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1 {York Stenographic Services, Inc.}

2 RPTS J. BROWN

3 HIF204.160

4 ``OVERSIGHT OF INCENTIVE AUCTION IMPLEMENTATION''

5 TUESDAY, JULY 23, 2013

6 House of Representatives,

7 Subcommittee on Communications and Technology

8 Committee on Energy and Commerce

9 Washington, D.C.

10           The Subcommittee met, pursuant to call, at 10:34 a.m.,  
11 in Room 2322 of the Rayburn House Office Building, Hon. Greg  
12 Walden [Chairman of the Subcommittee] presiding.

13           Members present: Representatives Walden, Latta,  
14 Blackburn, Scalise, Lance, Guthrie, Kinzinger, Long, Ellmers,  
15 Eshoo, Doyle, Braley, Welch, Lujan, Dingell, and Waxman (ex  
16 officio).

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17           Staff present: Ray Baum, Senior Policy Advisor/Director  
18 of Coalitions; Sean Bonyun, Communications Director; Matt  
19 Bravo, Professional Staff Member; Megan Capiak, Staff  
20 Assistant; Andy Duberstein, Deputy Press Secretary; Kelsey  
21 Guyselman, Counsel, Telecom; David Redl, Counsel, Telecom;  
22 Charlotte Savercool, Executive Assistant, Legislative Clerk;  
23 Shawn Chang, Democratic Senior Counsel; Patrick Donovan,  
24 Democratic FCC Detailee; Roger Sherman, Democratic Chief  
25 Counsel; and Kara Van Stralen, Democratic Policy Analyst.

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|  
26           Mr. {Walden.} I will call to order the Subcommittee on  
27   Communications and Technology, and welcome our witnesses for  
28   our hearing on ``Oversight of the Incentive Auction  
29   Implementation.''

30           So the subcommittee meets today to continue our  
31   oversight of the FCC's progress in implementing the incentive  
32   auction legislation that Congress passed last year. As you  
33   know, a successful broadcast incentive auction has the  
34   potential to bring significant revenue from the sale of the  
35   spectrum to bear on our Nation's broadband spectrum crunch,  
36   unleash innovation for consumers, create hundreds of  
37   thousands of jobs for Americans, provide funding to begin the  
38   process of building out a nationwide interoperable public  
39   safety broadband network, and make significant contributions  
40   to reducing the Nation's deficit.

41           But as with most things, the devil is in the details.  
42   We convened all five sitting FCC commissioners last December  
43   for a progress report on the implementation of the law. This  
44   was a first step in making sure that the Commission stays on  
45   track and acts within the confines of the law. In order to

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46 ensure that the FCC continues to follow the law, proper  
47 oversight is necessary.

48 A successful auction will require the FCC to get two  
49 parts of the equation correctly: the broadcast side and the  
50 broadband side. Now for broadcasters, the intent of the law  
51 could not be more clear. For those that plan to exit the  
52 market, the FCC has an obligation to let the market work. I  
53 am sure the Commission seems to be contemplating its judgment  
54 for that of the market when it comes to placing a value on a  
55 broadcast license. For the incentive auction to be  
56 successful, broadcasters that participate should be assured  
57 that they will be compensated based on the market value of  
58 their licenses as determined by the auction, not based on  
59 estimates by the FCC. The auction is voluntary, and we  
60 should askance at FCC policies that would dissuade  
61 participation.

62 Now for those who remain in the business of  
63 broadcasting, I have been equally clear what I believe is  
64 needed, and the statute is clear what they deserve is  
65 certainty. Broadcasters should be assured they will be able  
66 to remain viable following the auction. That means the

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67 Commission must provide the certainty that broadcasters in  
68 the border states will not be interfered with by our  
69 neighbors to the north and south. But beyond the statutory  
70 requirements, it means the FCC should take into consideration  
71 the unique challenges across the country as they reclaim  
72 broadcast spectrum and repack existing channels.

73 For example, although ineligible to participate in the  
74 auction, low-powered translators play a unique role in states  
75 in the mountain west. The Commission should consider the  
76 ongoing need for translators as they conduct the repacking  
77 analysis.

78 On the broadband side of the equation, the Commission  
79 should carefully consider how best to promote participation  
80 in the auction in a way that is consistent with the  
81 Communications Act.

82 Ultimately, a successful auction will be dependent on  
83 both broadcast and broadband interest. The FCC would be wise  
84 to recognize that in an industry as competitive as commercial  
85 wireless, rarely does the industry speak with a single voice.  
86 That is why I am encouraged that a large portion of the  
87 industry and broadcasters seems to be coalescing around a

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88 band plan that promotes competition and maximizes auction  
89 proceeds. So I would like to have seen the FCC focus on  
90 these aspects in their recent public notice on band plans.

91 Finally, I would like to talk for just a moment about  
92 the auction participation. Just like the broadcasters,  
93 potential broadband licensees should be courted as  
94 participants and not subjected to economic manipulations at  
95 the hands of the FCC. As we have learned time and again in  
96 spectrum auctions, well-meaning FCCs have tried to place  
97 conditions on auctions in an effort to engineer what it  
98 deemed a pro-competitive outcome. Recently, some have  
99 suggested the FCC can place restrictions on auction  
100 participation without any adverse effect on auction proceeds.  
101 It would be folly at best for the FCC to think that it could  
102 know better than the true market-based auction the maximum  
103 amount the auction could raise. Carefully crafted auction  
104 that recognizes the value of participation and has the  
105 humility to let the market decide the value of spectrum will  
106 best serve all the goals of the legislation.

107 So our witnesses today represent the many sides of this  
108 debate. Broadcasters that want to sell and broadcasters that

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109 want to broadcast, two of our Nation's four largest wireless  
110 providers, a representative of the public interest community,  
111 and the Federal Communications Commission. While our  
112 witnesses may not see eye-to-eye on all the issues we will  
113 discuss, I look forward to your testimony--I have read it--  
114 and your counsel as we all work together on this. I know  
115 that we share a desire to see a successful broadcast  
116 incentive auction. I thank you all for being here today.

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

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

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119           Mr. {Walden.} I would yield the balance of my time to  
120 the vice chair of the subcommittee, Mr. Latta.

121           Mr. {Latta.} Well thank you, Mr. Chairman, and thank  
122 you very much for holding this very important hearing today.

123           Spectrum has been a priority for this subcommittee over  
124 the past several years, and it is incumbent upon Congress to  
125 exercise oversight over the incentive auction. The Spectrum  
126 Act passed as part of the Middle Class Tax Relief and Job  
127 Creation Act in 2011 was landmark legislation with the  
128 authorization of the broadcast spectrum incentive auction.  
129 The success of this auction, which will be the most  
130 complicated the world has ever seen, is absolutely critical  
131 for bringing more spectrum to the market for mobile broadband  
132 as well as for funding our nationwide public safety broadband  
133 network.

134           There is no question that success hinges on the  
135 incentive auction's design. I look forward to hearing from  
136 each of our distinguished witnesses on the incentive auction  
137 implementation and the benefits or consequences of the  
138 certain auction designs. I look forward to the testimony,

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139 and as we continue this very critical dialogue.

140 [The prepared statement of Mr. Latta follows:]

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

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142           Mr. {Latta.} And with that, Mr. Chairman, I yield back  
143 the remainder of my time.

144           Mr. {Walden.} Gentleman yields back his time. Chair  
145 now recognizes the gentlelady from California, Ms. Eshoo, the  
146 ranking member, for 5 minutes.

147           Ms. {Eshoo.} Thank you, Mr. Chairman. Good morning to  
148 all of my colleagues and to those that are testifying today.

149           As former FCC Chairman McDowell wisely stated last year,  
150 the upcoming voluntary incentive auction will ``literally be  
151 the most complex spectrum auction in world history.'' To  
152 drive new investment, create jobs, and spark a new era of  
153 wireless broadband, we need to make sure this auction is done  
154 right the first time. We have to get this right.

155           We all know the storyline by now. Consumer demand for  
156 wireless broadband continues to skyrocket. More than half of  
157 all Americans now own a smartphone and as the number of  
158 wireless devices increases, so has data consumption. Last  
159 year alone, mobile devices in the U.S. downloaded more than  
160 1.4 trillion megabits of data. That is nearly four times  
161 more demand than in 2010, and 2010 was not all that long ago.

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162           As the FCC structures its auction rules and band plan to  
163 meet this growth, there are two areas that deserve enhanced  
164 attention. First, with a rare opportunity to auction  
165 beachfront spectrum under 1 gigahertz, we must promote a  
166 competitive wireless landscape in which carriers of all  
167 sizes, both regional and national, have an opportunity to bid  
168 competitively for licensed spectrum. Today in the top 10  
169 U.S. markets, the two largest wireless carriers control 86  
170 percent of all beachfront spectrum below 1 gigahertz. As the  
171 Department of Justice observed earlier this year, an auction  
172 that protects and promotes a healthy, competitive wireless  
173 marketplace enhances consumer choice and serves the public  
174 good. Consistent with statute, the FCC should heed this  
175 advice by developing rules that promote competition and broad  
176 carrier participation.

177           Second, the FCC should structure a band plan that  
178 ensures a nationwide block of spectrum under 1 gigahertz  
179 dedicated for unlicensed innovation. The economic benefits  
180 of such an expansion are well-documented with recent studies  
181 concluding that the unlicensed wireless sector contributes  
182 between \$50 and \$100 billion per year to the U.S. economy.

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183 That is with a B. That is not million, that is billion.

184 Just this month, West Virginia University became the

185 first university in the country to use TV white spaces to

186 deliver wireless broadband service across the campus.

187 Following on the successes of wifi, Bluetooth, and RFID, the

188 upcoming incentive auction can provide a unique opportunity

189 to fuel a new generation of unlicensed technologies,

190 supporting rural broadband, connected hospitals, smart grid

191 networking, and so much more.

192 So I thank all of the witnesses that are here today to

193 share your perspectives. I look forward to your testimony

194 that will support our subcommittee's ongoing oversight.

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

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

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|  
197 Ms. {Eshoo.} I don't know--where is the clock? With  
198 that, I would like to yield the balance of my time to my  
199 colleague, Mr. Doyle.

200 Mr. {Doyle.} I thank my friend.

201 This is a critical time for the future of competition in  
202 the wireless marketplace. Large carriers currently hold over  
203 80 percent of the licenses for spectrum below 1 gigahertz.  
204 This spectrum provides the best in-building coverage,  
205 something that is crucial in urban areas, like many parts of  
206 my district in Pittsburgh.

207 The increasing disparity in carrier spectrum assets  
208 which the Department of Justice and the Commission have both  
209 recognized, presents significant risks such as slowing  
210 innovation, stifling price and service competition. If we  
211 are going to ensure more competitive mobile services  
212 marketplace, the Commission must ensure that all carriers  
213 have the opportunity to acquire high quality spectrum to meet  
214 the skyrocketing demand for mobile broadband services.

215 In the Spectrum Act we passed last year, we specifically  
216 preserved the Commission's authority to adopt and enforce

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217 rules concerning spectrum aggregation that promote  
218 competition. Holdings of lower band spectrum are already  
219 dangerously concentrated. I hope the FCC uses its authority  
220 to prevent further concentration in this upcoming incentive  
221 auction.

222 [The prepared statement of Mr. Doyle follows:]

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

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|  
224           Mr. {Doyle.} With that, I yield back my time and thank  
225 my colleague and friend, Ms. Eshoo.

226           Ms. {Eshoo.} Mr. Chairman, may I just submit something  
227 for the record? This is a letter from a broad coalition of  
228 Fortune 100 companies, rural wireless carriers, and small  
229 businesses who believe every wireless carrier should have a  
230 fair opportunity to compete in the upcoming auction.

231           Mr. {Walden.} Without objection.

232           [The information follows:]

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

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|  
234 Ms. {Eshoo.} Thank you.

235 Mr. {Walden.} Gentlelady yields back her time. Turn  
236 now to the vice chair of the full committee, Ms. Blackburn,  
237 from Tennessee, for 5 minutes.

238 Mrs. {Blackburn.} Thank you, Mr. Chairman, and I want  
239 to thank each of you for being here. I have to tell you, we  
240 all have questions and we are looking forward to having your  
241 feedback today as we look at what we think is a pretty  
242 important issue, and that is the spectrum auctions. There  
243 are questions that are unanswered regarding both the policy  
244 and the process. We are hoping that we can clear up some of  
245 those. We think the law is clear and if we follow the law,  
246 then we are going to have a successful auction. And if we  
247 don't, then I think that we are pretty much guaranteed to  
248 fail.

249 It is important for us to keep in mind also that going  
250 through the spectrum auction process, this is not a science  
251 fair project, and we want to make certain that we do our due  
252 diligence. This is going to be a complicated process and it  
253 doesn't mean the FCC should exclude participants in order to

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254 show favoritism to certain telecommunication competitors.  
255 Gerrymandering the auctions, particularly the below 1  
256 gigahertz level, to give regulatory favor to some competitors  
257 at the expense of those who have earned their success puts  
258 all of the work that we have done up to this point at risk.  
259 It violates the law and it also threatens our ability to  
260 stand up the public safety network, to provide revenue for  
261 deficit reduction, and to find a repacking solution.

262           So we are going to have a lot of questions for you  
263 today. Again, I thank you all for being here, and we look  
264 forward to proceeding in an orderly manner.

265           [The prepared statement of Mrs. Blackburn follows:]

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

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267           Mrs. {Blackburn.} And I yield back--I will yield time  
268 to Mr. Long, Ms. Ellmers, whomever is--

269           Mr. {Walden.} If either of you seek time? If not--

270           Mrs. {Blackburn.} If no one is seeking time, I will  
271 yield back.

272           Mr. {Walden.} Yield back. Chair now recognizes former  
273 chairman of the committee, the gentleman from California, Mr.  
274 Waxman, for 5 minutes.

275           Mr. {Waxman.} Thank you, Mr. Chairman.

276           Today we continue our oversight of the FCC's  
277 implementation of the public safety inspector MACT that  
278 Congress passed last year with strong bipartisan support, and  
279 I want to thank Chairman Walden for working with us to  
280 assemble an outstanding panel of witnesses. We are delighted  
281 to have you all here.

282           We will hear divergent views today on how the auction  
283 should be implemented, but equally strong, we will hear  
284 agreement that we have a need to make this groundbreaking  
285 auction a success.

286           When Congress enacted this landmark legislation, we knew

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287 that implementation would be challenging. The FCC quickly  
288 retained a group of world class experts to help design the  
289 complex spectrum auction, and the FCC staff immediately  
290 started working around the clock to get this right. I want  
291 to thank the dozens of FCC staffers who have worked so hard  
292 to address the challenges posed by this auction.

293 In my view, the success of the auction will be measured  
294 by how well we meet the goals laid out by the law. Congress  
295 enacted the law with multiple goals in mind: to help relieve  
296 the spectrum crunch, and to meet the exploding demand of  
297 wireless data, to raise revenue, to fund multiple public  
298 priorities, including the creation of the broadband network  
299 for first responders, or FirstNet, to promote competition in  
300 the wireless marketplace, and to spur continued innovation  
301 such as the creation of new super wifi services. The law we  
302 passed reflects all of these goals. To promote competition,  
303 the law expressly preserves the ability of the FCC to  
304 establish limits on spectrum aggregation where necessary to  
305 ensure competition. To promote innovation, the law called  
306 for the establishment of a nationwide guard bands that can be  
307 used for unlicensed use.

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308           Not surprisingly, some parties are now engaged in  
309 revisionist history, suggesting that the FCC has less  
310 authority than the statute provides. Others are trying to  
311 erect straw men, arguing that proponents of a competitive  
312 auction want to exclude AT&T, Inspect, and Verizon from  
313 bidding. No party that I am aware of is urging the FCC to  
314 exclude the biggest wireless companies from participating in  
315 the auction. In fact, my own view is that both companies  
316 should be able to compete in the auction. But it makes no  
317 sense to allow the two biggest companies with an already  
318 dominant market position to acquire all of this high quality  
319 beachfront spectrum. The Justice Department wrote the FCC  
320 earlier this year to emphasize how important it is for  
321 competition and consumers that this low band spectrum not be  
322 dominated by the two big carriers. This expert views from  
323 the antitrust division deserve careful consideration.

324           Others have challenged the creation of guard bands, but  
325 guard bands are important to enhance the value of the  
326 spectrum being auctioned, and to create spectrum that can be  
327 used for the next generation of wifi services. The FCC's job  
328 will not be easy, but the goals of the statute are the right

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329 ones and they are all achievable. With carefully designed  
330 rules, the FCC can make new spectrum available to wireless  
331 carriers, raise the revenue needed for FirstNet, and promote  
332 competition and innovation. Our job should be to resist the  
333 importuning of special interests and help the FCC make this  
334 groundbreaking auction an historic success.

335 I look forward to the testimony of our distinguished  
336 witnesses, and I would like to ask unanimous consent to put  
337 two documents into the record. One is a letter from public  
338 interest groups, Public Knowledge, The New America  
339 Foundation, the National Hispanic Media Coalition, Free Press  
340 of the Writers Guild of America, in support of pro-consumer  
341 limitations on spectrum concentration as part of the auction  
342 of the 600 megahertz band by the FCC.

343 Mr. {Walden.} Without objection.

344 [The information follows:]

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

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|

346           Mr. {Waxman.} And the second is to enter into the  
347 record an ex parte by the U.S. Department of Justice  
348 concluding that the rules for the 600 megahertz auctions are  
349 necessary to ensure competition in the wireless market.

350           Mr. {Walden.} Without objection.

351           [The information follows:]

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

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|

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

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

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|  
355 Mr. {Waxman.} Thank you, Mr. Chairman. I yield back  
356 the balance of my time.

357 Mr. {Walden.} Gentleman yields back the balance of his  
358 time. Now we will turn to our distinguished panel of  
359 witnesses who have agreed to provide us with great testimony  
360 and counsel today. We appreciate you all being here.

361 We will start with Gary Epstein, who is the Senior  
362 Advisor and Co-Lead of the Incentive Auction Task Force, the  
363 Federal Communications Commission, the man who has the  
364 biggest weight on his shoulder to do it all, and do it all  
365 right, make it all work. Mr. Epstein, thanks for the work  
366 you are doing for the country at the FCC. We look forward to  
367 your comments today, sir.

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|  
368 ^STATEMENTS OF GARY EPSTEIN, SENIOR ADVISOR AND CO-LEAD,  
369 INCENTIVE AUCTION TASK FORCE, FEDERAL COMMUNICATIONS  
370 COMMISSION; HAROLD FELD, SENIOR VICE PRESIDENT, PUBLIC  
371 KNOWLEDGE; RICK KAPLAN, EXECUTIVE VICE PRESIDENT, STRATEGIC  
372 PLANNING, NATIONAL ASSOCIATION OF BROADCASTERS; PRESTON  
373 PADDEN, EXECUTIVE DIRECTOR, EXPANDING OPPORTUNITIES FOR  
374 BROADCASTERS COALITION; KATHLEEN HAM, VICE PRESIDENT, FEDERAL  
375 REGULATORY AFFAIRS, T-MOBILE; AND JOAN MARSH, VICE PRESIDENT,  
376 FEDERAL REGULATORY, AT&T

|  
377 ^STATEMENT OF GARY EPSTEIN

378 } Mr. {Epstein.} Thank you very much. Good morning,  
379 Chairman Walden and Ranking Member Eshoo, and members of the  
380 subcommittee. My name is Gary Epstein. I am the Senior  
381 Advisor and Chair of the Federal Communications Commission  
382 Incentive Auction Task Force. Thank you for the opportunity  
383 to discuss the Commission's efforts to carry out Congress'  
384 statutory direction in designing and implementing the  
385 broadcast television spectrum incentive auction.

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386           In our effort to design and implement the incentive  
387 auction, the Commission is guided by four primary public  
388 interest objectives. One, relieving the spectrum crunch by  
389 creating a market-based process for repurposing the maximum  
390 amount of UHF spectrum for licensed and unlicensed flexible  
391 use to address the expected growth in mobile data usage,  
392 which is predicted to grow by a factor of nine by 2017. Two,  
393 fulfilling our statutory obligations and congressional  
394 objectives that include reimbursing repack broadcasters,  
395 funding FirstNet, and deficit reduction. Three, providing a  
396 unique financial opportunity for participating broadcasters  
397 while preserving our healthy broadcast services for those who  
398 choose not to contribute their spectrum. And four, promoting  
399 the innovation in a vibrant mobile market.

400           As we pursue these objectives, we are focused on both  
401 the engineering and economics issues, and are drawing on the  
402 expertise of the world's leading economists, auction design  
403 experts, and engineers, both inside and outside the agency.  
404 We are engaging with all interested parties in an open and  
405 transparent process in which we will learn from the robust  
406 public record we are building, aim for simplicity, and adjust

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407 our proposals as necessary to ensure that the auction  
408 succeeds.

409 With respect to process, it is also important to  
410 remember that we are in the middle of an open proceeding and  
411 the Commission has made no final determinations. The staff's  
412 role in the incentive auction proceeding, under the direction  
413 of the Commission, is to conduct as comprehensive and  
414 exhaustive an examination of the full range of policy options  
415 as practicable in order to best advise the Commission.  
416 Ultimately, within the bounds of the statute, it is the  
417 Commission that will determine the design of the incentive  
418 auction.

419 The Commission has moved swiftly since Congress passed  
420 the Spectrum Act. A guiding principle has been to ``get it  
421 done on time and to get it done right.'' Under Acting  
422 Chairwoman Clyburn, the staff has continued our steady  
423 progress toward a 2013 report and order and a 2014 auction.

424 In the first 6 months after the Act was passed, the  
425 Commission quickly formed a cross-agency task force, retained  
426 auction design experts, adopted a channel sharing order, and  
427 officially launched the proceeding by adopting a

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428 comprehensive and specific notice of proposed rulemaking.

429           Since adopting the Notice, we have hosted several  
430 workshops and participated in numerous industry conferences,  
431 both to inform the public about the proceeding and solicit  
432 input on distinct incentive auction issues. To date we have  
433 had workshops on channel sharing, reimbursement for  
434 relocation costs, auction design, the band plan, and the  
435 Notice itself.

436           In addition, in the interests of public engagement and  
437 an open, transparent and participatory process, the  
438 Commissioners and staff have participated in over 180  
439 incentive auction-related events and meetings since the  
440 enactment of the Spectrum Act, including numerous discussions  
441 with our colleagues in Canada and Mexico. Perhaps  
442 unsurprisingly, the Task Force has met with each of my fellow  
443 panelists numerous times to discuss their particular views  
444 with respect to the auction.

445           Since the Notice, we have also released several public  
446 notices on issues we believe warranted further consideration  
447 and opportunity for interested parties to provide additional  
448 input. To date, we have received and considered over 460

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449 comments and reply comments to incentive auction public  
450 notices. Our public notices have solicited input on  
451 interference calculation software, band plan design, and in  
452 the case of a public notice we released just yesterday, the  
453 repacking process. Yesterday's release includes the results  
454 of a preliminary analysis of whether any particular  
455 television station could be assigned or reassigned to  
456 particular channels in the incentive auction repacking  
457 process, consistent with statutory and other requirements.  
458 Each public notice we have issued has proven critical to  
459 advancing the proceeding, and we expect that yesterday's  
460 release, which was only the first of several public notices  
461 we expect to issue regarding repacking, will allow interested  
462 parties to better understand some of our preliminary efforts  
463 in developing a repacking methodology and elicit valuable  
464 comments on our proposals.

465 Finally, we are committed to an open, transparent, and  
466 inclusive process. On several issues it appears there is  
467 emerging some agreement on how to move forward. On other  
468 issues, stakeholders appear to be coming to general agreement  
469 on the surface, but there remain important differences of

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470 opinion in the details. And on some important topics there  
471 remain divergent positions. The key for the Commission is to  
472 continue to solicit and carefully review ideas from the  
473 experts, both outside and within the Commission, to enable  
474 the Commission to make the hard decisions based on the best  
475 available data and ideas. The Incentive Auction Task Force  
476 will make recommendations to the full Commission that we  
477 believe will result in an auction that will serve the public  
478 interest and achieve the objectives and goals Congress laid  
479 out in the Spectrum Act. The ideas we put forth for the  
480 Commissioners to consider will be based on substantial and  
481 valuable input from the public.

482 Thank you and I look forward to your questions.

483 [The prepared statement of Mr. Epstein follows:]

484 \*\*\*\*\* INSERT A \*\*\*\*\*

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|  
485           Mr. {Walden.} Mr. Epstein, thank you, and again, thank  
486 you for what you and your team are doing to try and get this  
487 right and get it done on time. So we appreciate that.

488           Mr. {Epstein.} Thank you, Mr. Chairman.

489           Mr. {Walden.} We are going to go now to the Senior Vice  
490 President of Public Knowledge, Mr. Harold Feld. We  
491 appreciate your being back before our subcommittee to  
492 testify, and we look forward to your comments.

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|

493 ^STATEMENT OF HAROLD FELD

494 } Mr. {Feld.} Thank you very much, Chairman Walden,  
495 Ranking Member Eshoo. Thank you for inviting me here to  
496 testify today.

497 Two years ago, I testified before this subcommittee that  
498 a properly structured incentive auction could be a rare  
499 public policy trifecta, a win-win-win that provided more  
500 licensed spectrum, more efficient access to unlicensed  
501 spectrum in this extremely useful set of frequencies. In  
502 addition to raising revenue for an interoperable public  
503 safety network, now called FirstNet, the auction of licenses  
504 in this band for mobile broadband could also enhance  
505 competition to the benefit of consumers.

506 At the same time, while reallocation of a portion of the  
507 TV band from broadcasting to licensed wireless service would  
508 mean the loss of spectrum for white spaces in some areas that  
509 raise the possibility of creating more access in crowded  
510 urban markets. Through the reallocation of the spectrum and  
511 subsequent repacking of the remaining broadcasters, the FCC

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512 could create a national unlicensed band that would encourage  
513 developers to build new devices and offer more innovative  
514 services that take advantage of the unique properties of  
515 these frequencies.

516         The last 2 years have proved both the importance of  
517 unlicensed access, especially in the TV bands, and the  
518 importance of stimulating competition on the licensed side.  
519 In this time period, we have seen the cable industry  
520 recognize the value of offering unlicensed access as a  
521 supplement for their broadband networks. Ad hoc unlicensed  
522 networks proved their value in the aftermath of Superstorm  
523 Sandy. We now talk of carrier grade wifi as a critical tool  
524 for the wireless industry. Wireless ISPs are using  
525 unlicensed spectrum, including TV white spaces, to bring  
526 affordable broadband to rural America.

527         We have also seen the value of regulatory steps to  
528 promote competition. In 2011, the FCC imposed data roaming  
529 rules, and with the Department of Justice, jointly blocked  
530 the effort of AT&T to acquire T-Mobile. In 2012, they pushed  
531 Verizon to divest spectrum to competitors as part of its  
532 acquisition of spectrum co-licenses. As a result, we have

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533 seen more investment in the wireless market in the last year  
534 than we had for many years before. Billions of dollars of  
535 new investment float into the market as both T-Mobile and  
536 Sprint attracted new interest. These revitalized competitors  
537 have offered new equipment plans and service plans, and in  
538 response, AT&T and Verizon have redoubled their efforts to  
539 deploy 4G LTE networks as rapidly as possible and respond  
540 with their own new pricing plans. In short, competition  
541 works and needs to be preserved.

542 All of this highlights the importance of getting rules  
543 for this incentive auction right. The Department of Justice  
544 has identified access to low band spectrum as critical for  
545 competition. This spectrum is highly valued for its  
546 propagation qualities, its ability to travel long distances  
547 and penetrate buildings and trees. Companies looking to  
548 invest in unlicensed, such as Comcast, Google, and Microsoft  
549 have likewise identified the broadcast band as critical for  
550 developing the next generation of unlicensed services.

551 What does getting it right mean? First, it means we  
552 must stop creating false choices and pushing the FCC to  
553 choose sides. Congress passed a compromised bill that gave

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554 the FCC the authority to use the auction to enhance  
555 unlicensed and promote competition, but within limits. We  
556 should collectively embrace this compromise rather than  
557 refighting old battles. The priorities of this auction must  
558 work together, not push against each other and fly apart.

559         Second, we need to respect the FCC staff as they work  
560 through this difficult process. We cannot have the  
561 transparency and trust we need if people unhappy with the  
562 substantive choices browbeat them over procedure. We should  
563 recognize that well-structured guard bands will both provide  
564 adequate spectrum for unlicensed use and increase the value  
565 of the service as a whole. This is not about artificially  
566 inflating guard bands to the point where it would undermine  
567 the license service; this is about being mindful to achieve  
568 all our goals. Instead of setting this up as a false choice  
569 where every megahertz of guard band is seen as lost revenue,  
570 we should recognize that well-structured guard bands will  
571 serve the interest of licensed and unlicensed users alike.

572         Finally, we need to make sure that we have enough  
573 participation in the auction to make it worth holding. The  
574 best way to ensure that enough bidders to show up is what we

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575 call a ``No Piggies Rule.'' Don't ban anyone from the  
576 auction, but limit the number of licenses that any one  
577 company can win. Opponents of a No Piggies Rule argue that  
578 we need to have AT&T and Verizon in the auction. That is  
579 true, but the beauty of the No Piggies Rule is it lets AT&T  
580 and Verizon participate; it just makes sure there are enough  
581 licenses to make it worthwhile for competitors to show up as  
582 well. An auction with only AT&T and Verizon will be just as  
583 much a failure as an auction that banned AT&T and Verizon.

584 To conclude, the key to a successful incentive auction  
585 is a balanced approach. We get there by continuing our  
586 current deliberative process. We can still achieve a public  
587 policy trifecta, a win-win-win for mobile broadband  
588 competition and unlicensed access and build an interoperable  
589 public safety net that we all need. It would be a shame to  
590 miss this chance by fighting old battles instead of working  
591 together.

592 Thank you, and I look forward to your questions.

593 [The prepared statement of Mr. Feld follows:]

594 \*\*\*\*\* INSERT B \*\*\*\*\*

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|  
595           Mr. {Walden.} Mr. Feld, thank you for your testimony.  
596 We will now go to Mr. Rick Kaplan, who is the Executive Vice  
597 President, Strategic Planning, at the National Association of  
598 Broadcasters. Mr. Kaplan, welcome back. We look forward to  
599 your testimony as well.

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|

600 ^STATEMENT OF RICK KAPLAN

601 } Mr. {Kaplan.} Good morning, Chairman Walden, Ranking  
602 Member Eshoo, and members of the subcommittee. Thank you for  
603 inviting me on behalf of the National Association of  
604 Broadcasters to testify before you today.

605 NAB is committed to lending its expertise to the  
606 subcommittee and the FCC to ensure the successful completion  
607 of the world's first ever broadcast incentive auction to the  
608 benefit of America's consumers, the U.S. Treasury, and public  
609 safety. A properly run auction is also critical to the  
610 future of the Nation's broadcast industry.

611 Now, a casual observer of today's hearing might be led  
612 to believe that the upcoming incentive auction is primarily a  
613 wireless industry issue. He or she will hear about licensed  
614 and unlicensed spectrum, spectrum aggregation limits, and the  
615 drive to maximize the amount of spectrum freed up by paying  
616 handsomely private equity funds and others on the fringes of  
617 broadcasting to relinquish spectrum. The reality, however,  
618 is that the industry on which this auction will have the

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619 greatest impact is the broadcast industry.

620 To offer some perspective, according to OSTP and the  
621 National Economic Council, the U.S. commercial wireless  
622 industry will soon control more than 660 megahertz of  
623 spectrum, more than any other commercial enterprise, and well  
624 more than its counterparts in nearly every other country.  
625 This amount is more than double the spectrum allocated to the  
626 broadcast industry, and that is before the incentive auction.  
627 In fact, a wildly successful incentive auction will likely  
628 contribute less than 15 percent of new spectrum to the  
629 wireless industry's overall stockpile.

630 By contrast, this auction will leave an indelible mark  
631 on the broadcast industry. Some 30 percent of the channels  
632 on which broadcasters operate will be gone, and we will have  
633 to reallocate upwards of 50 percent of the stations that  
634 remain on the air. Moreover, potential changes to our  
635 coverage areas could greatly impair the ability of a  
636 significant number of the nearly 60 million Americans who  
637 rely exclusively on over-the-air television to receive the  
638 local stations they count on most.

639 Our goal at NAB is to help those broadcasters who remain

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640 on the air continue to have the same opportunities to serve  
641 the American people they had prior to the auction: the  
642 opportunity for the station in Boston to offer wall-to-wall  
643 coverage of the terrifying bombings, the opportunity for the  
644 Tri-State area station to help direct local residents to  
645 lifesaving services during Hurricane Sandy, and the  
646 opportunity for the station in Oklahoma to warn its viewers  
647 about the path of deadly tornadoes.

648         Some have described this auction as a win-win-win,  
649 although with the final victory being awarded to the  
650 broadcasters. To be candid, from what we have seen so far,  
651 we will be lucky to escape with a tie. In any event, to  
652 avoid a loss for the broadcast industry, the FCC must ensure  
653 three things. First, broadcasters who remain on the air  
654 should not be harmed by the voluntary auction. The Spectrum  
655 Act dictates that broadcasters must be able to serve the same  
656 coverage area and same viewers they did the day after the  
657 auction as they did the day before. The FCC should not, for  
658 example, move the goalpost by altering the formula by which  
659 they calculate these coverage areas. No harm also means that  
660 the FCC should not force remaining broadcasters to go out of

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661 pocket for reasonable expenses when they are forced to make  
662 way for the wireless industry. The Commission must treat the  
663 TV Broadcaster Relocation Fund as its relocation budget. If  
664 not, broadcasters could face significant costs associated  
665 with moves they never sought and that offer them no benefits  
666 whatsoever.

667         Second, the Commission must develop a band plan that  
668 avoids interference between broadcasters and wireless  
669 operators. The engineering behind the FCC's variable plan  
670 has not yet been vetted in an open forum, and the time has  
671 come to put the staff's engineering assumptions to the test.  
672 As we know from experience, post-auction interference  
673 problems take far longer to fix than if they had been  
674 addressed openly, transparently, and thoroughly up front.  
675 For the same reason it is essential that the FCC complete  
676 international coordination prior to the auction and  
677 repacking, an unfinished product leaves the Commission with  
678 far less revenue and also forces the Commission into a jagged  
679 variable band plan where it has to match broadcasting  
680 wireless services in an unprecedented manner across the  
681 northern third of the Nation.

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682           Third, despite the fact that low power television and TV  
683 translators are not formally protected in the statute, the  
684 Commission must nevertheless do all it can to preserve these  
685 critical services. As last week's letter signed by 57 House  
686 members representing rural and mountainous districts made  
687 clear--and I would like to submit that letter for the record,  
688 if possible--

689           Mr. {Walden.} Without objection.

690           Mr. {Kaplan.} Translators are indispensable means by  
691 which rural communities, especially out West, receive their  
692 free over-the-air news, weather, and emergency news  
693 information. Also at a time where the Commission and many  
694 Members of Congress have expressed concerns about diversity  
695 in media ownership or programming, low power television  
696 provides one important answer. If the Commission repacks too  
697 aggressively, literally thousands of translators and many  
698 more low power television stations will disappear and never  
699 return.

700           In closing, the NAB continues to vigorously support the  
701 voluntary market-based incentive auction authorized by  
702 Congress and to see it conducted as expeditiously as

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703 possible. But we must also remember that getting it done  
704 right is more important than simply getting it done right  
705 now. Our aim is to preserve a healthy and robust broadcast  
706 industry and to continue to serve our local communities in a  
707 way that no other service can duplicate. Thank you again for  
708 the opportunity to testify, and I look forward to your  
709 questions.

710 [The prepared statement of Mr. Kaplan follows:]

711 \*\*\*\*\* INSERT C \*\*\*\*\*

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|

712           Mr. {Walden.} Thank you, Mr. Kaplan. We appreciate  
713 your counsel.

714           Now we will turn to Preston Padden, the Executive  
715 Director, Expanding Opportunities for Broadcasters Coalition.  
716 Mr. Padden, welcome back and we look forward to your  
717 comments.

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|  
718 ^STATEMENT OF PRESTON PADDEN

719 } Mr. {Padden.} Thank you, Chairman Walden and Ranking  
720 Member Eshoo and members of the subcommittee. My name is  
721 Preston Padden and I am the Executive Director of the  
722 Expanding Opportunities for Broadcasters Coalition of more  
723 than 70 television stations interested in participating in  
724 the auction, under the right conditions.

725 Chairwoman Clyburn has provided great leadership in  
726 moving this auction forward. Commissioners Pai and  
727 Rosenworcel are very constructively engaged in these auction  
728 issues. Auction Chair Gary Epstein, Bureau Chiefs Ruth  
729 Milkman, Bill Lake, and Julius Knapp are working diligently  
730 to develop recommendations for the auction design and rules.

731 We are cheerleaders for this auction. In 2014, the FCC  
732 can reallocate the full 120 megahertz in the National  
733 Broadband Plan, even in the largest markets, as we would be  
734 happy to demonstrate in detail to the committee staff. The  
735 number one challenge facing the FCC is to make sure that  
736 payments to broadcasters are sufficiently large to induce a

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737 substantial number of TV spectrum sellers to participate in  
738 the auction. If a large number of TV stations offered to  
739 sell their spectrum, the FCC will succeed in reallocating 120  
740 megahertz and in raising the revenues necessary to pay the  
741 selling TV stations, pay the repacking expenses of non-  
742 participating stations, fully fund FirstNet, and contribute  
743 to deficit reduction. If an insufficient number of TV  
744 spectrum sellers participate, the auction will fail at its  
745 inception, and there will be no need to debate other issues  
746 such as band plans and wireless carrier eligibility. All TV  
747 stations enjoy a range of attractive alternatives other than  
748 participating in the incentive auction.

749 To be sure, economists and lawyers easily could  
750 construct rules and auction designs such as scoring stations  
751 and weighting the auction that would have the effect of  
752 limiting payments to potential TV spectrum sellers. But this  
753 would lead to less spectrum being offered, less spectrum  
754 being reallocated, and less revenue being generated.

755 Prominent legislators of both parties have expressed  
756 their concerns about counterproductive proposals to diminish  
757 incentives. On March 13, Chairman Walden issued a statement

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758 noting ``without broadcasters, there is no spectrum to  
759 auction,'' and adding ``it would be foolhardy to limit the  
760 incentives from the get-go.'' On June 4, the chairman  
761 emeritus of the full committee, Congressman Dingell, wrote a  
762 letter asking the FCC to estimate the effect of scoring and  
763 weighted auctions on the number of participating TV spectrum  
764 sellers and on the amount of spectrum recovered. The FCC  
765 will be buying spectrum, not TV station businesses. Scoring  
766 based on characteristics of the station is irrelevant to the  
767 auction, and the statute authorizes the FCC to pay stations  
768 based on competitive bidding, not based on scoring.

769 Finally, as we understand the FCC's likely auction  
770 design, it will freeze those stations with the greatest  
771 clearing and repacking impact at high-priced early rounds of  
772 the auctions, while stations with lesser clearing and  
773 repacking impact continue to descend to lower priced rounds,  
774 thereby automatically paying more to the stations most  
775 important to the FCC's clearing goal. Simply put, the FCC  
776 should offer the same high initial prices to all stations in  
777 the same market and rely on the statutorily prescribed  
778 auction to discipline final prices.

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779           We urge the Commission to provide broadcasters with more  
780 information about auction design and rules. If there are  
781 border markets where the FCC cannot recover 120 megahertz at  
782 this time, we support a variable band plan to avoid a lowest  
783 common denominator limitation on nationwide spectrum  
784 recovery. The FCC should allow stations to channel share  
785 with any other station in their DMA, and to change their city  
786 of license to match the host sharing partner. The FCC should  
787 continue its productive discussions with Mexico and Canada  
788 without making the final conclusion of those discussions an  
789 obstacle to holding the auction in 2014, just as the FCC  
790 previously has conducted other auctions without final  
791 resolution of border issues.

792           Finally, the clear congressional priorities of funding  
793 FirstNet and making a dent in the deficit militate against  
794 restricting participation in this auction by any wireless  
795 carrier. We need robust competition among all wireless  
796 carriers to assure that the auction produces the maximum  
797 revenues possible. Concerns about market concentration  
798 should be left to another proceeding on another day when they  
799 may well have been obviated by the recent dramatic

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800 marketplace strengthening of Sprint and T-Mobile.

801 Thank you very much, Mr. Chairman.

802 [The prepared statement of Mr. Padden follows:]

803 \*\*\*\*\* INSERT D \*\*\*\*\*

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|

804 Mr. {Walden.} Mr. Padden, thank you for your testimony.

805 We will now move to Kathleen Ham, who is the Vice President,

806 Federal Regulatory Affairs of T-Mobile. Welcome.

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|

807 ^STATEMENT OF KATHLEEN HAM

808 } Ms. {Ham.} Thank you. Good morning, Chairman Walden,  
809 Ranking Member Eshoo, and members of the subcommittee. My  
810 name is Kathleen O’Brien Ham, and I am the Vice President for  
811 Federal Regulatory at T-Mobile U.S. Thank you for inviting  
812 me to testify today.

813 T-Mobile is the fourth largest wireless carrier, serving  
814 about 43 million subscribers and employing 38,000 people in  
815 the U.S. Since the government blocked our merger with AT&T  
816 18 months ago, we have been reinvigorating our brand and our  
817 network. Earlier this year, we announced our uncarrier  
818 strategy, setting us apart from our larger competitors. We  
819 dropped traditional price plans in favor of affordable,  
820 simple choice plans. We said there is no need for annual  
821 service contracts anymore. We gave customers the option to  
822 bring their own device or buy one from us, interest free. We  
823 launched JUMP, so customers can upgrade their phones when  
824 they want, not when they are told.

825 These innovative moves are putting pressure on our

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826 larger competitors who are now copying our offers. That is  
827 what healthy competition achieves. On top of all this, we  
828 are rolling out our 4G LTE at a record-shattering pace.

829 The upcoming incentive auction is critical to the future  
830 of wireless competition. Spectrum is the air we breathe.  
831 Without it, we cannot compete and we cannot innovate. The  
832 FCC should maximize the amount of spectrum auction for mobile  
833 use. More spectrum is good for competition and good for  
834 auction revenues, plain and simple. We commend the  
835 Commission for its ongoing work to develop auction rules. To  
836 ensure the rules promote competition and consumer choice, the  
837 FCC should consider three critical objectives.

838 First, encourage broadcaster participation to maximize  
839 the amount of spectrum auctioned. Second, adopt a 600  
840 megahertz band plan that maximizes auctioning paired spectrum  
841 for mobile use. Finally, and most important, adopt  
842 reasonable spectrum aggregation limits so the dominant  
843 carriers do not foreclose other competitors from this last  
844 best opportunity to acquire low band spectrum.

845 All carriers agree there needs to be competitive limits  
846 on spectrum. The only dispute is how and when to employ

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847 them. T-Mobile has proposed an overall limit on the amount  
848 of low band spectrum that any carrier can hold, and we have  
849 said no carrier would be shut out of the incentive auction in  
850 any market, even if they otherwise exceed the limit.

851 Despite what you may be hearing, limits on spectrum  
852 concentration are consistent with Congress' 1993 directive to  
853 promote competition. It is that visionary law that is the  
854 basis of the billions of dollars in investment and the  
855 creation of millions of jobs that wireless competition has  
856 channeled into the U.S. economy for the past 2 decades.

857 Why do we need reasonable spectrum aggregation limits?  
858 Three reasons. First, all spectrum is not created equal.  
859 The 600 megahertz spectrum penetrates buildings, is cheaper  
860 to deploy in both rural and certain urban settings. Today,  
861 the two largest carriers control about 80 percent of the  
862 spectrum below 1 gigahertz, half of which they got for free  
863 from the government in the 1980s. All carriers need a mix of  
864 both high and low band spectrum to effectively compete. T-  
865 Mobile, even with its good high band spectrum position today,  
866 holds no low band spectrum. Second, the two dominant  
867 carriers have much to lose from competition. Their market

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868 power gives them a significant incentive, an ability to  
869 acquire spectrum to block competition. By contrast, T-Mobile  
870 and other smaller carriers value spectrum solely based on its  
871 use. Without market power, you don't pay more for spectrum  
872 than the use value derived from it, no matter who your  
873 shareholders are. In a letter shared with the subcommittee  
874 yesterday, smaller and rural carriers joined T-Mobile in  
875 calling for low band limits to protect competition. Finally,  
876 up front limits enhance auction revenue. Without them,  
877 smaller bidders may decide to sit out the auction or curtail  
878 their participation.

879 Without a doubt, this auction will have a critical  
880 impact on the competitive future. The right policy choices  
881 will foster competition and investment. The wrong choices  
882 will move us backward. Thank you for inviting me to testify  
883 today, and I am happy to take any questions.

884 [The prepared statement of Ms. Ham follows:]

885 \*\*\*\*\* INSERT E \*\*\*\*\*

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|  
886           Mr. {Walden.} Thank you very much, Ms. O'Brien Ham. We  
887 appreciate your being here.

888           We now turn to Joan Marsh, who is Vice President,  
889 Federal Regulatory Affairs for AT&T. We welcome you here,  
890 Ms. Marsh, and please go ahead with your testimony.

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|  
891 ^STATEMENT OF JOAN MARSH

892 } Ms. {Marsh.} Thank you, sir, and thank you, Chairman  
893 Walden and Ranking Member Eshoo for inviting AT&T to join in  
894 this very important discussion today.

895 To quote former FCC Chairman Julius Genachowski, ``This  
896 is a big deal.'' The 600 megahertz auction presents the next  
897 best opportunity to reallocate valuable spectrum for wireless  
898 broadband use, and could be the only one like it for years to  
899 come. But this auction is not just about new wireless  
900 allocations; it is also about critical public safety goals.  
901 There is wide agreement that the auction must generate up to  
902 \$7 billion to fund construction of the first nationwide  
903 interoperable wireless broadband public safety network.  
904 Auction revenues will also support broadcaster relocation,  
905 public safety research, next generation 911 services, and  
906 much needed deficit reduction.

907 The importance of these goals has been underscored by  
908 both sides of the Aisle in letters to the Commission, urging  
909 them to adopt policies that will enhance the ability of the

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910 auction to meet these critical statutory goals. We agree.  
911 But success in meeting these goals is by no means a  
912 guarantee. This is, by far, the most complex auction  
913 proceeding ever undertaken, and the Commission must persuade  
914 two different sets of auction bidders to participate in two  
915 separate but interrelated auctions.

916 In the face of this enormous complexity, there are a few  
917 key principles that should guide decision-making at every  
918 turn. You will be happy to hear I agree with two of the  
919 principles Ms. Ham expressed today. I would like to discuss  
920 how our one remaining principle in which there is some  
921 disagreement.

922 The primary principle is straightforward: allow free and  
923 open participation in the auction by all qualified bidders.  
924 This approach is the only one that will maximize auction  
925 revenues and thereby maximize the chances for an auction that  
926 achieve all of Congress' stated goals. If qualified bidders  
927 are excluded or limited in their bidding activity, less  
928 spectrum may be relinquished by broadcasters, the spectrum  
929 that is offered will sell at lower prices, and the chances of  
930 a successful auction will be diminished. Unfortunately, as

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931 always in the case of regulatory proceedings of significant  
932 import, there are some who want the Commission to gain the  
933 rules in favor of certain competitors over others. These  
934 proposals vary in their specifics, but they share a common  
935 theme: restricting AT&T and Verizon from full participation  
936 in the auction while steering spectrum to other bidders,  
937 including Sprint and T-Mobile, neither of which participated  
938 in the last major auction. These proposals are ill-advised,  
939 as they are unlawful. For starters, we believe they are  
940 unnecessary. Sprint already has, by far, the largest  
941 spectrum portfolio of any U.S. wireless provider, vastly  
942 exceeding that of both AT&T and Verizon. Indeed, given this  
943 it is by no means certain that Sprint will choose to  
944 participate in the 600 megahertz auction. Sprint also has at  
945 its disposal substantial new capital resources from its  
946 owner, Japanese-based SoftBank to fund any future spectrum  
947 purchases it might choose to make. For its part, T-Mobile is  
948 owned by Deutsche-Telekom, one of the largest  
949 telecommunications companies in the world. It too has  
950 recently acquired substantial amounts of new spectrum,  
951 including from AT&T, Verizon, and the former Metro PCS. In

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952 fact, T-Mobile now runs ads in the marketplace claiming that  
953 its network is less congested and provides greater capacity  
954 than does AT&T's.

955 In short, there is no basis upon which to conclude that  
956 Sprint or T-Mobile have a greater need to win spectrum at  
957 this auction than any other bidder. More importantly, to the  
958 extent these carriers choose to participate, there is no  
959 basis to conclude that they lack the resources to bid  
960 competitively and win, absent auction rules that either make  
961 it easier or cheaper for them to do so. Conversely,  
962 restricting or limiting bidder participation will come at a  
963 heavy price. If AT&T or Verizon are restricted, or relegated  
964 to a separate shadow auction with its own set of rules,  
965 spectrum values at auction will be suppressed and revenues  
966 reduced. This result would effectively ask U.S. taxpayers to  
967 subsidize the auction, undermining the auction's revenue  
968 goals, including that of deficit reduction. Such rules could  
969 also impact the calculation that broadcasters will make in  
970 deciding whether to participate or not.

971 For these reasons, AT&T has urged the Commission to  
972 adhere to its statutory mandate and conduct an open and

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973 competitive auction that awards spectrum to the highest  
974 bidder. This approach is not only consistent with the law,  
975 but it would also offer the best prospect for a successful  
976 auction that meets all of Congress' goals.

977 My written testimony includes comments in other areas of  
978 great interest to AT&T, including the band plan, the need to  
979 get the engineering right, the efforts of the industry to  
980 find consensus, and the role unlicensed services can play in  
981 this auction. As to broadcaster participation, AT&T believes  
982 that broadcasters who come to the auction table are not  
983 selling a broadcast business. They are relinquishing their  
984 rights to 6 megahertz of spectrum, much needed for mobile  
985 wireless use. An evaluation mechanism adopted in the reverse  
986 auction should be consistent with that reality and opening  
987 prices should be set at a level that will encourage  
988 participation.

989 In conclusion, this auction presents enormous  
990 opportunity and risk. The stakes are as high as the issues  
991 are complex. AT&T remains confident that under the able  
992 leadership of Chairwoman Clyburn, Commissioners Pai and  
993 Rosenworcel, and Commission staff led by Mr. Epstein, the FCC

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994 will adopt auction rules that maximize participation and  
995 prospects for a successful auction, with all the intended  
996 benefits envisioned by Congress.

997       Before I conclude, one comment on something Ms. Ham  
998 said. She indicated that we got a lot of our low band  
999 spectrum for free. That is incorrect. Although the 850  
1000 allocations were originally allocated to incumbents, those  
1001 licenses have changed hands many times in the secondary  
1002 market, and the vast majority of AT&T's portfolio of 850  
1003 spectrum was purchased in the secondary market, and I can  
1004 assure you, we paid big values for that spectrum. I just  
1005 wanted to correct that one fact, and I appreciate your time.

1006       [The prepared statement of Ms. Marsh follows:]

1007 \*\*\*\*\* INSERT F \*\*\*\*\*

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|  
1008 Mr. {Walden.} Thank you, Ms. Marsh. We appreciate your  
1009 testimony.

1010 Now we will go to the question phase, so again, we want  
1011 to thank you all for your testimony today, and your counsel.

1012 Mr. Epstein, although ineligible to participate in the  
1013 auction, low power translators play a unique role in the  
1014 States, especially in the mountain West where thousands of  
1015 viewers rely exclusively on translators for news and weather  
1016 and emergency information. Is the FCC considering auction  
1017 rules and repacking procedures that will minimize the  
1018 negative impacts the auction will have on TV translators and  
1019 low power TV where possible?

1020 Mr. {Epstein.} Mr. Chairman, Commission in its notice  
1021 recognized the public interest concerns that you just stated.  
1022 The Congress made the decision not to include low power and  
1023 translators in the incentive auction, but it doesn't mean  
1024 that they are not highly valued--

1025 Mr. {Walden.} Right.

1026 Mr. {Epstein.} --aspects and yes, in considering the  
1027 repacking and other aspects of the incentive auction, that

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1028 translators--we asked specific questions about translators  
1029 and low power.

1030 One other point that I would like to quickly make--

1031 Mr. {Walden.} Yes, sir.

1032 Mr. {Epstein.} --and that is that in our--and this may  
1033 be a misapprehension on some people's part. In any of our  
1034 band plan deliberations, what we are seeking to do is to have  
1035 a core amount of spectrum across most of the United States.  
1036 There may be some areas which are impaired because of issues  
1037 which I am sure we will discuss, but in rural areas, we are  
1038 not seeking to eke out the last amount of spectrum, and that  
1039 is especially in recognition of the issue you just stated.

1040 Mr. {Walden.} I appreciate that. Thank you.

1041 Again, Mr. Epstein and Mr. Kaplan, the Spectrum Act  
1042 requires the FCC to follow the methodology in OET Bulletin 69  
1043 when repacking the broadcast band. But the FCC has released  
1044 multiple public notices on changes to the software and inputs  
1045 it intends to use to run the repacking analysis, including  
1046 the use of new data and assumptions. Mr. Kaplan, do you  
1047 believe that the proposed changes to the OET 69 software  
1048 comport with the Act, and Mr. Epstein, why are those changes

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1049 necessary?

1050 Mr. {Kaplan.} I believe the changes now on the fourth  
1051 round of changes as of last night are both unlawful and  
1052 unwise.

1053 Mr. {Walden.} Okay. Mr. Epstein, do you have a  
1054 different view of that?

1055 Mr. {Epstein.} Yes, I do. I have a different view.

1056 Mr. {Walden.} I figured as much.

1057 Mr. {Epstein.} Statute requires us to maintain the  
1058 methodology utilized in OET 69. We believe we are  
1059 maintaining the methodology. What we are looking at is  
1060 updating the inputs. We are doing such things as using 2010  
1061 census instead of 2000 census. It seems to make a lot of  
1062 sense to us to update the inputs to the software. The  
1063 original software is just not capable of operating with the  
1064 incentive auction--

1065 Mr. {Walden.} So you are making changes in the  
1066 methodology?

1067 Mr. {Epstein.} We are not.

1068 Mr. {Walden.} Okay. Mr. Kaplan, why do you think these  
1069 are unwise, illegal, and whatever else you said?

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1070           Mr. {Kaplan.} Well when I worked at the FCC, when  
1071 Congress told us to do something, we did it. Those were the  
1072 easiest times, when it was clear. Congress made it very  
1073 clear as to what the FCC should do. There was a very simple  
1074 methodology--actually very complicated for most of us, but  
1075 for engineers, very simple--about how to go about calculating  
1076 our coverage areas. Congress was wise to not allow the FCC  
1077 to move the goalpost, mostly to create certainty, which you  
1078 talked about in your opening statement, about what  
1079 broadcasters will participate, what won't and where we might  
1080 cover. As we did our analysis on the changes that are  
1081 occurring in OET 69, they become widely inaccurate. We get  
1082 different results each run we do, and they surprisingly--or  
1083 unsurprisingly--shrink our coverage areas quite a bit in  
1084 certain areas of the country. And so therefore, we think it  
1085 runs far afoul of what Congress intended.

1086           Mr. {Walden.} All right. We will follow up on this  
1087 discussion.

1088           Mr. Epstein, the FCC staff has taken the unusual step of  
1089 freezing not only new but also pending applications by TV  
1090 stations to modify their viewing areas. Some of these

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1091 modifications have been pending for years. These mods will  
1092 allow broadcasters that wish to remain on the air to bring  
1093 local news emergency information to a larger audience in  
1094 local markets. Is the Commission considering any kind of  
1095 analysis to determine whether some can be granted without  
1096 disrupting the incentive auction? And Mr. Kaplan, do you  
1097 know of an approach that would prevent the mods from making  
1098 the repacking process more difficult?

1099 Mr. {Epstein.} Mr. Chairman, yes we are analyzing the  
1100 station applications that are pending. Just two sentences  
1101 worth of background. You and Congress and the statutes set a  
1102 specific date for applications to be considered in the  
1103 repacking. These applications were either pending or not  
1104 granted by that date. The FCC found in its notice it had the  
1105 discretion to grant them, but put a temporary freeze in place  
1106 so we can analyze them.

1107 Mr. {Walden.} But you are in that process?

1108 Mr. {Epstein.} We are in that process.

1109 Mr. {Walden.} Because I would think there would be some  
1110 markets as you described where-

1111 Mr. {Epstein.} We have also--

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1112 Mr. {Walden.} --you would get into a problem.

1113 Mr. {Epstein.} We have also put in place a waiver  
1114 request for particular hardship. So the answer to your  
1115 question is yes, we are analyzing those stations.

1116 Mr. {Walden.} Mr. Kaplan, do you care to comment?

1117 Mr. {Kaplan.} Any time you freeze--and this goes for  
1118 any industry--you freeze an industry from acting, you freeze  
1119 investment and you freeze any outside investment, especially  
1120 in that industry. And that is what is going on right now in  
1121 the broadcast industry. We have actually proposed another  
1122 solution, perhaps, that we hope the FCC would adopt, which  
1123 is, I think--and everyone can agree might help the process in  
1124 general, which is to move forward on this portion of the  
1125 incentive auction order, and not wait for issues like band  
1126 plan, competition, other things, but actually adopt an order  
1127 making the decisions that are--of things that are proposed in  
1128 the notice of proposed rulemaking on these issues.

1129 Therefore, you won't have a need for a freeze because you  
1130 will--the FCC will then have decided where they come down on  
1131 what stations are protected and what stations aren't, and we  
1132 would fully support that.

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1133 Mr. {Walden.} Mr. Epstein, did you want to comment?

1134 Mr. {Epstein.} Just briefly. This is an overriding  
1135 comment. Anything that I say with respect to recommendations  
1136 ultimately has to be acted on by the Commission.

1137 Mr. {Walden.} Sure.

1138 Mr. {Epstein.} What the staff does is make  
1139 recommendations to the Commission, and the Commission is the  
1140 actual decision maker here. We are analyzing stations. What  
1141 we are concerned about is in the process, and a complicated  
1142 process like the incentive auction, we don't want to get  
1143 ahead of ourselves and make decisions which we may regret  
1144 later, which will completely--which will significantly affect  
1145 our repacking. So we are doing exactly as Mr. Kaplan said.  
1146 We are trying to determine whether these stations will have  
1147 any effect on repacking.

1148 Mr. {Walden.} All right. I appreciate your answers to  
1149 my questions.

1150 We will now turn to the gentlelady from California, the  
1151 Ranking Member, Ms. Eshoo, for questions.

1152 Ms. {Eshoo.} Thank you, Mr. Chairman, and thank you to  
1153 each one of you. I think that this is not only a very

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1154 important panel, but your testimony is--I mean, we are  
1155 hanging on every word that each one of you are saying.  
1156 Obviously there are differences between you.

1157 I want to go to Ms. Marsh first. There is something  
1158 that is really bothering me about this is as Mr. Waxman said,  
1159 a straw man being set up, that there are those that want to  
1160 exclude or seeking to have AT&T and Verizon excluded from  
1161 this process. There isn't anyone that has suggested that. I  
1162 haven't found that. I have tried Googling it. I have asked  
1163 my staff to research it. There isn't anyone that has  
1164 suggested that or is for that. I think I heard a suggestion  
1165 that if it isn't--if this isn't set up the way you want it,  
1166 that AT&T is simply not going to participate, which I think  
1167 is a threat that unless it goes exactly the way you want it,  
1168 the entire auction is going to fail, that we won't be able to  
1169 reduce the deficit, we won't produce the dollars for the  
1170 interoperable nationwide public safety network, and the  
1171 auction won't be successful. Are you actually stating that  
1172 if you don't get your way that you are just not going to  
1173 participate?

1174 Ms. {Marsh.} No, ma'am, and I apologize if I suggested

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1175 that. I certainly did not suggest that AT&T will not  
1176 participate. But we do believe if there are limitations  
1177 imposed, even if they are not exclusions by name, they could  
1178 act to exclude--

1179 Ms. {Eshoo.} So let me just ask you this. If, in fact,  
1180 there is not room for competition by smaller carriers, you  
1181 think that the auction will fail?

1182 Ms. {Marsh.} No, I believe that the auction can be set  
1183 up so there is room for all bidders to come and win, and that  
1184 is exactly what we have seen in the last two major auctions  
1185 at the FCC.

1186 Ms. {Eshoo.} So how, Ms. Ham, does that--I think she  
1187 just said something that may please you.

1188 Ms. {Ham.} Yes. Well, we are in favor of broad  
1189 participation, yes. I used to run the spectrum auctions  
1190 program at the FCC, and I ran the early PCS auctions and I  
1191 saw what a successful auction looked like. Successful  
1192 auction is one where you have a lot of bidders bidding in a  
1193 lot of markets, okay? That is what T-Mobile would like to  
1194 see in this auction. That is what we think will be  
1195 accomplished with reasonable spectrum aggregation limits. As

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1196 you indicated, we and others are not saying exclude AT&T and  
1197 Verizon. What we are worried about--and bear in mind, we are  
1198 not even sure how much spectrum there is going to be in this  
1199 auction. It all really depends on what broadcasters show up.

1200 Ms. {Eshoo.} Voluntary, right.

1201 Ms. {Ham.} And if there is less spectrum here, there is  
1202 a much greater likelihood that AT&T and Verizon can divide  
1203 and conquer, okay? So to Harold's No Piggies Rule, I think  
1204 that is what we are talking about.

1205 Ms. {Eshoo.} I was waiting for someone to bring that up  
1206 on the panel.

1207 Ms. {Ham.} I think what we are talking about--but  
1208 anyway, it is ensuring that there is competition after this  
1209 auction. The FCC hasn't run an auction in 5 years. This is  
1210 the most important auction that they have run since the PCS  
1211 auctions. Back then, there was a duopoly. There was a  
1212 cellular duopoly, and guess what the Commission did? The  
1213 Commission put in place reasonable aggregation limits. T-  
1214 Mobile stands here today as a competitor because of that good  
1215 policy. That is what we are for.

1216 Ms. {Eshoo.} Thank you.

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1217           Mr. Epstein, this is just a curiosity question. Do you  
1218 think that the FCC will meet its goal of holding the auction  
1219 in 2014?

1220           Mr. {Epstein.} What our charges from Chairwoman Clyburn  
1221 is for the staff to do whatever it can to place the options  
1222 before the Commission to adopt a report and order in 2013 and  
1223 to hold the auction in 2014. That is what we plan and intend  
1224 to do.

1225           Ms. {Eshoo.} You have confidence that it can happen in  
1226 2014, though?

1227           Mr. {Epstein.} Whether it happens in 2014 I guess is  
1228 above my pay grade, but we will do everything we can to  
1229 empower the Commission to make that decision and to hold the  
1230 auction.

1231           Ms. {Eshoo.} You are a wonderful diplomat.

1232           I think everyone in this room knows that--how strongly I  
1233 feel about unlicensed spectrum, you know, the fight to get  
1234 that into the spectrum bill. I think a real victory for the  
1235 country that we did, and that we continue on that path to not  
1236 only protect it, but enlarge it. In 2011, the Stanford  
1237 Institute for Economic Policy Research--it is known at home

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1238 as SIEPR--it is a very important organization at Stanford.  
1239 It looked at the economic benefits of unlicensed and  
1240 concluded that making more of it available would ``likely add  
1241 significantly to government revenue and could result in  
1242 higher auction revenue than if all new bandwidth were sold  
1243 under exclusive licenses.'' Mr. Feld, do you agree with that  
1244 assessment?

1245 Mr. {Feld.} Absolutely. We have seen historically  
1246 every time that we have, you know, added more unlicensed  
1247 spectrum and made that more available, it has just led to a  
1248 fantastic boom in new services and new devices that product  
1249 exciting new economic opportunities. '99--in '89, rather,  
1250 when we first went to garage door openers; in '97 we opened  
1251 up the UNII band which laid the ground work for wifi and all  
1252 of the innovations that that has brought. With TV white  
1253 spaces in only the short time that it has actually been  
1254 available for us to certify equipment, we have got a huge  
1255 backlog of orders among WISPs. We are seeing other countries  
1256 in Europe, we are seeing Kenya and South Africa, New Zealand  
1257 all looking at this technology with pilot projects popping up  
1258 all over the world. This is just a fantastic engine of not

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1259 just innovation, but also of economic opportunity and growth.

1260 Ms. {Eshoo.} Thank you very much.

1261 I have other questions, Mr. Chairman, but I will submit

1262 them to the witnesses. Is there a timeframe in which

1263 witnesses need to respond to us when we submit questions to

1264 them? I don't know the answer to that one.

1265 Mr. {Walden.} Ten days.

1266 Ms. {Eshoo.} Ten days? Good. Okay, thank you very

1267 much.

1268 Mr. {Walden.} The lady's time is expired, and the chair

1269 recognizes the lady from Tennessee, the vice chairlady,

1270 Representative Blackburn for 5 minutes.

1271 Mrs. {Blackburn.} Thank you, Mr. Chairman. Again, I

1272 thank you all for being here. I have to tell you, it is

1273 interesting to hear such a spirited conversation, and I think

1274 that we all appreciate this. I hope we are all focused on

1275 the same goal, and that is getting this spectrum out to the

1276 marketplace so that we don't end up with a spectrum crisis.

1277 Ms. Ham, I want to come to you because I know that you

1278 all have been running an ad that claims that your network is

1279 less congested than AT&T's. And then I saw a Deutsche Bank

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1280 financial statement that said Sprint is the new spectrum  
1281 powerhouse and has more spectrum for LTE than all of its  
1282 competitors combined. And then you are talking about AT&T  
1283 being excluded. So if your ads are true, why would you not  
1284 want AT&T in the spectrum auctions?

1285 Ms. {Ham.} Well again, to clarify, we are not talking  
1286 about excluding them. In fact, it helps us to have AT&T and  
1287 Verizon in our neighborhood, okay? I mean, we were the  
1288 leaders of building out AWS spectrum. We did that alone,  
1289 okay? It helps to have your competitors out there buying  
1290 from vendors, et cetera, et cetera. It brings down the costs  
1291 so we want them in the neighborhood, okay? That is not what  
1292 this is about. And you know, in terms of our ads, none of  
1293 those ads--I mean, T-Mobile, going back 18 months I think I  
1294 referenced since our deal, so we got some spectrum from AT&T  
1295 as part of that deal, okay? We got some spectrum from  
1296 Verizon as part of the Verizon spectrum co-deal, and we  
1297 recently merged with Metro PCS. So we are in a stronger  
1298 position than we were 18 months ago--

1299 Mrs. {Blackburn.} Let me ask you this, then.

1300 Ms. {Ham.} --with upper band spectrum.

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1301           Mrs. {Blackburn.} Okay. Then if the sub-1 gigahertz  
1302 spectrum is so important, then why did T-Mobile--why didn't  
1303 they even participate in the 700 megahertz auction?

1304           Ms. {Ham.} Sure, thank you. Well first of all, with  
1305 all due respect, I think we have to take the market as it is  
1306 today, not as it was in 2006. The market has changed  
1307 dramatically since then. There were barely even smartphones  
1308 back in 2007. T-Mobile did participate in the 2006 auction,  
1309 and we very aggressively built that spectrum out. That  
1310 spectrum was encumbered with 22 federal agencies, okay? We  
1311 were deep in the throes of that and I know we visited a lot  
1312 of your offices during that time about that issue, because  
1313 clearing the Department of Justice and the Department of  
1314 Defense is no easy job, okay?

1315           So the other thing I would say is we have to take the  
1316 spectrum in the order we get it, okay? The 700 megahertz  
1317 auction came after the AWS auction. At the time the AWS  
1318 auction occurred, T-Mobile was hot to trot to get our 3G  
1319 spectrum so we could compete with these guys, okay? That was  
1320 the spectrum that was on the auction block. We put our  
1321 resources into it and we put our resources into clearing it.

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1322 And today, we are using that spectrum. We are probably using  
1323 it the most of anybody. That is our LTE spectrum. So T-  
1324 Mobile knows how to get its spectrum and use its spectrum,  
1325 but we don't have any low band spectrum, and low band  
1326 spectrum is what this auction is about.

1327 Mrs. {Blackburn.} Okay. Now Mr. Feld has his hand up  
1328 and I am going to recognize him, even though he has a No  
1329 Piggies Rule and he is trying to hog the time. So Mr. Feld,  
1330 I am going to recognize you for your comments, but then also  
1331 in your written testimony, you were comparing the auction if  
1332 AT&T and Verizon were in it, it would be akin to the Boston  
1333 Celtics trying to play an amateur team. I am not certain, I  
1334 think your testimony is a little exaggerated there. You  
1335 know, ask your question, but then I also want to hear you  
1336 respond, why do you have so little faith in these wireless  
1337 providers?

1338 Mr. {Feld.} Well first of all, let me say I cannot help  
1339 but think fondly and nostalgically of the '85-'86 Celtics,  
1340 but that is just a product of growing up in Boston. The  
1341 issue I just wished to raise was there were many other  
1342 competitors comparable to T-Mobile and Sprint who--both of

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1343 whom were going through their own internal spectrum issues,  
1344 T-Mobile buying and clearing AWS, Sprint and the rather  
1345 horrific 800 megahertz rebanding, that participated. They  
1346 all got beat. Alltel came out with nothing. They had not  
1347 choice but essentially to exit the field after they came up  
1348 empty. Leap came up empty. Metro PCS came up practically  
1349 empty. All of these players came in because when push came  
1350 to shove, Verizon and AT&T were able to bring the most  
1351 resources to bear on the licenses that they wanted to have,  
1352 and nobody else could hope to outbid them. You know, that is  
1353 what happened in 700 megahertz, and if T-Mobile had been  
1354 there, they would have gone the same way as Alltel.

1355 Mrs. {Blackburn.} My time has expired, but I will just  
1356 mention for the record, I read a Citibank report in  
1357 preparation for this, and I think that Verizon now has less  
1358 spectrum per million post-paid subscribers than any of you at  
1359 the table. And so as we--I think we need to be careful about  
1360 talking about trying to keep people out or restricting the  
1361 auctions, and I yield back.

1362 Mr. {Walden.} The gentlelady yields back, and at this  
1363 time the chair recognizes the gentleman from California, the

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1364 ranking member of the full committee, Mr. Waxman, for 5  
1365 minutes.

1366 Mr. {Waxman.} Thank you very much, Mr. Chairman.

1367 As I said in my opening statement, Congress enacted this  
1368 law, the Public Safety Inspector MACT, with multiple goals in  
1369 mind. These goals include using auction revenue to fund  
1370 multiple priorities, such as the creation of a nationwide  
1371 public safety broadband and network known as FirstNet, as  
1372 well as ensuring that the wireless marketplace remains  
1373 competitive after the auction closes. These goals are not  
1374 mutually exclusive. I would rather just ask the panelists, I  
1375 can ask you all answer affirmative, but do any of you think  
1376 that the FCC is not capable of conducting an auction that  
1377 advances both of these critical goals? Seeing no one  
1378 responding, then I will accept--

1379 Ms. {Ham.} They are absolutely capable of doing that.

1380 Mr. {Waxman.} Okay, thank you.

1381 Now I would like to ask a hypothetical question. It is  
1382 a simple hypothetical of our panelists. Let's assume that  
1383 the incentive auction clears enough spectrum for the FCC to  
1384 make available for sale seven paired spectrum licenses at

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1385 every market throughout the United States. Should the FCC  
1386 allow any one bidder to acquire all seven licenses available  
1387 in a market? Maybe get a yes or no. Mr. Feld?

1388 Mr. {Feld.} No, certainly not.

1389 Mr. {Waxman.} And Mr. Epstein, do you want to answer  
1390 that?

1391 Mr. {Epstein.} Whatever diplomatic skills I exercised  
1392 with Ranking Member Eshoo I would like to exercise again,  
1393 because we are the initial decision makers on that issue.

1394 Mr. {Waxman.} Well I wanted a yes or no, so if you  
1395 don't feel you can do a yes or no, maybe because we are  
1396 asking about the FCC I will ask the other panelists.

1397 Mr. Kaplan, yes or no?

1398 Mr. {Kaplan.} It is not an issue that NAB has taken a  
1399 position on, but I don't believe anyone on this panel will  
1400 answer that question yes, I think that only one bidder should  
1401 win. I don't think anyone has answered that.

1402 Mr. {Waxman.} Okay, Mr. Padden?

1403 Mr. {Padden.} Congress has asked a great deal of this  
1404 one small proceeding, and that is to convince enough  
1405 broadcasters to come in and volunteer their spectrum to raise

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1406 enough money to--

1407 Mr. {Waxman.} But should the FCC allow, under my  
1408 hypothetical, any one bidder to acquire all seven licenses,  
1409 if that is what we have available, in the market?

1410 Mr. {Padden.} We believe the priority has to be to  
1411 maximize the revenue in this market--in this auction to  
1412 achieve the public interest goals Congress has set, including  
1413 funding FirstNet.

1414 Mr. {Waxman.} So you think that FCC should allow it if  
1415 it backs--

1416 Mr. {Padden.} We would defer to the market forces of  
1417 the auction to determine the outcome.

1418 Mr. {Waxman.} Ms. Ham?

1419 Ms. {Ham.} No, I don't think any one bidder should  
1420 acquire all of it, and I think you can have a healthy  
1421 competition and maximize the revenue.

1422 Mr. {Waxman.} Ms. Marsh?

1423 Ms. {Marsh.} I think that it is highly unlikely, if you  
1424 look at prior auctions, that that would ever happen. We have  
1425 always had a diversity of winners, even when auctions were  
1426 open and free to all participants, and as a backstop to that,

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1427 the FCC would always retain its general authority over  
1428 spectrum aggregation. AT&T has never suggested that general  
1429 authority would not continue to exist.

1430 Mr. {Waxman.} Okay, thank you.

1431 Let me ask this to Mr. Feld and Ms. Ham. When Congress  
1432 first granted the FCC the authority to conduct spectrum  
1433 auctions in 1993, the law included specific instructions  
1434 about what the Commission must consider to protect the public  
1435 interest. Under Section 309(j) of the Communications Act,  
1436 the FCC is required to promote ``economic opportunity and  
1437 competition'' and ensure that ``new and innovative  
1438 technologies are readily accessible to the American people by  
1439 avoiding excessive concentration of licenses and by  
1440 disseminating licenses among a wide variety of applicants.''   
1441 Furthermore, statute prohibits the FCC to base a public  
1442 interest finding solely or predominantly on the expectation  
1443 of revenues from an auction. Mr. Feld, Ms. Ham, do you think  
1444 these provisions are equally valid today?

1445 Mr. {Feld.} Absolutely. In fact, the Spectrum Act of  
1446 2012 explicitly states in Section 6043(i) that nothing in  
1447 this subsection shall be construed to expand or contract the

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1448 authority of the Commission, except as otherwise expressly  
1449 provided. Those provisions remain. They were not explicitly  
1450 addressed. What was addressed was a methodology in which  
1451 Congress said the rule by which you implement those things is  
1452 to say you can't--it must be a rule of general applicability,  
1453 which is what the Commission has before it today, and those  
1454 remain not only legal, but we would argue under the statutes  
1455 that you have cited, necessary.

1456 Mr. {Waxman.} Ms. Ham, you were there in the original  
1457 auction.

1458 Ms. {Ham.} Yes, I was there. No, I think those  
1459 provisions are very wise and valid, and as I indicated  
1460 before, it is the reason why T-Mobile exists today and the  
1461 reason why billions have been invested into this industry and  
1462 millions of jobs have been created since that law was  
1463 enacted. So yes, I think it is wise and it is good public  
1464 policy.

1465 Mr. {Waxman.} I want to conclude by asking Mr. Feld, as  
1466 you know, the Department of Justice filed a letter with the  
1467 FCC earlier this year in support of its spectrum aggregation  
1468 rules. The Department expressed concern that the dominant

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1469 wireless incumbents may have the incentive to pay foreclosure  
1470 value to acquire spectrum licenses for the purpose of  
1471 blocking competition and preventing rivals from improving  
1472 their competitive position through the acquisition of better  
1473 spectrum. An article in the Wall Street Journal recently  
1474 suggested that AT&T's proposal to acquire Leap Wireless is  
1475 evidence that foreclosure might be a real concern, given that  
1476 AT&T is willing to spend more than eight times Leap's 2013  
1477 earnings to acquire the carrier. Do you think that the DOJ  
1478 was correct to raise this concern with the FCC?

1479       Mr. {Feld.} I absolutely think the DOJ was correct,  
1480 particularly with regard to the low band spectrum, because  
1481 this is all there is. There is no spectrum fracking that we  
1482 can use to get low band spectrum out of spectrum shale.  
1483 There are no new spectrum mines that could be open now that  
1484 the price of low band spectrum has become more valuable.  
1485 This is our last chance to get low band spectrum into the  
1486 hands of competitors, and therefore there is every incentive  
1487 for those companies that could block competitors from getting  
1488 it to do so. Verizon is advertising its low band spectrum on  
1489 its LTE network. To borrow Ms. Blackburn's proof, they are

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1490 advertising that you can get better reception in the woods on  
1491 a Verizon system using 700 megahertz low band spectrum. That  
1492 is really valuable stuff that they expect even the consumers  
1493 who don't know what a megahertz is to understand. It is  
1494 incredibly valuable and we need to make sure that competitors  
1495 have some.

1496 Ms. {Marsh.} Can I respond on the foreclosure point?

1497 Mr. {Waxman.} It is up to the chairman, but I certainly  
1498 would want you to be able to.

1499 Mr. {Walden.} Well, the gentleman's time has expired,  
1500 but if you could make it very, very brief.

1501 Ms. {Marsh.} Yes, the foreclosure point is fully  
1502 addressed by the FCC's build requirements. The FCC today and  
1503 in the prior auction and all transactions have very stringent  
1504 build requirements that requirement any licensee that  
1505 acquires spectrum to build it in very specific timeframes, or  
1506 face significant consequences. We think that that completely  
1507 eliminates any potential threat of buying spectrum simply to  
1508 foreclose competitors.

1509 Mr. {Waxman.} Thank you. Thank you very much, Mr.  
1510 Chairman.

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1511           Mr. {Walden.} Thank you very much. The gentleman's  
1512 time has expired, and yields it back. At this time, the  
1513 chair recognizes himself for 5 minutes. Again, I want to  
1514 thank all the witnesses for your testimony today. I think it  
1515 is another outstanding panel that we have here today.

1516           Let me just start, Mr. Kaplan, with some of your  
1517 testimony that you gave today, and if I can just get a little  
1518 more comment on this. I just read a little bit from page 7  
1519 you were talking about in February of this year that the  
1520 FCC's staff presented what the FCC staff believed to be the  
1521 seven key components of the voluntary broadcast incentive  
1522 auction, and you list those seven. But then you say this:  
1523 this list is remarkable for the fact that almost a year and a  
1524 half after passage of the Spectrum Act, the affected  
1525 industries still have no clear idea how and when the FCC  
1526 plans to address these key components. Would you care to  
1527 comment on that?

1528           Mr. {Kaplan.} Sure, thank you. One concern we have is  
1529 transparency, and not just transparency for transparency's  
1530 sake, but transparency and engagement, and that means, on the  
1531 list of seven that is there, aside from the first one which

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1532 actually was mandated by Congress, the options that were  
1533 available to the FCC for participation by broadcasters, but  
1534 is bringing people together. And actually, we had a very  
1535 nice conversation before this hearing, so thank you for  
1536 bringing this panel together, because I think we have already  
1537 accomplished some things before the hearing--to work together  
1538 prior to things coming out to figure out how we, I guess to  
1539 quote Jerry Maguire, how we can help you. So in other words,  
1540 we would love to be of assistance, as I know T-Mobile and  
1541 AT&T, Harold, Preston, to the Commission, but understanding  
1542 where they are in the process is enormously important,  
1543 because otherwise, we are shooting in the dark. So all of  
1544 our comments about transparency are about transparency and  
1545 engagement. And to Ms. Eshoo's point before about the  
1546 auction in 2014, to get that done, we all need to be engaged.  
1547 We are ready to do it. We want to do it expeditiously, but  
1548 not knowing where things stand and then finding out, let's  
1549 say, the night before a hearing where we might be and then  
1550 trying to figure out things really quickly is not necessarily  
1551 a recipe for success. So we are ready to do it, but I think  
1552 transparency and engagement are central.

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1553           Mr. {Walden.} Thank you very much. Mr. Epstein, I know  
1554 this is an issue that is very important to both Chairman  
1555 Emeritus Dingell and to me because of our districts, where we  
1556 are located. Mr. Dingell's being in Michigan and mine being  
1557 in northwest Ohio, and of course, with Ontario being our  
1558 next-door neighbor. Has there been further progress on  
1559 coordination of efforts on setting a timeline in getting  
1560 things worked out on international agreements with the  
1561 Canadians, especially when we are looking at the whole issue  
1562 of spectrum and we are looking at trying to get that  
1563 completed prior to or after? What is it looking like right  
1564 now at the FCC?

1565           Mr. {Epstein.} Yes, Mr. Chairman, if you would indulge  
1566 me for a moment, I would like to respond to Mr. Kaplan. I  
1567 can either do that now or--

1568           Mr. {Walden.} Go ahead.

1569           Mr. {Epstein.} Okay. Just very briefly, I think I  
1570 agree with the need for transparency and engagement. I do  
1571 slightly disagree with what the Commission has done over the  
1572 last year. There have been, you know, four workshops, there  
1573 have been public notices that have come out, there are 460

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1574 comments that have been filed. I have actually--of all of  
1575 the panel members that are here, I think the NAB has been in  
1576 more than 15 times to have meetings with the Commission's  
1577 staff. We welcome their engagement and we welcome the  
1578 engagement of everybody on this panel. If we can do better,  
1579 we will do better with respect to that. But I think that is  
1580 a crucial and important part of the incentive auction  
1581 process.

1582         With respect to the question about border issues, we  
1583 agree that it is important to allow us to do as much as we  
1584 can to reach agreements with Canada and Mexico to allow us to  
1585 repack, to allow us to reclaim more spectrum in the border  
1586 areas. We intend, of course, to follow the statutory  
1587 requirement to coordinate with Canada and Mexico. We are  
1588 committed to advancing the process. We are working very  
1589 closely, both with the International Bureau and the  
1590 Department of State. Staff level meetings have been held for  
1591 at least the last 4 or 5 months on technical matters.  
1592 Chairwoman Clyburn places this at the highest priority level.  
1593 She is traveling to Canada this Thursday and has asked me to  
1594 accompany her to engage in further high level discussions in

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1595 order to attempt to reach agreements. What we intend to do  
1596 by the time of the auction is to advance the process  
1597 sufficiently to provide as much certainty as possible.

1598 It is not a different or all that unusual problem with  
1599 respect to spectrum discussions and negotiations. In almost  
1600 all of the auctions, like the 700 megahertz auction, the  
1601 analog to digital transition, we have had similar issues and  
1602 have had similar successes.

1603 Mr. {Walden.} Thank you very much, and my time has  
1604 expired, and the chair at this time recognizes the gentleman  
1605 from Michigan, Chairman Emeritus Mr. Dingell, for 5 minutes.

1606 Mr. {Dingell.} Mr. Chairman, I thank you for your  
1607 kindness.

1608 As you know, I am strongly interested in seeing that the  
1609 incentive auctions authorized by the Middle Class Tax Relief  
1610 and Job Creation Act of 2012 proceeds in a fair and  
1611 transparent manner. With respect to the reverse auction,  
1612 broadcasters should be treated fairly, and I will do my level  
1613 best to ensure that the Commission takes no action that would  
1614 deprive constituents in border areas of free over-the-air  
1615 television. Concerning the forward auction, the Commission

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1616 should implement simple rules in a transparent manner that  
1617 allows the greatest number of parties to bid on reclaimed  
1618 broadcaster frequencies. As the representative of the Act's  
1619 implementer, I will be most interested to hear Mr. Epstein's  
1620 response. Consequently, my questions this morning will be  
1621 directed at him. They will require only a yes or no.

1622 Mr. Epstein, I want to begin with the reverse auction.  
1623 Section 6403(b)(1) of the Act specifies that the Commission  
1624 may, subject to international coordination along the border  
1625 with Mexico and Canada, reassign and reallocate broadcast  
1626 frequencies. Is that correct?

1627 Mr. {Epstein.} Yes.

1628 Mr. {Dingell.} Mr. Epstein, in the Commission's July 2,  
1629 2013, response to my letter of inquiry about the reverse  
1630 auction, you made the following statement. The language used  
1631 in Section 6403(b)(1) of the Act is, and I quote, ``identical  
1632 to that used by the Commission in describing its handling of  
1633 the earlier DTV transition, in which the Commission adopted  
1634 our proposed allotments for these stations, subject to our  
1635 continuing negotiations with Canada, notwithstanding the  
1636 broadcasters' request to the contrary.'' One could

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1637 reasonably assume that based on that statement, that the  
1638 Commission may assign and reallocate broadcast frequencies  
1639 pursuant to the Act while negotiations with Canada and Mexico  
1640 are still ongoing. Is that correct?

1641 Mr. {Epstein.} Yes.

1642 Mr. {Dingell.} Is that going to happen?

1643 Mr. {Epstein.} As I stated in response to the prior  
1644 question that we are doing everything we can to provide as  
1645 much certainty as we can--

1646 Mr. {Dingell.} My people are not feeling much certainty  
1647 on this matter, and I would remind you that this is subject  
1648 to very intense discussions, or should be, between the United  
1649 States, Mexico, and Canada in order to ensure that the  
1650 services to our people up there do not go dark.

1651 Is it correct that the Commission has not yet finalized  
1652 its order to implement Section 6403 of the Act, yes or no?

1653 Mr. {Epstein.} Yes.

1654 Mr. {Dingell.} In that case, Mr. Epstein, I would urge  
1655 that the Commission in its final order not to reassign or  
1656 reallocate the broadcast frequencies until it has concluded  
1657 negotiations with Mexico and Canada. As I noted earlier, my

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1658 constituents live in a border region and stand to see  
1659 television stations go dark if the Commission doesn't get  
1660 this right. For their sake, I prefer you measure twice and  
1661 cut once when it comes to broadcast repackaging.

1662         Now Mr. Epstein, I would like to turn my attention to  
1663 the forward auction. I note that the Commission has had a  
1664 proceeding pending on its spectrum screen since September,  
1665 2012. Does the Commission intend to complete this proceeding  
1666 before releasing new rules for the forward auction authorized  
1667 by Section 6403(c) of the Act? Yes or no?

1668         Mr. {Epstein.} Congressman, that is above my pay grade.  
1669 The schedule for the Commission acting on this order is  
1670 something that the Commission will take up. What I do know  
1671 is that the Commission has expressed a desire to provide  
1672 clarity before the incentive auction goes forward.

1673         Mr. {Dingell.} You are comforting me but only slightly.

1674         Now, Mr. Epstein, Section 6403(c) contains an  
1675 interesting subparagraph which provides that the Commission  
1676 may not grant licenses through the forward auction, reassign  
1677 or reallocate broadcast frequencies, or will revoke spectrum  
1678 usage rights unless it proceeds--unless the proceeds of the

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1679 former--forward auction are greater than the following three  
1680 factors combined: those factors are the total amount of  
1681 compensation that the Commission must pay successful bidders  
1682 in the reverse auction; the costs of conducting a forward  
1683 auction; and the estimated costs for the Commission to pay  
1684 for broadcaster reallocations. In addition, it is in the  
1685 public interest that the Commission ensure that the auction  
1686 raises a significant amount of money in order to help fund  
1687 the build-out of FirstNet. Together, these constitute  
1688 significant pressure on the Commission to maximize the  
1689 auction's revenue, do they not? Yes or no?

1690 Mr. {Epstein.} Yes, it does. Yes.

1691 Mr. {Dingell.} Okay. Now Mr. Epstein, to that effect,  
1692 will the Commission adopt transparent and simple rules to  
1693 encourage participation by the broadest group of wireless  
1694 providers in the forward auction? Yes or no?

1695 Mr. {Epstein.} Yes.

1696 Mr. {Dingell.} Now I would like to ask unanimous  
1697 consent, Mr. Chairman, that the July 16 letter sent by Mrs.  
1698 Engel, Butterfield, Green, Braley, Matheson, Barrow, Tonko  
1699 and I to the Commission about the forward auction as well as

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1700 any response that the Commission may tend or may care to send  
1701 to be included in the record.

1702 [The information follows:]

1703 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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1704 Mr. {Dingell.} The entire incentive auction must be  
1705 subject to rigorous and ongoing oversight in order to assure  
1706 the transparency and that it achieves to Congress' intent as  
1707 set forth in the Act.

1708 I thank you for your courtesy, Mr. Chairman. Thank you,  
1709 Mr. Epstein.

1710 Mr. {Walden.} Mr. Chairman, without objection, your  
1711 letter will be, and its response, entered into our record.

1712 Mr. {Dingell.} Thank you, sir.

1713 Mr. {Walden.} Yes, sir. Now turn to gentleman from  
1714 Illinois, Mr. Shimkus, for 5 minutes.

1715 Mr. {Shimkus.} Thank you, Mr. Chairman. I think my  
1716 questions are going to follow right along with Mr. Dingell's  
1717 point, and I will go to Mr. Epstein.

1718 You have studied the Spectrum Act to a sufficient degree  
1719 that you and I can walk through--this is a question--through  
1720 the auction revenues proceeds from the forward auction that  
1721 are contemplated by this Act, so I want to go through the  
1722 sections, and you are prepared to maybe answer?

1723 Section 6413(b)(3) we have \$7 billion for FirstNet.

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1724 6413(b)(2), \$135 million for State and local implementation  
1725 funds. 6413(b)(4), \$100 million for public safety research.  
1726 6413(b)(5), \$20.4 billion for deficit reduction. We are good  
1727 on the numbers so far?

1728 Mr. {Epstein.} Congressman, I don't have the statute in  
1729 front of me, but it sounds correct, subject to my  
1730 confirmation.

1731 Mr. {Shimkus.} Okay. So we have got \$115 million for  
1732 Next Gen, \$200 million for wireless, \$1.75 billion for TV  
1733 broadcasters' relocation. That comes to about \$28.7 billion  
1734 is what is projected under the Act, I am being told. Will  
1735 the auction rules that you are devising enable the production  
1736 of the proceeds in this amount?

1737 Mr. {Epstein.} I can't predict, okay, how much money we  
1738 will raise in the auction. It is a market-based auction.  
1739 What our job is is to make the auction attractive and simple  
1740 and get maximum broadcaster participation.

1741 Mr. {Shimkus.} Okay, let me go. If in addition to this  
1742 proposed hopefully \$28.7 billion, do we also--might we also  
1743 need additional proceeds to pay broadcasters who participate  
1744 in the incentive auction?

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1745           Mr. {Epstein.} The total amount of money that we will  
1746 need will include the amount, of course, that we have to pay  
1747 broadcasters who--

1748           Mr. {Shimkus.} So it might be more than \$28.7?

1749           Mr. {Epstein.} Again, I don't have the exact numbers.

1750           Mr. {Shimkus.} So here is the crux of the question, and  
1751 it is line with the letter that the Democrats sent. Are you  
1752 designing an auction that will produce only ``minimum  
1753 proceeds'' described in the Spectrum Act, or are you trying  
1754 to design an auction that reaches the goals of the Spectrum  
1755 Act that we just kind of went over?

1756           Mr. {Epstein.} I think I--in my testimony, I talked  
1757 about the four goals that were put before us by Congress,  
1758 which include to maximize the amount of spectrum which is  
1759 repurposed. The second goals are the fiscal goals, which are  
1760 equally important, and they--I talked about the statutory  
1761 requirements that are to pay the broadcasters, to pay the  
1762 reimbursement, to pay our--

1763           Mr. {Shimkus.} Okay, so let me follow up, because  
1764 again, there is another one I want to get to. If we impose  
1765 restrictions to AT&T and Verizon, can we get these dollars?

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1766 Mr. {Epstein.} It is an issue which is before the  
1767 Commission. It is an issue you heard today being debated by  
1768 two of the major carriers. They take different positions on  
1769 them. One carrier here says that you will maximize auctions  
1770 by limiting participation. Another carrier takes the exact  
1771 opposite view. So these are the difficult issues that will  
1772 be before the Commission to determine which of these is  
1773 correct and in the public interest--

1774 Mr. {Shimkus.} The public interest, the public policy  
1775 designed by the legislation which was passed--

1776 Mr. {Epstein.} Correct.

1777 Mr. {Shimkus.} --which was to ensure that we had the  
1778 funds available to roll out our first responder  
1779 communications system, and all these other applications. So  
1780 we have to get it right, and that is kind of why we are  
1781 focusing on this. We know there is a struggle, but this is  
1782 our best spectrum. It is not a small proceeding. This is a  
1783 big deal. It is our best spectrum, and really, our biggest  
1784 bite at the apple, and hence the oversight hearing on this.

1785 Let me just finish up with a question, Mr. Feld. You  
1786 almost had me when you talked about fracking, because I was

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1787 there with you until--but you do propose a position which I  
1788 find is more challenging for me that when you pull away some  
1789 spectrum for other use, the remaining spectrum is going to be  
1790 more valuable. I would like Ms. Ham and Ms. Marsh to respond  
1791 whether they agree with that, and why or why not?

1792 Ms. {Ham.} Thank you. Well one thing I wanted to  
1793 clarify to make sure you understand, you guys were wise in  
1794 putting other spectrum bands into the Spectrum Act so it is  
1795 not just the broadcast spectrum that is going to raise money  
1796 for public safety. There are at least 65 megahertz, and if  
1797 you want to put some of that additional DOD federal spectrum  
1798 in there, you know, that can raise money--

1799 Mr. {Shimkus.} That is a debate for another time.

1800 Ms. {Ham.} --as well. So there are other sources, and  
1801 I just want to make sure that you understand that. And then  
1802 again, your other question--excuse me--

1803 Mr. {Shimkus.} Is when you in essence apportion some of  
1804 the spectrum and you have a limited amount, does that make  
1805 that more valuable in the overall proceeds might be more?

1806 Ms. {Ham.} Well, you know, there are a lot of different  
1807 factors that go into, you know, auctions, okay, and one of

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1808 the biggest factors is the amount of spectrum that is in this  
1809 auction. T-Mobile is calling for a band plan that has 20  
1810 more megahertz in the auction than AT&T, okay, as part of the  
1811 band plan. That is going to have a huge impact on revenue,  
1812 so we want to see the maximum amount of spectrum in the  
1813 auction and we want to see the maximum amount of  
1814 participation. We think that is going to raise the most  
1815 revenue.

1816 Ms. {Marsh.} And just to correct that, so there are  
1817 different variations of band plans on the record, but we all  
1818 agree we need to maximize spectrum available for auction. We  
1819 believe, though, we have to get the engineering right, and we  
1820 cannot put forward a band plan that has engineering  
1821 challenges or introduces interference. On your specific  
1822 question, which I take it to be about unlicensed allocations,  
1823 AT&T supports unlicensed allocations if they can exist in  
1824 guard bands, including the duplex gap, and not create  
1825 interference. The biggest challenge would be if we  
1826 introduced unlicensed services, and they interference with  
1827 adjacent licensed allocations, we will suppress the value of  
1828 the licensed allocations and we will suppress the revenue

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1829 raised at auction.

1830 Ms. {Ham.} Yeah, and I would just say on the unlicensed  
1831 piece, I think we agree with that. We would like--you know,  
1832 we want to make sure that whatever guard bands are set up for  
1833 unlicensed--T-Mobile likes unlicensed. We use unlicensed.  
1834 We have wifi calling in all our phones, but you know, we have  
1835 to have reasonable interference--

1836 Mr. {Shimkus.} My time is way expired. Thank you, Mr.  
1837 Chairman.

1838 Mr. {Walden.} Those were good answers, and you are  
1839 right, we don't want this interference thing. We have had  
1840 hearings on things like light-squared GPS and things of that  
1841 nature, and that is--we will go now to Mr. Doyle from  
1842 Pennsylvania for questions.

1843 Mr. {Doyle.} Thank you, Mr. Chairman.

1844 Mr. Epstein, maybe just to follow up on what my friend,  
1845 Mr. Shimkus, and Ms. Ham said. Much has been made about the  
1846 role the auction is going to play in funding FirstNet, and  
1847 yet, part of the Act that created the incentive auction  
1848 process also provided for multiple funding opportunities in  
1849 the form of partial proceeds from other auctions going

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1850 forward for the funding of FirstNet, which Ms. Ham just  
1851 referred to. Just for the record, what other auctions will  
1852 FirstNet draw its funding from, and how does the FCC view its  
1853 obligation to raise these funds?

1854 Mr. {Epstein.} Let me apologize. I am innately and  
1855 completely focused on the incentive auction.

1856 Mr. {Doyle.} Good.

1857 Mr. {Epstein.} The Wireless Bureau is running a number  
1858 of other auctions, you are exactly right. There are a series  
1859 of auctions which will also contribute to the FirstNet and  
1860 other emergency funding obligations that are there, and I can  
1861 supply you with a list of those auctions which are teed up.

1862 Mr. {Doyle.} Thank you.

1863 Ms. Ham, let me ask you also. You know, members of the  
1864 committee and stakeholders that we have heard from today have  
1865 expressed concerns that spectrum aggregation limits will  
1866 result in lower auction revenue. However, when I read your  
1867 testimony, T-Mobile and other carriers are arguing quite the  
1868 opposite. So tell us, how can an auction with limits on  
1869 bidder eligibility result in higher revenues?

1870 Ms. {Ham.} Well I think through greater participation.

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1871 I think, you know, again as I said earlier, we don't really  
1872 even know how much spectrum there is going to be in this  
1873 auction, and if there isn't a lot of spectrum, I think it is  
1874 easier for AT&T and Verizon that have an 80 percent  
1875 concentration in this spectrum today to be able to divide and  
1876 conquer it. I think all the bidders who sign on to the  
1877 letter that was put into the record I think would attest to  
1878 the fact that having some reasonable limits--and again, we  
1879 are not calling for the exclusion of AT&T and Verizon. Bear  
1880 in mind, they already have 80 percent of the lower band  
1881 spectrum. We are talking about reasonable aggregation limits  
1882 to give everybody else an opportunity, a foothold on this  
1883 very important spectrum.

1884 Mr. {Doyle.} So you are saying if these reasonable  
1885 limits you talk about are in place, that this will encourage  
1886 more participation from smaller companies?

1887 Ms. {Ham.} Yes, absolutely.

1888 Mr. {Doyle.} I mean, how does it drive up higher--

1889 Ms. {Ham.} Absolutely, and I draw from my experience,  
1890 you know, running these spectrum auctions in the early PCS  
1891 auctions. We exactly did that. We had limits on the amount.

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1892 You had a situation there where you had two cellular  
1893 duopolies who had 25 megahertz of spectrum, and the  
1894 Commission put in place limits on the ability for those  
1895 duopolies to acquire PCS spectrum. The point of putting PCS  
1896 spectrum out in the mid-'90s, remember those huge phones you  
1897 used to have and the lack of innovation and the high prices  
1898 we were paying? You know, we don't want to go back there,  
1899 okay? Putting new spectrum into the market is the most  
1900 important auction that the Commission is going to run that I  
1901 can think of, okay, at least a decade. It is very important  
1902 to competition, so you need to get--you need to take into  
1903 consideration the competitive structure of the market and the  
1904 importance of this spectrum to competition going forward.

1905 Mr. {Doyle.} Mr. Epstein, I want to follow up on  
1906 something that my friend Ms. Eshoo talked about, too. I am  
1907 also very concerned that the band plans that are being  
1908 offered by some stakeholders do not provide adequate spectrum  
1909 for unlicensed usage. What do comments in the records at the  
1910 FCC reflect on unlicensed spectrum, and how does the FCC view  
1911 those comments in light of its responsibility to encourage  
1912 innovation and flexible uses of spectrum?

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1913           Mr. {Epstein.}   Congressman Doyle, our original notice  
1914 recognized the importance of both licensed and unlicensed  
1915 spectrum. It is one of the four policy goals I talked about  
1916 in my opening remarks. The Act permits use of unlicensed  
1917 spectrum in the guard bands without auction, and what the  
1918 notice does and what the Commission is committed to doing is  
1919 a balanced approach. We will, of course, comply with the  
1920 statutory requirement that the guard bands are not larger  
1921 than technically reasonable, and the Commission will make the  
1922 ultimate determination recognizing the importance of  
1923 unlicensed spectrum as part of the overall plan.

1924           Mr. {Doyle.}   I would urge the FCC to issue a public  
1925 notice and hold a workshop to address those issues.

1926           Finally, Mr. Epstein, I--and again, just for the record,  
1927 because there is some concern about transparency and whether  
1928 there is engagement in transparency going on at FCC. I did  
1929 hear you mention that there were, what, 15 ex parte meetings  
1930 with NAB. Just for the record, can you tell us how many  
1931 times you have--that the Commission has met with witnesses  
1932 here today on the panel?

1933           Mr. {Epstein.}   I can, but I do want to preface by

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1934 saying I consider this extremely positive things that the  
1935 Commission has done. We get a lot out of these meetings. We  
1936 hope they will continue, and we encourage and welcome them.  
1937 What our records show is that we have had 15 meetings with  
1938 the NAB. We have had 11 meetings with EOBC, the Padden  
1939 organization, Public Knowledge, 3, AT&T, 8, and T-Mobile, 16.

1940 Mr. {Doyle.} Thank you very much. Mr. Chairman, thank  
1941 you. I will yield back.

1942 Mr. {Walden.} Gentleman yields back and we turn now to  
1943 the gentleman from Louisiana, Mr. Scalise, for 5 minutes.

1944 Mr. {Scalise.} Thank you, Mr. Chairman. Appreciate you  
1945 holding this hearing. I thank all the panelists. I know you  
1946 are all working hard to ultimately get to the point we want  
1947 to get to, and that is to have a successful spectrum auction.

1948 I do want to take a moment to commend again the  
1949 chairman, which I don't do a whole lot, but I usually just  
1950 make fun of him. But you know, the fact that his legislation  
1951 moved forward after years and years and years of people  
1952 talking about this and trying to do it, he ultimately made it  
1953 happen and so I do think it is important to note that. You  
1954 know, when you see how hard it is to get things done in

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1955 Congress, you know, the fact that he got us to this point is  
1956 important, and that is why I think it is so important that we  
1957 make sure now that it is done right. You know, when you look  
1958 at the two purposes that were brought forward when the  
1959 chairman brought the legislation that was ultimately included  
1960 in the final Act, it was to, number one, make sure that we  
1961 had the \$7 billion to go and build out a national public  
1962 safety network, something that hadn't been done since  
1963 September 11, and been promised by a lot of people, but  
1964 ultimately finally is now at the forefront of being ready to  
1965 happen. But the other part of that was to also generate  
1966 additional revenue to reduce the federal deficit, and that is  
1967 an important point that can't be lost when we are talking  
1968 about how to set up the rules, and the rules of any game are  
1969 very important because ultimately, they can have a major  
1970 impact in how the game is going to be played.

1971 And so Mr. Epstein, I want to ask you, we have had a lot  
1972 of different testimony. There have been a lot of people for  
1973 months and months trying to make sure that the rules are set  
1974 up in a way that is fair, and in some cases, they want to  
1975 make sure it is fair to them. I understand that is their

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1976 job. But your role is to make sure it is not only fair for  
1977 the people that will be participating, but it is also fair  
1978 for the American taxpayer, because the American taxpayer has  
1979 a big role in this. Because if it is not set up properly and  
1980 there are limitations to entry that don't allow for the  
1981 amount of bidding that ultimately yields the greatest amount  
1982 of revenue, then that is less money that goes to reducing the  
1983 national deficit. And that is something that we have got to  
1984 watch out for, not only as legislators, but you as a  
1985 regulator who is drafting these rules. If there are  
1986 limitations put in place to entry that ultimately would  
1987 reduce that competition, then that can reduce the revenue,  
1988 not only to build out an interoperable network for our first  
1989 responders, but also to pay down the deficit.

1990 So when you are looking at that, are you thinking about  
1991 that in addition to all the interest you are getting from the  
1992 people that will hopefully be coming to bid, but also are you  
1993 thinking about the fact that you need to make sure that  
1994 yielding the most revenue was a big component of this Act  
1995 passing so that we can reduce the deficit?

1996 Mr. {Epstein.} Yes, Congressman, we are looking at that

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1997 as a major goal. We are also looking at the overall statute,  
1998 which has a series of goals and I think as many people have  
1999 stated here, many Congress people have stated here today, it  
2000 is a balancing act but the goal that you point out, of  
2001 course, is an extremely important part of that balance that  
2002 must be struck.

2003 Mr. {Scalise.} Thank you, and I would encourage you to  
2004 continue to keep that mind in view as well.

2005 I want to ask both Ms. Ham and Ms. Marsh, because you  
2006 have competing views on how that set of rules is established.  
2007 I guess, Ms. Ham, I have trouble when you say that  
2008 limitations on auction access will increase competition. I  
2009 guess I am not quite understanding that, so I want to get  
2010 your take, and then also get Ms. Marsh's comment on that as  
2011 well.

2012 Ms. {Ham.} Sure. Thank you for that question. I think  
2013 the broad participation--in the auctions that I have had  
2014 experience with where you had broad participation, so you  
2015 have a lot of bidders bidding on a lot of markets, those are  
2016 the healthy auctions that are going to raise revenue, okay?  
2017 Plain and simple. I think T-Mobile, together with large

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2018 regional carriers that submitted the letter today all are  
2019 calling for limits, okay, because they believe that it will  
2020 make it more likely that they will participate than if you  
2021 don't have those limits. So reasonable limits--and again, I  
2022 think T-Mobile is not suggesting excluding AT&T and Verizon,  
2023 okay, understanding they have 80 percent of the low band  
2024 spectrum today, okay, we are not saying exclude them, we are  
2025 saying give other people a shot at this very important  
2026 spectrum, okay--

2027 Mr. {Scalise.} So if I could get Ms. Marsh's--

2028 Ms. {Ham.} And we think getting strong competition in  
2029 the auction is the way to raise the revenues.

2030 Mr. {Scalise.} Thanks. Ms. Marsh?

2031 Ms. {Marsh.} Yes. I think to understand what is going  
2032 to happen at this auction, we don't need to go back to the  
2033 PCS auction. We should look at what happened in the last  
2034 major auction, the 700 megahertz auction. There, there were  
2035 214 qualified bidders, and of those--and it was an open  
2036 participation auction. No one was limited or excluded in any  
2037 way. One hundred and one bidders won licenses at that  
2038 auction and even though it was a difficult economic climate

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2039 at the time, revenues exceeded congressional expectations by  
2040 over \$10 billion. An open auction can succeed and produce a  
2041 diversity of winners. Now Mr. Feld suggested a lot of  
2042 companies were shut out. Let me point to a couple of  
2043 companies who signed the letter that Ms. Ham just referred to  
2044 that won significant spectrum at that auction. DISH won 168  
2045 licenses, including spectrum covering most of the United  
2046 States. King Street Wireless, who is partnered with U.S.  
2047 Cellular, deploy LTE services in 700 megahertz, was the  
2048 fourth largest winner in that auction a megahertz POPS basis.  
2049 C Spire, who is also deploying LTE services in its territory,  
2050 was the tenth largest winner. An open auction with full  
2051 participation can result in a diversity of bidders, and it  
2052 will maximize revenues consistent with congressional intent.

2053 If I have a moment, I would also like to respond to some  
2054 of the comments made about low band spectrum. There has been  
2055 a lot of discussion about the importance of this auction  
2056 because it is low band spectrum. In a broadband world it is  
2057 about capacity, and capacity is driven by two things: the  
2058 width of the band you can put together, regardless of where  
2059 it sits, it is about how wide the channels are and how dense

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2060 you build the network. And that type of environment, it is  
2061 not about low band or high band spectrum. It is about  
2062 putting together wide band spectrum and building very dense  
2063 networks, and any advantage that may have been perceived from  
2064 the low band spectrum in a voice world is very much negated  
2065 in a broadband world, where it is really about capacity and  
2066 not coverage.

2067 Mr. {Scalise.} Well thanks. I appreciate your  
2068 testimony and look forward to a successful spectrum auction.  
2069 I do want to mention that the broadcasters ought to be  
2070 treated fairly, because they are an active participant in  
2071 this--sometimes may be inactive--but they ought to be treated  
2072 fairly and the impact it will have on them. I know FCC is  
2073 looking at that as well. And with that, Mr. Chairman, I  
2074 yield back the balance of my time.

2075 Mr. {Walden.} Gentleman yields back, and I would like  
2076 to ask unanimous consent to enter into the record a letter  
2077 from the Telecommunications Industry Association, the leading  
2078 trade association with global manufacturers, vendors, and  
2079 suppliers of information communications technology,  
2080 supporting broad auction participation and maximizing

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2081 licensed spectrum. Without objection, that will be entered  
2082 into the record.

2083 [The information follows:]

2084 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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|  
2085 Mr. {Walden.} I think that concludes our hearing for  
2086 today. We really appreciate your testimony, your counsel,  
2087 the work that you are doing. Obviously there are some issues  
2088 that still need to be resolved. We took note of that, but we  
2089 commend you as you move forward to work this out so we have a  
2090 successful auction, so we continue to be the generator of  
2091 innovation and new technologies, and generate some revenue to  
2092 pay for first responders and lower our deficit.

2093 Ms. {Ham.} Thank you.

2094 Ms. {Eshoo.} Mr. Chairman, may I ask--

2095 Mr. {Walden.} Yes.

2096 Ms. {Eshoo.} Just I would like to thank you for the  
2097 excellence of this hearing, and bringing together the  
2098 witnesses that we have here today. Very important. You have  
2099 all been instructive, and bravo, Mr. Chairman. So this is  
2100 really enlightening for the subcommittee, and I am very  
2101 pleased that there are two women.

2102 Ms. {Ham.} Go girl.

2103 Ms. {Eshoo.} Even though they don't agree with each  
2104 other, two women in very high positions in very important

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2105 American companies, so thank you again, Mr. Chairman.

2106 Mr. {Walden.} It is a team effort, as you know,

2107 organizing our panel, so we appreciate you and your staff's

2108 work as well.

2109 And with that, we will stand adjourned.

2110 [Whereupon, at 12:25 p.m., the Subcommittee was

2111 adjourned.]