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4 ``OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION''
5 TUESDAY, JULY 10, 2012
6 House of Representatives,
7 Subcommittee on Communications and Technology
8 Committee on Energy and Commerce
9 Washington, D.C.

10 The subcommittee met, pursuant to call, at 10:21 a.m.,
11 in Room 2123 of the Rayburn House Office Building, Hon. Greg
12 Walden [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Walden, Terry,
14 Stearns, Shimkus, Bono Mack, Rogers, Blackburn, Bass,
15 Gingrey, Scalise, Latta, Guthrie, Kinzinger, Barton, Upton
16 (ex officio), Eshoo, Markey, Doyle, Matsui, Barrow,
17 Christensen, DeGette, Dingell, Schakowsky and Waxman (ex
18 officio).

19 Staff present: Gary Andres, Staff Director; Ray Baum,
20 Senior Policy Advisor/Director of Coalitions; Neil Fried,
21 Chief Counsel, Communications and Technology; Debbie Keller,
22 Press Secretary; Alexa Marrero, Communications Director; Gib
23 Mullan, Chief Counsel, Commerce, Manufacturing and Trade;
24 David Redl, Counsel, Telecom; Charlotte Savercool, Executive
25 Assistant; Lyn Walker, Coordinator, Admin/Human Resources;
26 Dan Tyrrell, Oversight and Investigation; Shawn Chang,
27 Democratic Senior Counsel; Margaret McCarthy, Democratic
28 Professional Staff Member; Roger Sherman, Democratic Chief
29 Counsel; David Strickland, FCC Detailee, Counsel; and Kara
30 van Stralen, Democratic Special Assistant.

|

31 Mr. {Walden.} Good morning. I want to welcome a fully
32 constituted Federal Communications Commission to our
33 subcommittee today, and I extend a special greeting to the
34 newest Commissioners Rosenworcel and Pai. We are delighted
35 to have you both here. You will find that the members of
36 this subcommittee take their work seriously and are fully
37 observant of the activities at the Federal Communications
38 Commission, observant of the changes in the audio, video and
39 data marketplaces, and the need to keep the Internet free
40 from government control, foreign or domestic. We do our
41 research, and we complete our work.

42 I want to congratulate Commissioner McDowell for his
43 fine remarks in Rome in June. You, more than anyone I know,
44 have consistently and forcefully stood up for a free and open
45 Internet. Our subcommittee has heeded your message and,
46 thanks to the leadership of Representative Mary Bono Mack,
47 provided the House with a bipartisan resolution calling on
48 our negotiators at the World Conference on International
49 Telecommunications, WCIT, to maintain the multi-stakeholder
50 approach to Internet governance.

51 And While I know Chairman Genachowski sometimes has less
52 than laudatory comments regarding our work to free up
53 spectrum through incentive auctions and fulfill the call of

54 the 9/11 Commission by finally approving legislation to pay
55 for and build out that interoperable public safety network,
56 know that we are keenly interested in making sure that the
57 FCC and the NTIA fulfill the intent of the legislation.
58 Further, if either agency has questions about the intent of
59 the law or identifies problems with it, the subcommittee
60 expects to hear the specific concerns immediately. We also
61 continue to examine how federal agencies might use spectrum
62 more efficiently so that we can put more in the hands of
63 commercial providers while simultaneously helping the
64 government do its work better. I anticipate that
65 Representatives Guthrie and Matsui, who Ranking Member Eshoo
66 and I have appointed to lead a working group on this issue,
67 may have questions for you in regards to government spectrum.

68 You need to know that I—and a majority of this
69 subcommittee, and indeed a majority of the House, remain
70 deeply committed to the cause of improving transparency and
71 accountability at the Federal Communications Commission. Too
72 often the public has had to turn to the courts to prove
73 procedural wrongs at the Commission, wasting taxpayer
74 resources and leaving the impression with some that the
75 Commission considers itself above due process. I commend the
76 current chairman, however, for the thoughtful reforms that he
77 has instituted, but these are but a bare minimum with no

78 guarantee that a less thoughtful chairman in the future would
79 follow a similar path.

80 Finally, our subcommittee is very interested in making
81 sure competitive market forces driven by empowered consumers
82 are allowed to work in a way that spurs new technology,
83 innovation and creation of American jobs. The Federal
84 Communications Commission is an important player in that
85 effort, and should not abuse its power to achieve outcomes it
86 lacks statutory authority to accomplish on its own.

87 Again, thank you for your service. Thank you for coming
88 before our subcommittee.

89 [The prepared statement of Mr. Walden follows:]

90 ***** COMMITTEE INSERT *****

|
91 Mr. {Walden.} With that, I would yield to Mr. Terry.

92 Mr. {Terry.} Thank you, Mr. Chairman, and I recognize
93 the need to bring any and all available spectrum online as
94 soon as possible. It is absolutely necessary in order to
95 meet our growing demand.

96 The Commission should make finalizing near-term
97 opportunities like 4 megahertz of spectrum and the AWS-4 or 2
98 gigahertz band and the broadcast incentive auctions top
99 priority.

100 I have concerns about the regression analysis contained
101 in the recent high-cost order with admitted inaccuracies in
102 the data sets used, lawsuits filed and implementation
103 beginning this past Sunday. I worry that what started out as
104 an honest effort to modernize and create an efficient fund
105 has developed into a situation in which rural America could
106 in fact see declining service quality and higher prices.

107 I understand that the FCC has opened a proceeding
108 seeking comment on contribution reform, and I am eager to
109 hear where our witnesses stand on how contribution should be
110 assessed, what services and service providers should
111 contribute, and most importantly, what they understand their
112 current authority is when making such assessments.

113 Last, I have a few questions on a process in regard to

114 investigations at the FCC Office of Engineering and
115 Technology. I have been informed that a company in my
116 district that produces remote monitoring equipment for
117 propane tanks has filed a formal complaint alleging that one
118 of their competitors is operating in an unauthorized band,
119 and I would like to know more about how the Commission
120 considers such allegations, and I thank my friend from
121 Oregon, and I yield back.

122 [The prepared statement of Mr. Terry follows:]

123 ***** COMMITTEE INSERT *****

|
124 Mr. {Walden.} And I would yield now to the gentleman
125 from Texas, Mr. Barton, for the remaining 23 seconds.

126 Mr. {Barton.} Twenty-three seconds?

127 Well, I want to welcome our two new Commissioners from
128 the FCC to the Energy and Commerce Committee. We look
129 forward to a long and fruitful dialog with you two fine
130 folks, and I hope that in this hearing today, Mr. Chairman,
131 we take a look at your bill, H.R. 3309, the FCC Process
132 Reform Act. I think it is a good piece of legislation and I
133 would like to hear what the members of the FCC have to say
134 about it.

135 And with that, I will put the balance of my statement in
136 the record and yield back the remaining 12 seconds.

137 [The prepared statement of Mr. Barton follows:]

138 ***** COMMITTEE INSERT *****

|
139 Mr. {Walden.} I thank the gentleman from Texas and now
140 recognize the ranking member of the subcommittee, Ms. Eshoo,
141 for 5 minutes.

142 Ms. {Eshoo.} Thank you, Mr. Chairman, and good morning
143 to the full Commission. We have all five Commissioners
144 before our subcommittee for the first time this year, so
145 welcome to you, and an especially warm welcome to the two new
146 Commissioners. Congratulations to you. We look forward to
147 working with you.

148 Today the FCC is faced with an enormous set of tasks
149 that will define the communications landscape in the second
150 decade of the 21st century. From implementation to voluntary
151 spectrum auctions to reforming the special-access market, the
152 FCC has an opportunity to create a more competitive
153 marketplace supporting greater consumer choice and a more
154 robust wired and wireless network for consumers and
155 businesses across our country.

156 I would like to begin by addressing the implementation
157 of incentive auctions, a product of this subcommittee's work
158 over the last year and a half, practically a year and a half
159 it took us to produce that bill. The law was carefully
160 crafted to create new opportunities for unlicensed spectrum
161 and ensure that rules guiding the auction of spectrum,

162 enhanced competition, consumer choice and innovation. So as
163 the Commission proceeds with developing its rules, I look
164 forward to discussions that will ensure that the
165 Congressional intent is closely followed.

166 Second, the Commission has an opportunity to overhaul
167 the special-access market. As an FCC official noted last
168 month, there is widespread agreement that the existing
169 framework is broken. I am hopeful that the FCC will proceed
170 expeditiously with a mandatory data request and collect the
171 data that is necessary to reform the special-access market on
172 a comprehensive basis. This has been hanging around for a
173 long time. So I think that that needs to be really moved to
174 the front burner.

175 Third, in less than 30 days, the FCC's rules to place
176 the political file online will go into effect, and I want to
177 thank the Commission for what it has done. We have to
178 sometimes remind ourselves that we are in the 21st century,
179 not the 19th or the 20th. We need to go beyond wooden file
180 cases, even metal file cases. There is an Internet.
181 Everything goes online. So I look forward to this, as a
182 long-time supporter of this action. I want to thank the
183 Commission and I look forward to seeing the Commission
184 proceed with bringing the information online, and as I said,
185 out of these cabinets that probably sit in the basements of

186 stations today.

187 There are many more issues I hope we will cover in
188 today's hearing including efforts to improve consumer
189 disclosure of wireless data plan terms and conditions, the
190 impact of discriminatory data caps on future innovation, and
191 steps being taken, and I know many have been, to expand
192 broadband adoption.

193 So thank you, Mr. Chairman, for holding this hearing,
194 and I would like to yield my remaining time to Ms. Matsui.

195 [The prepared statement of Ms. Eshoo follows:]

196 ***** COMMITTEE INSERT *****

|
197 Ms. {Matsui.} Thank you so much, Ranking Member Eshoo,
198 for yielding me time. I want to welcome our new
199 Commissioners, Commissioner Rosenworcel and Pai, along with
200 our Chairman Genachowski and Commissioners Clyburn and
201 McDowell. We love to have the full complement of
202 Commissioners here.

203 While the FCC has a lot on its plate, one of its major
204 tasks will be undertaking arguably the most complex spectrum
205 auction in history. It is imperative that the process be
206 transparent, and I believe Congress must work closely with
207 the FCC to ensure the auction's success. As co-chair along
208 with Mr. Guthrie of the bipartisan Federal Spectrum Working
209 Group, we have another unique opportunity to work closely
210 with the FCC, NTIA, DOD and other relevant agencies in truly
211 identifying underutilized federal spectrum.

212 Our Nation continues to face a spectrum crunch. As a
213 first step, Congressman Stearns and I introduced bipartisan
214 legislation to repurpose the 1755 to 1780 spectrum ban for
215 commercial use.

216 Lastly, while there are some tough decisions ahead, I
217 want to encourage the FCC to move forward with the USF reform
218 efforts. As part of its reforms, I am pleased that the
219 Commission is moving forward with a broadband adoption pilot

220 program similar to legislation I introduced last year, the
221 Broadband Affordability Act. These pilot projects will help
222 provide greater access to the Internet for seniors, the
223 disabled and lower-income Americans in both urban and rural
224 America. It is my hope that the FCC will use the data
225 gathered from the pilot program to implement a responsible,
226 permanent, broadband adoption program. I look forward to
227 working with the Commission on these and other issues, and
228 yield back the balance of my time.

229 [The prepared statement of Ms. Matsui follows:]

230 ***** COMMITTEE INSERT *****

|
231 Mr. {Walden.} The gentlelady yields the balance of her
232 time.

233 The chairman now recognizes the chairman of the full
234 committee, the distinguished gentleman from Michigan, Mr.
235 Upton.

236 The {Chairman.} Thank you, Mr. Chairman. I too join in
237 welcoming our two new Commissioners and all five of you
238 together.

239 This is an exciting time. We passed landmark spectrum
240 legislation earlier this year that will indeed help kick-
241 start our economy, promote investment and jobs, and provide
242 Americans access to new and innovative services. The
243 legislation does this by putting more frequencies in
244 commercial hands as the Internet goes mobile and demand for
245 wireless broadband continues to grow tremendously.

246 First, it requires the FCC to auction 65 megahertz of
247 particular spectrum within the next 3 years, and Mr.
248 Chairman, I look forward to hearing your plans for this
249 spectrum, including the frequencies from 2155 to 2180
250 megahertz, which are ideally suited for pairing with the
251 spectrum from 1755 to 1780.

252 Second, the legislation authorizes the FCC to conduct
253 incentive auctions in which the government shares some

254 proceeds with licensees, including broadcasters, that
255 voluntarily return spectrum to be auctioned for broadband
256 services. I am eager to learn when you will start
257 implementing the incentive auctions and when you think the
258 broadcast incentive auction will indeed take place. I also
259 want to reinforce what we required in the legislation: that
260 the FCC not preclude parties from participating in the
261 auction. The FCC should not be picking winners and losers,
262 and the more robust an auction, the more successful that it
263 will be.

264 I would also like to hear about your plans for special
265 access services. I am glad you chose not to move forward
266 with the draft order that would have suspended the current
267 pricing flexibility regime even though parties had petitions
268 pending. This regime was put in place by a Democrat-led FCC
269 to allow limited deregulation where the parties demonstrate
270 the presence of competition. And as we know, we have made
271 good process a priority in this Congress, and it would have
272 been inappropriate to change the rules in the middle of the
273 game.

274 I understand you may be redrafting that item. I am
275 interested to know whether you will first move forward with a
276 mandatory data collection, as reported, to determine whether
277 changes are appropriate and, if so, what kind. I also want

278 to make sure that you keep in mind the purpose of the pricing
279 flexibility regime: to gradually stop applying some old rules
280 to old technology in the presence of competition, not to
281 start imposing new rules on new technology, like fiber
282 facilities and Ethernet services designed for the broadband
283 world.

284 I also look forward to hearing about the impact of the
285 massive storm that swept from the Midwest through the Mid-
286 Atlantic region just over a week ago. There were reports
287 that phone service and 911 call centers were down. How
288 extensive was it? What were the causes? What can we do to
289 stop them again?

290 I yield the balance of my time to Mr. Stearns.

291 [The prepared statement of Mr. Upton follows:]

292 ***** COMMITTEE INSERT *****

|
293 Mr. {Stearns.} Thank you, distinguished full Chairman,
294 and let just also welcome the two Commissioners, and I want
295 to applaud the FCC for taking the steps to reform the
296 Universal Service Fund. Any small step forward is good. I
297 encourage you to conclude your operation and work forward.

298 I think I am also interested in how the FCC believes
299 federal spectrum can alleviate today's spectrum crunch, and
300 the federal government occupies approximately 60 percent of
301 the best spectrum which the FCC must strongly consider as it
302 seeks to reach its goal set out in the national broadband
303 plan.

304 Mr. Chairman, I think you and I had called for an
305 inventory during the stimulus package when you had the
306 broadband deployment of \$7.5 billion. We wanted to map it
307 before it was given out; it wasn't. I think we should also
308 have a spectrum inventory of the military and elsewhere to
309 see how much they have to possibly see how much of that is
310 available to help the private sector. I have introduced a
311 bill, as Congresswoman Matsui mentioned, H.R. 4817, Efficient
312 Use of Government Spectrum Act. This is a small step
313 forward, which we believe is helpful and we would like to
314 have a hearing on it.

315 And finally, Mr. Chairman, the FCC must continue to work

316 diligently on clearing its backlog. Part of the problem that
317 we find across government is there is a backlog, whether it
318 is in the Veterans Administration or the FCC. The agency is
319 making headway. I compliment you on that. But many items
320 that could fuel job growth and investment have lingered.
321 Perhaps I will just name a few without taking any positions
322 on the merits of these. That is the Securus petition, Anda's
323 application for review, Sky Angel's program access complaint,
324 and of course, the Illinois Public Telephone Association
325 petition for a declaratory ruling. I hope the FCC will look
326 at that.

327 I thank you, Mr. Chairman.

328 [The prepared statement of Mr. Stearns follows:]

329 ***** COMMITTEE INSERT *****

|
330 Mr. {Walden.} The gentleman's time has expired.

331 The chair recognizes the distinguished gentleman from
332 California, Mr. Waxman, for 5 minutes.

333 Mr. {Waxman.} Thank you, Mr. Chairman, for holding this
334 hearing, and I want to welcome back Chairman Genachowski and
335 Commissioners Clyburn and McDowell. You have been before our
336 committee before. And I am pleased to also welcome the two
337 new members from the Commission, Jessica Rosenworcel and Ajit
338 Pai. I am sure you are both going to prove worthy of the
339 long wait you had to get your confirmation to join the
340 Commission, and we are all looking forward to working with
341 you as well.

342 The communications and technology industry is a source
343 of incredible innovation and it is an engine for national
344 economic growth. The FCC's charge is to promote robust
345 competition, ensure access to service for all, and safeguard
346 the American consumer, and all these become even more
347 important as these technologies play an increasing role in
348 our daily lives.

349 This was certainly brought home to us as recent weather-
350 related incidents made abundantly clear. Americans rely on
351 broadband devices and applications more than ever, and our
352 lives are greatly enhanced by access to these critical

353 services. When we had the massive power outages throughout
354 the mid-Atlantic region, it led millions of Americans to
355 malls and coffee shops, not necessarily to seek an air-
356 conditioned environment, shop or drink coffee, but to
357 recharge their phones, tablets and computers. These devices
358 needed to have power in large part so that they could be
359 connected to the Internet.

360 In light of our increasing reliance on the Internet, it
361 is imperative that our communications laws and regulatory
362 policies not only continue to promote the innovation that our
363 Nation exports worldwide, but also ensure that Americans have
364 reliable, affordable, access to the Internet at home.

365 Earlier this year, Congress passed legislation charging
366 the FCC with carrying out two critical tasks: ensuring
367 interoperability for a nationwide broadband network for first
368 responders and making more spectrum available for mobile
369 broadband through incentive auctions, and I am pleased that
370 the Chairman has retained a world-class team to help design
371 and implement these unprecedented auctions.

372 I also understand the FCC is now considering how to
373 integrate jurisdictions that had previously received waivers
374 to build-out their public safety network into FirstNet. I
375 strongly urge the Commission to limit the potential for early
376 builders to undermine the long-term success of FirstNet.

377 The FCC has also taken long overdue steps to modernize
378 the high-cost and low-income Universal Service Fund programs.
379 These limited public dollars must be used wisely to connect
380 millions of Americans unserved by broadband or facing
381 barriers to adoption, and I urge you to continue moving
382 forward with reform. Under Chairman Genachowski's
383 leadership, you are collectively making the tough policy
384 calls that need to be made and I support your efforts.

385 Special access is a concern. It is long overdue for
386 reform. There is widespread agreement that the current
387 deregulatory triggers are broken, even from many incumbent
388 providers of these services, and I hope the Commission will
389 move quickly to gather additional industry data as needed and
390 address the potentially anticompetitive terms and conditions
391 in special-access contracts.

392 And finally, I urge the Commission to scrutinize
393 carefully the transactions between Verizon and four of the
394 Nation's largest cable companies. Serious questions have
395 been raised about the impact these integrated deals will have
396 on video, broadband and wireless competition. We are hearing
397 from a variety of corporate and public interest stakeholders
398 who are very concerned about what these deals mean for
399 competition. I know the Department of Justice as well as the
400 FCC both have important responsibilities in this process and

401 should coordinate their respective reviews as the agencies
402 examine these proposed arrangements.

403 I look forward to your testimony and want to thank you
404 again for appearing before our committee.

405 Mr. Chairman, I want to yield the balance of my time to
406 our colleague, Ms. Christensen.

407 [The prepared statement of Mr. Waxman follows:]

408 ***** COMMITTEE INSERT *****

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409 Dr. {Christensen.} Thank you, Mr. Chairman, and I would
410 also like to add my word of welcome to Commissioners Clyburn
411 and McDowell, who are back with us, and of course, Mr.
412 Chairman and to the two new members, and I really want to
413 thank the Commission for the work that you have done to
414 streamline and make the work of the Commission more efficient
415 and also more transparent.

416 I am particularly interested in the FCC's USF reform
417 proposed changes to intercarrier compensation and its
418 potential impact on rural service providers in territories.
419 In my district, the U.S. Virgin Islands, we are extremely
420 concerned that the proposed cost model currently being
421 reviewed by the Wireline Competition Bureau would reduce
422 support for our incumbent provider potentially from \$16.4
423 million to only \$400,000.

424 And also, as a member of the Working Group on Spectrum,
425 I look forward to working with you and service providers to
426 address spectrum scarcity. I know that companies like
427 Verizon Wireless and T-Mobile are taking the initiative to
428 find solutions and they are under your review right now, but
429 working with you and the working group, I know that we will
430 find some solutions as well.

431 Thank you. I yield back the balance of my time.

432 [The prepared statement of Dr. Christensen follows:]

433 ***** COMMITTEE INSERT *****

|
434 Mr. {Walden.} The gentlelady yields back the balance of
435 her time. Does the gentleman yield back the balance of his
436 time? He does.

437 And now we will proceed on to our witnesses, and we are
438 certainly delighted to have all of you here today and respect
439 the work that you do, and Chairman Genachowski, we are going
440 to lead off with you. Thank you for being here and we look
441 forward to your testimony.

|
442 ^STATEMENTS OF HON. JULIUS GENACHOWSKI, CHAIRMAN, FEDERAL
443 COMMUNICATIONS COMMISSION; HON. ROBERT M. MCDOWELL,
444 COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; HON. MIGNON
445 CLYBURN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION;
446 HON. JESSICA ROSENWORCEL, COMMISSIONER, FEDERAL
447 COMMUNICATIONS COMMISSION; AND HON. AJIT PAI, COMMISSIONER,
448 FEDERAL COMMUNICATIONS COMMISSION

|
449 ^STATEMENT OF JULIUS GENACHOWSKI

450 } Mr. {Genachowski.} Thank you, Chairman Walden and
451 Ranking Member Eshoo, members of the committee. I am pleased
452 to be joined by a full complement of Commissioners including
453 my newest colleagues, Commissioners Rosenworcel and Pai. I
454 am certain that the members of this committee will find them
455 to be excellent additions to the Commission, as I have.

456 This is my seventh time testifying before this committee and
457 I have been fortunate to meet with many of you individually.

458 So by now, most of you know that that my primary focus
459 as Chairman has been promoting innovation, investment,
460 competition and consumers in the ICT sector. We focused the
461 agency on maximizing the benefits of broadband
462 communications, and on harnessing wired and wireless

463 broadband to grow our economy, create jobs, enhance U.S.
464 competitiveness, and foster improvements in areas like
465 education, health care and public safety.

466 Let me provide a brief overview of some recent
467 developments since I last testified before you about 5 months
468 ago. First, we continue to receive good news for the United
469 States from across the broadband sector. The United States
470 has regained global leadership, particularly in mobile. The
471 United States leads the world in 3G subscribers by a wide
472 margin, and we are leading the world in deploying 4G mobile
473 broadband at scale.

474 The apps economy continues to grow, and U.S. firms and
475 developers continue to lead the way. In the last 3 years,
476 the percentage of smartphones globally with U.S. operating
477 systems has grown from 25 percent to more than 80 percent.
478 And in the last 3 years, we have gone from less than 20
479 percent of our population living in areas with broadband
480 infrastructure capable of broadband speeds above 100 megabits
481 to approximately 80 percent, more than triple in 3 years,
482 putting us at or near the top of the world.

483 Of course, in this fast-moving sector, there are many
484 challenges ahead, and our global competitors remain focused
485 on broadband opportunities. So at the FCC, we continue to
486 work to help drive our broadband economy. We continue our

487 efforts to spur broadband buildout, including by removing
488 barriers to deployment. Just last month, the President
489 issued an Executive Order implementing recommendations of the
490 FCC's National Broadband Plan, our Technological Advisory
491 Council, and members of this Committee, and I acknowledge
492 Congresswoman Eshoo's leadership on this. The Executive
493 Order took steps to ease access to federal roads, lands and
494 buildings for broadband infrastructure. It also directed the
495 Department of Transportation to develop ``dig once''
496 policies.

497 As part of our Mobile Action Plan, we have taken several
498 recent actions to spur mobile innovation and investment and
499 free up spectrum. In March, we launched a rulemaking on a
500 proposal to remove barriers to flexible spectrum use in the
501 proposed AWS-4 band. We are close to completing our work to
502 free up 25 megahertz of spectrum in the WCS band. In May, we
503 removed outdated rules on spectrum use in the 800 megahertz
504 band, which will help accelerate LTE. And in August I expect
505 that we will continue our ongoing efforts to remove
506 unnecessary rules hindering the deployment of wireless
507 backhaul.

508 We are making progress on other pieces of our Mobile
509 Action Plan. The Commission is working with NTIA to
510 facilitate industry tests of LTE sharing in the 1755-1780

511 megahertz band, and of course, we are hard at work designing
512 the world's first incentive auctions to implement the
513 landmark recently enacted law, a complex task affecting major
514 parts of our economy and involving many challenging questions
515 of economics and engineering. I expect the Commission will
516 put forward proposals by the fall and seek broad public
517 comment.

518 We are also on track to fulfill our obligations under
519 the recent law that relate to the new national mobile
520 broadband public safety network, and we continue to work on a
521 full range of public safety communications issues. I am
522 concerned about 911 and other communications outages during
523 the recent storm in the D.C. area. This is something we are
524 investigating and take seriously.

525 On other matters, we are moving forward with
526 implementation of our unanimously approved comprehensive
527 reform of the Universal Service Fund (USF). These reforms
528 will finally bring broadband to millions of unserved people
529 in rural America while putting the fund on a fiscally
530 responsible budget. We recently announced the availability
531 of the first rounds of funding under the Connect America Fund
532 and Mobility Fund, and just yesterday Frontier announced that
533 it will be deploying broadband to approximately 200,000
534 unserved Americans as a result of the new Connect America

535 Fund.

536 The Commission is also helping to tackle threats to our
537 broadband economy. As the result of an FCC-led process on
538 cybersecurity, ISPs serving 90 percent of all U.S.
539 residential broadband subscribers have committed to adopting
540 voluntary, concrete measures to combat three major threats:
541 botnets, IP route hijacking and domain name fraud. Working
542 with the Nation's police chiefs, we reached an agreement with
543 the major mobile carriers to create a database of stolen cell
544 phones, which will help crack down on the growing problem of
545 smartphone theft.

546 And I continue to speak both publicly and privately with
547 my international counterparts about the vital importance of
548 preserving Internet freedom and the multi-stakeholder model
549 of international Internet governance. I commend this
550 committee for its bipartisan resolution reaffirming the
551 United States' unequivocal support for the successful multi-
552 stakeholder model.

553 On top of all of these efforts, we continue working to
554 make the agency more open, efficient and effective. I have
555 previously reported on the many concrete steps we have taken
556 to reduce backlogs and speed decisions. I am pleased to
557 report today that over the past 6 months we have made
558 significant reductions in our backlog, including a more than

559 20 percent reduction in items pending more than 6 months in
560 the Wireline Bureau, and an across-the-board 20 percent
561 reduction in license applications and renewals pending more
562 than 6 months. We have also cut the average number of days
563 required to review routine wireless transactions in 2012 by
564 more than half.

565 I appreciate the opportunity to be here today. I look
566 forward to continuing to work with this committee to identify
567 opportunities to unleash communications technologies to
568 benefit our economy and all Americans. Thank you.

569 [The prepared statement of Mr. Genachowski follows:]

570 ***** INSERT 1 *****

|
571 Mr. {Walden.} Thank you, Chairman. We appreciate your
572 testimony and your work and now we will turn to Commissioner
573 McDowell. Thank you for being here. We look forward to your
574 comments as well.

|
575 ^STATEMENT OF ROBERT M. MCDOWELL

576 } Mr. {McDowell.} Thank you, Chairman Walden and Ranking
577 Member Eshoo and all members of the committee. It is great
578 to be back here. I was just here 6 weeks ago, so it is good
579 to be back.

580 The FCC's to-do list is quite lengthy. Among the many
581 tasks that face the agency are, in no particular order:
582 implementing the new spectrum auction law; completing
583 universal service contribution, or tax reform; modernizing
584 our media ownership rules; determining a path forward in the
585 wake of the Supreme Court's recent ruling regarding our
586 indecency policies; and turning back international efforts to
587 regulate the Internet.

588 First, as the Commission works to implement the new
589 spectrum auctions law, we should do it with simplicity,
590 humility and restraint. History teaches us time and again
591 that over-engineered or micromanaged auctions and spectrum
592 policies inevitably lead to harmful unintended consequences
593 such as interoperability complications, reduced investment
594 and less revenue generated at auction for the Treasury. Band
595 plans and auction rules should be minimal and future-proof so
596 no innovation is preempted by government action and no market

597 player is excluded from the opportunity to bid.

598 Second, to help put more spectrum into the hands of
599 American consumers, we need to find new ways to encourage the
600 Executive Branch to relinquish federal spectrum for auction,
601 as well as help create a policy framework to encourage
602 technological advancements and investments in spectral
603 efficiency, that is, how can we squeeze more capacity out of
604 currently available airwaves.

605 Third, although the Commission has completed most of its
606 work on the spending side of the universal service ledger, we
607 are overdue for an overhaul of the taxing side. As this
608 automatic tax increase skyrockets into unprecedented
609 stratospheric heights, we have an obligation to finalize
610 fiscally prudent reform as soon as possible.

611 Fourth, way back in 1996, Congress directed the FCC to
612 clear away unnecessary regulations in the media marketplace
613 as competition takes root. Although complicated by several
614 appellate rulings, the Commission owes it to Congress, the
615 courts and, most importantly, the American people to
616 modernize our rules to reflect the competitive realities of
617 the new media age. In my view, the newspaper broadcast
618 cross-ownership rule is outdated, is contributing to a loss
619 of voices in the media marketplace and should be largely
620 eliminated.

621 Fifth, as the father of three young children, protecting
622 them from inappropriate content is a high priority for our
623 family. The Commission should act with all deliberate speed
624 to clarify its indecency policy in the wake of the recent
625 Supreme Court decision on this matter and work to process the
626 roughly 1.5 million indecency complaints, some of which have
627 been pending for over 9 years.

628 Lastly, I would like to thank this subcommittee in
629 particular once again for raising the profile of the
630 international effort to regulate the Internet. The May 31st,
631 which hearing was watched literally around the world, as I
632 learned from my trip to Italy recently, it delivered a loud
633 and clear message that not only is it the strong bipartisan
634 policy of the United States to ensure that the expansion of
635 intergovernmental powers over the Net never takes place, but
636 that failure to prevent this effort would harm developing
637 nations the most.

638 So thank you again for having us here, and I look
639 forward to answering your questions.

640 [The prepared statement of Mr. McDowell follows:]

641 ***** INSERT 2 *****

|
642 Mr. {Walden.} Thank you for your thoughtful testimony.

643 We now go to Commissioner Clyburn. Thank you for being

644 here and we appreciate the work you are doing on the

645 Commission and look forward to your comments as well.

|
646 ^STATEMENT OF MIGNON CLYBURN

647 } Ms. {Clyburn.} Thank you. Good morning, Chairman
648 Walden, Ranking Member Eshoo and members of the committee.

649 I am grateful for the opportunity to testify before you
650 today. Through a collaborative and inclusive decision-making
651 process, the Commission is issuing rulemakings and setting
652 policies that are creating a foundation for innovation and
653 investment, for we all share the goal of promoting robust
654 competition throughout all industry sectors, and by
655 continuing this dialogue between the Commission, Congress and
656 all stakeholders, we are on the path towards fostering a
657 vibrant and dynamic communications marketplace.

658 The ideal communications environment consists of a host
659 of viable competitors, constantly innovating and challenging
660 one another with a myriad of products and service offerings.
661 Today's reality, however, is far from this utopian ideal.
662 There are still times where the communications ecosystem
663 fails to properly address key consumer interests. When that
664 occurs, the FCC is charged with playing a vital role that
665 necessitates striking the delicate balance between two
666 equally important considerations: the protection of consumers
667 and regulatory certainty for businesses.

668 Under the leadership of Chairman Genachowski, the FCC
669 has worked collaboratively with stakeholders in crafting
670 policies and solutions in response to industry concerns. And
671 while we encourage voluntary solutions that will give the
672 marketplace greater flexibility to respond to ever-evolving
673 consumer needs, we recognize that this will not always take
674 place. The Commission is justified in some instances in the
675 adoption of smart, targeted regulations when necessary to
676 promote meaningful competition in order to ensure that basic
677 protections are in place. And even in instances where the
678 Commission must codify regulations, we make sure that lines
679 of communication remain open and have implemented waiver
680 procedures so that we can take into consideration the unique
681 circumstances of industry participants.

682 Last October, the Commission adopted reforms to the
683 Universal Service Fund put it on a sound, more sustainable
684 path. Today, with more Americans using mobile services than
685 ever before, and with broadband now serving as a gateway by
686 which most Americans obtain critical information and
687 services, the fund needed to be updated to reflect modern-day
688 realities.

689 The reforms that we adopted will promote significant
690 broadband deployment to millions of unserved consumers in our
691 Nation as quickly as possible over the next 6 years. Most

692 importantly, our reform carefully balances the need for
693 certainty and predictability for carriers by avoiding flash
694 cuts and providing transitions so they may adjust to the
695 changes.

696 Another example of how efficient progress is being made
697 through collaboration is reflected in recent Commission
698 action to spur the creation of new Body Medical Area
699 Networks, or MBANs. These devices, which are about the size
700 and shape of a Band-Aid, are going to revolutionize health
701 care. They are disposable, low-cost inventions that send
702 signals to a nearby information aggregation device by way of
703 a low-power radio transmitter. They will allow hospitals to
704 monitor patients' vital signs, such as heart rate and blood
705 pressure levels, without all the wires and cables that tether
706 a patient to machines. MBAN devices should also attract
707 capital investment and spur business development and job
708 creation as the health care profession and the wireless
709 industry again join forces in deploying innovation
710 nationwide.

711 At the FCC, we are also committed to equal provision of
712 communications services to all. In addition to expanding
713 sustainable broadband service to rural and underserved
714 Americans, we are also tackling addressing those with
715 disabilities. Congress paved the way for the Commission's

716 advocacy of these issues by enacting the 21st Century
717 Communications and Video Accessibility Act. Under the CVAA,
718 two initiatives will come into effect this month. The first
719 is network video descriptions, which will allow blind or
720 sight-impaired viewers to more fully benefit from network
721 programs. The second is the National Deaf-Blind Equipment
722 Distribution Program, which will provide funding for up to
723 \$10 million annually for the local distribution of
724 communications equipment to low-income individuals who are
725 deaf-blind. The represents an important moment towards
726 ensuring that individuals who are deaf-blind are better able
727 to utilize our Nation's communications systems.

728 At this juncture, I will yield out of respect for time
729 and will offer myself for questions that you may have. Thank
730 you.

731 [The prepared statement of Ms. Clyburn follows:]

732 ***** INSERT 3 *****

|
733 Mr. {Walden.} I thank the Commissioner. We appreciate
734 your work and your testimony.

735 Ms. Rosenworcel, we are delighted to have you here
736 before the committee. We welcome you and we and look forward
737 to your comments.

|
738 ^STATEMENT OF JESSICA ROSENWORCEL

739 } Ms. {Rosenworcel.} Good morning, Chairman Walden,
740 Ranking Member Eshoo and members of the subcommittee. It is
741 an honor to appear before you today in the company of my new
742 colleagues at the Federal Communications Commission. I also
743 would like to thank Chairman Genachowski, Commissioner
744 McDowell, Commissioner Clyburn and the FCC staff for the warm
745 and generous welcome I received when I was sworn into office
746 with Commissioner Pai just 2 months ago.

747 Let me begin by noting that there is no sector of the
748 economy more dynamic than communications. By some measures,
749 communications technologies account for one-sixth of the
750 economy in the United States. They support our commerce,
751 they connect our communities, and they enhance our security.
752 They help create good jobs. By unlocking the full potential
753 of broadband, they will change the way we educate, create,
754 entertain and govern ourselves.

755 But communications technology is changing at a brisk
756 pace. Laws and regulations struggle to keep up. So it is
757 important that the FCC approach its tasks with a healthy dose
758 of humility. At the same time, I believe that there are
759 enduring values in the Communications Act that must always

760 inform our efforts.

761 First, public safety is paramount. Congress directed
762 the FCC to promote the safety of life and property in the
763 very first sentence of the Communications Act. The Middle
764 Class Tax Relief and Job Creation Act builds on this
765 principle with its framework for a nationwide network for
766 first responders. Just last week in Washington we were
767 reminded how vulnerable we are without access to
768 communications. Weather-related power outages across the
769 region brought life to a halt, as wireless towers and 911
770 centers failed too many of us. Now the FCC must begin an
771 investigation. It must search out the facts wherever they
772 lead and apply the lessons we learn, so that our networks are
773 more resilient, more secure and more safe.

774 Second, universal service is essential. No matter who
775 you are or where you live, prosperity in the 21st century
776 will require access to broadband. The FCC's ongoing efforts
777 at broadband deployment and adoption are built on this simple
778 truth. But I believe the principle of universal service goes
779 further. It incorporates the direction from Congress and
780 this committee in the 21st Century Communications and Video
781 Accessibility Act, which has helped the FCC expand digital
782 age opportunity to 54 million Americans with disabilities.

783 Third, competitive markets are fundamental. Competition

784 inspires private sector investment. It is the far and away
785 the most effective means of facilitating innovation and
786 ensuring that consumers reap its benefits.

787 Fourth, consumer protection is always in the public
788 interest. Communications and media services are growing more
789 complex and becoming a more substantial part of household
790 budgets. It is vitally important to get consumers the
791 information they need to make good choices in a marketplace
792 that can be bewildering to navigate. Here the FCC, working
793 with industry, has made strides, including with its new bill
794 shock initiatives. But going forward, the FCC should strive
795 to make the data it produces more useful for consumers and
796 make the complaint process more responsive to their needs.

797 In the months ahead, the FCC will have no shortage of
798 challenging issues to address. Let me highlight one that you
799 are undoubtedly familiar with: the growing demand for
800 spectrum. The statistics vary, but are undeniably striking.
801 In the next 5 years, mobile data traffic will grow between 16
802 and 35 times.

803 But let me start by traveling back. For nearly 2
804 decades, the FCC's path-breaking spectrum auctions have led
805 the world. The agency has held more than 80 auctions, issued
806 more than 36,000 licenses, and raised more than \$50 billion
807 for the United States Treasury. In the Middle Class Tax

808 Relief and Job Creation Act, Congress provided the FCC with
809 authority to hold a new kind of auction--incentive auctions.
810 I am confident that with the right mix of engineering and
811 economics, the agency can once again serve as a pioneer. It
812 should strive to do so in a manner fair to all stakeholders.
813 I also believe that with a concerted effort, the FCC can
814 identify ways that guard bands can support new and innovative
815 unlicensed services, contributing billions to our economy.
816 But I do not believe that incentive auctions alone will meet
817 our spectrum challenge.

818 The equation here is simple. The demand for airwaves is
819 going up. The supply of unencumbered airwaves is going down.
820 This is the time to innovate. We must put American know-how
821 to work and create incentives to invest in technologies--
822 geographic, temporal and cognitive--that will multiply the
823 capacity of our airwaves. We also must find ways that reward
824 federal users when they make efficient use of their spectrum
825 and provide real incentives for sharing or return when their
826 allocations are underutilized.

827 It is an exciting time in communications. The issues
828 before the FCC are not easy. But the rewards of getting them
829 right are tremendous. They will grow the economy, create
830 jobs, raise wages and enhance our civic life.

831 Thank you for the opportunity to appear before you

832 today. I look forward to any questions you might have.

833 [The prepared statement of Ms. Rosenworcel follows:]

834 ***** INSERT 4 *****

|
835 Mr. {Walden.} Thank you, Commissioner. We appreciate
836 your comments, especially the ones at the end. We have a
837 working group on government spectrum and we would welcome any
838 comments you may have as they continue their work, so we may
839 be calling on you.

840 We recognize now the--are you the newest Commissioner?
841 I don't know, in the seating order, who came last?

842 Mr. {Pai.} Technically, yes, I am the most junior
843 member.

844 Mr. {Walden.} All right. Well, we will save your
845 testimony for last then but now you are. Thank you for being
846 here, Commissioner Pai. We welcome your comments and your
847 service on the Commission, and please feel free to go ahead.

|
848 ^STATEMENT OF AJIT PAI

849 } Mr. {Pai.} Thank you, Mr. Chairman. Chairman Walden,
850 Ranking Member Eshoo, and members of the committee, thank you
851 for inviting me to testify at this hearing today. I have
852 been honored to meet recently with many of you, and it is a
853 privilege to make my first appearance before you in my
854 capacity as a Commissioner.

855 At my confirmation hearing, I testified that a good
856 Commissioner must be a good listener. During my first 7
857 weeks in office, I have tried to be just that. I have held
858 over 80 meetings with representatives of companies, public
859 interest groups, trade associations, Members of Congress, and
860 others. Everyone, of course, has distinct views on how the
861 FCC is doing, but there is a common refrain: the FCC needs to
862 become more nimble in discharging its responsibilities.

863 I have been struck by how many parties have suggested
864 that the Commission has delayed taking action in a particular
865 proceeding for months, for a year, or even for the better
866 part of a decade. This has been a longstanding issue. I
867 believe we must act with the same alacrity as the industry we
868 regulate because delays at the Commission have real-world
869 consequences: new technologies remain on the shelves; capital

870 lies fallow; entrepreneurs stop hiring or, even worse, reduce
871 their workforce as they wait for the regulatory uncertainty
872 to work itself out. None of these outcomes benefits the
873 American economy or the American consumer. That is why one
874 of the members of this subcommittee recently advised me that
875 what was most needed from the FCC was speed. To that end, I
876 support initiatives such as shot clocks and sunset clauses.
877 The former measure sets deadlines for Commission action while
878 the latter requires periodic re-evaluation of existing rules.
879 In different ways, each ensures timelier decision-making at
880 the Commission as well as a regulatory framework better
881 calibrated to a dynamic marketplace.

882 One critical area where we must act with greater
883 dispatch is spectrum. The National Broadband Plan set two
884 targets: 300 megahertz in additional spectrum by 2015 for
885 mobile broadband; and 500 megahertz by 2020. Unfortunately,
886 we are not on track currently to meet these goals. Two years
887 after the plan was adopted, none of the bands identified
888 today can be used for mobile broadband. This situation must
889 change.

890 One near-term opportunity is the 40 megahertz of
891 spectrum in the AWS-4 band. Earlier this year, the
892 Commission issued a NPRM on establishing service, technical
893 and licensing rules for this band to facilitate its use for

894 terrestrial broadband. The comment cycle in that proceeding
895 has ended, and I believe we should issue rules by the end of
896 September.

897 In the intermediate term, incentive auctions hold the
898 greatest promise of increasing the stock of commercial
899 spectrum for wireless broadband thanks to legislation passed
900 by Congress and shaped by the subcommittee. It is an
901 exciting opportunity but also a daunting one. No nation has
902 ever held a more complex set of auctions. My view is that we
903 should roll up our sleeves and commence a rulemaking no later
904 than the fall.

905 Over the longer term, we need an all-of-the-above
906 approach to spectrum policy. We must allocate and encourage
907 the efficient use of any and all bands that can be utilized
908 for commercial wireless broadband services. We must work
909 with NTIA to facilitate the relinquishment of federal
910 spectrum. We must expedite a review of secondary market
911 transactions. We must remove barriers that stand in the way
912 of spectral efficiency, and we must encourage unlicensed use
913 of spectrum where appropriate.

914 Spectrum aside, the Commission must recognize that the
915 country is moving away from copper wire networks toward a
916 competitive world of IP networks but billions of dollars in
917 potential capital investment are sitting on the sidelines

918 because of uncertainty over how the Commission intends to
919 regulate IP networks. I am worried that recent hints about
920 the direction of special-access regulation, not to mention
921 the still-open Title II proceeding, are only going to further
922 chill investment. These proposals signal to the private
923 sector that outdated economic regulations are very much on
924 the table when it comes to IP networks. I do not support
925 imposing these regulations on high-capacity services because
926 that will only depress infrastructure investment and
927 discourage job creation.

928 Moving to the issue of process reform, I want to thank
929 this subcommittee for its views on improving the Commission's
930 work. The FCC does not have to wait, however, for a law to
931 be enacted. Indeed, we can incorporate some of these
932 proposals now. To give just an example, the adoption of new
933 regulations always should be predicated upon the Commission's
934 determination that their benefits outweigh their costs.

935 In conclusion, my goal is to work with the Chairman and
936 my fellow Commissioners to bring communications regulations
937 fully into the 21st century. The FCC needs to be a nimble
938 agency that removes barriers to technological innovation and
939 infrastructure investment, for it is innovation and
940 investment that will result in better services, lower prices,
941 economic growth and job creation, and working together, I am

942 very confident that we can do just that.

943 Thank you once again, Mr. Chairman, for affording me
944 this opportunity and I look forward to the questions from
945 members of the panel.

946 [The prepared statement of Mr. Pai follows:]

947 ***** INSERT 5 *****

|
948 Mr. {Walden.} Mr. Pai, thank you for your fine words
949 and the compliments of our work, and I appreciate some of the
950 staff hires you have made there with Nick as well. You got
951 him out of our hair. No, he is doing a great job.

952 We are going to start off with questions now and I am
953 going to start with the Chairman. Chairman Genachowski,
954 under your new order, the FCC's new order, television
955 stations in the top 50 markets by August 2nd, which is 22
956 days away, are going to have begin posting on a new site
957 information related to television buys. There are questions
958 about what is going to have to be posted. I know you have
959 got a webinar coming up, I think next week, but I wonder, in
960 terms of having been a broadcaster what is required, can you
961 show us on your website where we go to find what they are
962 required to post in specificity? Because the order came in
963 out April, I think, and the Commission said it would make a
964 version of the political database available very soon after
965 adoption of the item. That has been almost a couple months
966 ago now. A lot is happening, and we have got your site up
967 here. Can you tell us--I have never been good at navigating
968 your site, by the way. That is another issue for another
969 day. Can you tell us, if you a TV broadcaster in the top 50
970 market where on the FCC's website you go to find out how to

971 comply and what is required?

972 Mr. {Genachowski.} Sure. They are on the website. If
973 you search for public inspection file, I think that one of
974 the things you will see is the announcement for the
975 demonstration and workshop next week, which will be the
976 primary way in addition to the order that came out, which was
977 quite clear that broadcasters can learn exactly what is
978 required. Of course, it is very simple. Broadcasters
979 already keep records in their public files in their stations
980 on all the elements that need to be filed online. They will
981 be able either to email them to the FCC or to upload them.
982 It is a very simple process--

983 Mr. {Walden.} So will this--

984 Mr. {Genachowski.} --next week will help elucidate.

985 Mr. {Walden.} And so that is spelled out here. It is
986 whatever in the public file goes up online?

987 Mr. {Genachowski.} Well, the order itself says very
988 clearly what is required as well as the press release that
989 summarizes the order.

990 Mr. {Walden.} So is that order available right there?
991 I can't read it either.

992 Mr. {Genachowski.} Unfortunately, I can't read it from
993 here.

994 Mr. {Walden.} Well, I guess--so if I have got an order

995 in to my stations starting--well, it doesn't start August
996 2nd. Let us say it starts in October but I have received it
997 today but I may have a couple of flights. Some may run in
998 September, some may run in October, some may run this month.
999 I mean, there is a war going on out in about 9 States right
1000 now at the presidential level. What has to go up online
1001 August 2nd?

1002 Mr. {Genachowski.} Well, again, the primary
1003 requirements are already in place. Broadcasters are already
1004 obliged to place in their public files documents relating to--
1005 -

1006 Mr. {Walden.} So is it the buy that is running now that
1007 goes through then? Is it the information on the buy starting
1008 August 2nd forward?

1009 Mr. {Genachowski.} The general rule of thumb that we
1010 adopted in the order was that the implementation would go
1011 forward. I am not sure of the answer to your question what
1012 that means. I presume that it would mean that any buys that
1013 occur after the date of August 2nd, but that is the kind of
1014 question that will come up--

1015 Mr. {Walden.} Does this include inquiries for time? Do
1016 they have to be posted up there even if a buy hasn't taken
1017 place?

1018 Mr. {Genachowski.} Beginning August 2nd, anything a

1019 broadcaster would otherwise have to put physically in its
1020 public file at the station, it will also have to put online.
1021 And by the way, we found since we did this that companies
1022 like Time Warner made the decision a couple of years ago to
1023 just put everything they were doing online because they found
1024 it cheaper and more efficient and effective to do it. They
1025 moved to online from paper, and we expected that as
1026 broadcasters implement--

1027 Mr. {Walden.} And when you talk about Time Warner, you
1028 are talking about their broadcast television side, not their
1029 cable?

1030 Mr. {Genachowski.} No, I am talking about the cable
1031 side because they also have to keep certain files under--

1032 Mr. {Walden.} So the cable operator is going to have to
1033 put this up as well?

1034 Mr. {Genachowski.} The rules that we adopted apply only
1035 to broadcasters. I was pointing out that companies like Time
1036 Warner have decided on their own that online is actually
1037 cheaper and more effective than paper anyway.

1038 Mr. {Walden.} Let me shift gears, because there has
1039 been a lot of incoming regarding NTIA's suspension of the
1040 BTOP grants in some states. My colleague from California,
1041 Mr. Waxman, mentioned a bit about that. I am hearing from
1042 some States including my own concerns about the suspension of

1043 the grants and that in some cases that may put States out of
1044 compliance with the requirement that allows them to have this
1045 spectrum which I think in Mississippi's case by September
1046 could mean that you would have the authority to take back
1047 their public safety spectrum. So I guess the question is, do
1048 you think NTIA has this authority on its own to suspend these
1049 grants? Question one.

1050 Mr. {Genachowski.} Well, I wouldn't comment on NTIA's
1051 authority. I think NTIA should speak to its authority.

1052 Mr. {Walden.} All right. But that may fall into your
1053 lap at the FCC if NTIA suspends the grants, a State is then
1054 out of compliance. You then have the authority to take back
1055 some of their spectrum because they are out of compliance.
1056 So at some point you are going to have to make a decision
1057 whether they have the authority or not, right? So are you
1058 telling me you don't know of any authority they have to
1059 suspend these grants?

1060 Mr. {Genachowski.} Congress in the new law did
1061 something that was a landmark step even separate from
1062 incentive auctions, and that is finally move forward on
1063 creating a national interoperable public safety network.

1064 Mr. {Walden.} Right.

1065 Mr. {Genachowski.} And the clear direction of Congress
1066 was one network, FirstNet, in addition to asking the NTIA to

1067 take the lead on that. As you point out, we do have some
1068 pending specific issues that we have to work through. We are
1069 doing it together with NTIA and I look forward to working
1070 with the committee--

1071 Mr. {Walden.} But to interrupt you, some of these
1072 States have told me they have contracts with their providers
1073 that require that whatever gets built out matches whatever
1074 FirstNet puts out for interoperability and yet they are being
1075 suspended.

1076 Mr. {Genachowski.} Well, these are the issues. What we
1077 need to do now is together with NTIA look specifically at the
1078 waiver grants and determine how to get the balance right
1079 between moving forward as Congress intended with a nationwide
1080 FirstNet and dealing with particular public interest issues
1081 that come up. The fundamental goal that we understand is a
1082 nationwide interoperable network giving--

1083 Mr. {Walden.} Right. Nobody disagrees with that.
1084 Their concern, and I am sure you are keenly aware of this as
1085 we are, we want both. There is no question. We don't want
1086 the taxpayer money wasted. We want to build out. We want it
1087 to be interoperable. I am being told that is what they are
1088 doing. September 2nd may be the drop-dead date where they
1089 are out of compliance so you can imagine their panic here is
1090 what do we do if our money has been withheld, we have been

1091 stopped but we could be out of compliance with your agency by
1092 September 2nd.

1093 My time is expired. I flagged that for you. Maybe
1094 later we can talk more.

1095 Mr. {Genachowski.} Thank you.

1096 Mr. {Walden.} I now recognize the ranking member of the
1097 subcommittee, Ms. Eshoo.

1098 Ms. {Eshoo.} Thank you, Mr. Chairman, and thank you to
1099 all the Commissioners for your wonderful and important
1100 testimony.

1101 Chairman Genachowski, bravo. Those were very, very
1102 impressive numbers, and as you know, I have said ad nauseum
1103 here that the United States of America should be number one--
1104 number one in broadband, number one across the board, and I
1105 think that these numbers are really very, very important,
1106 that we are reclaiming important leadership in what you
1107 outlined, so I congratulate you and the members of the
1108 Commission.

1109 Tomorrow, there will be hundreds of people from around
1110 the bay area that are going to gather at Stanford University
1111 for a one-day event on the power and the potential of the
1112 unlicensed economy. You know that the auction provisions in
1113 the spectrum bill were really carefully crafted to preserve,
1114 protect and enhance unlicensed spectrum. So my question to

1115 you is, what steps are you taking to ensure through FCC rules
1116 that will provide innovators and entrepreneurs with the
1117 regulatory certainty they need to develop the next generation
1118 of unlicensed technologies? I have a whole list of questions
1119 so just be as brief as you can.

1120 Mr. {Genachowski.} I will answer briefly.

1121 Ms. {Eshoo.} I need a good flavor of what you are going
1122 to do.

1123 Mr. {Genachowski.} I completely agree with your premise
1124 and I think it is widely shared at the FCC. Unlicensed has
1125 been an extraordinary success story. It gave us WiFi,
1126 trillions of dollars of impact on our economy, and so in
1127 looking at incentive auctions consistent with the law, taking
1128 seriously the opportunities of unlicensed is something that
1129 we will do, and also looking at the need to address WiFi
1130 congestion and other unlicensed opportunities in other
1131 spectrum bands, but there is no question that the incentive
1132 auction bands provides an opportunity, and I was glad that
1133 the legislation provides some opportunity for unlicensed
1134 there.

1135 Ms. {Eshoo.} Great. I would encourage the
1136 Commissioners to come out to Silicon Valley and meet with the
1137 unlicensed community there because it is very exciting about
1138 what is going on, and whatever collaboration you can develop

1139 with them I think would be highly instructive as you move
1140 forward with your rules.

1141 This is for all the witnesses. Last year, I introduced
1142 legislation to help consumers understand exactly what they
1143 are getting when they sign up for a wireless data plan.
1144 There are a lot of people that advertise a lot of things, but
1145 there isn't consistency to it. So as much as we are all
1146 looking forward to 4G without a standard definition of the
1147 technology, consumers really are experiencing or often
1148 experience a vastly different experience on speeds depending
1149 on the wireless provider and the location. This in turn has
1150 led to a great deal of consumer confusion. So my question to
1151 the Commissioners is, what can the Commission do under
1152 existing statute to help consumers make a more informed
1153 decision when choosing a wireless provider?

1154 Mr. {Genachowski.} I would just note briefly that we
1155 paid close attention to complaints we have gotten from
1156 consumers in this area. It led to our efforts on bill shock
1157 so that mobile consumers get alerts before they exceed their
1158 data plans.

1159 Ms. {Eshoo.} But that is not really what I am talking
1160 about. I am talking about speeds.

1161 Mr. {Genachowski.} Yes.

1162 Ms. {Eshoo.} Because there is a lot of advertisement

1163 where we are the only ones and we do this and we don't do
1164 that but we don't have a standard, number one, which then
1165 leads to, you know, companies putting out very exciting ads,
1166 I mean, it sounds just delicious; I want to grab that, that
1167 sounds like the best thing since sliced bread. Except there
1168 isn't any standard and in many ways it is false advertising.

1169 Mr. {Genachowski.} On broadband speeds, we are about to
1170 release the second of our broadband speed tests that reports
1171 on the exact speeds offered by broadband providers. It
1172 compares it to their advertising. We have seen it has had a
1173 positive impact in the market and it is something that we
1174 will--

1175 Ms. {Eshoo.} So you are on it? Is that what you are
1176 saying?

1177 Mr. {Genachowski.} We are on that, and we will follow
1178 up with you on the broadband speed test.

1179 Ms. {Eshoo.} I just have a quick question to the two
1180 new Commissioners. How can the Commission better use the
1181 information that it puts out and the information that comes
1182 to it from consumers in order to make sense out of it? I
1183 mean you issue a lot of reports. I don't know who reads them
1184 and who understands them. So how can we be relevant? I
1185 mean, it is the 21st century. We keep using that term. Do
1186 you have ideas about how as the new Commissioners you infuse

1187 the new blood in the Commission that we can address this?

1188 Ms. {Rosenworcel.} I think that is a terrific point. I
1189 think the data suggests that in the last quarter, complaints
1190 at the actually rose 32 percent. That is not because there
1191 is some bad dealings on those that provide services but the
1192 honest truth is that communications has become a much more
1193 important part of all of your household budgets. We rely on
1194 all of these devices more than ever before. We need to start
1195 studying those complaints as they come in and we should
1196 identify what are consistent concerns and then we should see
1197 how we can use the existing reports and data that we produced
1198 to try to help consumers address those concerns.

1199 Mr. {Pai.} And Ranking Member, I will build up my
1200 colleague's response by saying that to the extent that the
1201 wave of complaints suggests that the Commission's rules in a
1202 particular area are lacking, we should consider actively
1203 whether a new framework is necessary to address those
1204 concerns so that complaints in the future are removed and
1205 also to--

1206 Ms. {Eshoo.} Just don't write it the way you said
1207 because no one will understand it except us here in the
1208 hearing room.

1209 Mr. {Pai.} Right. And to go the other point you
1210 raised, I think the consolidating reporting initiatives that

1211 have been discussed in Congress would help present a single
1212 unified product the FCC can put out that we will try our best
1213 to write in plain English so that both the legal community
1214 and the consumers and the Congress can understand.

1215 Ms. {Eshoo.} Thank you.

1216 Thank you, Mr. Chairman.

1217 Mr. {Walden.} You are welcome.

1218 Let us go now to the chairman of the full committee, Mr.
1219 Upton.

1220 The {Chairman.} Thank you.

1221 Chairman Genachowski, in 2003, the FCC adopted on a
1222 bipartisan basis a hands-off approach for fiber and Internet
1223 protocol networks to promote investment, encourage
1224 deployment. Analysts report that fiber now passes over 22
1225 million homes in the United States up from 180,000 homes in
1226 2003. In January 2010, the FCC reported that 1,442
1227 competitive carriers were providing service. That again is
1228 up from 536 that the FCC reported operating in 2003, and
1229 analysts report that there are more than 770 providers of
1230 fiber to the home networks around the country.

1231 So would you agree based on that evidence that the
1232 hands-off approach is working?

1233 Mr. {Genachowski.} In general, we have seen, as I
1234 mentioned in my opening remarks, tremendous progress in the

1235 space and a light touch and relying on competition is our
1236 dominant strategy.

1237 The {Chairman.} And you don't have any plans to reverse
1238 that, do you?

1239 Mr. {Genachowski.} I don't have any plans to revisit
1240 those forbearance but--

1241 The {Chairman.} That is good.

1242 At the heart of the special-access proceeding is the
1243 question of whether there are sufficient competitive
1244 alternatives in the market today, inherently a fact-based
1245 inquiry. The Commission has twice made a voluntary request
1246 for data from the ILECs and CLECs cable companies and fixed
1247 wireless companies that compete in the market with little
1248 response. How does the Commission intend to collect the data
1249 needed to proceed with its determination of whether the
1250 market is competitive?

1251 Mr. {Genachowski.} Well, this is something I have
1252 discussed with my colleagues and we intend to move forward
1253 with a comprehensive data collection order. We also have a
1254 sufficient amount of information, a great deal of information
1255 already to make wise decisions as we move forward.

1256 The {Chairman.} So again, you don't plan any preemptive
1257 strike without getting all the information?

1258 Mr. {Genachowski.} Well, we plan to steer through

1259 consistent with our obligations under the Communications Act
1260 to promote competition and to drive investment in new
1261 services.

1262 The {Chairman.} Lastly, let me say in April, the chief
1263 of the FCC's Wireline Competition Bureau said about special-
1264 access data, he said, ``There is an incredible dearth of data
1265 and that we need to be able to show costs either do or don't
1266 relate to a market. We cannot do the analysis without the
1267 data.'' Yet a senior official in your office recently told
1268 the press that the Clinton Administration's deregulatory
1269 policies for special access are not working as intended. How
1270 did the official reach the conclusion with a dearth of data?

1271 Mr. {Genachowski.} There is a great deal of data and
1272 indeed wide consensus that the current framework for special
1273 access is not working. It is both overinclusive and
1274 underinclusive. We know that. We don't have the data to
1275 determine what framework should replace it, and that is what
1276 we are working on.

1277 The {Chairman.} I yield back. Thank you.

1278 Mr. {Walden.} The gentleman yields back the balance of
1279 his time.

1280 The chair recognizes the ranking member of the full
1281 committee, Mr. Waxman.

1282 Mr. {Waxman.} Thank you very much, Mr. Chairman.

1283 With the passage of the Middle Class Tax Relief and Job
1284 Creation Act, and the creation thereby of the First Responder
1285 Network Authority, or FirstNet, we have an unprecedented
1286 opportunity to develop a nationwide interoperable public
1287 safety network. At the time of the Act's passage, however,
1288 the FCC had already granted waivers to several jurisdictions
1289 allowing them to deploy local or regional public safety
1290 broadband networks that would utilize public safety broadband
1291 spectrum immediately. With the creation of FirstNet,
1292 concerns have been raised that moving forward with these
1293 waivers may undermine FirstNet by establishing regional
1294 networks that are not truly integrated and will require more
1295 taxpayers' dollars to eventually incorporate into the
1296 national network. As NTIA noted, ``The law's vision is
1297 plainly at odds with the continuation of the Commission's
1298 pre-legislation waiver approach. If the Commission does not
1299 take consistent Congress's vision, it could jeopardize
1300 nationwide interoperability as well as harm FirstNet's
1301 ability to carry out its powers, duties and
1302 responsibilities.''

1303 Chairman Genachowski, given the dramatic change in
1304 circumstances created by the passage of this new law, what do
1305 you think of NTIA's concerns about the pre-legislation waiver
1306 approach and how do we ensure that we are protecting taxpayer

1307 funds and not undermining our core goal of nationwide
1308 interoperability?

1309 Mr. {Genachowski.} I think NTIA is right to have
1310 concerns given the change in circumstances of the statute,
1311 and we are working closely with NTIA to chart a course to
1312 make sure that a nationwide FirstNet could be stood up
1313 without any unnecessary encumbrances and look as required by
1314 law to specific situations and work through them, and we are
1315 working very closely with NTIA on that.

1316 Mr. {Waxman.} Thank you.

1317 Commissioner Rosenworcel, you are familiar with this
1318 issue because of your previous role with Senator Rockefeller
1319 at the Senate Commerce Committee. Do you have any
1320 suggestions of how we can ensure that FirstNet is not
1321 undermined by the pre-legislation waiver approach NTIA is
1322 concerned about?

1323 Ms. {Rosenworcel.} I think this is largely a challenge
1324 of timing. The Commission made some choices to provide local
1325 jurisdictions with access to spectrum held by the Public
1326 Safety Spectrum Trust early on so that they could develop
1327 local interoperability. Since that time, Congress passed a
1328 very substantial law in the Middle Class Tax Relief and Job
1329 Creation Act and contemplated for the first time a nationwide
1330 network for interoperability for first responders. It is now

1331 the tax of the NTIA and the FCC working together with local
1332 jurisdictions to figure out how to harmonize all these
1333 efforts so we produce that nationwide network that Congress
1334 contemplated.

1335 Mr. {Waxman.} Thank you.

1336 As I mentioned in my opening statement, special access
1337 is an area of policy that is long overdue for reform.
1338 Although some have argued that special access is a legacy
1339 technology that is becoming increasingly irrelevant, I am
1340 skeptical of this argument.

1341 We have heard repeatedly from a wide variety of wireless
1342 and wireless competitors, large and small businesses,
1343 educational institution, public-interest organizations and
1344 government agencies that significant demand for special
1345 access remains. The same stakeholders assert that the high
1346 price of special access has impeded innovation and
1347 competition for the industry as carriers are forced to
1348 purchase these services from their competitors at
1349 artificially high rates. We are also told that the four
1350 largest ILECs combined for over \$12 billion in sales of
1351 special-access services in 2010. That doesn't sound like a
1352 legacy technology just yet.

1353 Chairman Genachowski, I know that you have been a strong
1354 proponent of policies that promote innovation and investment

1355 in communications services. Are you concerned about the
1356 state of the market for special-access services and its
1357 potential to stifle innovation and investment? And what
1358 information do you now need to complete this proceeding and
1359 make a final policy determination so we can resolve this
1360 matter?

1361 Mr. {Genachowski.} Yes, I agree with your point. Even
1362 as fiber is rolled out, special access remains a very large
1363 market. You may have said this number, but it is about a \$12
1364 billion market, and even more important perhaps, special
1365 access is an essential input into competition in general in
1366 broadband and into competition in mobile. So we need to make
1367 sure as the statute requires that there is competition in
1368 that space. I expect that we will move forward with a
1369 comprehensive data collection that is designed to give us
1370 efficiently the information we need to adopt a new framework
1371 for the space that promotes competition.

1372 Mr. {Waxman.} Thank you.

1373 Commissioner Pai and Commissioner McDowell, based on
1374 your statements, you seem to be more skeptical about FCC
1375 intervention into the special-access market. How would you
1376 respond to the concerns we have heard from businesses and
1377 other purchasers of special-access services that deregulation
1378 has translated into higher prices?

1379 Mr. {Pai.} Ranking Member Waxman, thank you for the
1380 question. I guess I first would echo Ranking Member Eshoo's
1381 call for mandatory data collection. I think we need to
1382 understand what exactly the current state of the marketplace
1383 is before adopting any regulatory framework. I think
1384 everyone would agree that regulating in the dark is always a
1385 dangerous proposition.

1386 Furthermore, to the extent that there are competitive
1387 problems, we should address them obviously after we conduct
1388 the data collection but we should also remember that the
1389 Clinton-era flexibility triggers that were adopted in 1999
1390 also were found to benefit some of the very customers you
1391 were mentioning. For example, phase 1 of the triggers allows
1392 a carrier to reduce prices, to give them discounts in
1393 particular cases so that contracts can be more consumer
1394 friendly, so to the extent that we would be suspending those
1395 triggers moving forward without having adequate data to know
1396 what the replacement regulatory framework would be would, I
1397 think, be bad for everybody. It would be bad for the
1398 consumer, as you mentioned. It would be bad for the carriers
1399 in terms of their incentive to build out fiber.

1400 Mr. {Waxman.} Could we hear from Mr. McDowell briefly,
1401 Mr. Chairman?

1402 Mr. {Walden.} Sure.

1403 Mr. {McDowell.} Thank you, Mr. Chairman. Excellent
1404 question, and for 6 years I have been talking about this
1405 issue myself. We are past the fifth anniversary of then-
1406 Subcommittee Chairman Markey's letter to the FCC of May of
1407 2007 asking us to resolve this by September of 2007. I have
1408 been asking for a mandatory data collection of all market
1409 players in the space for, I think, almost 6 years so what the
1410 chairman says in that regard is music to my ears.

1411 Then once we have that data--and by the way, the
1412 Commission is on record with the federal appeals court here
1413 in Washington saying that we don't have enough data to make a
1414 substantive decision just yet, and I agree with that pleading
1415 before the court. So once we do get that data, then there is
1416 going to be an opportunity for an important economic
1417 analysis. So for instance, if incumbents in certain markets
1418 are indeed charging far above cost, the question from an
1419 economic perspective is, doesn't that then give an incentive
1420 for a competitor to come in and build if there is a lot of
1421 headroom with pricing. Some competitors then come back to
1422 say well, when that happens, the incumbent lowers their
1423 price. But as policymakers, isn't that exactly what we want?
1424 We want falling prices.

1425 So there are a lot of more thorny issues here than at
1426 first blush and I welcome the mandatory comprehensive data

1427 collection so we can move forward before my gray hair turns
1428 white.

1429 Mr. {Walden.} Or in my case, falls out.

1430 Let us go now to the gentleman from Texas, Mr. Barton.

1431 Mr. {Barton.} Thank you, Mr. Chairman.

1432 I want to follow up on something that former Chairman
1433 Waxman asked. These grants, these BTOP grants that NTIA has
1434 suspended, I think it is questionable to suspend them, and so
1435 my first question would be to the Chairman, Mr. Genachowski,
1436 is it better to have a system that is actually operable
1437 although not perfect rather than a system that is perfect but
1438 not operable at all?

1439 Mr. {Genachowski.} I think the answer is yes. What I
1440 believe the statute--

1441 Mr. {Barton.} Yes, it is better to have a system that
1442 is operable but not perfect?

1443 Mr. {Genachowski.} Yes. I think that what the statute
1444 contemplates is something different, which is an operable,
1445 effective nationwide--

1446 Mr. {Barton.} I think you just made my point. We have
1447 got a system in Mississippi that got a BTOP grant that is
1448 about to be operational, or could be very quickly if it
1449 wasn't suspended, and there are one or two grants in Texas
1450 that are also close to being operable. I would postulate

1451 that there is a much greater likelihood that the first-
1452 responder unit in Houston, Texas, is going to have to
1453 communicate with the first responders in Sugar Land, Texas,
1454 which is a suburb outside of Houston, as opposed to the first
1455 responders in Houston having to communicate with the first
1456 responders in Los Angeles, California.

1457 So I think it would be better to go forward with these
1458 BTOP grants with the caveat that they have to be able to
1459 interconnect when the FirstNet system is up and running, so
1460 they have to be interoperable with the national system when
1461 it happens but in the meantime it is a lot better to let
1462 Biloxi communicate with Jackson, Mississippi, or vice versa
1463 than it is to have a theoretical requirement that Biloxi be
1464 able to communicate with New York City, and this suspension,
1465 you know, when several of these grants, as I understand it,
1466 are within months of being operable.

1467 So to go back to the original question, I believe it is
1468 better to have an operable system although perhaps imperfect
1469 than to have an inoperable system that is theoretically
1470 perfect which probably won't exist for another 4 to 5 years.
1471 Do you, Mr. Chairman, have a problem with the thesis that I
1472 just propounded?

1473 Mr. {Genachowski.} I think Commissioner Rosenworcel
1474 said it very well, I think, which is that our goal together

1475 with NTIA and local public safety authorities is to harmonize
1476 the various goals that we would all like to accomplish.

1477 Mr. {Barton.} That is a good word, ``harmonize.'' I
1478 like that.

1479 My next question is to Mr. McDowell. Is there any place
1480 in the country, the lower 48, where there is not wireless
1481 service available to anybody who wishes to purchase it?

1482 Mr. {McDowell.} Oh, there may very well be a lot of
1483 coverage issues. Some of that is local zoning or just
1484 buildout in more remote areas, so yes, but I think is the
1485 heart of your question, you know, nine out of ten American
1486 consumers have a choice of at least five wireless providers.

1487 Mr. {Barton.} Well, I don't want to beat a dead horse
1488 but I am going to. I am more and more at a loss as to why we
1489 continue to fund the Universal Service Fund, and I know that
1490 the Commission has got some ongoing reviews and I know we
1491 have got some reform proposals here in the Congress, but I am
1492 told that almost 100 percent of the population has wireless
1493 accessibility at very reasonable prices, and in most cases,
1494 numerous potential providers and yet we still are spending I
1495 think in the neighborhood of between \$5 and \$10 billion on
1496 universal-service subsidies that basically tax the cities and
1497 the suburbs to subsidize systems that may have once actually
1498 had a legitimate right to have a Universal Service Fund but

1499 in today's America, I don't think that need exists. What is
1500 your comment about that?

1501 Mr. {McDowell.} Well, first of all, Congress has
1502 mandated this through Section 254 under the 1996 Act.

1503 Mr. {Barton.} So you are going to blame us?

1504 Mr. {McDowell.} Well, I am not blaming anybody. I am
1505 just trying to follow your--

1506 Mr. {Barton.} That is a pretty low blow. Would you
1507 support repeal of that section? Let us put it that way.

1508 Mr. {McDowell.} Well, if Congress passes it and the
1509 President signs it, obviously we would--

1510 Mr. {Barton.} That is not as good an answer.

1511 With that, Mr. Chairman, I yield back.

1512 Mr. {Walden.} The gentleman yields back.

1513 The chair now recognizes the gentleman from Michigan,
1514 Mr. Dingell, for 5 minutes.

1515 Mr. {Dingell.} Mr. Chairman, I thank you.

1516 I would like to begin by welcoming all the
1517 Commissioners. My questions will be largely directed to
1518 Chairman Genachowski, so I want to welcome you, Mr. Chairman.
1519 The questions I hope you will answer yes or no. Is it true
1520 that the Commission expects notice of proposed rulemaking
1521 later this year to begin to implement the voluntary incentive
1522 auction of broadcast frequencies authorized by the Middle

1523 Class Tax Relief and Job Creation Act? Yes or no.

1524 Mr. {Genachowski.} Yes.

1525 Mr. {Dingell.} Mr. Chairman, I have tried for some time
1526 to get the Commission to share with me not only the allotment
1527 optimization model, the AOM, that it has used to broadcast an
1528 incentive auction but also, and I believe more importantly,
1529 the variables and other assumptions that the Commission
1530 inputs into the AOM to evaluate such an auction. The
1531 Commission has to date refused to share these variables and
1532 assumptions which is quite disappointing because I believe
1533 they should be a matter of public record. Further, such
1534 information will be of invaluable assistance to broadcasters,
1535 wireless companies and the citizenry in general when it comes
1536 to their participation in or their approval or disapproval of
1537 an incentive auction.

1538 Now, Mr. Chairman, will the Commission make public the
1539 AOM as well as the assumptions and variables that it has put
1540 into the AOM when it publishes its NPRM to implement the
1541 voluntary incentive auction of broadcasting frequencies? Yes
1542 or no.

1543 Mr. {Genachowski.} Yes, the Commission will make public
1544 all the information that is relevant to make decisions and
1545 move forward with incentive auctions.

1546 Mr. {Dingell.} Mr. Chairman, I hope you realize that

1547 that is liable to be the subject of a lawsuit, and if you
1548 fail to make all that information available, you may find
1549 that a lawsuit will not be sustained for want of proper
1550 information by the Commission to support its actions.

1551 Now, Mr. Chairman, the Middle Class Tax Relief and Job
1552 Creation Act allows the Commission to assign broadcast
1553 channels along the northern and southern borders subject to
1554 the coordination with Canada and Mexico. Has the Commission
1555 updated the AOM using this statutory requirement as an input?
1556 Yes or no.

1557 Mr. {Genachowski.} I am not sure of the answer to that,
1558 so I could get back to you.

1559 Mr. {Dingell.} If you please.

1560 Now, Mr. Chairman, on a related note, has the Commission
1561 or any other agency begun consultations with Canada and
1562 Mexico about abiding by treaty stipulations when reassigning
1563 U.S. broadcasting channels? Yes or no.

1564 Mr. {Genachowski.} Yes, discussions have begun with
1565 both Mexico and Canada.

1566 Mr. {Dingell.} Now, would you submit then for the
1567 record a summary of the issues discussed at such meeting or
1568 meetings as well as their outcome, please? Yes or no.

1569 Mr. {Genachowski.} Yes.

1570 Mr. {Dingell.} Mr. Chairman, now that the Commission's

1571 June 2012 repacking roundtable is over, the Harris
1572 Corporation noted that 3 years might not be sufficient time
1573 in which to modify all broadcast towers impacted by
1574 repacking. Has the Commission gathered empirical evidence to
1575 support or refute such claims? Yes or no.

1576 Mr. {Genachowski.} I am not sure of the answer to that.
1577 The purpose of the proceeding is to gather and make sure that
1578 we have all the relevant information to make decisions to
1579 implement the Act.

1580 Mr. {Dingell.} Of course, we had this little problem
1581 that it has to be done and it has to be done in a way that it
1582 is done within the time and will sustain a lawsuit.

1583 Now, does the Commission believe that 3 years' time is
1584 sufficient? Yes or no.

1585 Mr. {Genachowski.} I don't think I can answer that. I
1586 think many of these questions have to be answered on the
1587 record that we will eventually receive and we will reach out
1588 to all stakeholders to participate in that proceeding.

1589 Mr. {Dingell.} I would be much more comforted if I
1590 thought you knew what the answer to the question was.

1591 Now, Mr. Chairman, my last question on this matter
1592 pertains to consultants that the Commission has retained to
1593 help it design the voluntary incentive auction. Have any of
1594 these consultants previously lobbied the Commission or

1595 otherwise advocated on behalf of incentive auctions? Yes or
1596 no.

1597 Mr. {Genachowski.} I don't know the answer but I am
1598 sure that all rules have been complied with.

1599 Mr. {Dingell.} Would you please submit to the Committee
1600 the names of those who have been retained to do this kind of
1601 work?

1602 Now, to all witnesses, I would like to ask this. The
1603 provisions of the Middle Class Tax Relief and Job Creation
1604 Act of 2012, they required that the Commission take certain
1605 steps to protect and to assure that broadcasters along the
1606 borders of the United States and Canada, Alaska and Canada,
1607 receive certain assurances that they will receive protection
1608 of their licenses and so forth. Do you all commit that you
1609 will see to it that those provisions are carried forward, Mr.
1610 Chairman?

1611 Mr. {Genachowski.} Yes.

1612 Mr. {Dingell.} And other members of the Commission?

1613 Mr. {McDowell.} Yes.

1614 Mr. {Pai.} Yes.

1615 Mr. {Dingell.} Thank you.

1616 Now, do you also commit to ensuring that the
1617 Commission's intentions implementation the voluntary
1618 incentive auction are readily available to the Congress and

1619 the stakeholders in full? Yes or no.

1620 Mr. {Genachowski.} Yes. Our goal will be--the short
1621 answer is yes, we will provide the information that we can
1622 that is actually helpful and relevant to making decisions.

1623 Mr. {Dingell.} Thank you, Mr. Chairman.

1624 Mr. {Walden.} The gentleman's time is expired.

1625 Mr. {Dingell.} Mr. Chairman, I thank you for your
1626 courtesy.

1627 Mr. {Walden.} Absolutely. And to the chairman, the AOM
1628 is going to be obviously critically important to the success
1629 of the incentive auctions, so we need to discuss how this can
1630 be done as transparently as possible in the process, and
1631 recognizing that you have got to do your work, but I think
1632 there is obviously a lot of interest, and the committee has a
1633 lot of interest, and clearly, the former chairman has a lot
1634 of interest, so we look forward to that.

1635 I recognize the gentleman from Nebraska, the vice chair
1636 of the subcommittee, Mr. Terry.

1637 Mr. {Terry.} Thank you, Mr. Chairman.

1638 Mr. Genachowski, yes or no. If industry was able to
1639 compress the data that Mr. Dingell is able to compress the
1640 number of questions into 5 minutes, we would have no shortage
1641 of spectrum.

1642 Mr. {Genachowski.} Yes.

1643 Mr. {Terry.} You don't have to answer that. I think it
1644 would be yes. I am always in awe of his ability to ask
1645 questions.

1646 Now, getting a little bit to USF and particularly the
1647 regression order, incredibly complex order, and I can't
1648 imagine how much time and brainpower has been invested in the
1649 regression order to date, so congratulations on that.

1650 But I hear from some that they feel that the modeling
1651 used is incorrect. There are complaints about incorrect data
1652 being used within the modeling and around April 25th even
1653 your own folks have said there may have been inaccurate data
1654 used in the process. So there is at least from my some
1655 outside the FCC have been very critical about the viability
1656 of that regression order. Do you have concerns about the
1657 regression order? Are there plans to perhaps review the
1658 modeling back to the very beginning and start over? Is there
1659 another potential order looming out there? Where are we?

1660 Mr. {Genachowski.} Thanks to my colleagues, and with
1661 your help, Congressman Terry, we were able to take a program
1662 that lacked accountability, that was inefficiently spending
1663 public money and transform it to one that will efficiently
1664 get broadband to unserved America, and no one is more
1665 familiar with the problems in the old program than you are.
1666 Multiple competitors in a single market getting funding,

1667 subsidizing some companies who were competing against
1668 unsubsidized competitors and a system that gave control of
1669 the funding spigot to recipients of funding. We have ended
1670 that, and we have put in place a system of accountability to
1671 deal with things like situations where two companies
1672 providing services near each other getting funding,
1673 correcting for geography and population where one was
1674 receiving three or four times as much as another, and the
1675 regression analysis and benchmarks are an important part of
1676 ensuring accountability in the program and fiscal
1677 responsibility. I have great faith in our staff that is
1678 doing this. It has been an open process. I have instructed
1679 them to continue to be open to issues, concerns that
1680 companies raise and we have shown a willingness to say you
1681 know what, you are right about this, we will make a change,
1682 and I expect that we will continue to do that even as we move
1683 forward with implementing these reforms because every day we
1684 don't do that, we are wasting time.

1685 Mr. {Terry.} Just to maybe summarize, you are going
1686 forward based on the current regression modeling or analysis
1687 that has already been done?

1688 Mr. {Genachowski.} Yes.

1689 Mr. {Terry.} So you are confident enough in it now that
1690 you are going forward?

1691 Mr. {Genachowski.} We are moving forward, and we
1692 continue to consider improvements, modifications to the
1693 program that we have adopted including the regression
1694 analysis.

1695 Mr. {Terry.} Is everybody else comfortable on going
1696 forward on the current data?

1697 Mr. {McDowell.} As I said, Congressman, this order,
1698 which was historic in nature, is iterative, and as we get
1699 data, we will make adjustments if necessary. I think the
1700 chairman agrees with that. I want to make sure that whatever
1701 we do, we don't delay or change expectations that there will
1702 be reform. From my perspective, we had a historic
1703 opportunity to flatten the growth curve on a federal
1704 entitlement, and this took full advantage of that.

1705 Mr. {Terry.} Now, one other point that I hear criticism
1706 is that the cap can change every year from year to year,
1707 which is impacting their ability to do multiple-year business
1708 plans. Is that a concern to the FCC, Chairman?

1709 Mr. {Genachowski.} Well, providing predictability is of
1710 course a goal, and changes in year-to-year funding has been a
1711 part of the program for a very long time. The transition
1712 period of course is the hardest period. As we work through
1713 these issues together with the carriers, we will work every
1714 day to improve certainty and predictability while meeting our

1715 goals of accountability and getting broadband to unserved
1716 parts of the country and there still is, you know, millions
1717 of American's who live in areas that don't have broadband.

1718 Mr. {Terry.} Mr. McDowell?

1719 Mr. {McDowell.} Well, I think predictability is
1720 absolutely important. I understand there are a lot of rural
1721 carriers that have a great deal of anxiety right now. I
1722 think we are trying to work with them as best we can and we
1723 will try to provide as much certainty as we can going forward
1724 without changing the ultimate goals that we laid out last
1725 fall.

1726 Mr. {Terry.} I appreciate that, and to our two new
1727 great additions to the FCC, if you ever want to take the
1728 Genachowski tour of rural America, I invite you to Nebraska.

1729 Mr. {Genachowski.} Well worth it.

1730 Mr. {Terry.} Yield back.

1731 Mr. {Walden.} The gentleman yields back.

1732 I recognize the gentlelady from California, Ms. Matsui.
1733 And by the way, thank you for the work you are doing on our
1734 special effort on government spectrum.

1735 Ms. {Matsui.} Thank you, Mr. Chairman.

1736 As you all know, the 1755-1805 spectrum band continues
1737 to be a priority. Mr. Chairman, you said in the past that
1738 the 1755-1780 band presents a near-term opportunity to free

1739 up spectrum that can help drive U.S. economic growth and our
1740 global competitiveness. Do you believe as a first step we
1741 should focus on repurposing the lower 25 megahertz that is
1742 1755 to 1780 for commercial use to meet demand and spur
1743 innovation?

1744 Mr. {Genachowski.} Yes, I do, and I think that there
1745 are new opportunities given new technologies and dynamic
1746 access and sharing that make that even more of a reality and
1747 potentially could lead to freeing up even more of that
1748 spectrum.

1749 Ms. {Matsui.} So the other Commissioners agree with
1750 that too?

1751 Mr. {Pai.} Yes.

1752 Mr. {McDowell.} Absolutely. If Congress wanted to take
1753 leadership to get the executive branch to relinquish more
1754 spectrum for auction, I think that would be terrific.

1755 Ms. {Matsui.} Mr. Chairman, some have suggested that we
1756 look at developing incentives to help alleviate some of the
1757 reluctance some agencies may have in repurposing their
1758 underutilized federal spectrum for commercial use. We will
1759 need additional spectrum in the marketplace. Otherwise we
1760 will lose our competitive edge in technology and innovation.

1761 As we look for creative ways to help break any potential
1762 impasses with federal agencies, are there any financial

1763 incentives or any other incentives we should consider moving
1764 forward on?

1765 Mr. {Genachowski.} I think that could be a productive
1766 area. In the past, Congress has done things that have
1767 created and provided incentives. Certainly we need the
1768 cooperation of federal spectrum holders in order to free up
1769 the spectrum we need for our commercial marketplace.

1770 Ms. {Matsui.} Commissioner McDowell?

1771 Mr. {McDowell.} I think Congress could unleash a whole
1772 host of incentives, especially on the tax side in terms of
1773 capital investment, tax incentives there. That is not
1774 necessarily the purview of this committee but I think that
1775 could be very constructive.

1776 Ms. {Matsui.} Any ideas?

1777 Ms. {Clyburn.} And also some sharing opportunities.
1778 Sharing discussions have been taking place, and I think that
1779 is again a worthwhile pathway for us to consider.

1780 Ms. {Matsui.} Certainly.

1781 Commissioner Rosenworcel?

1782 Ms. {Rosenworcel.} The Commercial Spectrum Enhancement
1783 Act as modified by the Middle Class Tax Relief and Job
1784 Creation Act is two important things. First, it compensates
1785 federal authorities when they relocate off of their existing
1786 allocation. Second, it provides some upfront planning money

1787 so that they can make plans for when they might have to
1788 relocate. Both of those things are good, but in addition to
1789 sticks, carrots tend to work too, and I think adding to those
1790 two things a set of incentives would be a prudent thing to do
1791 and I would certainly support it.

1792 Ms. {Matsui.} Commissioner Pai?

1793 Mr. {Pai.} Congresswoman, I would add to my colleagues'
1794 comments that to the extent that the incentives can be
1795 tailored to the particular incumbents within the 1755 band
1796 where relocation or compression is most feasible in the short
1797 term, that would be ideal. So, for example, in the NTIA
1798 report earlier this year, precision-guided munitions, fixed
1799 point-to-point microwave and other applications were
1800 identified as the types of services that could be moved
1801 relatively quicker than some of the other applications, for
1802 example, telemetry where just because of the nature of the
1803 operations it would be very difficult and/or expensive to
1804 move. So the incentives, tailoring them to the particular
1805 incumbents could get the most bang literally for the buck.

1806 Ms. {Matsui.} Thank you.

1807 Mr. Chairman, the Middle Class Tax Relief and Job
1808 Creation Act requires the FCC to auction 25 megahertz of
1809 spectrum between the 2155-2180 megahertz in 3 years. Many
1810 stakeholders have suggested that the spectrum band should be

1811 paired with the 25 megahertz of spectrum between the 1755 and
1812 1780. Do you believe that the federal government should
1813 reallocate and auction the spectrum between 1755 and 1780
1814 megahertz in terms to be paired with the 2155-2180 megahertz
1815 block?

1816 Mr. {Genachowski.} That would be a great outcome, to be
1817 able to auction off that spectrum as a pair. It is why we
1818 are moving aggressively with--we should move aggressively
1819 with the idea of sharing solutions on 1755. We now have an
1820 application for an experimental license from T-Mobile
1821 supported by CTIA to begin immediate testing of sharing in
1822 the 1755 band. Moving forward on that quickly is important
1823 for precisely the reason you mentioned, which is that we have
1824 a 3-year deadline on auctioning the other, so we need to
1825 resolve 1755 quickly. The committee's role here could be
1826 very important and we look to working with you on it.

1827 Ms. {Matsui.} Do the other Commissioners agree with
1828 this too?

1829 Mr. {McDowell.} From a macro perspective, I think it is
1830 important for us to start looking at this from a different
1831 perspective. Right now the law says that if it costs more to
1832 move a federal user off of spectrum than it would raise at
1833 auction, it is not going to happen. So let us look at maybe
1834 the cost of how much it would cost to move a federal user off

1835 of spectrum versus the overall economic effect, and I think
1836 that is going to start to tilt the scales in a different
1837 direction.

1838 Ms. {Matsui.} Okay. I see I have used up my time, and
1839 unless the others want to make a quick comment? Okay. Thank
1840 you.

1841 Mr. {Walden.} Thank you.

1842 We now recognize the gentleman from Illinois, Mr.
1843 Shimkus, for 5 minutes.

1844 Mr. {Shimkus.} Thank you, Mr. Chairman, and I
1845 appreciate you all coming. I guess I know how long I have
1846 been here when you finally get a full FCC Commissioner panel
1847 that since I started is all new, really. You guys are--
1848 unfortunately, that means you have been around a long time,
1849 which is not always good in Washington these days.

1850 But thank you for coming and it is always an exciting
1851 time when you are talking about communications, and as many
1852 of you know, I don't try to do gotchas and stuff like that,
1853 but I want to--and I say that hesitantly because, Chairman, I
1854 want to talk about your new website which I have up, which is
1855 kind of snazzy. Some people are saying it is a little more
1856 difficult than the old one, so I hope that we can address may
1857 be some of those concerns.

1858 But I do that because I did put in--I tried to figure

1859 out and do the search to find the title to reclassification
1860 proceeding on the site. I just went into the search thing
1861 and did Title II reclassification, and I can find nothing.
1862 It is very quiet. It moved me to number twos and all sorts of
1863 other stuff but maybe I am wrong but maybe you can help me
1864 direct that through eventually.

1865 I am not going to go much further, but the question is,
1866 is the Title II reclassification still open?

1867 Mr. {Genachowski.} It is still open. Generally
1868 speaking, with notices of inquiry, the norm is to keep them
1869 open as--

1870 Mr. {Shimkus.} And we can pull that down. I don't need
1871 that.

1872 Mr. {Genachowski.} And in fact, in that proceeding we
1873 have received over the last year I think about 19 different
1874 comments, and so the norm is to keep notice of inquiries
1875 open.

1876 Mr. {Shimkus.} Nineteen?

1877 Mr. {Genachowski.} I believe that is the number.

1878 Mr. {Shimkus.} Is that abnormally high or abnormally
1879 low?

1880 Mr. {Genachowski.} You know, for the 19 people who
1881 commented, it is important, and I would say the fundamental
1882 test for us is, are our policies having a positive effect on

1883 the broadband sector, and the broadband sector is moving very
1884 strongly in the right direction, and I think the Commission
1885 together has done a good job driving investment in U.S.
1886 leadership.

1887 Mr. {Shimkus.} So you don't plan on closing that?

1888 Mr. {Genachowski.} It would be unusual to close it. I
1889 have no plans to close it.

1890 Mr. {Shimkus.} So then my follow-up question, with our
1891 last hearing, I don't know if you had presence here or not,
1892 but we did have a hearing on the U.N. ITU regulation. I
1893 think Commissioner McDowell made public comments on that. It
1894 was pretty much the consensus, I think, from the committee on
1895 both sides about the concern of controlling the Internet from
1896 places. There is a concern that if we don't close down the
1897 hearing process or we don't close down the reclassification,
1898 that there is a possible default or a movement to the
1899 government having bigger control of the Internet. Do you
1900 recognize that that concern is out there?

1901 Mr. {Genachowski.} I have heard that concern. I don't
1902 share it. I believe very strongly in Internet freedom, clear
1903 and consistent position, no gatekeepers to the Internet,
1904 public or private.

1905 Mr. {Shimkus.} But you don't think that keeping the
1906 recognition system open sends an opposite signal?

1907 Mr. {Genachowski.} I don't think so at all.

1908 Mr. {Shimkus.} Does anyone else want to comment on that
1909 real quickly because I have two more points.

1910 Mr. {McDowell.} I would disagree. Whenever I speak to
1911 international audiences, this comes up as issue, isn't the
1912 United States being hypocritical opposing IT regulation of
1913 the Net but at the same time wanting to go into the space of
1914 regulating Internet network management.

1915 Mr. {Shimkus.} Ms. Clyburn?

1916 Ms. {Clyburn.} I am not in agreement, with all due
1917 respect, with your premise.

1918 Mr. {Shimkus.} That is fine. Great.

1919 Commissioner Rosenworcel?

1920 Mr. {Rosenworcel.} I agree with the chairman as well.

1921 Mr. {Shimkus.} Mr. Pai?

1922 Mr. {Pai.} And I testified in November at my
1923 confirmation hearing. I said as well in my opening statement
1924 that I would support closing the Title II proceeding in order
1925 to provide certainty to people in the industry and around the
1926 world.

1927 Mr. {Shimkus.} And then I only have 35 seconds left,
1928 and I plan to use them to really make a statement. We
1929 haven't really talked about--I don't know if we have. I have
1930 been upstairs for an energy hearing, but Congresswoman Eshoo

1931 and I do E-911, telecommunications safety obviously with the
1932 storms, especially Fairfax County. I hope we are looking at
1933 that and offer some recommendations and the like.

1934 And before I get a response, let me also just make--
1935 because we talked about Universal Service Fund, and I do
1936 represent rural America, 30 counties out of 102 in southern
1937 Illinois, and I just want to put on record that Universal
1938 Service today is also broadband access and speed. It is just
1939 not cellular communications, and even in cellular
1940 communications you may not have--you will need multiple
1941 towers. So I hope in your consideration we get equity in the
1942 ability of rural America to have access of speed in broadband
1943 technologies, and I think that you will some support in
1944 movement in that direction.

1945 Thank you, Mr. Chairman. I yield back my time.

1946 Mr. {Walden.} The gentleman yields back the balance of
1947 his time.

1948 The chair now recognizes the gentlewoman from the Virgin
1949 Islands, Dr. Christensen, for 5 minutes.

1950 Dr. {Christensen.} Thank you, Mr. Chairman.

1951 And I am sure it won't surprise you that my questions
1952 are going to be related to insular issues. Mr. Chairman, in
1953 the USF ICC transformation order, the FCC recognized that
1954 unique circumstances exist in insular areas and directed the

1955 wireline competition consider those special circumstances as
1956 it implements a forward-looking cost model for price cap
1957 carriers. You also instructed the bureau that if the adopted
1958 phase II cost model doesn't adequately account for costs of
1959 the price cap companies outside of the contiguous United
1960 States, it could choose to exclude those companies from the
1961 phase II mechanism and continue to provide them phase I
1962 support instead. So my question is, given that phase I
1963 support for the noncontiguous States and territories accounts
1964 for less than 5 percent of the total high-cost budget for
1965 price cap companies, wouldn't you agree that it might make
1966 more sense for the bureau to get the cost model right for the
1967 companies in the contiguous states first since they account
1968 for 95 percent of the budget and then make adjustments for
1969 the noncontiguous States and insular areas later?

1970 Mr. {Genachowski.} Well, first of all, I thank you for
1971 recognizing the steps that the order took to recognize the
1972 importance of the territories and the relevance of broadband
1973 access. We take that very seriously. The answer to the
1974 question is really the same in both the territories and the
1975 States. Moving forward with reform is the best way to get
1976 broadband to people all over the country and the territories
1977 who don't have broadband today and we have an obligation to
1978 the consumers paying money into the fund to make sure that

1979 their money is being used in a defensible way. So we will
1980 continue to listen to all concerns including from the
1981 territories, make adjustments as appropriate, but we are
1982 proud of the forms that we adopted and we think they will
1983 finally deliver broadband to unserved Americans all over the
1984 country while having the fund on a fiscally responsible
1985 budget.

1986 Dr. {Christensen.} Well, you know, we obviously want to
1987 discuss that further with the Commission as we move ahead.

1988 I don't know if our new Commissioner, Commissioner
1989 Rosenworcel, having had experience in working with Senator
1990 Inouye in Hawaii, if you had any comments.

1991 Ms. {Rosenworcel.} Well, I did not participate in the
1992 very big effort that my colleagues here did and undertook
1993 last October in reforming Universal Service Fund, and I
1994 wholeheartedly support the thrust of that effort. I think it
1995 puts the fund on a more sustainable course. It puts it on a
1996 budget and it makes it more financially accountable. At the
1997 same time, going forward, we are going to be open to
1998 continuing to have discussions about its impact on different
1999 areas of the country and obviously that includes insular
2000 areas. Insular areas is one of the criteria that is set out
2001 in section 254 of the statute, so I think on a going-forward
2002 basis we should make sure that we listen to the words

2003 Congress placed in there.

2004 Dr. {Christensen.} Thank you.

2005 Mr. Chairman, again, in the order, as I said, you
2006 recognized that unlike mainland rural company services, we
2007 are a bit different. For example, insular areas face higher
2008 costs to ship, deploy and maintain communications
2009 infrastructure because of their remoteness, and also our
2010 exposure sometimes to severe weather. In addition to that,
2011 the Virgin Islands and Northern Marianas and America Samoa
2012 are outside of the custom zone of the United States, so our
2013 companies pay duties on equipment and materials that come in
2014 from the United States as well as foreign areas.

2015 So can you talk about Connect America Fund phase II cost
2016 model could take into account these factors in producing and
2017 projecting the costs of deploying broadband service in
2018 insular areas? Would those factors be able to be taken into
2019 consideration?

2020 Mr. {Genachowski.} Yes. We recognize that in insular
2021 areas and in some States that are unique circumstances that
2022 in fairness we need to take into account. We have sought to
2023 address that in the order and also through the waiver process
2024 that we set up as sort of a safety net in case our mechanisms
2025 miss any criteria that are important to take into account.
2026 The door is open for legitimate waiver requests.

2027 Dr. {Christensen.} Thank you.

2028 And a question on spectrum. How long do you anticipate
2029 it will take to complete the incentive auctions, both the
2030 reverse and forward auction?

2031 Mr. {Genachowski.} We don't know yet. It is important
2032 that we move quickly but also move in a way that maximizes
2033 the opportunities of the auction. So I think we intend to
2034 start the process very soon. We have started in many
2035 respects but to move forward with additional notices in the
2036 fall and then as we get more participation from stakeholders,
2037 I think we will be able to make a judgment on what the right
2038 time is to hold the auction to maximize the benefits.

2039 Dr. {Christensen.} Thank you, Mr. Chairman.

2040 Mr. {Terry.} [Presiding] Thank you.

2041 The chair recognizes the gentlelady from California for
2042 5 minutes.

2043 Mrs. {Bono Mack.} Thank you, Mr. Chairman, and I would
2044 like to thank the entire Commission for being here today.
2045 Oversight hearings like this can be very helpful for us
2046 because they give us an opportunity to reflect now here we
2047 have been and talk about where we are going. As lawmakers,
2048 our job is to constantly evolve the marketplace to ensure
2049 that consumers are protected, that there is sufficient
2050 competition and that the rules on the books are not unduly

2051 harming investment and innovation.

2052 We all know that the Internet has radically changed how
2053 we receive and share information. In 1996, when Congress did
2054 its first and only rewrite of the Communications Act,
2055 approximately 36 million people used the Internet, less than
2056 1 percent of the world's population. The copper wire was
2057 king and people waited patiently, very patiently while an
2058 image slowly loaded onto their screen. But today more than
2059 2.2 billion people are on the web and people all across the
2060 globe are more connected than ever before. We share and
2061 access information on the web constantly and we can do it
2062 from the phone in our pocket. It is pretty hard to argue
2063 that the landscape isn't drastically different than it was 16
2064 years ago.

2065 We also know that the technology sector is among the
2066 most dynamic and innovative parts of our economy. We all
2067 care deeply about jobs. But I wonder, do our dated laws
2068 actually harm innovation and inhibit investments? Too often,
2069 it seems the FCC has overreached in interpreting its
2070 authority, perhaps because that authority was granted in a
2071 different world than we live in today.

2072 I would like to ask the new Commissioners, Rosenworcel
2073 and Pai, do you think the--these are complete opposite of Mr.
2074 Dingell's. These are multifaceted questions and you may

2075 elaborate. Do you think the FCC has jurisdiction to regulate
2076 all IP networks? How about all fiber networks? Do you think
2077 the FCC should regulate such networks, and what is the proper
2078 regulatory framework for IP-based services to the two new
2079 Commissioners, and welcome.

2080 Ms. {Rosenworcel.} I think the FCC has jurisdiction to
2081 do so. Congress in laying out the definitions at the front
2082 of the Communications Act speaks to telecommunications
2083 services regardless of the technology used. That definition
2084 informs the definition of telecommunications and the
2085 definition of information services. So I think the
2086 jurisdiction is present.

2087 But your question is a good one. Does that mean that
2088 the agency should then go take an extensive regulatory role?
2089 And I think the question for the agency is, are its rules
2090 promoting competition which can inure to the benefit of
2091 consumers? Are its rules promoting universal service so that
2092 we get these services everywhere? And I think that those are
2093 the fundamentals that should really drive the agency in its
2094 decision-making at this time.

2095 Mrs. {Bono Mack.} Commissioner Pai?

2096 Mr. {Pai.} Representative, I share your concerns about
2097 the Commission's occasionally elastic interpretation of its
2098 own statutory authority, and even to the extent that, say,

2099 for example, Title I would broadly seem to cover IP networks,
2100 the question is whether we are being faithful to the actual
2101 language of the statute and the intent of Congress. But
2102 putting that aside, assuming for the sake of argument that
2103 the Commission has authority, the question, as my colleague
2104 pointed out, is whether the Commission should exercise that
2105 authority with respect to IP networks.

2106 As I said forth in my opening statement, I have very
2107 serious concerns about extending the legacy economic
2108 regulations of the old copper-wire networks to fiber
2109 networks, and the reason is because we want to maximize the
2110 incentives for companies and carriers to deploy more fiber,
2111 so to the extent that additional regulations of the type that
2112 were present in the copper area are applied to fiber, that
2113 dampens the incentive for a company to deploy fiber if they
2114 know that prices or other terms can be regulated and changed
2115 and so they don't have the certainty they need from the
2116 Commission in order to make those investments. So I take a
2117 slightly different approach to that question.

2118 Mrs. {Bono Mack.} Commissioner McDowell, would you like
2119 to weigh in on that?

2120 Mr. {McDowell.} First of all, I think it is important
2121 to note that if the Act gives us jurisdiction over
2122 telecommunications services, that doesn't mean that we can

2123 then foist upon information services the same powers. And it
2124 is important to also note that information services,
2125 broadband Internet access in particular, has never been
2126 regulated under Title II--never.

2127 So the other part of your question, which is should it
2128 be, I agree with Commissioner Pai in that we should be very
2129 careful. We should encourage the buildout of new systems.
2130 But I think overall--I have said this on the record many
2131 times before--Congress should take a fresh look at the Act.
2132 It is stovepipes of regulation based on legacy technologies.
2133 It might be wireless. It might be coaxial cable. It might
2134 be copper. It might be other types of wireless technologies
2135 as well, broadcast versus mobile broadband etc.

2136 So consumers really don't understand the difference. I
2137 try to look at the marketplace through the eyes of my
2138 children, and they don't see what the regulatory difference
2139 should be based on any sort of technology differential. So
2140 let us look at concentrations of market power, abuses of that
2141 power, and whether or not that leads to harm to consumers. I
2142 think that would help inspire a fresh look at a new statutory
2143 construct.

2144 Mrs. {Bono Mack.} Thank you very much. My time is
2145 expired. I yield back.

2146 Mr. {Terry.} I thank the gentlelady and now we

2147 recognize the gentleman from Boston.

2148 Mr. {Markey.} I thank the gentleman very much.

2149 And I would like to extend a particular welcome to our
2150 two new Commissioners. Congratulations. It is going to an
2151 exciting tour of duty for you. It is just the most exciting
2152 area in all of public policy.

2153 Yesterday I released the findings of an investigation
2154 into law enforcement requests for consumers' mobile phone
2155 records. It is the first-ever accounting of such
2156 information. The responses from the carriers are startling
2157 in both volume and in scope. In 2011, law enforcement made
2158 more than 1.3 million requests for personal information from
2159 wireless carriers, and this number has been increasing every
2160 single year. With wireless devices now ubiquitous, mobile-
2161 phone records, geolocation data and text messages have become
2162 indispensable tools in the hands of law enforcement
2163 authorities. Law enforcement should have access to this data
2164 as long as it is granted according to court warrants and
2165 appropriate legal processes.

2166 Since the transfer of mountains of mobile data to law
2167 enforcement raises a number of important privacy concerns
2168 that we have to deal with. For instance, while police are
2169 searching for the guilty needle, innocent people in the rest
2170 of the haystack may be swept up in a digital dragnet.

2171 So let me ask you, Mr. Chairman, do you think this
2172 process should be more transparent so that innocent consumers
2173 whose information is being included in these data dumps can
2174 better understand how their personal information is
2175 collected, handled and stored?

2176 Mr. {Genachowski.} Yes, and I think the information
2177 that you released provided a real service. If I can make one
2178 brief point on the importance of privacy, important as a
2179 fundamental value that we all care about but also important
2180 for the success of the Internet and broadband in driving
2181 economic growth and all the benefits. If people don't trust
2182 the Internet and their information on the Internet, that will
2183 drive down adoption and usage so I think you are doing
2184 something very valuable.

2185 Mr. {Markey.} Commissioner McDowell, do you agree?

2186 Mr. {McDowell.} I would also like to thank you for your
2187 leadership on this issue. There are obviously some Fourth
2188 Amendment concerns here.

2189 Mr. {Markey.} Commissioner Clyburn?

2190 Ms. {Clyburn.} Yes, and again, I appreciate you for
2191 that, and I woke up with the morning news reaffirming your
2192 statement and I would embrace appropriate legislative action.

2193 Mr. {Markey.} Commissioner Rosenworcel?

2194 Ms. {Rosenworcel.} Yes.

2195 Mr. {Markey.} Commissioner Pai?

2196 Mr. {Pai.} Yes, and I thank you again for your inquiry.

2197 Mr. {Markey.} Okay. Now, court warrants are required
2198 before carriers turn over data to law enforcement except in
2199 emergency situations when lives are at stake. This makes
2200 sense, of course. However, I found that there don't seem to
2201 be uniform requirements for law enforcement to furnish
2202 warrants to carriers after the emergency has passed but while
2203 police still want carriers to provide additional data. Do
2204 you think that more certainty with respect to the legal
2205 standards in this area would be beneficial for both the
2206 carriers and for consumers?

2207 Mr. {Genachowski.} Yes.

2208 Mr. {McDowell.} Yes.

2209 Ms. {Clyburn.} Yes.

2210 Ms. {Rosenworcel.} Yes.

2211 Mr. {Pai.} Yes.

2212 Mr. {Markey.} Thank you.

2213 Now, law enforcement is routinely asking for geolocation
2214 information rather than wire taps because they are easier to
2215 obtain. How does the FCC plan to address this shift to
2216 geolocation information, particularly as nearly every person
2217 now carries a GPS tracker, their cell phone? The telephone
2218 companies know where we are.

2219 Mr. {Genachowski.} This is an important issue. We have
2220 open proceedings on this and our goals are to protect
2221 consumer choice, make sure there is transparency and
2222 information to consumers and preserve consumer trust in the
2223 communications networks.

2224 Mr. {Markey.} Do you each agree that this is an
2225 important area where we have to give the consumer some
2226 confidence that they are not being tracked at all times?
2227 Commissioner McDowell?

2228 Mr. {McDowell.} It is an important area. The FCC's
2229 legal authority in this area is unclear regarding privacy.
2230 We have a few discreet statutory areas that give us some
2231 authority but I am not sure--in fact, I don't think it is
2232 very expensive.

2233 Ms. {Clyburn.} I have yet to review all of the comments
2234 of the providers, but again, if it demonstrates a need for
2235 enhanced interaction, I would be supportive.

2236 Mr. {Markey.} Thank you.

2237 Ms. {Rosenworcel.} Here is what we know in the digital
2238 age. The technology exists to track where we go and what we
2239 do both on the Internet and with our mobile devices. Law
2240 enforcement is interested in this information and businesses
2241 want to monetize it. I think the more challenging course is
2242 to try to understand what consumers understand about this

2243 situation and whether or not--

2244 Mr. {Markey.} Nothing. They have no idea that this is
2245 a tracker. They know nothing, right?

2246 Ms. {Rosenworcel.} I agree with you.

2247 Mr. {Markey.} Okay. Let me just ask one quick
2248 question. Kids 15 and under do they deserve an online
2249 privacy bill of rights so that they are not just turned into
2250 commodities? Mr. Chairman?

2251 Mr. {Genachowski.} Yes.

2252 Mr. {Markey.} Mr. McDowell, 15 and under?

2253 Mr. {McDowell.} That is all three of my kids right
2254 there you just described, so yes, I would agree.

2255 Ms. {Clyburn.} Yes, even though I don't have kids.
2256 Yes.

2257 Mr. {Markey.} Okay. Great.

2258 Ms. {Rosenworcel.} Yes.

2259 Mr. {Pai.} Yes.

2260 Mr. {Markey.} Yeah, 15 and under, we just have to have
2261 a privacy bill of rights, and the longer we wait is the more
2262 these kids are just going to get exploited, and this
2263 committee has the jurisdiction to move it.

2264 Thank you, Mr. Chairman, very much.

2265 Mr. {Terry.} Thank you, Mr. Markey.

2266 I recognize Mr. Stearns for 5 minutes.

2267 Mr. {Stearns.} Thank you, Mr. Chairman.

2268 Commissioner McDowell, I have called into question
2269 NTIA's March report in which it estimated that it would cost
2270 about \$18 billion in 10 years to relocate federal users off
2271 the 1755-1850 band. Apparently NTIA based these estimates on
2272 agency reporting without conducting an independent analysis.
2273 What are your thoughts on this report?

2274 Mr. {McDowell.} First of all, I think our friends at
2275 NTIA did their best to try to produce that report. They are
2276 completely dependent upon the information supplied to them
2277 from other executive-branch agencies, and that is where it
2278 gets very opaque as to who is providing that information,
2279 what are the assumptions, what is the data upon which all of
2280 those financial numbers rely. So I think there is a lot more
2281 work to be done. The good news about the executive branch is
2282 that it ultimately culminates with one person and some new
2283 Executive Orders I think could be very helpful in trying to
2284 focus the executive branch on relinquishing more spectrum and
2285 then Congress could come into play by not just looking at how
2286 much it costs to relocate federal users of spectrum but what
2287 would the economic effect, the net economic effect be of
2288 placing that spectrum into the hands of consumers through an
2289 auction.

2290 Mr. {Stearns.} Okay. Chairman Genachowski, there has

2291 been a lot of discussion within NTIA and the FCC on spectrum
2292 sharing with government users. The wireless industry was
2293 built on clearing and auctioning spectrum with exclusive
2294 rights. This spectrum model has created huge economic
2295 benefits for our country. Has there been any economic
2296 analysis of the likely outcomes of auctioning shared
2297 spectrum? I am concerned about assumptions being made about
2298 a business model that will work within a sharing regime.

2299 Mr. {Genachowski.} In my opinion, we have to do both.
2300 We have to completely clear more spectrum and ship it to
2301 commercial but we also have to be open to the possibility
2302 that as technology is developed, sharing might provide new
2303 opportunities to add spectrum on top of that, and the
2304 spectrum crunch is so significant, I have come to the view
2305 that we need to pursue both avenues, sharing, but not at the
2306 expense of clearing.

2307 Mr. {Stearns.} Okay. You have also noted that during
2308 your tenure the Commission has moved to eliminate 200
2309 unnecessary and outdated regulations. Can you tell me which
2310 of these was the most significant in terms of moving the
2311 needle in a way that improves the climate for investment in
2312 the telecom sector?

2313 Mr. {Genachowski.} Sure. I will mention a few. Just
2314 recently, we removed the dual carriage requirement for cable

2315 that will free up cable capacity for broadband. We have
2316 removed regulations that limited the ability to provide
2317 wireless backhaul in rural areas. We have eliminated
2318 regulations in the 800 megahertz band to accelerate
2319 deployment of LTE. So those are just some examples of
2320 regulations that we have eliminated.

2321 Mr. {Stearns.} I guess Commissioner McDowell, do you
2322 believe that the Commission has been aggressive enough in
2323 burning off this regulatory sort of underbrush?

2324 Mr. {McDowell.} First of all, I think the Chairman
2325 should be commended for some of the steps he has taken. I
2326 think as we continue to look through that list of 200 or so
2327 regulations, there are a lot there that aren't really
2328 substantive eliminations of rules. I think there is a lot
2329 more than can be done. I think some day I would love for the
2330 Commission, for Congress to examine whether or not all
2331 Commissioner rules should be sunsetted and have to be
2332 reauthorized because we know the facts change in this
2333 marketplace so very quickly. So just as certain bills
2334 regarding agency authorization expire and Congress looks at
2335 those from time to time, I think the Commission ought to have
2336 that sort of presumption when it promulgates new rules.

2337 Mr. {Stearns.} Okay. Commissioner Pai, one of the
2338 first statements you made upon arriving at the Commission was

2339 about the need to breathe new life into the biannual review
2340 process. I think you mentioned that. Can you tell us more
2341 about what you think the Commission should be doing in that
2342 regard?

2343 Mr. {Pai.} Thank you for the question, Representative.
2344 Section 11 of the Communications Act, as you know, requires
2345 the Commission in every other year to review its regulations
2346 with respect to communications services and evaluate whether
2347 they continue to be in the public interest as a result of
2348 competition. To the extent that Commission determines that
2349 those regulations are no longer in the public interest, we
2350 are required to repeal those regulations.

2351 When I was at the Commission in the general counsel's
2352 office in 2007, 2008 and early in 2009, part of my work
2353 involved compiling some of the recommendations from the
2354 various bureaus and offices with respect to biannual review.
2355 What I found was that a lot of staff work is involved in
2356 getting the recommendations together and sending them to the
2357 general counsel's office but often the Commission itself
2358 didn't take formal action or at least didn't make the Section
2359 11 process as robust and as meaningful as it could be.

2360 So my view, and the same that you referred to, was that
2361 instead of or in addition to bureau-level recommendations, it
2362 would be a terrific idea and would give the Commission a

2363 better sense of--or would allow the Commission to better
2364 calibrate its regulations to the current marketplace. If a
2365 Commission-level order or set of orders, if necessary, were
2366 adopted with respect to biannual review, that would mean
2367 commitment of resources on the Commission level, of course,
2368 but I think it would also give the staff a sense that a lot
2369 of their carefully considered recommendations were in fact
2370 getting acted upon.

2371 Mr. {Stearns.} Thank you, Mr. Chairman.

2372 Mr. {Terry.} Thank you, Mr. Stearns.

2373 At this time we recognize the gentleman from western
2374 Pennsylvania.

2375 Mr. {Doyle.} Thank you, Mr. Chairman.

2376 Chairman Genachowski, Commissioner McDowell,
2377 Commissioner Clyburn, welcome back. Commissioner Rosenworcel
2378 and Commissioner Pai, I look forward to working with both of
2379 you and welcome to your first hearing in front of the
2380 committee.

2381 I just want to say very briefly, there has been some
2382 concern expressed on this committee about the
2383 reclassification proceedings leading to some sort of
2384 government censorship. I just want to say for the record, I
2385 think that is a misinformed view. Quite the opposite, I
2386 think this promotes an open Internet that protects our

2387 consumers' access to the content of their choosing. But let
2388 me move on.

2389 Chairman Genachowski, we have had a number of
2390 conversations, maybe 200, 300 or 400, on special access, and
2391 I know that you are aware that the resolution of this issue
2392 is important to the industry. You have recently circulated
2393 an order that would freeze pricing flexibility pending
2394 further reform of the special-access market. I fully support
2395 that effort. You mentioned here today that the FCC's pricing
2396 flexibility rules are not working properly. Would you agree
2397 that it is difficult for the industry to operate under rules
2398 that the FCC admits are broken, even in the short term?

2399 Mr. {Genachowski.} Yes, and I think the process of--

2400 Mr. {Doyle.} That is good, so are you planning to bring
2401 this order to a vote in the short term, and if so, when might
2402 you do that?

2403 Mr. {Genachowski.} There is a draft order currently
2404 before my colleagues. It is something that we have been
2405 discussing and that we hope to resolve in the near future.

2406 Mr. {Doyle.} When might that be? The near future has
2407 been since 2007, so--

2408 Mr. {Genachowski.} No, no, no, this is under active
2409 consideration at the Commission and I think you can expect
2410 some action in the very near future.

2411 Mr. {Doyle.} And then also we understand that you are
2412 going to issue another data request, this one being
2413 mandatory, and my understanding is that a mandatory data
2414 request is something that most of the stakeholders are in
2415 favor of. But as I said before, going back to as far as
2416 2007, this committee has been promised multiple times that
2417 the FCC would complete the special-access proceeding
2418 expeditiously. This is giving new mean to the term
2419 ``expeditiously.'' So we have heard this all before, but
2420 what is the timeline by which the FCC will issue this
2421 mandatory data request, analyze the data and complete this
2422 proceeding? And please don't say ``soon.''

2423 Mr. {Genachowski.} We expect to issue, or I expect to
2424 ask my colleagues to vote on the data collection order in the
2425 coming weeks as quickly as it can be finalized, and then once
2426 we get the data, it is hard to predict exactly when we would
2427 bring the order to conclusion, but I think your point--

2428 Mr. {Doyle.} How long will it take to get all the data?

2429 Mr. {Genachowski.} I don't know what comment cycle we
2430 will put in that but we will do--

2431 Mr. {Doyle.} Weeks, months, years?

2432 Mr. {Genachowski.} Not years, months, and I think--

2433 Mr. {Doyle.} More than 3 months?

2434 Mr. {Genachowski.} The shortest comment cycle that--

2435 Mr. {Doyle.} I am looking at Commissioner McDowell's
2436 head going like this. Two to three months?

2437 Mr. {Genachowski.} Yes, sir, or--the answer is yes. We
2438 want to have a comment cycle that gets us the information we
2439 need as quickly as possible.

2440 Mr. {Doyle.} Okay. I am going to get off your back at
2441 this point but we are going to be on your back. This needs
2442 to get done.

2443 I want to talk about minority and female media ownership
2444 too. Federal appeals court last year ruled that the FCC does
2445 not have enough accurate data on female and minority
2446 ownership to demonstrate that it is serving its statutory
2447 mandate to promote diversity. The court has directed the FCC
2448 to study minority and female ownership before changing any
2449 media ownership rules. In Pittsburgh, where I live, minority
2450 and female ownership of broadcast outlets has decreased
2451 rather than increased in recent years. We have less than a
2452 handful of broadcast stations owned by minorities or women.
2453 I remember growing up, WAMO-FM in Pittsburgh was a very
2454 important radio station in the African American community for
2455 many years, and it is no longer minority owned. What are
2456 your plans, Mr. Chairman, for moving forward with this
2457 assessment of minority and female ownership? And after you
2458 have answered, I would like to throw that out to the rest of

2459 the Commissioners too.

2460 Mr. {Genachowski.} This is an important issue. I am
2461 glad you are raising it. We have taken steps in the wake of
2462 that order to gather data that we need, that the court said
2463 that we need. That is underway and we will continue to make
2464 sure that we have the data we need to meet these objectives,
2465 which are clearly stated in the Communications Act.

2466 Mr. {Doyle.} Commissioner McDowell?

2467 Mr. {McDowell.} Thank you for raising this. This has
2468 been a very important issue of mine as well. In December of
2469 2007, we had a unanimous 5-0 vote on the diversity order
2470 where I supported the 13 proposals, some of which got turned
2471 back by the 3rd Circuit here not too long ago, but one that
2472 did withstand the appeal was the ban on no urban, no Hispanic
2473 dictates, and I am very proud of that. That was the first
2474 civil rights rule codified by the federal government in about
2475 a quarter-century.

2476 But we can do a lot more. I think we need to, you know,
2477 finish the diversity studies actually would be the first
2478 point of order here at the Commission, and that will give us
2479 the factual and legal context under the shadow of the Supreme
2480 Court's Adarand decision from many years ago to make sure
2481 what we do is legally enforceable, but we need to first of
2482 all provide incentives for those who hold broadcast licenses

2483 to divest them. Congress could be helpful by reinstating a
2484 version of the tax certificate law that was in place for
2485 many, many years. It was flawed but it could be improved
2486 upon, and I have long advocated that. I think there are a
2487 whole host of ideas and I know you want to talk to the other
2488 Commissioners, so I will be quiet now.

2489 Mr. {Doyle.} Commissioner Clyburn?

2490 Ms. {Clyburn.} Well, you have taken an important first
2491 step in this direction by in essence releasing or codifying a
2492 study, and that is online for anyone's review. Again, this
2493 is an important first step and I am hoping that we are in the
2494 process of funding and getting more robust information that
2495 is needed for us to make decisions, not only in this aspect
2496 but in overall media ownership proceeding coming forward.

2497 Ms. {Rosenworcel.} As you note, this is an important
2498 issue. The statistics right now are not encouraging, and the
2499 3rd Circuit remanded these issues to the FCC. In addition,
2500 the FCC has statutory duties under section 257 of the statute
2501 to continually look at minority and small-business ownership
2502 of communications properties. And then finally, it is the
2503 right thing to do. I do agree with Commissioner McDowell,
2504 however, that the minority tax certificate program, which was
2505 in place from 1978 to 1995, was one of the most effective
2506 means of promoting diversity of ownership.

2507 Mr. {Pai.} I agree that this is an important issue. As
2508 you know, the 3rd Circuit decision in this case was paired
2509 with a decision with respect to media ownership rules
2510 generally, and as the Chairman has pointed out, the
2511 quadrennial process is ongoing. We are collecting facts, and
2512 I support action ideally by the end of the year if we can get
2513 it in order to address these serious issues.

2514 Mr. {Doyle.} Mr. Chairman, thank you for your courtesy,
2515 and let us get those LPFM licenses going.

2516 Mr. {Terry.} Second.

2517 The gentleman from New Hampshire is recognized for 5
2518 minutes.

2519 Mr. {Bass.} Thank you, Mr. Chairman, and I am going to
2520 associate myself with the remarks of all my preceding
2521 colleagues in welcoming you all here, especially the new
2522 members of the Commission.

2523 This committee recently held a hearing on the future of
2524 video, and I believe that there was broad agreement that the
2525 video marketplace has changed significantly since the passage
2526 of the 1992 Cable Act. Chairman Genachowski, tens of
2527 thousands of New Hampshire residents woke up this morning to
2528 a blue screen due to a retransmission consent impasse between
2529 Time Warner Cable and Hearst. As a result, our State's only
2530 full-power network-affiliated broadcast station went dark on

2531 Time Warner Cable.

2532 Mr. Chairman, you and I have corresponded over the past
2533 year, in fact, once instance in particular just before the
2534 Super Bowl, regarding how consumers should not be harmed
2535 during these negotiations and why I think it is essential
2536 that the Commission complete its review of the retransmission
2537 consent rules expeditiously. What is the scope of the
2538 agency's authority on this matter and when will you be
2539 completing your proceeding so that Congress may act
2540 accordingly?

2541 Mr. {Genachowski.} I share your concern about the
2542 issues, particularly the effects on consumers. As I said
2543 before, the Commission's authority under the old laws is
2544 limited and I have said that we look forward to working with
2545 the committee on whether the retransmission consent
2546 provisions should be updated as a result of changes in the
2547 marketplace. It is obviously an area that we continue to
2548 monitor so it is an area that I look forward to working with
2549 you and the committee.

2550 Mr. {Bass.} When will you be completing your
2551 proceedings so that--I will repeat my question. Is there any
2552 timeline here?

2553 Mr. {Genachowski.} If I could, I would like to get back
2554 to you on that but our options are limited, and I wouldn't

2555 say that that should hold up any inquiry by the committee
2556 into changing the law because we have stated very clearly the
2557 limited nature of our ability to intervene under the current
2558 statute.

2559 Mr. {Bass.} So the scope of your authority on this
2560 matter you think is very limited?

2561 Mr. {Genachowski.} Yes.

2562 Mr. {Bass.} Okay. Ericsson recently estimated that by
2563 2017, worldwide mobile broadband subscriptions will grow to 5
2564 billion, and with the evolving use of devices, mobile data
2565 traffic will grow 15 times over. Recognizing the
2566 significance of efficient spectrum deployment to consumers,
2567 our Nation's economy and our global competitiveness, this
2568 committee and Congress passed bipartisan spectrum reform
2569 legislation earlier this year which we know, acknowledging
2570 that spectrum from incentive auctions is a ways off, I
2571 believe that it is vitally important that we firstly bring
2572 federal spectrum to market in a responsible manner, and
2573 secondly, ensure that an efficient secondary market occurs.

2574 You have answered the issue about relocating cost
2575 estimates that was asked by Mr. Stearns and somebody else
2576 preceding him, but regarding the secondary market, and
2577 without opining on any particular matter, shouldn't the FCC
2578 be treating spectrum swaps and sales with timely, predictable

2579 and reasoned evaluation as a clear means of alleviating near-
2580 term spectrum shortage?

2581 Mr. {Genachowski.} Yes, and we have processed hundreds
2582 of secondary market transactions over the last few years.
2583 Our pace of reviewing those transactions is increasing and I
2584 agree with you on its importance.

2585 Mr. {Bass.} Any others? Commissioner McDowell?

2586 Mr. {McDowell.} Absolutely, I agree 100 percent that we
2587 need to continue to make our secondary spectrum markets as
2588 vibrant as possible. The best way the Commission can help is
2589 for speedy review and approval of transactions.

2590 Mr. {Bass.} Commissioner McDowell, Chairman Genachowski
2591 stated in his opening statement that the United States has
2592 ``regained global leadership, particularly in mobile'' under
2593 his leadership. When and how did we lose that leadership in
2594 mobile?

2595 Mr. {McDowell.} Well, I would--I appreciate his
2596 enthusiasm and his optimism. I don't think we ever lost it.
2597 I think we have always been the leader in mobile ever since
2598 Marty Cooper invented the cell phone in 1973. We never lost
2599 it.

2600 Mr. {Bass.} Very well.

2601 Thank you very much, Mr. Chairman, and I will yield
2602 back.

2603 Mr. {Terry.} The gentleman yields back.

2604 Since the gentl lady from Illinois is not part of the
2605 subcommittee, we are going to finish with those that are. So
2606 I know you are there.

2607 The gentleman from Georgia is recognized.

2608 Dr. {Gingrey.} Mr. Chairman, I want to thank you for
2609 calling today's hearing on the oversight of the FCC, and I
2610 would also like to welcome Chairman Genachowski and all the
2611 Commissioners. In particular, I would like to welcome the
2612 two newest members of the FCC, Commissioners Rosenworcel and
2613 Pai. Welcome indeed.

2614 In a May 13, 2011, hearing before this subcommittee on
2615 process reform at the FCC, Chairman Genachowski testified
2616 that the FCC is ``committed to clearing out the backlogs''
2617 and that it has reduced the pending number of broadcast
2618 applications by 30 percent. Earlier this year, the House
2619 passed H.R. 3309, the FCC Process Reform Act. That
2620 legislation was the product of stakeholder input that will
2621 create more regulatory certainty and will make the Commission
2622 work in a more efficient manner. Believe me, I have got a
2623 question in all of this.

2624 I appreciate Commissioner Pai's testimony which stated
2625 that the FCC ``must act with the same alacrity as the
2626 industry we regulate.'' Unfortunately, despite these

2627 comments, Chairman Genachowski's testimony and the inaction
2628 by the Senate on H.R. 3309, the Commission is still riddled
2629 with process laws that cause significant delays for an ever-
2630 changing industry. I would like to spend the remainder on
2631 this very issue that impacts companies in my home State of
2632 Georgia as examples of why statutory process reform is
2633 desperately needed at the FCC.

2634 In 1999, 13 years ago, WTHC CD 42, the Atlanta channel,
2635 filed an application for class A status along with six other
2636 stations across the Southeast. Due to some clerical errors
2637 in the application, the Atlanta channel's application was the
2638 only one of the seven that was denied. In 2000, the Atlanta
2639 channel filed an appeal that is still pending before the FCC.
2640 Recently, I along with my Georgia Republican colleagues--we
2641 also got letters from the Democrats in Georgia--sent a letter
2642 to Chairman Genachowski asking the Commission to approve the
2643 class A status for the Atlanta channel which has yet to
2644 receive a response. Mr. Chairman, I want to ask unanimous
2645 consent to include the letter in the record.

2646 Mr. {Terry.} Without objection, so ordered.

2647 [The information follows:]

2648 ***** COMMITTEE INSERT *****

|
2649 Dr. {Gingrey.} Thank you, Mr. Chairman.

2650 I believe that this example is precisely why we need to
2651 ensure that process reform is a priority for the Commission
2652 because this industry is at the cutting edge of innovation
2653 and companies should not be forced to wait 12 years to
2654 receive an answer from the agency that regulates them.

2655 Here is the question. Chairman Genachowski, based on
2656 your previous testimony before the subcommittee and the
2657 recent Congressional inquiry, yes or no, will you commit to
2658 resolve this year the pending appeal from the Atlanta channel
2659 that has been before the Commission since Bill Clinton was in
2660 the White House?

2661 Mr. {Genachowski.} Well, I commit to resolving it as
2662 quickly as possible. I am not familiar with the details but
2663 I certainly agree that no one should have to wait that long
2664 for a decision.

2665 Dr. {Gingrey.} And the answer is yes?

2666 Mr. {Genachowski.} If there is any way to do so, yes.

2667 Dr. {Gingrey.} Chairman, I thank you and the other
2668 members of the Commission.

2669 Chairman McDowell?

2670 Mr. {McDowell.} I agree to commit the Chairman to
2671 working very quickly on that application, yes, sir.

2672 Dr. {Gingrey.} Chairwoman Clyburn?
2673 Ms. {Clyburn.} Thank you for the promotion.
2674 Dr. {Gingrey.} Commissioner Clyburn.
2675 Ms. {Clyburn.} And again, I will work with the
2676 Chairman.
2677 Dr. {Gingrey.} And Commissioner Pai?
2678 Mr. {Pai.} Yes.
2679 Dr. {Gingrey.} And Commissioner?
2680 Ms. {Rosenworcel.} Yes. Nobody should have to wait
2681 that long.
2682 Dr. {Gingrey.} Yes. Well, hey, that is great. I don't
2683 know whether I used more of my allotted time or less of my
2684 allotted time, but with that response, I thank all five of
2685 you and I thank you for being with us today and giving
2686 testimony on process reform.
2687 Mr. Chairman, I yield back.
2688 Mr. {Terry.} Thank you for yielding back.
2689 The gentleman from Kentucky is recognized for 5 minutes.
2690 Mr. {Guthrie.} Thank you, Mr. Chairman. I would like
2691 to welcome our two new Commissioners. I enjoy working with
2692 you guys.
2693 I have a question. I am the co-chair of the Government
2694 Spectrum Working Commission with Ms. Matsui and have worked
2695 pretty closely with Deputy Secretary Strickland, and they

2696 were trying to work to move forward, but I have a couple of
2697 questions, and I know that NTIA oversees that, not you, but
2698 Commissioner McDowell, I just wanted to hear maybe some of
2699 your experiences, and there is a March 2012 report that on
2700 the 95 megahertz between 1755 and 1850, that the estimated
2701 cost to restack that is \$18 billion. That is what the
2702 estimated cost came to was \$18 billion to clear it and
2703 repackage it. And I know that estimates like this have been
2704 wildly exaggerated and they come far under costs what has
2705 been estimated, so I just want to get your opinion on that.

2706 The other thing too on your opinion is, it seems that it
2707 is coming out of NTIA that they think sharing is probably the
2708 best way to reclear and repack the spectrum, so it looks like
2709 we have high, high costs to repack, and from what I
2710 understand, if it is shared, it is probably going to be the
2711 least valuable if it is shared as opposed to clear spectrum.
2712 So we are going through an exercise to try to free up
2713 government spectrum but we are looking at estimated high
2714 costs offering probably the lower value for our people who
2715 want to buy it, and it just seems like that is not a good way
2716 to go, and I just wanted to see your experience and the high
2717 cost and the sharing in terms of sharing some of your
2718 experience. I know we have a vote coming too, so--

2719 Mr. {McDowell.} Sure, and thank you for coming at that

2720 issue from a slightly different angle too. First of all, we
2721 have no way of knowing if that \$18 billion figure is real,
2722 how real that it is. We don't know what the underlying data
2723 is.

2724 Mr. {Guthrie.} But your experience, they have been
2725 higher?

2726 Mr. {McDowell.} Well, it is hard to say. These are
2727 executive-branch numbers. We are an independent agency. We
2728 don't have any reach into the executive branch. So we don't
2729 really know. And NTIA has to rely on information given to it
2730 from other agencies so I don't want to fault the good people
2731 at--

2732 Mr. {Guthrie.} Right, and we have worked well with the
2733 Deputy Secretary.

2734 Mr. {McDowell.} Right, so they are given what they are
2735 given and they have to spit out the numbers that they are
2736 given, but beyond that, we can't drill down any deeper, and
2737 there is a disincentive, a strong disincentive for any user
2738 of spectrum or holder of a license, be they private sector or
2739 public sector, to relinquish that license, and that is going
2740 to be especially true of the federal government, so we have
2741 to ask a fundamental question, which is, are all agencies of
2742 the federal government using all of their spectrum
2743 efficiently. I think the answer to that question is probably

2744 no. That is a hypothesis. But we don't really know because
2745 there has never been an exhaustive audit or exhaustive study
2746 in that regard, and I think one is needed, but that is going
2747 to take leadership directly probably from the West Wing of
2748 the White House, from the Oval Office. You have a huge, vast
2749 executive-branch bureaucracy here regarding operators and
2750 users of spectrum but it does culminate with one person and I
2751 think this translates across who has been in the White House
2752 over the years. It is not a partisan issue, but the
2753 President with Executive Orders that are clear and defined
2754 could resolve this issue. So thus far it is sort of muddled.

2755 So here we are in a bit of a cul-de-sac, a bit of a dead
2756 end, which is, we need spectrum. The broadband plan calls
2757 for 500 megahertz to be auctioned. I am skeptical that the
2758 incentive auction legislation will produce 80 megahertz. It
2759 is also a matter of 80 megahertz where. Is it going to be in
2760 those congested urban areas or where it is less needed in
2761 rural areas? And then so if you look at the federal
2762 government occupying perhaps 60 percent of the best spectrum,
2763 that is perhaps some very low-hanging fruit right there, but
2764 again, that takes executive-branch leadership to get that
2765 moving.

2766 So then Congress has a role here, which is, there is a
2767 law that says if it costs more to move a federal user off the

2768 spectrum than it would raise at auction, that is not to be
2769 auctioned. So do we need to reformulate that? Do we need to
2770 look at the net economic effect of that spectrum? Do we need
2771 to look at that whole problem through that different lens?
2772 And I think we do, but we are at a dead end right now. We
2773 are not going to get to 500 megahertz that the National
2774 Broadband Plan talks about. Consumers are going to be
2775 frustrated for years, and even if we could find spectrum
2776 today, it does take the better part of a decade before it
2777 actually reaches the hands of consumers just because of due
2778 process and funding and buildout and all the rest. So are
2779 looking at a real drought for spectrum right now absent some
2780 quick action and leadership.

2781 Mr. {Guthrie.} Yes, this has been an interesting thing
2782 for me, eye-opening for me, and I think not many people
2783 understand and I still don't understand exactly how it all
2784 works, but the process by how we need to get spectrum out
2785 there because it is our competitiveness as a country, and I
2786 always kind of joking since I have been doing this task
2787 force, I never ran around Kentucky saying send me to
2788 Washington and I will get you more spectrum. That was never
2789 in my platform moving forward, but I enjoy doing it because
2790 it is an extremely important thing that we need to do and be
2791 very serious about because we have uses, everything going

2792 forward that we have to have spectrum for.

2793 Thank you very much, Mr. Chairman.

2794 Mr. {Terry.} Thank you, Mr. Guthrie.

2795 At this time, since there are no other members from the
2796 subcommittee, I am able to recognize the gentlelady from
2797 Illinois, Ms. Schakowsky. You are recognized for 5 minutes.

2798 Ms. {Schakowsky.} Mr. Chairman, I appreciate your
2799 allowing me to just ask one short question.

2800 Chairman Genachowski, let me begin with a compliment.
2801 The FCC I believe has done an impressive job under your
2802 leadership of improving the responsiveness and increasing
2803 efficiency. The Commission's significant reduction in the
2804 number of open dockets is particularly impressive.

2805 However, there are several pending petitions which we
2806 have been hearing about filed by State pay-phone associations
2807 requesting the FCC to order a remedy for violations of
2808 previous FCC orders that are still awaiting decisions. I
2809 previously asked about one specific petition submitted by
2810 pay-phone operators in Illinois. It is now 8 years after
2811 that petition was filed. So I am asking what specific
2812 efforts have been made in recent months to reach a final
2813 decision on the outstanding pay-phone petitions. What will
2814 be done in the near future to bring this issue to a
2815 conclusion? And can you say when final orders on those

2816 petitions will be completed, and from my point of view
2817 particularly, the Illinois petition?

2818 Mr. {Genachowski.} Thank you for your comments, and I
2819 appreciate you drawing attention to that proceeding. There
2820 is a draft order in that proceeding that is before the other
2821 Commissioners, and I can't speak for them but I would expect
2822 that we will see action on that in the near future.

2823 Ms. {Schakowsky.} Since it is now dependent on the
2824 others, might comment on that.

2825 Mr. {McDowell.} You know, I graduated from law school
2826 in 1990, and one of my first projects was to work on a pay-
2827 phone matter before the FCC when I was in private practice,
2828 and what tends to happen is that the FCC will act. It goes
2829 to an appellate court. It goes back down to the FCC, several
2830 years in between actions, and this has been going on
2831 literally in my 22 years of practice and work in this area.
2832 But I do think that we should get to work on all matters that
2833 are easily decidable and I agree with the Chairman in his
2834 answer.

2835 Ms. {Schakowsky.} Okay. Anyone else?

2836 Ms. {Clyburn.} My office will continue to do all that
2837 they can to expedite this process.

2838 Ms. {Schakowsky.} Thank you.

2839 Ms. {Rosenworcel.} Yes, we should get to work.

2840 Mr. {Pai.} I have aggressively reviewed the list of
2841 orders circulation and have tried to vote them as quickly
2842 as possible, and I will take a particular look at this order
2843 and take the appropriate action within a very short period of
2844 time.

2845 Ms. {Schakowsky.} Pretty soon no one alive will
2846 remember pay phones, so I hope that we will be able to
2847 resolve this very soon. Thank you so much.

2848 And Mr. Chairman, again, thank you.

2849 Mr. {Terry.} Thank you.

2850 Mr. Kinzinger will now take over.

2851 Mr. {Kinzinger.} [Presiding] Thank you. The chair now
2852 recognizes himself for questions. This what you do. You go
2853 vote early and then you can pretend like you are the chairman
2854 for a few minutes.

2855 From everybody's written testimony, many of you talk
2856 about spectrum controlled by the federal government. As a
2857 military pilot, I understand and agree that certain agencies
2858 and departments have critical needs which must be prioritized
2859 in the realm of communications availability. I have also
2860 realized in my short time here that the federal government
2861 isn't exactly the model of efficiency. I know that doesn't
2862 surprise too many people. I was happy to see the FCC and
2863 NTIA initiate some plans to free up spectrum in the 1755 band

2864 but I believe there is more we can do to move this
2865 conversation along in the meantime.

2866 To take a page from Commissioner Pai's testimony,
2867 sometimes you just have to get the first run across the plate
2868 to get the ball rolling. That being said, I have been
2869 working with Senator Kirk's office to do just that by
2870 introducing legislation which would relinquish federal
2871 spectrum through a BRAC-style commission. It is H.R. 4044.

2872 Now, everyone has their own opinion on how federal
2873 spectrum should be reallocated but it is my hope that I will
2874 be able to work with each of you here today on a way forward
2875 and that we will be willing to talk about those ideas. And
2876 if you any of you have anything on the subject that you would
2877 like to talk about, hopefully we can do that as we move
2878 forward. It is an extremely important issue and I believe we
2879 can solve it if we start working together now.

2880 Now, on to my question, and this is just fairly quick
2881 here. I guess this was touched on a little bit already, but
2882 to the whole panel I would like to ask this question.
2883 Through various proceedings, the FCC has stated that the
2884 Communication Act is technologically neutral. Do each of you
2885 continue to hold that view?

2886 Mr. {Genachowski.} Fundamentally, yes.

2887 Mr. {Kinzinger.} Okay. Next?

2888 Mr. {McDowell.} If you mean does it treat all
2889 technologies the same, I think the answer is no. It is very
2890 stovepipy in nature, so as I stated earlier, whether you are
2891 a copper-based common carrier or wireless provider or a
2892 broadcaster or providing a service over coaxial cable or over
2893 some other medium, the law will look at you differently
2894 rather than through the eyes of the consumer. So no, I don't
2895 think it is technologically neutral.

2896 Ms. {Clyburn.} I think in terms of our engagement and
2897 recognition of an ever-evolving marketplace in terms of how
2898 we evaluate these technologies, we take as neutral a stance
2899 as possible.

2900 Ms. {Rosenworcel.} We should try to take as neutral a
2901 stance as possible but we should also acknowledge some of the
2902 direction that Congress provided in the statute, which does
2903 on occasion treat, for instance, local exchange carriers,
2904 cable operators and wireless licensees differently.

2905 Mr. {Kinzinger.} Mr. Pai?

2906 Mr. {Pai.} Our goal certainly should be technological
2907 neutrality. The problem, as Commissioner McDowell
2908 identified, is that we are compelled to apply statutory
2909 requirements and in some cases predate the very industries we
2910 purport to regulate by decades.

2911 Mr. {Kinzinger.} Chairman Genachowski, the FCC issued a

2912 report claiming it had eliminated some 200 rules. How many
2913 of those rules were regulations that were still in force that
2914 you used your discretion to eliminate?

2915 Mr. {Genachowski.} I don't know the number. I would be
2916 happy to get that for you.

2917 Mr. {Kinzinger.} Can you give me an example?

2918 Mr. {Genachowski.} I hesitate to do that, but I would
2919 also point out that that list underestimates actions we have
2920 taken to modify regulations to reduce their impact in a way
2921 that wasn't a complete elimination so we didn't include it on
2922 the list.

2923 Mr. {Kinzinger.} Of the 200, maybe you will be able to
2924 tell me how many had already been invalidated by a court? Do
2925 you know the answer to that?

2926 Mr. {Genachowski.} I don't know the answer to that.

2927 Mr. {Kinzinger.} Okay. And you will be able to get
2928 that to me, I hope?

2929 Mr. {Genachowski.} Sure, absolutely.

2930 Mr. {Kinzinger.} And I will ask you this too. How many
2931 had already expired is another question I have, and I assume
2932 you probably can't answer that here. How many of these were
2933 simply cross-references to other bills is another question I
2934 would like answered on that, or cross-references to other
2935 rules. I am sorry. And if you are really going to meet

2936 President Obama's challenge to deregulate, don't you need to
2937 review all your rules with the presumption that the rule is
2938 unnecessary unless the Commission finds compelling evidence
2939 to the contrary?

2940 Mr. {Genachowski.} Well, we do do regular reviews,
2941 biannual reviews, of all of our rules. I think our record on
2942 eliminating unnecessary rules is very good. We have also
2943 adopted rules that are necessary to promote competition like
2944 our broadband data roaming rule. We don't always agree on
2945 all of these things but I think we have made a very strong
2946 effort to eliminate unnecessary regulations, and at the same
2947 time to fulfill our responsibilities under the statute.

2948 Mr. {Kinzinger.} Mr. McDowell, do you have any input on
2949 that at all?

2950 Mr. {McDowell.} Well, first of all, sections of the
2951 statute such as section 10, section 11, which apply only to
2952 telecommunications providers, it would be great if we had a
2953 mandatory look-see if all rules regardless of what kind of
2954 company they apply to, so I think that could be very helpful.

2955 And as I stated before, the FCC could look at sunseting
2956 its rules to revisit them after X number of years because the
2957 marketplace does change so quickly. I haven't looked at all
2958 of the Chairman's rules that he says have been taken off the
2959 books, and I want to give him credit for at least taking

2960 those steps, and we have worked together on many
2961 eliminations. There are a number that are cross-references
2962 or that were struck down by courts such as broadcast flag or
2963 haven't been enforced in a long time such as the Fairness
2964 Doctrine, things like that. But I think we should look at
2965 that, you know, with the best spirit and credit due but also
2966 to understand that we could do better and be more aggressive
2967 in terms of scrubbing the Code of Federal Regulations and
2968 reducing its volume.

2969 Mr. {Kinzinger.} I agree.

2970 With that, I will yield back.

2971 Members have 10 days to submit material for the record,
2972 and we will now adjourn. By the way, thank you, everybody,
2973 for coming out and spending time with us. We appreciate it.
2974 And we will go ahead and adjourn.

2975 [Whereupon, at 12:55 p.m., the Subcommittee was
2976 adjourned.]