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THE FUTURE OF AUDIO

WEDNESDAY, JUNE 6, 2012

House of Representatives,  
Subcommittee on Communications  
and Technology,  
Committee on Energy and Commerce,  
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:20 a.m., in Room 2123, Rayburn House Office Building, Hon. Greg Walden [chairman of the subcommittee] presiding.

Present: Representatives Walden, Terry, Stearns, Shimkus, Bono Mack, Rogers, Blackburn, Bilbray, Gingrey, Scalise, Latta, Guthrie, Kinzinger, Upton (ex officio), Eshoo, Markey, Doyle, Matsui, Barrow, Christensen, and Waxman (ex officio).

Also Present: Representative Green.

Staff Present: Nick Abraham, Staff Assistant; Gary Andres, Staff Director; Ray Baum, Senior Policy Advisor/Director of Coalitions; Michael Beckerman, Deputy Staff Director; Patrick Currier, Counsel, Energy & Power; Nicholas Degani, FCC Detailee; Andy Duberstein, Deputy Press Secretary; Neil Fried, Chief Counsel, C&T; Katie Novaria, Legislative Clerk; David Redl, Counsel, Telecom; Charlotte Savercool, Executive Assistant; Tim Torres, Deputy IT Director; Lyn Walker, Coordinator, Admin/Human Resources; Tom Wilbur, Staff Assistant; Phil Barnett, Minority Staff Director; Roger Sherman, Minority Chief Counsel; Shawn Chang, Minority Senior Counsel; Margaret McCarthy, Minority Professional Staff Member; David Strickland, Minority FCC Detailee; Kara van Stralen, Minority Special Assistant; and Elizabeth Letter, Minority Assistant Press Secretary.

Mr. Walden. Good morning everyone and welcome to the Subcommittee on Communications and Technology and the hearing on The Future of Audio.

I was telling our counsel I am really tempted to start out by saying the old radio thing I did in college: Arctic First Federal Savings and Loan time in 30 seconds will be 10:25. The temperature in downtown Fairbanks 30 below zero. CBS News is next on the mighty nightly KFRB Fairbanks.

That goes back to 1974, and I still remember.

There is a saying allegedly from the Chinese that says, "May you live in interesting times." It is supposedly a curse, but the alternative is living in boring times. And I think you all at this panel are going to convince us we are not living in boring times.

Today's audio market is certainly not boring. As I mentioned, I was a radio broadcaster for more than two decades and, my, how the industry has changed.

The number of full power broadcast radio stations has jumped by 23.7 percent since 1996 to more than 15,000. More than 2,000 local broadcast radio stations have gone HD, each offering as many as four channels and the benefits of digital technology. Many broadcasters now also simulcast their stations over the Internet as well as offer dedicated Internet content. Satellite radio offers more than 150 digital channels to more than 20 million subscribers. Internet radio garners more than 89 million listeners each month. The number of subscribers worldwide to mobile music streaming services is expected

to reach 160 million by 2016. Anyone with a Web page can transmit his or her songs to the world. The majority of Americans over the age of 12 possess a portable music player that lets them take their music wherever they go. And the growth of the Cloud now enables consumers to have their music everywhere they go without even taking it.

On the one hand, this means today's song writers and performers have a wealth of options for reaching music lovers. On the other, it means securing a critical mass of listeners may be harder as audiences fracture. Are artists liberated by the digital age or finding it harder to cut through the cacophony? Is it, ironically, easier to start a career but harder to make a living in the music business today? Is the pie getting larger or is everyone nibbling at each other's slice?

One thing is certain, experimentation will be critical as new technologies challenge existing business models. That is why I was intrigued by the announcement yesterday that Clear Channel and record label Big Machine will share over-the-air revenue while trying to grow the online market. This deal shows that radio broadcast stations and record labels can get to "yes" on issues that have vexed the industry for years.

I for one encourage the private sector to negotiate deals without government involvement. It is much better for stakeholders to solve their own business matters than for Congress and Washington to try and solve them for them. I will be interested to hear if other broadcasters and record labels are willing to enter into similar deals with Clear Channel and Big Machine and with each other.

We have an amazing panel today that spans almost the entire distribution chain, from songwriter to performer to service provider to device manufacturers. I will be curious to hear from our witnesses how changes in communication services and consumer electronics equipment is affecting the way audio content is distributed and consumed.

So we certainly live in interesting times, and I think that is a good thing.

I would now yield to the former chairman of the full committee, Mr. Stearns.

Mr. Stearns. Thank you, Mr. Chairman.

I think you have echoed pretty much what I was going to say. Consumers are listening to music that can be chosen from terrestrial radio, HD radio, Sirius XM, satellite radio, cable, Pandora, live radio, YouTube, iTunes, Vevo, Muve Music, Rhapsody, and the list goes on. So I think we have competition.

As one of our witnesses, Gary Shapiro, states in his testimony, we have rapidly shifted to a growing set of choices with a phenomenal array of devices, products, sources and services; and I had the opportunity to see this recently at the consumer electronics show. And our witnesses today represent an important competition in the music space, offering consumers an array of choices and musicians new opportunities to gain new audiences.

Gone are the days when consumers were limited to radio and just television; and gone, too, should be the archaic policies of the old

era of prohibiting free market decisions. In today's struggling economy, we are looking at a market that is working, and let's keep it that way.

Thank you, Mr. Chairman.

Mr. Walden. I would now yield to the vice chair of the subcommittee, Mr. Terry.

Mr. Terry. I appreciate that as well.

I appreciate your college experience. I also DJ'd, just not on radio but parties, weddings, and I will tell you what. In my time, when I had to go to Homer's Music to buy vinyl, it was really hard to find the Flying Dutchman in Homer's Records back in the '70s and early '80s, but on today's digital world it is a lot easier.

My how things have changed since then. And in fact my three sons, two of them teenagers, only the oldest even cares what a CD is. The other two don't care. It is all about the digital world. It is about organizing their music as they want it and see it, having the devices necessary to play it. And where it goes, I don't know. But I like it, like the Rolling Stones say.

Now I will say that I am intrigued as well with the contract or agreement between Big Machine and Clear Channel. But I need to work through this a little bit more before I have a level of enthusiasm. Because I also remember private contracts between radio stations and record labels, that was called payola, and so I don't know where we are going with this. But it is intriguing.

And I will yield back.

Mr. Walden. The gentleman yields back.

I now recognize the ranking member of the subcommittee from California, Ms. Eshoo.

Ms. Eshoo. Thank you, Mr. Chairman, and good morning and welcome to all of the witnesses.

More than 90 years ago, Pittsburgh's KDKA launched the Nation's first commercial radio broadcast. For decades, AM and FM radio served as the primary source for local news, information, and music for millions of Americans.

While I continue to believe that broadcast radio plays an important role in local communities around our country, the Internet has opened up a world of innovation that is driving new business models like on-demand streaming, providing new opportunities for independent musicians and even expanding the reach of traditional AM and FM stations to audiences not only around the country but around the world.

Many of these innovations are being developed in my congressional district in Silicon Valley. Last year, I had an opportunity to visit a Palo Alto startup known as TuneIn. It is headquartered in an old plumbing supply store which I remember going to when my children were small. They had 40 employees when I was there last year. TuneIn has developed a mobile app featuring over 60,000 AM, FM, HD, and Internet radio stations and an active monthly listener base of more than 30 million people. That is stunning, just in and of itself.

And TuneIn is just one example. Over the past decade, we have seen the emergence of Spotify, Pandora, iHeartRadio, Apple iTunes,

Amazon Music Store, Google Music, and Slacker Radio. The significance of these services is, in fact, quite stunning.

Last year, within the United States, 52 percent of record company revenues came from digital sources. So we need to embrace these innovative technologies and not hinder their growth. The future of audio is about enhancing, in my view, consumer choice, whether at home or on the go, using smart phones, tablets, or other portable devices.

I have always opposed technology specific mandates -- always -- because technology moves at the speed of lightning. Before our ink is even dry, the technology has changed. And for that reason I have always opposed technology specific mandates, which is why last year I joined with Representative Issa to introduce the Creativity and Innovation Resolution. The resolution asserts that Congress should not mandate specific technology that limits the way consumers listen to local news, information, and music. The resolution has the rare distinction of being endorsed by CEA, CTIA, and RIAA; and I hope my colleagues will join me in supporting this bipartisan resolution.

As consumers increasingly stream audio through their mobile devices, I am also interested in learning whether data caps impact user behavior. While more often discussed in the context of data-intensive video, users who stream just 1 hour per day of high fidelity audio through a typical online music subscription service can easily exceed the monthly data package offered by many wireless carriers. This is an issue that rests squarely with our subcommittee's jurisdiction, and

I think it is important for us to examine this closely.

Mr. Chairman, the future of audio looks bright, as consumers have a growing array of options, including online music stores, subscription-based services, satellite radio, and HD radio. So thank you for holding this morning's hearing. We have a great panel, and I am anxious to hear what they have to instruct us, and I welcome the witnesses again and thank you for holding the hearing.

I yield back, Mr. Chairman.

Mr. Walden. The gentlelady yields back the balance of her time.

The chair recognizes the chairman of the full committee, the gentleman from Michigan, Mr. Upton.

Mr. Upton. Thank you, Mr. Chairman.

From the radio dramas and fireside chats of the '30s to talk radio and to online streaming of today, audio content has been an integral part of American society for the last century. Twenty years ago, the world of audio choices was pretty simple, AM, FM, cassette, CD.

The world of audio in 2012 offers so much more. Broadcasters are using digital services to deliver HD radio, satellites 22,000 miles above the Earth provide subscription radio service to millions of Americans, technological advances make it possible to carry an entire music library in your pocket, and an increasing number of Americans are streaming music over the Internet to their computers and wireless devices.

Not only has the ability to access the world of professional audio content gotten so much easier and more universal, the ability for people

around the world to produce and distribute their own works over the Internet has changed major industries, music, journalism, entertainment, just to name a few.

So today we are going to hear from the broadcasters that are innovating, mobile wireless providers that are making access to media ubiquitous, Internet pioneers that are leveraging the Internet to bring users personalized content channels, and professional artists at the center of it all on how this new media frontier is changing their industries and the way that we listen.

I will be particularly curious to hear, as would Chairman Walden, to hear their reaction to yesterday's announcement by Clear Channel and the Big Machine. It looks to me like an agreement that might break the logjam that has plagued this space and help advance online radio. Best of all, it doesn't require legislation or regulation.

So I thank the witnesses, and I don't know if any other members on my side --

Mr. Walden. Mrs. Blackburn.

Mrs. Blackburn. Thank you, Mr. Chairman.

I want to say welcome to all of our witnesses. I enjoy working with each of you on this issue. I think it is vitally important.

Audio distribution systems can't be successful without compelling content, and in Nashville we think that is a really important thing. Likewise, the music won't enjoy wide distribution without innovative technologies, and Mr. Shapiro and I continue to have this ongoing discussion.

The audio marketplace is constantly evolving, but the music and the technology industries need each other in order to thrive. I believe we can be both pro intellectual property and pro innovation. I am determined that we are going to find a way to do that. And we must be both if we want to grow and be successful. And for our Nation's economy, Tennessee's economy, and for our exports, we need to figure this one out.

Big Machine records, which is a national Tennessee company and a major broadcaster, as Chairman Upton said, did enter into a voluntary agreement yesterday on the performance rights issue. We are pleased to see that. We are looking forward to more good things so that the industry does continue to grow in Nashville. We like to say it all starts with the song. We believe it does, and we want to make certain that we figure this one out.

Thank you so much. I yield back.

Mr. Walden. The gentlelady yields back to the chairman.

Mr. Chairman, do you have anyone else you want to yield to? Anyone else on our side?

Apparently not. The chairman yields back the balance of his time.

I now recognize the former chairman of the committee, the gentleman from California, Mr. Waxman.

Mr. Waxman. Thank you, Chairman Walden, for holding this hearing to examine the future of audio.

We live in an era of rapidly changing technologies and consumer

behavior. Innovation over the past decade has led to a proliferation of choices in the way consumers access audio content, whether it is news-subscription-based streaming services, Web casting, or HD radio offered by traditional over-the-air broadcasters. But the dynamic audio marketplace has brought consumers more choices, greater accessibility, and lower prices.

As technology advances, it is important that we do not lose sight of the artists, musicians, and songwriters whose work compels consumers to seek out these innovative new services. Thanks to these new technologies, barriers to entering the music market have never been lower, but, paradoxically, the number of people who identify themselves as musicians has declined over the last decade. We need to understand why this is happening.

Congress has an important role to play in ensuring that singers, songwriters, and other musicians are compensated fairly both through combating online piracy and ensuring an equitable licensing and royalty system.

I am proud to have co-sponsored the Performance Rights Act during the last Congress. This bill would ensure that musicians are compensated by over-the-air broadcasters for the right to publicly perform their music. As we will hear from some of our witnesses today, the exemption for broadcasters is not only grossly unfair to performing artists, it also creates an unlevel playing field that disadvantages innovative audio services such as Pandora.

Whatever their rationale may have been in the past, there is no

reason in today's environment that over-the-air broadcasters should be allowed to play music without compensating the artists that perform it. Although we are still learning the full details of the agreement between Clear Channel and Big Machine, I am encouraged that a major broadcasting group has acknowledged that performing artists should be compensated for their music on over-the-air radio.

I look forward to hearing from our panel about the impact of wireless data caps and proposals to require or encourage FM chips. We also need to ask whether policymakers should encourage FM chips to be incorporated into mobile handsets.

I would like to now yield the balance of my time to Mr. Doyle.

Mr. Doyle. Thank you, Mr. Waxman, and thank you to our witnesses here today.

Mr. Chairman, I am continually amazed by the massive changes in recent years in how music is created, shared, and promoted. Changes in the industry have shifted music consumption away from the mega artists to support more production and distribution of independent music, and this has allowed new musical genres and subgenres to thrive.

I am not exactly sure what Nerdcore is, for instance. I think it is a mix between Star Wars and Vanilla Ice. But as this subcommittee well knows, I have been a supporter of the mixtape and the mashup for a long time; and I am fascinated to see how innovative musical production has not only exploded but found near endless ways to reach an audience. Web sites like Kickstarter, for example, have allowed musicians from my home town of Pittsburgh to make a living selling

records and merchandise entirely from online donations. I think these are very positive trends.

Increasing the diversity of audio programming and providing ways for more people to be heard are some of the main reasons that I have been such a strong supporter of low power FM radio. LPFM is another platform that can bring greater diversity to our media landscape, and it is a platform for independent artists to gain a listenership.

Internet radio has also been a key driver of this kind of innovation. The Internet has opened the door for more terrestrial broadcasters to stream their content live on the air. So now people around the world can listen to a station they love. I hope that can expand even more in the future. And countless online Web casters, one of which has joined our panel, let us listen to any artist we want whenever we want.

So I am really interested to hear our witnesses share their thoughts on what audio looks like today and where it is headed moving forward.

I thank Mr. Waxman for yielding me the time, and I yield back.

Mr. Walden. The gentleman yields back the balance of his time.

We are ready to get on with the panel then. Thank you all for being here. I think we have a terrific array of witnesses and a lot of supporting people around you as well.

So, Mr. Allison, we are going to start with you.

Mr. Ben Allison is a bassist, a composer, and governor of the New York Chapter of the National Academy of Recording Arts and Sciences.

Thank you for being here, pull that microphone pretty close, make sure the light is on, and it is all yours.

STATEMENTS OF BEN ALLISON, BASSIST/COMPOSER AND GOVERNOR, NEW YORK CHAPTER, NATIONAL ACADEMY OF RECORDING ARTS AND SCIENCES; DAVID M. ISRAELITE, PRESIDENT AND CEO, NATIONAL MUSIC PUBLISHERS' ASSOCIATION; CARY SHERMAN, CHAIRMAN AND CEO, RECORDING INDUSTRY ASSOCIATION OF AMERICA; JEFF SMULYAN, CHAIRMAN, PRESIDENT, AND CEO, EMMIS COMMUNICATIONS; STEVEN W. NEWBERRY, PRESIDENT AND CEO, COMMONWEALTH BROADCASTING CORP.; TIM WESTERGREN, CHIEF STRATEGY OFFICER AND FOUNDER, PANDORA; CHRISTOPHER, GUTTMAN-MCCABE, VICE PRESIDENT, REGULATORY AFFAIRS, CTIA; AND GARY SHAPIRO, PRESIDENT AND CEO, CONSUMER ELECTRONIC ASSOCIATION

#### STATEMENT OF BEN ALLISON

Mr. Allison. Good morning, Chairman Walden, Ranking Member Eshoo, and members of the subcommittee.

My name is Ben Allison. I am a jazz musician, a composer, and a producer based in New York. I am also a board member of the New York Chapter of The Recording Academy. Outside the Beltway, The Recording Academy is best known for producing the Grammy Awards. But here in D.C. the Academy is the trade association representing more than 20,000 performers, songwriters, and studio professionals. I want to thank the members for the privilege of being able to share my perspective as an artist and to represent the Academy.

In less than 24 hours, I will be traveling to the Bonnaroo Music

Festival in Tennessee to perform. But the music created at Bonnaroo will not be confined to the 80,000 people attending the concerts. Bonnaroo will offer live streaming of performances, while Internet radio services like Pandora will offer Bonnaroo-themed stations. This is just one example of why I am excited about the future of audio. The infinite possibilities of stations on Internet radio and the niche genres available on satellite have given more artists a chance to be heard.

As a working musician on the New York music scene, I meet many young and emerging artists who are using these new services to connect to fans. And these new platforms don't only provide promotion. They provide compensation to artists and songwriters. And the sound quality offered through these services, while sub par in its early days, is improving. I have chosen my instrument, which is an 1840 American-made bass, for its pure and nuanced sound, so I want my listeners to hear a recording that sounds as close to the original performance as possible.

The Recording Academy's producers and engineers wing have been very active on the issue of sound quality, and consumers, music services, and manufacturers are responding. But, to creators, compensation from these new services is the most important aspect of this issue.

Internet and satellite radio services primarily pay performers through a compulsory license processed by Sound Exchange, a nonprofit entity that pays 50 percent of the royalties collected directly to

performers. But with interactive or on-demand services, unlike Internet radio, the consumer can choose to listen to a particular track whenever they want.

Streaming services such as Spotify are currently paying a very low royalty rate, a fraction of a penny per spin. We are told that we are benefitting from the promotion, but promotion should never replace compensation. If on demand services replace downloads and the royalties don't increase, this will be a great concern for creators.

But, ironically, one of the most pressing issues for performers is not about the future of audio but its past. Terrestrial radio broadcasters have an inexplicable free ride when it comes to performance royalties. They are exempt from paying performers any royalties when they use our recordings to fuel their multi-billion-dollar industry. This makes corporate radio the only business in America that can legally use another's intellectual property without permission or compensation.

All of the other broadcast platforms pay a performance royalty for sound recordings. Every other country in the developed world has such a right. But, in the U.S., over-the-air broadcasters are required to pay songwriters, as they should, but not performers.

Previous private negotiations led to an industry agreement that would have created a terrestrial performance royalty in exchange for specific rate reductions on simulcasting. Unfortunately, when the NAB board voted on the deal, they changed the agreed-upon numbers making it a net loss for the music side, and the deal collapsed.

To add insult to injury, terrestrial broadcasters are now asking for another legislative perk, a mandate to include FM receivers in Smartphones. They already exploit one anomaly in the law. They do not pay performers, while new audio technologies do. Now they want a second legislative anomaly, to have a free ride, quite literally, on the backs of new devices. Artists believe that Congress should address the first anomaly before there can be any discussion of the second.

Finally, I would like to close by discussing the lowered barriers to entry for music creators. I am a professional musician. I started taking music lessons at the age of 9 and played my first gig when I was 16. This is my life and my livelihood. That said, I am delighted that those for whom music is a part-time pursuit can have access to the digital marketplace; and while it is fine for the market to welcome nonprofessional musicians, we must not allow the market to make music a nonprofession.

Each one of my fellow panelists here have a role in connecting the music creator to the fan. But they will have no business if there is no great music. Without the songwriter putting that first note on paper, without the musicians performing that song in ways that move us, without the producer and engineer capturing that performance, there will be no iPods, no Pandoras, no labels, no publishers. Music must be respected, content protected on line, and all creators compensated.

So let me close by stating one constant in the music industry. In this regard, the future of audio is the same as the past. It is

dependent upon the creator. And we, distinguished members of the subcommittee, are dependent on you to protect our rights.

Thank you.

[The prepared statement of Mr. Allison follows:]

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Mr. Walden. Thank you, Mr. Allison. We appreciate your testimony and your music, and we welcome you here.

Our next witness is Mr. David M. Israelite, President and CEO of the National Music Publishers' Association.

Mr. Israelite, we are delighted to have you here today. Thanks for your testimony and please go ahead.

#### **STATEMENT OF DAVID M. ISRAELITE**

Mr. Israelite. Thank you.

Good morning, Chairman Walden, Ranking Member Eshoo, and members of the subcommittee. Thank you for the opportunity to appear before you today to talk about the future of audio as it pertains to music publishers and songwriters.

I serve as President and CEO of the National Music Publishers' Association, the principal trade association representing music publishers and songwriters in the United States. Now in our 95th year, we represent over 2,800 member companies with the goal of protecting and advancing their property rights on the legislative, litigation, and regulatory fronts. Prior to this position, I also had the honor of serving at the Department of Justice where I chaired the Department's Task Force on Intellectual Property.

Issues involving the music industry are complicated in part because there are two separate and distinct copyrights in music. The first copyright, which we represent, is for the underlying musical

composition created by songwriters and often owned or represented by a music publisher. I am here representing that half of the music industry. The second copyright is for any recording of that song, commonly known as the sound recording copyright, and represented by Mr. Sherman and the record labels. It is crucial to understand that these two different copyrights are controlled and represented by different interests and are often treated very differently under the law and in business practices.

If that were not complicated enough, the difference uses of our musical composition copyright are also treated very differently under the law and through government regulation.

Songwriters and music publishers attempt to earn a living through three primary means of utilizing their separate copyrights -- mechanical reproductions, public performances, and audiovisual synchronizations. Depending on the particular songwriter or publisher, each type of income represents roughly a third of our income.

First, there is the mechanical reproduction right. An example is when a consumer downloads a song from iTunes or streams music through a service like Spotify. For songwriters, this right is regulated by section 115 of the Copyright Act which imposes a compulsory license system on the songwriter community. Songwriters and music publishers do not get to negotiate the value of our intellectual property in a free market. For record labels, this is a free market right and not regulated by law.

Second, there is the public performance right. An example is when music is performed on the radio, whether it be broadcast or digital. While this right is inherently unregulated by law for us, the vast majority of the market is regulated by consent decrees with the Department of Justice. Again, under these consent decrees, songwriters and music publishers do not negotiate the value of their intellectual property in a free market.

In addition, there are situations where the rights of songwriters and music publishers are utilized using these consent decrees, but there is no compensation for vast lengths of time due to the terms of the consent decrees.

Finally, there is the use of music synchronized with video. Traditionally, this has included using music in movies, television, and commercials. For songwriters and music publishers, this is a free market right not regulated by law. Newer forms of this right include music videos and the use of music in user-generated content such as YouTube.

Music publishers and songwriters face three primary challenges when we look to the future.

First, we must do a better job of protecting music from theft. While there can be legitimate debate about how to best deal with new technologies, it can never be right to steal the intellectual property of songwriters. It also cannot be right for parties to facilitate or turn a blind eye from such theft while profiting from that theft.

Second, we must find efficient ways to license our copyrights and

empower new business models. Much of the current licensing system is outdated and inefficient.

And, finally, we must ensure that future business models fairly compensate songwriters. Licensing new business models efficiently does no good if new business models do not allow a songwriter to earn a living.

The impact of theft on the music world is a familiar subject to all of you. It is important to consider that it is significantly more difficult for songwriters to police the Internet for infringement. Just a few months ago, 25 parties completed a year-long negotiation over rates for 5 new categories of music services to allow flexibility in creating new services that enable consumers to access and use and purchase music in previously impossible ways. These new categories allow consumers to enjoy and access their own music across almost every electronic device; and parties representing digital services, record labels, and songwriters are currently involved in discussions on how to work together to improve our licensing system.

I believe the streaming market is one of the significant growth areas for music in the future. As this area of the market grows, we need to ensure that songwriters are fairly compensated for their work. It is also crucial that new services like Vevo properly license and compensate songwriters.

In conclusion, songwriters and music publishers will continue to embrace new delivery models and technology, but as the future of audio develops, Congress and the music community must ensure that laws

protect intellectual property while providing fans the music they want and in the manner that they want.

Thank you, Mr. Chairman, for the time.

[The prepared statement of Mr. Israelite follows:]

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Mr. Walden. Mr. Israelite, thank you for your testimony. We appreciate it.

Now we will turn to Mr. Cary Sherman, who is chairman and CEO of the Recording Industry Association of America.

Welcome, Mr. Sherman, and please go ahead.

#### **STATEMENT OF CARY SHERMAN**

Mr. Sherman. Thank you Chairman Walden, Ranking Member Eshoo, and members of the subcommittee.

The music industry has a great story to tell. Record companies have transformed how they do business, and the evolution will continue, enabling new artists to prosper and allowing consumers to enjoy music in many different ways.

The music industry is now primarily digital, and if you look at the slides on the screens, you will see that CDs are no longer the primary format or the primary source of revenue. Digital is not just our future. It is our present.

In 2004, the first year we had real digital revenues, the industry earned only \$190 million from digital services. Last year, we earned nearly \$3.5 billion. That is quite a change.

We used to hear that we needed to get a new business model. Well, our companies have done just that. You want DRM free downloads? We have got that. You want to pay a small monthly fee for a subscription to unlimited music on your computer or Smartphone? We have got that,

too. You want free ad-supported streaming? Got it. You want a music service bundled with your mobile phone? Got that. You want to store all your music in the Cloud so that you can access it from anywhere? That is now here. You want specialized digital radio services? Lots are available. You want AM/FM radio stations online? That is available, too. In fact, there are over 500 digital services authorized by our member companies worldwide, offering 20 million authorized tracks.

And we are not stopping there. One of our highest priorities is to develop the infrastructure that will make it faster and easier to offer even more innovative models to fans. Just last month, as David said, we announced with NMPA and a large number of music services a groundbreaking licensing agreement that will make it easier for digital services to clear rights for new models, and we are also working on new industry-wide databases and royalty distribution systems to make royalty payment functions more efficient.

It probably goes without saying that we are embracing these new offerings under the continuing threat of rampant piracy. In fact, we are less than half the size we used to be, down to \$7 billion in 2011 from nearly \$15 billion in 1999.

Even more worrying is that, according to BLS data, the number of people who identify themselves as musicians has declined over the last decade by 41 percent since the industry's high point in 1999. Clearly, piracy affects not just our economy but our culture.

When it comes to protecting creative rights, strategic copyright

enforcement combined with robust new legal services can make a difference. For example, Limewire, which was the world's most popular illegal peer-to-peer file sharing service, was finally shut down by a Federal Court in 2010. The very next month, digital sales of music improved; and they have remained higher ever since.

Just a couple of months ago, a market research firm released a survey showing that more than half the people who had used Limewire did not go to another illegal music site to get their music after the shutdown. So one of the most important anti-piracy strategies remains innovation. Experimenting and working with our technology and Internet partners on consumer-friendly new business models, we also need some enforcement.

So how are we protecting our rights these days? By forging voluntary marketplace agreements with Internet partners.

Just last year, we announced a voluntary program of ISPs to address illegal downloads on P-to-P networks. We also helped craft an agreement with major credit card companies to reduce sales of counterfeit and pirated goods. And just last month major advertisers and ad agencies announced a series of voluntary best practices designed to stop enriching rogue Web site operators. We hope other intermediaries, like search engines, will follow suit to do their part in preventing the theft of U.S. creativity. These voluntary programs are not a panacea, but collectively we think these collaborative efforts will make a difference.

Speaking of working together, I would be remiss if I didn't take

this opportunity to, once again, point out a glaring inequity when it comes to compensating creators. Every platform that legally plays music pays to do so except for one. AM/FM radio stations use music just like Internet radio, cable music channels, and satellite radio services do. The difference is that all these other radio services compensate artists and labels for the music they play while promoting artists at the same time. AM/FM radio does not.

Yesterday, we were glad to hear that Bob Pittman, the CEO of Clear Channel, the largest radio group, stated that artists and record companies deserve to be paid and that promotion alone is not enough. It is time for the NAB to join with us in working toward an industry-wide solution to ensure that all artists and record companies are rewarded for their work.

One thing remains abundantly clear. Music matters, now more than ever. Of the top 10 most followed people on twitter, seven are music artists. Of the top six videos on YouTube, five are music. Music remains a centrifugal force in culture and in commerce, and it is only going to get stronger. It is worth creating, and it is worth protecting.

Thank you.

[The prepared statement of Mr. Sherman follows:]

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Mr. Walden. Thank you Mr. Sherman. We appreciate your testimony.

We will now go to Mr. Jeff Smulyan, Chairman, President and CEO of Emmis Communications.

Mr. Smulyan, we are delighted to have you here. Please go ahead with your testimony.

#### **STATEMENT OF JEFF SMULYAN**

Mr. Smulyan. Good morning, Chairman Walden, Ranking Member Eshoo, and members of the subcommittee.

My name is Jeff Smulyan, and I am chairman and CEO of Emmis Communications based in Indianapolis, Indiana. I am here today because I believe in the future of radio and cell phones and what it can mean to all Americans.

I have spent many years working to get local radio signals accessible on mobile phones. Radio chips, which are just mini radio receivers installed in a cell phone, are literally the size of a Tic Tac, cost pennies, and can give you the ability to listen to your favorite local radio station wherever you may be.

Now let me start by dispelling a myth that has been repeated by my friends in the wireless industry. Neither I nor the NAB is pursuing a legislative mandate that radio chips be included in phones. We are not asking for a mandate. What I am committed to pursuing is an education campaign to explain the enormous benefits that come from

installing radio chips in mobile devices and activating the ones that are already in phones today.

Radio chips are the definition of consumer friendly. Today, mobile customers are streaming music through apps they have downloaded. But, in the process, they are possibly racking up hefty charges to their data plans. You see, when you stream music, you are using the Internet, and the wireless carriers charge you for that access. And, as most of you know, unlimited data plans are ending for most carriers.

A radio chip, on the other hand, picks up the free over-the-air broadcast signal. The chip turns your device into a handheld radio. So a radio chip provides mobile phone consumers with a way to listen to music and information for free without meeting and exceeding their growing data caps.

Giving mobile phone users cost-free options is the definition of consumer-friendly ideas and something we hope that the cellular industry can certainly embrace.

Something in which this committee should be particularly interested in are the spectrum efficiencies that can be gained from integrating radio chips into mobile devices. Pandora alone said its listeners streamed over 3 billion hours of music in the last quarter. That doesn't even include the additional hours for popular sites like iHeart or TuneIn or my own stations. Music streaming which uses the Internet is part of the reason we have a very congested broadband system.

A radio chip utilizing the free over-the-air radio signal can offload traffic from congested broadband markets, helping relieve what we know are significant and growing spectrum demands. And now FM chips use less than 20 percent of the battery life that streaming requires.

Finally and most importantly, there are tremendous public safety reasons for putting radio chips in cell phones and activating the chips that are already in there. As we have seen during times of crisis, radio broadcasters stay on the air with the use of generators when mobile phone users are often left with devices that are unable to make calls or send emails due to an overwhelmed cellular system.

Even more important, when the power grid goes down, the cell system is off. Since most broadcasters have emergency generators, we are able to provide lifesaving information at the times of greatest peril.

I appreciate that the CTIA has embraced the commercial mobile alert system. But the system limits emergency warnings to a 90-character text that lacks the kind of detail desperately needed by citizens during an emergency.

In a life-and-death situation, the importance of redundancy of information cannot be overstated. If you think a 90-character text message is sufficient -- if it gets through at all -- ask the people in Joplin, Missouri, or New Orleans or the people in Owensboro or the people in Fargo or the people who have endured any major crisis in this country.

The real irony here is that, if educated about radio chips,

consumers want them. According to a recent Harris interactive poll, 81 percent of those polled who own a mobile phone would consider paying a small, one-time fee to access their local radio stations. Curiously, many cell phones in the U.S. already have the radio chip embedded in the phone. These chips just haven't been activated.

I am holding here two Samsung Galaxy Notes, the one from the U.K. and this one from the U.S. They look identical, but the U.K. version has activated a radio chip. You can listen to any FM station in Washington right now on it. The U.S. version actually has a radio chip, but that chip has been deactivated.

We agree with CTIA. We should let the market decide, just as in the rest of the world where over 1 billion phones have been sold with radios, but that market has been closed in this country.

The good news is that the consumer experience is only getting better. The brand-new, state-of-the-art HD radio chip was recently unveiled. This low-powered, low-cost, high-processing chip uses an app which allows a user to tune to their local stations. The HD chip offers song tagging features and delivers an interactive radio which benefits the listeners, the advertisers, the wireless industry, and consumers. It is a true win-win.

For all of the reasons I have discussed, I believe the time is now for a reasonable and factual discussion on the merits of radio-enabled mobile phones. I look forward to working with this committee on this issue, and I thank you for your invitation.

[The prepared statement of Mr. Smulyan follows:]

\*\*\*\*\* INSERT 1-4 \*\*\*\*\*

Mr. Walden. Mr. Smulyan, thank you for your testimony and for being here today.

We will now go to Mr. Steven W. Newberry, President and CEO of Commonwealth Broadcasting Corporation.

Mr. Newberry, we are delighted to have you here today as well. Please go ahead with your testimony.

#### **STATEMENT OF STEVE W. NEWBERRY**

Mr. Newberry. Good morning, Mr. Chairman, Ranking Member Eshoo, and other members of the committee.

My name is Steve, Newberry and I am president and CEO of Commonwealth Broadcasting Corporation, which operates 24 stations in rural Kentucky.

The Future of Audio is a broad title for a hearing, but as a radio broadcaster who has been in the business since I was 14 years old, I believe the future of radio broadcasting is extraordinarily bright.

Not only does radio provide free entertainment, but the radio industry is responsible for hundreds of thousands of jobs, delivers crucial information in times of crises, reaches deeply into the underserved communities of our country, and gives facts to its listeners in every local American community.

There are more than 14,000 local radio stations across our country. With a growing audience, over 270 million Americans listen to radio every week, one of the most popular entertainment options

anywhere.

What makes broadcast radio so enduring is its local programming, its connection to its community. Radio works because it forms relationships with its listeners. That is how we differentiate ourselves from all the other audio platforms. We are far more than just music, far more than just news and information. We are part of the fabric of American culture and its families.

The future of radio is in maintaining our commitment to localism. As an industry, we are investing in going digital. There are now over 2,000 HD stations providing crystal-clear, static-free audio to listeners with HD radio receivers. We are leveraging the Internet and streaming our radio content so no matter where you are you can tune in to your favorite radio station. We are pushing to get our free signals available on all mobile devices so in times of emergencies when broadband and cellular systems may fail, Americans in distress can still access critical emergency alert and response information.

But as bright as our future is, radio still has our challenges. A major issue for radio is one we call the performance tax.

As you may know, the recording industry would like Congress to require radio stations to pay for every song we play over the air, songs we provide to our listeners for free. We believe the value of the promotion the artist and record label receive from free radio airplay is equal to and exceeds the value of the music.

In fact, for decades, radio airplay has been and continues to be the best friend of artists and record labels. Airplay exposes new

music and artists to millions of Americans every day for free, and it is the engine that drives the sale of music. That is why the system has worked for over 90 years.

And Congress also believes the current system works. When this issue was at its height in the 111th Congress, the Local Radio Freedom Act, which opposed any performance tax on local radio, had over 260 cosponsors of bipartisan nature in the House and 26 in the Senate.

In 2010, in the spirit of wanting to work out a fair compromise, we sat down with our friends in the music industry, and for months we worked to hammer out a potential agreement. We believe we made a fair, good-faith offer, but, unfortunately, the musicFIRST Coalition declined our offer and never returned to the negotiating table. Since November of 2010, we have been ready to sit down, roll up our sleeves, and work to find common ground that properly recognizes the promotional value that broadcasters provide and the value of the music.

Yesterday, a negotiated royalty deal between Clear Channel radio and Big Machine records was announced. As I understand the details, Clear Channel has agreed to pay a percentage of advertising revenue for Big Machine songs, whether they are heard digitally or terrestrially. It is a free enterprise transaction between two willing partners with no government involvement. From NAB's perspective, nothing about this deal changes our strong opposition to a congressionally mandated performance tax.

What this announced deal really does highlight is the major challenge we face as radio continues to grow on line and into other

new platforms. The current royalty structure for Web casting is broken. When initially set in 2007 and then built upon in 2009, the rates set by the Copyright Royalty Board were universally decried as being ridiculously high, so high radio stations cannot afford to be successful on line. The more listeners you attract, the less profitable it becomes.

Believe me, radio broadcasters want to take advantage of all the possibility that the Internet presents, but these royalty rates create a financial disincentive to Web cast. Solving this problem for broadcasters is essential. If we want music streaming to survive, we need to find a way to strike a better balance between royalty payments and platform growth, which at the end of the day will help broadcasters and artists.

In summary, the future of radio is strong. New technologies like HD, a robust, ubiquitous delivery platform of local, over-the-air, freely delivered radio stations and new delivery methods will enable radio to serve our local listeners for decades to come. I believe local broadcast radio has a very bright future, and I am very proud to be a part of that industry.

Thank you, and I look forward to your questions, Mr. Chairman.

[The prepared statement of Mr. Newberry follows:]

\*\*\*\*\* INSERT 1-5 \*\*\*\*\*

Mr. Walden. Mr. Newberry, thank you for your testimony on this issue.

We will now go to Mr. Westergren, who is the Chief Strategy Officer and Founder of Pandora.

We are delighted to have you here, sir. Please go ahead with your comments.

#### **STATEMENT OF TIM WESTERGREN**

Mr. Westergren. Thank you, Mr. Chairman. Good morning.

My name is Tim Westergren. I am the Founder and Chief Strategy Officer of Pandora.

Twelve years ago, after spending my 20s and early 30s playing in rock bands and composing film scores, I founded a music discovery service to help independent musicians like me find their audiences. I had a vision that by marrying musicology and technology I could solve the great problem of music discovery -- how to help listeners find new music to love and how to bring all these talented artists the attention and careers they deserve.

It took 6 long years before the Music Genome Project finally found its home in the form of Pandora. We have gone from a cramped studio apartment in south San Francisco, financed through salary deferral, credit card debt -- and lots of it -- and the extraordinary effort of a talented group of musicians and engineers, to the country's largest Internet radio service, with over 150 million registered listeners and

close to 600 employees in offices all across the country. We stream more hours of music every month on Pandora than YouTube streams hours of video and refer more music sales to iTunes and Amazon than virtually any other service in the world.

Today, more than ever, the dream of connecting listeners and artists seems within our grasp. Thanks to Pandora's Music Genome Project and its rich understanding of musical recordings, Pandora now plays the music of over 90,000 artists, 70 percent of them independent, represented by a catalog of over 1 million songs, and over 95 percent of these songs play every month.

Let me repeat that. Over 950,000 unique songs play every month on Pandora, and the music spans hundreds of genres that are rarely heard in any medium: bluegrass, big band, classic country, klezmer, New Orleans jazz, you name it. For most of these artists, Pandora is the only radio they have ever enjoyed.

It is conceivable that this new promotional vehicle as it continues to grow may eventually lead to the emergence of a musicians' middle class.

We have created a democratic and inclusive form of radio that listeners can access the same way they listen to terrestrial broadcasting. Seven of the world's largest automakers now include Pandora in new models. We are embedded in over 650 consumer electronics devices that enable Pandora to be enjoyed throughout people's homes. We are the second most downloaded iPhone app and one of the most popular iPad apps. Pandora is even built into

refrigerators.

Long gone are the days when customers accessed the Internet radio only through their PCs or laptops. In fact, over 70 percent of our listening now takes place off the computer.

But beneath this exciting transition is a severe and fundamental problem. While Pandora and other Internet radio services compete directly with broadcast and satellite radio for listeners in every place you find music -- the home, the car, the office, and on the go -- we are subject to an astonishingly disproportionate royalty burden compared to these other formats.

All forms of radio pay songwriters a very similar percentage of revenue, but there are enormous differences in how performing artists and labels are compensated.

Last year, on revenues of \$274 million, Pandora paid 50 percent of that revenue in performance fees. That same year, Sirius XM, on revenues of \$2.74 billion, paid 7-1/2 percent of revenue. And broadcast radio, on revenues of roughly \$15 billion, paid zero.

Just to be clear, we are fully supportive of fair compensation for artists. We strongly believe that radio can and should reward musicians for the use of their work, both songwriters and performers. But this lack of a level playing field is fundamentally unfair and indefensible.

So why the disparity in royalties? The inequity arises from the fact that Congress has made decisions about radio and copyright law in a piecemeal and isolated manner. As each new form of radio

transmission was invented, new legislation was passed but only to address the new form. The effect has been to penalize new media and advantage old media when setting the rules for music royalties.

To give you a sense of how absurd the current situation is, consider this example. Drivers of most current Toyota -- excuse me, Ford cars -- can receive AM/FM, satellite, and Internet radio all through the vehicle's sounds system. If a song is delivered over AM/FM, the associated performance artist and label receive no compensation. If a song is delivered over a satellite, the performing artist do receive compensation. But if the song is delivered using Internet transmission over 3G or 4G, then the effective percentage of revenue that must be paid by the company delivering the song goes up sixfold. It is the same song, same car, and the same sound system.

It is time for Congress to level the playing field and to approach radio royalties in a technology neutral manner. The current rate-setting law is unfair to performing artists, unfair to record labels, and unfair to Internet radio as we compete every day with broadcast and satellite radio for listener loyalty and for advertising and for subscription revenue. What amounts to a subsidy of entrenched radio media stifles innovation, discriminates against the Internet, and adversely affects consumers. It is time to unshackle innovation and allow new technologies and new forms of audio consumption to compete fairly.

Thank you for your time and consideration. I look forward to your questions.

[The prepared statement of Mr. Westergren follows:]

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Mr. Walden. Thank you very much, Mr. Westergren, both for your testimony and your creativity.

Mr. Christopher Guttman-McCabe is next, Vice President, Regulatory Affairs of CTIA.

Good morning. We are delighted to have you here. We look forward to your testimony, sir.

#### **STATEMENT OF CHRISTOPHER GUTTMAN-MCCABE**

Mr. Guttman-McCabe. Thank you and good morning, Chairman Walden, Ranking Member Eshoo, and members of the subcommittee. Thank you again for the opportunity to participate in this morning's hearing.

CTIA believes the future of audio is mobile, it is personal, it is what the consumer wants it to be, and it is bright. The consumer's desire is a theme that you will hear from me throughout my testimony. I want to share some of the reasons we feel this way as well as a few suggestions for how to ensure that our optimistic projection turns out to be true.

As mobile broadband becomes ubiquitous, the mobile platform provides a compelling opportunity for artists and entrepreneurs to deliver all sorts of audio products. No matter where their interest lie, consumers can and will be able to access content of their choosing tailored to their preferences at that moment.

This shift from a producer-and-distributor-driven model to a consumer-driven model will test existing businesses and force them to

adapt. We see this in the way that the music and news-gathering business, for instance, are being transformed by the twin forces of digitization and disintermediation. This is a challenge for some in the old order in much the same way that telephony was a challenge for the telegraph and wireless is a challenge for wired.

At the same time, these forces are unleashing a wave of creativity and innovation that is giving rise to new businesses like Pandora -- thank you, Tim -- Spotify, and TuneIn, all of which are on my phone, none of which yet are on my refrigerator. It is morphing communications devices into music devices and enabling services like Cricket's MUVE.

While many of those of us who grew up in the age of the LP lament the loss of album art and liner notes, this transformation is one that is good for consumers, and it is good for America. Consumers gain control as they can choose the time and the method by which their content is delivered or accessed. And America wins because it is at the center of this transformation. America is the epicenter of the development of these new services, and we are the world's undisputed leader in wireless broadband.

So what needs to be done to enable continued American leadership in this area and ensure that the future of audio is, indeed, bright? The short answer is that we must continue to have access to spectrum, the highway across which audio traffic moves, and we need a light regulatory touch that permits services and applications providers to experiment with new product offerings and new pricing structures.

Policymakers need to resist calls to use government to protect business models that find themselves subject to new competitive challenges.

I want to expand a bit on this last point, as I know that some in the radio industry will use this hearing as an opportunity to reiterate their call for wireless devices to include FM chips or some other type of commercial radio capability. This effort should be rejected.

To be clear, CTIA is not opposed to including FM capabilities in wireless devices. If you listen to Mr. Smulyan's testimony, one would think that the capability that he seeks does not exist. It does. Indeed, at least 59 wireless devices today have an FM chip included. But the decision to offer FM capability or not should be driven by consumer preference, not government fiat. A mandate would be at odds with the idea that a competitive marketplace does a superior job of delivering products and services that consumers value.

Our members provide phones with and without radio capability, just as they provide handsets with or without keypads, with or without cameras, and devices with or without Internet access capabilities. This differentiation allows consumers to find what they want and what they value, rather than taking any phone, as long as it is black and connected to the wall, as was once the norm.

If some in the radio business want to encourage consumers to buy FM-enabled devices, they are free to do so. But they should not seek to have the government impose their business plan on others. The Commercial Mobile Service Alert Advisory Committee's conclusion, by

a vote of 41-1, that FM is not appropriate for wireless emergency alerts was correct; and thus decisions regarding the inclusion of FM capability and wireless devices must be driven by commercial factors.

Today's audio sector demonstrates reliance on the churn and the ingenuity of the marketplace will force better product outcomes for platform providers, content creators, and consumers alike.

Mr. Chairman, members of the subcommittee, thank you for the opportunity to appear on the panel. With the right combination of good spectrum policy and regulatory restraint, reliance on the innovative capabilities of American entrepreneurs, and trust that consumers know what they want, the future of audio is and should remain bright.

Thank you.

[The prepared statement of Mr. Guttman-McCabe follows:]

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Mr. Walden. Mr. Guttman-McCabe, thank you for your testimony.

We will conclude our panel with Mr. Shapiro, who is the President and CEO of the Consumer Electronics Association.

Mr. Shapiro, welcome to our committee again, and we look forward to your testimony.

RPTS MCKENZIE

DCMN NORMAN

[11:21 a.m.]

**STATEMENT OF GARY SHAPIRO**

Mr. Shapiro. Thank you very much, Mr. Chairman. We represent over 2,000 U.S. consumer electronics companies, every one of which directly or indirectly touches or relies on or sells sound or audio. And we welcome this hearing because it is very gratifying to see Congress focusing on something we cherish but we rarely discuss in Washington: the spoken word, music, and sound. And we are pleased to share our views.

First, I am proud that many of our members make loudspeakers and other audio products here in the United States and export worldwide. Audio files around the globe actually recognize and appreciate the phenomenal quality of these U.S. products, including scores of great companies both large and small.

Second, the popularity of American culture and products abroad ties in directly with this type of innovation including innovation in both audio, music, and word as our national brand. If we can continue to innovate, our economy will continue to grow and mitigate our tax and spending dilemma. Of course, the challenge of innovation, including innovation in technology and music and news distribution,

is that innovation always threatens incumbents, and they too often come to Washington to protect their legacy business models.

Third, the world of reproduced audio parallels the world of energy. Just a few decades ago we had a few choices. It was radio or television or telephone in terms of reproduced sound. Well, as we have heard from many witnesses and the members in their opening statements, things have changed dramatically. And just like with energy, we suggest an all-of-the-above policy, which means that no one source should be given preferential treatments over all others. For this reason alone, we are puzzled why Congress favors broadcast radio over every other source of audio.

Fourth, the phenomenal growth in digital video, the resulting flattening of TV screens, and the high quality of displays has created a huge opportunity and demand for quality audio, and that is a big shift. And corresponding to that is advancements in the science of sound reproduction which is changing the world of audio. What we are starting to see in the next generation is streaming surround-sound audio which will solve a lot of problems and create a lot of opportunities.

Now, if you think about it, music is the only area where millions of people still spend hours enjoying creativity from hundreds of years ago. But the fact is that our best times are still ahead of us, not only with content creation but with devices and in terms of solving some of our problems. For example, we have products that are starting to appeal to an aging population, audio solutions that provide

amplification, and sound clarity will emerge through such devices as phones and headsets. In fact, we have initiated a standards project to enable people with hearing impairments to adjust audio presentations for their specific needs.

We also are focusing on health maintenance, socialization, and service to remote, aging, and other populations. Related to this is an area of concern that we haven't heard about today, and that is what we can do collectively to educate Americans about the importance of protecting their hearing. Since 1981, most reputable headphone makers have warned about playing music too loud. And CEA has joined with the RIAA, the American Speech--Language-Hearing Association, and others in a national campaign aimed at ensuring children and parents learn very early to value hearing as a very precious sense which must be protected. We don't seek your action, but we do ask you to use your bully pulpit.

Now, clearly the audio marketplace for music and information is vibrant. We have been hearing about that in the last hour. Innovations are entering very quickly, and thriving new business models are being created. Consumers are the winners here and new businesses. But with all of the advances in audio distribution and consumption, it troubles me that we are still fighting efforts to mandate the incorporation of old technologies in new products; namely, radio broadcasters, which they have been doing in writing and lobbying, seeking Congress to intervene in the marketplace and require analog radio receivers be installed in a host of digital devices. The fact

is is that analog radio and digital phones is not popular with consumers. And if you look at independent research, the fact is, consumers are not choosing and they are not saying they want to buy them. In fact, all the products out there are not generally being used. And the argument for them -- all of a sudden this new argument about emergencies, frankly, defies logic.

First, many, if not most radio stations do not operate 24 hours in attended mode with live human beings present. In a famous 2002 disaster, a train carrying deadly toxic chemicals derailed near Minot, North Dakota. No emergency alert was sent out because no one at the stations nearby could be reached by phone.

Second, in the event of an emergency, what are people going to do? Well, they will use their phones. They will use their Internet devices. They could go to their home radio or their car radio. They could access the Internet or platforms such as Facebook and Twitter. These provide more specialized and localized information that is more helpful than a generalized radio update.

Finally, as we heard earlier, there is already a solution in place that the Federal Government has required which basically requires text alerts to telephones. We oppose a mandate for FM chips in cell phones but also the current effort should simply get a study. Taxpayers should not be spending money about why there should be mandates. And we applaud you, Representative Eshoo and Congressman Issa, for introducing House Concurrent Resolution 42 which opposes the FM chip.

Innovation is driving our economy, and nowhere is this truer than

the audio industry. Hardware makers, online innovators, and artists are all taking advantage of new business opportunities. We urge Congress to ignore self-interested pleas from declining industries and continue to promote a vibrant and dynamic free-market economy that creates investments in jobs. And we look forward to working with you in these efforts. Thank you very much.

Mr. Walden. Mr. Shapiro, thank you for your testimony.

[The statement of Mr. Shapiro follows:]

\*\*\*\*\* INSERT 2-1 \*\*\*\*\*

Mr. Walden. Now we are going to go into our question phase. We welcome everyone to take on these questions.

Mr. Allison, I know not all the details are out yet, but I would like to hear you elaborate on what you know of the Clear Channel/Big Machine agreement from the artists' perspective. And are you supportive of it? Obviously some of the details aren't out, the concepts.

Mr. Allison. I think what is kind of interesting about it is that it seems to kind of open the door. I mean, here we have the biggest broadcaster conglomerate in America basically agreeing that performance rights should exist. So I think it kind of diminishes the argument that this right should not exist.

Mr. Walden. Mr. Sherman, could you tackle that same question, just from what you know?

Mr. Sherman. We are obviously delighted that the biggest radio group has acknowledged that something should be done and has actually gone and done something. I mean that is a breakthrough. We have been advocating for this for about 80 years. So obviously it is very important. But we need an industry-wide solution, not a label-by-label, piecemeal solution. And we don't know whether other radio groups will feel the same economic motivation to do a deal. So we need to come up with something broader.

Mr. Walden. Thank you. Mr. Newberry, would you like to comment on this as well?

Mr. Newberry. Mr. Chairman I don't know the specifics of the

transaction. But I think what should be pointed out is -- and I referenced this in my statement -- is it is a free-market transaction. So to Mr. Allison's point, I don't believe that Clear Channel simply made a statement about performance rights as much as they entered a transaction and received something back in return for that. What did encourage me as much as anything was that it appeared to be a universal solution that addressed the digital expense that that company is incurring. So I think that that needs to be measured as part of the analysis of that transaction that occurred.

Mr. Walden. I appreciate that.

I would like to ask unanimous consent to enter into the record this February 2012 statement by the NAB saying the Association does not support an FM chip mandate. Without objection, so ordered.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Walden. Mr. Smulyan, your written statement also makes clear you are not seeking an FM chip mandate. If you are not looking for legislation, can you tell us what you are looking for?

Mr. Smulyan. We are looking for an honest assessment evaluation. I take issue with Mr. Shapiro's statement we don't want to study this. We think it is an issue that needs to be studied. We are, as an industry, open to negotiations with the wireless industry. We are engaged in those now. We think the more people understand this issue, both from the wireless side and the consumer side and here in Congress and at the FCC, that they will understand that this is an idea whose time has come.

Mr. Walden. Mr. Shapiro mentioned that -- we are talking about analog radio, I think, in your comment. But you also mentioned there is a newly developed HD digital chip?

Mr. Smulyan. Right. We have actually developed an HD chip along with Intel and Ubiquity through the sponsorship of NAB, and we are now demonstrating that. We previewed it at the NAB convention. And not only does it provide HD and all the intended benefits, but it also provides a back channel for commerce, where consumers can hear an ad on the air, download a coupon, walk into a store. They can find out the location of events. They can find out the time of events, calendar. We think there are some remarkable benefits to this. The HD chip really does a lot more. There have been well over a billion analog phones sold with radios in them around the world. This is the next generation.

Mr. Walden. Mr. Newberry, there was a comment made about an

unattended operation, a situation in North Dakota. Are you familiar with that one? And can you tell us your perspective from a broadcaster about what happened there?

Mr. Newberry. I can. It is Minot, I believe, would be the pronunciation.

It is a situation that occurred that the station had provided a phone number to emergency personnel. And unfortunately the emergency services personnel there dialed the wrong number. So they were unable to reach the station personnel.

But many stations in rural America do operate unattended at night, Mr. Chairman. It is an economic reality and it is much like volunteer fire departments in rural America. Just because someone is not sitting at the fire department 24 hours a day does not mean that those firefighters are not willing to answer the call 24 hours a day when that emergency occurs.

But all of us have abilities, and I can go on online from here with my phone and I can broadcast live on my station from this location if I needed to.

Mr. Walden. And from my own experience, I know we were 24/7 and unattended. But we weren't the primary station. But we were set up so that the primary station, when it triggered, triggered all of our stations to do the alert. So we used to sign off at 11:00 at night, like a lot of stations did. So we wouldn't even be on the air. Now we are 24/7. I am out of business but --

Mr. Newberry. If I can make a point. I think that is the dilemma

that broadcasters face. We could sign our stations off the air at 10 at night and not have anyone there and not provide any service, or we can provide service 24 hours a day and have a very solid emergency plan to make sure that our station is responsive in those overnight hours.

Mr. Walden. Thank you very much. My time has expired. Now I will turn to the gentlelady from California, Ms. Eshoo.

Ms. Eshoo. Thank you, Mr. Chairman. And thank you to all of the witnesses. I think that we had an excellent array of testimony on several subjects.

I want to first go to Mr. Smulyan. But before I do, Mr. Chairman, I would like to ask unanimous consent that -- I have two pieces to place in the record. One, an annual consumer survey data 2012, and the other activity and data use in megabits which I think are pertinent to our hearing.

Mr. Walden. Without objection.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Ms. Eshoo. Now, Mr. Smulyan, you have been very clear that the broadcasters are not seeking to mandate radio chips in mobile devices.

Mr. Smulyan. Right.

Ms. Eshoo. But you have also raised the issue that in the European market, what you would like to see in the American market is flourishing, but you are essentially blocked by the wireless industry. Now I think that consumers have a lot to do with this, most frankly. And one of the pieces that I just asked to be placed in the record is really instructive. And I would like to hear your reaction to it.

This is the 2012 edition of a bipartisan survey that was conducted by McLaughlin and Associates and the Penn Schoen Berland of 1,000 adults. And what it asks of the people that were contacted, other than making or receiving voice calls, which one of the following cell phone features is most important to you? And there is a long list: texting, Internet access, email, a whole long list. And it goes across all age groups, from 18 to over 65.

Now of the some 12 or 14 choices, FM radio chip set, you know what, it is zero across the board. So how do you square that off with your testimony? You make it sound like there is something that you know tens of millions of people are clamoring for. And yet consumers across the board in this are saying, nyet.

Mr. Smulyan. It is interesting you say "nyet" because you have a free market, probably, in the Soviet Union for this issue. We don't have one here.

In the rest of the world --

Mr. Shapiro. No. But you used the word "the free market." This is consumers saying that they have no interest in it. You don't want a mandate. Consumers are not interested. Now I think that if you can get people to put this in the sets and people can make up their minds, I don't have any problem with that. And I am glad you don't want it mandated. But I do think it is interesting that consumers across the board -- from the ages of 18 to 29, 30 to 40, 41 to 55, 56 to 65 and over 65, of all these categories -- are not interested in it. It is zero.

Mr. Smulyan. Interestingly enough, in this country consumers aren't aware of this issue. It has become ubiquitous in the rest of the world. If you go into a phone store in London --

Ms. Eshoo. Let me ask CTIA or the wireless people or Mr. Guttman-McCabe, do you block this? Are you not allowing access to this?

Mr. Guttman-McCabe. No, Ranking Member. And I think that is the point I tried to make in my original testimony. There is almost a sense here that these devices don't exist. And we had an intern yesterday spend 25 minutes and found 59 devices. And then we sent him out at lunchtime to go to Best Buy. He picked up the Best Buy catalog, which we use a lot. There are 26 devices in the center pull-out section of the Best Buy catalog. That is a third of the devices in that section that are FM chip-enabled. But what we are hearing from our manufacturers is the point that you made earlier which is, we are not seeing consumer demand for it. And yet it is right here in the center

of Best Buy. It is not not available.

Ms. Eshoo. Sure. I understand that there are 40 phone models on the market today with the chip. So there is a discrepancy here. But it seems to me, long-short, that there is not consumer demand for it. That is my take on it.

Mr. Guttman-McCabe. We have a survey --

Ms. Eshoo. I just have 6 seconds left.

I would like to thank Mr. Westergren for what you have done. It is inspiring. What is the kind of royalty regime you are advocating for?

Mr. Westergren. We are advocating for a technology-neutral regime, so give us all the same starting point, the same language, the same criteria, and let the chips fall where they may. We are not coming to you asking you for a specific rate --

Ms. Eshoo. Good expression.

Mr. Westergren. Forgive me for that. I didn't mean to do that. Just something technology-neutral.

Ms. Eshoo. Thank you. Thank you, Mr. Chairman.

Mr. Walden. I now recognize the gentleman from Illinois, Mr. Shimkus, for 5 minutes.

Mr. Shimkus. Thank you, Mr. Chairman. I will go into this round of questions with a lot of trepidation because they are all my friends and it is a great panel. But obviously there are struggles. And many of you know who have come to the committee numerous times, that I am a late adopter of technology. I still have teenage sons so they push

me to see what really the consumer -- that is who is driving this -- the youth, it moves fast, it moves quick. You can't control it.

But one thing that was raised, just an observation of the youth of our society right now is that I think this hearing thing is an important thing because they walk around now with headphones on all the time, whether they are gaming or whether they are listening, streaming, maybe Pandora, but then there it is Bluetooth over a headset device. I mean, I don't know how we can really get a handle on that.

But I deal with a lot of Korean vets and World War II vets who didn't have ear plugs in when the artillery cannons fired. And hearing loss is a struggle for a lot of our society. So I don't know, I just will put that on the record as something that -- I see my son and I try to listen to make sure that it is not overly burdensome.

I am going to tactfully steer away from some issues. And you know how tactful I am.

In my local community -- not in my district but next door -- they have Art on the Square and there was a story -- and it has been very successful in the last couple of years. One of the stories was how, from an iPhone, you could debit your payment with an app and a little connection device. And I have seen it happen a couple of times, too. Credit card readers. Thank you. Pretty good technology, wouldn't you say, Mr. Shapiro?

Mr. Shapiro. It is terrific. It is a dongle, yes.

Mr. Shimkus. How did that evolve?

Mr. Shapiro. It evolved because innovators saw an opportunity.

They solved a problem. I mean Apple does a great job in their stores of getting you in and out of there without going to a cash register, and their store is always full. There is a vibrant marketplace obviously for innovation in our country. And we lead the world in it and that should be our strategy. So every policy you look at, I suggest that you focus on will it be good or bad for innovation?

As I think was Congresswoman Eshoo said so eloquently, technology mandates choke off innovation. That is just a fact and that is just what we have to be cautious about.

Mr. Shimkus. I was called yesterday by a reporter -- and Anna would appreciate this -- from The Dallas Morning News who is following CMAS and digital texting of warning alerts based upon legislation that passed in about 2006, the WARN Act.

So to Mr. Guttman-McCabe right there, if I am emailing or surfing the Internet on my smartphone, would I still receive a CMAS alert?

Mr. Guttman-McCabe. Yes, sir. You will get a distinctive tone. It will alert you to it and it will pop up on your device. You do not have to do anything proactive. It is not an opt-in service. It is a service that will come to you. And by legislation, you will get the three classes of alerts. You can later decide not to receive two of the three. But you will proactively, without any effort on your behalf, receive those alerts.

Mr. Shimkus. Which is a really good application. I was trying to remember when the heck we did that piece of legislation. And I try to remember. And I always fall back to my days in the Army, up a tree

on west German soil when we were worried. The information we needed to have was which direction do we need to go in case there is an emergency and a disaster. And that texting ability is critical.

Mr. Westergren, you may not want to answer this question because it is top secret information. I am a Pandora user when I run. Seventies era. I am interested in how many people opt out or -- what percentage of people eventually go back and say, I don't want these advertisements? I want to pay the \$3 a month for uninterrupted? How many?

Mr. Westergren. It is a very, very low, single-digit percentage that subscribe.

Mr. Shimkus. So most people will put up with the ads or two, every three to five songs?

Mr. Westergren. The vast majority, yes.

Mr. Shimkus. I successfully treaded this without causing too much damage. I yield back my time.

Mr. Walden. We will make note of that in the record as a first-time occurrence.

I will now turn to Mr. Doyle for 5 minutes.

Mr. Doyle. Thank you, Mr. Chairman.

Mr. Newberry, I know there has been a lot of talk today about royalties and other issues. But I was looking at your written testimony. And about a third of it was devoted to FCC implementation of low-power FM and regarding power levels and second adjacent waivers. And I would just like to ask you a few questions for the record.

You agree that the FCC regulates operating hours for radio stations, right?

Mr. Newberry. That they regulate operating hours?

Mr. Doyle. Does the FCC regulate operating hours for radio stations?

Mr. Newberry. Yes, sir.

Mr. Doyle. And does it regulate what kind of antenna stations can use?

Mr. Newberry. Not what model. It does set a technical requirement for the station but it does not specify model.

Mr. Doyle. And it regulates for underwriting and advertising?

Mr. Newberry. For public stations, yes.

Mr. Doyle. Are any of these issues addressed in the Local Community Radio Act?

Mr. Newberry. There are power requirements that are addressed in there. There are specifications in terms of what the restrictions on the power for the low-power stations would be. I haven't read that act in detail for some period of time.

Mr. Doyle. Right. I will help you out there since I wrote it. So it is not in there?

Mr. Newberry. No.

Mr. Doyle. Thanks.

Now, you mention in your written testimony, you think the FCC should not allow LPFM stations to increase their power levels from 100 watts to 250 watts because power levels are not mentioned in the Local

Community Radio Act. The Local Community Radio Act was written to address the issuing of insuring licenses for LPFM. There are lots of other issues related to LPFM that are not discussed in the bill, like power levels, but also operating hours, antennas, programming, and everything else the FCC has the authority to determine.

I just want to make the argument for you that 250 watt service is still a very localized service compared to 50,000 and 100,000 watt full-power stations. So in fact, translator stations routinely operate at 250 watts at greater tower heights than LPFM without any problems. So I guess my question is, as long as LPFMs are still required to operate under the same very strict interference protections required by the Local Community Radio Act, what difference would it make if LPFMs run at a higher power level as long as they don't interfere with neighboring stations?

Mr. Newberry. Mr. Doyle, that would be comparable to if I have a radio station that has 25,000 watts of power, but it wouldn't interfere with someone, so I could arbitrarily increase that power to whatever level I could reach my contours without causing interference. That is not the way the system has been devised. That is not the way the system has operated. There are classes of stations. You have maximum power within each of those classes of stations. And that is how the FCC has operated for years. It is not get as much space or coverage as I can; it is operate a particular class.

Mr. Doyle. Sure. But you acknowledge translators run at 250 watts and there are not interference problems.

Mr. Newberry. Yes, sir. It is a different class of station.

Mr. Doyle. Yes, I understand. But I am just saying that since we already know that translators run at that wattage without causing interference problems, it wouldn't be an interference issue. I mean, if the issue is interference, do you think that somehow a low-power FM station operating at 250 watts would cause interference that a translator wouldn't?

Mr. Newberry. Well, I think the issue is what the intent of the act of 2010 was that the NAB did go on record supporting and we advocated for. And that was these were to be microstations that cover particular neighborhoods, 100 watt stations at 100 feet. And that was the class of station that was authorized by that act. And that would be NAB's position, just asking that the spirit of that legislation be continued.

Mr. Doyle. Thank you. And let me ask you about the second adjacent frequency waivers, too. The act says that the FCC may only grant an LPFM station a second adjacent waiver if that station -- and I will quote the act -- "will not result in interference to any authorized radio service."

So a second adjacent frequency waiver cannot be granted to an LPFM station that might cause interference to any radio station no matter how far away, even outside that station's protective listening range. And if interference somehow happens anyway, the LPFM must suspend operations immediately. This is a much stronger standard than full-power stations have to abide by.

So what I want to ask, in your written testimony, you propose that

a full-power station should be able to review the second adjacent waiver application of an LPFM station. This is on top of the already exhaustive interprotections that are enacted by the Local Community Radio Act. I am just curious why you find it necessary to have that extra layer of scrutiny.

Mr. Newberry. It goes back to the principle of the concerns of the degradation of the quality of the audio band. You can look at what happened to the AM band in this country and see why the NAB was so protective of the second adjacent channels. The third adjacent does provide enough separation between the stations that it avoids an unintended consequence of interference. The second adjacent does cause more interference; that is a fact of physics.

Mr. Doyle. But you acknowledge the act requires them to shut down immediately if that is the case.

Mr. Newberry. Right. But what we are asking is that broadcasters have the opportunity to be proactive and avoid that problem so that our listeners are not -- that the listeners are not interfered with their habits of listening to our station.

Mr. Doyle. But our experience has been that translators, which are higher than 100 watts, that only about 5 percent of translators have had to move or go off the air as a result of this kind of scenario that you are describing. So I am just curious; since it doesn't seem to be a big problem and we have not had any issues with it, or very few issues with it, why you see the need for the extra layer of scrutiny. I see my time has run out.

Mr. Walden. I will let you respond.

Mr. Newberry. I would respond again by saying a different class of stations with different license intentions through the act of 2010.

Mr. Doyle. Thank you, Mr. Chairman.

Mr. Walden. Thank you, Mr. Doyle.

I will now turn to the gentlelady from California, Mrs. Bono Mack, for 5 minutes of questions.

Mrs. Bono Mack. Thank you, Mr. Chairman. And thank you for this exciting, interesting hearing. It is great to have all of you here. We appreciate very much your testimony.

I am just going to start by saying how important the delivery of music has become. But I am a firm believer that Shimkus started with dating ourselves. I will continue on in that vein. Way back when, when you used to buy a car, we actually used to look under the hoods and see what was under the hood of a car, what kind of engine it had. Nobody cares any longer. But we care what is in the dash. And that is the most important thing, whether it is Pandora or whatever it is. We are now buying two things, the gadgetry and the cupholders, I am convinced.

My first question is to Mr. Israelite and then to Mr. Sherman and to Mr. Allison. Is there a lot of discussion with broadening the definition of a sync right?

Mr. Israelite. The synchronization right, where you marry the music with video, is growing in importance for a lot of reasons; obviously, things like professionally produced music videos are

becoming more popular. They are making income now. YouTube user-generated content postings. So it is becoming a very much more important income stream for songwriters.

The good news is that it is in a free market. Our rights are not governed by consent decrees or compulsory licenses, so we get to negotiate the value of that which is a valuable thing. And in many instances the songwriter gets 50 percent of the revenue with the record label and artist when we are both in a free market, which is a wonderful thing for songwriters.

The challenge is we are not built for licensing. So one of the things that we have been discussing among some of the interested parties is how we can set up a system that doesn't change the free-market nature of licensing synchronizations but can make it more efficient so that when you need a mass amount of synchronization that there is a way to license it. And we had a pretty big ground-breaking deal with YouTube that NMPA entered into, which I think can be a model for how to do this in the future.

Mrs. Bono Mack. Thank you. Mr. Sherman.

Mr. Sherman. I agree with what David has said. And there are uses of sync now that are well beyond anything at the level historically. For example, it is very common now to release music videos as part of an album. So we need more of an ability to license that stuff easily than the current system allows. So we have been having conversations to figure out how to do that. There is a lot of resistance to doing it under existing copyright law at section 115,

but we are trying to find alternatives.

Mrs. Bono Mack. Would either one of you care to clarify the difference between a YouTube version of Lady Gaga performing -- for example, one of her songs, and then I just pulled it up on YouTube, now there are various fans with, what, 50 million views of a song -- is there a difference, whether it is Lady Gaga herself or if it is a fan performing that song and how the two would be treated?

Mr. Israelite. Yes. Actually there is quite a big difference. Right now when a record label releases a professionally produced music video, it will license to YouTube or through Vivo the entirety of the licensing so that all of the money that gets paid goes to the record label and the record label then is responsible for licensing and paying the songwriters. Sometimes that is happening. Sometimes it is not. And we are going to address that.

When a user posts a video that includes that music or, for example, does a cover song, then the person posting it is supposed to have the responsibility of getting that licensing. And one of the things we are trying to work out with YouTube is that for advertising that is now placed on those videos, YouTube is now actually paying directly the music publisher and songwriter for the use of that composition. So that is a tremendous step forward from where we were a few years ago when that music was being used and the songwriter wasn't seeing any income from the use. So music videos are still a challenge for us, professional ones. User-generated, we have actually made more progress on with this type of ground-breaking deal with YouTube.

Mrs. Bono Mack. Do you want to add anything?

Mr. Sherman. That is right.

Mrs. Bono Mack. Thank you.

Mr. Allison, you are leaving tomorrow for Bonnaroo. So that is very exciting. I don't know if you got the opportunity to play Coachella but I hope you will be at the Coachella festival next year. Can you speak a little bit about the importance of touring in relation to all of this?

Mr. Allison. Sure. I mean, touring is a major part of my income. It is at least half. And I would say it is the reason why I do what I do. I just want to perform. I just want to play the bass. That is my goal in life. And touring, I derive a certain percentage of my income from touring.

I guess the big problem in terms of the performing rights part of the equation is that where I will have income from touring and I will have income as a songwriter, I don't get income -- a royalty stream, that is -- as a performer. And I work in a kind of a field where as a musician, it is very collaborative when we make recordings. We are working together. And we are getting of each other. When we are in the studio, people come up with great ideas and they throw them out there.

We were talking before about the great bassist Carol Kaye, and she would contribute a great bass line to a pop tune.

Mrs. Bono Mack. I know one in particular.

Mr. Allison. Yeah. And may go unrecognized. I guess you could

say I have two songs. I am a songwriter, for which I receive royalties. But I am also a performer, for which I do not receive royalties. And I am talking about terrestrial radio here. And usually if you have two jobs you get two paychecks. In this case, I don't.

Mrs. Bono Mack. Mr. Chairman, my time has expired. Thank you very much.

Mr. Walden. Thank you. I was going to say we were going to play your music, but we don't have a copyright agreement.

I will turn now to the former chairman, Mr. Waxman, for 5 minutes.

Mr. Waxman. Thank you, Mr. Chairman.

Mr. Shapiro, you mentioned in your testimony that advancements in audio technology have brought about more immersive, enriching experiences for listeners. Some of these technologies are relatively bandwidth-intensive. Are you concerned that data caps could potentially undercut these types of consumer experiences?

Mr. Shapiro. Well, clearly these use more data. But generally, audio uses a lot less data than video. I think the consumers really understand what they buy and there will be transparency by the providers, and also that we have enough spectrum so that we can do this both wirelessly -- well, wirelessly. I think wired is less of an issue now. We do have pretty good broadband deployment and there is increasing competition. But wireless definitely needs more spectrum because we are facing a spectrum cliff.

I so much appreciate what was done by Congress and signed by the President recently in terms of private broadcast incentive options.

But that will not be enough. And I think that should be our focus: How do we plan 5, 10 years out for this spectrum explosion? Because let's be honest, it is just not about audio and new services and audio. It is about so many things which the U.S. is leading on.

Mr. Waxman. Do you think the data caps could potentially undercut these?

Mr. Shapiro. I think the broadband providers have certain rights to offer their product and the best thing we can do from a matter of public policy is to ensure vigorous competition. And the consumers understand what they are buying and it is disclosed very clearly.

Mr. Waxman. Mr. Allison, you mention in your testimony that the Recording Academy has been very active on the issue of sound quality which would require increased bandwidth for higher resolution streaming and downloads. Could you share with us your perspective on data caps and how that might affect your efforts in raising the levels of sound quality?

Mr. Allison. I have no strong informed opinion on that. That is above my pay grade in terms of data caps. But I can say as a musician, sound quality is essential. I think art is an immersive experience. And I come up in the era of vinyl records. Still have them, still listen to them. And now we are recording very high-resolution formats, 24 bit at the minimum, which sound incredible. And I think that having high-quality audio available has a lot to do with how people experience art.

Mr. Waxman. Well, we hear a lot about the technology changing

the business model for distributing music, but technology is also changing the business model for the artist in other ways. Have these new technologies and the Internet changed how you and other artists create, record, and promote your music?

Mr. Allison. Well, certainly the recording side has changed a lot as technologies emerge. My first few records were recorded on 2-inch analog tape which sounds great. The last eight were recorded directly into a computer. So technology certainly has changed. Also, of course, as a small businessman -- that is what I am, I am out there kind of hawking my wares, trying to get people interested in my music -- I use social media quite a bit to try to get the word out. I think that has definitely transformed how musicians connect with their audience and hope to build their audience.

Mr. Waxman. Mr. Westergren, you note that for many of the artists featured through your service, Pandora is the only air play that they have ever received. Why do you think these independent artists have such a hard time getting their work on traditional radio? Have you seen changes in the traditional radio industry's willingness to feature new or independent content in the last 15 years?

Mr. Westergren. I think it is a fundamental feature of broadcast. I have been a fan of broadcast radio all my life. I have listened to it, growing up with it. They can only play a single play list at a time, as opposed to the Web where you can stream literally millions of simultaneous completely different radio stations. So it just has a natural, innate ability to be much more inclusive.

And if I may, to Mr. Allison's comment, for touring, Pandora has the ability to alert listeners to local lesser-known musicians when they are playing. We have email addresses and zip codes upon registration. We have actually been experimenting with filling clubs in small cities around the U.S. by inviting people based on musical preference.

Mr. Waxman. So based on the preference that they have expressed to you, you can inform them of a concert.

Mr. Westergren. That is right. We hope to build a musician's middle class, like I said.

Mr. Waxman. Well, I appreciate the comments that all the witnesses have given and I think that this has been a very important and worthwhile hearing. Thank you, Mr. Chairman.

Mr. Walden. Thank you, Mr. Waxman. I appreciate that.

Now we go to Mrs. Blackburn from Tennessee for 5 minutes.

Mrs. Blackburn. Thank you. Mr. Allison, I hope you enjoy Bonnaroo.

Mr. Allison. I know I will.

Mrs. Blackburn. It is a great Tennessee happening. Never been. I hear it is a great happening out there.

Mr. Chairman, I would like to submit for the record some testimony from a musician named David Lowery.

Mr. Walden. Without objection.

[The statement of Mr. Lowery follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mrs. Blackburn. Thank you. I appreciate that. He wanted to be able to weigh in on what we were hearing today.

Let me go back, I want to come to Mr. Sherman and Mr. Newberry. The chairman referenced the agreement with Big Machine and Clear Channel yesterday and talked a little bit about that. And Mr. Newberry, come on back down to Tennessee, I will introduce you to Mr. Bruschetta. He is one of my constituents. And I think that this is something that we all find interesting. And certainly it has been quite a part of the subject that we are hearing today. So I would like to hear from the two of you just very quickly. And if you want to expand on it in writing, I think that would be interesting to the committee.

Let's talk about what this agreement means to each of your entities and to the future of performance rights as we move on down the line in this discussion. So very briefly now. And if you want to submit something in detail later, that is fine too. So Mr. Sherman, I will start with you.

Mr. Sherman. Well, as I said before, we don't know how many other radio stations and groups will think that this is something that they want to do. So the mere fact that Clear Channel has done this with one label doesn't solve the problem for the entire industry. We have had Dionne Warwick come testify in Congress. She is no better off today than she was yesterday, notwithstanding the Clear Channel deal with Big Machine. And most, 99.9 percent of the artists, are not any better off.

Mrs. Blackburn. Let me cut you off and go to Mr. Newberry.

Mr. Newberry. Congresswoman, I would tell you that I think it is a good thing from the standpoint of private enterprise transaction. It was a decision made by a private company, Clear Channel, to engage with a private company, Big Machine, and reach an agreement -- the terms of which I am not privileged to, but reached an agreement that they were both satisfied with, without government intervention. So it doesn't change our position that there should not be a congressionally mandated, but I think it signifies the willingness of both sides to engage in conversations and look for solutions.

Mrs. Blackburn. Thank you. Mr. Israelite, I want to go back to your testimony. And you mentioned a more efficient licensing system for new business models. I just want to ask you this: Do you agree that reforming section 115 of the Copyright Code would be a good step in bringing the law up to speed with the new technologies? And what type reforms would you like to see in your organization, like to see us follow and consider?

Mr. Israelite. Well, thank you for the question. I think reforming 115 is very important. The mechanical licensing system was built on an old model where you would license one song to one record label to put out. Today when Apple iTunes store has 20 million tracks and others may want to open their store with that many licenses, we are not built for that right now. And I think we have some very innovative progressive proposals of how we can change that licensing system to make that work.

I would still be concerned about the existence of a compulsory

license on the songwriter. It doesn't exist for the record label or the artist, but the songwriter is told the value of their intellectual property. And I think once you reform licensing we ought to take a look at removing that compulsory license and let the free market operate.

On the performance base, we are very efficient in how we license. We have three performance rights organizations that license very efficiently. But, again, because of the existence of consent decrees, there is no free-market negotiation and I think the value for songwriters is diminished.

And on the synchronization front, while there is not a consent decree and there is not a compulsory license, it is a free market exercise, I do think that reforming 115 can lead to opportunities and do a better job of licensing synchronization in a free market. And that is basically what we have tried to do with YouTube, where there was a model deal, it was offered to all music publishers and songwriters who walked in, we had very good success of people voluntarily doing that.

So thank you for the question. I think it is something that is very important for the future of music.

Mr. Sherman. If I could just jump in. David left the impression that there are no compulsory licenses for record companies. We are actually subject to a compulsory license for Pandora and all of Internet radio.

Mrs. Blackburn. Precisely. And that was part of the point of

the question and getting to the reforms in 115. I do have other questions that I will submit for the record. I have got one on the FM chip. I know we are about out of time. I have got one on DMCA and Google, Mr. Sherman, that I have wanted to discuss with you. And I will have to say, dealing with the FM chip, I have just pulled up WSM online here and was tempted to hit the on-air right now, listen live, so I could entertain y'all. I will yield back.

Mr. Walden. I thank the gentlelady for her questions and her interest in this hearing. And I congratulate her on this, the anniversary of her 30th birthday.

Mrs. Blackburn. I am so pleased that you couched that so delicately and gingerly.

Mr. Walden. Trying to be diplomatic here, but happy birthday.

We now turn to the gentleman from Massachusetts Mr. Markey. For 5 minutes.

Mr. Markey. Thank you, Mr. Chairman, very much. I would just like to have a little bit of an additional conversation on this FM chip issue.

Mr. Smulyan, in Europe they include a chip in cell phones. What is the frequency of use in Europe from your perspective?

Mr. Smulyan. It is one of the most widely used features. What you find is, when you go into a cellular store there, it is always listed. When the manufacturer lists the features, it is one of the most widely accepted features. We have had manufacturers say, look, for years people would pay a couple of extra dollars to have an FM radio

in there, and that has been true. We have got research that shows that it is one of the most requested features all over the world. And the NAB did a study with Harris which said that 81 percent of the public would want it. It has just not --

Mr. Markey. In Europe?

Mr. Smulyan. No, in the United States. But it hasn't been known in this country. If you go into a cellular store today and you ask about radio, they will talk about Pandora, they will talk about streaming, but nobody talks about over-the-air broadcasting. It has been left out of the literature.

Mr. Markey. So let me turn to you, Mr. McCabe and Mr. Shapiro. What is your response to that? They are saying in Europe it is widely accepted and it is a part of the culture. Why not in the United States?

Mr. Guttman-McCabe. Sure. I guess first I would start off by saying it is in 59 phones here in the United States, so that is pretty significant if you can find 59 phones using a 20-minute search. That is number one.

Number two, we have a manufacturer who manufactures phones globally and they have done a similar survey -- not in the context of our discussion here -- and they gave consumers 33 choices. In the United States, the FM chips came in 31st out of 33rd. In the United Kingdom, it came in 25th out of 33. In Brazil it came in second.

Now it is just a different environment. The United States is a different environment. We have Pandora, we have Spotify, we have TuneIn. We have a range of options here that other entities don't.

Mr. Markey. Let me go back to Mr. Smulyan then. He says there are already 59 devices that have that in the United States and it just won't work in our country. What is your response?

Mr. Smulyan. Well, we are convinced that, yes, there are 59 and there are literally thousands of phones manufactured and sold in the United States. It has been sort of gradually put in since we have been having this discussion. Chips have finally been activated. But I think what you will find is in the rest of the world, most of the chips manufactured in the world today are multifunction chips. So when they are shipped anywhere else in the world -- because it is a standard part of the system -- they are there. When they come into this country, they are still installed in the phones. They are just not turned on. And our question is, we would like -- especially as we get into an era of data caps, when people start paying not \$30 a month for unlimited data but maybe \$40 or \$50 or \$60 or \$70, we all like the personalization of streaming. But when people understand the cost, we think the idea of having a free option is a big, big difference. We are going into the era of data caps.

Mr. Markey. You are saying they are just not turned on.

Mr. Smulyan. They are not turned on.

Mr. Markey. Yes. So would there be a problem with turning them on, Mr. McCabe or Mr. Shapiro?

Mr. Guttman-McCabe. No. Again, the 59 that we have identified are active FM chips that you can utilize. Again, we continue to have a discussion with NAB where they say they are not seeking a mandate.

And yet here we are in front of Congress talking about something that NAB suggests is a business issue. And if it is a business issue, why are they not advertising this? If Mr. Westergren wants his product to be known to people, he advertises it. I have yet to hear a single advertisement or a single mention by Mr. Smulyan and his multitude of radio stations --

Mr. Markey. Let's get back to Mr. Smulyan, if you could answer that.

Mr. Smulyan. The industry has started promoting the fact that you can get radios, but they have been so infrequent until the last 6 months. But I think the question is we don't understand -- since obviously you use less battery life turning on a cell phone with a radio than you do streaming -- why aren't they activated? They are activated all over the world. All you have to do is turn them on. That was a question that we would ask.

Mr. Markey. Well, Mr. Guttman-McCabe is saying they are turned on.

Mr. Guttman-McCabe. Well, I could submit this for the record, Congressman. This is a Best Buy catalog that lists 26 of them. Out of the less than 80 that they identify, 26 have FM chips. There is a little dot in that FM chip category.

Mr. Markey. I will come back to Mr. Smulyan again, please.

Mr. Smulyan. It is interesting, the NAB did a study that when they went to the Verizon catalog they had 18 specific features that you could buy on their phones. Never was radio mentioned. What we

are finding is, it is almost deliberately kept from the consumer. Yes, there are 59 phones and I am thrilled that there are. Six months ago, there were probably 20 phones. A year ago there were none. But the reality is, we sell thousands of different models of phones in this country. And I would submit that out of thousands of those phones, of the smartphones, a great majority of them have a FM chip that is not turned on.

Mr. Markey. Mr. Shapiro?

Mr. Shapiro. If broadcast is such a powerful medium, they should be advertising it to the consumers. If many of them wanted to go buy it, then Best Buy and others will carry more. I would also suggest, in comparing us to other countries, it is cultural perhaps, but we are very different. We have a different digital television system. We have a unique geography and a unique culture. And also, we are the fountain of Internet creation here. So there is nothing wrong with that.

And I want to paraphrase the acting chairman, Mrs. Bono Mack, who I read a quote from this morning. But why not mandate them in cars, in lights, in pillows; why all of a sudden smartphones? And it is just not a matter of activating a chip, I want to point out. You have to have an antenna that works for FM which is not necessarily the same antenna that will work well for the cellular signal.

Mr. Markey. So you are saying that the phones in the United States, even if you activated them, would not be able to receive it because they don't have the proper antenna?

Mr. Shapiro. Well, it is the quality of the reception as well. I mean, you could get a very weak staticy signal without a great antenna, but you might have to add a better antenna.

Mr. Markey. A quick final word, Mr. Smulyan.

Mr. Smulyan. The antennas that come with cell phones are the antenna in almost every case. There are also internal antennas. The phone I have here in the Fidelity is perfect. It is the size of a human hair. So they are available. They have dealt with this problem over a billion times everywhere else in the world.

Mr. Markey. Thank you all for being here. It is a very important discussion. Thank you all.

Mrs. Bono Mack. [Presiding.] The gentleman yields back. And the chair now recognizes Mr. Latta for 5 minutes.

Mr. Latta. Thank you, Madam Chair. Thank you all for being here today. As was already stated by others, it has been a very, very interesting discussion.

Mr. Guttman-McCabe, if I could start with a couple of questions of you. I found it interesting in your testimony that you were saying that of course America is really at the forefront of innovation across the globe. And also with that innovation comes job creation. Any idea what is being created out there, jobs in the industry today?

Mr. Guttman-McCabe. Yeah. We are responsible directly for several million jobs and indirectly for tens of millions of jobs. And that continues to evolve as you see our service go into areas -- we call them vertical. So Mr. Shimkus, I think, talked about the credit

card swipe; mHealth, I am a beneficiary of mobile mHealth products as well, mobile education. So it is almost impossible to quantify the volume of jobs because you see, you know, services like Mr. Westergren's and others moving onto the mobile platform and things evolving on a daily basis. Right now we have 6 percent of the world's wireless subscribers, but we have 70 percent of the world's LTE subscribers. So we are at the cutting edge -- Mr. Shapiro talked about sort of we are the Internet country. I think that is true. I think that is why you see a different approach to FM radio here than you do in other countries, because all of the companies that we mentioned earlier began here in the United States. They are all driving employees, they are driving revenues, they are driving taxes and capex. And it is happening here. And all we say with regard to this FM chip set discussion, let there be choice, let the consumer choose. Let innovation continue and flourish. And if consumers want more and more FM-enabled products, I assure you, one of the 30 to 40 handset manufacturers will find ways of getting those products to the consumers.

Mr. Latta. Well, I also see in your next paragraph in your testimony you go on to talk about spectrum and the access to it. Are you going to have enough spectrum out there?

Mr. Guttman-McCabe. Well we certainly -- I think you may recall CTIA, along with our friends at CEA put a paper together which began the discussion about the incentive broadcast option, because we looked at the needs that were coming up and then the spectrum that was in the

pipeline, and it was an equation that caused us concern. So we started talking about a looming spectrum crisis.

We are, as Mr. Shapiro suggested, extremely happy with what Congress did and what the President signed into law about bringing more spectrum to market. That is key. It has to happen in the next 3 to 5 years. There needs to be a move to get the spectrum, not just from the broadcasters but from some of the Federal Government users, into the pipeline and out to the carriers so that we can meet up with this, whether it is audio demand or video demand or the verticals with Am Health and education. So we will continue to sort of bang that drum to say Congress did its part. Now we need the agencies to push this over the goal line to finalize that part of it, to actually get the spectrum to market.

Mr. Latta. You also stated that you also need a light regulatory touch. Could you define "light regulatory touch"?

Mr. Guttman-McCabe. Sure. And I think the best way to describe it is, if we look back 3 years ago -- or if we will go back 5 years ago -- 5 years ago, the hottest selling phone was the Motorola RAZR. It was a flip phone. There weren't app stores. There were less than 100 applications. And in that 5-year period, almost 60 percent of the phones are now smartphones. We have tablets. We have an environment that is changing so dramatically that to suggest -- and this is the ranking member's opening statement talked about trying to not lock in technology, because once you do that with a mandate, you are overtaken by events.

In this world, it moves so quickly that by the time I have a phone that I call new, you know, my team members have three or four other phones that do things that I can't even contemplate.

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Mr. Guttman-McCabe. And so, for us, it is first do no harm, the physician's mantra. Look at a regulation not just independent but as a whole. Look at it holistically and, say, boy, adding this on top of the other regulations that are out there, how is it going to impact these tier 2 or tier 3 carriers, not just the large carriers but all the others out there that are trying to upgrade their networks? So, for us, a light regulatory touch is, unless you see a significant failure in the market, you really shouldn't be contemplating regulation in such a fast-moving market segment as ours.

We have taken to calling it an ecosystem, because companies like Pandora are now part of it. And our trade association is changing dramatically as we sit here. We have more companies now from the west coast, from Silicon Valley. We have the Googles and the Microsofts, but we also have the smaller companies. Because this ecosystem is evolving.

And so a light regulatory touch is first do no harm. Have a sense of what you are regulating and make sure you don't have a negative impact on investment, on jobs, on innovation.

Mr. Latta. Thank you very much.

Madam Chair, I see my time has expired, and I yield back.

Mrs. Bono Mack. Thank you, Mr. Latta.

The chair now recognizes Ms. Matsui for 5 minutes.

Ms. Matsui. Thank you, Madam Chair.

Mr. Westergren, Pandora I know is a very popular app with my constituents. I think I have 150,000 active listeners in my district. And I am buying a new refrigerator. I am thinking about having it embedded, I suppose. But I would spend a lot of time with my refrigerator then I think, and I don't want to do that.

Anyway, since everybody else has commented on the Clear Channel business model, what do you think about that online streaming business model of Clear Channel?

Mr. Westergren. I won't give you a course of the details of that transaction.

The one way we think about it is it clearly is evidence that, even for a company of Clear Channel's size and sort of business competence, they are realizing that Internet radio is a tough business. That is for a company that is probably one of the world's best at selling advertising. So I feel it is just one more signal that something is broken in the royalty rate setting for Internet radio.

Ms. Matsui. So do you think that is a big signal?

Mr. Westergren. A huge signal. Absolutely. There could not be a bigger one.

Ms. Matsui. How does the growth and the availability of Smartphones and tablets correspond to the growth of Internet radio?

Mr. Westergren. Smartphones is the ball game for Pandora. Our growth rate doubled overnight the day we launched on the iPhone. And it has not only led to a massive increase in Smartphones. They have

also driven adoption across consumer electronics and cars, because people began taking Smartphones and plugging them into their car dashboards and really using Pandora in the car. That led to now virtually every major car manufacturer partnering with us to embed it in the dashboard. So mobile technology has completely transformed the whole Internet radio industry.

Ms. Matsui. Mr. Guttman-McCabe, monthly data caps potentially -- could they have an affect potentially on innovation for new audio services available through mobile broadband connection and can you provide some examples?

Mr. Guttman-McCabe. Sure. I would say that when we look at monthly data caps the word you chose is actually a perfect word. It is innovation. So often we think of innovation in our ecosystem. We talk about it in the context of devices or networks or things like that. In our space, I have seen in my 11 years at CTIA as much or more innovation in the service plan space as I have seen in the technology space.

So if you think back 10 years ago, we paid for every minute coming and going. And then someone magically came up with buckets of minutes and then we had nights and weekends and we had prepaid and we had rollover minutes and myFaves and My Circle, and then we had sort of the all you can eat and now we have different entities offering levels of caps.

And the way that we look at it at CTIA, because of our friends over at the Department of Justice, we tend to stay away from pricing

issues. But we look at it as allow the market to continue to evolve and innovate. And we saw Cricket Leap came up with a new service called MUVE, which is an audio-based service, and came up with a unique pricing structure for it which was separate from their cap -- or their plan.

Ms. Matsui. Does anyone else have a comment on that?

Mr. Smulyan. I think what people have to understand is -- and you can see it with AT&T having -- what -- 21,000 percent data growth since the introduction of the iPhone -- there is a staggering amount of data being consumed for entertainment. We are all big believers. We stream everyone in the broadcast industry streams. We find it. And I guess the best way is to give you an example, if I can, for a minute.

I have a radio station in Los Angeles. We reach a little under 3 million people a week. My cost of electricity of that radio station is \$39,000 a year. So for \$39,000 I can reach one person in southern California or 15 million. But I actually reach just under 3 million. If I took my transmitter down, my cost of reaching my just under 3 million people would be a little over \$1 million a year. That is my cost to reach them. Their cost to receive the signal would be identical or probably actually higher, because I buy in bulk.

The question you have -- and I think it is really the heart of all this -- listen, innovation, the consumer will make the decision whether I am out of business or Tim is out of business or anyone. But the real issue here that we are not noticing is, is the American public willing to pay ever-increasing costs to receive its entertainment in a spectrum that is becoming increasingly crowded?

You now can use your entire monthly data cap on your Smartphone or your tablet in watching a baseball game or a movie in 3 hours. The fact is, if the American public wants to pay it, great. Our whole point is, look, we have a free alternative. Just turn the chip on. But the reality is the data consumption for the American public is growing at staggering rates and the question that really needs to be asked is, is this the best way to entertain the American public or inform them?

Ms. Matsui. I understand. Thank you very much.

Mrs. Bono Mack. The gentlelady's time has expired.

The chair now recognizes Mr. Bilbray for 5 minutes.

Mr. Bilbray. Well, let's just follow up on and allow anyone to jump in on this thing. But the question again is, if we have the chips available, what is the opposition to turning those on, again?

Mr. Smulyan. I have no idea. I think I know. Because if people are consuming free radio, they are not buying data. That is the opposition. Bluntly. They are not buying data.

Mr. Bilbray. Okay. One thing that shocks me is that in a techie, savvy world as we think it is, how few of consumers realize that this is something that is available in the United States or could be available. When you go over to third world countries and you go overseas, you see this as being a matter of course a lot more and more and more.

Of course, sometimes I think that people that are not being distracted by old technology is getting a lot more hype on that. I was actually, Madam Chair, surfing on an island off Panama and a kid

spoke perfect English. And when I asked him what school he went to to learn it, he said, no, my iPhone taught me the English language. But that shows you what they have got.

How can we move this and allow the consumer to know this is an option to where they can make an informed decision?

Mr. Smulyan. One of the things that we appreciate from our friends at CTIA is, finally, in the last year you can now -- there are phones that are being activated. The chips are being turned on. I am thrilled to see it is 59. A month ago, it was about 20 or 25. And, again, there are hundreds maybe thousands of phones.

But the reality is that up until recently -- the NAB did a study. They sent people into phone stores. And when they went into phone stores, the sales people had no idea -- when you got the sales card, if you go into a phone store anywhere else in the world, it says top features, and FM is always listed. You found that card in the United States. It was never mentioned. We need to change that, and we think it has been an active idea to sort of not have the consumer be aware of it.

And I will also say something else. We as a broadcast industry must also say, you can now get phones in cell phone stores with radios in them. We haven't been able to say that until recently.

Mr. Guttman-McCabe. Congressman, if I could, I don't think you were here for this earlier, but I sent our intern, who used to work on Capitol Hill, out to Best Buy to secure their June catalog. They put out a wireless catalog each month, and here it is. It always has

a pullout section, and this pullout section lists phones and features from carriers and from manufacturers, and it lists about 80 phones. It specifically identifies 26 that have the FM chip set available in it. And, as I said, we have found 59.

So, again, Mr. Smulyan says he wants to have a factual discussion, and the facts are that this capability is available and if consumers desire it, they have access to it.

In the third world countries, some of those wireless carriers don't have second generation, let alone fourth, or what we have is a third, let alone fourth -- what we have -- generation here. So our consumers are savvier. They see services like Pandora and Spotify and others, and they take advantage of those, and they get their music in their format when they want it.

Yet there are still 59 phones available, and when our manufacturers do an analysis of what sells in Germany versus Brazil versus the United States, that differs, and they --

Mr. Bilbray. I am going to interrupt a second. Because, Madam Chair and myself, we have districts that have suffered massive wildfires, and one of the things that my consumers would like to know about is the fact that it could be lifesaving if they had that capability during an emergency when, instead of using a reverse 9/11 call and all the stuff that we have been doing with hardwire and with cell phones, is the ability of somebody to be able to tune in and know exactly from the local station what is going on and be able to carry it with them, not have to be in their car and still be able to have that information.

There is a big one there from the safety factor, that I think you are going to see disaster preparedness people raising that as being an option, much like the 9/11 chip was.

Mr. Guttman-McCabe. And we recognize that. And, again, I guess I would point to the fact that if consumers want that capability it is in 59 phones. I have testified in the Homeland Security Committee on the Warren Act and emergency alerts.

Several months ago, I was crossing the Roosevelt Bridge, and I got my alert through my wireless device. We had our radio on. We had our daughters in our car. It was tuned to a local channel. We got our emergency alert through Arlington alerts through our wireless device.

So we don't look that wireless is replacing the emergency alert capabilities of radio. We look at it as supplemental. And, to us, having both of those capabilities is fantastic, just like having television broadcasts and others and --

Mr. Bilbray. I understand that. But, Madam Chair, my time is up. I think that the fact is people are starting to depend on this for more and more, and they want it consolidated. They don't want to be carrying four or five or whatever. It is becoming all inclusive. We just want to make sure the consumer has that choice.

I yield back.

Mrs. Bono Mack. I thank the gentleman.

The chair now recognizes Mrs. Christensen for 5 minutes.

Mrs. Christensen. Thank you, Madam Chair.

Mr. Smulyan, you seemed as though you wanted to answer that last question?

Mr. Smulyan. Yes. I think I would ask the question, in his district or your district or any district, when there is an emergency are people actually going to be alerted and get the information they need in a 90-character text?

We would say -- we have been doing this -- we have been alerting and informing the American public for almost 90 years, and I believe that especially in a world in which the Internet clogs up, the cell system is jammed, or in the worst emergencies it is gone completely, when we have emergency generators, backup generators, we still remain the only people who can inform the American public at the time they need it the most.

Mrs. Christensen. I just saw that you were chomping at the bit to respond and my colleague's time had been up.

But let me also ask you a question about something that took place in my general neighborhood. The Puerto Rico legislature recently held a hearing on legislation that would require FM chips in cell phones in order to deliver those emergency alerts, and the bill was endorsed by the Puerto Rican Broadcasters Association. Did NAB support this legislation?

And as a follow-up I would like to ask you and also Mr. Guttman-McCabe, do you believe that States and territories should have the right to establish their own emergency alerting systems and mechanisms?

Mr. Smulyan. I want to defer to the NAB, because I am not sure what the position was. But, obviously, I can tell you I believe that every portable device should have this chip. It is included in most, and it can come on in any emergency.

I will defer to the NAB on what the position --

Mr. Newberry. We didn't take a position. I understand NAB did not take a position.

Mrs. Christensen. Okay. A lot of the questions that I had were already asked.

But it is interesting we have had this discussion about chips that are not activated. Do you know how many systems' cell phones are not activated?

Mr. Smulyan. I think the question was how many chips are not activated. It is hard to tell, because we understand that almost every Smartphone shipped in the United States now has a multi function that includes FM radio, but --

Mrs. Bono Mack. We were right about to change the chair here. So give us 1 minute to do see what the technical problem is; and it seems like the perfect point for me to leave and hand it over to you, Steve. I think it was your seersucker that did it.

Mrs. Christensen. Go ahead.

Mr. Smulyan. We don't know exactly. We think that most Smartphones shipped to this country have a multi-function chip which includes FM radio. For example, in every iPhone there has been an FM chip that has not been turned on. We don't know the exact number, but

we think the great majority. And the only way to do it is to tear a phone apart. But we understand, based on sales figures, that almost all Smartphones that are shipped to this country -- and this is, obviously, millions -- have an FM chip that just hasn't been turned on.

Mrs. Christensen. Mr. Shapiro, did you want to answer that?

I remember having a phone maybe about 10 years ago, and I like to walk and listen to music, and I used to listen to the radio on my phone. I can't do it anymore. Did something change?

Mr. Shapiro. You can buy phones that do that. There are several available -- several dozen available in the marketplace. As Ms. Eshoo pointed out, consumers don't really demand that feature. I think the radio broadcasting industry can change that dynamic by aggressively advertising for it, and then consumers will do it.

The other way they can change the dynamic is, although we have heard a witness testify it costs almost nothing, well, if it costs almost nothing, they should be willing to pay for that feature as other feature providers often do to have that in telephones.

What this is really about is not about emergencies at all. This is about an industry trying to preserve its market share. Forty-seven percent of Americans listen to less radio today than they did just 1 year ago. So it has gone down dramatically. And they are coming to Congress and say they are not requesting a mandate, but yet in word and action they are acting very differently.

So all this talk about emergencies -- and I specify in my written

testimony why the emergency feature is somewhat greatly overrated, because you can -- for various reasons. But this is just about a rather old industry trying to deal with the fact that there are new players out there and despite the fact they don't even play fairly --

Mrs. Christensen. Let me try to get my last question to Mr. Smulyan. Since they are already available, why should individuals be forced to get these FM chips in their mobile devices if they didn't want them?

Mr. Smulyan. Well, number one, I want to respond to Mr. Sherman -- Mr. Shapiro -- forgive me. I really apologize.

Number one, the statement there is 41 percent less listening is crazy. There are more people who listen to radio stations in the United States today than ever have been. We have 241 million of the 12-plus population and about 275 million of the 6-plus population. The fact is, more Americans listen to radio today than ever in the history of this country.

Our whole point is we think, based on experiences around the world and based on the study that has been done, that the great majority of people would use the radio if it were activated. We think that it is an opportunity, especially at a time when data caps are coming and people are going to be forced to understand how much more they are paying for audio that they haven't had to pay before data caps came.

Mrs. Christensen. Okay. My time is well up. So, thank you, Mr. Chairman.

Mr. Scalise. [Presiding.] The gentlelady yields her time, and

I will recognize myself for 5 minutes to ask questions.

I will start with Mr. Westergren. I have used Pandora many times. It is an honor to meet the founder of Pandora.

I want to first ask on the royalty arrangement that you have, 50 percent of revenue is what Pandora pays, is it based -- when you are dealing with the Copyright Royalty Board, is it based on revenue? Is it based on the number of plays? How do they come to the amount that you have to pay versus what XM and what other platforms have to pay?

Mr. Westergren. Sure. It is actually written as a greater of a per song fee or 25 percent of revenue. That is how it is calculated. And, currently, that per song fee is the larger number, and it equals about 50 percent.

Mr. Scalise. Was there a back and forth or did they just impose this upon you and you have got your business model and now you have to pay 50 percent of whatever revenue you have, knowing that your competitors are paying a much lower rate? How did that come about? And is there any kind of appeals process?

Mr. Westergren. It was imposed upon us by an arbitration, a Copyright Royalty Board, which is a three-judge panel that is part of the copyright office that actually legislative -- per law, Federal law, every 5 years determines what our rate will be for the ensuing 5 years. And they came up with a ruling last time that led to our current rates.

Really, the argument we are here to make is we are okay with a

centralized license. We actually really embrace that. It really enables our business. But we want the rate setting that we have to come from the same guidelines that other forms of radio derive their rates, which currently is not true.

So that three-judge panel, when they consider our rates, are guided by a different and worse or more disadvantageous set of criteria than, say, XM Sirius or, of course, broadcast.

Mr. Scalise. And on the deal that was just reached between Clear Channel and Big Machine, that to me seems like an example of the system working, where private parties go and negotiate rates and once they come to an agreement that is what they pay and now they have got the ability to move forward and do business. Is that a better model, do you think, than having a government agency with their arbitration panel imposing rates upon you where you don't really get that opportunity to go and negotiate with the actual artist you are helping to promote?

Mr. Westergren. That is a great question. Where we come to that topic on is part of Pandora's mission as a company is about giving wide exposure to a huge catalog of artists, both from the standpoint of artists as well as listeners, so playing old big band music for somebody that is older and playing the latest hip hop for kids.

Mr. Scalise. Or New Orleans jazz, as you mentioned in your opening statement, which I am very fond of.

Mr. Westergren. You name it, we are playing it. And that requires our ability to easily license and access a huge catalog of music, much of what is being created by artists who are not on labels,

some of whom are literally hobbyists that do it on the weekends at home making great music.

Absent a compulsory license, in other words, one place we can go to to get permission to do all that, it would be impossible for us to go find all those people and get the proper permission to do it. That catalog which is about 1 million songs right now would be dramatically smaller. So the great benefit of a compulsory license is inclusion for artists and breadth of listening for music, for listeners.

Mr. Scalise. I will have to get name of the band that you were in when you were playing, because I couldn't find it.

Mr. Westergren. I am never giving that up.

Mr. Scalise. I can't find it on Pandora when I search it.

Mr. Newberry, you had something you wanted to add.

Mr. Newberry. I would like to make a couple of observations.

First of all, I think, while we disagree on some points, Mr. Westergren and I would both agree that the Copyright Royalty Board has set a rate structure that has suffocated the expansion of the industry and makes it very difficult. I don't know if I would have gone into his business model. But that is a decision he made, and I will respect that. He is perfectly capable of making that.

But where we disagree is that radio --

Mr. Scalise. If you could wrap it up, because my time is running out.

Mr. Newberry. Radio is not just music. Radio stations -- what we represent as the National Association of Broadcasters -- have local

information, compelling personalities, emergency services. And when Mr. Shapiro says this is just an effort for us as an outdated technology and questions our commitment to emergency information and our services, I take disagreement with that. We have a long heritage of providing that information, and we are very sincere about that intent.

Mr. Scalise. My time is about to run out, and I have got a question I wanted to ask Mr. Smulyan.

On the NAB Web site, you actually call on Congress -- it is a section that says action needed, and you are calling on Congress to consider ways to expand availability of these FM chips.

And, again, in a free market, if somebody wants one, I think Mr. McCabe showed some examples of where people can go purchase it. I know on laptops and other tablet devices if you want a wireless card in some cases you have to pay extra for that, even though it is something people use every single day. I am happy to pay extra for it, but I have the option as a consumer not to pay extra for it or to buy it later.

Are you asking for Congress to do something that they -- right now, you are saying that Congress needs to take action. I am just asking you to expand on that.

Mr. Smulyan. Number one, we did a study that said 81 percent of the American public would pay more to have an activated radio station.

Mr. Scalise. But what are you calling on Congress to do? Because you are calling on Congress in the Web site.

Mr. Smulyan. We would like a study that was requested. We would like this issue to be fully vetted. We believe that the most important

thing is it is not a question of paying more, turn on the chips that people have already paid for.

When I bought this phone --

Mr. Scalise. So you are calling on Congress to take action regarding mandates on -- one way or another?

Mr. Smulyan. No. We are not. We are asking for a full and complete discussion.

But my only point is -- I don't want to call it a mandate, but I paid for an FM radio in this phone. It is turned off. If I buy this phone in London, England, it has got an FM radio. I pay. I pay the same price in the United States for the same phone. They turned the radio off. So we are saying, wait a minute. And we would like that issue studied and discussed more fully.

Mr. Scalise. My time is expired. I see that we have one of our colleagues from the full committee not on the subcommittee but is interested in asking questions. So I would ask unanimous consent to allow Mr. Green from Texas to be allotted 5 minutes to ask questions.

Without objection, the gentleman from Texas is recognized for 5 minutes.

Mr. Green. Thank you, Mr. Chairman, Ranking Member Eshoo, and members of the committee, for allowing me to weigh in on our committee today.

At any given time -- I have been on Energy and Commerce since '97. So I have been on Telecom Subcommittee and off of it, depending on where our seniority is at.

I want to thank our witnesses for appearing today.

I have been an advocate of free over-the-air radio for many years, and the future of audio is an important topic for my constituents in the Houston, Texas, area. All of us along the Gulf Coast and I know my colleague sitting in the chair now realizes we rely on radio for alerts, hurricanes, floods, and other emergencies.

There is a proposal that the government set fees for radio stations to pay to record labels, and it is deeply flawed. Again, as the chairman mentioned, the announcement from Clear Channel and Big Machine label group indicates that the private marketplace is well suited for those negotiations and show the government does not have to have a role here.

Mr. Allison, I would like to ask you a question. And again we don't have a whole lot of time, but keep your answers as brief as possible.

In your testimony, you say that broadcasters are getting a free ride by playing music without having to pay. What would the music industry do without radio now that actually provides free coverage of a lot of music, no matter what venue?

Mr. Allison. I am certainly not advocating getting rid of radio. I love radio. I am fortunate to have had six number one albums, albeit on noncommercial independent radio.

But I think the big problem for me is, whereas they are these royalty streams for Internet radio, satellite, cable for performers, there is none for terrestrial radio.

Mr. Green. The Internet radio, oftentimes you pay a subscription fee.

Mr. Allison. Yeah, but there is no --

Mr. Green. But the difference is, if I turn on my radio in my car -- and, believe me, I am one of the huge group that every time I am in my vehicle I listen to the radio. In my area, it is country music or news. And thank goodness we do have an FM news station now in Houston.

But artists are bound to benefit from that exposure on radio.

Mr. Allison. Well, Pandora, is free as well.

Mr. Green. But the consumer pays for a subscription to Pandora, is that not correct?

Mr. Allison. No.

Mr. Green. Well, Pandora must make money somehow from it.

Mr. Allison. For advertising, I guess.

Mr. Green. But, I guess my concern is Pandora is not required to do, for example, emergency announcements. I don't know if they do or not. Maybe Mr. Scalise could tell me.

But our free over-the-air radio has been there for decades and provides that. No matter what venue you have, they all have some kind of a public interest, whether it is news at the top or bottom of the hour. But they also have access to emergency alerts like 911 for a number of other issues that maybe Pandora or other newer generations cannot do.

Do you believe that artists who are not currently getting a lot

of airtime would benefit from a fee regimen if there was a certain fee agreement that was reached by a government agency or something else?

Mr. Allison. You mean start charging for terrestrial radio? Is that what you are asking?

Mr. Green. Yeah.

Mr. Allison. I don't understand the question. I am sorry.

Mr. Green. Well, I guess the question is, do you believe that artists who are not -- who do not currently get a lot of airtime would benefit from the fee-based regimen?

Mr. Allison. From a performance?

Mr. Green. From a fee-based regimen that royalties -- that radio would pay for royalties for paying, you know, similar to other venues? Do you think that artists who are not receiving free over-the-air radio now, are not currently getting a lot of airtime, would benefit from a fee-based regimen, no matter who imposes it?

Mr. Allison. No, I don't think so.

Mr. Sherman. Can I just jump in here?

Many artists will get payments. Background musicians, not just featured musicians, will be paid if there is a performance royalty for terrestrial over-the-air radio.

I would also like to just comment on the public interest obligation. There is no subsidy given for rent or for electrical use or transmissions or anything else for radio. Songwriters are still paid even though -- and they should be -- even though there is a public interest obligation by radio stations. They get their spectrum for

free.

Mr. Green. I only have 30 seconds left. Let me finish, though.

That is the difference. We have a lot of new generation technology that is great. But at the same time I don't want to eliminate what may be -- whether it is in the rural area of Louisiana or a very urban area of Houston, that people will turn on that radio and limit that availability because of the costs that may be imposed by a regimen, whether it be Congress, unless it is agreed to like what happened in Clear Channel.

Mr. Sherman. I can assure you that we have in -- all the legislation thus far has made huge accommodations to make sure that small radio stations in rural Louisiana are not impacted in any way.

Mr. Green. Well, I have been in those negotiations typically with our jurisprudence or Judiciary Committee, and so far they haven't reached that commonality where we could get an agreement. That is the concern. I am mainly here because I am concerned about the loss of that information available to my constituents that are not provided by a lot of other new venues.

And, Mr. Chairman, I appreciate the time.

Mr. Scalise. The gentleman yields back.

With that, I would like to remind members that they have 10 business days to submit any questions to our panelists, and I would ask that the panelists respond to those questions.

I would like to thank you for participating in our hearing today; and, with that, the subcommittee stands adjourned.

[Whereupon, at 12:50 p.m., the subcommittee was adjourned.]