

FCC REAUTHORIZATION: OVERSIGHT OF THE COMMISSION

HEARING BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

MARCH 19, 2015

Serial No. 114-24



Printed for the use of the Committee on Energy and Commerce
energycommerce.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE

95-817

WASHINGTON : 2016

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

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FCC REAUTHORIZATION: OVERSIGHT OF THE COMMISSION

THURSDAY, MARCH 19, 2015

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

The subcommittee met, pursuant to call, at 11:02 a.m., in room 2123 of the Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Members present: Representatives Walden, Latta, Shimkus, Blackburn, Scalise, Lance, Guthrie, Olson, Pompeo, Kinzinger, Bilirakis, Johnson, Long, Collins, Cramer, Barton, Eshoo, Doyle, Clarke, Loeb sack, Rush, Butterfield, Matsui, McNerney, Luján, Cardenas, and Pallone (ex officio).

Staff present: Gary Andres, Staff Director; Ray Baum, Senior Policy Advisor for Communications and Technology; Sean Bonyun, Communications Director; Leighton Brown, Press Assistant; Karen Christian, General Counsel; Andy Duberstein, Deputy Press Secretary; Gene Fullano, Detailee, Telecom; Kelsey Guyselman, Counsel, Telecom; Peter Kielty, Deputy General Counsel; Grace Koh, Counsel, Telecom; David Redl, Counsel, Telecom; Charlotte Savercool, Legislative Clerk; Jeff Carroll, Democratic Staff Director; David Goldman, Democratic Chief Counsel, Communications and Technology; Margaret McCarthy, Democratic Professional Staff Member; Tim Robinson, Democratic Chief Counsel; and Ryan Skukowski, Democratic Policy Analyst.

Mr. WALDEN. If everyone could take their seats. And while they are, before we start the clock, as many of you know, I am going to exert a little Chairman's prerogative here, because Mr. Wheeler and I have not always gotten along. And I have my opening statement here, but I am just sick and tired of your third string approach to winning, and the way you are willing to tackle and run over the top of people, and score points just for scoring points.

Now, now that the U of O/OU game is over in the national football championship, I want everybody to know I have kept my promise and worn the Ohio State tie. So—

Mr. WHEELER. Mr. Chairman, I—

Mr. WALDEN. No, you are out of order.

Mr. WHEELER. I hope we—

Mr. WALDEN. I am just going to say that right now. Mute the mics—nothing.

Mr. WHEELER. I hope we are on the record, because I just want to say two things. Number one, you are an honorable man, and—

Mr. WALDEN. Thank you.

Mr. WHEELER [continuing]. You had the wrong side, and we were pleased to beat you with our backup to the backup quarterback.

Mr. WALDEN. You think this is going to go better for you?

Mr. WHEELER. But I do think that the color is very becoming on you.

Mr. WALDEN. Now, just so you know, I have now fulfilled my bet that I would wear the Ohio State tie if they beat my Ducks, and vice versa. I also want you to know there is a pending matter to be settled. I did offer up dates for lunch, which I will buy, and I suggested February 26 might have been a wonderful day for the Chairman to have lunch with me. He suggested he had other matters to attend to. All right. Enough of fun and frivolity. Thank you all for being here, and I thank our FCC Commissioners for being here, and my colleagues. I know this is a "go away day", and we will probably interrupt it by votes, so we will try and move through this. But this is really important business we are going to take up, as we always do in this committee, and so on to the serious matters.

OPENING STATEMENT OF HON. GREG WALDEN

Mr. WALDEN. It was just over 2 weeks ago that we had the Commission's managing director present us with his rationale for the largest budget request in history for the Federal Communications Commission. We were able to discuss with him whether the funding levels requested would actually yield an effective and credible agency. Today we have the opportunity to ask the Commissioners themselves whether this agency is functioning as it should, whether it is producing the high caliber policymaking that American society requires and deserves, and I, for one, have to confess, I am skeptical.

I think I have a good reason for my skepticism. The Federal Communications Commission was once a transparent, predictable agency, presiding with a light touch over an explosion of mobile and Internet investment and innovation that has greatly benefitted consumers. Today that agency, in my opinion, has evolved into a place where statutory obligations are left to languish in favor of scoring points.

The agency's capitulation to the President's demands comes at the end of a proceeding mired in what I say is procedural failures, and the White House's behind the scenes influence on the FCC's process has been well documented by credible news sources, including the Wall Street Journal, through e-mails from Senator Reid's office last May as well. It is the responsibility of an expert independent agency to issue detailed notice to the public when it intends to act, and to apply its expertise to resolve the hard questions of law and policy. This process should be transparent, and every effort should be made to resist calls to politicize the outcome. Perhaps in this respect, the FCC should learn a thing or two from the Federal Trade Commission, an agency the FCC rendered moot in protecting ISP consumers.

A properly functioning commission doesn't work behind closed doors with the President to bypass the administrative process, and a properly functioning commission doesn't make decisions based on

the number of click and bait e-mails that interest groups can generate. A properly functioning commission focuses on law and facts to generate thoughtful and legally sound analysis, rather than being carried away by politically generated populous furor.

The Open Internet proceeding is not the only place where the FCC seems to have abandoned good process. I am also concerned about the use of delegated authority. Commissioners have the responsibility for dealing with matters that are controversial or make new policy, and should not simply delegate a decision to bury the result. I am concerned that transparency has suffered between the Commissioners. Lack of agreement should not mean that decisional documents are kept from other Commissioners until the 11th hour. And I am concerned that an excessive number practical proceedings remain unresolved, and thousands of businesses wait in the wings while the Commission focuses on extending its regulatory reach.

But mostly I am concerned that the FCC has overstepped its jurisdiction too regularly, net neutrality, the obvious example here, but there are others. An agency only has the authority given to it by statute, and I can't see how any reading of the Communications Act would give the impression that Congress granted the FCC authority to be the ultimate arbiter of the use of personal information. I cannot see how the Telecommunications Act could be read to gut the 10th Amendment, place the FCC in the position of deciding how states can spend their tax dollars. I cannot see how the FCC could possibly interpret its governing statutes to wrest control of content from the creators and mandate its presentation on the Internet.

But for the fact that I only have 5 minutes for my statement, we could keep going. A bidding credit waiver for grain management, government researchers in newsrooms adopting trouble damages without notice, excessive and unfunded merger conditions, last minute data dumps into the record. The FCC appears to believe it is authorized to take the Potter Stewart approach to its authority. I know it when I see it.

To be fair, some of the responsibility lies right here in Congress. We have not updated the Communications Act for decades, and technology has out-evolved its regulatory framework. The FCC does not have the tools to do its job, but this doesn't mean the agency should distort or ignore the current law, or worse, threaten to manufacture authority out of whole cloth, should regulated industries have the temerity to resist the Commission's demands. Instead it should work with Congress. We have offered a way forward on net neutrality that is more certain, and less costly for society, and it is not clear to me that the objections to our legislation are based on policy.

But if we could work together on fixing the net neutrality situation, I think we would be able to chalk up a victory for all of us, and for all our consumers, and for the American economy. So it starts today with trying to fix the agency itself. It is our job to do our due diligence and reauthorize this agency for the first time since 1995. I thank our Commissioners, and Chairman Wheeler, for their attendance today, and I look forward to our productive session ahead.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

It was just over 2 weeks ago that we had the commission's Managing Director present us with his rationale for the largest budget request in history for the FCC. We were able to discuss with him whether the funding levels requested would actually yield an effective and credible agency. Today we have the opportunity to ask the Commissioners themselves whether this agency is functioning as it should—whether it is producing the high-caliber policymaking that the American society requires and deserves. I, for one, am skeptical that this is the case.

I think I have good reason for my skepticism. The Federal Communications Commission was once a transparent and predictable agency presiding with a light-touch over an explosion of mobile and Internet investment and innovation that has greatly benefited consumers. Today that agency has devolved into a place where statutory obligations are left to languish in favor of scoring political points.

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It is the responsibility of an expert independent agency to issue detailed notice to the public when it intends to act and to apply its expertise to resolve the hard questions of law and policy. This process should be transparent and every effort should be made to resist calls to politicize the outcome. Perhaps in this respect the FCC could learn something from the Federal Trade Commission—an agency the FCC recently rendered moot in protecting ISP customers.

A properly functioning commission doesn't work behind closed doors with the president to bypass the administrative process and a properly functioning commission doesn't make decisions based on the number of click-bait emails that interest groups can generate. A properly functioning commission focuses on law and facts to generate thoughtful and legally sound analysis rather than being carried away by politically generated populist furor.

The Open Internet proceeding is not the only place where the FCC seems to have abandoned good process. I'm also concerned about the use of delegated authority. Commissioners have the responsibility for dealing with matters that are controversial or make new policy and should not simply delegate a decision to bury the result. I am concerned that transparency has suffered between the Commissioners; a lack of agreement should not mean that decisional documents are kept from other Commissioners until the eleventh hour. And I'm concerned that an excessive number of practical proceedings remain unresolved—and thousands of businesses wait in the wings—while the commission focuses on extending its regulatory reach.

But mostly, I'm concerned that the FCC oversteps its jurisdiction too regularly. Net neutrality is the obvious example here, but there are others. An agency only has the authority given to it by statute, and I cannot see how any reading of the Communications Act would give the impression that Congress granted the FCC authority to be the ultimate arbiter of the use of personal information; I cannot see how the Telecommunications Act could be read to gut the 10th Amendment and place the FCC in the position of deciding how states can spend tax dollars; and I cannot see how the FCC could possibly interpret its governing statutes to wrest control of content from the creators and mandate its presentation on the Internet.

But for the fact that I only have 5 minutes for my statement, we could keep doing this all day. A bidding credit waiver for Grain Management; government researchers in newsrooms; adopting treble damages without notice; excessive and unfounded merger conditions; and last minute data dumps into the record. The FCC appears to believe that it is authorized to take the Potter Stewart approach to its authority: "I know it when I see it."

To be fair, some of the responsibility here lies with Congress. We haven't updated the Communications Act for decades, and technology has out-evolved its regulatory framework. The FCC doesn't have the tools to do its job. But this doesn't mean that the agency should distort or ignore the current law or worse threaten to manufacture authority in whole cloth should regulated industries have the temerity to resist the commission's demands. Instead, it should work with Congress. We have offered a way forward on net neutrality that is more certain and less costly for society, and it's not clear to me that the objections to our legislation are based on policy. But if we could work together on fixing the net neutrality situation, I think we would be able chalk up a victory for all of us, for all consumers, and for the American economy.

It starts today with trying to fix the agency itself.

[H.R. _____ follows:]

F:\CBO\114\TEL\FCC_REAUTH\FCC_REAUTH\Discussion Draft

[DISCUSSION DRAFT]

114TH CONGRESS
1ST SESSION

H. R. _____

To amend the Communications Act of 1934 to reauthorize appropriations for the Federal Communications Commission and to streamline the provisions governing the assessment of offsetting collections by the Commission, to provide for an independent Inspector General for the Commission, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Communications Act of 1934 to reauthorize appropriations for the Federal Communications Commission and to streamline the provisions governing the assessment of offsetting collections by the Commission, to provide for an independent Inspector General for the Commission, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4 (a) SHORT TITLE.—This Act may be cited as the
5 “FCC Reauthorization Act of 2015”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FCC REAUTHORIZATION

Sec. 101. Authorization of appropriations.

Sec. 102. Application and regulatory fees.

Sec. 103. Effective date.

TITLE II—INDEPENDENT INSPECTOR GENERAL FOR FCC

Sec. 201. FCC Inspector General appointed pursuant to section 3 of the Inspector General Act of 1978.

TITLE III—DETERMINATION OF BUDGETARY EFFECTS

Sec. 301. Determination of budgetary effects.

3 **TITLE I—FCC**
4 **REAUTHORIZATION**

5 **SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

6 (a) IN GENERAL.—Section 6 of the Communications
7 Act of 1934 (47 U.S.C. 156) is amended to read as fol-
8 lows:

9 **“SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

10 **“(a) AUTHORIZATION.—**

11 **“(1) IN GENERAL.—**There are authorized to be
12 appropriated to the Commission to carry out the
13 functions of the Commission \$339,844,000 for each
14 of the fiscal years 2016 through 2020.

15 **“(2) COSTS OF ADMINISTERING AUCTIONS.—**In
16 addition to the amounts authorized to be appro-
17 priated in paragraph (1), there are authorized to be
18 appropriated to the Commission \$819,000,000 for

1 fiscal years 2016 through 2022 to carry out the pro-
2 gram required by section 309(j) (including carrying
3 out section 6403 of the Middle Class Tax Relief and
4 Job Creation Act of 2012 (47 U.S.C. 1452)).

5 “(b) OFFSETTING COLLECTIONS.—

6 “(1) IN GENERAL.—The sum appropriated in
7 any fiscal year to carry out the activities described
8 in subsection (a), to the extent and in the amounts
9 provided for in advance in Appropriations Acts, shall
10 be derived from fees authorized by section 9.

11 “(2) DEPOSIT OF COLLECTIONS.—Amounts re-
12 ceived from fees authorized by section 9 shall be de-
13 posited as an offsetting collection in, and credited to,
14 the account through which funds are made available
15 to carry out the activities described in subsection
16 (a).

17 “(3) DEPOSIT OF EXCESS COLLECTIONS.—Any
18 fees collected in excess of the total amount of fees
19 provided for in Appropriations Acts for a fiscal year
20 shall be deposited in the general fund of the Treas-
21 ury of the United States for the sole purpose of def-
22 icit reduction.

23 “(c) UNIVERSAL SERVICE CONTRIBUTIONS SUBJECT
24 TO APPROPRIATIONS PROCESS.—

1 “(1) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated to the Com-
3 mission to carry out Federal universal service sup-
4 port programs established pursuant to section 254
5 \$9,000,000,000 for each of the fiscal years 2016
6 and 2017.

7 “(2) CONTRIBUTIONS TREATED AS OFFSETTING
8 COLLECTIONS.—

9 “(A) IN GENERAL.—The sum appropriated
10 in any fiscal year to carry out the programs de-
11 scribed in paragraph (1), to the extent and in
12 the amounts provided for in advance in Appro-
13 priations Acts, shall be derived from contribu-
14 tions received under section 254(d).

15 “(B) DEPOSIT OF CONTRIBUTIONS.—Con-
16 tributions received under such section shall be
17 deposited as an offsetting collection in, and
18 credited to, the account through which funds
19 are made available to carry out the programs
20 described in such paragraph.

21 “(C) DEPOSIT OF EXCESS CONTRIBU-
22 TIONS.—Any contributions received under such
23 section in excess of the total amount provided
24 for in Appropriations Acts for a fiscal year shall
25 be deposited in the general fund of the Treas-

1 ury of the United States for the sole purpose of
2 deficit reduction.

3 “(3) LIMITATION TO AMOUNTS PROVIDED FOR
4 IN APPROPRIATIONS ACTS.—Contributions under
5 such section may be assessed and collected in a fis-
6 cal year only to the extent and in the amounts pro-
7 vided for in advance in Appropriations Acts for such
8 fiscal year.

9 “(4) ESTABLISHMENT OF RATES.—The Com-
10 mission shall provide for the assessment and collec-
11 tion of contributions under such section at rates that
12 will result in the collection, in each fiscal year, of an
13 amount that can reasonably be expected to equal the
14 amount provided for in advance in Appropriations
15 Acts for such fiscal year.”.

16 (b) COSTS OF ADMINISTERING AUCTIONS COVERED
17 THROUGH APPROPRIATIONS.—

18 (1) IN GENERAL.—Section 309(j)(8) of the
19 Communications Act of 1934 (47 U.S.C. 309(j)(8))
20 is amended—

21 (A) in subparagraph (A), by striking

22 “(B),”;

23 (B) by striking subparagraph (B);

24 (C) in subparagraph (D)(ii), by striking

25 “and except as provided in subparagraph (B)”;

1 (D) in subparagraph (F), by striking “sub-
 2 paragraphs (B) and” and inserting “subpara-
 3 graph”; and

4 (E) in subparagraph (G), by striking “and
 5 except as provided in subparagraph (B)” each
 6 place it appears.

7 (2) CONFORMING AMENDMENTS.—Section
 8 6403(c)(2) of the Middle Class Tax Relief and Job
 9 Creation Act of 2012 (47 U.S.C. 1452(c)(2)) is
 10 amended—

11 (A) in subparagraph (B)—

12 (i) in clause (i), by adding “and” at
 13 the end;

14 (ii) by striking clause (ii); and

15 (iii) by redesignating clause (iii) as
 16 clause (ii); and

17 (B) by striking subparagraph (C).

18 (c) ELIMINATION OF DUPLICATIVE AUTHORIZATION
 19 OF APPROPRIATIONS.—

20 (1) IN GENERAL.—Section 710 of the Tele-
 21 communications Act of 1996 (Public Law 104–104)
 22 is repealed.

23 (2) CONFORMING AMENDMENT.—The table of
 24 contents of section 2 of such Act is amended by
 25 striking the item relating to section 710.

1 (d) TRANSFER OF FUNDS.—On the effective date de-
 2 scribed in section 103, any amounts in the account pro-
 3 viding appropriations to carry out the functions of the
 4 Federal Communications Commission that were collected
 5 in excess of the amounts provided for in Appropriations
 6 Acts in any fiscal year prior to such date shall be trans-
 7 ferred to the general fund of the Treasury of the United
 8 States for the sole purpose of deficit reduction.

9 **SEC. 102. APPLICATION AND REGULATORY FEES.**

10 (a) IN GENERAL.—Section 9 of the Communications
 11 Act of 1934 (47 U.S.C. 159) is amended to read as fol-
 12 lows:

13 **“SEC. 9. APPLICATION AND REGULATORY FEES.**

14 “(a) GENERAL AUTHORITY.—The Commission shall
 15 assess and collect application fees and regulatory fees to
 16 recover the costs of carrying out the activities described
 17 in section 6(a) only to the extent and in the amounts pro-
 18 vided for in advance in Appropriations Acts.

19 “(b) APPLICATION FEES.—

20 “(1) IN GENERAL.—The Commission shall as-
 21 sess and collect application fees at such rates as the
 22 Commission shall establish in a schedule of applica-
 23 tion fees to recover the costs of the Commission to
 24 process applications.

25 “(2) ADJUSTMENT OF SCHEDULE.—

1 “(A) IN GENERAL.—In every even-num-
 2 bered year, the Commission shall review the
 3 schedule of application fees established under
 4 this subsection and, except as provided in sub-
 5 paragraph (B), set a new amount for each fee
 6 in the schedule that is equal to the amount of
 7 the fee on the date when the fee was established
 8 or the date when the fee was last amended
 9 under paragraph (3), whichever is later—

10 “(i) increased or decreased by the per-
 11 centage change in the Consumer Price
 12 Index during the period beginning on such
 13 date and ending on the date of the review;
 14 and

15 “(ii) rounded to the nearest \$5 incre-
 16 ment.

17 “(B) THRESHOLD FOR ADJUSTMENT.—
 18 The Commission may not adjust a fee under
 19 subparagraph (A) if—

20 “(i) in the case of a fee the current
 21 amount of which is less than \$200, the ad-
 22 justment would result in a change in the
 23 current amount of less than \$10; or

24 “(ii) in the case of a fee the current
 25 amount of which is \$200 or more, the ad-

1 justment would result in a change in the
2 current amount of less than 5 percent.

3 “(C) CURRENT AMOUNT DEFINED.—In
4 subparagraph (B), the term ‘current amount’
5 means, with respect to a fee, the amount of the
6 fee on the date when the fee was established,
7 the date when the fee was last adjusted under
8 subparagraph (A), or the date when the fee was
9 last amended under paragraph (3), whichever is
10 latest.

11 “(3) AMENDMENTS.—In addition to the adjust-
12 ments required by paragraph (2), the Commission
13 shall by rule amend the schedule of application fees
14 established under this subsection if the Commission
15 determines that the schedule requires amendment so
16 that such fees reflect increases or decreases in the
17 costs of processing applications at the Commission
18 and the consolidation or addition of new categories
19 of applications.

20 “(c) REGULATORY FEES.—

21 “(1) IN GENERAL.—The Commission shall as-
22 sess and collect regulatory fees at such rates as the
23 Commission shall establish in a schedule of regu-
24 latory fees that will result in the collection, in each

1 fiscal year, of an amount that can reasonably be ex-
 2 pected to equal the difference between—

3 “(A) the amounts described in subsection
 4 (a) with respect to such fiscal year; and

5 “(B) the amount of application fees rea-
 6 sonably expected to be collected in such fiscal
 7 year.

8 “(2) ADJUSTMENT OF SCHEDULE.—

9 “(A) IN GENERAL.—For each fiscal year,
 10 the Commission shall by rule adjust the sched-
 11 ule of regulatory fees established under this
 12 subsection to—

13 “(i) reflect unexpected increases or
 14 decreases in the number of units subject to
 15 the payment of such fees; and

16 “(ii) result in the collection of the
 17 amount required by paragraph (1).

18 “(B) ROUNDING.—In making adjustments
 19 under this paragraph, the Commission may
 20 round fees to the nearest \$5 increment.

21 “(3) AMENDMENTS.—In addition to the adjust-
 22 ments required by paragraph (2), the Commission
 23 shall by rule amend the schedule of regulatory fees
 24 established under this subsection if the Commission
 25 determines that the schedule requires amendment so

1 that such fees reflect the full-time equivalent number
2 of employees within the bureaus and offices of the
3 Commission, adjusted to take into account factors
4 that are reasonably related to the benefits provided
5 to the payor of the fee by the Commission's activi-
6 ties. In making an amendment under this para-
7 graph, the Commission may not change the total
8 amount of regulatory fees required by paragraph (1)
9 to be collected in a fiscal year.

10 “(d) JUDICIAL REVIEW PROHIBITED.—An adjust-
11 ment or amendment to a schedule of fees under subsection
12 (b) or (c) is not subject to judicial review.

13 “(e) NOTICE TO CONGRESS.—The Commission shall
14 transmit to Congress notification—

15 “(1) of any adjustment under subsection (b)(2)
16 or (c)(2) immediately upon the adoption of such ad-
17 justment; and

18 “(2) of any amendment under subsection (b)(3)
19 or (c)(3) not later than 90 days before the effective
20 date of such amendment.

21 “(f) ENFORCEMENT.—

22 “(1) PENALTIES FOR LATE PAYMENT.—The
23 Commission shall by rule prescribe a penalty for late
24 payment of fees under this section. Such penalty

1 shall be 25 percent of the amount of the fee that
2 was not paid in a timely manner.

3 “(2) INTEREST ON UNPAID FEES AND PEN-
4 ALTIES.—The Commission shall charge interest, at a
5 rate determined under section 3717 of title 31,
6 United States Code, on a fee or penalty under this
7 section that is not paid in a timely manner. Such
8 section 3717 shall not otherwise apply with respect
9 to a fee or penalty under this section.

10 “(3) DISMISSAL OF APPLICATIONS OR FIL-
11 INGS.—The Commission may dismiss any applica-
12 tion or other filing for failure to pay in a timely
13 manner any fee, interest, or penalty under this sec-
14 tion.

15 “(4) REVOCATIONS.—

16 “(A) IN GENERAL.—In addition to or in
17 lieu of the penalties and dismissals authorized
18 by paragraphs (1) and (3), the Commission
19 may revoke any instrument of authorization
20 held by any licensee that has not paid in a
21 timely manner a regulatory fee assessed under
22 this section or any related interest or penalty.

23 “(B) NOTICE.—Revocation action may be
24 taken by the Commission under this paragraph
25 after notice of the Commission’s intent to take

1 such action is sent to the licensee by registered
2 mail, return receipt requested, at the licensee's
3 last known address. The notice shall provide the
4 licensee at least 30 days to either pay the fee,
5 interest, and any penalty or show cause why the
6 fee, interest, or penalty does not apply to the li-
7 censee or should otherwise be waived or pay-
8 ment deferred.

9 “(C) HEARING.—

10 “(i) GENERALLY NOT REQUIRED.—A
11 hearing is not required under this para-
12 graph unless the licensee's response pre-
13 sents a substantial and material question
14 of fact.

15 “(ii) EVIDENCE AND BURDENS.—In
16 any case where a hearing is conducted
17 under this paragraph, the hearing shall be
18 based on written evidence only, and the
19 burden of proceeding with the introduction
20 of evidence and the burden of proof shall
21 be on the licensee.

22 “(iii) COSTS.—Unless the licensee
23 substantially prevails in the hearing, the
24 Commission may assess the licensee for the
25 costs of such hearing.

1 “(D) OPPORTUNITY TO PAY PRIOR TO
2 REVOCATION.—Any Commission order adopted
3 under this paragraph shall determine the
4 amount due, if any, and provide the licensee
5 with at least 30 days to pay that amount or
6 have its authorization revoked.

7 “(E) FINALITY.—No order of revocation
8 under this paragraph shall become final until
9 the licensee has exhausted its right to judicial
10 review of such order under section 402(b)(5).

11 “(g) WAIVER, REDUCTION, AND DEFERMENT.—The
12 Commission may waive, reduce, or defer payment of a fee,
13 interest charge, or penalty in any specific instance for
14 good cause shown, if such action would promote the public
15 interest.

16 “(h) PAYMENT RULES.—The Commission shall by
17 rule permit payment—

18 “(1) in the case of fees in large amounts, by in-
19 stallments; and

20 “(2) in the case of fees in small amounts, in ad-
21 vance for a number of years not to exceed the term
22 of the license held by the payor.

23 “(i) EXCEPTIONS.—

1 “(1) APPLICATION FEES.—The application fees
2 established under this section shall not be applicable
3 to—

4 “(A) a governmental entity; or

5 “(B) a nonprofit entity licensed in the
6 Local Government, Police, Fire, Highway Main-
7 tenance, Forestry-Conservation, Public Safety,
8 or Special Emergency Radio service.

9 “(2) REGULATORY FEES.—The regulatory fees
10 established under this section shall not be applicable
11 to—

12 “(A) a governmental entity or nonprofit
13 entity; or

14 “(B) an amateur radio operator licensee
15 under part 97 of the Commission’s rules (47
16 C.F.R. part 97).

17 “(j) ACCOUNTING SYSTEM.—The Commission shall
18 develop accounting systems necessary to make the amend-
19 ments authorized by subsections (b)(3) and (c)(3).”.

20 (b) CONFORMING AMENDMENTS.—The Communica-
21 tions Act of 1934 (47 U.S.C. 151 et seq.) is amended—

22 (1) by repealing section 8; and

23 (2) in section 309(j)(6)(H), by striking
24 “charges imposed pursuant to section 8 of this Act”

1 and inserting “application fees assessed under sec-
2 tion 9”.

3 (c) RULEMAKING TO AMEND SCHEDULE OF REGU-
4 LATORY FEES.—

5 (1) IN GENERAL.—Not later than 1 year after
6 the effective date described in section 103, the Fed-
7 eral Communications Commission shall complete a
8 rulemaking proceeding under subsection (c)(3) of
9 section 9 of the Communications Act of 1934, as
10 amended by subsection (a) of this section.

11 (2) REPORT TO CONGRESS.—If the Federal
12 Communications Commission has not completed the
13 rulemaking proceeding required by paragraph (1) by
14 the date that is 6 months after the effective date de-
15 scribed in section 103, the Commission shall submit
16 to Congress a report on the progress of such rule-
17 making proceeding.

18 **SEC. 103. EFFECTIVE DATE.**

19 This title and the amendments made by this title
20 shall take effect on October 1, 2015.

1 **TITLE II—INDEPENDENT**
 2 **INSPECTOR GENERAL FOR FCC**

3 **SEC. 201. FCC INSPECTOR GENERAL APPOINTED PURSU-**
 4 **ANT TO SECTION 3 OF THE INSPECTOR GEN-**
 5 **ERAL ACT OF 1978.**

6 (a) AMENDMENTS.—The Inspector General Act of
 7 1978 (5 U.S.C. App.) is amended—

8 (1) in section 8G(a)(2), by striking “the Fed-
 9 eral Communications Commission,”; and

10 (2) in section 12—

11 (A) in paragraph (1), by inserting “, the
 12 Federal Communications Commission,” after
 13 “the Chairman of the Nuclear Regulatory Com-
 14 mission”; and

15 (B) in paragraph (2), by inserting “the
 16 Federal Communications Commission,” after
 17 “the Environmental Protection Agency,”.

18 (b) TRANSITION RULE.—An individual serving as In-
 19 spector General of the Federal Communications Commis-
 20 sion on the date of the enactment of this Act pursuant
 21 to an appointment made under section 8G of the Inspector
 22 General Act of 1978 (5 U.S.C. App.)—

23 (1) may continue so serving until the President
 24 makes an appointment under section 3(a) of such
 25 Act with respect to the Federal Communications

1 Commission consistent with the amendments made
2 by subsection (a); and

3 (2) shall, while serving under paragraph (1), re-
4 main subject to the provisions of section 8G of such
5 Act which, immediately before the date of the enact-
6 ment of this Act, applied with respect to the Inspec-
7 tor General of the Federal Communications Commis-
8 sion and suffer no reduction in pay.

9 **TITLE III—DETERMINATION OF**
10 **BUDGETARY EFFECTS**

11 **SEC. 301. DETERMINATION OF BUDGETARY EFFECTS.**

12 The budgetary effects of this Act, for the purpose of
13 complying with the Statutory Pay-As-You-Go-Act of 2010,
14 shall be determined by reference to the latest statement
15 titled “Budgetary Effects of PAYGO Legislation” for this
16 Act, submitted for printing in the Congressional Record
17 by the Chairman of the House Budget Committee, pro-
18 vided that such statement has been submitted prior to the
19 vote on passage.

Mr. WALDEN. I would yield the remaining 30 seconds to the vice chair, Mr. Latta.

Mr. Latta. Well, thank you, Mr. Chairman, and I appreciate you for yielding, and holding today's hearing. I thank the Commissioners for being here. The success and productivity of the communications and technology industry never ceases to amaze me, as it has been, and is a constant bright spot in our economy as it rapidly advances and evolves to meet consumer demands.

Given the FCC's integral role in the marketplace, it is critical that the agency is transparent, efficient, and accountable. That is why I am concerned with the FCC's decision to reclassify broadband Internet service as a telecommunications service under Title II. Despite the fact that the order goes against a light touch regulatory approach that was fundamental for providing the industry with flexibility it needed to invest, innovate, and create jobs, the order process was not transparent, and represents a regulatory overreach that will have lasting negative consequences.

Today's hearing is a step in the right direction in an effort to make the agency more efficient and effective by reviewing the Commission's policy decision and processes. I look forward to hearing from the Commissioners.

Mr. Chairman, I yield back with a point of personal privilege. From an Ohioan, I think your tie looks great.

Mr. WALDEN. Sure glad I yielded time to you. With that, I will turn to my friend from California, part of the Pac-12, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman. I don't have any sports analogies, so—and obviously I hold a much different view, and so I want to express that view with an intensity that I think needs to be brought to really what this issue is all about. And I appreciate having the hearing, but I think that the main point is that on February 26 the American people finally won one, and it was big. The regular guys and gals across our country, part of the beleaguered middle class, were heard. It was a historic day when the FCC voted for bright line Open Internet rules to protect the ability of consumers, students, and entrepreneurs to learn and explore, create and market, all on equal footing. This is about net equality.

The FCC decision ensures that the Internet remains open and accessible to everyone, a source of intellectual enrichment, and an engine for economic growth and prosperity in our country. The Internet is the public library of our time, a laboratory in the most robust marketplace imaginable, and the FCC declared it open to all, and for all. I think this is nothing short of extraordinary.

It was a day when the average person witnessed something very rare. The big shots in Washington, D.C. sided with them. Decision makers actually took in and considered the advice of over four million Americans. I remember watching TV when Dr. King addressed a million people on the Mall. It was a sea of humanity. Well, put a multiplier on that. It is over four million people that weighed in, and I think that kind of public engagement with our government should be celebrated, and not rolled over and disrespected.

Today the majority has offered a legislative discussion draft intended to reauthorize the FCC. I have reviewed the draft legislation, and concluded that, in effect, it is meant to squeeze an agency that is already operating at the lowest number of full time staff in

30 years. The FCC has to have the means to fulfill its mission, to protect consumers, promote competition, and advance innovation. That is their mission. This includes huge issues, and they are huge, like freeing up additional spectrum, promoting municipal broadband deployment, and enhancing 911 services. Any attempt to overhaul the FCC's funding structure should be fully analyzed, and the implications of these changes should be fully understood. We shouldn't be horsing around with it, in plain English, and a 48 hour review is simply insufficient.

So I find myself wondering, why are we having this hearing today? I hope it isn't a fishing expedition. By compelling the FCC Chairman and Commissioners to testify five times over the course of 8 days, it seems to me that the majority seems to have chosen to ignore a glaring fact. Four million—over four million Americans did something. They, and countless more, contacted their members of Congress to say, we don't want to pay more for less. We don't think any kind of discrimination, blocking, or throttling is good or fair. We are tired of poor service from providers, confusing bills, and having to wait for a half hour or more on hold to try and talk to a human being, and we don't want any gatekeepers.

So I think that is really what this is all about. I welcome the debate. I welcome the discussion with the Commissioners. And I yield the remainder of my time to Congresswoman Matsui.

Ms. MATSUI. Thank you very much, Ranking Member. I would also like to welcome the Chairman and the Commissioners here today. We know over the last year the debate over the future of the Internet has not been an easy one. There have been many twists and turns. But in the end, I was specifically pleased that the FCC's net neutrality rules ensure that paid prioritization schemes, or so-called Internet fast lanes never see the light of day in our economy. Americans will not experience Internet slow lanes or gatekeepers hindering traffic. We know, however, the fight to preserve net neutrality is not over.

That said, it is time for us to really get back to working on issues that advance our Internet economy. I think spectrum should be at the top of that list. The AWS3 option demonstrated the massive appetite for spectrum. I look forward to re-introducing bipartisan legislation with Congressman Guthrie that would create the first ever incentive auction for Federal agencies.

With that, I yield back the balance of my time.

Mr. WALDEN. The gentlelady yields back. Chair recognizes the Vice Chairman of the full committee, Ms. Blackburn.

Mrs. BLACKBURN. Thank you, Mr. Chairman. And to the Commission, I want to say thank you for being here and offering your testimony. As you all know, we have got questions, and we want to move right on to them. I think that the recent actions taken by the FCC have really raised more questions about your scope, and your reach, and your authority, and I will also say about transparency. Chairman Wheeler, I will tell you, I do not think it is acceptable for the Commission to pass a net neutrality rule before the American people have the opportunity to find out what is in it, and that was disappointing to us. Releasing a draft final order should have been a part of the rulemaking process, and it is disappointing that it was not. Every dollar you spend is a taxpayer dollar. Every

action that you take affects the American taxpayer, so that lack of transparency is incredibly disappointing.

I am sure that also you are hearing from Netflix, and some of the other stakeholders who have been very disappointed on what they found out once they started to read the 322 word-filled pages. I will tell you also, as a former State Senator from Tennessee, and someone that worked on the telecommunications and interactive technology issues there, I was terribly disappointed to see the action of the Commission, to choose to take a vote, and choose to preempt state laws in Tennessee and North Carolina that restrict municipal broadband entry. These are decisions that should be made by their state legislators. Your actions there are disappointing, and we have questions about them.

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

Mr. WALDEN. Anyone else on the Republican side seeking time? If not, gentlelady yields back. Chair now recognizes the Ranking Member of the full Committee, the gentleman from New Jersey, Mr. Pallone, for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman. Over the past few days we have heard quite a bit about process, fairness, and transparency at the FCC. We just heard it again from my previous colleague. But given what has transpired in this subcommittee over the last 48 hours, I wonder whether we first have to make sure our own house is in order. As witness testimony was already being submitted, the Republicans released, with no notice, a partisan discussion draft that would completely overhaul the FCC's funding, and this maneuvering is unfair to the witnesses, and unfair to the members of the subcommittee, Mr. Chairman. Unfortunately—

Mr. WALDEN. Gentleman yield?

Mr. PALLONE. Yes?

Mr. WALDEN. Yes. So the discussion draft was put out at least an hour and a half before any testimony came in. I realize that is still not enough time, but this isn't a markup. This is a hearing. We followed all the committee rules. We have circulated drafts, and always tried to be open and transparent. We will continue to be. We are not marking up a bill.

Mr. PALLONE. Well, Mr. Chairman, unfortunately, in this Congress, we seem to have halted a tradition. I am not sure it is in the rules, but we have had a long tradition of sharing text with all members of the subcommittee at least a week prior to a legislative hearing, and we have seen these same partisan tactics—

Mr. WALDEN. Will the gentleman yield on that point?

Mr. PALLONE. Sure.

Mr. WALDEN. Because actually, when you all were in charge, I have got a list here of examples where that wasn't the case. I agree we should be more transparent—

Mr. PALLONE. Well, let us just say, if I can take back my time, I would like to see us go back to a tradition, process, whatever it was, that we have at least a week prior to a legislative hearing. I mean, the same thing happened in the Commerce, Manufacturing, and Trade subcommittee in the last couple days, and it just, you know, I understand—maybe give examples of things that were done in the past by us, but I just think that, Mr. Upton, yourself, the subcommittee chairs have all said that they want to act in a

bipartisan way, they want bipartisan bills, and I appreciate that. But if you are going to do that, then we need to have more time than just the 48 hours that occurred here today. And we had the same thing yesterday in the other subcommittee. If we are going to really move forward, we are trying to do bills on a bipartisan basis, we need to have more than the 48 hours.

In addition to that, I have yet to hear a convincing explanation for why this legislation is a good idea. Given what we just went through with the Department of Homeland Security, I doubt our constituents are clamoring for us to create another funding cliff, especially for an agency that just netted \$41 billion for public safety and deficit reduction without raising a dime in taxes. I just think this agency is too important to play these types of games with its funding.

And nonetheless, I am grateful that we are having the hearing today. It gives us the opportunity to show our appreciation in person and in public to the FCC for its work. So thank you, Chairman Wheeler, and to his fellow Commissioners for all that you have accomplished. This has been an eventful year for the FCC. The Commission has certainly received more than its fair share of attention, and also an unprecedented level of civic engagement. Four million Americans weighed in, overwhelmingly calling for strong Network Neutrality rules. 140 members of Congress engaged in the process. And, of course, the President expressed his opinion as well, which is not something that we should be embarrassed about, by the way.

Yet despite the withering glare of the spotlight, the Commission stood tall. The Commissioners, and the entire staff of the FCC, have shown a steadfast dedication to serving the public interest. You showed everyone who called in, who wrote in, who came in to support net neutrality that the FCC and the rest of Washington know how to listen, so thank you.

Now, I have repeatedly said that I welcome the majority's change of heart, and their offer to legislate on this issue of net neutrality, and I remain open to looking for truly bipartisan ways to enshrine the FCC's Network Neutrality protections into law. But after what has taken place over the past few days, I wonder if bipartisanship may only be in the eye of the beholder.

If we are able to find a real partner in this process, we must make sure that our efforts do not come at the expense of all the other work the Commission does. The FCC must remain an effective cop on the beat to protect consumers. The FCC must continue to promote universal service to all Americans. The FCC must ensure that the telecommunications and media markets are competitive. And the FCC must maintain the vitality of our public safety communications. And that is why I look forward to hearing today how the FCC can continue to serve an important role in the broadband age. And so, to the Commissioners, thank you for coming here today, and thank you for your public service.

May I just ask—I know, because I yielded time to you, Mr. Chairman, I wanted to yield a minute of my time to Mr. Luján, but I don't have it now. But if I could ask unanimous consent—

Mr. WALDEN. Without objection.

Mr. PALLONE. Thank you.

Mr. LUJÁN. Thank you, Ranking Member Pallone, and let me second your comments about the need for us to work together. Telecommunications policy has a long history of being made on a bipartisan basis, and I would hate to see the polarization that defined so many of our policy debates dominate our efforts on this Subcommittee.

Before us are real challenges. We still have 77 percent of New Mexicans living in rural areas that lack access to fixed high speed broadband. And as I have shared with Chairman Wheeler before, if we can have Internet access at 30,000 feet on an airplane, we should be able to have Internet access all across rural America, including New Mexico.

Today I am especially interested in hearing from Commissioner Rosenworcel on the innovative potential of unlicensed spectrum, and I am also excited to hear from a former public utility commissioner, a colleague of mine as well, Commissioner Clyburn's ideas to modernize the Lifeline program in the broadband era. And I want to hear from all Commissioners on how we can work with the FCC, including strengthening the information and technology systems that collapsed under the weight of millions of comments generated last year when a friend of ours, John Oliver, and four million others filed comment to the FCC, which crashed its servers. Four million comments is a lot, but surely the agency that is charged with overseeing the Internet should be able to handle the traffic.

And with that, Mr. Chairman, I want to thank everyone for being here today, and I look forward to this important conversation today.

Mr. WALDEN. Thank the gentleman for his comments. We will go now to the Chairman of the FCC for an opening statement. Mr. Wheeler, thank you for being here. We know you have a tough job, and we look forward to your comments, sir.

STATEMENTS OF THE HONORABLE TOM WHEELER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; THE HONORABLE MIGNON CLYBURN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; THE HONORABLE JESSICA ROSENWORCEL, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; THE HONORABLE AJIT PAI, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; AND THE HONORABLE MICHAEL O'RIELLY, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

STATEMENT OF TOM WHEELER

Mr. WHEELER. Thank you very much, Mr. Chairman, Ranking Member Eshoo. It is a privilege to be here with all of my colleagues. There has been some reference up here about the Open Internet. I am sure we will discuss it more today. Clearly the decision that we made was a watershed.

You, in your legislation, Mr. Chairman, and we in our regulation, identify a challenge, a problem that needs to be solved. We take different approaches, to be sure, and no doubt we are going to be discussing those, now and in the future. There is common agreement that the Internet is too important to ignore, and too impor-

tant to not have a set of yardsticks and rules. We have completed our work, now Open Internet rules will be in place.

Now let me move on to another couple of issues that I think are important to the committee, and one is that there is a national emergency in emergency services, and Congress holds the key to the solution. Ms. Eshoo referenced the public safety challenges. The vast majority of calls to 911 come from mobile devices. In a unanimous decision of this entire Commission, we have established rules for wireless carriers to provide location information as to where that call is coming from. The carriers are stepping up. But delivering that information is only the front end of the challenge.

Mr. Shimkus, about 15 years ago, led legislation making 911 a national number. Amazing it had never been that. The calls now go through, but many times it is like a tree falling in the forest. There was a recent tragic example in Georgia, when a lady by the name of Shanelle Anderson called as she was drowning in her car. The signal was received by an antenna that happened to be an adjacent PSAP, public safety answering point, that had decided not to have maps of the area next door.

I have listened to the call, and it is heartbreaking. She keeps saying, "well, here is where I am," and the dispatcher keeps saying, "I can't find it on the map. I can't find it, I don't know where you are," and didn't know where to send somebody. There are 6,500 different PSAPs in this country. They are all staffed by incredibly dedicated individuals, but there needs to be some kind of set of standards, and only Congress can deal with it. We have dealt with the front end, but now it is necessary to do something about the back end. This is not a power grab. I don't care how it gets done, or what agency is responsible, but we owe this to the American people.

The second quick issue that I would like to raise is, Mr. Chairman, both you and I want a Commission that works openly, fairly, and efficiently. While three-to-two votes always get the attention, about 90 percent of our decisions during my tenure have been unanimous. About two percent have been four to one, and there have been 21 out of 253 votes that have been three to two.

We also have, during my tenure, the best record of any full commission this century for getting decisions out quickly. Seventy three percent of our decisions are released in one business day or less. The measure of that is the last Republican-led commission, it took a week before they could hit that number. We also have the lowest number, and percentage, of actions made on delegated authority of any commission, Republican or Democrat, in the last 15 years. But regardless of this, we should be constantly striving for improvement.

Commissioner O'Rielly has raised some really good questions about longstanding processes. He and I were in the same position. We walked in the door at the same time, and we found processes in place that had been typical for both Republican and Democratic administrations. As I say, he raised some really good questions, and to address these questions, I am going to be asking each Commissioner to appoint one staff person to work on a task force to be headed by Diane Cornell, who ran our Process Reform Task Force. I have already asked her to begin a review of all similarly situated

independent agencies so that we know what the procedures are for those agencies, and that can be a baseline against which we can measure our procedures and move forward to address what I think are some of the legitimate issues that Commissioner O'Rielly has raised. Thank you, Mr. Chairman.

[The prepared statement of Mr. Wheeler follows:]

**Statement of
Tom Wheeler
Chairman
Federal Communications Commission
Before the
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives**

**Hearing on
“FCC Reauthorization: Oversight of the Commission”
March 19, 2015**

I. INTRODUCTION

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

Since becoming FCC Chairman in November 2013, I have been clear that the agency should be focused on two over-arching priorities: first, facilitating dynamic technological change to enable economic growth and to promote U.S. leadership; and second, ensuring that our communications networks reflect certain core civic values – universal access, competition, public safety, and consumer protection.

I have also been clear from the outset that what the agency can accomplish depends on how we do our business. Accordingly, I have made improving agency operations and processes a top priority.

Thanks to the tireless efforts of the Commission’s outstanding professional staff, the agency has posted a significant record of achievement in support of these goals. I look forward to discussing these accomplishments with the Subcommittee today and working with you and my fellow Commissioners to build on this progress and bring the benefits of broadband to all Americans.

II. PROMOTING ECONOMIC GROWTH AND U.S. LEADERSHIP

Broadband Internet – wired and wireless – is the indispensable infrastructure of our information economy. A vibrant broadband ecosystem is also critical to America’s global economic competitiveness. Driven by innovative American companies and entrepreneurs, the U.S. is the clear global leaders in advanced wireless networks, devices, and applications. To enable economic growth and continued U.S. leadership, the Commission is focused on promoting fast, fair, and open broadband networks and unleashing spectrum to enable mobile innovation.

A. Fast, Fair, and Open Networks.

There are three simple keys to the broadband future. Broadband networks must be fast, fair, and open. Fast networks enable new products and services and remove bandwidth as a constraint on innovation. Fair networks ensure consumers have competitive choices. Open networks allow innovation without permission and freedom of expression. The FCC's challenge is to achieve the goal of networks that are fast, fair, and open for all Americans and the equally legitimate goal of preserving incentives for investment in broadband infrastructure.

Open Internet Order

In January 2014, most of the FCC's Open Internet rules were struck down and the case was remanded to us by the court, eliminating the Commission's ability to be a cop on the beat – be it through principles, rules, or otherwise – to effectively deter or punish harmful behavior by ISPs. The Commission acted immediately to begin a process to restore Open Internet protections. Over the past year, we received input from nearly 4 million Americans in the one of the most transparent proceedings this Commission has ever run. There was a 130-day public comment period. We held six roundtable discussions with experts on legal, technical, and market issues. We heard from and responded to over 140 members of Congress. Our team had dozens of meetings with Congressional staff. I spoke with – and listened to – hundreds of consumers, innovators, and entrepreneurs in meetings across the country.

On February 26, 2015, after a year-long process and a decade of debate, the FCC adopted bright line Open Internet protections that ban blocking, throttling, and paid prioritization. These rules will fully apply to fixed and mobile broadband. The Order also includes a general conduct rule that can be used to stop new and novel threats to the Internet. That means there will be basic ground rules to assure Internet openness and a referee on the field to enforce them.

The FCC's Open Internet Order should reassure consumers, innovators, and the financial markets about the broadband future of our nation.

Consumers now know that lawful content online will not – cannot – be blocked or their service throttled. Internet users can say what they want and go where they want, when they want – whether they access the Internet on their desktop computer or on their smartphones.

Innovators now know they will have open access to consumers without worrying about pay-for-preference fast lanes or gatekeepers. Entrepreneurs will be able to introduce new products and services without asking anyone's permission.

Financial markets now know that there will be common sense Open Internet protections in place that rely on a modernized regulatory approach that has already been demonstrated to work – not old-style utility regulation. The rules under which the wireless voice industry invested \$300 billion to build a vibrant and growing business are the model for the rules the Commission adopted. That means no rate regulation, no tariffing, and no forced unbundling.

The new rules ensure ISPs continue to have the economic incentives to build fast and competitive broadband networks.

Community Broadband Petitions

Last year, the leaders of Chattanooga, Tennessee and Wilson, North Carolina petitioned the FCC asking the agency to preempt laws enacted by state legislatures that prohibit them from expanding their successful community-owned broadband networks.

The Commission respects the important role of state governments in our federal system, and we do not take the step of preempting state laws lightly. But it is a well-established principle that state laws that directly conflict with federal laws and policy may be subject to preemption in appropriate circumstances.

Congress instructed the FCC to encourage the expansion of broadband throughout the nation. Consistent with this statutory mandate, the Commission voted to preempt restrictive state laws in North Carolina and Tennessee that hamper investment and deployment of broadband networks in areas where consumers would benefit from greater levels of broadband service.

The Commission's action will get rid of state-level red tape, which served as nothing more than a barrier to broadband competition, and allow communities to determine their own broadband future.

Broadband Progress Report

Section 706 of the Communications Act instructs the Commission to “determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion” and report to Congress annually. Since 2010, the benchmark for advanced communications has been 4 megabits per second (Mbps) down, 1 Mbps up. Four Mbps is less than the recommended capacity to stream a single HD video. Now consider that the average connected household has seven Internet-connected devices including televisions, desktops, laptops, tablets, and smartphones. If you were to look at the ISPs marketing materials, they recommend speeds of 25 Mbps or higher if you plan on using multiple connected devices at the same time.

In January, the Commission established a new definition for advanced telecommunications capability as 25 Mbps down, 3 Mbps up. This new standard already holds for 83 percent of U.S. homes. But we have a problem when 17 percent of U.S. households can't access broadband at this new standard, with rural and Tribal areas disproportionately left behind. This new standard is an impetus for meaningful improvements in the availability of true high-speed networks for all Americans and also an invitation to innovation that is enabled by increased throughput.

Removing Barriers to Broadband Deployment

The private sector must play the leading role in extending fast, fair, and open broadband networks to every American. That's why the FCC is committed to removing barriers to

investment and to lowering the costs of broadband build-out. We have made great strides in this area in the past year, and there is more to come. Last August, we substantially reformed tower lighting and marking requirements, which greatly eased compliance burdens for tower owners without any adverse impact on aviation safety. In October, we adopted changes to facilitate the process — at the federal and state level — for deploying small-cell wireless systems and other installations that have no impact on historic properties.

Looking ahead, we have launched an effort to streamline further the federal review for deployments of the small cell and distributed antenna systems that will power wireless broadband in the future. We have committed to wrapping up this effort by mid-2016, which is an aggressive schedule considering the wide consultation we are required to pursue with all stakeholders, including the Advisory Council on Historic Preservation, Tribal Nations, and State historic preservation offices.

We have also been working closely with industry and other stakeholders to craft an approach to bring into compliance towers that may have been built without the historic preservation reviews required by statute. Once complete, this will open up thousands of towers for collocations, eliminating the need for new construction and excavation in many cases. The tower industry is working directly with us on this initiative, and they have committed to providing us with information about these towers by early June.

In addition, we have launched a project to modernize the Tribal Nation consultation by establishing clear parameters for the information tower constructors must provide and the deadlines that apply to any responses or objections from Tribal Nations.

Finally, we recognize that industry can face greater expense and delay when a project's federal funding or physical location requires them to work with disparate federal agencies to gain approval. To address this, we are taking the lead with our federal agency partners — including FirstNet, the Rural Utility Service, and the Federal Railway Administration — to clarify and simplify the federal review process in cases of overlapping jurisdiction.

B. Spectrum

No sector holds more promise for new innovations that will grow our economy, create jobs, and improve our quality of life than mobile broadband. Consider that the “app economy” didn't exist until 2008, and it is already sustains more than 600,000 U.S. jobs. Mobile is also an essential pathway to the Internet, accounting for more than 60 percent of Internet usage. Spectrum is the oxygen that sustains our mobile networks, and more spectrum is needed to meet the increasing demand for mobile broadband. In 2014, the spectrum pipeline re-opened, and the Commission is working to make sure more spectrum can and will be made available on terms that promote competition and consumer choice.

AWS-3 Auction

Auctions are one of the Commission's tools to meet the nation's demand for wireless broadband. This January, we closed bidding on The AWS-3 auction (Auction 97), which was a huge success. It marked a new era in spectrum policy, where a collaborative and unprecedented effort resulted in new commercial access to federal spectrum bands. A bipartisan group of leaders in Congress, federal agencies – especially NTIA and DoD, industry, and the team at the FCC all came together to help meet the Nation's demand for wireless broadband.

The AWS-3 auction made available an additional 65 megahertz of spectrum to improve wireless connectivity across the country and accelerate the mobile revolution that is driving economic growth and improving the lives of the American people. It also generated more than \$41 billion in net bids. In particular, this auction will fully fund \$7 billion for FirstNet's nationwide public safety broadband network. It will also deliver \$300 million to public safety; \$115 million in grants for 911, E911, and NextGen 911 implementation; and more than \$20 billion for deficit reduction; all while paying for the spectrum relocation efforts of DoD and other Federal agencies.

H-Block

The spectrum spigot was re-opened in February 2014, when the Commission auctioned the 10 megahertz H-Block. This was the first major auction of mobile broadband spectrum since 2008. The H-Block auction succeeded in putting this spectrum to work in the marketplace and raised more than \$1.5 billion, much of which served as a down payment on the deployment of FirstNet's public safety network.

Incentive Auction

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

The FCC staff has been working tirelessly to design the auction ever since Congress authorized it in February 2012. In May 2014, the Commission adopted a Report and Order that set out the ground rules for the auction.

This past December, we initiated a public comment period, making detailed proposals about how key aspects of the auction will work.

We realize that broadcasters' participation is critical to the success of the Incentive Auction, and we are continuing our broadcaster outreach and education efforts. In February 2015, the Incentive Auction Task Force released an updated information packet, which, for the first time, has opening bid prices, based on the proposals in the Commission's December Public Notice.

The Task Force has also started holding its field visits in every region of the Continental U.S., including both larger and smaller television markets.

Thanks to these efforts, we are on track to conduct an Incentive Auction in the first quarter of 2016. We are confident that there will be high demand for this valuable low-band spectrum, which will help ensure a successful auction.

Mobile Spectrum Holdings

The Commission is not only committed to making available more spectrum for mobile broadband, it is also committed to promoting competition in the mobile marketplace. In May 2014, the Commission adopted a reasonable, balanced Report and Order updating our mobile spectrum holding policies to ensure a healthy mobile marketplace with clear rules of the road for spectrum aggregation. In particular, the Order will help ensure competitive access to “low-band” spectrum that we will make available in the Incentive Auction, which is best suited for transmitting wireless communications over long distances and through walls. Such low-band spectrum is critical to companies’ ability to compete in today’s wireless marketplace.

Unlicensed Use (5 GHz)

The Commission is working to make available not only licensed spectrum, but also unlicensed spectrum, which has enabled breakthrough innovations like Wi-Fi and Bluetooth. In March 2014, the Commission adopted an Order to take 100 MHz of unlicensed spectrum at 5 GHz that was barely usable – and not usable at all outdoors – and transform it into spectrum that is fully usable for Wi-Fi. This was a big win for consumers, who will be able to enjoy faster connections and less congestion, as more spectrum will be available to handle Wi-Fi traffic. But we cannot stop there. We have been and will continue work with our federal partners and the transportation industry to find technical solutions that will enable the use of an additional 195 megahertz of spectrum for shared unlicensed use in the 5 GHz band.

Citizen’s Broadband Service (3.5 GHz)

Spectrum sharing is another Commission policy with potential to transform spectrum management. In April 2014, the Commission took a significant step toward turning the spectrum sharing concept into reality, adopting a Further Notice of Proposed Rulemaking to enable innovative spectrum sharing techniques in the 3.5 GHz band. Our three-tiered spectrum access model, which includes federal and non-federal incumbents, priority access licensees, and general authorized access users, could make up to 150 MHz of spectrum available for wireless broadband use. I plan to present an Order establishing final rules for this band to my fellow Commissioners in the near future.

“5G” Spectrum Frontiers

An effective spectrum strategy requires an all-of-the-above approach. This means making more spectrum available for not only licensed but unlicensed uses; for both exclusive use and sharing. It also means exploring entirely new spectrum opportunities. In October, the Commission adopted a Notice of Inquiry to explore the possibility of facilitating the use of a huge amount of spectrum in higher frequency bands, those above 24 GHz, which could be used strategically to help meet the growing demand for wireless broadband. Some in the industry are referring to the use of these bands in the context of so-called “5G.” The NOI is about encouraging next-generation wireless services, and is also designed to develop a record about how these technologies fit into our existing regulatory structures, including how they can be authorized, to make sure we are facilitating and not unduly burdening their further development.

III. PROTECTING CORE VALUES

Changes in technology may occasion reviews of our rules, but they do not change the rights of users or the responsibilities of network providers. The Commission must protect the core values people have come to expect from their networks: universal access, competition, consumer protection, and public safety and national security.

A. Universal Access

Universal access to communications has been at the core of the FCC’s mission since the agency was established 80 years ago. Considering access to broadband is increasingly necessary for full participation in our economy and democracy, connectivity for all is more important than ever. Our universal service programs promote access to technology at home, at work, in schools or libraries, or when seeking assistance from a rural healthcare clinic. The Commission must ensure that our programs keep up with the changing technologies, are well- managed and efficient, while limiting waste, fraud, and abuse. Above all, we must make sure that the infrastructure supported by the Commission is available to ALL, including low-income Americans, individuals living on Tribal lands, and individuals with disabilities.

Connect America Fund

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

In December 2014, the Commission approved an Order to move forward with Phase II of the Connect America Fund, putting us on the path to potentially bring broadband networks and services to over 5 million rural Americans.

The long-term success of the Fund will be measured not just by the number of newly-served

Americans, but by the quality of the networks that are being deployed. That's why the December Order increased the minimum download speed required as a condition of high-cost support to 10 megabits per second, up from 4 megabits per second.

Rural Broadband Experiments

Fulfilling our statutory mission to deliver on the promise of universal service in rural America challenges us to think anew, and act anew. In January 2014, the FCC initiated an experiment to inform our policies to build next-generation networks in rural America. We invited American enterprises, communities and groups to tell the FCC whether there is interest in constructing high-bandwidth networks in high-cost areas, and to tell us how it could be done with Connect America Fund support.

In July, we adopted an Order establishing a \$100 million budget for the rural broadband experiments, criteria for what we expect from applicants, and an objective, clear-cut methodology for selecting winning applications. These experiments will allow us to explore how to structure the CAF Phase II competitive bidding process in price-cap areas and to gather valuable information about deploying next-generation networks in high-cost areas.

E-Rate Modernization

E-rate – America's largest education technology program – has helped to ensure that almost every school and library in America has the most basic level of Internet connectivity. In the 18 years since E-rate was established, technology has evolved, the needs of students and teachers have changed, and basic connectivity has become inadequate.

This past July, the Commission approved the first major modification of E-rate in the program's 18-year history. The overhaul accomplished three overarching objectives:

First, for the first time, the Commission set specific, ambitious speed targets for the broadband capacity delivered to schools and libraries: a minimum throughput of 100 Mbps per 1,000 students and a pathway to 1 Gbps per 1,000 students.

Second, we refocused the program away from funding 20th century technologies like pagers and dial-up phone service toward supporting 21st century high-speed broadband connectivity. In the process, we moved to close the Wi-Fi gap by ensuring that over the next two years an additional 20 million students will have Internet access at their school or library desk.

Third, we took steps to improve the cost-effectiveness of E-rate spending through greater pricing transparency and through enabling bulk purchasing to drive down costs and give Americans who contribute to E-rate on their monthly bills the most bang for their buck.

In December, we took the final major step in rebooting how we connect our students to 21st century educational opportunity by increasing the level of annual E-rate investment. The increase is justified by data showing 63% of American schools – and higher percentages in low-income and rural areas – do not currently have an Internet connection capable of supporting modern digital learning.

Enhanced Closed Captioning

Reliable and consistent access to news and information for deaf and hard-of-hearing communities is not a luxury, it is a right. In February 2014, the Commission adopted rules to provide standards for better quality closed captioning on TV programming. Members of the deaf and hard-of-hearing community, alongside industry—NCTA, NAB, and MPAA—stepped up to the plate to help craft a set of rules that moves us toward improving captioning quality, while also assuring that vital news and other types of programming provide captioning. Building on this progress, we adopted an Order in July that requires captioning for video clips that are posted online.

B. Competition

The central underpinning of broadband policy today is that competition is the most effective tool for driving innovation, investment, and consumer and economic benefits. Our competition policy is simple. Where competition does exist, we will protect it. Where competition can exist, we will incent it. And where competition cannot be expected to exist, we must shoulder the responsibility of filling that void. Many of the actions already highlighted in my testimony, such as approval of the two community broadband petitions and the Connect America Fund’s investments to bring broadband to unserved areas, are consistent with these principles.

Multichannel Video Programming Distribution Services (MVPD)

Some new entrants have alleged that their efforts to develop competitive services have faltered because they could not get access to programming content that was owned by cable networks or broadcasters. Last December, the Commission moved to give video providers who operate over the Internet – or any other method of transmission – the same access to programming that cable and satellite operators have.

More specifically, we adopted an NPRM that proposes updating our interpretation of the definition of a multichannel video programming distributor (MVPD) to make it technology-neutral. Under our proposal, any providers that make multiple linear streams of video programming available for purchase would be considered MVPDs, regardless of the technology used to deliver the programming. The effect of this change will be to improve the availability of programming that over-the-top providers need and consumers want. By facilitating access to such content, we expect Internet-based linear programming services to develop as a competitor to cable and satellite. Consumers should have more opportunities to buy the channels they want instead of having to pay for channels they don’t want.

Access to Last Mile Connections

Small and medium-sized businesses, schools, hospitals, and other government institutions often rely on services delivered by competitive broadband and phone providers. But competitive providers may no longer be able to reach customers if incumbent carriers withdraw certain “last mile” services. Last November, the Commission adopted an NPRM that tentatively

concludes that carriers seeking to discontinue a service used as a wholesale input should be required to provide competitive carriers equivalent wholesale access going forward. The NPRM also proposes to update the FCC's rules so that competitive carriers receive sufficient notice of when copper networks are being shut off, so that they can continue to serve their customers effectively.

Joint Sales Agreements

In March 2014, the Commission closed a loophole in our attribution rules for TV Joint Sales Agreements (JSAs) that had been exploited by some to circumvent our local TV ownership limitations. By prohibiting arrangements that have the full effect of common ownership – by stations' own admission in their SEC filings – we will protect viewpoint diversity and competition goals. We have also been clear to point out, however, that where we find that an agreement serves the public interest, we will waive our rule and do so through an expedited process.

Merger Reviews

Congress has directed the Commission to review transactions (involving licenses and authorizations) under the Communications Act and to determine whether the proposed transaction would serve "the public interest, convenience, and necessity." While I can't comment on the specific transactions currently before the Commission, I would note that the "public interest" standard encompasses the broad aims of the Communications Act, which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private-sector deployment of services, and ensuring a diversity of information sources and services to the public.

C. Public Safety

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

Text-to-911

In certain circumstances, such as domestic violence or kidnapping situations, texting 911 may be the only practical way to get help. In almost all circumstances for people who are deaf or hard-of-hearing, texting is the primary means for reaching out for emergency assistance. But most Americans still can't reach 911 via text. Last August, the Commission adopted an Order that required all wireless carriers and certain IP-based text messaging providers to support text-to-911 by the end of 2014. Now, if a 911 call center requests text-to-911, text messaging providers have six months to deploy the service in that area.

E-911/Location Accuracy

Our E-911 location accuracy rules were written when wireless phones were a secondary means of communication, and were mostly used outside. Today, more and more consumers use wireless phones as their primary means of communication, and more and more 911 calls are coming from wireless phones, from indoors. This January, the Commission updated its E-911 rules to include requirements focused on indoor location accuracy. The new rules are intended to help first responders locate Americans calling for help from indoors, including challenging environments such as large multi-story buildings. They establish clear and measurable timelines for wireless providers to meet indoor location accuracy benchmarks, both for horizontal and vertical location information. The new rules were an important step forward, but by no means are we done. We established a floor, but so long as private app developers can locate consumers more accurately than a 911 call-taker can, we still have work to do.

Network Reliability

The transition to IP-based networks presents potential new vulnerabilities to 911 service. The process of routing and completing a 911 call now often involves multiple companies, sometimes geographically remote from where the call is placed. And in 2014 we saw a trend of large-scale “sunny day” 911 outages – that is, outages not due to storms or disasters but instead caused by software and database errors. As evidenced by yesterday’s consent decree with one carrier, we are taking affirmative steps to ensure that providers comply with our existing 911 service rules to ensure the reliability and resiliency of emergency communications. Just as importantly, however, we are taking steps to make our rules stronger. In November, the Commission adopted an NPRM proposing a 911 governance structure that would ensure that technology transitions are managed in a way that maximizes the availability, reliability, and resiliency of 911 networks, as well as the accountability of all participants in the 911-call completion process. That same month, the Commission adopted a separate NPRM regarding the transition to all-IP networks, which calls for an examination of potential strategies for providing back-up power during lengthy commercial power failures.

D. Consumer Protection

Consumers must be able to depend on fast, open, and fair communications networks without being subject to discriminatory or predatory behavior. I have often stated that the best consumer protection is competitive choice. I also believe a multi-stakeholder process where industry rapidly adopts processes and procedures can be faster and more nimble than the regulatory process. But, at certain points, having regulation is necessary.

Record-Breaking Enforcement Actions

2014 was a record-breaking year for enforcement actions on behalf of consumers. In August, the Commission fined Time Warner Cable \$1.1 million for failure to comply with our network

outage requirements. In September, our Enforcement Bureau reached a \$7.4 million settlement with Verizon to resolve an investigation into the company's use of personal consumer information for marketing purposes. In October, the Commission announced a \$105 million settlement with AT&T Mobility to resolve an investigation into allegations that the company billed customers millions of dollars in unauthorized third-party subscriptions and premium text messaging services – the largest enforcement action in FCC history. Later in October, the Bureau proposed fining TerraCom, Inc. and YourTel America, Inc. \$10 million for storing the personal information of up to 305,000 customers online in a format accessible through a routine Internet search. In December, the Commission announced a settlement of at least \$90 million with T-Mobile to resolve an investigation into cramming allegations.

Sports Blackout Repeal

In September, the Commission repealed its sports blackout rules, which prohibited cable and satellite operators from airing any sports event that had been blacked out on a local broadcast station. The sports blackout rules are a relic from the days when gate receipts were the National Football League's principal source of revenue and most games didn't sell out. The FCC will no longer be complicit in preventing sports fans from watching their favorite teams on TV.

Cell Phone Unlocking

Consumers who fulfill the obligations of their mobile phone contracts should be able to take device to a network of their choosing without fear of criminal liability. One month after I became Chairman, the FCC secured an industry commitment to adopt voluntary industry principles for consumers' unlocking of mobile phones and tablets. This February, the country's major carriers confirmed that they have fulfilled their commitment. I also applaud Congress for passing legislation last summer to make cell phone unlocking the law of the land.

Tech Transitions

As part of our November NPRM facilitating the transition from copper networks to IP networks, we proposed greater transparency, consumer protection, and opportunities for consumer input when carriers are planning to shut down (or "retire") their existing copper networks. We also set in motion a process to ensure that new services meet the needs of consumers before carriers are allowed to remove legacy services from the marketplace.

Retransmission Consent

Congress created the retransmission consent regime over 20 years ago. Congress intended TV stations would negotiate retransmission consent agreements on their own. Increasingly, though, stations in a local market that are separately owned have banded together to negotiate for retransmission consent fees, even though they otherwise would compete against each other for those fees. In March 2014, the Commission adopted new rules to prohibit joint retransmission consent negotiations by same-market TV stations that are both ranked in the

Top 4 in order to level the playing field and to potentially keep such agreements from unfairly increasing cable rates for consumers. This step preceded Congress's expansion of the ban on retransmission consent to any two same-market TV stations.

IV. MODERNIZING THE COMMISSION

It's not enough for the FCC to put in place policies that help foster the communications networks of the 21st century; the Commission itself must become more agile and business-like in order to become more effective, efficient, and transparent.

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

Guided by this Report, we have been moving forward with changes to streamline how the Commission functions so we are better able to serve the entities we regulate, as well as the American public. For example, we now use a Consent Agenda at Commission meetings to facilitate quick action on non-controversial items that require a Commission vote, and we have made significant progress toward all-electronic filing and distribution of documents.

Every Bureau and Office with responsibility for responding to requests from external petitioners and licensees has developed a backlog reduction plan. And last year, we also closed more than 1,500 dormant dockets.

In early 2015, we launched a new online Consumer Help Center, which will make the FCC more user-friendly, accessible, and transparent to consumers. The new tool replaces the Commission's previous complaint system with an easier-to-use, more consumer-friendly portal for filing and monitoring complaints. In addition to being easier to use for consumers, the information collected will be smoothly integrated with our policymaking and enforcement processes.

The Commission's efforts to modernize operations have been hamstrung by level appropriations since 2013. In particular, we need to upgrade our IT infrastructure; we have more than 200 relic IT systems that are costing the agency more to service than they would to replace over the long term. I believe these investments are essential and will payback in dividends with the increased efficiency gained.

I am aware of this Committee's interest and efforts with respect to modernizing our processes, including consolidating some of our reporting requirements, and will be happy to be of assistance, if requested.

V. CONCLUSION

The Commission has focused on harnessing the power of communications technology to grow our economy and enhance U.S. leadership, while preserving timeless values like universal service. As my testimony reflects, we have made significant progress toward these goals to the benefit of the public.

I recognize and appreciate the ongoing Congressional interest in Commission actions and process reforms. I pledge transparency and cooperation, as well as assistance, where requested, and look forward to working with Members of this Subcommittee to maximize the benefits of communications technology for the American people.

Mr. WALDEN. Thank you, Mr. Chairman. We will now move to the Honorable Mignon Clyburn, Commissioner of Federal Communications Commission. It is a delight to have you back here, former Chairwoman. We are delighted to have you here. Please go ahead.

STATEMENT OF MIGNON CLYBURN

Ms. CLYBURN. Thank you, Chairman Walden, Ranking Member Eshoo, distinguished members of the Committee. Thank you for the opportunity to share my perspectives with you this morning. In my written testimony for the record, I discussed the Commission's work in several policy areas. This morning I will focus on spectrum auctions and inmate calling services reform.

In March of 2014 we unanimously adopted licensing and service rules to auction 65 megahertz of spectrum in the AWS-3 bands. This was not only important for wireless seeking to meet skyrocketing consumer demand on their networks, but it was critical for the promotion of more competitive options. My colleagues and I agreed on a plan with smaller license blocks, and geographic licensed areas. We also agreed on the need for interoperability between the AWS-1 and AWS-3 bands. Such rules encourage participation by smaller carriers, promote competition in local markets, and ensure the auction allocates spectrum to the highest and best use.

Most experts predicted intense bidding in this auction, but no one forecasted that the total gross amount of winning bids would be a record setting \$44.89 billion. The success of this auction was due in large part to a painstaking effort to pair the AWS-3 spectrum bands that involve the broadcast and wireless industries, Federal agencies, and members of this Committee, and for that I thank you. We should follow a similar collaborative approach in the voluntary incentive auction.

Robust participation by small and large wireless carriers in the forward auction will encourage broadcast television stations to take part in the reverse auction. A unanimously adopted notice of proposed rulemaking seeks to strike a proper balance between licensed and unlicensed services. We also initiated a proceeding to reform our competitive bidding rules in advance of the incentive auction. We proposed comprehensive reforms so small businesses can compete more effectively in auctions, and sought comment on how to deter unjust enrichment.

An example of how the markets do not always work, and a regulatory backstop is sometimes necessary, is inmate calling services. While a petition requested relief from egregious inmate calling rates remained pending at the FCC for nearly a decade, rates and fees continue to increase. Calls made by deaf and hard of hearing inmates have topped \$2.26 per minute. Add to that an endless array of fees. \$3.95 to initiate a call, a fee to set up an account, another fee to close an account. There is even a fee charged to users to get a refund from their own money. These fees are imposing devastating societal impacts that should concern us all. There are 2.7 million children with at least one parent incarcerated, and they are the ones most likely to do poorly in school, and suffer severe economic and personal hardships, all exacerbated by an unreasonable rate regime.

Studies consistently show that meaningful contact beyond prison walls can make a real difference in maintaining community ties, promoting rehabilitation, successful reintegration back into society, and reducing recidivism. Ultimately, the downstream costs of these inequalities are borne by us all.

We have had caps on interstate inmate calling rates since February of last year, and despite dire predictions of losing phone service and lapses in security, we have witnessed nothing of the sort. What we have seen is increased call volumes, ranging from 70 percent to as high as 300 percent, and letters expressing how this relief has impacted lives.

I look forward to working with the chairman and my colleagues to finally bring this issue over the finish line, my sports reference, the best I am going to do this morning, by reforming all rates, while taking into account robust security protections.

Mr. Chairman, and Ranking Member, and others of the committee, I appreciate the opportunity to appear before you today, and I look forward to any questions you may have.

[The prepared statement of Mr. Clyburn follows:]

Summary of Testimony of FCC Commissioner Mignon L. Clyburn
U.S. House of Representatives Committee on Energy & Commerce
Subcommittee on Communications & Technology
Oversight of the Federal Communications Commission

March 19, 2015

- The FCC adopts policies to promote innovation and investment and takes into account the needs of all stakeholders as it fulfills its statutory mandates and regulatory role.
- In March 2014, we unanimously adopted rules to auction 65 megahertz of spectrum in the AWS-3 bands. This auction will enable wireless carriers to meet the demand on their networks. The success of this auction was due, in large part, to a painstaking effort to pair the 1755 to 1780 and 2155 to 2180 bands that involved the broadcast and wireless industries, federal agencies and members of this Committee.
- We should follow a similar collaborative approach as we finalize rules for to the world's first ever voluntary incentive auction. We unanimously adopted a Notice of Proposed Rulemaking that seeks to strike the proper balance between licensed and unlicensed services. We also initiated a proceeding to update our Competitive Bidding rules to enable small businesses to compete more effectively and sought comment on whether we should do more to deter unjust enrichment.
- We made strides towards our goal of universal broadband for all Americans with our Connect American Fund. The FCC also updated the E-rate program, to ensure that all children receive access to the best technology and world-class digital learning.
- The FCC's 2012 Lifeline reforms closed long-standing loopholes that have saved consumers a whopping \$2.75 billion – exceeding projections by \$750,000,000. While this is incredibly significant, Lifeline still supports voice only and needs real modernization. We need a totally restructured program -- one that removes the carrier from determining whether a customer is eligible for service and ensures that every dollar counts as we get the most bang for each universal service buck.
- We must continue to reform the exorbitantly high interstate and intrastate inmate calling fee structure. Our 2013 reforms have produced significant, positive results, but there is much more left to do. Regardless of your views when it comes to inmates and those accused, there are 2.7 million children with at least one parent incarcerated and they should not be the ones punished.
- The FCC's 2010 Open Internet rules brought certainty and promoted the tremendous levels of opportunity and growth. I am pleased that the FCC responded to the D.C. Circuit's remand and reinstated strong, enforceable rules. But I also respect Congress's desire to evaluate a legislative solution, and stand ready to assist to achieve our mutual goal for a free and open Internet and a thriving ecosystem.
- Finally, the progress we are making in implementing the STELA Reauthorization Act of 2014 should be commended. As required under the statute, the FCC has established a working group of technical experts, to study and recommend a downloadable security system that can be used in conjunction with navigation devices, such as set-top boxes, to promote greater competition for such devices.

**Testimony of
Mignon L. Clyburn
Commissioner
Federal Communications Commission**

**U.S. House of Representatives
Committee on Energy & Commerce
Subcommittee on Communications & Technology**

Oversight of the Federal Communications Commission

March 19, 2015

Chairman Walden, Ranking Member Eshoo, and distinguished Members of the Committee, thank you for the opportunity to once again share my perspectives with you today.

By most objective measures, investment and innovation in the communications marketplace have been, in a word, robust. This explosive growth represents one of the key drivers in our national – and indeed – the global economy. New companies and nascent technologies are spawning fresh products and services at breakneck speed. The expansion of our broadband footprint along with the widespread embrace of mobile devices, and a groundswell of video produced by an ever-widening crop of content creators, are being delivered over new and novel platforms. Both start-ups and established companies are essential in the American narrative and as consumers and commercial entities adopt and embrace this evolution, the capital markets respond.

Guided by the laws set forth by Congress, the Federal Communications Commission carefully considers the needs of consumers and service providers as it fulfills its statutory mandate and regulatory role. The FCC employs some of this nation's brightest and hardest working public servants, who strive to

do what is right. I believe, Mr. Chairman and distinguished members of the Committee, that all five commissioners appearing before you today play important roles in the development of policies that protect consumers and promote universal service, competition, innovation and investment in the American communications and technology sector.

We are called upon to decide many complex and often contentious issues and like any group of strong-willed individuals, we do not always agree. But it is worth noting that 90 percent of the Commission's items are approved unanimously. That is not a bad outcome. And I believe we can all agree that, since my last appearance before this committee in December 2013, the Commission has been quite active in adopting a number of significant Orders that have spurred tremendous investment in this nation.

In March 2014, we unanimously adopted the licensing and service rules to auction 65 megahertz of spectrum in the AWS-3 bands. This was the first auction of multiple paired blocks of spectrum the Commission had held in six years. Since mid-2010, we have witnessed explosive consumer demand for mobile broadband services, so this auction was important to give wireless carriers the spectrum they need to meet the demand on their networks.

But it was also important for us to meet the Congressional directive to design an auction that promotes more competitive options for wireless consumers. My colleagues and I agreed on a band plan that included smaller license blocks and geographic license areas. We also agreed to mandate interoperability between AWS-1 and AWS-3 bands.

Such rules encourage participation by carriers who may have a smaller service footprint than nationwide providers, yet possess a strong desire to acquire more spectrum to serve a particular area. This approach promotes competition in local markets and has the added benefit of ensuring that the auction promotes efficient allocation of spectrum to the highest and best use.

Most experts predicted that increased consumer demand for mobile services would result in robust bidding in the AWS-3 auction. But no analyst predicted that the total amount of winning bids would exceed \$18 billion. In fact, the final gross total of winning bids was a record setting \$44.89 billion.

The success of this auction was due, in large part, to a painstaking effort to pair the 1755 to 1780 and 2155 to 2180 bands that involved the broadcast and wireless industries, federal agencies and members of this Committee. We commend all those stakeholders for reassessing what really matters, finding common ground and doing the right thing, for the American people.

We should follow a similar approach as we work towards finalizing rules to implement the world's first ever voluntary incentive auction. Encouraging smaller carriers to participate is also important to the success of this auction, because we must incentivize broadcast TV stations to take part in the reverse auction. Both large and small carriers developed a consensus band plan that allowed us to shift from large Economic Areas to smaller Partial Economic Areas. We unanimously adopted a Notice of Proposed Rulemaking that seeks to strike the proper balance between licensed and unlicensed services and accommodate the needs of incumbent services in the TV bands. These are all positive outcomes.

We also initiated a proceeding to update our Competitive Bidding rules and procedures in advance of the incentive auction. The incentive auction will offer applicants a historic opportunity to acquire substantial amounts of valuable wireless spectrum below 1 GHz. We have proposed comprehensive reforms, that will enable small businesses to compete more effectively in auctions, and sought comment on whether we should do more to deter unjust enrichment.

Collaboration was also important to the Commission adopting, for the first time, location accuracy rules for wireless 9-1-1 calls made from indoor locations. Most consumers believed until recently that when they called 9-1-1 from their cellphones, they would automatically get help just as quickly as when they called from a land line phone. But this is not the case.

To improve the accuracy of wireless 9-1-1 location information, all relevant stakeholders must do their part. In February 2014, we adopted a Further Notice that I believe would have put us on a more efficient path to strong 9-1-1 location accuracy requirements. But I also realize that litigation has prevented the industry from making more strides in this important policy area. So if industry was willing to lead the way on another path towards substantial progress, then I was willing to listen. CTIA, the four nationwide carriers, and APCO and NENA presented a roadmap with commitments to provide more

accurate 9-1-1 location information, earlier than the two-year benchmark originally proposed in the Further Notice. For example, within one year of signing the roadmap agreement, the four nationwide wireless carriers will establish a test bed for 9-1-1 location technologies.

We also continue to make strides towards our goal of universal broadband for all Americans. In 2011, the FCC reformed our universal service and intercarrier compensation programs and put the country on a path to close the broadband gap. We take it for granted now, but this was a significant feat after a decade of good faith efforts faltered, and required us to make difficult decisions. As a result of those reforms, the FCC authorized funding to serve over 630,000 locations, or approximately 1.7 million people, in 45 states plus Puerto Rico with fixed broadband for the first time. We provided mobile coverage to tens of thousands of road miles, and connected over 50,000 people living on Tribal lands with access to mobile broadband. And we are poised to offer incumbent carriers the right to accept funding to deploy broadband within the states they serve very soon. For these Americans, broadband will be life changing.

The FCC also updated the E-rate program to ensure that schools and libraries have the connectivity they need, so that all children and library patrons have access to the best technology and world-class digital learning. The changes will enable additional investment, which not only helps schools, but will have a multiplier effect throughout the wider community. Indeed, we have seen companies do this in smaller, regional markets with significant success.

And we are not done. There are calls for us to adopt a reformed universal service framework for smaller, rate-of-return carriers that serve rural America. It is also time to reboot our only universal service adoption program, which has been frozen in time for three decades. Congress directed the FCC to ensure that all Americans, including low income consumers, have access to advanced telecommunications and information services. Right now, we are falling woefully short of fulfilling this statutory obligation, because our low-income program is limited to support voice-only, which is insufficient when it comes to today's needs.

The FCC's 2012 Lifeline reforms closed long-standing loopholes that have saved consumers a whopping \$2.75 billion – exceeding projections by \$750,000,000. While this is incredibly significant, Lifeline still supports voice only and needs true modernization.

We need a rebooted, recalibrated, totally restructured Lifeline program. Removing the carrier from determining whether a customer is eligible for service or not, would be a giant step toward eliminating incentives for waste, fraud, and abuse. We must ensure that every dollar counts and that we get the most bang for each universal service dollar spent. How will we do that? By mandating minimum service standards a provider must offer to receive Lifeline funding. The program administration process should be streamlined to broaden participation and create more competition. We should eliminate disincentives for innovative carriers to participate and leverage efficiencies from other programs, by creating public-public and public-private partnerships designed to close the broadband adoption gap.

Of all the federal beneficiary programs, from Medicaid, to Supplemental Nutrition Assistance Program (SNAP), to the National School Lunch Program, to public housing, Lifeline has the smallest level of annual expenditures and reaches the greatest number of households of any program except Medicaid. If reformed properly, at \$9.25 a month, Lifeline could once and for all enable consumers to have true broadband and close those chronic digital divides. A truly reformed Lifeline program can prove to be one of the greatest investments this government could make.

Congressional directives to ensure that rates are affordable do not carve out any particular class or consumer. I highlight this because we have fallen woefully short of this obligation, when it comes to inmates, as well as their families, friends, clergy and lawyers. While we may prefer competition over regulation, it is painfully clear that in this area, the market has failed.

A full 10 years after the first petition requesting relief from shamefully high inmate calling fees was filed and ultimately ignored, not only has the market failed to correct itself, things actually have gotten worse. Calls made by deaf or hard of hearing inmates may top \$2.26 per minute. Add to that an endless array of fees: \$3.95 to initiate a call, a fee to set up an account, another fee to close an account, a fee to use a credit card. There is even a fee charged to users to get a refund of their own money.

Fees on top of fees are imposing devastating societal impacts that should concern us all and serve as the motivation for reform. Studies show that having meaningful communication beyond prison walls can make a real difference when it comes to maintaining community ties, promoting rehabilitation and reducing recidivism. Regardless of your views when it comes to inmates and those accused, there are 2.7 million children with at least one parent incarcerated. In addition to the anxiety associated with a parent who is absent on a daily basis, these young people are more likely to do poorly in school and suffer severe economic and personal hardships and all of this is exacerbated by an unreasonable rate regime. Ultimately, the downstream costs of these inequities are borne by us all.

We have had caps on interstate inmate calling rates since February 2014 and despite the parade of horrors that opponents to inmate calling services reform said would flow -- from losing phone service entirely, to security lapses -- we have witnessed nothing of the sort. What we have seen is increased call volumes, ranging from 70% to as high as 300% and letters expressing how this relief has impacted lives. But we are not finished and justice will not be done until intrastate rates (which account for 85% of calls) and ancillary fees are also reformed.

I would be remiss if I didn't mention the item that took center stage at our meeting last month. The tremendous investment and innovation we have seen in this country did not happen organically. Our policies have been key enablers for all of this incredible growth.

The FCC's 2010 Open Internet rules provided clear, simple, basic rules of the road that brought certainty and were responsible for the tremendous levels of development and opportunity we have realized in this nation. The entire ecosystem -- from investors, to innovators, from writers, artists, educators, health care providers, equipment manufacturers, to network providers and last but not least, consumers -- has thrived at record levels. But what is obvious, yet too seldom said, is that the policies and rules which have been in place for nearly a decade, the ones the industry has agreed to follow, are directly responsible for the industry's established course, have proven their effectiveness, and have struck the proper balance.

This is why I am pleased that the FCC responded to the D.C. Circuit's remand and reinstated strong, enforceable rules. But I also respect Congress's desire to evaluate a legislative framework and stand ready to assist to achieve our mutual goal, for a free and open Internet and a thriving ecosystem.

Finally, the progress we are making in implementing the STELA Reauthorization Act of 2014 should be commended. As required under the statute, the FCC has established a working group of technical experts to study and recommend a downloadable security system that can be used in conjunction with navigation devices, such as set-top boxes, to promote greater competition for such devices. The statute requires us to issue a report on this issue by September and the Commission is hard at work to accomplish this milestone.

I appreciate the opportunity to appear before the committee today, and I look forward to answering any questions you may have. Thank you.

Mr. WALDEN. I think you have a winner there. OK, we are going to go now to Commissioner Jessica Rosenworcel. We are delighted to have you back before the subcommittee. Look forward to your comments as well, Commissioner. Thank you for being here.

STATEMENT OF JESSICA ROSENWORCEL

Ms. ROSENWORCEL. Good morning, Chairman Walden.

Mr. WALDEN. I don't think that microphone stayed on.

Ms. ROSENWORCEL. Have I got it now?

Mr. WALDEN. There you go.

Ms. ROSENWORCEL. OK. Good morning Chairman Walden, Ranking Member Eshoo, and distinguished members of the Committee.

Today communications technologies account for $\frac{1}{6}$ of the economy, and they are changing at a breathtaking pace. How fast? Well, consider this. It took the telephone 75 years before it reached 50 million users. To reach the same number of users, it took television 13 years, and the Internet 4 years. More recently, to reach the same number of users it took Angry Birds 35 days.

So we know the future is coming at us faster than ever before. We also know the future involves the Internet, and our Internet economy is the envy of the world. It was built on a foundation of openness. That is why Open Internet policies matter, and that is why I support network neutrality.

As you have undoubtedly heard, four million Americans wrote the FCC to make known their ideas, thoughts, and deeply held opinions about Internet openness. They lit up our phone lines, clogged our e-mail inboxes, and jammed our online comment system. That might be messy, but whatever our disagreements on network neutrality, I hope we can agree that is democracy in action and something we can all support.

Now, with an eye to the future, I want to talk about two other things today, the need for more wi-fi and the need to bridge the Homework Gap.

First, wi-fi. Few of us go anywhere today without mobile devices in our palms, pockets, or purses. That is because every day, in countless ways, our lives are dependent on wireless connectivity. While the demand for our airwaves grows, the bulk of our policy conversations are about increasing the supply of licensed airwaves available for auction. This is good, but we also need to give unlicensed services and wi-fi its proper due. After all, wi-fi is how we get online in public and at home.

Wi-fi is also how our wireless carriers manage their networks. In fact, today nearly one-half of all wireless data connections are at some point offloaded onto unlicensed spectrum.

Wi-fi is also how we foster innovation. That is because the low barriers to entry for unlicensed airwaves make them perfect sandboxes for experimentation.

And wi-fi is a boon to the economy. The economic impact of unlicensed activity has been estimated at more than \$140 billion annually. By any measure, that is big.

So we need to make unlicensed services like wi-fi a priority in our spectrum policy, and at the FCC, we are doing just that with our upcoming work in the 3.5 gigahertz band, and in guard bands in the 600 megahertz band. But it is going to take more than this

to keep up with demand. That is why I think the time is right to explore greater unlicensed use in the upper portion of the five gigahertz band. And I think, going forward, we are going to have to be on guard to find more places for wi-fi to flourish.

Now, second, I want to talk about another issue that matters for the future, and that is the Homework Gap. Today, roughly 7 in 10 teachers assign homework that requires broadband access, but FCC data suggests that as many as one in three households today lack access to broadband at any speed.

Think about those numbers. Where they overlap is what I call the Homework Gap. And if you are a student in a household without broadband, just getting homework done is hard. Applying for a scholarship is challenging. And while some students may have access to a smartphone, let me submit to you that a phone is just not how you want to research and type a paper, apply for jobs, or further your education.

This is a loss to our collective human capital, and to all of us, because it involves a shared economic future that we need to address.

That is why the homework gap is the cruelest part of our new digital divide. But it is within our power to bridge it. More wi-fi can help, as will our recent efforts to upgrade wi-fi connectivity—through the e-rate program, but more work remains. I think the FCC needs to take a hard look at modernizing its program to support connectivity in low-income households, especially those with school-age children. And I think the sooner we act, the sooner we bridge this gap, and give more students a fair shot at 21st century success. Thank you.

[The prepared statement of Ms. Rosenworcel follows:]

**STATEMENT OF COMMISSIONER JESSICA ROSENWORCEL
FEDERAL COMMUNICATIONS COMMISSION
BEFORE THE
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY
ENERGY AND COMMERCE COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
“FCC REAUTHORIZATION: OVERSIGHT OF THE COMMISSION”
MARCH 19, 2015**

Good afternoon, Chairman Walden, Ranking Member Eshoo, and members of the Committee. Thank you for the opportunity to appear before you in the company of my colleagues at the Federal Communications Commission.

Today, communications technologies account for one-sixth of the economy—and they are changing at a breathtaking pace. How fast? Consider this: According to the *Wall Street Journal*, it took the telephone 75 years before it reached 50 million users. To reach the same number of users, television took 13 years, and the Internet 4 years. But Angry Birds took only 35 days.

So we know the future is coming at us quicker than ever before. We also know that the future involves the Internet and that our Internet economy is the envy of the world. It was built on a foundation of openness. Sustaining the openness that has made us innovative, fierce, and creative is vitally important. In fact, our commercial and civic success in the digital age depends on it. That is why open Internet policies matter—and why I support network neutrality.

As you have undoubtedly heard, four million Americans wrote the FCC to make known their ideas, thoughts, and deeply-held opinions about Internet openness. They lit up our phone

lines, clogged our e-mail in-boxes, and jammed our online comment system. That might be messy, but whatever our disagreements on network neutrality, I hope we can agree that's democracy in action and something we can all support.

With an eye to the future, I want to talk about two other things today—the need for more Wi-Fi and the need to bridge the Homework Gap.

First, up Wi-Fi. Few of us go anywhere now without mobile devices in our palms, pockets, or purses. That is because every day, in countless ways, our lives are dependent on wireless connectivity. While the demand for our airwaves grows, the bulk of our policy conversations are about increasing the supply of licensed airwaves available for auction. This is good. But the best spectrum policy involves a mix of both licensed and unlicensed airwaves. And focus on the former should not come at the expense of the latter.

That's because the 2.4 GHz band where Wi-Fi makes its primary home is getting mighty crowded. The demand for 5 GHz Wi-Fi is also growing. So before we overwhelm Wi-Fi as we know it, we need more efforts to secure more unlicensed spectrum.

There are no shortage of reasons why this is a good idea.

After all, Wi-Fi is how we get online—in public and at home.

Wi-Fi is also how our wireless carriers manage their networks. In fact, today nearly one-half of all wireless data connections are offloaded onto unlicensed spectrum.

Wi-Fi is how we foster innovation. That's because the low barriers to entry for unlicensed airwaves make them perfect sandboxes for experimentation.

Wi-Fi is also a boon to the economy. The economic impact of unlicensed spectrum has been estimated at more than \$140 billion annually.

So we need to make unlicensed services like Wi-Fi a priority in our spectrum policy. We have opportunities to do just that with upcoming FCC work in the 3.5 GHz band and in the guard bands in our reimagined 600 MHz band. But it will take more than this to keep up with demand. That is why I think the time is right to explore greater unlicensed use in the upper portion of the 5 GHz band, and specifically from 5850 to 5925 MHz. In the future, we need to be on guard for more opportunities like this so we can find more places for Wi-Fi to flourish.

Second, I want to talk about another issue that matters for the future—the Homework Gap. Today, roughly seven in ten teachers assign homework that requires access to broadband. But FCC data suggest that as many as one in three households do not subscribe to broadband service at any speed—due to lack of affordability and lack of interest.

Think about those numbers. Where they overlap is what I call the Homework Gap. If you are a student in a household without broadband, just getting homework done is hard.

Applying for a scholarship is challenging. While some students may have access to a smartphone, let me submit to you that a phone is just now how you want to research and type a paper, apply for jobs, or further your education.

These students enter the job market with a serious handicap. That's a job market today where half of all jobs require digital skills. By the end of the decade that number jumps to 77 percent. But the loss is here more than individual. It's a loss to our collective human capital and shared economic future that we need to address.

That is why the Homework Gap is the cruelest part of our digital divide. But it is within our power to bridge it. More Wi-Fi will help, as will our recent efforts to upgrade connectivity in libraries through the E-Rate program. But more work remains. I think the FCC needs to take a hard look at modernizing its program to support connectivity in low-income households, especially those with school-aged children. And I think the sooner we act the sooner we bridge this gap and give more students a fair shot at 21st century success.

Thank you and I look forward to answering any questions you might have.

Mr. WALDEN. Thank you, Commissioner. We appreciate your testimony. Those bells that went off, or buzzer, as we so lovingly say—we have got two votes, but we should have time to get through both the other Commissioners' testimony, and then we will probably break to go vote, and then we will come back immediately after votes to resume questioning.

So welcome, Commissioner Pai. Thank you for being here. Please go ahead with your testimony.

STATEMENT OF AJIT PAI

Mr. PAI. Chairman Walden, Ranking Member Eshoo, members of the subcommittee, thank you for giving me the opportunity to testify here today. It has been an honor to work with the members of the Subcommittee on a wide variety of issues, from making available more spectrum for mobile broadband to improving the Nation's 911 system.

I last testified in front of the subcommittee more than a year ago, and since that hearing on December 12, 2013, things have changed dramatically at the FCC. I wish I could say that these changes, on balance, have been for the better, but unfortunately, that has not been the case. The foremost example, of course, is the FCC's decision last month to apply Title II to the Internet.

The Internet is not broken. The FCC didn't need to fix it. But our party line vote overturned a 20-year bipartisan consensus in favor of a free and Open Internet. With the Title II decision, the FCC voted to give itself the power to micromanage virtually every aspect of how the Internet works. The FCC's decision will hurt consumers by increasing their broadband bills and reducing competition. A Title II order was not the result of a transparent rulemaking process. The FCC has already lost in court twice, and its latest order has glaring legal flaws that are guaranteed to mire the agency in litigation for a long time.

Turning to the designated entity program, the FCC must take immediate action to end its abuse. What was once a well-intentioned program designed to help small businesses has become a playpen for corporate giants. The recent AWS-3 auction is a shocking case in point. DISH, which has annual revenues of \$14 billion, and a market cap of over \$34 billion, holds an 85 percent equity stake in two companies that are now claiming \$3.3 billion in taxpayer subsidies. That makes a mockery of the small business program. The \$3.3 billion at stake is real money. It could be used to underwrite over 580,000 Pell grants, fund school lunches for over six million schoolchildren, or incentivize the hiring of over 138,000 veterans for a decade.

The abuse had an enormous impact on small and disadvantaged businesses, from Nebraska to Vermont. It denied them spectrum licenses they would have used to provide consumers with competitive wireless alternative. The FCC should quickly adopt a further notice of proposed rulemaking so that we can close these loopholes in our rules before our next auction.

Turning next to process, the FCC is at its best when it acts in a bipartisan collaborative manner. During my service under Chairman Genachowski and Chairwoman Clyburn, 89 percent of votes on FCC meeting items, where the agency votes on the most high

profile, significant matters affecting the country, were unanimous. Since November 2013, however, only 50 percent of votes at FCC meetings have been unanimous. This level of discord is unprecedented. Indeed, there have been 40 percent more party-line votes at the FCC in the last 17 months than there were under the entire chairmanships of Chairmen Martin, Copps, Genachowski, and Clyburn combined.

I am also concerned that the Commission's longstanding procedures and norms are being abused in order to freeze out Commissioners. For example, it has been customary at the FCC for Bureaus planning to issue significant orders on delegated authority to provide those items to Commissioners 48 hours prior to their scheduled release. Back then, if a Commissioner asked for the order to be brought up for a Commission-level vote, that request from a single Commissioner would be honored. Recently, however, the leadership has refused to let the Commission vote on items where two Commissioners have made such a request. Given this trend, as well as others, I commend the subcommittee for focusing on the issue of FCC process reform, and I welcome the Chairman's announcement this morning.

Finally, I would like to conclude by discussing an issue where it should be easy to reach consensus. When you dial 911, you should be able to reach emergency personnel wherever you are. But, unfortunately, many properties that use multi-line telephone systems require callers to press nine, or some other access code, before dialing 911, and this problem has led to tragedy.

Unfortunately, the phone systems at many Federal buildings are not configured to allow direct 911 dialing. Recognizing this problem, Congress directed the General Service Administration to issue a report on the 911 capabilities of telephone systems in all Federal buildings by November 18 of 2012. I recently wrote to GSA to inquire about the status of that report, and I was disturbed to learn through a press report just a couple of days ago that the GSA never completed it.

The FCC's headquarters is one such Federal building where direct 911 dialing does not work. But as Ranking Member Eshoo recently observed, when it comes to emergency calling, the FCC should be the example not only for the rest of the Federal government, but for the entire country. I commend her and Congressman Shimkus for their leadership on this issue.

Chairman Walden, Ranking Member Eshoo, and members of the subcommittee, thank you once again for inviting me to testify. I look forward to your questions, and to working with you and your staffs in the days to come.

[The prepared statement of Mr. Pai follows:]

**Summary of FCC Commissioner Ajit Pai's Testimony
Before the Subcommittee on Communications and Technology of the
United States House of Representatives Committee on Energy and Commerce**

March 19, 2015

- **Net Neutrality.**—The FCC's party-line vote to apply Title II to the Internet overturned a 20-year bipartisan consensus in favor of a free and open Internet.
 - The Internet is not broken. The FCC didn't need to fix it.
 - With the Title II decision, the FCC voted to give itself the power to micromanage virtually every aspect of how the Internet works.
 - The FCC's decision will hurt consumers by increasing their broadband bills and decreasing the number of choices they have for broadband providers.
 - The FCC has already lost in court twice, and the Title II order has glaring legal flaws that are sure to keep the Commission mired in litigation for a long, long time.
 - The Title II order was not the result of a transparent rulemaking process.
- **The Designated Entity Program.**—The FCC must take immediate action to end abuse of this program. What was once a well-intentioned program designed to help small businesses has become a playpen for corporate giants. The recent AWS-3 auction is a shocking case in point.
 - DISH, which has annual revenues of \$14 billion and a market cap of over \$34 billion, holds an 85% equity interest in two companies that are now claiming \$3.3 billion in taxpayer subsidies. That makes a mockery of the small business program.
 - The abuse had an enormous impact on small businesses from Nebraska to Vermont, denying them spectrum licenses they would have used to provide wireless customers a competitive alternative.
 - The \$3.3 billion at stake is real money. This money could fund 581,475 Pell Grants, fund school lunches for 6,317,512 children, or help hire 138,827 veterans for 10 years.
 - The FCC should quickly adopt a Further Notice of Proposed Rulemaking so that we can close loopholes in our rules before our next auction.
- **Process.**—The FCC is at its best when it acts in a bipartisan, collaborative manner. During Commissioner Pai's service under Chairman Genachowski and Chairwoman Clyburn, 89% of votes on FCC meeting items were unanimous.
 - Since November 2013, only 50% of votes at FCC meetings have been unanimous. This level of discord is unprecedented. Indeed, there have been 40% more party-line votes at FCC meetings in the last seventeen months than there were under Chairmen Martin, Copps, Genachowski, and Clyburn *combined*.
 - This Subcommittee has rightly addressed FCC process reform. Policy decisions should be made by the Commission rather than staff acting at the Chairman's direction.
- **911.**—In January 2014, Commissioner Pai started an inquiry into the status of 911 dialing at properties that use multi-line telephone systems (MLTS).
 - Substantial progress has been made to fix this problem. But the phone systems at many federal buildings are not configured to allow direct 911 dialing. That includes the FCC's headquarters. The FCC needs to lead by example and fix this problem immediately.

TESTIMONY OF FCC COMMISSIONER AJIT PAI
BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY OF THE
UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY AND
COMMERCE

MARCH 19, 2015

Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee, thank you for giving me the opportunity to testify this afternoon. Over the last two-and-a-half years, it has been an honor to work with the Members of this Subcommittee on a wide variety of issues, from making available more spectrum for mobile broadband to better connecting our nation's schoolchildren with digital opportunities, from improving our nation's 911 system to encouraging broadband deployment in rural America.

I last testified in front of this Subcommittee more than a year ago. Since that hearing on December 12, 2013, things have changed dramatically at the FCC. I wish I could say that these changes, on balance, have been for the better. But unfortunately, that is not the case.

Net Neutrality.—The foremost example, of course, is the Commission's decision last month to apply Title II to the Internet. That party-line vote overturned a 20-year bipartisan consensus in favor of a free and open Internet. It was a consensus that a Republican Congress and a Democratic President enshrined in the Telecommunications Act of 1996 with the principle that the Internet should be a "vibrant and competitive free market . . . unfettered by Federal or State regulation." It was a consensus that every FCC Chairman—Republican and Democrat—had dutifully implemented for almost twenty years. And it was a consensus that led to a thriving, competitive Internet economy and more than a trillion dollars of investment in the broadband Internet marketplace—investments that have given Americans better access to faster Internet than our European allies, and mobile broadband speeds that are the envy of the world.

Here is the truth. The Internet is the greatest example of free-market innovation in history. The Internet empowers Americans to speak, to post, to rally, to learn, to listen, to watch, and to connect in ways our forefathers never could have imagined. The Internet is a powerful force for freedom, at home and abroad.

In short, the Internet is not broken. And it didn't need the FCC to fix it.

But last month, the FCC decided to try to fix it anyway. It reclassified broadband Internet access service as a Title II telecommunications service. It seized unilateral authority to regulate Internet conduct, to direct where Internet service providers put their investments, and to determine what service plans will be available to the American public. This was a radical departure from the bipartisan, market-oriented policies that have served us so well for the last two decades.

With the Title II decision, the FCC voted to give itself the power to micromanage virtually every aspect of how the Internet works. The FCC can now regulate broadband Internet rates and outlaw pro-consumer service plans. As the Electronic Frontier Foundation wrote us, the FCC has given itself "an awful lot of discretion, potentially giving an unfair advantage to parties with insider influence," which is "hardly the narrow, light-touch approach we need to protect the open Internet." Or as EFF's cofounder wrote after the decision, "Title II is for setting up monopolies, not tearing them apart. We need competition, not regulation. We need engineers not lawyers."

And that's precisely the problem. When I talk to people outside the Beltway, what they want—what they need—is more broadband deployment and more competition. But this regulatory "solution" takes us in precisely the opposite direction. It will result in less competition and a slower lane for all. What have our nation's scrappiest Internet service providers told us? What did we hear from 142 wireless ISPs who've deployed broadband service using unlicensed spectrum without a dime from the taxpayer? What did we hear from 24 of the nation's smallest ISPs, each with fewer than 1,000 residential customers? What did we hear from 43 municipal broadband providers, including Cedar Falls Utilities? What did we hear from the National Black Chamber of Commerce, the National Gay & Lesbian Chamber

of Commerce, the U.S. Hispanic Chamber of Commerce, and the U.S. Pan Asian American Chamber of Commerce? That regulating the Internet under Title II is sure to reduce competition and drive smaller competitors out of the business. Monopoly rules from a monopoly era will move us toward a monopoly.

The FCC's Title II decision is a raw deal for consumers. Broadband bills will go up—the plan explicitly opens the door to billions of dollars in new taxes on broadband. One estimate puts the total at \$11 billion a year—with \$4 billion a year on top of that if the Internet Tax Freedom Act isn't extended (or better yet made permanent). And broadband speeds will be slower. The higher costs and regulatory uncertainty of utility-style regulation have stymied Europe's broadband deployment, and America will follow suit. Just look at the data. Today, 82% of Americans, and 48% of rural Americans, have access to 25 Mbps broadband speeds. In Europe, those figures are only 54% and 12% respectively. In the U.S., average mobile broadband speeds are 30% faster than they are in Western Europe. And broadband providers in the U.S. are investing more than twice as much per person and per household as their European counterparts. Their model has not succeeded, as even leading European regulators and legislators concede. Indeed, neither big nor small providers will bring rural and low-income Americans online if it's economically irrational for them to do so. In short, Title II's utility-style regulation will simply broaden the digital divide.

I am hopeful that the FCC won't get the chance. The FCC has already gone to court twice with attempts to regulate the Internet. Both times, the courts have rejected the agency's efforts. And I doubt the third time will be the charm. As detailed in my written dissent, the Title II order has glaring legal flaws that are sure to keep the Commission mired in litigation for a long, long time.

Finally, the Title II order was not the result of a transparent notice-and-comment rulemaking process. For one thing, the FCC didn't actually propose Title II. In the May 2014 *Notice of Proposed Rulemaking*, the agency's plan was quite different; it was premised on section 706 of the Telecommunications Act and the *Verizon* court's admonitions on how to avoid Title II. Only in early February did the public learn that the FCC would pursue this course. And even then, the FCC did not

make the plan public (despite the fact that an overwhelming majority of Americans—79%—said they wanted to see it). Nor did it make public the critical last-minute changes to the *Order* that were sought by a particular company and special interest group. Only two weeks after the FCC voted on the *Order* were Americans *finally* allowed to see it. Whatever the normal practice at the agency, net neutrality was anything but normal. We should have published the plan before we voted on it and given the public a chance to comment on its many novel details. Going forward, I join Commissioner O’Rielly’s call for the FCC to make public three weeks beforehand the matters scheduled for a vote at public meetings.

The Designated Entity Program.—The FCC must take immediate action to end abuse of our designated entity program. What was once a well-intentioned program designed to help small businesses has become a playpen for corporate giants.

Here’s how the program was supposed to work. When Congress first granted the FCC auction authority in 1993, its goal was to help small businesses—“designated entities” in FCC parlance—compete for spectrum licenses with large, established companies. A small business that lacked the funding to outspend a large corporation could bid, say, \$100,000 for a license but end up paying only \$75,000. In effect, a federal subsidy would cover the remaining \$25,000.

Perversely, this well-intentioned program now helps Goliath at David’s expense. Small business discounts are now being used to give billions of dollars in taxpayer-funded subsidies to Fortune 500 companies and to make it harder for legitimate small businesses to compete in the wireless market. Bipartisan concern about this state of affairs has emerged from those in Congress. And a chorus is growing among the public as well. For instance, the Communications Workers of America, the NAACP, and Americans for Tax Reform have all made these points recently, explaining that big businesses are now abusing the program and driving out legitimate small businesses.

The FCC’s recent AWS-3 spectrum auction is a shocking case in point. Last month, the FCC disclosed that two companies, each of which claimed it was a “very small business” with less than \$15 million in revenues, together won over \$13 billion in spectrum licenses and are now claiming over \$3

billion in taxpayer-funded discounts. How could this be? DISH Network Corp. has an 85% ownership stake in each (not to mention highly intricate contractual controls over each). Allowing DISH, which has annual revenues of approximately \$14 billion and a market capitalization of over \$34 billion, to obtain over \$3 billion in taxpayer-funded discounts makes a mockery of the small business program. Indeed, DISH has now disclosed that it made approximately \$8.504 billion in loans and \$1.274 billion in equity contributions to those two companies—hardly a sign that they were small businesses that lacked access to deep pockets.

The abuse of the program during the AWS-3 auction had an enormous impact on small businesses. Here are just a few examples:

- Glenwood Telephone Membership Corp. provides communications services to rural parts of Nebraska. Glenwood was the provisionally winning bidder for two licenses that would have allowed it to serve parts of Nebraska, but it was outbid by a DISH entity claiming a taxpayer subsidy. As a result, it did not win a single license in the auction. Glenwood has gross annual revenues of just over \$13 million, which are **1,052 times less than DISH's**.
- Rainbow Telecommunications Association, Inc. provides communications services to rural parts of Kansas. Rainbow was the provisionally winning bidder for one license that would have allowed it to serve parts of Kansas, but it was outbid by a DISH entity claiming a taxpayer subsidy. As a result, it did not win a single license in the auction. Rainbow has gross annual revenues under \$14 million, which are **1,025 times less than DISH's**.
- Pioneer Telephone Cooperative, Inc. provides communications services in rural parts of Oklahoma. Although Pioneer won three licenses in Oklahoma and Kansas, it was outbid by a DISH entity claiming a taxpayer subsidy for another license that it could have used to serve other parts of Oklahoma. Pioneer has gross annual revenues under \$15 million, which are **933 times less than DISH's**.

- Geneseo Communications Services, Inc. provides communications services to rural parts of Illinois. Although Geneseo won two licenses in Illinois, it was outbid by DISH entities claiming taxpayer subsidies for four other licenses that Geneseo could have used to serve different parts of Illinois. Geneseo has annual gross revenues under \$16 million, which are **894 times less than DISH's**.

- VTel Wireless, Inc. provides communications services to consumers in rural parts of Vermont. VTel was the provisionally winning bidder for one license that would have allowed it to serve parts of Vermont, but it was outbid by a DISH entity claiming a taxpayer subsidy. As a result, it did not win a single license in the auction. VTel has gross annual revenues under \$27 million, which are **515 times less than DISH's**.

In every one of these cases, the small businesses that the DISH entities outbid either claimed no taxpayer-funded discounts or ones that were far smaller than those claimed by DISH.

These examples are just a small part of a much broader story. Analysis shows that there were over 440 licenses in the auction for which the DISH entities outbid smaller companies, or ones that were not providers of nationwide service, that had been winning the licenses. That's more than three times as often as those providers were outbid by AT&T, Verizon, and T-Mobile *combined*.

I am appalled that a corporate giant which itself does not have a single wireless customer has attempted to use small business discounts to box out the very companies that Congress intended the program to benefit and to rip off American taxpayers to the tune of more than \$3 billion. And I am certainly not alone in feeling this way. The Communications Workers of America, the NAACP, and many others have already called on the FCC to reject DISH's attempt to claim these discounts.

This \$3.3 billion is money that otherwise would have been deposited into the U.S. Treasury. This is money that could be used to fund 581,475 Pell Grants, pay for the school lunches of 6,317,512 children

for an entire school year, or extend tax credits for the hiring of 138,827 veterans for the next 10 years. This is real money.

And it is certainly not too late to ensure that the Treasury gets it. The DISH entities' applications are pending before the FCC. If it turns out that they did not comply with the FCC's rules, the agency must, at a minimum, deny them these discounts. The American people deserve no less.

But regardless of whether DISH violated our rules, the FCC must take immediate action to ensure that this abuse never happens again. DISH is certainly not the only entity that has attempted to game the system. Remarkably, the Commission is currently moving in the wrong direction. Instead of tightening our rules to prevent Fortune 500 companies from abusing the designated entity program, the FCC adopted a Notice of Proposed Rulemaking (NPRM) in October 2014 that would actually *loosen* our rules and make it easier for large companies to benefit from the program. I dissented from those parts of the NPRM. Unfortunately, the Commission's adoption of those proposals as well as an arbitrage-enabling waiver it granted on a party-line vote prior to the AWS-3 auction sent precisely the wrong signal to large companies. Instead of strictly enforcing our rules to protect American taxpayers and small businesses, the FCC sent an "anything goes" message to those inclined to game the system.

The FCC must reverse course. To start, it should quickly adopt a Further Notice of Proposed Rulemaking that would allow the agency to consider a full range of options before our next auction to close loopholes in our rules. The proposals teed up in the October NPRM simply do not give the Commission that degree of flexibility. And, as I am well aware from my experience in the Office of General Counsel, the Commission has lost on notice grounds before when trying to change our designated entity rules.

If, in the face of recent experience, the FCC is not willing to crack down on abuse of the designated entity program, then Congress must act. I applaud Ranking Member Pallone for his leadership on this issue and stand ready to work with this Subcommittee to ensure that the designated entity program benefits legitimate small businesses rather than large corporate interests.

Process.—I firmly believe that the FCC is at its best when it acts in a bipartisan, collaborative manner. Commissioners will inevitably hold different viewpoints on important issues. But traditionally, there has been a willingness to compromise, to negotiate in good faith, and to reach consensus. I witnessed this firsthand during my years as an agency staffer. And I directly participated in such negotiations and compromises during the first year-and-a-half of my tenure as a Commissioner.

For example, during my service as a Commissioner under Chairman Genachowski and Chairwoman Clyburn, 89% of votes on FCC meeting items were unanimous. We didn't always start out in the same place. But we worked hard to reach agreements that everyone could live with and we usually succeeded. We understood that no political party has a monopoly on wisdom, and we recognized that communications issues historically have not been partisan in nature.

Unfortunately, the environment at the Commission is now much different. Since November 2013, only 50% of votes at FCC meetings have been unanimous. This level of discord is unprecedented. **Indeed, there have been 40% more party-line votes at FCC meetings in the last seventeen months than there were under Chairmen Martin, Copps, Genachowski, and Clyburn combined.**

On issue after issue, the Commission's Republicans have been willing to compromise. But time and time again, our overtures have been rebuffed. Last December, for instance, I offered twelve proposed edits to the Incentive Auction Procedures Public Notice. I did not expect that all of them would be accepted. And indeed, even if all of them had been accepted, the document certainly would not have been what I would have drafted if my office had the pen. But I was willing to meet the Chairman's Office more than halfway.

So what happened? Eleven of my suggestions were rejected outright, and the response was "maybe" on the twelfth. For each proposal but one, there was no willingness to talk, no willingness to negotiate, no willingness to compromise. It was just one red line after another, or so I was told. What were some of those proposals that were viewed as too extreme? One was my suggestion to extend the comment deadlines for these exceedingly complex procedures. But I was told that we could not do so

without risking a delay in the auction. You might say I was a little amused when the FCC later ended up extending the deadlines *twice* after receiving complaints from stakeholders. Then again, this wasn't the first time that an idea offered by a Republican Commissioner has been rejected only to be accepted when proposed by someone else. Last summer for instance, the Chairman's Office rejected some of my proposed changes to the E-Rate order (including such "radical" proposals as allowing schools and libraries to use E-Rate funds for caching servers) only to accept them when they were offered by one of the Democratic Commissioners.

This isn't how the FCC used to operate. And it's certainly not how it should function. Our work product is far better when every member of the Commission is allowed to contribute. And our orders have far more legitimacy when they are the product of consensus rather than raw political power.

The divisive manner in which the Commission is being run extends to other areas as well. In particular, the Commission's longstanding procedures and norms have repeatedly been abused in order to freeze out Commissioners and subvert the deliberative process. Here are just three examples:

- In a dispute about whether third parties should be given access to sensitive programming contracts in the Comcast-Time Warner Cable and AT&T/DIRECTV merger proceedings, the Chairman's Office circulated an order at 1:39 PM on November 10, 2014 (the afternoon before Veterans Day) and told Commissioners that they had to cast their votes by the end of that day or else the programming contracts would be released. What was the emergency requiring hurried consideration of such an important and complex issue? There was none. Given this process, I wasn't surprised that the D.C. Circuit later stayed the disclosure order the Commission adopted on a party-line vote.
- The Chairman's Office circulated an item last July that, among other things, changed the coordination zones previously adopted by the Commission in the AWS-3 band. When I asked the Wireless Telecommunications Bureau to show me what the new coordination zones would be, the Bureau said that it could not do so. After I indicated that I would be unable to cast a vote on new

coordination zones without knowing what those zones were, the Chairman's Office pulled the item from circulation and directed the Bureau to issue it on delegated authority.

- It has long been customary at the FCC for Bureaus planning to issue significant orders on delegated authority to provide those items to Commissioners 48 hours prior to their scheduled release. Then, if any one Commissioner asked for the order to be brought up to the Commission level for a vote, that request would be honored. I can tell you from my time as a staffer in the Office of General Counsel that we consistently advised Bureaus about this practice. Recently, however, the Chairman's Office has refused to let the Commission vote on items where *two* Commissioners have made such a request. Moreover, on many occasions significant matters have not even been provided to the Commission 48 hours prior to their release. Often, we only receive them a couple of hours in advance. Other times, we learn about them from the press after they are released.

Given these abuses as well as others, I commend this Subcommittee and your counterparts on the Senate Commerce Committee for addressing the issue of FCC process reform. In particular, I would urge you to consider taking steps to ensure that important policy decisions are made by the Commission as a whole rather than staff acting at the direction of the Chairman's Office. Congress established the FCC as a multimember agency and gave each of its five members an equal vote. Had Congress wanted to make the agency a sole proprietorship or to make some Commissioners more equal than others, it would have structured the Commission in a dramatically different way. I believe that action should be taken to restore the FCC to its collaborative and bipartisan tradition.

911.—In January 2014, I started an inquiry into the status of 911 dialing at properties that use multi-line telephone systems (MLTS). Like many others, I was moved to act when I learned about the tragic death of Kari Rene Hunt Dunn in a Marshall, Texas hotel room. While Kari was being attacked, her daughter tried calling 911 four times, but her call for help never went through because the hotel's phone system required guests to first dial a "9." While my inquiry revealed that many properties that use

MLTS require callers to press "9" or some other access code before dialing 911, it also showed that there were no technical barriers to eliminating that requirement in all or nearly all cases. Moreover, it often cost little or no money for properties to make the changes, and phone systems can be configured to allow both 911 and 9-911 dialing. I recently provided an update on the substantial progress that is being made to fix this problem. For example, thanks to the hard work of many, the 911 problem should be solved by the end of the year at 24 major nationwide hotel chains, from Motel 6 to the Ritz-Carlton.

But there is more work to be done. For example, the phone systems at many federal buildings are not configured to allow direct 911 dialing. Recognizing this problem, Congress directed the GSA in the Spectrum Act to issue a report on the 911 capabilities of multi-line telephone systems in use in all federal buildings and to do so by November 18, 2012. To date, I have not seen the mandated report, and I recently wrote GSA to inquire about its status.

Unfortunately, the FCC's headquarters is one such federal building where direct 911 dialing does not work. When you pick up the phone and dial 911 at the FCC, this is what you hear: "Your call cannot be completed as dialed. Please consult your directory and call again or ask your operator for assistance. This is a recording." This is not acceptable. I commend Ranking Member Eshoo and Congressman Shimkus for their leadership in explaining why this is so.

As Ranking Member Eshoo recently observed, when it comes to emergency calling, the FCC "should be the example not only for the rest of the federal government but for the entire country." Federal agency employees and visitors deserve the same direct access to emergency responders as those who work at and visit private facilities. When disaster strikes and you are in a panic, you shouldn't have to think about what number to dial. Those three simple digits 9-1-1 should connect you with someone who can help.

* * *

Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee, thank you once again for holding this hearing and allowing me the opportunity to speak. I look forward to answering your questions, listening to your views, and continuing to work with you and your staff in the days ahead.

Mr. WALDEN. Thank you, Mr. Pai.

We now turn to the fifth Commissioner, or fourth Commissioner and the Chairman, Commissioner O’Rielly. We are delighted to have you here. Please go ahead with your full testimony.

STATEMENT OF MICHAEL O’RIELLY

Mr. O’RIELLY. Thank you Mr. Chairman, Ranking Member Eshoo, Ranking Member Pallone, and members of the subcommittee for the opportunity to deliver testimony today. I have always held the Energy and Commerce Committee in the highest regard, given my past involvement as a congressional staffer, with oversight hearings and responsibilities that you have to face every day. I applaud the subcommittee for focusing on this issue of reauthorizing the FCC and improving its process, and I recommit myself to being available of any resource I can in the future.

In my time at the Commission, I have enjoyed the many intellectual and policy challenges presented by the innovative and ever challenging communications sector. It is my goal to maintain friendships, even when we disagree, and seek out opportunities where we can work together. To provide a brief snapshot, I voted with the Chairman on approximately 90 percent of all items. Unfortunately, this percentage drops significantly, to approximately 62 percent, for the higher profile open meeting items.

One of the policies I have not been able to support is the insertion of the Commission into every aspect of the Internet. As you may have heard, the Commission pursued an ends justifies the means approach to subject broadband providers to a new Title II regime without a shred of evidence that it is even necessary, solely to check the boxes on a partisan agenda. Even worse, the order punts authority to FCC staff to review current and future Internet practices under vague standards such as just and reasonable, unreasonable interference or disadvantage, and reasonable network management. This is a recipe for uncertainty for our nation’s broadband providers, and ultimately edge—providers.

Nonetheless, I continue to suggest creative ideas to modernize the regulatory environment to reflect the current marketplace, often through my public blog. I have written extensively on the need to reform numerous outdated and inappropriate Commission procedures. For instance, I have advocated that any document to be considered at an open meeting should be made publicly available on the Commission’s Web site at the same time it is circulated to the Commissioners, typically 3 weeks in advance. This fix is not tied to a net neutrality item, although it provides a great example why change is needed.

Under the current process, I meet with numerous outside parties prior to an open meeting, but I am precluded from telling them, for example, having read the document, that their concerns are misguided, or already addressed. This could be a huge waste of time and effort for everyone involved, and allows some favored parties an unfair advantage in the hunt for scarce and highly prized information nuggets. The stated objections to this approach, presented under the cloak of procedural law, are really grounded in resistance to change, and concerns about resource management. In addition,

the Commission has a questionable post-adoption process that deserves significant attention.

While I generally refrain from commenting on legislation, I appreciate the ideas approved by this subcommittee, and ultimately the full House last Congress, which would address a number of Commission practices that keep the public out of the critical end stages of the deliberative process. I believe that these proposed changes, as well as others, would improve the functionality of the Commission, and improve consumer access to information.

In addition, I would turn the subcommittee's attention to a host of other Commission practices that I believe deserve attention. The 48-hour notification that my friend mentioned, testimony provided by outside witnesses at the Commission open meetings, delegating vast authority to staff to make critical decisions or set policy, the Regulatory Flexibility Act and Paperwork Reduction Act compliance, and accounting for the Enforcement Bureau's assessed penalties.

Separately, I have also been outspoken on many substantive issues, such as the need to free up spectrum resources for wireless broadband, both licensed and unlicensed. I look forward to working with my colleagues on this issue, and so many more in the months ahead. I stand ready to answer any questions you may have.

[The prepared statement of Mr. O'Rielly follows:]

**Statement of Michael O’Rielly, FCC Commissioner
Before the Subcommittee on Communications and Technology
House Energy and Commerce Committee
“FCC Reauthorization: Oversight of the Commission”
March 19, 2015**

Thank you, Mr. Chairman, Ranking Member Eshoo and the Members of the Subcommittee for the opportunity to deliver testimony to you today. I have always held the Energy and Commerce Committee in the highest regard given my past involvement, as a Congressional staffer, with oversight hearings and legislative efforts to reauthorize the Commission. Not only did these experiences afford me the opportunity to work and form friendships with a number of the Committee staff on both sides of the aisle, but I am also well aware of your responsibilities and the challenges of conducting Congressional oversight. I applaud the Subcommittee for focusing on this issue of reauthorizing the FCC and improving its process, and I recommit to making myself available as a resource if I can be of any assistance to the Subcommittee in the future.

In my time at the Commission, I have enjoyed the many intellectual and policy challenges presented by the innovative and ever-changing communications sector. In addition, I have appreciated the opportunity to meet and work with many of the Commission’s dedicated public servants, including my colleagues here today. It is my goal to maintain friendships even when we disagree, and seek out opportunities where we can work together. To provide a brief snapshot, I have voted with the Chairman on approximately 90 percent of all items. Unfortunately, this percentage drops significantly – to approximately 62 percent – for the higher-profile Open Meeting items.

One of the policies I have not been able to support is the insertion of the Commission into every aspect of the Internet. As you may have heard, the Commission pursued an ends-justify-the-means approach to subject broadband providers to a new Title II regime without a shred of evidence that it is even necessary, solely to check the boxes on a partisan agenda. Even worse, the order punts authority to FCC staff to review current and future Internet practices under vague standards, such as “just and reasonable,” “unreasonable interference or disadvantage” (i.e., the infamous general conduct standard), and “reasonable network management.” This is a recipe for uncertainty for our nation’s broadband providers and, ultimately, edge providers. Additionally, the Commission has gone down a path of no return by allowing this Administration to have undue influence over its decisions, which undermines confidence in our ability to produce fair, unbiased and reasoned outcomes. Other countries follow the actions of the FCC, and this decision is likely to sway the positions of our international regulatory counterparts in international fora.

Nonetheless, I continue to suggest creative ideas to modernize the regulatory environment to reflect the current marketplace, often through my public blog. I have written extensively on the need to reform numerous outdated and inappropriate Commission procedures. For instance, I have advocated that any document to be considered at an Open Meeting should be made publicly available on the Commission’s website at the same time it is circulated to the Commissioners, typically three weeks in advance. This fix is not tied to the net neutrality item, although I think it provides a great example of why change is needed.

Under the current process, I meet with numerous outside parties prior to an Open Meeting, but I am precluded from telling them, for example, having read the document, that their concern is misguided or already addressed. I can’t tell them anything of value. This can be a huge waste of time and effort for

everyone involved, and allows some favored parties an unfair advantage in the hunt for scarce and highly prized information nuggets. Ultimately, it prevents the staff from focusing on the real issues and improving the text of an item. The only solution, in my eyes, is greater transparency by the Commission, and I have suggested a way to accomplish this consistent with current law. The stated objections to this approach, presented under the cloak of procedural law, are really grounded in resistance to change and concerns about resource management.

In addition, the Commission has a questionable post-adoption process that deserves significant attention. In particular, items approved at a Commission meeting can then be changed by the Commission staff after the meeting to make or strengthen arguments in response to Commissioner dissents or additional industry filings to improve the Commission's potential litigation position.

While I generally refrain from commenting on legislation, I appreciate the ideas approved by the Subcommittee and ultimately the full House, which would address a number of Commission practices that keep the public out of the critical end stages of the deliberative process. I believe that these proposed changes, as well as others, would improve the functionality of the Commission and improve consumer access to information. In addition, I would turn the Subcommittee's attention to a host of other Commission practices that I believe deserve review:

- ❖ 48-hour notification to Commissioners for items to be released at the bureau-level
- ❖ Testimony provided by outside witnesses at Commission Open Meetings
- ❖ Delegating vast authority to staff to make critical decisions or set policy
- ❖ Regulatory Flexibility Act and Paperwork Reduction Act compliance
- ❖ Accounting for Enforcement Bureau's assessed penalties

Separately, I have also been outspoken on many substantive issues, such as the need to free up spectrum resources for wireless broadband, both licensed and unlicensed. I was pleased to work with my colleague, Commissioner Rosenworcel, and share our thoughts on how to expand opportunities for unlicensed spectrum, especially in the upper 5 GHz band. I applaud Congressman Latta, Congresswomen Eshoo and Matsui, and others for their continued leadership on looking for ways to increase access to this band for Wi-Fi use. Additionally, I have put forward substantive suggestions for the Lifeline program. I recognize that several of my colleagues are interested in expanding the program to include broadband, and I have put forth ideas on how to ensure that any expansion fits within a reasoned budget and does not result in new waste, fraud, and abuse. I look forward to working with my colleagues on this and other issues in the coming months.

I stand ready to answer any questions you may have.

Mr. WALDEN. Thank you, Commissioner. We appreciate your input as well.

Mr. O'RIELLY. Thank you.

Mr. WALDEN. We will recess now so that Members can go to the House floor and vote. Please return as promptly as possible, as we will begin our questioning thereafter. We stand in recess. We have two quick votes.

[Recess.]

Mr. WALDEN. Public and Commissioners to please resume their places. We will get restarted here in the hearing in just a second, when everybody gets settled.

All right. Thank you very much, and we will resume the Subcommittee on Communications and Technology. We are now into the questioning phase from the members of the committee. And, again, we want to thank all of you for your testimony today, and the work that you do with all of us every day, so we do appreciate that.

You know, throughout the debate on the Internet proceeding, I was amused—there were some comparisons to what former Chairman Kevin Martin did or didn't do with respect to his media ownership proceeding. Yes, he wrote a late in the day op-ed, put out a public notice, testified before Congress, but he didn't do a further notice of proposed rulemaking, and that seems to be precisely why the Third Circuit threw his newspaper/broadcast cross-ownership rule out. I guess Federal Appellate Judges don't think much of op-eds, news releases, or even congressional testimony when it comes to satisfying APA notice and comment requirements. They actually think the agency should go through the procedural steps to make sure that all interested parties, even those outside D.C. policy circles, get a real opportunity to understand a significant shift in direction, and have a reasonable amount of time to comment.

So I have got just a couple of questions, and perhaps I will just direct them to Mr. Pai. How many of the Commission's tentative conclusions found in the NPRM were reversed in the final order?

Mr. PAI. Mr. Chairman, virtually all of them.

Mr. WALDEN. What number paragraph in the NPRM says that the Commission planned to assert its authority over IP addressing? Was that in the NPRM?

Mr. PAI. It was not, sir.

Mr. WALDEN. And what number paragraph of the NPRM put the public on notice that the Commission intended to redefine the term public switched network?

Mr. PAI. There is no such paragraph.

Mr. WALDEN. That is what I was concerned about. I didn't see that either. There are a number of issues that are pending at the Commission, and I know Chairman has had a lot on his plate. You all have, I get that. It is a rapidly changing environment, and you have limited resources and all. Some of you have heard me talk about our little applications for FM translators when I was in the radio business, 10 years waiting, 30 days to satisfy the requirements and all. And we get a lot of input here from constituencies out across the country. Just because of limited time, has the Commission acted on the AM modernization order yet?

Mr. PAI. Mr. Chairman, it has not yet, and the NPRM, as you know, was adopted about a year and a half ago. The record is complete, unanimous support from the public.

Mr. WALDEN. There is another issue that came up, I was speaking at a group, and it involves this issue to allow small cable operators to operate as a buying group for the purchase of content. Has that been acted on yet? That has been pending for some time, I am told.

Mr. PAI. It has not. I voted on the NPRM about—I want to say 3 years ago, but—

Mr. WALDEN. Three years ago?

Mr. PAI. If I recall, it was the summer of 2012, and I am not sure what the status of it is. But I stand ready to vote whenever it is teed up for a vote.

Mr. WALDEN. And my understanding is the Commission has not yet issued its quadrennial review of media ownership rules for 2010. I believe that is about 5 years ago, is that correct?

Mr. PAI. Five years ago, but December of 2007 was the last time the actual rules were adopted.

Mr. WALDEN. So it has been 8 years since—

Mr. PAI. Correct.

Mr. WALDEN. And isn't that a statutory obligation?

Mr. PAI. It is, and that is why I said we need to put the quad back in quadrennial.

Mr. WALDEN. And what about the work on the Connect America Fund? Has the Commission finished its work on how Connect America will work in supporting mobile?

Mr. PAI. My understanding is not yet, but that work is underway.

Mr. WALDEN. These are some of the things that trouble us, to say the least. We also had an issue come to our attention involving the Western Amateur Radio Friendship Association interference case, and maybe, Chairman, I could direct this to you. I understand it has been going on for quite a while, and it is quite disturbing. I have been told about some of the audio recordings, allegedly that there is this jamming that is included. Really awful, repulsive racial epithets, and threats against a female member. And it has come to our attention this has been sitting there for a while, where these operators are jamming and using really awful, awful language. Do you know the status of that? Can you give us some update on that? Anybody on the—Commission.

Mr. WHEELER. I can give you an update on that, Mr. Chairman. I will—

Mr. WALDEN. If you could get back to us? Yes, I think it is called the Western Amateur Radio Friendship Association interference case. I guess there are a couple of these involving pirate radio operators. Which leads into a discussion, and I am going to run out of time here, about the closing of the regional office.

When we had the CFO, I guess would be close, managing director here, we weren't really brought up to speed, or advance noticed at least, of this notion that you are going to close these regional offices. Isn't that where this enforcement activity generally takes place?

Mr. PAI. Mr. Chairman—

Mr. WALDEN. That is fine, whoever. Commissioner Pai?

Mr. PAI. Yes. Indeed, I think the field offices of the Enforcement Bureau perform one of the core functions, which is to protect the public interest by, among other things, resolving interference concerns, and protecting public safety. And while, obviously, I am still studying the issue, I have had a chance to meet with our union representatives. And I know members of this Committee, such as Congresswoman Clarke, have recently expressed concern about the field offices' function.

Mr. WALDEN. Yes.

Mr. PAI. We want to make sure that, however it is reorganized, we protect the public interest.

Mr. WALDEN. And I will quit here in a second, but we clearly don't have—it would leave only two offices, one in L.A. and San Francisco, nothing for the west coast, which I am hearing from various entities. And I was pleased——

Mr. WHEELER. Can I at least——

Mr. WALDEN. Sure.

Mr. WHEELER [continuing]. So there are multiple things going on there. First of all, we need to make sure that, in flat budgets or reduced budgets, that we are spending our money efficiently. When you have more trucks than you have agents, which is the reality that exists today——

Mr. WALDEN. I would sell some trucks.

Mr. WHEELER [continuing]. You have got to ask yourself the question, are you distributing resources as they ought to be distributed? When you have got one manager for every four people, you say to yourself, is this the right kind of structure?

Mr. WALDEN. I fully agree, and I understand——

Mr. WHEELER. Then how do you fix that?

Mr. WALDEN. So what we would like to have is the backup for this, because I understand that wasn't what——

Mr. WHEELER. Happy to.

Mr. WALDEN [continuing]. And I think we have a request pending for that, and we are told——

Mr. WHEELER. Yes.

Mr. WALDEN [continuing]. Well, I don't know whether we were told we can't get it or whatever, but we would like to see——

Mr. WHEELER. No, if my understanding is correct, you asked for the consultant's report. The final consultant's report is—and——

Mr. WALDEN. Yes.

Mr. WHEELER [continuing]. You will have it when I have it. I have seen a draft of the——

Mr. WALDEN. OK.

Mr. WHEELER [continuing]. Structures, but have also——

Mr. WALDEN. All right.

Mr. WHEELER [continuing]. Sent it back for some more detailed information.

Mr. WALDEN. All right.

Mr. WHEELER. You will have that.

Mr. WALDEN. Thank you.

Mr. WHEELER. You will——

Mr. WALDEN. I have far exceeded my time. I appreciate the indulgence, Committee. I recognize the gentlelady from California.

Ms. ESHOO. It is OK, because I will ask you for the same. Thank you, Mr. Chairman. Welcome again to the entire Commission. It is obvious that we have different takes on the issues, but I sincerely thank you for your public service. And, to Commissioner O'Rielly, this is a graduate of this committee. You were here under Chairman Bliley, whom I had the pleasure of working with, and getting a lot of things done together, so welcome back.

Commissioner Pai, thank you for your advocacy on the 911 issues. You know that the mother and father, the mommy and daddy of this are right here at the committee. Congressman Shimkus and myself founded that caucus, and then helped—

Mr. PAI. This—

Ms. ESHOO. Well, we did. What is so funny about that? I think it is terrific. And it was when no one was paying attention to those issues, but it was before our country was attacked. Commissioner Rosenworcel, thank you for your clarity, and your passion when you speak. And Commissioner Clyburn, go get them. Just go get them. And to the distinguished Chairman, I don't know how many people realize this about the Chairman, but he is a man of history, and so I want to pick on the vein of history. Because I think it is very important for us—around here, life is incremental. It is incremental anyway. God gives us life a day at a time, so those are increments. But I think what I would like to do is to have you, and I want to say a few things about it first, to widen the lens of what is before us today, in terms of history.

Now, the majority has defined, or tries to define, net neutrality with some very scary things. They call it railroad regulation, billions of dollars in taxes, new taxes are going to be levied, no investment is going to be made, the market is going to be chilled. In terms of history, we have been through the Stone Age, the Bronze Age, the Iron Age, the Age of Invention, the Industrial Revolution, the Technology Age, and now the Information Age.

And I think why this is difficult for some to actually see—and when you see something, you either get it or you miss it. We are at a moment in our nation's history where we are moving to a new age. And I would say that those that are on the other side of this issue are back in an older age, where you have huge corporations, gatekeepers, duopolies. That is not what the Internet is all about. So what I would like you to—as a historian, to address what this moment is, and place it on the stage of history.

Mr. WHEELER. Thank you, Ms. Eshoo. You get me started on history, and this—we—

Ms. ESHOO. Well, we don't have very much time.

Mr. WHEELER. We could—

Ms. ESHOO. I have got a minute and 40 seconds left. Yes.

Mr. WHEELER. I think that we are living through the fourth great network revolution in history.

Ms. ESHOO. Yes.

Mr. WHEELER. And if you look at those, what you will find is that every single time it was the end of Western civilization—

Ms. ESHOO. Yes.

Mr. WHEELER [continuing]. As we know it that—

Ms. ESHOO. Yes.

Mr. WHEELER [continuing]. Was being—people who didn't want to embrace the change was like, this is awful. I have hanging in my office a poster from 1839 that was put out by people who were against the interconnection of railroads. It was all patterned around, women and children are going to be hurt by this. It was paid for by all the people whose businesses would be affected because the railroads would interconnect. Yet that interconnection drove the 19th and 20th century.

We always hear these imaginary horrors about the awful things that are going to result, and we also always end up saying, as a society, we need rules. We need to have a known set of rules. We need to have a referee on the field who can throw the flag. That is the process that we have gone through since time immemorial, every time there is a new network revolution. We have the privilege of living through that, and trying to deal with those realities today.

Ms. ESHOO. Well, I think that that is magnificent in a short period of time. I wish I could question—I have questions for all of you. I am going to submit them to you. And, with that, Mr. Chairman, I would like to ask unanimous consent that Congressman Cardenas's questions be submitted for the record. He is a guest of our subcommittee today—

Mr. LATTA [presiding]. Without objection.

Ms. ESHOO [continuing]. And demonstrates his great interest in the issues at hand. And another from many, many—I don't know, maybe 50 racial justice and civil rights organizations who have addressed a letter to the Chairman and myself in support of net neutrality.

Mr. LATTA. Without objection.

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

Ms. ESHOO. Thank you, Mr. Chairman.

Mr. LATTA. The lady yields back. The next questioner will be the gentlelady from Tennessee, Ms. Blackburn, for 5 minutes.

Mrs. BLACKBURN. Thank you, Mr. Chairman, I appreciate that. Chairman Wheeler, I will just add my viewpoint of, when you look at our economic revolutions in society, whether it was the Agricultural or the Industrial, the Technology, the Information, successful revolutions are about freeing up, not restricting. And what we are looking at right now is the vantage point from—that you all are coming from is taking away and restricting, not freeing up.

Chairman—Mr. O'Rielly—Commissioner O'Rielly, let me come to you for a moment and talk taxes. You and I penned an op-ed back in July, calling for the need for a cost benefit analysis, and really looking at what had been said by PPI, Free Pressed, Professor Farber, and what they thought would happen with taxes. New York Times agreed with that. I want to hear from you a little bit, 30 seconds' worth, about why we should have had a cost benefit analysis, and what you think the outlook is.

Mr. O'RIELLY. So I believe that we should do better at the FCC on cost benefit analysis, and this is a perfect case. I think the—

Mrs. BLACKBURN. None was done.

Mr. O'RIELLY. This is a woeful job that was done in this instance. We are talking about hypothetical harms and real world impacts on business.

Mrs. BLACKBURN. Yes.

Mr. O'RIELLY. But in terms of your question on taxes, I would say—I would switch it more to taxes and fees, because the question has been on universal fees, and what happens in universal service going forward? The Chairman has been very clear that the item in and of itself before us does not impose universal service. That is something we are going to punt for about a month or two, and we are waiting for the joint board—

Mrs. BLACKBURN. OK.

Mr. O'RIELLY [continuing]. This is something that has to go forward. We are going to see those fees in the months ahead.

Mrs. BLACKBURN. OK. Commissioner Pai, you gave an interview this week and stated that there was going to be a tax on broadband, and the Commission is waiting for a joint board to decide April 7 how large that tax is going to be. You want to expand on that?

Mr. PAI. Thank you for the question, Congresswoman. The order suggests that the joint board is going to make a recommendation on April 7. The order also says that a “short extension” might be appropriate. So at some point very soon the joint board is going to recommend whether and how to increase these fees that are—

Mrs. BLACKBURN. OK.

Mr. PAI [continuing]. Going to be assessed on broadband for the first time. In addition, it is not just the USF fees, as Commissioner O'RIELLY has pointed out. It is also state and local fees. For example, state property taxes. Localities also impose taxes. The District of Columbia imposes an 11 percent tax on gross receipts. These are all fees that are going to have to be paid by someone. It is going to be paid by the consumer at the—

Mrs. BLACKBURN. OK. Chairman Wheeler, rate regulation. I read something from Professor Lyons at Boston College, and he said Title II is fundamentally a regime for rate regulation. And then we are looking at another thing which he said about a person, which might include a large company, can file a complaint with the FCC under Section 208 if they don't think their charges are just and reasonable.

So you have denied that the FCC is going to get into rate regulation through this net neutrality order, but—I understand that the order does not explicitly state that the FCC will be regulating rates on the date the rules are effective, but what about the first time that a complaint is filed with the FCC under Section 208 because a party feels that their rates are not just and reasonable? What is the remedy going to be, and isn't it true that the FCC will be engaged thereby in de fact rate regulation?

Mr. WHEELER. Thank you, Congresswoman. I hope somebody files that kind of a complaint. As you know, there hasn't been a complaint filed for 22 years in the wireless voice space, despite the fact that this same kind of authority exists. If somebody files that kind of a complaint, and I don't want to prejudice a decision, but I will assure you that there will be a process that will look at that, and will develop, I would hope, a record that would make it very clear that the FCC is not in the consumer rate regulation business.

Mrs. BLACKBURN. Mr. Chairman, don't you think what you just said about there hasn't been a complaint filed in that space for 22

years proves the point that the Internet is not broken, this space is not broken, and it does not need your oversight and guidance?

Mr. WHEELER. No, I was referring to wireless voice, not to broadband. I think the key thing is, you said in your——

Mrs. BLACKBURN. OK, let me cut you off there. I have got one question for Commissioner Clyburn. And I want to go to the Lifeline and USAC Program——

Ms. CLYBURN. Yes.

Mrs. BLACKBURN [continuing]. With you. You have advocated restructuring and rebooting that program, and you have had several supply-side reforms, and did eliminate incentives for waste, fraud, and abuse. And the FCC's Inspector General, as you know, has performed a review of the verification process on this, and recommended that the FCC may improve the effectiveness of the warnings that it gives subscribers, and reduce the level of fraud in that program. We have had hearings on this, and I want to work with you on it.

Ms. CLYBURN. Thank you.

Mrs. BLACKBURN. And is it true that, under the current system, the penalty for a subscriber defrauding the program by having multiple phones is to lose the subsidy for those phones, all but one? They get to keep one, and then the carrier is prosecuted. And I will tell you why your answer is important. You all are talking about getting into broadband, and in addition to the phones, and you have got to reform all of this before you talk about expanding.

Ms. CLYBURN. I totally agree. And one of the reasons why I set out five points for reform is because I recognize two things. One, we need to eliminate all incentives, and all existing waste, fraud, and those abuses. We need to do that, and the key way to do that is to get those providers out of the certification business. They will no longer greenlight customers——

Mrs. BLACKBURN. We need to prosecute the user——

Ms. CLYBURN. And——

Mrs. BLACKBURN [continuing]. Not the——

Ms. CLYBURN. And we have——

Mrs. BLACKBURN [continuing]. You know, not the——

Ms. CLYBURN. With guidance from my colleagues, and while I was acting Chair——

Mrs. BLACKBURN. I yield back. My time is expired.

Ms. CLYBURN. I am sorry.

Mrs. BLACKBURN. Thank you, Mr. Chair.

Mr. LATTA. Thank you. The gentlelady yields back. The Chair now recognizes the gentleman from New Jersey, the Ranking Member, for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman. I just want the Commissioners to know, my district was ravaged by Hurricane Sandy in 2012, and one of the most concerning impacts of the storm was the loss of communications services. A lot of people couldn't call their friends, their family, and 40 percent of our cell towers were knocked out in the state. A lot of people there basically learned the hard way that when the power lines go down, communications services go down along with electricity.

So I wanted to ask Commissioner Rosenworcel, I know that you toured New Jersey after Sandy, and I ask what lessons did you

learn about how to prevent these kinds of communication failures during future emergencies?

Ms. ROSENWORCEL. Thank you for the question. I did tour the New Jersey shore with public safety officials following Hurricane Sandy, and I won't long forget what I saw. A lot of broken homes and businesses, and cars and boulders strewn this way and that, and piles of sand many blocks from where the ocean is because wind and water had delivered it there.

But I also saw a lot of people who were very committed to rebuilding, and I learned a lot about how communications succeeded and failed during that storm. What stuck with me was that many of the wireless towers in the affected areas went out. Now, throughout the 10 states that were impacted by the storm, about a quarter of the wireless cell towers went out of service. In New Jersey, as you mentioned, it was about 40 percent. But I would bet the number was significantly higher on the New Jersey shore.

And in the aftermath of learning those things, we were able, at the agency, to start a rulemaking to ask, how can we fix this going forward? Because we know that 40 percent of all households in this country are wireless only, and in the middle of a storm, at the very least, they should be able to connect and get the help they need.

So we issued a rulemaking in 2013, and among the issues discussed in that was the question of how much backup power is necessary at cell sites, and how much of a reporting duty our wireless carriers should have when these sites go out of service. I hope that we can turn around and deliver a decision on that in short order because we don't know when the next storm is going to hit. But I am pretty sure people are going to try to use communications when it does.

Mr. PALLONE. Well, thank you. Let me ask Chairman Wheeler, I understand the FCC, as was mentioned, is considering updates to its rules to ensure that consumers have access to essential communications during disasters. Can you commit to updating those rules this year?

Mr. WHEELER. Absolutely. The issue that Commissioner Rosenworcel raised is a paramount issue. There are broader issues too, and that is the whole issue of copper retirement, which got forced by Sandy, and how do we make sure that, when the power goes down, and you are relying on fiber, which doesn't carry its own power, that you have got the ability to make a 911 call?

We have a rulemaking going on that literally just closed last week. All of these issues interrelate, but first and foremost in our responsibility, which was why I focused on the 911 location issue in my statement, is public safety.

Mr. PALLONE. I wanted to ask you about the designated entity rules, Mr. Chairman. Obviously small businesses are so important in my state and elsewhere, and I just don't think small businesses can survive in capital intensive industries, like telecommunications, without some smart public policy. I am concerned that the current rules for small businesses still contain Bush era loopholes that allow large corporations to game the system, and so I actually introduced today the Small Business Access to Spectrum Act to update the FCC's rules, and give small businesses a fair shot at accessing the nation's airwaves.

Well, there is not much time left, but I will start with Chairman Wheeler, if the others want to chime in. Would you commit to working to maintain a robust designated entity program focused on genuine small businesses?

Mr. WHEELER. You wrote us and asked us that. I replied yes, we will, and yes, we are. We have had a rulemaking going on, and we will issue shortly a public notice, making sure that the discussion is broadened out, and the record is built on the question of the recent AWS-3 auction, and some of the very legitimate concerns that have been raised about that.

The thing that is frustrating to me, Congressman—you say yes, these were Bush era rules, they haven't been reviewed since then, and it is time to review them. What is really upsetting is the way in which slick lawyers come in and take advantage of rules that this committee created. I was in the room when this committee created designated entities. And, as you say, the world changes dramatically in how a designated entity can be structured and can play in now what is a big market, whereas before it was a much smaller market.

Our rules have not kept up, but the slick lawyers sure have figured out how to do it. And we want to make sure, whether it is in this, or whether it is in slick lawyers playing around with broadcast licenses, that there is no way that we keep our rules current. And we are going to do that on this issue. The commitment that I will ironclad give you, sir, is that we want to make sure that we have a new set of DE rules in place before the spectrum auction takes place early next year.

Mr. PALLONE. Thank you.

Mr. LATTA. Gentleman's time is expired, and yields back. The Chair now recognizes himself for 5 minutes. Again, thanks very much to the Commissioners for being here today.

Commissioner Pai, in January the FCC voted to update the broadband benchmark speeds to 25 megabits per second for downloads and 3 megabits per second for uploads. The speeds had previously been set at 4 megabits per second and 1 megabits per second.

While I understand the need to update the broadband speeds, I am kind of curious as to the process the Commission chose the speeds of 25 megabits and the three megabits. It seems, to an outside observer, that an arbitrary number was picked, especially considering that recently the Commission voted to spend \$10.8 billion over the next 6 years through the Connect America Fund to employ 10 megabits per second broadband. According to the Commission's new benchmark, 10 megabits per second is going to no longer even be considered broadband.

Can you walk us through how the agency came to these new benchmarks? And then also if you could follow up—and how does it still plan to spend over \$10 billion on those 10 megabits per second deployment in light of that new definition?

Mr. PAI. Thank you for the question, Mr. Chairman. I think the problem is that the agency has viewed each of these issues in a vacuum, and so, in December, when we were talking about rural broadband deployment, we agreed to spend, over the course of a decade, billions of dollars to establish what we considered to be

broadband at the time, which was 10 Megabits per second. Flash forward 1 month, all of a sudden we learn that actually isn't broadband. Broadband is 25 megabits per second, under which standard there is no such thing as mobile broadband, because even the fastest LG—4G LTE connection can't get you to 25 megabits per second. Flash forward 1 month more, all of a sudden we learn that there is such a thing as mobile broadband, and it is going to be classified as a Title II service.

And I think the schizophrenia that we have seen over the last several months from the Commission as to what is broadband illustrates the basic point. We need intellectual consistency that is grounded in the facts. And the facts in this case basically stem from the question, what do people use broadband for? And by and large, if you look at my statement with respect to the January order, I was trying to look at patterns of usage. And obviously there are going to be some folks who use the Internet for very high bandwidth applications, others who use it for less.

The goal of the FCC shouldn't be to artificially pick a number so that it can declare that the broadband marketplace is uncompetitive, and thus justify regulation. It should be to try to tailor, with some forward thinking, what broadband means in the current era. And that is why I think the problem with the 25 megabits per second standard, which I forecast would be jettisoned soon, I didn't know it would be 1 month from then, is that it was more grasping for press headlines, as opposed to what actually was in the record.

Mr. WHEELER. Can I—

Mr. LATTA. Let me follow up. I am also concerned that this new threshold would reduce the broadband investment in rural areas. You know, if you look at my district, and you have seen it, is that it could ultimately deter the competitive entry into the broadband market. Do you foresee any of these benchmark speeds unfairly impacting consumers and businesses in the rural areas?

Mr. PAI. That is a great question, Congressman, and coming from a rural area myself, that is something that I take very personally. The FCC heard from a great number of small providers, and that is service providers in rural areas, who told us that Title II, ironically, would take us in the opposite direction of getting more competition. A lot of folks in rural areas, if they have an option, it is going to be from one of these smaller providers.

And so we heard, for instance, from 43 municipal broadband providers, who said that Title II regulation "will undermine our business model that supports our network, raise our costs, and hinder our ability to further deploy broadband." We even heard from 24 small broadband providers on February 17, who said that Title II "will badly strain our limited resources, because we have no in-house attorneys and no budget line items for counsel.

And those ISPs, by the way, include very small ISPs, including one called Main Street Broadband that serves four customers in Cannon Falls. The notion that Main Street Broadband in Cannon Falls exerts some kind of anti-competitive monopoly vis-a-vis edge providers like Netflix, Google, and Facebook is absurd, but I think that is part of the reason why the Obama Administration's Small Business Administration was exactly on point when it urged the FCC last year to take a careful look at how these rules would

affect small businesses, because, ultimately, that is where the digital divide is going to open up. It is for the rural Americans, who have a tough enough time getting a broadband option as it is.

Mr. LATTA. Well, thank you. I would like to ask the question now—the Chairman mentioned, in his opening statement, about the task force starting the agency process, and I am just curious, Commissioner Clyburn, when did you find out about the task force?

Ms. CLYBURN. When did I find out about the actual task force? To the best of my knowledge, last quarter of last year. It issued a report in February. There was a very interactive process. They asked each office to weigh in, and that is when—subject to check. My memory is sometimes challenged, but last quarter of last year, with a February—

Mr. LATTA. All right. Thank you.

Ms. CLYBURN. Thank you.

Mr. LATTA. Commissioner Rosenworcel? Excuse me.

Ms. ROSENWORCEL. I believe they issued a report sometime last year. I would have to go back and check.

Mr. LATTA. Commissioner Pai?

Mr. PAI. If you are referring to the task force that the Chairman announced this morning, is that the one?

Mr. LATTA. Right, he asked about—that he spoke about in his opening testimony.

Mr. PAI. Then I learned about it this morning, when he announced it.

Mr. LATTA. Commissioner O’Rielly?

Mr. O’RIELLY. Well, I appreciate the kind words from the Chairman on the ideas that I put forward. I just learned about it this morning.

Mr. LATTA. Thank you. My time has expired, and the Chair now recognizes Mr. Doyle.

Mr. DOYLE. Thank you, Mr. Chairman. I want to take a moment and recognize, along with my colleague, Ms. Eshoo, the historic step forward the Commission has made in its Open Internet Order, and the order on municipal broadband. Taken together, these actions by the Commission represent incredible wins for consumers, entrepreneurs, and millions of Americans who called on the Commission to take action. Innovators shouldn’t need to ask permission, or pay gatekeepers to deploy new products and services, and the FCC’s actions will ensure that this remains true.

And I want to point out one more thing too. My colleagues on the other side of the aisle have been talking about Title II like it is the end of the world. Well, up until 2002, the Internet was treated as a Title II service. It was a Republican FCC Chairman, and a Republican Commission, that acted to re-classify the Internet as an information service. I see this rule as the FCC finally setting things straight.

Chairman Wheeler, last September you testified before the House Small Business Committee. You were asked about net neutrality proceedings, and you stated Title II is on the table. Now, my Republican colleagues are making the allegation that you only started looking at Title II as a result of White House interference in November of 2014. Was the FCC considering using its Title II

authority before President Obama joined millions of Americans in calling on the FCC to take that course of action?

Mr. WHEELER. Yes, sir, and the Small Business Committee that you cite there was one member who was saying to me, “don’t you dare do Title II,” and I was saying, “we are seriously considering Title II.” And there was one member who was saying, “we want you to do Title II,” and I said, “yes, we are considering doing Title II.”

Mr. DOYLE. Thank you, Mr. Chairman. Let me ask you another question. The Open Internet Order makes great strides to protect consumers and innovators, but in particular by including interconnection and protections for consumer privacy through Section 222 in this order. I want to get your commitment that the Commission will move quickly to complete the rulemaking on Section 222, and ensure that the Commission has rules in place to protect consumer privacy online. And I would also like your commitment that the Commission will take seriously this new responsibility on interconnection. With all of the recent announcements by over the top providers releasing new streaming video services, I think it is more important than ever that gatekeepers do not restrict these new services access to consumers.

And also, Mr. Chairman, while I have got you here, I would be remiss if I didn’t take the opportunity to mention special access. I understand that the data collection component is complete. I would encourage you to move forward as quickly as possible to complete analysis of that data, and to take action to address any harms taking place. Fixing this situation is a great opportunity to improve competition and economic growth across this country.

Mr. WHEELER. So let me see if I can go through it one, two, three. One, on privacy, absolutely, sir, and it starts next month, when we are holding the workshop that gets the parties together and says, “OK, let us talk specifically about how Section 222 exists in this new reality.”

Secondly, with regard to interconnection, I could not agree more with your point about how over the top services are revolutionizing, and are going to be the consumers’ savior. I sat before this committee before this and other committees before, and it is a bipartisan belief that something has to be done about cable prices. That starts with alternatives. Those alternatives are delivered over the top via the Internet. That is why the Internet has to be open, so there are competitive alternatives for people.

Mr. WHEELER. Special access. My hair was not gray when I first started asking the Commission about special access. Actually, we have just gotten permission and have begun the data collection on special access. Special access is an incredibly important issue that is particularly essential to those who are bringing competition to communications. My goal is that we are going to have this whole special access issue on the table and dealt with before the end of the year.

Mr. DOYLE. Thank you, and one last thing. And I—this question, it is on the AWS-3 auction. It raised \$45 billion in revenue, meeting all the funding targets, including fully funding First Net and next gen 911. Considering this new reality, and the massive appetite for spectrum by wireless carriers, hasn’t the FCC been liber-

ated from these fully funded objections, and its reconsideration of its previous decision on the size of the spectrum reserve, and the incentive auction?

Mr. WHEELER. Well, that is one of the issues that we are going to be addressing again as we put together the final rules for the auction. I understand your point, that we have now lived up to our committed obligations, and this is an issue that we will be dealing with in the next couple of months.

Mr. DOYLE. Commissioner Clyburn, Rosenworcel, do you have comments on that too, very briefly?

Ms. CLYBURN. One of the things that I joke about, and this is a positive joke, is that all predictions were wrong, that—

Ms. ROSENWORCEL. Right.

Ms. CLYBURN [continuing]. Two and a half, three times the amount of money that was predicted was raised. You were right to say that we have met our obligations, and we will continue through other auctions, including incentive auction, to deliver spectrum to the American people.

Mr. DOYLE. Yes.

Ms. ROSENWORCEL. I agree with the chairman. We will be looking at this in the next few months. It is important we follow the statute, and it is also important that we make sure that everyone has opportunities to bid in this upcoming auction, and that no single player walks away with all the spectrum.

Mr. DOYLE. All right. Mr. Chairman, I appreciate your indulgence, then. I would just like to include in the record this letter from the Public Interest Spectrum Coalition in regards to the incentive auction.

Mr. LATTA. Without objection.

Mr. DOYLE. Thank you. I yield back.

Mr. LATTA. The yields back. The gentleman's time has expired. The Chair now recognizes the gentleman from Illinois, Mr. Shimkus, for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman. Welcome to the Commissioners. It is great to have you here. I want to be careful because history does tell us a lot of things. I was fortunate to be on the committee during September 11. Chairman Upton of the subcommittee, at that time, took us to Ground Zero because we had the Verizon switching station right across the street. And what I learned in walking through that process, it was really only a big company that could get Wall Street back online after that catastrophic attack. And it is true. I mean, I have still got pictures of it. The basement was flooded. You had wires going up to the third floor. You had individuals hand tying the copper lines. So as we talk about our great country, and competition, and large entities, sometimes large entities are very important in the security of this country.

The—and I want to also—thanks for kind words on 911. It is really a team effort. Anna and I have been fortunate to work on this, but it is a process that you have got to stay vigilant on, as, Chairman Wheeler, you mentioned. First we dealt with 911 over cell, then really went to location, then we went to voice over Internet. Now we are back into location, because I am being told by

some PSAPs that there is really too many right now, and that they maybe should centralize those. Any comments, briefly, if you can?

Mr. WHEELER. One of the interesting things that was in your bill that you and Ms. Eshoo had was—you asked states to voluntarily have state level coordination of their PSAPs, and by and large, that has been observed in the breach. It hasn't existed. There is no state level coordination in Georgia. Introducing mobile means that the people on the right and on the left side of the map need to be able to talk to each other. They need to have similar standards.

You ticked off some of the issues in terms of the technologies. The other is text to 911, which we have required carriers to do. Out of the 6,500 PSAPs in the country, 200 have implemented it. That means that America's deaf and hard of hearing community, which, thanks to the unanimous action of this Commission, has text to 911 capabilities provided by carriers. They can text away, and there is nobody who hears it.

Mr. SHIMKUS. And I guess the other thing that we also didn't talk about was the testing that you did on the elevation—I would say the elevation—

Mr. WHEELER. Yes, sir. The ability to get the Y coordinate.

Mr. SHIMKUS [continuing]. Stuff like that, and—very excited about that opportunity. Of course, I don't have much high rises—

Mr. WHEELER. The Z coordinate.

Mr. SHIMKUS [continuing]. In—

Mr. WHEELER. Yes.

Mr. SHIMKUS [continuing]. In my congressional district, but I know it is probably important in large metropolitan areas.

Give me some comfort—my concern with the rule being presented is, one, litigation. Two, I have this concern about how do you incentivize build-out of the pipes when it looks like you are moving back to re-regulation?

Mr. WHEELER. Yes.

Mr. SHIMKUS. And that, if you are re-regulating, then you have to have a fee. That is where this fee debate comes from. So how do you get a fee to help build out? And maybe I am a simplistic view, but—and then the other question I have is really about the megabit debate, 10, 25. How do you encourage in this new venue, and then I will end, and if you all can—how—the individual consumer decide what speed they want versus being forced to buy a speed which they will never use, like my mother-in-law?

Mr. WHEELER. Right. It is interesting, Congressman, everybody cites their mother or their mother-in-law in that example. There is nothing in here that regulates or established tariffs for the rates for consumer services. There is nothing in here that says that a company can't have multiple levels of services. So your mother-in-law gets e-mail only, and the person next—

Mr. SHIMKUS. And will pay for that—

Mr. WHEELER. And will pay—

Mr. SHIMKUS [continuing]. Simple service—

Mr. WHEELER [continuing]. For that kind of—

Mr. SHIMKUS [continuing]. Versus what—

Mr. WHEELER. And the person next door wants—

Mr. SHIMKUS. Just so I can have a contrary debate, can I have Commissioner Pai or Commissioner O’Rielly address those before I run out of time, which I am about ready to do?

Mr. PAI. Well, a couple different issues, Congressman. One, I think the order explicitly opens the door to ex-post rate regulation. Anyone can file a complaint under Section 208, either with the Commission, or with any Federal court across the country, and that Commission or court will have to adjudicate whether or not the rate is just or reasonable. And the fact that, while on the surface you might allow for differential prices based on different services, nonetheless it is ultimately up to the caprice of any given Commission or court to decide after the fact whether the rate is just and reasonable, and that is the essence of rate regulation.

Additionally, you pointed out the incentive—or the effect that this would have on deployment. We have heard from companies that were responsible for the largest capital expenditures in our country when it comes to broadband, and companies that represent very small market areas, and they have told us that the impact of this kind of rate regulation, and other Title II regulations, is going to impede them from delivering some of those advanced services to anybody, whether it is a high bandwidth user or your mother-in-law.

Mr. SHIMKUS. With respect to my colleagues and everybody else, I will just yield back now. Thank you very much.

Mr. LATTA. Well, thank you very much. The gentleman yields back. The Chair now recognizes, for 5 minutes, the gentleman from Iowa, Mr. Loeb sack, for 5 minutes.

Mr. LOEB SACK. Thank you, Mr. Chair. Thanks to all of you for being here today. Great discussion about various issues. I guess I will start out by saying—I don’t want to be too presumptuous about this, but I think a lot of us up here have a lot of concerns about rural broadband in particular. I know that that is a big concern for all of you. I have 24 counties, and although the Committee Chairman reminded me that his district is a lot larger than mine—I don’t mean the current chair, I mean Chairman Walden, and we have got some from North Dakota, that is a lot bigger than my district too.

But I have 24 counties, and I have a lot of rural broadband carriers, a lot of small ISPs, as you mentioned, Commissioner Pai. But a lot of folks who need rural broadband for education, educational opportunities, for health opportunities—we are going to see a lot more tele-health, I think, in rural areas going forward. We are going to need that. For farmers, who have to access GPS so they can plant, and do it efficiently, and make a living, and for economic development, there is no question, and a lot of other reasons as well.

I have one quick statistical question for you, Commissioner Pai. You gave us some numbers as far as—I think it was municipal providers and small providers. Can you repeat those numbers? You had two numbers, I believe.

Mr. PAI. Sure. We received a letter from 43 municipal broadband providers on February 10, and we also received a letter from 24 small broadband providers, each of which serves less than 1,000 customers, on February 17.

Mr. LOEBSACK. Thank you for those numbers. How many small providers are there in the country? You received 20—from 24. Do you know what the number is total?

Mr. PAI. I am not sure of the total number—

Mr. LOEBSACK. We have a lot in Iowa alone.

Mr. PAI. Yes, I am not sure what the overall number is, but this is very representative—

Mr. WHEELER. About 800, sir.

Mr. LOEBSACK. About 800? Thank you.

Mr. PAI. We also—

Mr. LOEBSACK. Thank you, Mr. Pai. Thank you, Commissioner.

Chairman Wheeler, as I am sure you are aware, the FCC reauthorization bill draft that we had before us on this committee that has been offered by the majority would make the Universal Service Fund subject to the appropriations process. I have been here 9 years, my 9th year, and things are pretty dysfunctional here, as we all know, when it comes to the appropriations process.

In this current environment, where Congress seems utterly incapable, if you will, of passing a bill through regular order, we saw this with the last minute—with the DHS, tying USF funding, which is so important for rural areas, as you know, to the appropriations process, I think, does risk a lot of instability down the road. I know you may not be willing to weigh in on this, but my question to you is do you support attaching USF funding to the appropriations process?

Mr. WHEELER. Well, let me see if I can answer that, Congressman, by talking about what we hear from the kind of carriers you were talking about the small rural carriers. They say, “we need certainty. You are asking us to deploy capital, and we need to know that the capital from you is going to come behind that. We need to know with 5, 7 years of certainty that this money is going to be there.” That is the way the Universal Service Program has been run to provide that kind of certainty.

Clearly a serious concern is that if, all of a sudden, that certainty is impacted because the appropriations move like this, or don’t move—

Mr. LOEBSACK. Yes.

Mr. WHEELER [continuing]. And we are dealing with CRs, or whatever the ability of these rural carriers to make the investments that are necessary to provide service in high cost areas will be significantly impaired.

Mr. LOEBSACK. Not to mention putting a cap on such a fund as well, which I think is something that is called for as well. This is just a really huge concern for so many of us, the rural broadband issue, as I mentioned. And I have had concerns in the past about how the USF is administered as well.

I want to make sure—and I would be happy to hear from any of you here, I want to make sure that the USF fund actually goes to where it is supposed to go as well, and that those folks who can access that, and provide that kind of broadband that is necessary in those rural areas can have access to those funds. Because we also know that a lot of those folks are the ones who are paying into it in the first place, and I have just heard complaints that sometimes the funding doesn’t come back to them, they feel as though

they are being disproportionately put upon, if you will, in terms of contributing to that fund, and then not getting back, you know, in a proportionate way what they have been putting into it. Would any of you care to respond to that?

Mr. WHEELER. So if I can pick up on that, Congressman? Particularly for the smaller rate of return carriers, we are going to be putting into effect this year a revision of the Universal Service Program for them. We are going to deal with the QRS, the hated regression analysis. We are going to come up with a model that says, "here is what you can base your business decisions on."

If I can pause for a self-interested commercial for a second, we do need those carriers to help us come together. The reason I knew there were 800 is because we hear multiple voices talking about what they need, and everybody sits in a slightly different position, and if the industry could come together and say, "here is a common approach," that would be very helpful.

Mr. LOEBSACK. Thank you.

Mr. WHEELER. I also need to correct the record on something that Mr. Pai said. He was talking about making a broad brush statement about small carriers. The NTCA represents these small carriers, has said—so the track records of RLEX rural carriers makes clear, Title II can provide a useful framework, and does not need to be an impediment to investment in ongoing operation of broadband networks. In a statement, the small rural wireless carriers also said that they will not object to this. So we have got to be careful that we don't haul out a handful of people and make great generalizations from it.

Mr. LATTA. The gentleman's time is expired.

Mr. LOEBSACK. Thank the Chair for indulging me—

Mr. LATTA. The Chair now recognizes for 5 minutes the gentleman from New Jersey, Mr. Lance, for 5 minutes.

Mr. LANCE. Thank you very much. Commissioner Pai, would you like to respond to that?

Mr. PAI. Thank you, Congressman, for the opportunity. I think, first, it is significant to remember that, number one, one of those folks who submitted the comments about Title II were conceiving of Title II in terms of just the last mile connectivity between the ISP and the customer. They had no idea, because the FCC never published the proposal, that this would go all the way to the far reaches of the Internet, including interconnection.

Mr. WHEELER. That is not correct.

Mr. PAI. Well, Mr. Chairman, please, if I could respond to the Congressman? Second, among the municipal broadband providers who—these are folks who, by definition, represent the public interest in their communities. Indeed, one of the municipal broadband providers was visited by the President himself in the weeks leading up to our vote. They themselves said, please don't fall prey to what they called the "facile argument" that Title II won't have an effect.

Third, I think it is important to remember that, with respect to the effect that Title II will have on investment and opportunity, none of these services have been subjected to Title II previously. At the very most you can make the argument that last mile connectivity was, but I think it is critical for us to remember that regulation does have an effect.

We have heard from members of the American Cable Association, from small ISPs, from municipal broadband providers, and we can all debate about the numbers. What is indisputable is that these providers have thrived with light-touch regulation, and I think that is part of the reason why just yesterday we heard from a major broadband provider, “we have benefitted from, essentially, government staying out of the Internet, and I am worried that we are now on a path to starting to regulate an awful lot of things on the Internet.” Who was that? That was Google’s Executive Chairman Eric Schmidt—

Mr. LANCE. Thank—

Mr. PAI [continuing]. In Washington.

Mr. LANCE. Thank you. Commissioner Pai, in your dissenting statement you state, I see no legal path for the FCC to prohibit paid prioritization or the development of a two-sided market, which appears to be the—objection by many to the Chairman’s proposal. The NPRM frankly acknowledges Section 706 of the Telecommunications Act could not be used for such a ban, and while the NPRM resists saying it outright, neither could Title II. After all, Title II only authorizes the FCC to prohibit unjust or unreasonable discrimination, and both the Commission and the Courts have consistently interpreted provision to allow carriers to charge different prices for different services. Could you elaborate on that—

Mr. PAI. Thank you for the question, Congressman. It has been textbook law since Title II and its antecedents were adopted, and this goes back to the 1880s, when—

Mr. LANCE. Yes.

Mr. PAI [continuing]. You are regulating railroads, that differential services could be assessed at different prices by common carriers. Extending that toward the Telecommunications Age, it has long been the case, as I pointed out in my dissent, that you cannot ban paid prioritization. And in that regard, I completely agree with the Chairman’s statement on May 20 of last year that there is, “nothing in Title II that bans paid prioritization.”

Mr. LANCE. Given that, how long do you think that this is likely to be litigated in the courts? And I ask that because businesses need certainty as to what the rules of the road will be long term.

Mr. PAI. I think whether you support or oppose the FCC’s order, the unfortunate aspect, everyone can agree on, is this will be litigated for a long time.

Mr. LANCE. And this goes first, I guess, to the District Court here in the District of Columbia? Is—

Mr. PAI. Well, it will depend on where a petition for review is filed. It could be filed in any of the regional courts of—

Mr. LANCE. Yes.

Mr. PAI [continuing]. Appeals. And then, if there are multiple appeals, it will have to be chosen by a lottery.

Mr. LANCE. And is it your opinion that this will eventually reach the Supreme Court of the United States?

Mr. PAI. I think it will. It presents a very substantial question, on which I could easily imagine the Supreme Court granting writ of certiorari.

Mr. LANCE. Commissioner O’Rielly, your views as to the length of a litigation?

Mr. O'RIELLY. I agree wholeheartedly with my colleague on this. This is a 3 plus year debate that we are going to have in the court system.

Mr. LANCE. Commissioner Rosenworcel, your views on that, please?

Ms. ROSENWORCEL. I believe we will see litigation, yes.

Mr. LANCE. And Commissioner Clyburn? And it is certainly an honor to serve with your father in Congress.

Ms. CLYBURN. Thank you, I appreciate that. I am 99.99 percent sure that bill will be a legal—

Mr. LANCE. So this is even purer than Ivory soap?

Mr. WHEELER. Wait a minute, I will go better than my colleague, OK? Because the big dogs have promised they are going to—

Mr. LANCE. I see.

Mr. WHEELER [continuing]. Their word.

Mr. LANCE. I do think that we need certainty going forward, and I am deeply concerned regarding that.

Commissioner Clyburn, in a speech you gave several years ago, you said, without forbearance, there can be no reclassification, and I believe you went on to compare it as peanut butter and jelly, salt and pepper, Batman and Robin. Would you have supported reclassification under Title II without forbearance?

Ms. CLYBURN. Without forbearance?

Mr. LANCE. Yes.

Ms. CLYBURN. One of the things that I think we did right was recognize the current dynamics of the day.

Mr. LANCE. Yes.

Ms. CLYBURN. This is not your father's or your mother's Title II. We forbore from 27 provisions, over 700 rules and regulations, so I am very comfortable in saying this is looking at a current construct, and that is you looking at me. My seconds are up. Thank you.

Mr. LANCE. Thank you. I think you should have compared it to Bogart and Bacall myself.

Ms. CLYBURN. That will be the next—

Mr. LANCE. Thank you very much, Mr. Chairman. I yield back my time.

Mr. LATTI. Well, thank you very much. The gentleman yields back. The Chair now recognizes the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. MCNERNEY. Well, I thank the Commissioners for your hard work on this. Regarding the litigation issue, is there any decision you could make whatsoever on net neutrality that wouldn't involve significant litigation?

Mr. WHEELER. I think you have just hit the nail on the head, sir.

Mr. MCNERNEY. OK. Just wanted to make sure about that. I believe most or all stakeholders believe that it is important to meet the big three of net neutrality, no throttling, no paid prioritization, and no blocking, but there is other stuff that might be controversial in your recent decisions. Anything that you want to bring up that might be of interest?

Mr. WHEELER. Thank you, sir. Actually, there are only four regulations in here: no throttling, no blocking, no paid prioritization, and transparency. You have got to tell the consumers what you are

doing, so they have a fair choice. The other thing that we do is to establish general conduct rule that says you will not harm consumers; you will not harm innovators and you will not harm the functioning of the Internet and the public interest.

Now, it is really interesting because people come in and say, "I don't know what that means." Well, that is exactly the way the FTC operates, and the way that the carriers have been saying, "well, let us take things away from the FCC, and give it to the FTC, because we like this case by case analysis better than somebody coming in and having a rulemaking." So we are not having a rulemaking that says we know best, this is the way you are supposed to operate. What we are saying is that there needs to be a judgment capability that says, "is there harm?" There needs to be the ability, if harm is found, to do something about it, but never to pre-judge, and always to be in a situation where you are weighing all of the interests.

Mr. MCNERNEY. OK. Commissioner Rosenworcel, does the FCC have the power to regulate broadband providers, consumer privacy practices that are unrelated to their phone services?

Ms. ROSENWORCEL. No. Not if they are unrelated to their telecommunications.

Mr. MCNERNEY. Right.

Ms. ROSENWORCEL. No.

Mr. MCNERNEY. No. Is that something that would be of value?

Ms. ROSENWORCEL. Well, obviously privacy is an important issue to all Americans, and privacy in the digital age is an evolving thing. Our statute, which dates back to 1996, involves customer proprietary network information under Section 222, and that is where the bulk of our privacy authority comes from, with respect to telecommunications services.

Mr. MCNERNEY. Are there enough engineers at the FCC to help you do your job?

Ms. ROSENWORCEL. I think we have terrific engineers at the FCC, but in revamping the agency, I think we should make it a priority to have more. It is clear that wireless technologies are exploding. The demand for our equipment authorization process is also multiplying exponentially. And if we had more engineers, I believe we would be in a position to help facilitate more innovation getting to the market faster.

Mr. MCNERNEY. Do engineers tend to stay out of the politics of the Commission, or are they like other human beings and want to get into it once in a while?

Ms. ROSENWORCEL. Well, that is a kind of metaphysical question. I am not sure I want to answer that one.

Mr. MCNERNEY. All right. Let us see. You mentioned that there should be greater use for the upper portion of the 5-gigahertz band. Could you expand that a little bit, please?

Ms. ROSENWORCEL. Absolutely. We benefit immensely from wi-fi in this country. About 50 percent of us use it to go online regularly in public places, and 60 percent of us use wi-fi at home. The bulk of our wi-fi activity takes place on the 2.4 Gigahertz band, but that place is getting mighty crowded. We also have spectrum in the five Gigahertz band that we use for wi-fi. Many of us, for instance, our home wi-fi systems are based on it. But only a portion of the five

Gigahertz band is dedicated to unlicensed and wi-fi services. We have got some other uses in there, and I think we should start studying those other uses, and find out if we can free up more spectrum in the 5-gigahertz band so more people have more access to unlicensed and wi-fi service.

Mr. MCNERNEY. Well, what are the physical limitations of the 5-gigahertz band? Line of sight, or what are the physical limitations?

Ms. ROSENWORCEL. So the easy way to describe it is the higher you go, you get more capacity, but it doesn't travel as far. So five Gigahertz is really good inside buildings, inside households. And as more of us use devices that are not tethered to a cord, having that functionality is really important.

Mr. MCNERNEY. Thank you. I yield back, Mr. Chairman.

Mr. LATTI. Thank you very much. The gentleman yields back. The Chair now recognizes the gentleman from Texas for 5 minutes.

Mr. OLSON. I thank the Chair, and welcome to all the Commissioners. Folks back home noticed that Commissioner Pai and Commissioner O'Rielly weren't at the rollout of the new rules on February 26 this past year. They have got some questions they want answered, and want to know what you guys would answer if you had been at that rollout.

I know there are claims about these Open Internet rules, that they do not violate the Fifth Amendment by "taking" broadband providers' property. The Commission states that the rules do not break the Fifth Amendment because they "actually enhance the value of broadband networks" by protecting innovation. If these rules enhance the value of these networks, as the FCC's majority claims, why do broadband providers large and small, wired and wireless, oppose the rules? Any thoughts, Commissioner Pai?

Mr. PAI. Congressman, thank you for the question. I think part of the reason why established broadband providers oppose these rules is that they have invested literally hundreds of billions, if not trillions of dollars since the inception of the Internet in reliance on the bipartisan consensus, started in the Clinton Administration, that the Internet would "remain unfettered from Federal and state regulation". That same combination of President Clinton and Congress agreed that access to the Internet would be an information service in Section 230 of the Act.

In reliance on that determination, a lot of these providers went to the capital markets, spent a lot of money, took a lot of risk, to build out what I consider to be the best Internet environment in the world. As Commissioner Rosenworcel has said, our Internet is the envy of the world. And part of the reason why they have a concern about regulatory takings is, under the leading case of Pension Benefit Corporation vs. Connolly, there is a question about whether reliance expectations have been disturbed by the exertion of these Title II regulations, and that is something that a court is going to have to work out and take very seriously.

Mr. OLSON. So they think it is taking it, it sounds like. Mr. O'Rielly, your thoughts, Commissioner O'Rielly?

Mr. O'RIELLY. So I would suspect that there will be an argument made and challenged on the Fifth Amendment, and the assumptions made by the Commission are likely to be put to test in court.

Mr. WHEELER. Congressman?

Mr. OLSON. Yes, sir. One question for Commissioner Pai, hold on a second, if I have some time, but I have got some questions my people back home want me to answer.

Commissioner Pai, let us talk about transparency, how the Committee works behind the scenes. You wrote in your testimony that your edits in the e-rate proceedings were rejected, and yet miraculously they came back when another Commissioner introduced those same edits. Is that true, false? Can you elaborate on what happened there?

Mr. PAI. Thank you for the question, Congressman. I put my own proposal for E-Rate on the table 2 years ago. When the FCC teed up its own proposal last year, I suggested, OK, I don't need to go with my proposal. Working within your framework, here are a number of suggestions that would get my vote. I was told no, a lot of these are all red lines, we don't want your vote.

One of the suggestions I had obviously didn't go to the core of the item. It said, I want to allow schools and libraries to be able to use e-rate funds for caching servers. Doesn't seem too ideologically troublesome to me, but that was rejected explicitly as what was "a red line". Miraculously, when the order was ultimately adopted, and when my colleagues on the other side suggested it, it was agreed to. Same thing on the incentive option. I made 12 different asks. I was told no to 11, and maybe on the 12th.

One of the ones that was deemed a red line was extending the comment deadlines, because we had put some very complex proposals on the table, we might want to understand what the public thought about it. I was told no, that was a red line, that would risk delaying the incentive auction. Lo and behold, now the Bureau on delegated authority has extended those very comment deadlines twice. These are just some of the pretty non-ideological proposals I have made that have been rejected.

Mr. OLSON. Is that standard practice?

Mr. PAI. It has not been historically. I can tell you that, based on my first year-and-a-half with the Commission, while I might have disagreed with some parts of an order that were ultimately adopted, nonetheless there was a spirit of collaboration and consensus that ultimately gained buy-in from all the Commissioners. And that, I think, ultimately really makes our product stand the test of time. It gains us legitimacy among the American public and gives us more insulation from litigation risk.

Mr. OLSON. One final question. There are some parties out there that have said this action has been essential because the Internet is so essential to our life, the American life, and that the current situation is outdated, and it must be changed. This is a change. Should that agent of change be you all, or Congress, the elected officials for the American people, our voices, as opposed to, not an offense, but five unelected Commissioners? I am going to go home today and take some heat, good and bad, about what has happened here. You guys will go home to your families and be OK. How about us being in control, as opposed to you all? Any thoughts?

Mr. PAI. Congressman, that is precisely why, when the D.C. Circuit rendered its decision last year, I said, without knowing how this would turn out, we should go to Congress for guidance. You wrote the Communications Act. You have updated it over the

years. You are the elected officials who should decide how the Internet economy should proceed. On a matter this important, with laws that essentially constrain our authority, we should turn to the experts, which is Congress.

Mr. OLSON. Constitution. Yield back.

Mr. LATTI. Thank you very much. The gentleman yields back. The Chair recognizes for 5 minutes the gentlelady from California.

Ms. MATSUI [continuing]. Mr. Chairman, I would like to yield my time, and we are going to switch our time.

Mr. LATTI. Well, in that case, the gentlelady yields her time to the gentlelady from New York.

Ms. MATSUI. Thank you.

Mr. LATTI. Five minutes.

Ms. CLARKE. Thank you very much, Mr. Chairman, and I would like to yield a few seconds to my Ranking Member, Ms. Eshoo.

Ms. ESHOO. Thank you for your time, appreciate it. To Commissioner Pai, as you went through the litany of your ideas, and you didn't get your way, welcome to the minority.

Ms. CLARKE. Thank you. Let me just ask a few questions of our distinguished Commissioners. And the first question is to Chairman Wheeler.

Chairman Wheeler, I am concerned about multilingual broadcasting alerts, and the FCC's urgency around this issue. In addition to 911 upgrades, what is being done to ensure that the EAS reflects the growing ethnic and language diversity of our nation?

Mr. WHEELER. Thank you, Congresswoman, I am glad you asked that question. Literally yesterday I was meeting with our public safety and security body that is an advisory group, and talking with them about the importance of updating EAS, and the recommendations that they have put out, insofar as making sure that those updates are communicated to all the parties. Yes, we have an EAS system that hasn't been updated since the Cold War. We have to fix it to represent not only new technology, but also increased diversity.

Ms. CLARKE. And I hope that we will make that a priority because, you know, with the challenges that we are facing, 21st century challenges of climate change, of flooding, of, unfortunately, terrorist attacks, it is becoming more and more of a pressing need, a current day need.

The next question I have to you has to do with the Section 257 report. Congress requires the FCC to report on market entry barriers every 3 years, but your latest report to Congress, the 257 report, was due December 31, 2012, and it is still forthcoming. Would you give us an idea, or share with us how the FCC will prioritize this as a process reform to ensure more diversity and inclusion in the media and telecom industries?

Mr. WHEELER. Thank you. This has been an item of contention. My colleague, Commissioner Clyburn, was moving this process forward when she was acting Chair. I think it is fair to say that it ran into some difficulties inside of the Commission amongst the Commissioners. She did an admirable and excellent job that I am attempting to pick up on, and to move forward on, because these kinds of issues are important to not only the future of how we build

out telecommunications, but the future economic opportunities and structure in our country.

Ms. CLARKE. Very well, I appreciate that. And 2 years ago I sent a letter to then FCC Chairman Julius Genachowski, asking that the issue of activated FM chips in cell phones be examined. I also understand that you, Chairman Wheeler, are interested in this issue. What progress has been made to ensure that my constituents have every tool at their disposal to receive life-saving information in the event of another terrorist attack, power grid outage, or weather emergency?

Mr. WHEELER. So FM chips are a great idea, and they are in an increasing number of phones. They bring with them a couple of technological challenges. One is antenna size. They need a bigger antenna to get the FM signal that that becomes an issue in a tiny device. They also can drain battery power. But they are increasingly showing up, consumers have the ability to purchase them, and some carriers specifically focus on them.

I think the broader question is whether or not the Commission should be forcing wireless carriers to activate these chips, or whether they ought to be leaving that to consumer choice. I know that broadcasters around the country are running commercials—

Ms. CLARKE. Yes.

Mr. WHEELER [continuing]. Saying write the FCC, write your Congressperson, and make them do it. I think this is something that is being resolved in the marketplace, and that we ought to monitor that, and watch what happens.

Ms. CLARKE. I appreciate it. I have a few more questions. I will submit them to the record, Mr. Chairman, but I thank you, and I thank all of you Commissioners for your hard work and diligence.

Mr. LATTA. Well, thank you very much. The gentlelady's time has expired. The gentleman from Illinois is now recognized for 5 minutes.

Mr. KINZINGER. Thank you, Mr. Chairman. Thank you all for being here. Thanks for serving your country, and spending all afternoon with us. We appreciate it. Hopefully not overly much longer.

Commissioner Pai, I have to tell you, when you were asked by Mr. Olson about your suggestions to the Commissioner were ignored, and then other folks made the same suggestion, and they were taken in, that was actually pretty mind blowing to me, to be honest with you. And, you know, the joke was made earlier, and I chuckled too, about welcome to the minority, but I hope the Commission doesn't become like Congress, because I think the intention of the Commission was not to be overtly partisan. That is Congress's job. We battle issues, we debate them. I mean, that is what happens. We look for compromise. I hope the Commission doesn't follow our lead on that.

Commissioner Pai, in your statement of dissent on the Open Internet Order, you spent some time talking about the procedure surrounding the Notice of Proposed Rulemaking. Specifically, you talked about how much the order changed from its initial creation, and stated that the standard is whether all interested parties should have anticipated the final rule, not that they could have anticipated the final rule. Could you explain a bit further the prob-

lems you see with what was originally proposed by the Commission, as compared to what was eventually adopted?

Mr. PAI. Thank you for the question, Congressman, and for the kind words about some of the bipartisan efforts I have made at the Commission to reach consensus. I think the problem with respect to notice is substantial. I think the FCC teed up, in May of 2014, a very different proposal from the one it ultimately adopted.

The May proposal, for example, was based on Section 706, and never mentioned such things as redefining the public switched network. It never mentioned the extent of forbearance, or even what specific sections would be forborne from. It never mentioned a whole host of other things, and I think the problem is that, once the FCC teed up this plan in—on February 5, and voted on February 26—a lot of the things in there, unfortunately, have not—there is no record sufficient to support them. Forbearance is the best example of that. There is no evidence in the record, certainly not on a geographic market basis, to support a finding sufficient to grant forbearance on a lot of these things.

And that is part of the reason why the FCC completely recast its forbearance analysis, created this new analysis that junked a lot of the previous FCC precedents in order to find forbearance. And I think there are going to be substantial legal problems with this.

Mr. KINZINGER. Thank you. Chairman Wheeler, earlier you said that if asked to regulate rates, that the Commission would make it clear that the Commission will not regulate retail rates on broadband. Would you agree that a prohibition on the Commission regulating broadband rates is consistent with your views?

Mr. WHEELER. So I have said repeatedly that we are not trying to regulate rates, and that, again, if Congress wants to do something in that—

Mr. KINZINGER. Sure.

Mr. WHEELER [continuing]. Regard, that is Congress's authority. I would—

Mr. KINZINGER. So, wait, you are not interested in, but what about the next FCC Commissioner? Do you believe that under Title II that they have the authority to regulate rates? Now, you—I mean, and I respect that you don't want to, but you have created something that will now be passed down through generations of FCC Commissioners.

Mr. WHEELER. Well, as I said in my earlier response, if this comes before us while I am there, I hope that, without pre-judging the issue, that we can build a record that will make it difficult for that to happen.

Mr. KINZINGER. But you could understand, then—

Mr. WHEELER. Congress clearly has the authority to do—

Mr. KINZINGER. You could understand—

Mr. WHEELER [continuing]. Like to—

Mr. KINZINGER. You could understand our concern, you know, again, we respect when you say, I have no intention of doing it. That is great. But you can understand the concern of Congress, where you implement a rule, and then, in essence, say, I don't have any intention of regulating rates, but I am not going to prevent—I mean, I, you know, the next—

Mr. WHEELER. So—

Mr. KINZINGER [continuing]. Commissioner could do it.

Mr. WHEELER. Yes. One of the things that we did was we patterned this after Section 332 and the regulation of mobile voice. For 22 years this exact same authority has rested at the Commission for mobile voice service and never been used.

Mr. KINZINGER. So if legislation that said, notwithstanding any provision of law, the Federal Communication Commission may not regulate the rates charged for broadband Internet access service, that would be consistent with that view?

Mr. WHEELER. That is what we are trying to accomplish.

Mr. KINZINGER. OK. Commissioner Pai, we have heard Chairman Wheeler assert that his decision to apply Title II to mobile broadband services will have no impact on investment because mobile voice service has been subject to Title II, and we have seen substantial investment in mobile voice under that regime. Do you agree?

Mr. PAI. I do not, Congressman, for a couple of different reasons. First, it is critical to remember that the reason rate regulation for mobile voice didn't occur was because the FCC, from the inception, determined that competition was sufficient in the voice marketplace so that there wasn't any need for rate regulation. Here, by contrast, the FCC explicitly finds that the broadband market is not competitive, so it explicitly opens the door to the kind of rate regulation that was not contemplated for mobile voice.

Secondly, with respect to mobile investment, one of the reasons why we have seen such huge investment since 2007 was because of the inception of the smartphone, and the huge increase in mobile data traffic that was generated as a result. Wireless carriers now, big and small, have to spend to keep up in terms of infrastructure and spectrum to deliver some of that mobile data traffic. Mobile data traffic has never been classified as a Title II service. That is what has driven mobile investment, not Title I's application to mobile voice.

Mr. KINZINGER. Thank you, and thank you all again for your service, and I yield back.

Mr. WALDEN. Thank the gentleman. We now turn to the gentlelady from California, Ms. Matsui, for—

Ms. MATSUI. Thank you, Mr. Chairman. I want to thank you, Commissioners, for being here. Question for Commissioner Rosenworcel. One of the keys to innovation is spectrum, and more spectrum, and I believe we need a national spectrum plan, actually, a plan that considers both licensed and unlicensed spectrum. Now, you have done a lot in this space, I know, so can you share with us briefly some of your ideas to generate revenue from spectrum sharing, and the ways to incentivize Federal agencies to relocate?

Ms. ROSENWORCEL. Thank you for this question, I know, along with Congressman Guthrie, you have done a lot of work in this area. The fuel for our wireless revolution is spectrum, and if we want to have a modern spectrum economy, we are going to need a more consistent spectrum pipeline. Today, as you probably know, when we need more airwaves for commercial mobile use, we knock on the door of Federal authorities—

Ms. MATSUI. Yes.

Ms. ROSENWORCEL [continuing]. And we beg, coax, and cajole, and over time they will give us some scraps. And then Congress will direct those Federal authorities to clear out of that spectrum, relocate, and then you will ask the FCC to auction off those airwaves. This process is slow, it is clunky, it is not reliable, and it is not the pipeline that a modern wireless economy needs.

That is why I think it is really important that we develop a system of structured incentives for Federal spectrum authorities so that, when we try to secure more airwaves for commercial use, they see benefits in reallocation and not just loss. That could, obviously, include anything from changes in their budgets to benefits through the appropriations process, to the ability to actually secure what sequestration might have taken away. But in any event, I think that this type of pipeline would actually make our spectrum markets more effective, fast, and efficient.

Ms. MATSUI. Well, thank you very much for those comments. Chairman Wheeler, I have a question for you.

Mr. WHEELER. Yes, ma'am.

Ms. MATSUI. I remain very concerned about the Stingray surveillance devices that are used by a number of local law enforcement agencies, without which appear—there doesn't seem to be any Federal oversight, and the public should actually have more access to the information about the Stingray device, including what it is being used for, its surveillance capabilities, and who has access to the sensitive information that it collects. And despite some assurances to the contrary, it is unclear to me, and many others, how the Stingray device does not collect data on innocent Americans.

And so, Mr. Chairman, in August you announced the creation of a task force on the Stingray device and similar technology. I would like to know the status of this task force, and why haven't we seen anything come out of it, and what—a series of questions—and what you are doing to address the real concern about the lack of oversight over this device.

Mr. WHEELER. Thank you, Congresswoman. The task force did look into the situation, and what we found was as follows: our jurisdiction, and our authority, is to certify the electronics and the RF components for such devices for interference questions, and that if the application was being made in conjunction with law enforcement, then we would approve it. This is for the technology. This is not for who buys it.

Ms. MATSUI. Right.

Mr. WHEELER [continuing]. In general, we would approve it. And from that point on, its usage was a matter of law enforcement, not a matter of the technological question of whether or not a piece of hardware interfered with other RF devices.

Ms. MATSUI. So you are saying that it is out of your jurisdiction, and we have to go to other Federal agencies, including law enforcement? Because I am concerned about the device being sold on the market, or over the Internet, to non-law enforcement organizations, or the general public. So this is something we have to follow up with law enforcement, Federal law enforcement?

Mr. WHEELER. We would—on the broad issue, it is follow up with—I think that we would have enforcement jurisdiction in an

unauthorized use of an RF device if, in fact, it were being sold illegally.

Ms. MATSUI. OK. Thank you. I just want to bring up another issue here. More consumers, particularly the millennials, are opting for online subscriptions to buy the TV channels and programming content they want, and we are really clearly seeing the market react. HBO and Apple streaming agreement, CBS is offering monthly online subscriptions, and on and on.

I really think this is the future, and no doubt it is a complex issue, however, cable video is going IP, and soon the consumer will be basically paying for bandwidth, and we should look for ways to empower the consumer to be able to pay for programming they want to watch. So I think this is something our subcommittee should explore moving forward in a bipartisan manner, and I just put that out there, and I will yield back the balance of my time.

Mr. WALDEN. Gentlelady yields back the balance of time. Chair recognize the gentleman from Florida, Mr. Bilirakis, for questions.

Mr. BILIRAKIS. Thank you. Thank you, Mr. Chairman, I appreciate it. And I want to thank the Commission for their patience today, and also for their testimony.

Mr. Chairman, Chairman Wheeler, there was an unfortunate accident in the Tampa Bay area, the area that I represent in Congress, last April involving Mr. Humphries. It seems that he had a powerful jammer in his SUV, powerful enough to jam local law enforcement radios and calls to 911. He had been doing this for over 2 years. When a local cell phone company reported interference, the field agents in the Tampa office quickly tracked him down, and ended the significant threat to the safety of the folks in the Tampa Bay area.

It is my understanding you are planning to close this enforcement office in my area. As a former chairman of the Homeland Security, Emergency Preparedness, Response, and Communications Subcommittee, I have a few questions. How many offices, if you are closing any, do you plan to close, sir?

Mr. WHEELER. Sixteen.

Mr. BILIRAKIS. Sixteen? Will the job slots say from the Tampa Bay area be moved to the Washington, D.C. area, yes or no?

Mr. WHEELER. No.

Mr. BILIRAKIS. OK. Are you closing the field offices and laying off staff to support the Enforcement Bureau's new work under the net neutrality order?

Mr. WHEELER. No. We are doing it to increase productivity. What we are finding is it costs two to three times what a centralized operation would cost, that we have got too many people doing too few things in a specific area, not meaning there aren't issues there, but that we can get greater productivity if we follow the kind of model the FAA has been doing, where you have strike forces. So we would leave in place, in Tampa, for instance, necessary equipment, and would bring people in out of the Miami office to deal with the kind of situations that you are talking about, and that is a more cost efficient way of accomplishing the kind of goals you are talking about.

Mr. BILIRAKIS. Florida is a big state, sir. According to the budget request, page 50, the agency will preserve the integrity of public

safety communications infrastructure by taking action on 99 percent of complaints of interference to public safety communications within 1 day. Will you commit to ensuring that this metric has been met historically according to the performance report the Commission has issued over the years? Will you commit that this metric will be met—

Mr. WHEELER. We believe that we can do this without a diminution in quality, sir.

Mr. BILIRAKIS. OK. Will you provide the committee a quarterly report detailing the Enforcement Bureau's success in meeting that metric, including a list of actions taken through the remainder of your Chairmanship, sir?

Mr. WHEELER. Good idea.

Mr. BILIRAKIS. OK. Very good. What do you want me to tell the deputies—I know you talked about it. If you can elaborate a little bit more, what would you like me to tell the deputies and other first responders in the Tampa Bay area who may be in danger? This is a very important issue, as you know, public safety, by the delayed response inevitable, and losing an Enforcement Bureau field office, which, again, Florida is a big state, and I know other members probably have questions with regard to the offices that are being closed, 16 nationwide.

Mr. WHEELER. So I think the reality that we face is that we have a flat or diminishing budget, we have unfunded mandates imposed by the Congress, and we have to say, "how can we increase efficiency?" Do I want to close these offices? I don't want to hear what you are saying, I don't want other folks who are representing areas that are going to lose offices, and hear their complaints. But I have got a fixed amount of dollars to work with.

Mr. BILIRAKIS. I will go on—

Mr. WHEELER [continuing]. So the question becomes how do you become efficient? And that's what we're trying to do.

Mr. BILIRAKIS. Thank you. Commissioner O'Rielly, how do we, the United States, have any credibility telling other countries, like China or Iran, not to control network management practices within their borders if we are taking large steps in that direction, with the recent overreaching broadband reclassification?

Mr. O'RIELLY. So I think there is an extreme trouble that we are setting our stage by passage of this item on net neutrality. I think it sends the wrong message internationally. That matches up with my conversations internationally, when I went to both Spain recently, and I was in South Korea for the ITU. They are interested in engaging on issues of the broadband. They would like to get as much involvement as they can.

Those regimes you speak of obviously have greater government control on the practices of Internet in their nations. So it is a bifurcated message that we were able to send before the passage of this item, that we shouldn't do it here, and you shouldn't do it there. Now we are saying, well, we are willing to do some things on regulating broadband, but you shouldn't do them over there, or that it is OK, acceptable practice across the world, which I think is just a terrible message for them to send—

Mr. BILIRAKIS. Mr. Pai, what are your thoughts on this issue?

Mr. PAI. Congressman, thanks for the question. I agree with my colleague, Commissioner O’Rielly, and I would associate myself with the State Department’s views 5 years ago, when they represented, “We are concerned that in some countries net neutrality may be used as a justification for blocking access for purposes of preventing unwelcome political, social, or cultural information from being disseminated to their citizens.” And I think this is a bipartisan issue on which the U.S. has historically stood together, and I hope, notwithstanding the February 26 order, that would continue into the future.

Mr. WALDEN. Gentleman’s time——

Mr. WHEELER. Congressman——

Mr. BILIRAKIS. Thank you.

Mr. WHEELER. Mr. Chairman, could I just say, for the sake of the record, could we submit for the record——

Mr. WALDEN. Sure.

Mr. WHEELER [continuing]. The full quote that was just excerpted by Commissioner Pai?

Mr. WALDEN. Absolutely.

Mr. WHEELER. Great. Thank you. Because it is really taken out of context.

Mr. PAI. It is not.

Mr. WALDEN. Yes. We now recognize the gentleman from Ohio, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. From the great state of Ohio——

Mr. WALDEN. Stop it.

Mr. JOHNSON. Chairman Wheeler, I want to tell you how honored I am that you have chosen to join with our Chairman in paying tribute to——

Mr. WHEELER. You——

Mr. JOHNSON [continuing]. Ohio State today.

Mr. WHEELER. You picked up on this, sir, the——

Mr. WALDEN. Is this button the one I use to mute?

Mr. JOHNSON. OK. Commissioner Rosenworcel, in your opening testimony, I want to associate myself with something you said. You said we rarely go anywhere these days without our mobile devices on us. I couldn’t agree with you more. I was in information technology for over 30 years, long before there was any such thing as the Internet as we know it today, and I submit that the reason we have these things is because we have had unregulated, by the Federal Government, Internet and information services, which has allowed for the innovators to blossom. So I agree with you.

Chairman Wheeler, this committee has requested a number of documents that have been denied under the claim of deliberative process privilege. For the deliberative process privilege to apply, an agency must show that a communication was a “direct part of the deliberative process, and that it makes recommendations or expresses opinion on legal or policy matters”. And in proceedings like the Open Internet proceeding, ex parte filings are required to disclose communications between the FCC and the executive branch, or its staff, if those discussions are, I quote, “of substantial significance and clearly intended to affect the ultimate decision”.

Now, I am trying to figure out how these two different concepts apply here. In withholding certain communications between the

White House and the FCC, you have asserted the deliberative process privilege. If those communications were relevant to the Commission's deliberation, several questions emerge. Weren't they subject to the Commission's ex parte rules? Are the contents of those meetings memorialized in any docket at the Commission? How could these conversations with the White House have been both a direct part of the deliberative process, but not have been of substantial significance in that proceeding? Those are questions that are rolling around in my mind. Now I will get to a question for you.

I know that you have indicated in your written testimony that you received no secret instructions from the White House. But, of course, secret instructions are not the standard for determining when ex partes are available. Here is my question. In the 10 meetings that you had with the White House in advance of the FCC's action on the Open Internet, is it your opinion that the only meeting that addressed the merits of the Commission's Open Internet proceeding occurred last November?

Mr. WHEELER. Yes, sir, and—

Mr. JOHNSON. Did you say yes?

Mr. WHEELER. Yes, and the 10 meetings, just to be clear, were not meetings that were necessarily on Open Internet. We had trade issues, we had national security issues, we had cyber issues, we had auction issues—

Mr. JOHNSON. But in the 10 meetings that came in advance of the FCC's action on the Open Internet, you are saying that there was no information or discussions of substantial significance and clearly intended to affect the ultimate decision, which would require the disclosure of that information?

Mr. WHEELER. There are—

Mr. JOHNSON. Is it your opinion that—

Mr. WHEELER. There are two parts here. One, you have—

Mr. JOHNSON. No, that is a yes or a no answer—

Mr. WHEELER. No, you correctly identified what the test—

Mr. JOHNSON. So is it yes or no?

Mr. WHEELER [continuing]. And I did not get instructions in those meetings.

Mr. JOHNSON. No, I am not talking about that. I said do they qualify under ex parte, or how do they qualify for both—I am asking you a question—

Mr. WHEELER. And there is an exemption—

Mr. JOHNSON. Mr. Wheeler, I am—my time.

Mr. WHEELER. And—

Mr. JOHNSON. How do they qualify under both? If they are in discussion with the White House, my goodness, that is the highest office in our land. I find that the American taxpayer does see that as significant and substantial. How can they not be significant and substantial, clearly intended to affect the ultimate decision, and yet you deny them under a deliberative process claim?

Mr. WHEELER. Well, there are multiple parts to that. You asked how. One is there were not instructions given to me. I have been on the record on that, and been clear. Second is that—

Mr. JOHNSON. That is not the determination.

Mr. WHEELER. I am about to—the determination also is that, specifically, interactions with Congress and the White House are

excluded from ex parte, and have been since 1991. But I am going beyond that, and saying that is a non ex parte conversation, if there was a conversation that was taking place in that kind of a construct, and two, that—I will even go——

Mr. JOHNSON. Under what basis?

Mr. WHEELER [continuing]. I got no instructions——

Mr. JOHNSON. Under what basis? I mean, you can't just make that up. The law says what is required to be revealed and what is not to be revealed, and a deliberative process privilege applies when you can show a direct part of the deliberative process, and that it makes recommendations, or expresses opinion in legal or policy matters, rather than substantial significance and clearly intended to affect the ultimate decision.

Mr. WHEELER. I am quoting the——

Mr. JOHNSON. Well, I am disagreeing with you, Mr. Chairman, and I think it is irresponsible that you are withholding information that rightfully should be openly disclosed to this Committee, and to the American people. And, Mr. Chairman, I have——

Mr. WALDEN. Gentleman's time——

Mr. JOHNSON [continuing]. Exhausted my time.

Mr. WALDEN. Chair now recognize the gentleman from New York, Mr. Collins, for 5 minutes

Mr. COLLINS. Thank you, Mr. Chairman. Before I get to my questions for Commissioners O'Rielly and Pai, one follow up to Mr. Johnson's question, Chairman Wheeler. There were 10 meetings, and we do understand there was, on the ex parte side, disclosure on one of those 10 meetings. It is my understanding that on the other nine meetings there was nothing of significance discussed relative to the FCC, where, under the rules of ex parte, that you should have, or would be required to otherwise disclose those. Is it true there was nothing disclosed on nine of the 10 meetings?

Mr. WHEELER. No, the test is——

Mr. COLLINS. No, I am not asking you for the test.

Mr. WHEELER. No, there is a——

Mr. COLLINS. Was there anything disclosed?

Mr. WHEELER. There is——

Mr. COLLINS. Sir, I am asking the questions.

Mr. WHEELER. OK.

Mr. COLLINS. Was there anything disclosed on the other nine meetings? That is a yes or a no.

Mr. WHEELER. I had no——

Mr. COLLINS. That is a yes or no.

Mr. WHEELER [continuing]. Instructions. No. I had no instructions.

Mr. COLLINS. Well, I guess I am befuddled that in nine of the 10 meetings in the White House there was nothing of any consequence discussed relative to the FCC that would require disclosure. I will take you at your word, and just say I am befuddled by that.

Now, one thing that we were clear about today is the importance of certainty. And Chairman Wheeler, more than anyone, stressed the importance to the providers in the Internet space of certainty, certainty, certainty, and I can't agree more, with my life in the private sector. Certainty drives investment and returns, and with certainty you invest in innovation. And I would say it is pretty obvi-

ous today, the way things have worked has been pretty good, the light touch.

We have the number one service in the world. The investments have been billions, and, as Commissioner Pai said, maybe trillions of dollars. We lead the world today. Now, here is my concern. We have also heard unanimous agreement by the Commissioners litigation is coming, and likely to take 3 years. It is guaranteed. Chairman Wheeler said guaranteed there is litigation coming for 3 years. Well, if that is not the definition of uncertainty, I don't know what is.

For the next 3 years the folks looking to invest and innovate in this world have to live under the ultimate uncertainty of which court is going to rule how, and when does it move, and what do you do? So, to me, there is a real issue here, a very genuine issue of inconsistency with the Chairman stressing importance of certainty, and then saying, and one thing is certain, we are going to court, which guarantees uncertainty.

So I guess, Commissioner Pai, I would like to say again, to me, lack of certainty is a wet blanket on investment. Lack of certainty is a wet blanket on innovation. And my worry is, with less innovation, and less investment, we will someday wake up and not be the leaders in the world relative to what we think and know is probably one of the most important aspects of where we are headed. Could you briefly comment on that, and perhaps take a minute, and then I would like Mr. O'Rielly to fill in the remaining time.

Mr. PAI. Thank you for the question, Congressman. I couldn't agree with you more that uncertainty is the bane not only of the private sector, but ultimately consumers, who won't get the benefit of some of that private sector risk. I will give you just two instances of uncertainty that this order generates.

First, with respect to the so-called Internet conduct standard, which lays out seven vaguely worded non-exhaustive factors under which the FCC is going to determine what is allowed and what isn't allowed. And the FCC, after the vote, conceded "we don't know where things go next". The FCC "will sit there as a referee and be able to throw the flag." The Electronic Frontier Foundation targeted this particular rule and said the problem with a rule this vague is that neither ISPs, nor Internet users, can know in advance what kind of practices will run afoul of the rule.

Second example, the Enforcement Bureau advisory opinion process. Nobody knows exactly how it is going to work. Commissioners aren't going to have the ability to have input into that. And when you pair the Enforcement Bureau advisory opinion process with this Internet conduct standard, essentially the entrepreneurial spirit of American is going to be funneled through this regulatory bottleneck, and nobody is going to know in advance until they get permission from Washington what is allowed and what isn't.

Mr. COLLINS. I couldn't agree more that the only thing certain is uncertainty for the next 3 years. Commissioner O'Rielly?

Mr. O'RIELLY. I couldn't agree with my colleague any more. I think he has hit it right on the head. I would say I was in St. Louis not but a couple months ago and talked to wireless ISPs, and talked about what could happen under this item, and what it would mean for their business. And these are the guys that are the

small guys. We talk about 800 other providers, well, these are 800 wireless ISPs trying to serve in the most rural parts of America, and they are stringing together networks under unlicensed bands, and they are asking for more spectrum, and they are like, what does this mean for me? And I am like, it means more paperwork, it means more compliance, it means you don't know what you can do for your business for a number of years. And they were just frustrated beyond belief.

Mr. COLLINS. Well, I share your concerns, and I think America will too, and we will have to see where that heads. Mr. Chairman, my time is up, and I yield back.

Mr. WALDEN. Thank the gentleman from New York, and our witnesses. And I have heard some of the same things from small Internet providers in my district. They are feeling like they are going to be overwhelmed by this, and so I am meeting with some of them as well.

I know Mr. Scalise is on his way here, the Whip of the House, so we will try to accommodate his questioning.

Ms. ESHOO. Mr. Chairman, I am going to have to leave. I have to catch a flight, and I don't know if that has an effect on—if I leave, can you keep the hearing open?

Mr. WALDEN. We can seek counsel on that. But, obviously, we should try to accommodate the third ranking member of the—

Ms. ESHOO. No, I know, but I—

Mr. WALDEN [continuing]. Of our committee, who is on his way.

Ms. ESHOO. We started at 11 o'clock, so, I mean, he could—

Mr. WALDEN. I—

Ms. ESHOO. He has had some time to get here.

Mr. WALDEN. I understand.

Ms. ESHOO. I am a patient person, but I don't want to miss my flight, so—

Mr. WALDEN. What time is your flight?

Ms. ESHOO. I have to go out to Dulles.

Mr. WALDEN. So while we—

Ms. ESHOO. It doesn't leave from the Rayburn horseshoe, unfortunately.

Mr. WALDEN. So while he comes in the door here—we are now going to let him get settled, but, as he is—first of all, if I could ask all of the witnesses there will be some follow-up questions. Some of them you have all taken down. Because of the nature of our work, we would like to have prompt responses to the questions. I know you have probably had questions from other Committees as well, I get that, but the extent to which you can respond promptly, that would be helpful. Thank you, Anna. And we would like your feedback on the draft legislation that we put out there. All of your feedback would be most helpful. It is not a rush job. We are trying to get this right, and we think it is very important.

So, with that, I would now recognize the gentleman from Louisiana, the Whip of the United States House of Representatives, allowing him to catch his breath fully, Mr. Scalise.

Mr. SCALISE. Thank you, Mr. Chairman, and I tested my 40 speed getting here, but I appreciate the Commissioners being here, coming to testify about their Commission, also about this net neutrality proposal that I know I have strong concerns about, and a

lot of my other colleagues have expressed real strong concerns about as well.

I guess when you get back to the basic question of what has worked so well with the Internet, and the technology community as a whole, somebody who graduated in computer science, who has worked in the technology industry, I have always felt that the reason that the industry has been so successful is because the Federal government hadn't figured out a way to regulate it, to slow it down. And then yet here you come with an answer to a problem that doesn't exist, a heavy handed role of government, and the FCC's traditional role has not been to have a heavy hand.

And this, when you look at the proposal that has come out, my goodness, I mean, over 300 pages of regulations. And this is just the first round, before the proposal is even been put into effect. I guess anybody is looking for a free and Open Internet, I am sure they looked to the over 300 pages of regulations from the Federal Government to start that process. It is not broken. Why is the Federal Government here to fix something that has been working incredibly well? Especially when you look at the role of Federal regulations over the years, and just what they have done to harm our economy.

I do want to ask you, Commissioner Pai, because you made some comments earlier about the potential taxes and fees that can come with this Title II classification, and when you look at Section 202 of the law, it clearly gives that ability for the FCC to get involved in regulating costs for the Internet. And so if you could share with me just what kind of impact this can have on both fees being implemented, higher prices that consumers will ultimately pay from this new classification?

Mr. PAI. Thank you for the question, Congressman. I think a multitude of fees and taxes are going to be levied on broadband in a way that is ultimately going down to the consumer's detriment. Just to give you one example, now that broadband has been reclassified as a telecommunications service, that order explicitly opens the door to billions of taxes and fees being assessed through the Universal Service Fund. So now, in addition to that line item you see on your phone bill which only applies to your voice, the Universal Service Fee, you are going to be paying a fee on broadband, and that will happen, I would imagine, in the next several weeks or months.

Secondly, and critically, there are all sorts of other fees that are going to be assessed. For example, currently a lot of broadband providers that had not been classified as telecom providers paid a lower rate for the equipment that they attached to the utility poles, known as pole attachments. They paid a rate under Section 224(d). Now, because they are all telecom providers, they will have to pay a much higher rate at Section 224(e), and smaller providers in particular will have to pay \$150 to \$200 million a year just for those higher pole attachment rates. Then you add on top of that the higher state and local property taxes that a lot of these companies will have to pay, because they are now telecom providers. All of these costs have to come out of somewhere, and it is going to be the consumer's wallet, and that is one of the reasons why I am concerned.

Mr. SCALISE. Yes, and we have seen this time and time again, that these kind of regulations, and ultimately these new fees and taxes that would be paid are ultimately going to be paid by consumers, by people that have been enjoying the benefits of the investments that have been made by private companies. This isn't the Federal Government investing. This is private investment, to the tune of billions of dollars.

I will read you this quote, and maybe I will let you answer it. "There is nothing worse for investment, innovation, job creation, all things that flow from investment, than businesses not knowing what the rules are." You want to comment on that?

Mr. PAI. I think that is, as I have pointed out many times, the bane of not just the private sector, but the consumer, to not know what is going to be allowed and what isn't. And it is exactly in that environment where the private sector is the least likely to take the risk, to raise the capital, to build the infrastructure that is going to connect Americans with digital opportunities.

And I believe, as you pointed out eloquently in your statement, that part of the reason why we enjoy the best Internet experience in the world is because we have had this historic bipartisan commitment, dating back to the Clinton Administration, that the Internet would be free from state and Federal regulation.

Mr. SCALISE. That quote, by the way, was Chairman Wheeler at his confirmation hearing. I do want to ask you, Commissioner O'Rielly, because you commented on this order that it will negatively impact edge providers. Of course, many of the edge providers have been proponents of these net neutrality regulations, but you have raised some concerns about how even they would be negatively impacted, people that even asked for this. So if you could comment on that?

Mr. O'RIELLY. Yes. A number of people have highlighted on this fact, is that the lines between an edge provider and a telecommunications provider under our new definition are blurring over time. And so today you may be an edge provider, tomorrow you may be something else. You may have multiple parts to your business, and that is problematic as you try to figure out how best to comply with our rules.

More importantly, I believe that the Commission is going to continue to push its regulations up the chain. And so today is about telecommunications providers, and we talked about that under our new definition. And then we are going to, we now are having a debate in terms of—we are going to have some kind of structure to deal with interconnection, or the middle mile, what used to be known as peering. In my conversation, we are bleeding right into the backbone of the Internet, and I think that only leads us to edge providers over time.

Mr. SCALISE. I see I am out of time, but I appreciate your answers, and hopefully this does go forward. But, with that, I yield back the balance of my time.

Mr. WALDEN. Gentleman yields back, and now that I know the rules only require two members of either party to be here, we could go five or six more rounds.

Mr. SCALISE. Let us go. I am sure they would love to stay around longer, and—

Mr. O'RIELLY. Could we order in?

Mr. WALDEN. I want to thank our witnesses. I know you have a tough job, and we may disagree, but we are all trying to do the right thing for the country, so thanks for testifying. Again, if you can promptly respond to our questions, that would be appreciated, and we look forward to your return visit in the not too distant future, we hope. So, with that, the committee stands adjourned.

[Whereupon, at 2:15 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF HON. FRED UPTON

Reauthorization of the Federal Communications Commission is long overdue as the agency was last reauthorized nearly a quarter of a century ago. A lot has changed over the last 25 years, and reauthorization provides an important opportunity to refocus the commission for the innovation era on its core purpose and responsibility to administer the policies set by Congress for the American people. I intend to see that we deliver.

The commission has an obligation to conduct its business in the open and in accordance with the law in the public's interest. The FCC's recent Open Internet proceeding, however, has been plagued by process failures. Very few people understood the extent of the FCC's new rules regulating the Internet until they were actually showcased by the FCC. And if press reports are accurate, nearly all of those who were looped in work at the White House. Impacted parties must be given the opportunity to review and understand the regulations the FCC proposes before they are adopted. That didn't happen here. Worse still, this is not the only proceeding that has raised questions of the FCC's process integrity.

In addition to the lack of transparency, I fear that the FCC has neglected other duties in favor of moving a politically motivated net neutrality decision. At last year's oversight hearing, I expressed my concern at the delay in completing the 2010 Quadrennial Review of Media Ownership rules. To date, the commission still has not done the statutorily mandated work and unfortunately, there are many more proceedings languishing at the FCC.

This reauthorization process also provides the opportunity to clarify the commission's jurisdiction. Of late, the FCC seems to be intent on expanding its authority to be the regulator of all things privacy. This is not the commission's role. Rather, it shares responsibility for privacy with the Federal Trade Commission. But the FCC's recent decision to reclassify broadband has taken broadband providers out of the FTC's jurisdiction. As we heard from the FTC at yesterday's hearing on data breach, this action has made consumers less safe.

The American people and our nation's economy deserve better and the commission has a lot of highly technical work ahead. These complex and difficult issues will require the best efforts of us all. I hope that we can work together to bring back an effective, transparent, and apolitical government agency that produces fair outcomes and good policy. Let's get the train back on the tracks.

March 18, 2015

Rep. Greg Walden
Chair
House Technology Committee
2125 Rayburn HOB
Washington, DC 20515

Rep. Anna Eshoo
Ranking Member
House Technology Committee
2125 Rayburn HOB
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

As racial justice and civil rights organizations, we write to express our support of the recent Federal Communications Commission decision to enact strong and enforceable Net Neutrality rules.

Our organizations are among the more than 100 racial justice and civil rights groups that have called on the FCC to pass strong Net Neutrality rules using its Title II authority. It is critical that the FCC have the legal authority to protect the online digital rights of communities that historically have been marginalized in our society. With such protections, our communities have been able to better participate in our democracy, tell our own stories, strive towards educational excellence and pursue economic success.

We are deeply troubled by Congressional efforts to overturn the Net Neutrality order and to strip the Commission of its legal authority to enforce its Net Neutrality protections under Title II of the Communications Act. This includes efforts to prevent the Commission from enforcing Net Neutrality by defunding the agency.

The Net Neutrality debate has centered on whether the Commission has the authority to enforce Net Neutrality rules that prevent Internet service providers (ISPs) from blocking or discriminating against online content. A federal court ruled last year that the Commission could not ban such online discrimination without reclassifying ISPs as common carriers under Title II. Therefore, the FCC cannot protect Internet users from ISP practices such as blocking, throttling and other types of discriminatory conduct that could arise as the marketplace and technology evolves, without asserting its authority under Title II.

This is why more than four million people have called on the FCC to use its Title II authority to adopt strong and enforceable Net Neutrality rules over the past year.

Accordingly, we respectfully request that you join the millions of digital equality champions and support the FCC's historic decision, and reject any efforts to overturn or weaken the decision. You will be in good company, on the right side of public opinion and history.

Sincerely,

Alliance for a Just Society
Black Alliance for Just Immigration
Black Lives Matter
Center for Community Change
Center for Media Justice

Center for Popular Democracy
Center for Rural Strategies
Center for Social Inclusion
ColorOfChange.org
Community Justice Network for Youth
Demos
Dream Defenders
18 Million Rising
Ella Baker Center
Forward Together
Free Press
Hispanic Association of Colleges and Universities
Latino Rebels
Media Action Grassroots Network
Mexican American Opportunity Foundation
Million Hoodies Movement for Justice
Movement Strategy Center
National Domestic Workers Alliance (NDWA)
National Association of Hispanic Journalists
National Association of Latino Independent Producers
National Economic & Social Rights Initiative
National Guestworker Alliance
National Hispanic Media Coalition
National Institute for Latino Policy
National Latina Institute for Reproductive Health
National LGBTQ Task Force Action Fund
National People's Action
News Taco
Nuestra Palabra: Latino Writers Having Their Say
Our Walmart
Philanthropic Initiative for Racial Equity
Presente.org
Radio Bilingüe
Race Forward
Right to the City Alliance
Roosevelt Institute Campus Network
The Librotraficante Movement
The Praxis Project
United Church of Christ, OC Inc.
United We Dream
Voices for Internet Freedom



February 24, 2015

The Honorable Tom Wheeler
 Chairman
 Federal Communications Commission
 445 12th Street S.W.
 Washington, DC 20554

Subject: *Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269
 Expanding the Economic and Innovation Opportunities of Spectrum through
 Incentive Auctions, Docket No. 12-268*

Dear Chairman Wheeler:

The undersigned nonprofit groups, most members of the Public Interest Spectrum Coalition (PISC), are concerned that the Commission and Congress may draw the wrong lessons from the recently-completed AWS-3 auction. The auction made headlines by generating \$41.3 billion in net revenue for the government but, we fear, will shortchange consumers who want more affordable and more innovative mobile broadband services. The two dominant wireless carriers with the deepest pockets—AT&T and Verizon—walked away with 20 megahertz of the paired AWS-3 spectrum in most major markets and left the rest of the industry with only a smattering of paired blocks and 15 megahertz of low-value, unpaired, uplink spectrum.¹ DISH, the one

¹ AT&T or Verizon acquired almost all the valuable, paired 20-megahertz J Block spectrum. When one of the two dominant carriers did not purchase the 20-megahertz J Block, the “losing” dominant carrier generally acquired both the H and I blocks which, when combined, also provide 20 megahertz of spectrum. AT&T, for example, acquired at least 20 megahertz of paired spectrum in every one of the 40 largest markets, while Verizon acquired at least 20 megahertz of paired spectrum in more than half of those top markets. Only roughly 20% of the time in the top 40 markets did one of two DISH-affiliated designated entities acquire the H and I Blocks or the J Block. The majority of DISH’s spectrum acquisitions occurred in the low-value, unpaired, uplink blocks, A1 and B1. DISH’s

other bidder to acquire substantial new spectrum, is not a mobile broadband provider. Excluding DISH, the two dominant carriers acquired more than 90 percent of the AWS-3 spectrum, virtually shutting out competitive carriers.

These results provide three valuable lessons for spectrum policy:

Lesson 1: The Commission Should Move Quickly to Provide More Broadband Spectrum – Both Licensed and Unlicensed. High prices in the AWS-3 auction indicate that any unnecessary delays in making spectrum available will exacerbate supply shortages while imperiling competition and economic growth. Accordingly, the FCC should re-double its efforts to ensure the upcoming 600 MHz incentive auction occurs in early 2016 as planned.² Record-high prices for AWS-3 spectrum also highlight the reality that there is very little additional low- and mid-band spectrum that can be reallocated for auction any time soon. This makes the Commission’s immediate adoption of its proposed three-tier, small-cell approach to shared use of the federal 3.5 GHz band as important as any auction. Extending this approach to dynamic spectrum sharing and more open, unlicensed access to other underutilized bands is the best long-term path to promote spectrum abundance and thereby ubiquitous connectivity at affordable prices.

Lesson 2: Auctions Should Maximize Consumer Benefits, Not Government Revenues. While some have characterized the \$45 billion in bids and the \$41.3 billion in net AWS-3 auction revenue as a victory, it will likely harm consumers twice over. Revenues from the AWS-3 auction ultimately get passed along as higher prices to wireless broadband consumers. It also sucks investment capital out of the highly-productive telecom sector. And to the extent that bids based on motivations of foreclosure and speculation add to the steadily increasing consolidation of spectrum holdings by AT&T and Verizon, the auction undermines mobile market competition as well.

The FCC should focus on competition policy, rather than arbitrary revenue goals. A less competitive wireless market risks irreversible damage to the “virtuous circle” of declining prices, increasing consumption, expanded services, and increased investment in wireless broadband that competition has generated. When it comes to spectrum policy, the FCC should focus first and

acquisitions of paired spectrum largely focused on the single, 10-megahertz G Block. DISH acquired 100% of the G Block spectrum in the top 10 markets and 85% of the G Block spectrum in the top 40 markets. With a few notable exceptions, therefore, Verizon and AT&T split the paired spectrum evenly at 20 megahertz, continuing a pattern of parallel accommodating conduct seen in prior spectrum auctions and secondary-market transactions. The continued parity in spectrum holdings between Verizon and AT&T in the nation’s top markets promises to empower the two dominant providers to raise prices while weakening their incentive to offer consumers better terms. *See, e.g., U.S. Dep’t of Justice & Fed. Trade Comm’n, Horizontal Merger Guidelines (2010), available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf>.*

² *See Kagan Media Appraisals, “Can the FCC Attract a Full House for the 2016 Broadcast Incentive Auction?” (Feb. 19, 2015) (“[t]he dominant carriers might welcome a delay in the Incentive Auction to the degree it would perpetuate a longer dry spell without low-band spectrum for the third- and fourth-ranked carriers and allow the leaders to further exploit their overweighting in low-band spectrum”).*

foremost on the public interest, not the public fisc – just as the Communications Act requires it to do.³

Lesson 3: Competitive Safeguards in Auctions Are Essential to Protect Consumer Choice. The AWS-3 auction incorporated no competitive safeguards and, as a result, helped entrench AT&T's and Verizon's dominance of the wireless broadband industry.⁴ Without more meaningful protections against spectrum concentration than the FCC has adopted so far, AT&T and Verizon can use future auctions to prevent other carriers from gaining access to the spectrum necessary to compete.⁵ The upcoming 600 MHz incentive auction provides what may be the FCC's final opportunity to prevent the two dominant carriers from monopolizing the low-band spectrum needed to compete in a broadband data world. Because AT&T and Verizon already control nearly three-quarters of the nation's uniquely valuable low-band spectrum, ***only a spectrum reserve of 40 megahertz or more*** can prevent the two dominant carriers from using the 600 MHz auction to extinguish the handful of wireless broadband competitors that continue to offer consumers an alternative for wireless voice and data services.⁶ It is difficult to see how the non-dominant carriers can effectively compete in a 4G marketplace without sufficient access to low-band spectrum that enables in-building penetration and economic wide-area coverage. The Commission has more than satisfied its obligation to finance FirstNet and should now focus on its obligation to design its auction policy to promote competition and the public interest, irrespective of total auction revenue.

* * * *

The supply of wireless broadband spectrum has wholly failed to keep pace with explosive consumer demand for new wireless broadband applications. This is primarily the result of a fixation on auctions and an overly cautious approach to embracing the potential of unlicensed

³ See 47 U.S.C. § 309(j)(3) (requiring the FCC to adopt competitive bidding rules that, among other things, “avoid[] excessive concentration of licenses” and “disseminat[e] licenses among a wide variety of Applicants”).

⁴ Although DISH won substantial spectrum, it did so primarily by exploiting DE bidding credits. As consumer advocate Harold Feld observed: “For DISH to make even a quasi-decent showing in the auction, it needed to use a [\$3 billion] bidding credit *AND still spend more than \$10 billion*. . . . [T]he fact that DISH could “save” \$3 billion is not so much a scandal as a flashing red-light indicator that without regulatory intervention we can forget about any kind of competition in the wireless industry.” Harold Feld, “DISH, the Spectrum Auction, and the Wrath of Commissioner Pai,” Public Knowledge Blog (Feb. 3, 2015), available at <https://www.publicknowledge.org/news-blog/blogs/dish-the-spectrum-auction-and-the-wrath-of-commissioner-pai>.

⁵ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993: Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT 13-135, Seventeenth Report, DA 14-1862, ¶ 62 (WTB Dec. 18, 2014) (“*17th Mobile Competition Report*”) (“We agree with the Antitrust Division of the DOJ, one of our nation’s expert antitrust agencies: there is a risk of foreclosure in downstream wireless markets”); *Ex Parte* Submission of the United States Department of Justice, WT Docket No. 12-269 (Apr. 11, 2013).

⁶ See *17th Mobile Competition Report* ¶ 92 (“For robust competition to exist and persist, multiple competing service providers must have access to a sufficient mix of low-and high-band spectrum to be able to enter a marketplace or expand output rapidly in response to any price increase or reduction in quality, or other change that would harm consumer welfare.”).

and other dynamic spectrum sharing technologies. Nonetheless, auctioning the 600 MHz spectrum as scheduled in early 2016 can help mobile providers satisfy consumer demand. And adopting competitive safeguards that avoid the continued foreclosure of low-band spectrum by the two dominant carriers will help arrest the damaging trend toward consolidation while promoting consumer choice, encouraging investment, and accelerating innovation for all Americans.

We look forward to discussing further, with you and your colleagues, options to increase mobile market competition and consumer welfare.

Respectfully submitted,

**Open Technology Institute at New America
Public Knowledge
National Hispanic Media Coalition
Engine
Center for Media Justice
Common Cause
Writers Guild of America – West
Institute for Local Self Reliance
Benton Foundation**

cc: Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Rielly

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

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

June 1, 2015

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

Dear Chairman Wheeler:

Thank you for appearing before the Subcommittee on Communications and Technology on March 19, 2015, to testify at the hearing entitled "FCC Reauthorization: Oversight of the Commission."

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

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, June 15, 2015. Your responses should be mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Charlotte.Savercool@mail.house.gov.

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

Sincerely,



George E. Walden
Chairman
Subcommittee on Communications and Technology

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

Attachment

123



Office of the Director

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

July 21, 2015

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

Dear Chairman Walden:

Enclosed please find responses to Questions for the Record submitted for Chairman Tom Wheeler regarding his appearance before the Subcommittee on Communications and Technology on March 19, 2015, at the hearing entitled "FCC Reauthorization: Oversight of the Commission."

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael Dabbs".

Michael Dabbs,
Director

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

Enclosure

Attachment 1—Additional Questions for the RecordThe Honorable Greg Walden

1. Chairman Wheeler, you recently said the Commission has finally begun the process of gathering necessary special access data to examine competition, but you “are not idly waiting for the data to come in” and want to move ahead now on special access terms and conditions. I understand your recent data request was a massive effort, consuming tens of thousands of hours. Why would you initiate a data request and then choose to move forward without the benefit of the data?

Response: The special access proceeding is multi-faceted. There are certain actions the Commission can take that are not dependent on analysis of the industry-wide data collection, and we are exploring all those options as part of our broad effort to address our special access rules comprehensively.

2. I understand that Ethernet and fiber services are better, faster technologies rapidly displacing demand for special access services. A recent analyst report points out that there are many Ethernet providers, and cable companies are major competitors. Time Warner Cable, Comcast and Cox are three of the top seven Ethernet providers – and they specifically market their services as replacements for special access. Doesn't this demonstrate a healthy, competitive market?

Response: We recognize there are a number of competing service providers in the nation at large. The FCC has previously found, however, that competition for special access services appears to occur at a very granular level, in a geographic area much smaller than the entire nation. One area may have robust competition while another depends upon a sole incumbent provider for service. The Commission's comprehensive analysis of the data in the special access proceeding will help determine when and where competition is sufficient to constrain special access rates to just and reasonable levels.

3. According to a recent press report the number of enforcement actions against pirate radio operators is the lowest it has been since 2005 -- less than 200 in 2014 and it is the first time since 2009 that less than \$100 thousand in penalties were levied.

For each Fiscal Year 2009, 2010, 2011, 2012, 2013, 2014 identify the number of complaints received formally or informally by the FCC regarding pirate radio operations. For each of those years identify the number of pirate radio operations the FCC confirmed were broadcasting. For each pirate radio operation identified in each of those years identify the frequencies being used and location of the unauthorized transmission. For each of those years identify the number and type of enforcement action taken by the FCC to address these unauthorized transmissions. For each transmission subject to enforcement action identify when the illegal transmissions ceased. Identify those instances in which multiple actions were taken against the same entity over the course of the FY2009-2014 period. For each of those years identify the location of each pirate radio operation known to be broadcasting by the FCC and against which no action was taken within 30 days.

Has any guidance or instruction been given by the Office of the Chairman or Enforcement Bureau to Commission staff to not enforce the statute or commission rules with regard to unlawful operation? Identify each instances in which a pirate radio operation was alleged or known by the FCC to be transmitting and no enforcement action was taken within 30 days. For any instances, identify the location of the illegal operation and explain why no action was taken to address the unauthorized transmissions.

Response: The Commission is committed to the strong enforcement of the rules prohibiting unauthorized radio broadcasting. The Office of the Chairman and the Enforcement Bureau (EB) have not given guidance or instruction to Commission staff to not enforce the statute or Commission rules with regard to unlawful operation. Indeed, earlier this year, EB conducted “pulse enforcement” initiatives in two of the cities with the worst pirate radio problems – Miami and New York. Over several weeks, EB field agents issued 23 enforcement actions against pirate radio operators and the landlords housing their operations and conducted nine on-site station shut downs. This fiscal year, the Bureau has issued more than 100 enforcement actions related to pirate radio activity.

The Commission’s resources are limited, however, and field agents handle many other important issues, including radiofrequency interference problems affecting thousands of consumers or public safety. Indeed, in the current flat budget environment where the Commission’s staffing is at its lowest in 30 years, pirate enforcement presents a particular challenge because of the heightened resources required to investigate these cases. Many pirate investigations require overtime pay because the pirate operators only broadcast on weekends or overnight. In addition, some pirate operators broadcast from high-crime neighborhoods, thereby requiring field agents to go out in pairs or obtain support from local law enforcement.

In mid-2014, in recognition of the budgetary and personnel constraints on EB, the entire Bureau began an effort to prioritize its work to focus on the most egregious violations of the Communications Act and the Commission’s rules. With regard to pirate radio enforcement, field offices focused their pirate enforcement efforts on the most egregious pirate operators, such as those operating at high power, causing interference, or running advertisements. Through this focused effort, the Bureau has targeted its resources in the most efficient way towards keeping the worst violators off the air. Further, this fiscal year, the FCC has been working to identify new policy and enforcement solutions to pirate radio. In recognition that pirate radio cannot be solved exclusively through enforcement, the Commission has worked with outside stakeholders, including the National Association of Broadcasters (NAB), to develop policy options to respond to pirate broadcasting. Indeed, on June 29, 2015, the Commission held a “pirate radio summit” with NAB and other broadcaster representatives to discuss pirate radio enforcement and policy ideas.

The data below are based on EB records beginning in January 2012, when the Bureau converted to a new database during FY12. We note, however, that some of the questions seek information that is either unavailable or that the Bureau does not track in a searchable format. Thus, EB does not independently track confirmation of pirate operations, the frequencies at issue, the location of unauthorized transmissions, or when transmissions ceased. In addition, the data do not reflect the full scope of the Bureau’s pirate enforcement work, *e.g.*, instances where agents obtained

cooperation from landlords, received voluntarily surrendered broadcasting equipment, assisted with *in rem* seizures by U.S. Attorney's Offices, or supported local law enforcement initiatives against pirate operators. Regarding the other questions, however, we have provided the available data requested.

Number of complaints received formally or informally by the Enforcement Bureau regarding pirate radio operations.

	FY-12 *	FY-13	FY-14	FY-15 (as of 6/22/2015)
Total Complaints	432	472	402	280

Number and type of pirate radio enforcement actions:

	Field Issued Pirate Radio Actions				
	FY-12	FY-13	FY-14	FY-15 (as of 6/22/2015)	Total Issued Actions
Citation	6	1	0	0	7
NOUO	66	227	137	86	525
NOV	0	4	0	0	4
Verbal Warning	0	5	9	4	18
Warning Letter	37	46	30	16	129
Forfeiture Order	6	19	13	3	43
NAL	22	9	11	1	46
MO&O	1	0	2	0	3
Order	2	0	0	0	2
TOTAL	140	311	202	110	777

Instances in which multiple actions were taken against the same entity over the course of the period.

Since January 2012, the Enforcement Bureau has acted 104 times against parties that had received an earlier enforcement action for unlicensed radio broadcasting.

4. Congress gave the Commission a statutory mandate to protect specific aspects of consumer privacy when it directed the do-not-call list to be established. Based on the Commission's quarterly complaint reports the FCC has received about 224,000 do-not-call complaints from 2010 – 2013 – almost 75,000 in 2013 with a trend upward. Overall TCPA complaints for that period total nearly 820,000.

In previous submissions to the Committee you told us that generally the FCC needs to issue a citation before it can issue a monetary penalty against an entity violating the TCPA rules. Yet in response to previous inquiries you have informed us that the Enforcement Bureau has issued only 18 citations – 4.5 citations on average a year over the 2010 - 2013 period. In

contrast to the level of this enforcement activity your recent data show that the total number of TCPA complaints increased in 2014 and do-not-call complaints increased by nearly 22,000 from the 2013 level to more than 96,000.

How many citations has the Commission issued in 2014 against violators of the do-not-call rules? How many for violations of the Commission's other TCPA rules? Explain what steps the Commission will take to resolve the growing backlog of TCPA complaints, which appears to now exceed one million since 2010.

Response:

The FCC's Consumer Help Center serves as the intake system for all consumer complaints. Complaints about issues such as loud commercials, the Do Not Call List, robocalls, unwanted telephone calls, unsolicited faxes and similar issues covered by the Telephone Consumer Protection Act are shared among the Enforcement Bureau as well as FCC bureaus and offices. The Commission does not resolve individual complaints on these issues. However, the collective data helps inform the Enforcement Bureau on what consumers are experiencing, which may lead to investigations and/or serve as a deterrent to the companies we regulate.

The Commission's Enforcement Bureau (EB) reviews these complaints to identify trends in consumer complaints so that the Commission can best apply its limited enforcement resources to take action against entities that have a pattern of violating the FCC's laws and rules.

For example, TCPA complaints received in EB are reviewed by subject matter experts to determine if they contain allegations of wrongdoing. Many complaints understandably convey frustration or dissatisfaction with a person or entity, or discuss a subject, without actually alleging legal wrongdoing; others represent isolated incidents that do not form a trend that would allow judicious use of extremely limited FCC resources. A significant number of complaints are closed for these reasons at this step.

For this reason and several others, the raw numbers of such complaints do not correlate to the number of enforcement actions that exist at any given time, or provide an accurate measure of EB's enforcement efforts.

The remaining TCPA complaints are reviewed and investigated, including by sending out subpoenas to identify the party responsible for the alleged violations. Unfortunately, for a large majority of these complaints, the widespread prevalence of spoofed numbers makes action against violators impossible, because the source of the apparently unlawful calls cannot be traced; another large percentage of complaints cannot be acted upon because the source of the calls is located outside of the United States and beyond the Commission's jurisdiction. In 2014, more than 70% of the complaints that FCC staff investigated were untraceable, spoofed, or originated overseas. Finally, the Commission is constrained from taking action against some entities that violate the TCPA because of the one-year statute of limitations from the date of violation that applies to most enforcement actions, including TCPA violations. In the past, the Commission has requested that Congress extend the statute of limitations for Communications Act violations to at least two years to provide more time to investigate and act; expand the scope of coverage of the TCPA to apply to persons outside of the United States when calls are made to people within its borders; and has requested authority to regulate third party spoofing services.

Accordingly, the number of enforcement actions the FCC pursues is significantly smaller than the number of consumer complaints that it receives. Nevertheless, the Commission continues to vigorously pursue violators and has been successful when investigating consumer complaints about the TCPA in those instances where there was sufficient information to identify the perpetrator of the violation and to prove that a pattern of violations is occurring. In 2014, over 26,000 complaints met EB's criteria for review (i.e., stated an actionable violation; were within the statute of limitations; and did not represent the only, or one of a few, complaints against the entity) and were reviewed to determine whether investigations should be launched.

In 2014, the Commission issued eleven citations, two Notices of Apparent Liability, one Forfeiture Order, two Consent Decrees, and one Enforcement Advisory related to TCPA violations. The eleven citations were based on a combined total of more than nine hundred consumer complaints. Importantly, the TCPA enforcement actions that the FCC took in 2014 resolved approximately five million violations, which FCC staff uncovered through its investigation process. Moreover, so far in 2015, the Enforcement Bureau has issued three citations representing approximately 60,000 additional violations of the TCPA identified by FCC investigators.

2014 TCPA Enforcement Actions				
Type of Action	Target/Recipient	File Number	Violation	Date of Action
Citation	Superior Roofing, Sam Mitchell	EB-TCD-13- 00011549	FAX	11-Feb-14
Citation	Globalnet Capital, Ahmed Amer	EB-TCD-14- 00013392	DNC, PREREC, TIME OF DAY, CALLER ID	21-Feb-14
Citation	Smart Procure, Jeffrey Rubenstein	EB-TCD-14- 00013101	FAX	7-Mar-14
Citation	Timeshare Relief, Inc.	EB-TCD-13- 00012690	DNC, PRERECORDED, CALLER ID	25-Mar-14
Citation	Leads Direct Marketing	EB-TCD-13- 00008501	DNC, PRERECORDED	9-Apr-14
Citation	Metrolina Exchange Corp	EB-TCD-13- 00008121	FAX	9-Apr-14
Citation	Smart Energy Advocates, LLC, Andrew Gold	EB-TCD-14- 00015240	DNC, PRERECORDED	20-May-14
Citation	Federal Verification Co., Inc.	EB-TCD-14- 00015760	DNC, CALLER ID, PRERECORDED	11-Jun-14

2014 TCPA Enforcement Actions				
Type of Action	Target/Recipient	File Number	Violation	Date of Action
Citation	South Bay Consulting, Op as QB Training, Robert McDaniel	EB-TCD-14-00015771	FAX	11-Jun-14
Citation	Seventy Eight LLC, Jeffrey Bernier	EB-TCD-14-00016293	DNC, PRERECORDED, CALLER ID	24-Sep-14
Citation	Crystal Training, Rudolf Galan, Mgr	EB-TCD-14-00017175	FAX	1-Oct-14
Notice of Apparent Liability for Forfeiture	Scott Malcolm/DSM Supply, et al.	EB-TCD-12-00001013	FAX	2-Feb-14
Consent Decree	Laser Technologies d/b/a Laser Tech, and Joseph Mistretta	EB-TCD-12-00000223	FAX	21-Mar-14
Forfeiture Order	Presidential Who's Who, Inc.	EB-TCD-12-00000217	FAX	28-Mar-14
Notice of Apparent Liability for Forfeiture	Dialing Services, LLC	EB-TCD-00001812	PRERECORDED	8-May-14
Consent Decree	Sprint Corporation f/k/a Sprint Nextel Corporation	EB-TCD-00002713	DNC	19-May-14
Enforcement Advisory	Telephone Consumer Protection Act Robocall Rules; Warning Political Campaigns And Promoters Against Robocall Abuse	N/A – DA 14-1505	PRERECORDED	21-Oct-14

5. The Commission has made efforts to reform Lifeline over the last few years, including an effort to take the eligibility determination out of the hands of service providers. To that end, the Commission sought to create a National Lifeline Eligibility database. The

Commission set for itself a December 31, 2013 deadline for delivering that database. Has the Commission delivered the National Eligibility database? If no, explain why and when will it be implemented?

Response: In articulating a desire in 2012 to develop a national, automated means to determine Lifeline eligibility, the Commission sought to both “improve the accuracy of eligibility determinations” and “reduce burdens on consumers as well as on ETCs.” In attempting to execute on that concept, however, the Commission experienced substantial challenges, including the complexities involved in coordinating the efforts of multiple state and federal agencies with relevant information. Despite those challenges, the Commission continues to believe that a nationwide system for verifying subscriber eligibility would further Lifeline reforms and serve the goals articulated by the Commission in 2012.

To that end, in the just-released 2015 Lifeline Order and FNPRM, the Commission proposes to remove from ETCs the responsibility for determining eligibility, a key underlying purpose of any nationwide automated eligibility verification system. Specifically, the Commission seeks comment on removing the eligibility determination from ETCs by establishing a national verifier to verify subscriber eligibility. The Commission also seeks comment on more closely coordinating with other agencies to verify subscriber eligibility. These steps build upon actions the Commission has already taken to work with its federal and state partners to enable additional automated means to verify subscriber eligibility. For example, the Commission released a joint letter last year with the Department of Agriculture, directing SNAP state agencies to respond to state Lifeline administrators and Eligible Telecommunications Carriers, seeking to verify the eligibility of prospective Lifeline consumers, and indicate whether a Lifeline applicant consumer is in fact receiving SNAP benefits.

6. As part of its 2012 Lifeline reform package, the Commission was to deliver within one year a National Duplicate Screening database so that it could properly enforce its “one benefit per household” rule. The Commission took two years to deliver this database. How has this database performed to date? Has the Commission’s database approved duplicate enrollments? If so, how many?

Response: Since its inception, the National Lifeline Accountability Database (NLAD) has been successful at enforcing the “one benefit per household” rule and, as a result, has saved the Lifeline program hundreds of millions of dollars. Specifically, since USAC first began uploading subscriber information to the NLAD in early 2014, a substantial amount of duplicative support was detected and eliminated, saving approximately \$300 million on an annualized basis. Moreover, USAC has made several substantial refinements to its duplicate detection systems to strengthen NLAD’s ability to detect and eliminate duplicates. As these refinements were being implemented, USAC detected and eliminated a significant number of records, representing a savings of approximately \$46 million on an annualized basis.

7. The January 31, 2012, Lifeline reform Order states the Commission will determine an appropriate budget for the Lifeline program within a year of order. It has been over three years since this Order was adopted and the Commission has yet to adopt a budget for the

Lifeline program. When will the Commission follow through on its order and adopt an appropriate budget for the program and what will that budget be?

Response: In the 2012 Lifeline Reform Order, the Commission said that it would evaluate an appropriate budget for the Lifeline program once its reforms were fully implemented. The reforms have bent the program growth curve and placed Lifeline disbursements on a downward trajectory. The Commission's 2012 reforms were even more successful than anticipated. Monthly disbursements began to decline in mid-2012 once the key reforms went into effect. After reaching a peak of approximately \$2.2 billion in 2012, disbursements declined in 2013 and again in 2014, at the end of which total program disbursements were approximately \$1.6 billion. If current trends continue, total disbursements for 2015 will be lower still. The Commission estimates that the reforms put in place in 2012 have eliminated over \$1 billion in waste, fraud and abuse, from, among other things, the elimination of duplicative support, the requirement for consumers of free Lifeline service to use their service every 60 days, and the requirement for consumers to recertify their eligibility every year. Overall, \$2.75 billion less was disbursed between 2012 and 2014 than the 2012 Lifeline Reform Order estimated would be spent in the absence of reform during that same period. This represents \$750 million more than the Commission's own savings goal. Following the successful implementation of those reforms, the Commission in the 2015 Lifeline Order and FNPRM is seeking comment on a budget for the Lifeline program.

The Honorable Brett Guthrie

1. A concern has been raised with me by some of my local video distributors about the definition of the term "buying group" as it relates to program access rules. As a result of the restrictive definition, I understand that many multichannel video programming distributors are unable to avail themselves of the program access protections intended by statute since they negotiate the bulk of their programming agreements through their buying group, the National Cable Television Cooperative.

My understanding is that the Commission has been reviewing for a few years now a pending Further Notice of Proposed Rulemaking, which contained a tentative conclusion that the definition of buying group should be updated as it applies under the program access rules. Since no final decision has yet been rendered, what is the status of this rulemaking? Will the Commission take up this issue by the end of the summer?

Response: The Commission sought comment in 2012 on a variety of issues related to our program access rules, including whether to modify the current definition of "buying group." The National Cable Television Cooperative (NCTC) sought the change because its existing practice excludes it from the definition, and thus, NCTC claims it is unable to avail itself of the complaint process under our rules.

Although the Commission made a tentative conclusion to potentially modify the "buying group" definition in the Further Notice, the record in the proceeding indicates that a rule change is not necessary for NCTC to qualify as a buying group, and it appears that this is more of a dispute over ultimate liability than a regulatory issue. NCTC previously complied with the requirements of the existing definition; past and recent filings have not demonstrated that it is burdensome to satisfy these requirements, should NCTC choose to do so.

The Media Bureau is currently in discussions with ACA as to whether there are some modest adjustments that can be made to the Commission's existing definition of "buying group" that will make it possible for ACA to fit within this definition and therefore have program access rights under Section 628 of the Act.

The Honorable Mike Pompeo

1. Mr. Chairman, I have been trying to understand the motivation for your agency in taking a Title II course of action on broadband when it is clear that the marketplace situation does not demand that action, and the FCC concedes in its order that it does not even intend to impose much of that regulatory regime on the companies providing Internet service.

I don't think I've ever seen an order that corrects for problems that do not now exist, and may never have been an issue. This abuse of the FCC's discretion, whether quarterbacked by the Obama Administration or not, is very jarring to this committee. It calls into question in my opinion the very role of an independent federal agency. Your actions should not be delineating business models for a particular industry. Putting your thumb on the scale is not the role of an independent agency. And that is what is happening here.

Moreover, this is not the only place where your agency is doing exactly that. You know well the concerns I have expressed to you over the agency's actions on the (Local Number Portability Administrator) LNPA contract, specifically to ensure that federal, state and local law enforcement and security agencies have unfettered access to this database, as they do today, to conduct their sensitive investigations.

I understand that there was an effort to have additional proposals submitted during the bidding. Recent reports suggest that the FCC staff may have played a role in making the decision not to permit additional proposals. And there is nothing in the public record that explains what did happen.

- Can you tell me what role the agency had in the decision to cut off further bidding that would have had the result of driving down prices paid by the industry to access this data base?**

Response: The Local Number Portability Administrator (LNPA) contract is currently managed by a consortium of industry participants called the North American Portability Management, LLC (NAPM). Over several years, the NAPM, in close coordination with the North American Numbering Council (NANC) – the Commission's federal advisory committee on numbering issues, conducted a rigorous process to select an LNPA, with extensive input from industry, government entities and consumer groups with general oversight from the Commission. In its LNPA Order, released on March 27, 2015, the Commission approved the recommendation of the NANC that Telcordia Technologies, Inc. serve as the next LNPA. As you note, the conditional selection of Telcordia as the new LNPA results in substantial savings over the new contract period.

With respect to the specific process questions you raise, in the LNPA Order the Commission pointed out (at paragraph 42) that Neustar and Telcordia each were afforded the opportunity to submit a Best and Final Offer (BAFO) subsequent to their initial responses to the Request for Proposals (RFP) for the new LNPA contract, notwithstanding that the RFP provided prospective bidders with no right to even a first BAFO, much less multiple ones. The Commission also found that the NAPM's decision not to seek further bids was reasonable (at paragraph 44), noting that the selection proceedings already had two full rounds of competing bids, substantial time and effort had already been invested in reviewing those submissions, and in-person interviews with Neustar and Telcordia had been conducted; there was thus an ample record on which to proceed without another bidding round.

Finally, the Commission did not direct the NAPM or the NANC to do anything; rather, the Commission's action was entirely consistent with its assigned "involvement in and oversight of the LNPA selection process to ensure that the process runs efficiently and is impartial to all potential vendors and all segments of the industry" (at paragraph 46).

2. Section 224 of the Communications Acts establishes two formulas for determining the rate carriers pay utilities to attach their lines to utility poles – the cable rate and the telecommunications rate. While the FCC's 2011 reforms attempted to equalize the rates produced by these two formulas, under certain circumstances the telecommunications rate formula may still produce significantly higher rates. Reclassifying cable broadband services as telecommunications services will subject cable operators to these higher rates. NCTA estimated the annual cost of these increased fees could be as high as \$150-200 million. This will have a detrimental effect on deployment, especially in rural areas where there are many more poles than in urban areas, and on adoption, as the higher rates will ultimately be borne by consumers.

- **Chairman Wheeler, what effect does reclassification have on the costs that cable ISPs will have to pay to attach their wires to utility poles?**

Response: The *Open Internet Order* applies section 224 of the Communications Act to broadband Internet access services, and in so doing ensures that companies providing broadband Internet access service – but not previously entitled to the protections of section 224 – will have access to utility poles at reasonable rates. With respect to the regulated rates at which cable companies are able to attach their wires to utility poles, as I recently told participants at NCTA's Internet & Television Expo, I am committed to ensuring that cable operators do not confront excessive rates for pole attachments. On May 6, 2015, the FCC's Wireline Competition Bureau issued a short public notice to refresh the record on the pending NCTA and COMPTTEL petition for reconsideration seeking to bring cable and telecommunications rates into closer alignment. Once the record is refreshed, my expectation is that a recommendation to the full Commission will be forthcoming to bring the rates into as close alignment as the Communications Act allows.

3. Chairman Wheeler, in the fact-fiction sheet that the FCC recently released, you list as myth: This will increase consumers' broadband bills and/or raise taxes and fact: The Order doesn't impose new taxes or fees or otherwise increase prices.

I notice that the “Fact” response is very carefully worded to indicate that the FCC won’t impose new taxes or fees. You also note that the Internet Tax Freedom Act (ITFA) prohibits state and local taxes on broadband access.

- **First, you make no mention of the possible imposition of state fees on broadband service. If broadband is now reclassified as a telecommunications service, can’t states start to impose telecommunications fees, like state USF fees, on broadband?**

Response: The Order will not amount to new fees or taxes on consumers. The Internet Tax Freedom Act explicitly prohibits the assessment of fees for Internet access. The Open Internet Order is fully compliant with that law. States currently are preempted from assessing USF contributions on broadband. The Order announced the Commission’s “firm intention to exercise . . . preemption authority to preclude states from imposing obligations on broadband service that are inconsistent with the carefully tailored regulatory scheme” adopted in the Order. The Order also disapproves of any state or local franchising authority requirement to pay any new franchising fees.

4. There’s also been considerable debate whether states and local governments can find a way around ITFA to begin taxing broadband service – if not directly on consumers, higher up in the chain. Not everyone agrees with your assessment that ITFA protects against all taxes in light of the reclassification.

- **Chairman Wheeler, I want to ask for your commitment to keep the Internet tax free, so I have a question. You have spoken about the use of Section 706 to encourage the deployment and adoption of broadband services. And you interpreted that as giving you the authority to stroke down state laws regarding municipal broadband. Would you agree that increasing the cost of broadband service through taxes and fees discourages broadband adoption?**
- **Would you use your authority under Section 706 to pre-empt any state or local law that seeks to impose any fees or taxes on broadband service?**

Response: In Section 706 of the Telecommunications Act of 1996, Congress directed the Commission to encourage broadband deployment and take immediate action to remove barriers to infrastructure investment and promote competition when advanced broadband is not being deployed to all Americans in a reasonable and timely fashion.

In our February 26, 2015 decision regarding certain state laws in North Carolina and Tennessee, the Commission found that certain statutory provisions in the North Carolina and Tennessee statutes constituted barriers to broadband infrastructure investment and competition, and we preempted those provisions pursuant to our authority under section 706. This action was taken in response to petitions for preemption filed by the City of Wilson, North Carolina (Wilson) and the Electric Power Board of Chattanooga, Tennessee (EPB).

The Commission’s decision does not preempt restrictive laws with respect to municipal broadband in other states. The decision does establish a precedent for reviewing similar laws in other states, and the Order stated that the Commission would not hesitate to preempt other, similar state laws if those laws constitute barriers to broadband deployment. Further, in the Open Internet Order, the Commission announced its “firm intention to exercise . . . preemption

authority to preclude states from imposing obligations on broadband service that are inconsistent with the carefully tailored regulatory scheme” that it adopted in that Order.

5. I have recently heard concerns related to the excessive royalty rate of the ATSC patent pool, which is administered by a private patent pool administrator, MPEG LA. The licensing fees charged by the ATSC patent pool are five times as much as fees charged for similar technologies around the world (Europe and Japan).

As the FCC requires all TVs and tuning devices sold in the US to include an ATSC tuner, making it a government granted monopoly, manufacturers are left without choice but to pay the high royalty. Importantly, the December 1996 FCC report and order on the DTV proceedings stated that the “proponents agreed to make any relevant patents that they owned available either free of charge or on a reasonable, nondiscriminatory basis.”

As you know, I submitted a letter to the FCC on October 27, 2014 expressing my concerns about this potential exploitation. Although I appreciated Chairman Wheeler’s response to my letter on November 26, 2014, there were two incorrect assertions in the response letter.

First, the statement that “the ATSC patent pool fees include the patent royalty for the MPEG-2 decoding standard” is incorrect. ATSC receiver products include the capability of an MPEG-2 decoder, however does not include any licenses to MPEG-2 patent portfolio. Therefore, a separate license and payment of additional royalty of \$2 is required under MPEG-2 Video and Systems patents. As a result, many manufacturers end up paying \$7 per TV (\$5 for ATSC licensing and \$2 for MPEG-2 licensing), which increases the hidden tax on U.S. consumers.

Second, the statement that “other venues – including the Patent and Trademark Office and the International Trade Commission – are viable options for entities seeking resolution of patent fee issues” is also incorrect. If an entity thinks another is charging excessive royalty, there is nothing that the PTO can do. An entity can try to invalidate patents that it deems inappropriate, which is not relief. Also, an entity cannot go before the ITC and complain about excessive royalty. The only way is for an entity to not pay royalty, then get sued at the ITC by a patent owner, then subsequently raise FRAND defense at the ITC. This approach, however, has not been successful to date and does not address fees, as it only grants exclusion orders.

- **Could you please elaborate on:**
 - **Whether the FCC has any plans to conduct oversight of the ATSC patent pool to monitor potential market abuse, and**
 - **Why I have not received a proper written correction to the agency’s response letter?**

Response: Thank you for highlighting certain inaccuracies in my November 26, 2014, response to your letter. You are correct that the ATSC patent pool fees do not include the patent royalty for the MPEG-2 decoding standard, but the ATSC patent pool does cover different patents than patent pools in other countries. And while the Patent and Trademark Office and International

Trade Commission have far more expertise in the field of patents, you are also correct that they are not the proper avenue for setting royalty rates.

The Commission continues to monitor potential market abuse with respect to the ATSC patent pool. If we believe that essential patents for the ATSC are not available on a reasonable and nondiscriminatory basis, then we will take appropriate action. To date, we have not received information suggesting that Commission intervention is warranted.

The Honorable Gus Bilirakis

1. You committed to preserve the integrity of public safety communications infrastructure by adhering to the goal articulated in your Fiscal Year 2016 Budget Request of taking action on 99 percent of complaints of interference to public safety communications within 1 day. You also committed to provide the Committee with a quarterly report detailing the Enforcement Bureau's success in meeting this metric. To that end, commencing with the second quarter of calendar year 2015 through the last quarter of your Chairmanship provide the Committee with a quarterly report. The report should be filed no later than ten business days after the last day of the quarter and include the following information:

- a. **Date and time the FCC was notified of alleged interference.**
- b. **Identity of FCC field office notified.**
- c. **Manner in which notification was made.**
- d. **Location of alleged interference.**
- e. **Date and time FCC personnel were dispatched to address alleged interference.**
- f. **Location of FCC field office responding to notification.**
- g. **Disposition of alleged interference including date and time resolved.**
- h. **Type of service impacted by interference.**
- i. **Analysis of whether metric was met.**

Finally, in order to further ensure openness and transparency in the FCC's process post the data reported on the Commissions website when submitted to the Committee

Response: As requested, attached please find a report on the Enforcement Bureau's public safety interference complaint response work for the 2nd quarter of CY2015, from April 1 through May 31, 2015. As documented in the report, the Enforcement Bureau responded within 1 day to all but 1 of the 69 public safety complaints that were properly filed with the Commission, thereby meeting our speed of disposal goal. The properly filed complaint that was not responded to in 1 day was initially handled by another Bureau and ultimately referred to the Enforcement Bureau.

As detailed in the report, consumers filed 4 public safety interference complaints online with the Consumer and Governmental Affairs Bureau, but the complaints were not timely referred to the Enforcement Bureau because the complainants mistakenly identified their complaints as non-public safety interference matters. To avoid such misunderstandings, the Commission recently modified its complaint intake screen for public safety interference complaints to refer complainants to the agency's Operations Center, which promptly sends such complaints to the Enforcement Bureau on a 24/7 basis. This should prevent future confusion and ensure the prompt referral of all public safety complaints.

Regarding the specific areas requested, the request seeks several categories of information that may be recorded in the Enforcement Bureau's case management database (the Enforcement Bureau Activity and Tracking System (EBATS)) but is not tracked in a searchable field, e.g., complainant contact information, location of interference, etc. Because manually identifying and providing that information would divert limited resources from other enforcement matters, we have provided the most responsive information available through automated data searches.

Your request touches on several areas where we plan to seek resources to enhance EBATS. For example, we plan to add fields to the system to track the date or time when an agent was dispatched to address alleged interference. We also hope to add fields to EBATS to track the date and time when an incident was resolved. Once we have made these enhancements, the report will be modified accordingly.

Finally, you have requested that we issue this report quarterly and post the data reported on the Commission's website. As we reviewed this request it became clear the resources necessary to prepare this report quarterly would be significant. Much of the data must be edited manually to ensure completeness and correct data entry errors. This requires reviewing the data line by line and diverts employees from core responsibilities, including responding to complaints and conducting investigations. A semi-annual report would ensure timely and accurate information without the same level of stress on resources. We have reached out to your staff to propose this solution and I hope this will address your request.

The Honorable Anna Eshoo

1. Earlier this month, the FCC's Managing Director testified that the agency needs additional funds to upgrade its IT infrastructure and move its headquarters within the next two years. How would these efforts be impacted if the Commission's appropriations were locked at the current level for the next four fiscal years, as the Majority's discussion draft proposes?

Response: If the Commission's funding level is locked at the current flat rate for the next four fiscal years, we would be unable to restack or move the FCC's headquarters and face holdover costs as well as unmanageable rent increases of at least \$9M per year. The Commission has requested \$44,168,497 for moving costs in Fiscal Year 2016 from its regular budget, or a total of \$51,358,717 including funds from auctions to pay that program's share of the costs. The Commission expects the move will cost a total of \$70.9M of Commission funds over two fiscal

years. The new lease is projected to include a 28 percent reduction in rentable square footage, leading to a cost savings of \$119M over 15 years. The failure to move will lead to inefficiencies, cost overruns and a net loss for the Commission, the taxpayer and the licensees who support the Commission's activities.

Second, significant upgrades to improve the usability and efficiency of important mission systems, such as an upgraded Commission licensing system, would be delayed to the detriment of a wide range of stakeholders who routinely use our current outdated systems. The Commission's budget requires \$5.8M to replace the legacy infrastructure with a managed IT service provider; \$9.6M to continue rewriting FCC Legacy Applications as a modular shift to a modern, resilient, cloud-based platform; and \$2.2 million to improve the resiliency of the FCC systems to comply with FISMA. We have reprogrammed and utilized all available funds and require the requested amount to complete ongoing work as well as initiate essential upgrades. These projects will secure the Commission's systems and protect our stakeholders while supporting core FCC programs. Stalling this process now will lead to insecure systems lacking required resiliency, and risk potential disruptions in essential IT systems. It should be noted that the Commission's innovative, responsible, cost-effective problem solving has been recognized in this area with an Association for Federal Information Resources Management's ("AFFIRM") Leadership Award in Cloud Computing. The Commission received the award for its development and installation of the new Consumer Help Desk IT system.

Third, it is important to note that this Committee has directed the Commission to follow through on initiating the PSAP Do Not Call Registry – but the Commission lacks the \$250,000 in funds to stand up the system; more importantly, we lack the resources to fund the system in out years. Another expense not contemplated in a flat number is the National Broadband Map, which will cost the Commission \$3,000,000 per year to operate.

Finally, the Commission is already at a 30 year low for FTEs and has substantially reduced contractors but must face yearly salary increases and inflationary adjustments. Flat funding, no moving or restacking resources and a lack of funds for basic IT needs will cripple the agency and undermine its regulatory mission, including USF and auctions activities. We will be faced with potential reductions in force and furloughs that will undermine application and transaction activities as well as a variety of essential programs.

2. It's my understanding that the Majority's draft legislation would cap the USF fund at \$9 billion for the next two years and provides no budget for the program beyond 2017. Would the draft bill impact the FCC's ongoing efforts to reform the four USF programs, including the recent updates to the E-Rate program? Wouldn't this proposal create uncertainty for USF recipients, including schools and libraries?

Response: In modernizing the Commission's four universal service programs we have remained committed to meeting the goals of the programs as cost-effectively as possible. Just to cite one example, although the Commission increased the E-Rate program cap last year in the FCC's 2nd E-rate Modernization Order, for the current funding year we have been able to meet all requests for support without any increase in collections whatsoever. At the same time, we share your concern that placing an arbitrary cap of \$9 billion on the universal service fund (USF) for

the next two years with no clarity as to funding in later years would impact our ongoing efforts to reform the program by creating uncertainty that will discourage long term, cost-effective decision making by recipients in the various programs. In fact, the Commission raised the cap on the E-rate program specifically to provide increased certainty to schools and libraries that sufficient funding will be available for both the necessary connectivity to and within schools and libraries. With this increased certainty, local decision-makers can confidently proceed at a pace that best serves their students and patrons. A cap on the overall USF would introduce doubt as to whether the full amount of the increased E-rate cap would be available to schools and libraries and obviate the FCC's efforts to assure schools and libraries that sufficient funding will be available.

3. I congratulate you on the successful adoption of last month's net neutrality rules. Can you highlight a few of the consumer protections that are the part of the FCC's order but are NOT addressed in the Majority's legislative discussion draft?

Response: The Open Internet Order contains clear, sustainable, and enforceable rules to preserve and protect the open Internet as a place for innovation and free expression. The Order gives the Commission the tools it needs to protect an Open Internet over time as the marketplace evolves. For instance, in addition to the three bright-line rules, the Order adopts a standard for case-by-case adjudication – setting forth the basic principle that Internet Service Providers (ISPs) should not “unreasonably interfere with or unreasonably disadvantage” the ability of consumers to select, access, and use the lawful content, applications, services, or devices of their choosing; and of edge providers to make these available to consumers.

Both the Order and the Majority draft legislation adopt bright-line rules to prohibit conduct that we know harms Internet openness. In addition, however, the Order recognizes that there may be current and future practices that cause the same types of harms, but may not be covered by the blocking, throttling, and paid prioritization rules. That's why the Commission adopted the no-unreasonable interference “rule of general conduct,” in addition to the three bright-line rules. Grounded in both the Commission's Section 706 authority and its authority under Sections 201 and 202 to ensure that carrier practices are “just and reasonable,” this rule will serve as an important consumer protection standard. It will allow the Commission to prohibit broadband providers from employing unfair or deceptive practices that could harm consumers' ability to access the online services, applications, and content of their choice.

In addition, the Order also applies another important consumer protection – Section 222 of the Act – to broadband Internet service. Section 222 requires carriers to protect the confidentiality of its customers' private information.

4. Thank you for your continuing commitment to ensure that the upcoming incentive auction rules are sufficient to prevent excessive concentration of spectrum among the nation's largest wireless providers. Do you agree that wireless carriers who lack substantial low-frequency spectrum are at a competitive disadvantage?

Response: Today, most low-band spectrum is in the hands of just two providers. The Incentive Auction offers an opportunity, possibly the last for years to come, for competitors to acquire low-band spectrum in significant quantities. One of our priorities for the Incentive Auction is to

ensure that competitive providers have a meaningful opportunity to access this spectrum, which I believe is critical to continue to enable a competitive marketplace. This is particularly important in rural areas, where low-band spectrum is necessary if competitors are to fill in their coverage gaps, and in urban areas, where low-band spectrum allows more reliable in-building coverage. Facilitating access to low-band spectrum by multiple providers is important to preserve and promote competition in the mobile wireless marketplace, which brings consumers more choices, lower prices, and higher quality services.

The Honorable John Yarmuth

1. The free exchange of information is at the heart of our democracy. All of us are well aware that television and radio political advertisements have saturated the airwaves since the Citizens United, SpeechNow, and McCutcheon decisions. Our constituents deserve to have as much information about these ad buys as possible. First, I want to commend the Commission for their ongoing work to expand the online public political file.

The FCC's online political ad files have received approximately 5 million views, which shows that the public clearly has an interest in seeing who is spending money in politics. However, much of the data in the political ad files is not sortable/searchable. While projects like Political Ad Sleuth have done an effective job at making the data more accessible, I believe the FCC could significantly improve the usability of the files so that millions of Americans could more easily view the information.

- o **Will you commit to improving the political ad file to ensure that its data is fully searchable and sortable so that the public knows who is trying to influence them during election season?**

Response: Currently, the Commission is working on a proceeding that would expand the online file requirements to cable operators, satellite TV providers, broadcast radio licensees, and satellite radio licensees. The expanded rules, if adopted, will bring greater transparency to political advertising, ensuring that the public has access to the political files of all broadcasters and MVPDs, not just television broadcasters. If the Commission votes in favor of this expansion, we plan to focus our resources on improving the ability to search and sort all of the data available in the public file.

The Honorable Yvette Clarke

1. In addition to the 9-1-1 upgrades, what is being done to ensure that the EAS reflects the growing ethnic and language diversity of our nation? And, when can we expect for these advances in the EAS to happen?

Response: The Commission is committed to promoting the delivery of alerts via the Emergency Alert System (EAS) to as wide an audience as technically feasible, including those who communicate in a language other than English or may have a limited understanding of the English language. Consistent with that goal, and Presidential directives on the establishment of national alerting infrastructure that is accessible to non-English speakers, we are currently considering ways in which we might best facilitate the Commission's understanding and public awareness of State, local and private efforts to distribute multilingual EAS alert message content

to the public. This might include, for example, a better understanding of the manner, if any, in which EAS Participants (broadcasters, cable systems, DBS and other service providers) make available EAS alert message content to persons who communicate in languages other than English, including why alerts are or are not provided in multiple languages. As part of our review, we are also considering how to encourage a more detailed and coordinated state/local emergency planning among state and local emergency response authorities and EAS Participants to reflect the ethnic and language diversity of our nation.

2. Congress requires the FCC to report on market entry barriers every three years, but your latest Report to Congress – the Section 257 report – was due December 31, 2012 and is still forthcoming. Would you please explain this and share how the FCC will prioritize this as a process reform to ensure more diversity and inclusion in the media and telecom industries?

Response: The Commission believes that the goal underlying Section 257 to promote diversity of ownership and opportunities for women and minorities to participate in the communications industry is an important part of our mission under the Communications Act. The Section 257 report is a compilation of actions and initiatives taken by each operating Bureau and Office in the agency to reduce or eliminate market-entry barriers faced by small and diverse businesses in the communications industry. In order to best serve the purposes of Section 257's reporting requirements, we sought to include several high-profile rulemakings and diversity initiatives undertaken by the agency in the latter part of the reporting period. Among these items were media ownership proceedings conducted by the Media Bureau which sought comment on how the Commission's ownership rules and policies can promote minority and women ownership of broadcast stations and how to define the term "eligible entity" for certain regulatory benefits to further the Commission's diversity goals.

The Section 257 report has also been undergoing a general review and assessment to determine what information is now outdated or needs clarification or updating by the relevant Bureaus and Offices, all of which resulted in further delay of the finalization of the Section 257 report.

Moreover, in addition to the overall review of the Section 257 report, the agency has decided to undertake a review and analysis of the process in which Section the 257 report is compiled and drafted with a view towards ensuring that the report serves the purposes of Section 257 in a meaningful way and is more efficiently coordinated throughout the agency.

3. Two years ago I sent a letter to then FCC Chairman Julius Genachowski asking that the issue of activated FM chips in cellphone be examined. I also understand that you, Chairman Wheeler, are interested in this issue. What progress has been made to ensure my constituents have every tool at their disposal to receive lifesaving information in the event of another terrorist attack, power grid outage or a weather emergency?

Response: Please be assured, one of the Commission's highest priorities is to ensure that all Americans can receive timely and accurate alerts, warnings, and critical information regarding disasters and other emergencies irrespective of what communications technologies they use. As we have learned from previous disasters, such a capability is essential so that Americans can take

appropriate action to protect their families and themselves. The addition of Wireless Emergency Alerts (WEA) enhances the reliability, resiliency, and security of our nation's alerting capability by providing for alerts to be distributed over a more diverse array of communications platforms, including mobile devices. Consistent with the Commission's well-established, flexible approach to technological requirements, I believe that mobile service providers and equipment manufacturers are in the best position to select and incorporate the technologies that will enable them to most effectively and efficiently deliver mobile alerts.

Importantly, Commission regulations do not prohibit activated FM chips in wireless handsets. I agree with you that FM chip sets can provide important benefits to consumers. I understand that there are already an increasing number of phones that include them, and, at least one major carrier has embraced the technology by providing FM radio access to its customers. At this point, it appears as though the issue may be resolving itself in the marketplace, which we will continue to monitor for further developments.

The Honorable Tony Cardenas

Chairman Wheeler, as you know from my communications with you, I strongly oppose the proposed merger between Comcast and Time Warner Cable. I stated last month that I believe the merger would be bad for consumers, harm competition, lead to less diverse content and more expensive cable and Internet access, and will eliminate good program-related jobs in my home state of California.

For Latino consumers, the merger will result in a near state of monopoly. In a post-merger world, over 90% of all Latino households will fall within television markets served by Comcast. The company will have control over the cable market in 18 of the top 25 Latino markets, including the major California markets of Los Angeles and San Francisco. In 16 of these markets, the merged company will dominate any competition.

A merged Comcast-Time Warner Cable will cover 84% of all of California. In some markets, the merged company will be the sole broadband provider and in many others, one of only two broadband providers. Comcast and Time Warner were ranked number 1 and number 2 for worst customer service by the University of Michigan's 2014 American Consumer Satisfaction Index. The market dominance of a merged company would destroy the free market ability that consumers should have to choose to leave a provider that mistreats them or provides substandard products and move to a competitor.

I could go on and on.

The point is, the combined Comcast-Time Warner Cable will not best serve the public interest. This merger, if granted, will reshape the media landscape by combining large players in cable, DBS, broadband and wireless/wireline services. I hope that by the end of this hearing, we learn from you how the FCC expects the media marketplace to look like in the near future.

I realize that you cannot comment on an ongoing merger review at the FCC. However, I believe that this Committee, in its oversight role, is able to hear how you approach such mergers and your vision for the media future in which these companies today play key roles:

Response: On April 24, 2015, Comcast withdrew its application for approval of a \$45 billion dollar bid to acquire Time Warner Cable after Commission staff informed the companies of their serious concerns that the merger risks outweighed the benefits to the public interest. The proposed transaction would have posed an unacceptable risk to competition and innovation especially given the growing importance of high-speed broadband to online video and innovative new services. The Commission staff's collaboration with the Antitrust Division of the Department of Justice provided both agencies with a deeper understanding of the important issues of innovation and competition that the proposed transaction raised.

The FCC reviews every merger on its merits and determines whether it would be in the public interest. Central to that analysis is how American consumers would benefit if a proposed transaction were to be approved.

1. You have stated publicly and the Commission has adopted language to the effect that 25Mbps/3Mbps is the threshold broadband speed required to support the best range of Internet applications, from HD video to video conferencing. Is this a metric you can or may consider in determining the applicable market for broadband in the merger context?

Response: I agree with you that our evaluation of the Comcast-Time Warner Cable-Charter transactions warranted a careful review under our public interest standard.

You asked whether 25 Mbps /3 Mbps is a metric that the Commission can or may consider in determining the applicable market for broadband in the merger context. The Commission considers many issues when evaluating a merger, and conducts an intensive, fact-based analysis when determining what markets are impacted by a merger and how those markets should be defined. This analysis may, if appropriate, consider broadband speeds such as a 25 Mbps /3 Mbps metric.

However, this market analysis is only one piece of the Commission's broad standard of review, in which the Commission assesses whether the proposed transaction serves the public interest, convenience, and necessity. We have noted that our public interest evaluation necessarily encompasses the "broad aims of the Communications Act," which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets. But the public interest standard goes beyond that, and requires the Commission to consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.

In contrast to this merger review standard, in its 2015 *Broadband Progress Report* the Commission adopted a 25 Mbps /3 Mbps benchmark as the threshold for what is considered to be "advanced telecommunications capability" as that term is defined by Section 706 of the

Telecommunications Act of 1996 (the “Telecommunications Act”).¹ In the *Broadband Progress Report*, as required by Section 706 of the Telecommunications Act, the Commission examines the availability of “advanced telecommunications capability” to all Americans and determines whether such capability is being deployed to all Americans in a reasonable and timely fashion. Because the *Broadband Progress Report*’s 25 Mbps /3 Mbps benchmark determination was made outside of our review of a merger, such a determination may inform our merger review, but the Commission would not be bound by the benchmark finding.

2. The FCC historically has said that a 30% market share is the most any competitor should control in the pay-TV market. Comcast has voluntarily proposed capping its national pay-TV market share at that level. I have seen information that the merged entities will reach over 90% of the households in which Latinos reside and as I mentioned, will control the cable market in 18 of the Top 25 Latino markets and will dominate 16 of those. Does the FCC view other dominant industry identified market as a category which a similar 30% threshold should apply?

Response: As noted above, the proposed, Comcast-Time Warner transaction has been abandoned. Pursuant to statute, the Commission previously sought to set both horizontal and vertical concentration limits for cable systems. In 2001, the D.C. Circuit reversed and remanded a Commission order that had limited cable operators to 30% of all MVPD subscribers nationwide. In February 2008, in response to the remand, the Commission again issued an order setting a 30% horizontal ownership limit on the number of MVPD subscribers a cable television operator could serve nationwide. In August 2009, in *Comcast v. FCC* (No. 08-1114), the D.C. Circuit again vacated the horizontal ownership limit, without remand.

3. The Internet Essentials program arose from the 2011 Comcast-NBC Universal merger. In turn, Time Warner Cable, at least in California, offers an inexpensive and fairly robust Internet service to a small number of low-income American homes. Recently, an Administrative Law Judge of the California PUC required that, were the merger to go through, Comcast offer a complete and comprehensive Internet Essentials service, including seniors. Will the FCC be considering the California action for application throughout the US?

Response: Comcast’s Internet Essentials program, which was a condition of Comcast’s acquisition of NBCU in 2011, was developed by the company to increase broadband adoption in low-income homes throughout its service area. The program continues to be offered. Numerous commenters discussed the pros and cons of the program in the Comcast-Time Warner Cable-Charter proceeding. In the California Public Utility Commission’s evaluation of that same proceeding, an Administrative Law Judge required Comcast to offer a more comprehensive Internet Essentials program as a merger condition.

¹ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375 (2015).

As to whether the Commission would consider the California action in its evaluation of the Comcast-Time Warner Cable-Charter proceeding, those companies submitted a letter to the Commission seeking to withdraw their applications on April 24, 2015. On April 29, the chiefs of the Wireline Competition Bureau, Media Bureau, International Bureau and Wireless Telecommunications Bureau granted their request. As a result, that merger is no longer before the Commission. However, I note that the Commission considers all record evidence in merger proceedings, even though it cannot comment on a specific issue while a merger is under review.

4. Can you articulate your understanding of the public interest standard and whether it applies to the ability of pay-TV subscribers to have provided to them a high degree of variety in the programming offered by MVPDs? For example, does the public interest encompass the provision of content delivery providers offering independent, unaffiliated programming in both English and Spanish?

Response: The FCC reviews every merger on its merits and determines whether it would be in the public interest. In applying the public interest test, an absence of harm is not sufficient. The Commission will look to see how American consumers would benefit if a deal were to be approved. Applications of the public interest standard depend on the specific facts of the proposed transaction before the Commission.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
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June 1, 2015

The Honorable Mignon Clyburn
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Commissioner Clyburn:

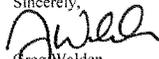
Thank you for appearing before the Subcommittee on Communications and Technology on March 19, 2015, to testify at the hearing entitled "FCC Reauthorization: Oversight of the Commission."

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

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, June 15, 2015. Your responses should be mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Charlotte.Savercool@mail.house.gov.

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

Sincerely,



Greg Walden

Chairman

Subcommittee on Communications and Technology

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

Attachment

The Honorable Mignon Clyburn
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Additional Questions for the Record

The Honorable Greg Walden

1. I understand that Ethernet and fiber services are better, faster technologies rapidly displacing demand for special access services. A recent analyst report points out that there are many Ethernet providers, and cable companies are major competitors. Time Warner Cable, Comcast and Cox are three of the top seven Ethernet providers – and they specifically market their services as replacements for special access. Doesn't this demonstrate a healthy, competitive market?

Thank you for the question. I have been advocating for the FCC to complete special access reforms since I arrived at the Commission in 2009. I supported the 2012 special access order which will, for the first time, collect data that should help the FCC analyze the competitiveness of the market and determine what type of reforms and modernization of our special access rules are appropriate. After receiving approval from the Office of Management and Budget in 2014, the FCC finally completed the largest collection of data to analyze the special access market earlier this year to answer this very question. I look forward to reviewing the staff's analysis which will enable the FCC to develop a data-driven proposal to appropriately reform the special access market.

2. I understand that the Commission recently denied a waiver for an FM translator to be used by an AM station in Tell City, Indiana. The FCC cited a pending AM Revitalization proceeding as one of the reasons for denying the waiver; you thought that it would be better to deal with that waiver as part of the larger proceeding.

But in another and similar situation, the Commission was willing to grant Grain Management LLC a waiver of the designated entity requirements, even though the Commission had announced it would re-examine the requirements as part of a broader review of the designated entity program through rulemaking and the Chairman circulated that rulemaking to the commissioners shortly after the Commission granted the waiver. This doesn't seem consistent, and I'm not entirely sure why the one company got its waiver in the face of the large rulemaking while the other is left to wait.

What is the status of the AM Revitalization docket? Doesn't this apparent inconsistency seem like it sends mixed messages to small businesses?

While the status of the AM Revitalization docket is pending, I do not see any inconsistency between the denial of the waiver petition from the Tell City, Indiana AM radio broadcast station and the grant of the limited waiver from the Attributable Material Relationship (AMR) Rule to all entities similarly situated to the petitioner Grain Management, LLC. The Media Bureau denied the Tell City waiver petition because the issues the radio station raised were being considered in the pending rulemaking

proceeding on AM Revitalization and there was no imminent proceeding or action for which Tell City needed a waiver. With regard to the AMR Rule, however, exigent circumstances were present that warranted a limited waiver from that rule to all parties. Specifically, the Commission had scheduled Auction 97 for AWS-3 licenses to commence in November 2014. In order to participate as a Designated Entity in that auction, Grain and other parties similarly situated would have needed a waiver from the AMR rule. In the May 2014 Incentive Auction Order, the Commission announced its intent to initiate a rulemaking proceeding to consider comprehensive changes to all the competitive bidding rules. Unfortunately, the Commission did not start that rulemaking proceeding until late October 2014. There was no way the Commission could have wrapped up the competitive bidding rulemaking proceeding in time to allow parties to take advantage of a proposed change to the AMR rule in the AWS-3 auction.

3. The January 31, 2012 Lifeline reform Order states the Commission will determine an appropriate budget for the Lifeline program within a year of order. It has been over three years since this Order was adopted and the Commission has yet to adopt a budget for the Lifeline program. When will the Commission follow through on its order and adopt an appropriate budget for the program and what will that budget be?

I appreciate that you asked this question. In November 2014, I outlined five principles that would completely restructure the Lifeline program, ranging from service eligibility to carrier participation. Lifeline, which was established in 1985, has not been restructured in its 30 years. The FCC must modernize the program, reduce administrative burdens on providers in order to increase competitive options for low-income consumers, streamline the process for eligibility, leverage efficiencies from other federal benefit programs, ensure that low-income consumers have access to advanced telecommunications and information services, and ensure that such services are “affordable,” as directed by Congress. Finally, we need to bring more dignity to the program.

At this time, I believe that we need additional information before establishing a budget to ensure the FCC meets our universal service obligations without foreclosing certain consumers from access to affordable service. Currently, fewer than 40% of eligible households participate in the program. If more consumers are eligible and want to participate, I do not believe they should be prevented from doing so.

The obligation to ensure that rural, high-cost and insular areas have access to reasonably comparable service appears in the statute, with equal weight to the requirement that low-income consumers do so as well. In the FCC’s high cost program, all carriers receive support and are able to operate and maintain their networks. The FCC adopted the budget for rate of return carriers after it analyzed the support that they had been receiving. At that point, we determined what level of support was sufficient. There is no similar analysis here and I believe we need more information after we restructure the program to determine whether a budget (or at what level) is appropriate.

While I do not believe a budget is appropriate at this time, I am not opposed to asking questions in a Notice of Proposed Rulemaking to help the FCC gather data necessary to further analyze this issue.

The Honorable Brett Guthrie

1. A concern has been raised with me by some of my local video distributors about the definition of the term “buying group” as it relates to program access rules. As a result of the restrictive definition, I understand that many multichannel video programming distributors are unable to avail themselves of the program access protections intended by statute since they negotiate the bulk of their programming agreements through their buying group, the National Cable Television Cooperative.

My understanding is that the Commission has been reviewing for a few years now a pending Further Notice of Proposed Rulemaking, which contained a tentative conclusion that the definition of buying group should be updated as it applies under the program access rules. Since no final decision has yet been rendered, what is the status of this rulemaking? Will the Commission take up this issue by the end of the summer?

I understand that the record in this proceeding indicates that the definition of “buying group” has not yet proven to disqualify the National Cable Television Cooperative from seeking statutory program access protections. The rulemaking is still pending, and I understand that there is no plan at this time to take up this issue by the end of the summer.

The Honorable Mike Pompeo

1. Section 224 of the Communications Acts establishes two formulas for determining the rate carriers pay utilities to attach their lines to utility poles – the cable rate and the telecommunications rate. While the FCC’s 2011 reforms attempted to equalize the rates produced by these two formulas, under certain circumstances the telecommunications rate formula may still produce significantly higher rates. Reclassifying cable broadband services as telecommunications services will subject cable operators to these higher rates. NCTA estimated the annual cost of these increased fees could be as high as \$150-200 million. This will have a detrimental effect on deployment, especially in rural areas where there are many more poles than in urban areas, and on adoption, as the higher rates will ultimately be borne by consumers.

- Commissioner Clyburn, you voted for the 2011 pole attachment rate reform – aren’t you concerned the reclassification walks those reforms backwards?

The FCC’s Open Internet Order removes impediments to broadband competition and deployment by allowing new entrants access to poles. Access to poles, as well as rights of way, are critical to deployment and the FCC’s reclassification ensures that all broadband providers have the right and ability to access poles. Rights of way and pole access lead to competition and competition generally leads to better service and lower prices for consumers.

In terms of the rates paid by cable providers for access to pole attachments, the FCC in the Open Internet Order, cautioned that any increases could “undermin[e] the gains the Commission achieved by revising the pole attachment rates paid by telecommunications carriers.” The FCC also committed to “monitor[] marketplace developments following this Order and can and will promptly take further action in that regard if warranted.”

Last month, the FCC refreshed the record on this issue and I hope the Commission moves swiftly to resolve outstanding petitions for reconsideration.

If you are aware of any instances where cable providers are faced with increases in the cost to access poles, please let me know. I want to ensure that the FCC follows through with its commitment to take swift action if there is evidence that pole attachment rates are increasing.

The Honorable Anna Eshoo

1. Opponents of net neutrality suggest that the recently adopted order would lead to regulated rates for broadband. At last month's Commission meeting you pushed back on that rhetoric. Can you point to an example of the FCC ruling that a rate is unreasonable in a context other than inmate calling or a tariff investigation?

To date, no one has answered my challenge to provide example of the FCC ruling that a rate is unreasonable in a context other than inmate calling or a tariff investigation. So, the answer to your question is no, and I find that telling.

The Honorable John Yarmuth

1. The free exchange of information is at the heart of our democracy. All of us are well aware that television and radio political advertisements have saturated the airwaves since the Citizens United, SpeechNow, and McCutcheon decisions. Our constituents deserve to have as much information about these ad buys as possible. First, I want to commend the Commission for their ongoing work to expand the online public political file.

The FCC's online political ad files have received approximately 5 million views, which shows that the public clearly has an interest in seeing who is spending money in politics. However, much of the data in the political ad files is not sortable/searchable. While projects like Political Ad Sleuth have done an effective job at making the data more accessible, I believe the FCC could significantly improve the usability of the files so that millions of Americans could more easily view the information.

- o Will you commit to improving the political ad file to ensure that its data is fully searchable and sortable so that the public knows who is trying to influence them during election season?

In the 2012 Online File Order, the Commission committed to improving the searchability of the database. Currently, efforts to expand the database are moving forward. This effort will provide the public with increased access to important information about who is trying to influence them during election season. At the same time, the Commission continues to look into improving the searchability of the database.

The Honorable Yvette Clarke

1. Commissioner Clyburn, I applaud your efforts to re-direct the conversation back to universal service reform and to the people who are not benefitting from this 21st century pathway, particularly the incarcerated and their families. I want to hear more about your ideas to reform the inmate calling fees process.

We know that meaningful communications beyond prison walls helps to promote rehabilitation and reduce recidivism. As a result, we should do all in our power as a society to promote communication and connectivity with friends and family of the incarcerated. Unfortunately, the inmate calling system's egregiously high phone rates have discourage such contact. Ever increasing rates make it difficult if not impossible for struggling families to stay in touch.

I was extremely proud as Acting Chairwoman to take the first step to meaningfully tackle this issue. In August 2013, the FCC adopted interstate rate caps to ensure that such rates are just and reasonable. When the FCC's rate caps for interstate calls went into effect in February 2014, interstate call volumes in some cases went up 70 percent and in one case as high as 300 percent. These data remove any doubt that unaffordable rates discourage contact while a more affordable regime promotes communication.

The FCC must reform all aspects of inmate calling services to finally bring much deserved relief to families, friends, lawyers and clergy. While the FCC's rate caps have had positive results with call volumes increasing, the reforms were limited to interstate calls. Approximately 85% of calls are intrastate, however, and these call rates have not been reformed. We have also seen fees and charges such as those to open an account, put money into an account, close an account, or even refund money to an account, known as ancillary charges, actually increase since we issued the first order. The FCC needs to act swiftly and adopt a reasonable rate structure for all calls, regardless of where they originate.

Data underscore the critical need for the FCC to promote connectivity and reform inmate calling services. In April 2014, the Department of Justice released a report analyzing the five-year recidivism rates for over 400,000 prisoners in 30 states, and the results are troubling. Two-thirds were rearrested within three years, and three-quarters were rearrested within five years. These trends come with enormous societal costs. In addition to more crime, crowded correctional facilities, more expensive prisons, and the judicial time required to prosecute these offenses, it costs an average of \$31,000 per year to house each inmate. While we do not know how to solve all the criminal justice challenges, we do know that meaningful communication helps to promote rehabilitation reducing recidivism.

In addition to traditional telephone calls, communications within correctional facilities are also migrating to new technologies such as video visitation. While the FCC is poised to reform the calling services, we do not want to create a loophole where calls migrate to another platform and consumers are once again left with an unaffordable rate structure.

For this reason, the FCC sought comment on the need for reform of alternative technologies in correction facilities in our October 2014 Further Notice of Proposed Rulemaking. We specifically asked about video visitation as the FCC needs to be forward-looking and ensure protections are in place today and in the future. We are trying to develop a record on what is occurring and whether the FCC needs to intervene.

It is my hope that the FCC will take final action this summer. I appreciate your

leadership on this issue and look forward to working with you to bring justice when it comes to inmate communications.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

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June 1, 2015

The Honorable Jessica Rosenworcel
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Commissioner Rosenworcel:

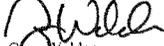
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To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, June 15, 2015. Your responses should be mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Charlotte.Savercool@mail.house.gov.

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

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

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

Attachment

FCC Commissioner Jessica Rosenworcel
House Committee on Energy and Commerce's Subcommittee on Communications and
Technology
"FCC Reauthorization: Oversight of the Commission"
March 19, 2015

Attachment—Additional Questions for the Record

The Honorable Greg Walden

1. I understand that Ethernet and fiber services are better, faster technologies rapidly displacing demand for special access services. A recent analyst report points out that there are many Ethernet providers, and cable companies are major competitors. Time Warner Cable, Comcast and Cox are three of the top seven Ethernet providers – and they specifically market their services as replacements for special access. Doesn't this demonstrate a healthy, competitive market?

I agree that competition is the best way to promote the development of better products and better prices. Moreover, it is important to promote competition not just at the national market level, but also at the local level.

With regard to special access services, in 1999 the Commission put in place a series of pricing flexibility triggers designed to serve as a proxy for competitive conditions within a local market. Where these proxies were met, the Commission relaxed its rules governing special access services. When proposed, this was a good and sensible system. But time and the evolution of technology has rendered these proxies increasingly ill-suited to discern between competitive and noncompetitive markets at the local level. Consider, for instance, that under existing policies Flint, Michigan has been granted a higher level of pricing flexibility than New York City. This suggests our proxies for local competition in the special access marketplace are both overbroad and underbroad at the same time. As a result, among others, the Small Business Administration, Government Accountability Office, and American Petroleum Institute have criticized Commission policies designed to assess special access competition in local markets.

In response, in 2012 the Commission launched a process to review its rules governing special access. In doing so, the agency acknowledged "widespread agreement across industry sectors that these rules fail to accurately reflect competition in today's special access markets[,] and were "not working as predicted." As part of this effort, the Commission suspended its rules in order to collect data and conduct a market analysis that would "aid . . . in granting deregulation in areas where actual and potential competition is sufficient to constrain prices."

Earlier this year, parties provided data to the Commission to assist with market analysis. I understand that staff is currently compiling this data, which I look forward to reviewing. I am hopeful that it will provide insights into competition in the current marketplace and take into consideration the Ethernet and fiber services you describe.

2. The January 31, 2012, Lifeline reform Order states the Commission will determine an appropriate budget for the Lifeline program within a year of order. It has been over three years since this Order was adopted and the Commission has yet to adopt a budget for the Lifeline program. When will the Commission follow through on its order and adopt an appropriate budget for the program and what will that budget be?

On January 31, 2012, the Commission adopted the Lifeline Reform Order, which made a series of changes designed to improve the program, including efforts to reduce waste and abuse. In this decision the Commission suggested that going forward it would “monitor . . . the impact of [its] fundamental overhaul of the program,” and as a result would eventually be in a position to “determine an appropriate budget for Lifeline and its appropriate duration.”

To this end, on May 28, 2015, Chairman Wheeler announced that at the June 18, 2015 Commission meeting the agency will consider a rulemaking concerning further reforms to the Lifeline program. I anticipate that this rulemaking will seek comment on efforts to modernize the Lifeline program and on the need for a budget, which will be informed by what the agency has learned about the program since adoption of the Lifeline Reform Order.

The Honorable Brett Guthrie

1. A concern has been raised with me by some of my local video distributors about the definition of the term “buying group” as it relates to program access rules. As a result of the restrictive definition, I understand that many multichannel video programming distributors are unable to avail themselves of the program access protections intended by statute since they negotiate the bulk of their programming agreements through their buying group, the National Cable Television Cooperative.

My understanding is that the Commission has been reviewing for a few years now a pending Further Notice of Proposed Rulemaking, which contained a tentative conclusion that the definition of buying group should be updated as it applies under the program access rules. Since no final decision has yet been rendered, what is the status of this rulemaking? Will the Commission take up this issue by the end of the summer?

On October 5, 2012 the Commission adopted a rulemaking seeking comment on a broad range of issues associated with its program access policies. Among other things, the Commission solicited comment on modifications to the program access rules relating to buying groups. In particular, the Commission acknowledged that buying groups for smaller multichannel video programming distributors play an important role in the market for video programming distribution. Furthermore, the Commission noted that these groups are often able to obtain lower license fees for members than they could through direct deals with programming entities.

I continue to review the record in this proceeding. The decision to circulate and request a vote on this matter is at the sole discretion of the Chairman. However, if a draft decision is circulated by the Chairman to my office, I would strive to vote it in a timely manner.

The Honorable Anna Eshoo

1. In remarks you made earlier this year, you suggested that Congress should take a fresh look at how we account for our airwaves. Specifically, you pointed out that the legislative process has overlooked the value of unlicensed in favor of licensed spectrum. What would you propose be done to ensure that the legislative process recognizes the enormous economic value of unlicensed?

Good spectrum policy requires both licensed and unlicensed spectrum. With respect to the latter though, I think it is time we take a fresh look at how we account for its value.

Traditionally, the legislative process has overlooked the value of unlicensed spectrum and favored licensed spectrum. This is not due to a great industry dispute. Nor is it the result of a partisan divide regarding our airwaves. It is simply because when the Congressional Budget Office does their job, they assign the greatest value to spectrum when it is licensed and sold at auction. As a result, bills that direct the Commission to sell spectrum get high grades, while legislation that creates more unlicensed spectrum for Wi-Fi gets low marks.

This accounting method is outdated. It puts an antiquated premium on the ability to sell a license for exclusive use of our airwaves. It also fails to take into account the more than \$140 billion in economic activity unlicensed spectrum generates each year. I believe that wireless economic activity can grow—if we find a new way to put unlicensed spectrum on the books. So I think it's time to develop a multiplier that accounts for the billions of dollars of activity that new unlicensed spectrum can generate in the economy—and encourage the Congressional Budget Office to use such a multiplier in its review. I think an effort like this would help Congress think differently about the value of unlicensed spectrum—and consumer and economic benefits would surely follow.

The Honorable John Yarmuth

1. The free exchange of information is at the heart of our democracy. All of us are well aware that television and radio political advertisements have saturated the airwaves since the Citizens United, SpeechNow, and McCutcheon decisions. Our constituents deserve to have as much information about these ad buys as possible. First, I want to commend the Commission for their ongoing work to expand the online public political file.

The FCC's online political ad files have received approximately 5 million views, which shows that the public clearly has an interest in seeing who is spending money in politics. However, much of the data in the political ad files is not sortable/searchable. While projects like Political Ad Sleuth have done an effective job at making the data more accessible, I believe the FCC could significantly improve the usability of the files so that millions of Americans could more easily view the information.

Will you commit to improving the political ad file to ensure that its data is fully searchable and sortable so that the public knows who is trying to influence them during election season?

I fully support the Commission's efforts to transition the traditional public files of broadcasters to an online database. As you note, political files, which are a component of public files, have received roughly 5 million views to date. This demonstrates real interest in who is buying time on public airwaves and who is spending money on political advertisements.

However, I share your frustration that the data in these files are not easily sortable or searchable. This problem is not unique to the Commission's public files, but I hope, over time, we can improve this situation and make more public data from the Commission available to the public in a meaningful way. Accordingly, I will support measures to make public information, including the political file, available with better sorting and searching capabilities.

The Honorable Yvette Clarke

1. Commissioner Rosenworcel, I want to hear more about this idea of the “Homework Gap” that can be solved by leveraging more Wifi in low-income communities. While the FCC has established new reforms to the use of Wifi, how do you suppose that this type of access will get directly to the home? Wouldn't this be counterproductive to competition and what standards for bandwidth would be prescribed to ensure it adequately meets the needs of students and safeguards their privacy?

The Homework Gap is the cruelest part of the digital divide. Today, as many as seven in ten teachers assign homework that requires access to broadband. But data from the Commission suggest that as many as one in three households do not subscribe to broadband service.

Where those numbers overlap is what I call the Homework Gap—and according to the Pew Research Center the Homework Gap is real. Five million households of the 29 million with school-aged children are falling into this gap.

If you are a student in one of these households, just getting basic schoolwork done is hard. Applying for a scholarship is challenging. In fact, according to a recent study by the Hispanic Heritage Foundation and Family Online Safety Institute, nearly 50 percent of students say they have been unable to complete a homework assignment because they didn't have access to the Internet or a computer. On top of that, 42 percent of students say they received a lower grade on an assignment because they didn't have access to the Internet.

I believe we need to do better for our children and our shared economic future.

There are several steps we can take to help close the Homework Gap, including promoting the availability and use of unlicensed spectrum and Wi-Fi. This is because Wi-Fi is an essential onramp to Internet connectivity. More than half of us online have relied on public Wi-Fi. But for many low-income households it is their only means of getting online. So having more Wi-Fi in more places will mean more opportunities for students to get their schoolwork done.

Stories abound about Wi-Fi helping kids to do their homework. In New York, for instance, the public library system has launched an innovative program that will allow library patrons to check out 10,000 hotspots for library users to take home and connect to the Internet via Wi-Fi. This

will allow kids without the Internet at home to get online and do their homework. Another compelling story comes from Coachella, California, which has wired some of its school buses with Wi-Fi so that students can do their homework on their bus rides to and from school. These examples go to show how Wi-Fi can be used to help close the Homework Gap.

Finally, it is important to note that Wi-Fi is an air interface for unlicensed spectrum. Wi-Fi does not itself set policies for bandwidth usage or privacy. These policies are set by those who deploy or operate networks and networked devices that use Wi-Fi. Those that do so should adhere to our laws designed to protect children, including the Children's Internet Protection Act and the Children's Online Privacy Protection Act, where applicable.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

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Minority (202) 225-3841

June 1, 2015

The Honorable Ajit Pai
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Commissioner Pai:

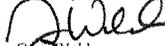
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To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, June 15, 2015. Your responses should be mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Charlotte.Savercool@mail.house.gov.

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

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

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

Attachment

The Honorable Ajit Pai
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Responses to Questions for the Record

The Honorable Greg Walden

1. I understand that Ethernet and fiber services are better, faster technologies rapidly displacing demand for special access services. A recent analyst report points out that there are many Ethernet providers, and cable companies are major competitors. Time Warner Cable, Comcast and Cox are three of the top seven Ethernet providers – and they specifically market their services as replacements for special access. Doesn't this demonstrate a healthy, competitive market?

Answer: Yes. Enterprise customers have more options than ever before to meet their needs. Traditional time-division-multiplexing-based dedicated services (DS1s and DS3s), Frame Relay service, Asynchronous Transfer Mode service, Multi-Protocol Label Switching service, Ethernet service, satellite service, and even broadband Internet access service are all options for enterprise customers.

And so it is not surprising that the majority of enterprise data services are left untouched by federal regulation. After all, incumbent local exchange carriers (LECs), competitive LECs, cable operators, and wireless providers—terrestrial or satellite-based, fixed or mobile—are all competing for a limited number of business opportunities. What is surprising is that the Commission continues to regulate one small corner of this market: the traditional special access services offered by incumbent LECs.

As the Commission completes its special access data collection, I hope that it will recognize today's marketplace reality that enterprise customers have more competitive options than ever before and update our regulations appropriately.

The Honorable Greg Walden

2. I understand that the Commission recently denied a waiver for an FM translator to be used by an AM station in Tell City, Indiana. The FCC cited a pending AM Revitalization proceeding as one of the reasons for denying the waiver; you thought that it would be better to deal with that waiver as part of the larger proceeding.

But in another and similar situation, the Commission was willing to grant Grain Management LLC a waiver of the designated entity requirements, even though the Commission had announced it would re-examine the requirements as part of a broader review of the designated entity program through rulemaking and the Chairman circulated that rulemaking to the commissioners shortly after the Commission granted the waiver. This doesn't seem consistent, and I'm not entirely sure why the one company got its waiver in the face of the large rulemaking while the other is left to wait.

What is the status of the AM Revitalization docket? Doesn't this apparent inconsistency seem like it sends mixed messages to small businesses?

Answer: In October 2013, under Acting Chairwoman Clyburn's leadership, the Commission unanimously adopted a Notice of Proposed Rulemaking addressing AM Radio Revitalization. We advanced a number of proposals designed to improve AM signal quality and reduce regulatory burdens on AM broadcasters. We also proposed opening a translator window to allow AM broadcasters to apply for FM translators, a step that would provide AM stations with badly needed short-term relief as we try to solve the AM band's long-term problems. Two months ago, Chairman Wheeler publicly indicated that "[i]n the coming weeks" he would circulate an item following through on this NPRM and adopting changes to our AM radio rules. Unfortunately, such an order has not yet circulated. I believe that the Commission should move forward in the AM Radio Revitalization proceeding as soon as possible. Every day, it gets harder for AM broadcasters to stay in business and for listeners to receive a good AM signal.

The Honorable Greg Walden

3. The January 31, 2012, Lifeline reform Order states the Commission will determine an appropriate budget for the Lifeline program within a year of order. It has been over three years since this Order was adopted and the Commission has yet to adopt a budget for the Lifeline program. When will the Commission follow through on its order and adopt an appropriate budget for the program and what will that budget be?

Answer: At the June 18 Commission meeting, we are scheduled to take up an item addressing the Lifeline program. I hope that the Commission adopts a Further Notice of Proposed Rulemaking that places the Lifeline program on a specific budget. I strongly believe that the Commission must adopt a Lifeline budget and that the current spending level (\$1.6 billion) would be a reasonable annual cap. Currently, Lifeline is the only universal service program that does not have a budget or cap, and over the last six years spending has approximately doubled. This has been a major factor in the contribution rate—essentially, the tax rate that consumers incur through their phone bills—skyrocketing by 83% over the past six years. Especially if we are going to expand the program to include broadband subsidies, it is imperative that we put Lifeline on a budget so that spending does not once again spiral out of control.

The Honorable Brett Guthrie

1. A concern has been raised with me by some of my local video distributors about the definition of the term “buying group” as it relates to program access rules. As a result of the restrictive definition, I understand that many multichannel video programming distributors are unable to avail themselves of the program access protections intended by statute since they negotiate the bulk of their programming agreements through their buying group, the National Cable Television Cooperative.

My understanding is that the Commission has been reviewing for a few years now a pending Further Notice of Proposed Rulemaking, which contained a tentative conclusion that the definition of buying group should be updated as it applies under the program access rules. Since no final decision has yet been rendered, what is the status of this rulemaking? Will the Commission take up this issue by the end of the summer?

Answer: In October 2012, I voted for a proposal to change the definition of a buying group for purposes of the Commission’s program access rules. But as a Commissioner, I do not set the Commission’s agenda. I therefore do not know whether the Commission will take up this issue by the end of the summer and cannot speak to the status of the rulemaking. I can say, however, that should the Chairman choose to circulate an order to the Commission on this topic, it would receive my prompt attention.

The Honorable Mike Pompeo

1. Section 224 of the Communications Acts establishes two formulas for determining the rate carriers pay utilities to attach their lines to utility poles – the cable rate and the telecommunications rate. While the FCC’s 2011 reforms attempted to equalize the rates produced by these two formulas, under certain circumstances the telecommunications rate formula may still produce significantly higher rates. Reclassifying cable broadband services as telecommunications services will subject cable operators to these higher rates. NCTA estimated the annual cost of these increased fees could be as high as \$150-200 million. This will have a detrimental effect on deployment, especially in rural areas where there are many more poles than in urban areas, and on adoption, as the higher rates will ultimately be borne by consumers.

- **Commissioner Pai, do you agree with that assessment, and what will this change mean for my rural constituents that are cable broadband customers?**

Answer: I do agree with this assessment. The best evidence to date suggests that many Internet service providers—ranging from small-town cable operators to new entrants like Google—will face higher pole-attachment rates. The overall cost increase is estimated to be \$150–200 million per year. In the short term, ISPs are likely to pass those costs along to consumers; that’s especially true in rural areas where ISPs often have lower margins and little ability to absorb new costs. Longer term, these higher rates will deter investment in rural areas, leaving rural consumers with slower speeds and lower quality service than they otherwise would have had.

In all, these rate increases will lead to higher broadband bills and slower speeds. That’s a serious—and unnecessary—harm to American consumers.

The Honorable Anna Eshoo

1. As your recent letter to GSA Acting Administrator Roth letter highlights, I agree that the FCC should lead by example, not only within the federal government but across the country in ensuring

both accurate location information and direct 9-1-1 dialing. Do you support a proceeding to update the FCC's rules on MLTS?

Answer: Thank you for your leadership in advocating for direct access to 911. I agree that the FCC should lead by example on this issue. And I am pleased that the FCC recently updated the multi-line telephone system (MLTS) at its headquarters so that anyone in the building can reach emergency services by dialing "911" without the need for an access code. *See Joint Statement of Chairman Tom Wheeler and Commissioner Ajit Pai Regarding Direct 911 Dialing (May 4, 2015), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-333315A1.pdf.* I hope that others in the federal government, as well as state and local governments, follow suit. I also hope to hear soon from GSA about the capabilities of MLTS systems across federal agencies; with that information in hand, we then can begin to promote direct 911 dialing functionality in every federal building in the country.

As you know, the FCC's Public Safety and Homeland Security Bureau released a Public Notice in May 2012 that seeks comment on the feasibility of ensuring that MLTS calls always provide accurate location information. *See Public Safety and Homeland Security Bureau Seeks Comment on Multiline Telephone Systems Pursuant to the Next Generation 911 Advancement Act of 2012, Public Notice, 27 FCC Rcd 5329 (2012), available at https://apps.fcc.gov/edocs_public/attachmatch/DA-12-798A1_Rcd.pdf.* When someone calls 911, emergency responders need to be able to locate the caller. I would support a proceeding that seeks comment on updating the FCC's rules on MLTS.

The Honorable John Yarmuth

1. The free exchange of information is at the heart of our democracy. All of us are well aware that television and radio political advertisements have saturated the airwaves since the Citizens United, SpeechNow, and McCutcheon decisions. Our constituents deserve to have as much information about these ad buys as possible. First, I want to commend the Commission for their ongoing work to expand the online public political file.

The FCC's online political ad files have received approximately 5 million views, which shows that the public clearly has an interest in seeing who is spending money in politics. However, much of the data in the political ad files is not sortable/searchable. While projects like Political Ad Sleuth have done an effective job at making the data more accessible, I believe the FCC could significantly improve the usability of the files so that millions of Americans could more easily view the information.

- **Will you commit to improving the political ad file to ensure that its data is fully searchable and sortable so that the public knows who is trying to influence them during election season?**

Answer: I believe that the FCC should make all public data available in a manner that is easy for people to use. That includes information contained in a station's political file.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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Majority (202) 225-2927
Minority (202) 225-3641

June 1, 2015

The Honorable Mike O'Rielly
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Commissioner O'Rielly:

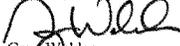
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Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

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

Attachment

165



Mike O'Rielly
Commissioner

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 12, 2015

Charlotte Savercool
Legislative Clerk
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Re: Questions for the Record

Dear Ms. Savercool:

Please find enclosed my responses to the questions for the record in connection with my testimony at the March 19, 2015 Hearing entitled "FCC Reauthorization: Oversight of the Commission."

A copy of this letter and responses are also being sent to you today via email at Charlotte.Savercool@mail.house.gov.

Thank you and please do not hesitate to contact me if you should have any questions.

Sincerely,

A handwritten signature in black ink that reads "Mike Rielly".

Michael O'Rielly
Commissioner

Enclosure
cc w/enc: Charlotte Savercool (*via email*)

Questions for the Record – House Committee on Energy & Commerce

The Honorable Greg Walden

1. I understand that Ethernet and fiber services are better, faster technologies rapidly displacing demand for special access services. A recent analyst report points out that there are many Ethernet providers, and cable companies are major competitors. Time Warner Cable, Comcast and Cox are three of the top seven Ethernet providers – and they specifically market their services as replacements for special access. Doesn't this demonstrate a healthy, competitive market?

I appreciate the point that you raise in your question and it is certainly something that the Commission must take into consideration before imposing any type of new rules in this area. In particular, it is imperative that the Commission fully understand what is happening in the current marketplace prior to suggesting efforts that could lead to rate regulation.

2. The January 31, 2012, Lifeline reform Order states the Commission will determine an appropriate budget for the Lifeline program within a year of order. It has been over three years since this Order was adopted and the Commission has yet to adopt a budget for the Lifeline program. When will the Commission follow through on its order and adopt an appropriate budget for the program and what will that budget be?

Since this is an item presently before the Commission for consideration at our next Open Meeting, I must respectfully refrain from commenting on the particulars of this issue. However, I have argued in the past in a blog post (<http://go.usa.gov/33Wcx>) and previous Senate Congressional testimony that it is past time to enact a sound spending cap for the Lifeline program for numerous reasons. I am hopeful that this issue will be given due consideration in our upcoming deliberations.

The Honorable Brett Guthrie

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My understanding is that the Commission has been reviewing for a few years now a pending Further Notice of Proposed Rulemaking, which contained a tentative conclusion that the definition of buying group should be updated as it applies under the program access rules. Since no final decision has yet been rendered, what is the status of this rulemaking? Will the Commission take up this issue by the end of the summer?

I do not believe that any Commission item should be delayed for multiple years, forcing the parties to await an answer and suffer the effects of uncertainty in the meantime. That said, under the Commission's procedures as they are today, the Chairman of the Commission has sole authority to control the agenda. Accordingly, I cannot promise a timeline for the consideration of this item, although I am ready to consider it whenever presented. Substantively, I should reserve judgment until I see the particulars of any recommendation by the Chairman, but I do understand and generally sympathize with the central theme of the arguments presented so far.

The Honorable Anna Eshoo

1. I congratulate you on the bipartisan partnership you recently formed with Commissioner Rosenworcel to free up additional unlicensed spectrum. What do you see as the greatest barrier to FCC action in the 5 gigahertz band? Are you concerned that LTE-U may undermine consumer Wi-Fi use?

Today, the biggest barrier to action is the unwillingness of incumbent users, in this case the automobile manufacturers and related safety equipment providers, to seriously consider sharing the 5.9 GHz spectrum. I would also suggest that the Department of Transportation has articulated an inappropriate standard for consideration and approval of unlicensed devices in this band. Thankfully, the Commission has a history of successfully finding ways to allow sharing while preventing harmful interference, including protecting sensitive Department of Defense systems in multiple bands. Therefore, I have little doubt that sharing is possible in this band as well.

Separately, I am mindful of both the concerns over the deployment of LTE-U in Wi-Fi bands and the potential benefits of such deployments, and it is a subject that I will continue to follow. It is my understanding that those seeking to deploy LTE-U systems have made it clear that they do not intend to disrupt or harm the Wi-Fi experience. This is especially true for those equipment manufacturers and chip makers that are actively involved in providing equipment and chips for the Wi-Fi community and those service providers that have deployed Wi-Fi networks at great expense. Accordingly, I support a watchful eye approach over one that requires Commission filings and burdens. Moreover, I have deep concerns that the Wireless Telecommunications Bureau and Office of Engineering and Technology's recent release of a Public Notice relating to LTE-U and Wi-Fi could interfere with or improperly influence the private sector standard setting process.

The Honorable John Yarmuth

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- o Will you commit to improving the political ad file to ensure that its data is fully searchable and sortable so that the public knows who is trying to influence them during election season?

I would not be opposed to efforts to improve the digitalization of the political files of broadcasters and others, if doing so does not increase or leads to only de minimis increases in costs for those entities to comply with Commission's rules. I cannot speak to whether the Commission could accomplish this function on its own.

The Honorable Marsha Blackburn

1. On March 30th, the Wireline Bureau issued an order that subsidizes broadband build out in areas where existing providers are already offering high speed service. Did the FCC properly notice what appears to be an arbitrary distinction whether or not the incumbent provider had a customer in the area as opposed to whether the provider offers service to an area? And how does the FCC justify that distinction?

I appreciate the concerns you raise in your questions. This situation also highlights the issues that can arise when substantive decisions are delegated to Bureau staff instead of being decided by the full Commission. A small number of entities have now undertaken the added expense of filing petitions for reconsideration and applications for review of certain decisions by the Bureau in the challenge process. In particular, some entities argue that the Bureau improperly ignored their service offerings in some areas. Alternatively, other entities argue that the Bureau did not conduct due diligence to determine the veracity of claims of service offerings in other areas. I am hopeful that the Commission will soon consider – and modify as necessary – any inaccuracies, to the extent any exist, in its challenge process. Others, including some that raised concerns about whether the standard was properly noticed, chose not to seek review of the Bureau's order and will, therefore, be bound by the Bureau's standard and ensuing decisions.

The Honorable Brett Guthrie

1. Do you believe these bills would create bureaucratic red tape as the Chairman suggests in his testimony?

I strenuously disagree with the Chairman that the proposed FCC process reform legislation would create additional bureaucracy or harm the ability of the Commission to conduct its work. These bills are common sense efforts to improve the work and product of the Commission. They would also lead to greater transparency regarding Commission

actions for the American people. Beyond misreading the specific provisions of the bills, the Chairman seems to ignore the positive effects that these bills, if enacted, would have.

The Honorable Mike Pompeo

1. The Chief of the FCC's Enforcement Bureau recently made the following statement:
"Generally speaking, I've found that most companies want to do the right thing, and when it's clear that something is impermissible, they generally don't do it. So when you're in enforcement, you're almost always working in a gray area."

- Commissioner O'Rielly, do you think the Enforcement Bureau should be operating "in a gray area," or should it be focused on clear violations of the Commission's rules?

I support vigorous enforcement actions against entities that violate the communications law or Commission rules. However, in order to have an effective enforcement regime, everyone must be notified of what practices are impermissible and subject to enforcement. To the extent that there are so-called "gray areas," it is the obligation of the Commission to provide clarity to regulatees so they are not subject to fines and penalties without proper notice. Considering that there are plenty of areas in which violations are not gray but have been improperly ignored, such as pirate radio, I would support efforts by the Commission to focus its immediate attention on these matters.