulations, as well as unpredictability in its processes. I was pleased to see that, in your committee questionnaire, you noted these same concerns. Are there specific regulations that you can point to as barriers to innovation that you wish to focus the Commission's attention on?

Answer. There are certainly a number of areas in which the Commission would do well to remove or refine its unnecessary rules and regulations, and the Commission has looked periodically to do this. I will suggest one such area that generates my extreme interest is the growing list of services or applications that "ride" the Internet, such as VoIP and over-the-top (OTT) video services (some refer to as IPTV). Just recently, the Commission finalized its regulatory fees for FY 2013 and included a new fee set for FY 2014 for "IPTV licensees" without much clarity over the breadth of the category. I would have concerns if such a fee were applied to OTT services, as it would seem to be counterproductive to the advancement of the Internet and innovation.

Question 2. The spectrum incentive auction is a first-of-its-kind process. If executing the auction was not challenging enough, my understanding is that the FCC also faces a number of technical issues such as not yet knowing what chunks of spectrum TV broadcasters will voluntarily surrender. I understand a process is in place via the task force the Commission has created to work through all these

issues, but what obstacles, if any, do you see what will prevent the Commission from meeting its stated goal of 2014 for the auction?

Answer. The spectrum incentive auction, as authorized and required by the Middle Class Tax Relief and Job Creation Act of 2012, will be the most complex auction process ever designed and conducted by the Commission. It will require near perfect execution of the reverse auction, the forward auction, and the repacking of spectrum now allocated to broadcast television services. There are numerous items that could cause the auction to be delayed, but if the Commission conducts an open process, listens and works constructively with all stakeholders, including American consumers, and makes sound decisions, I am hopeful that the 2014 goal can be achieved. While expediency is certainly appropriate given the need for additional spectrum for commercial wireless uses, our paramount concern should be getting this process right.

Question 2a. As someone who, until now, has been an “outsider looking in” at the process, can you share your thoughts on how the process is going?

Answer. Given my current responsibilities, I have not had the chance to review the complete record in this proceeding. While I have heard a number of concerns from affected parties and certain issues require attention, at this point it appears the Commission, and its dedicated staff, have set the stage for the Commissioners to make the difficult decisions necessary to move forward with the auction.

Question 3. I have heard concerns from my state regarding the regulation of high volume auto-dialer initiated *voice over Internet protocol* (VoIP) “broadcasted” calls. My understanding is that these calls can put 10,000 calls per minute onto Indiana’s landline telephone network, by using VoIP technology, in an attempt to get around Indiana’s Do Not Call List. The Commission has, pursuant to its authority under the Telephone Consumer Protection Act (TCPA), worked with the Federal Trade Commission (FTC) in establishing a national Do-Not-Call Registry. The registry is nationwide in scope, applies to all telemarketers (with the exception of certain non-profit organizations), and covers both interstate and intrastate telemarketing calls. Is this an issue you’re aware of, and if so can you share your views on this topic with me?

Answer. I am aware of the issue as both a consumer and an individual who has followed VoIP issues closely for over a decade. In this case, the heart of the issue is not one based on the newer technology, as the adoption of VoIP can bring tremendous value and benefit to consumers. Instead, this issue appears to be one best addressed by enforcement.

Question 4. On April 29, 2013, my office addressed a letter to then-Chairman Genachowski regarding Non Commercial Educational (NCE) Public Interest Obligation (PIO) television stations and the FCC’s process for reviewing complaints concerning underwriting announcements by these stations. The May 17th response from Michael Perko, Chief of the Media Bureau’s Office of Communication and Industry Information, ignored my inquiry and included a reference to parity between PBS and non-PBS television stations, an issue my letter did not address. Later research reveals the FCC sent my office was sent an identical form letter that also was sent to Rep. Andre Carson (IN-7) and Senator Inhofe in May 2013, both of whom addressed the parity between PBS and non-PBS stations. As a Commissioner, will you and your staff read and appropriately respond to inquiries and/or comments from Members of Congress?

Answer. Yes, Members of Congress have my commitment to read and respond accordingly to their views.

Question 4a. Given the current economic environment, many of these NCE PIO television stations remain concerned about the FCC’s criteria for underwriting announcements and its process for enforcing these rules. Do you support offering greater opportunities for these stations to engage with the FCC to ensure that they do not violate the rules for underwriting announcements, and that the penalties for inadvertent violations are not unduly severe?

Answer. Yes, I would be supportive of efforts to provide non-commercial educational stations greater clarity and/or guidance, including possible illustrative examples, pertaining to the Commission’s rules on underwriting to ensure that these stations are not subject to penalties for inadvertent violations.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TED CRUZ TO
MICHAEL P. O'RIELLY

Mr. O'Rielly: as you may be aware, on April 10 of this year myself, along with Leader McConnell, Sen. Cornyn, Ranking Member Thune, and the remaining Republican members of the Commerce Committee, sent a letter to the FCC expressing our grave concerns over any FCC attempt to impose the requirements of the failed DISCLOSE Act by regulatory fiat. In light of those concerns, I have several questions I'd like you to answer:

Question 1. Does the FCC have the authority to implement the kind of requirements laid out in the DISCLOSE Act?

Answer. The DISCLOSE Act, as it was considered by Congress in 2010, was a comprehensive bill to regulate certain practices involving political campaigns, providing authority to the Federal Election Commission to implement its numerous provisions. To the extent the FCC attempted to use its limited authority, which is at best tangentially-related to the issue, to impose DISCLOSE Act-type requirements, absent Congressional direction via a new law, it would likely raise issues challengeable in our court system.

Question 2. When it comes to the issue of regulating political speech, which institution do you believe has primary authority in this area—Congress or the FCC?

Answer. The Commission is a creation of Congress and exists to implement and enforce laws passed by the Congress.

Question 3. To the extent that you believe the FCC has the legal authority to regulate political speech, what statutory provision or provisions would you point to as the basis for that authority?

Answer. As a general matter, I believe the Commission must tread extremely cautiously when taking any actions with First Amendment implications. The Communications Act of 1934 grants the Commission only limited authority in the area of political speech. Specifically, Congress provided the Commission with authority under section 317 of the Communications Act to require broadcasters to include, at the time of the broadcasting, an announcement about sponsorship if the broadcast was paid for or furnished by another entity. In addition, under Section 315 of the Act, Congress established certain requirements on broadcasters to allow for equal opportunities for candidates for public office and public disclosure. To determine whether or not any particular action to regulate political speech was within the Commission's authority would require additional legal analysis based on the specific action being considered. But, again, any such actions would need to be solidly within the specific authority granted to the Commission by the Congress and consistent with First Amendment jurisprudence.

Question 4. To the extent that you believe the FCC has the legal authority to regulate political speech, what principles would guide your decisions on when limitations on political speech are justified?

Answer. As a strong supporter of the First Amendment to the U.S. Constitution, I would be reluctant to impose any limitations—either directly or indirectly—that had an impact on political speech.

Question 5. With regard to any potential FCC regulation involving political speech, how confident are you that the FCC's involvement in this area could be accomplished while preventing the kinds of abuses that we've discovered were prevalent at the IRS?

Answer. I am not an expert on the issues resulting from the IRS review of conservative not-for-profit organizations' tax filings. If the FCC was to modify its rules, promulgated to implement Section 317, to require greater disclosure in political ads, it could potentially have a negative impact on local television and radio broadcasters, as the burden of compliance lies with broadcasters, not the ad sponsor. To the extent broadcasters increase scrutiny or cease to accept political ads under additional regulatory provisions, political speech may be harmed or lessened, raising potential constitutional issues. I would have concerns that the FCC could execute changes to its rules that could pass constitutional muster or enforce such rules in a way that does not lead to further problems.

Question 6. To the extent that you believe that both Congress and the FCC have the ability to regulate political speech, how would the FCC, under your leadership, proceed with reconciling any differences in approach between the two bodies?

Answer. It is my view that it would be in the best interest of the Commission to focus its attention on its extensive list of items in which it must address (*e.g.*, incentive auctions) and avoid involving itself in any area still under considerable debate by Congress.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DEB FISCHER TO
MICHAEL P. O'RIELLY

Question 1. Mr. O'Rielly, former Commissioner McDowell recently called for the Federal Government to conduct a "bona fide audit" of its spectrum holdings.

As our Nation seeks to reallocate spectrum between Federal and non-federal users, and between industries, do you support a full audit of all spectrum users and their holdings to guide this process and ensure the proper stewardship of this vital national resource?

Answer. By all accounts, there is a spectrum scarcity facing our commercial wireless providers; additional spectrum is needed to meet the demand of consumers. Given that the most likely bands for these purposes are now allocated for Federal users, it would seem to make sense to focus any audit on these bands, and I would supportive of such an effort. Beyond simply auditing the holdings of Federal spectrum users, I think it is also important to have a better understanding of the types and frequency of use of different Federal spectrum users.

Question 2. Mr. O'Rielly, in 2008 Congress passed the Rail Safety Improvement Act (RSIA) calling on those in the railroad industry to install a new safety technology—known as Positive Train Control or "PTC"—on specific rail lines by the end of 2015.

As I understand the current situation with regard to the FCC's role in this matter, the railroads have been instructed by the FCC to stand down on the deployment of their PTC antenna structures due to the FCC's antenna review and permitting processes.

Are you familiar with this problem and can you share your views with the members of this Committee on the matter at hand?

Answer. I am aware of the difficulty faced by railroads in siting towers necessary to meet the requirements of Positive Train Control and I would be supportive of efforts to ease the process.

Question 2a. Do you have any suggestions as to a solution to the problem or a means for expediting the process?

Answer. The railroad industry has sought waiver of a height and power limitations. One consideration may be to separate towers into categories based on size and location and provide relief for those in the less sensitive circumstances.

Question 3. I understand that the FCC Wireline Bureau is working on a new model to allocate universal service funds for price cap companies. I also understand that, in some states, substantial numbers of customers will be assigned to satellite services for broadband.

Do you have information on how many customers in each state will be assigned to satellite services for universal service under the FCC's new model? If so, please forward that information to each Member of the Senate Commerce Committee.

Answer. I am not aware of such information at this time.

Question 3a. If you do not have that information, will you commit to obtaining that information and forwarding it to each Member of the Senate Commerce Committee during your first 30 days at the FCC?

Answer. If I am confirmed, I would be pleased to provide the Committee with such information as soon as it is practicable.

Question 4. Since coming to Congress, I have taken an interest in the need to get more spectrum for commercial services. I think we need to be smart about how we move forward with spectrum policy. What are your views on how we can do this better?

Answer. In my experience, the Federal Government can reduce its allocation of spectrum, and therefore it represents the greatest opportunity to identify additional spectrum for commercial wireless services. In addition, there may an opportunity to increase dynamic spectrum sharing, but that in my experience the best path forward is to allocate as much spectrum as possible for flexible commercial use.