

**Jon Wilkins**  
**FCC Managing Director**  
**Questions for the Record**  
**September 17, 2014 Hearing**  
**Communications and Technology Subcommittee**  
**Committee on Energy and Commerce**

**The Honorable Greg Walden**

**Question 1:**

**You testified that process reform is "fundamentally about measuring and tracking." You noted that when you can measure and track you can "simultaneously become more transparent and efficient."**

**In one of our recent information requests, the Committee asked for performance metrics – speed of disposal metrics and the success in meeting those – for each of the Commission's bureaus and offices. While the Commission provided these metrics for some bureaus, other bureaus and offices were not included in the response. For example, the response did not include metrics for the Enforcement Bureau – the agency's largest. We were told that the response was complete.**

- How can these other bureaus and offices be effectively managed in the absence of performance metrics and goals?**
- How can FCC managers assess performance and success in achieving the Commission's mission in the absence of such metrics and goals for the Commission's bureaus and offices?**
- How can the FCC successfully achieve real process reform in the absence of such metrics and goals?**
- What steps, if any, have been taken to develop performance metrics and goals for all of the Commission's bureaus and offices not included in the FCC's response? When will these steps be complete?**

**Response:**

**How can these other bureaus and offices be effectively managed in the absence of performance metrics and goals?**

The Chairman's June 30<sup>th</sup> response to question seven of your letter concerning speed of disposal included information for all Bureaus except the Enforcement Bureau (EB). The Chairman's response did, however, provide substantial information about EB's cases in response to question 13. Although in a different format than question seven, in response to question 13, EB produced five years of extensive information about its work, including numbers of investigations, types of investigations, and actions taken as a result of EB investigations.

EB also was at the time in the process of re-evaluating its internal processes, and that reform initiative has yielded a significantly more rigorous case management approach, as detailed below. As highlighted in the October 17<sup>th</sup> update of the June 30<sup>th</sup> responses to questions one through five on pending items, EB's new leadership team has been diligently working to re-evaluate case management methods, and the Bureau is improving its case load management as a result.

Importantly, the speed of disposal information provided for question seven by the Bureaus is a valuable way to quantitatively measure activity at the Commission, especially in the context of licensing, complaints, and petitions. The Commission also has a number of other activities such as rulemaking and consumer outreach where more qualitative measures are used to evaluate activity and progress.

Through the Commission's Strategic Plan, Annual Performance Plan, Annual Performance Report, Agency Financial Report, and Summary of Performance and Financial Information, the Commission provides a wide variety of financial and performance information available publicly on its website at: <http://www.fcc.gov/encyclopedia/fcc-strategic-plan>.

The goals within the Commission's Strategic Plan and Annual Performance Plan cut across the agency and are the result of collaboration among the Bureaus and Offices. This approach has allowed the Commission to publicly track and report on its work towards meeting its performance goals.

Finally, as noted recently in an update on process reform posted to the Commission's website, the Commission's staff has focused on matters identified as backlogged, and increasing speed of disposal for all matters. Two key internal process reform working groups have been examining ways to not only reduce the number of items currently pending at the Commission, but to also move incoming items through the system faster. Process reform efforts like these bolster the performance of the Commission's Bureaus and Offices by focusing their priorities on areas that need improvement.

**How can FCC managers assess performance and success in achieving the Commission's mission in the absence of such metrics and goals for the Commission's bureaus and offices?**

Managers throughout the Commission do use metrics and goals which are tailored to the work of the relevant Bureau or Office to evaluate the performance of their staff in achieving the mission of the Commission. As noted, six of the seven Bureaus did provide information on their metrics and goals in response to question seven, and EB provided extensive information on its performance in response to question 13. Individual Bureaus and Offices manage their workloads using front office and division management tools as well as tracking systems to guide their work and evaluate performance of their staff each fiscal year. As mentioned above, performance may be measured both quantitatively and qualitatively to ensure that the work is being completed effectively, and on schedule. The goals and priorities of the individual Bureaus and Offices evolve as issues arise so the Bureau and Office leadership must be dynamic and flexible in guiding their staffs to perform their roles to best support the Commission's work, as it responds to the broader communications landscape.

**How can the FCC successfully achieve real process reform in the absence of such metrics and goals?**

The Commission already is making progress on process reform, as it builds on its existing metrics and goals. For example, as noted in the Commission's October 17<sup>th</sup> update on questions one through five on pending items, the total volume of items pending at the FCC for more than six months has dropped by more than one-third since May 1<sup>st</sup>. This decrease is due in large part to focusing the priorities of staff on working toward backlog reduction. This effort requires planning, communication with staff, and execution.

As a result of the recommendations in the Report on FCC Process Reform, every Bureau and Office with responsibility for responding to requests from external petitioners and licensees has developed a backlog reduction plan. The plans focus on methods for reducing pending items at the Commission, as well as future process improvements. As part of these plans, every Bureau and Office has ensured that its tracking system includes a complete inventory of all pending matters.

In addition, based on the backlog reduction plans, an internal working group established "best practices" for speeding the processing of pending items before the Commission, including suggestions for streamlining operations. The best practices have been circulated internally and discussed in individual meetings with the Bureaus and Offices to facilitate information sharing across the Commission.

These are positive steps forward for the Commission and signify that process reform efforts are taking hold and working. But the solutions noted here require strategic planning and long-term execution. The Commission's staff is actively engaged in implementing process reform and ensuring that these reforms are permanent.

**What steps, if any, have been taken to develop performance metrics and goals for all of the Commission's bureaus and offices not included in the FCC's response?**

Over the last few months, EB has been aggressively pursuing a process reform initiative, and has already implemented several steps to improve its speed of disposal as part of a longer-term effort to make its processes more efficient. As part of this effort, EB is developing enforcement priorities to identify important matters and to allocate resources effectively. For example, EB has worked to quickly identify and resolve those matters that do not reflect the enforcement priorities. It also has developed and been implementing a comprehensive backlog reduction plan. In addition, EB has taken several steps to reform its internal processes to reflect these priorities, including minimizing the use of tolling agreements (thereby requiring the Bureau to act within one year), establishing templates to streamline processing and establishing speed of disposal targets based on the type and complexity of matters.

More generally, one of the process reform working groups is tackling the task of refining and expanding existing speed of disposal metrics agency-wide. The Bureaus and Offices have been evaluating the types of items that they work on, how they track them, and refining their tracking requirements. The working group is in the process of evaluating the Bureaus' and Offices' responses and determining how best to expand and enhance the use of speed of disposal metrics Commission-wide.

### **When will these steps be complete?**

The working group is expected to have speed of disposal metrics in place for each Bureau and Office that handles external matters in the first quarter of 2015.

### **Question 2:**

**In response to a cyber-security incident in 2010 the FCC initiated a project to improve security by implementing enhanced security controls. To do this the FCC received approval from OMB and Congress to use \$10 million in de-obligated funds. In January 2013 GAO issued a report finding the FCC did not do an effective job implementing this project. It also noted that until the FCC updates the cost estimate, finalizes a reliable schedule and fully manages project risks it will continue to have limited ability to effectively manage and monitor the project increasing the potential that successfully mitigating the risk from cyber threats will cost more than planned and will take longer than projected.**

**The then-Managing Director stated that the project would be completed under budget with only minor schedule deviations.**

- When was the project completed? Was it completed on time? Was it completed under budget? If not how much more did it cost? What was the total cost? How much of the total cost was allocated to auctions?**

### **Response:**

Shortly after his arrival in late 2013, the new FCC Chief Information Officer (Dr. David Bray) requested a status report on the implementation of the enhanced security controls paid for through the reprogramming. On February 24, 2014, Dr. Bray submitted a summary of that status report to the GAO's Director of Information Security Issues stating that the Commission had implemented all seven Public Recommendations and we had completed 17 of the 24 Non-Public Recommendations in accordance with the FCC's planned timeline, with the remaining four slated for completion in 2014. The final implementation cost was \$9,733,581. Because the project was completed on time and at \$266,419 under budget, there are no additional costs to report. Due to the outward face of auctions and the essential nature of ensuring the protection of proprietary business information, fifty percent of the cost was allocated to auctions.

It is important to note that immediately following his review of this situation, Dr. Bray obtained a top-level cyber detailee, at no cost to the FCC, from the Department of Homeland Security's NPPD cyber division.

### **Question 3:**

**You testified that the FCC will have a new consumer complaints process online by the end of the year.**

- **When will it be available? How much will this initiative cost when completed? How much of the cost will be allocated to auctions?**

Response:

The FCC initiated a test launch of its new Consumer Complaint system and website on October 31, 2014, with a percentage of consumers being routed to the new website starting on that date. FCC staff began providing demonstrations on Capitol Hill in November, and we provided a demonstration for this Committee's staff on November 21, 2014.

The test program has been going smoothly, and we expect the upgraded Consumer Complaint system to be fully launched before the end of the calendar year, as planned. We will keep the Committee staff apprised of our work.

The Commission thoroughly investigated the best method for upgrading its system and managed to procure a system at \$343,380 in start-up costs. None of the costs have been allocated to auctions, but some of the upkeep costs may be allocated in the future.

Below is a chart providing the costs and costs saving by initiating the new system versus using the current legacy system. These types of cost savings associated with modernization will be realized for all FCC systems once this process is underway.

	Initial Cost	\$ 343,380					
	O&M Cost	\$ 178,020	\$ 181,296	\$ 184,736	\$ 188,348		*includes licensing, support, operations, and sustainment
Zendesk	TCO	\$ 343,380	\$ 521,400	\$ 702,696	\$ 887,432	\$ 1,075,779	
		Year 1	Year 2	Year 3	Year 4	Year 5	
<b>Comparison</b>							
		FY11 (est)	FY12 (est)	FY13	FY14	FY15	
Legacy CCMS	O&M Cost	\$ 474,062	\$ 474,062	\$ 474,062	\$ 456,200	\$ 479,000	*includes operations and sustainment
	TCO	\$ 474,062	\$ 948,124	\$ 1,422,186	\$ 1,878,386	\$ 2,357,386	

**Question 4:**

**One of the recommendations of the recent report on FCC process reform was to overhaul the FCC website. When it was launched in 2011 it was described as a "model for other agencies" and the then-Managing Director said that its cost would be recouped in nine months.**

- **How much did the FCC spend to launch the website?**
- **How much has the FCC spent on the website from the date of its launch to the decision to implement an overhaul?**
- **Was the original cost recouped?**
- **How much will the overhaul cost once completed?**
- **When will the overhaul be completed?**
- **Once completed what will be the total cost of the website – from the beginning of the first overhaul in 2009 to the completion of the latest overhaul currently underway?**

Response:

Before the last upgrade, the website had not been substantially overhauled since its 1995 creation and minimal funds were spent for upkeep. Our records show that the FCC spent approximately \$300,000 for maintenance and upgrades during the next fifteen years.

On January 7, 2010, the FCC launched [reboot.fcc.gov](http://reboot.fcc.gov) as an initial step to transitioning to the current [www.fcc.gov](http://www.fcc.gov) during the following year. The Commission solicited public feedback and included its constituent base in the design of the new site, but admittedly, the final design was not entirely supported by the FCC website user community, and we continue to register complaints about its complexity.

My understanding is that the 2010-2011 website redesign was intended to be more consumer-focused, and included the addition of Web 2.0 technologies. Rewriting the back end of the website and going open source in the 2010 timeframe was an important step forward; now we need to refine and improve the front end, usability, and searchability on the site.

Our planned Fiscal Year 2015 improvements build on the improvements initiated in the 2010 – 2011 overhaul. The future website will focus on improving searchability and navigability of the website, ensuring content is current, and leveraging state-of-the-art technology to improve the delivery of FCC services. We have partnered with industry leaders on user experience, search and analytics. Over the next several months, the project team will conduct research, prototyping, and usability-testing to complete a data and stakeholder-driven design. By the end of January we expect to have improved the search capabilities of the FCC's current publicly available content and a working prototype.

By investing the time and energy to modernize our aging legacy systems in parallel with updating [www.fcc.gov](http://www.fcc.gov), we will holistically improve the data, information, and services the FCC provides the public.

**How much did the FCC spend to launch the website?**

The FCC invested \$1,330,470 in startup costs for the 2010-2011 website redesign. The post-launch support for the new website, combined with continued cloud-hosting of part of the website and the development of new tools and technologies, resulted in additional costs. The Commission later invested \$412,362 to refine the cloud infrastructure for the portion of the website hosted in the cloud.

**How much has the FCC spent on the website from the date of its launch to the decision to implement an overhaul?**

As of May 1, 2012, the combined expense of the FCC.gov overhaul, launch and maintenance, was \$4.2 million. This number does not include all routine maintenance costs which were later absorbed in the FCC's overall IT budget and continued through the next two fiscal years.

**Was the original cost recouped?**

Modernization efforts normally result in cost savings based on reduced operations and maintenance (O&M) costs, but we lack sufficiently detailed prior year data to quantitatively determine cost savings from the 2010-2011 redesign. Going forward, however, the current CIO has built this concept into his ongoing IT planning process. A good example of this focused approach is the chart at Response 3. We will be compiling such return-on-investment information for our significant IT expenditures going forward, for our own purposes and to better assist this committee and the appropriators in understanding our expenditures.

### **How much will the overhaul cost once completed?**

Project Refresh will come in two phases. Phase One's cost is estimated at \$400,000, while Phase Two full production costs are estimated at \$500,000, plus support costs not to exceed present expenditure levels. We expect cost avoidance or savings of nearly \$300,000 per year on upkeep and maintenance due to modernization. In this case the cost avoidance is quantifiable in internal support and maintenance costs.

### **When will the overhaul be completed?**

With sufficient funding, we expect to complete the website upgrades prior to the end of Fiscal Year 2015.

### **Question 5:**

**In your testimony you note that the FCC's electronic comments filing system -- ECFS, "which may have been state-of-the-art 18 years ago, is no longer able to cope with the world as it exists in 2014." In late 2009 the FCC announced what was described as *a major upgrade* to the FCC's Electronic Comment Filing System as part of the Chairman's modernization efforts.**

- **How much did the FCC spend on this upgrade?**

### **Response:**

The Commission released the Electronic Comment Filing System Version (ECFS) 2.0 to the public on October 23, 2009. The FCC's records show that the initiation of this project cost \$166,000 with a final cost of \$490,788. These amounts do not include general system maintenance. Prior to this upgrade five years ago, ECFS 1.0 was used for eleven years with very few upgrades.

The 2009 improvements allowed for multiple methods of downloading data on over 3,000 proceedings with associated filings, while also insuring that interested parties would be able to use features such as RSS feeds and full-text search to stay abreast of new dockets and filings added to ECFS. At that time, the Commission's staff noted that further upgrades would potentially include adding taxonomy terms for tagging content; providing XML upload and download of filings with secure authentication; adding audio and video filings to proceedings; and including social media dialogues to proceedings for inclusion into the record.

The FCC's budget was nearly or continually flat-lined during the next five years, and after sequestration reduced our budget by \$17 million in Fiscal Year 2013, we were unable to continue upgrades and improvements. Moreover, in 2011, substantial IT funds were diverted to security upgrades in a reprogramming request.

The ECFS system's dated nature became painfully evident during the Open Internet proceeding when the Commission received over four million comments. The electronic filing system is complex and interdependent upon other systems – more importantly, we need to upgrade the FCC's IT architecture to support the volume of today's ECFS users.

### **Question 6:**

**In a Blog posting appearing this past April, the new Chief Information Officer stated that "The FCC Data and Information Officers Working Group had atrophied in the last 12-14 months prior to my arrival, so we're in the process of re-invigorating that group."**

- **Explain what the CIO meant by this statement.**

### **Response:**

The FCC's previous CIO resigned from the Commission in December, 2012. The position remained unfilled by a permanent CIO until Dr. David Bray's initial appointment on August 19, 2013. The lack of CIO leadership during this period, combined with the financial impact of sequestration, led to a triage method of handling IT issues at the FCC and had an adverse effect on all related operations. Also, Chairman Wheeler did not take over until November of that year, which followed the government shut-down.

Since being hired, Dr. Bray has focused on upgrading the FCC's IT, recruiting highly skilled staff, including detailees from other agencies, putting in place a 24-month plan, and developing a long-term plan for modernizing the FCC's IT structure. Dr. Bray also has created a permanent roster of Information and Data Officers in each Bureau and Office to foster better use of data, and this group now meets regularly. Data Officers are responsible for the policies and practices that make FCC data available internally and externally as an asset for daily use. FCC leaders in information technology, geographic information, privacy, information security and enterprise architecture work closely with the Information and Data Officers to ensure better overall coordination and a holistic Commission strategy.

### **The Honorable Bob Latta**

### **Question 1:**

**How much has the FCC's new financial system cost? Who was the contractor? When will the integration and functionality issues be resolved? Identify the universal service funds impacted. Describe the impact of these issues on the FCC's oversight and management of these funds.**

Response:

**How much has the FCC's new financial system cost? Who was the contractor?**

The FCC awarded a 10-year, firm-fixed price, performance-based contract to CGI in September, 2008. The contractor completed the implementation of the financial system on time and on budget in September, 2010. The performance-based contract, which includes a Quality Assurance Plan with incentives and disincentives, continues through Fiscal Year (FY) 2018 with scheduled incremental upgrades and operations and maintenance of the application at the commercial shared service provider, CGI. As part of the firm-fixed price Operations and Maintenance portion of the contract, the FCC successfully upgraded the Financial System to the newest software release in January, 2014.

Total costs through Option Year Six to date are \$20,119,075, inclusive of \$1.6M for the acquisitions module implementation which was implemented on time and on budget in FY 2011.

**When will integration and functionality issues be resolved?**

The financial system integration and functionality audit findings mentioned in the Commission's FY 2013 Agency Financial Report (AFR) were submitted for closure to the Commission's Office of Inspector General on May, 2, 2014. The Commission's external auditor reviewed this information and closed the finding. This finding does not appear in the Commission's FY 2014 AFR.

The FCC initiated a "Tiger Team" in 2011 to address outstanding system and post implementation issues; however, the accounts receivable automated aging functionality in the financial system, continues to pose challenges with its inability to identify delinquent accounts through the system and produce the required dunning letters. Due to this system deficiency, the FCC was unable to utilize the automated process to assist with the remittance of debts to Treasury and did not begin transferring eligible debt until April 2013. As of September 30, 2014 the FCC has transferred 95.6% of eligible debt to Treasury and has plans to transfer 100% of eligible debt to Treasury by December 31, 2014. We are also complying with the new 120 day Treasury debt transfer requirement.

**Identify the universal service funds impacted.**

The corrective actions taken by the Commission related to the financial system functionality and integration issues associated with each reporting component and reported in the FY 2013 AFR were submitted for closure to the OIG on May 2, 2014. The Commission's external auditor reviewed this information and closed the finding. This finding does not appear in the Commission's FY 2014 AFR. Listed below are the reporting components and the amounts for each that are consolidated in the Commission's FY 2014 AFR.

Gross Outlays for the Fiscal Year Ended September 30, 2014

Universal Service Fund – 8,383,644,000

Telecommunications Relay Services – 925,447,000

Gross Receipts for the Fiscal Year Ended September 30, 2014  
Universal Service Fund – 8,883,191,000  
Telecommunications Relay Services – 938,494,000

**Describe the impact of these issues on the FCC's oversight and management of these funds.**

As previously mentioned, the findings related to financial system functionality and integration associated with each reporting component and reported in the FY-2013 AFR were submitted to the OIG for closure on May 2, 2014. The Commission's external auditor reviewed this information and closed the finding. This finding does not appear in the Commission's FY 2014 AFR. The Commission continues to work closely with its reporting components to develop timely, accurate, and useful financial information to ensure the most effective stewardship of funds.

**The Honorable John Shimkus**

**Question 1:**

**Mr. Wilkins, the Middle Class Tax Relief and Job Creation Act of 2012 required the Commission to create a Do-Not-Call registry for Public Safety Answering Points (PSAP) to address concerns about the use of "automatic dialing equipment" which can tie up public safety lines. The Commission released a Notice of Proposed Rulemaking on May 22, 2012 and an order on October 17, 2012. You testified that you "basically have a plan, five year plan to fulfill that mandate." You also testified that you are "ready to go." When will the Do-Not-Call registry for PSAPs be launched?**

**Response:**

The Commission has requested funding for this registry during the past two appropriations cycles but has not received the requested resources. Despite this handicap, the Commission continues to take steps to create the registry to safeguard PSAP phone numbers from autodialed calls, and has sought to do so in a way that is consistent with maintaining the security of these PSAP numbers while optimizing efficiencies and cost savings.

Toward this end, we have worked closely with the Federal Trade Commission and its contractor for the National Do-Not-Call registry to consider ways to effectively and efficiently develop and administer the PSAP Do-Not-Call registry that would not require the FCC to invest in and build its own registry completely separate from that of the FTC. Final Fiscal year 2015 funding levels will be an important factor in determining when the registry can be completed.

I note that the FCC's rules governing robocalls already prohibit the use of autodialers to make non-emergency calls without prior express consent to any emergency telephone line, including any autodialed call to 911 lines and emergency lines of a fire protection or law enforcement agency.

Separately, I have been advised that the FCC continues to enforce its more general robocalls rules before the registry is operational, and autodialed calls to registered numbers will become an

additional offense. The Commission’s Enforcement Bureau currently has a number of active robocall investigations which are potentially relevant, although not specifically focused on PSAPs. Given the prevalence of spoofing (i.e., altering the caller ID displayed on a called party’s phone) by robocallers, identifying those behind such calls presents particular law enforcement challenges.

Given the final FY 2015 spending measure is still under consideration, we have renewed our request for targeted IT funds, with the PSAP request designated as essential funding.

**Question 2:**

**In response to the Committee's information request we were told that the Chairman asked the Managing Director and General Counsel to review the guidance to employees to ensure that they are adhering to the FCC's internal reporting process for auction related expenditures.**

- **Is the review complete? Provide the findings.**

Response:

The Commission’s review is ongoing and we will keep the Committee apprised of our efforts in this area. The Office of Managing Director and the General Counsel are in the process of performing the following actions:

- 1) Review and update of the Commission wide directive “Policy Use of Auction and Credit Reform Funds by the Federal Communications Commission.”
- 2) Quarterly guidance to be issued to Commission wide staff on the proper use of auction funds for salaries and benefits of employees that directly support the auction program;
- 3) Ongoing review of the use of auction funds for IT infrastructure investments.

**Question 3:**

**You testified that "wherever possible [you] literally do direct accounting" to allocate costs to auction revenues. For Fiscal Year 2013 identify by Budget Object Class Codes all those instances in which costs are allocated to auctions revenues on a direct basis.**

Response:

**Summary by BOCC:**

<b>FY 2013 Auction Expenses 100% Direct</b>		
<b>BOCC</b>		<b>Amount</b>
1100	Personnel Compensation	\$26,357,090
1200	Personnel Benefits	\$7,034,894

2100	Travel	\$40,291
2311	GSA Rent - Portals I	\$3,382,101
2400	Printing	\$630
2520	Contract Services	\$6,310,934
2522	ADP Data Retrieval Service	\$160,916
2523	Training	\$18,025
2572	ADP Software Maintenance	\$173,960
2573	ADP Hardware Maintenance	\$15,307
2575	ADP Contract Services	\$10,808,383
2600	Supplies	\$2,650
2660	Periodicals & Subscriptions	\$1,862
3120	ADP Hardware	\$889,466
3130	ADP Software	\$348,551
3140	Furniture & Equipment	\$1,951
	<b>Total</b>	<b>\$55,547,011</b>

**The Honorable Lee Terry**

**Question 1:**

**In light of the revelation that you have staff who are "bored" and therefore have time to watch porn, what steps are you taking to realign work assignments so this type of activity no longer happens? Are you contemplating any reductions in staff?**

**Response:**

The FCC staffer involved in the incident described by you was designated for termination and resigned. We will continue to work with the IG and utilize FCC resources to ensure that appropriate steps are taken to address employee misconduct. The Commission routinely reviews staffing needs and moves staff where appropriate and eliminates unnecessary positions. We have contracted with the Office of Personnel Management (OPM) to complete a review of our Human Capital strategy and will act accordingly to follow any OPM recommendations.

**Question 2:**

**In 2010 as part of the modernization and reform of agency processes the FCC started an initiative to consolidate the Commission's 10 licensing systems into a single database. FCC officials testified that it would save tens of millions of dollars each year. You testified that this reform effort is on hold.**

- **How much did the FCC spend on this initiative before it was put on hold? How many staff hours were expended on the initiative before it was put on hold? When was it put on hold? Why was it put on hold?**

Response:

The FCC's records show that the initiation of this project cost \$2.04 million. My understanding is that the prior Managing Director suspended this upgrade when the complexity and problems related to our antiquated systems became too costly to complete modernization efforts, instead focusing efforts on overall system maintenance or triage for the antiquated systems. Overhauling these systems involves a complex and multifaceted approach that likely slowed progress when initiated almost five years ago. Moreover, by 2011 the FCC had identified security issues and diverted funds to related upgrades consistent with the Appropriations Committee's reprogramming grant. The following year, the Commission's funding levels were flat-lined and in Fiscal Year 2013, the Commission lost \$17 million of its flat-lined number to sequestration.

### **The Honorable Marsha Blackburn**

#### **Question 1:**

**You testified that the Commission "always coordinated with the Inspector General's with regard to oversight of universal services." You stated that you "will do more of that in the future." The Memorandum of Understanding between the FCC and USAC which was entered into "to facilitate the efficient management and oversight of the Commission's universal service program" expired by its terms in 2012. Among other things, the MOU delineated the responsibilities of the Office of Inspector General and the Enforcement Bureau.**

- **Explain why the MOU was not renewed. Given your commitment to coordinate with the Inspector General's Office going forward will another MOU be executed? If not explain why. How will the efficiencies achieved under the expired MOU be maintained in the absence of such an agreement?**

Response:

The FCC and USAC still have a Memorandum of Understanding (MOU) in effect. Specifically, in 2008, the FCC and USAC entered into an MOU, to facilitate the efficient management and oversight of the Universal Service Fund program. Although the initial expiration date for the MOU was September 8, 2012, it was extended six times, with the most recent extension establishing an expiration date of December 31, 2014. In addition, Sections 1, II, III.A, IV.B, and VI and Attachment E of the 2008 MOU were modified by the FCC and USAC on November 4, 2014. The expiration date for this Amendment is November 4, 2016. The 2008 MOU and 2014 MOU Amendment are available at <http://www.fcc.gov/encyclopedia/universal-service-fund-general-management-and-oversight>.

**The Honorable Cory Gardner**

**Question 1:**

**Beginning in November of 2013, not-for-profit and governmental health systems that operate acute and ambulatory care facilities began to appeal adverse rulings in which USAC held that they do not qualify as a "not-for-profit hospital" for the purpose of determining USF Healthcare Connect Fund program eligibility. These organizations have now waited for almost a year for the FCC to rule on their appeals. This uncertainty has hampered these health systems from developing broadband strategic plans and delayed the deployment of advanced telemedicine technology.**

- **What is the reason for the delay in resolving these appeals?**
- **When can these health systems expect the FCC to rule on their appeals?**

**Response:**

Commission staff is actively working on this matter, which involves complex legal issues. It is imperative that the Commission thoroughly review the implications of eligibility determinations to ensure that the Rural Healthcare Program provides funding for truly eligible recipients consistent with the program's statutory mandate. I have made your concerns known to the Wireline Competition Bureau and we will keep the committee apprised of progress in this area.

**The Honorable Adam Kinzinger**

**Question 1:**

**Media Bureau Chief, Bill Lake, was asked during the June 11, 2014 hearing on media ownership whether the FCC planned to make sure it held itself accountable for processing requests for waivers of the new JSA rule adopted by the agency. Mr. Lake was asked if he had incorporated a speed of disposal metric -the 90 days for these particular requests reflected in the Commission's order – into a management metric to see how well the Bureau does in meeting the 90 days.**

- **Has the FCC incorporated a 90 day speed of disposal metric for these waivers in the Media Bureau's performance metrics and goals? If not explain why?**

**Response:**

The Commission currently is in the process of revising its management performance metrics to

review all speed of disposal issues. With respect to the specific issue of JSA waivers, as Bill Lake noted to you in June, the 90 day period for review begins when the record closes on a specific application. Thus far, there have been a very small number of JSA waivers submitted to the Commission in conjunction with license transfer applications, with only three pending requests seeking a waiver of the JSA attribution rule. Subsequent to the filing of these waiver requests, however, the parties to the application filed amendments that would bring the proposals into compliance with the JSA attribution rule. The underlying applications are still under review with the Media Bureau.

### **The Honorable Anna Eshoo**

#### **Question 1:**

**In 2013, the FCC received nearly 300,000 consumer complaints, yet there does not appear to be any formal means for tying this data to the agency's policy activities. Does the FCC have the resources to respond to trends identified through consumer complaints and take enforcement action when companies violate Commission rules?**

#### **Response:**

The FCC is in the process of deploying a new Consumer Complaint system which will provide FCC staff with the ability to better analyze complaint data for use in Commission policy activities, in a more timely and accurate manner. Moreover, as this system matures with use, FCC staff will be able to create more refined reports, and make better use of the data collected.

The FCC initiated the test launch of its new Consumer Complaint system on October 31, 2014 and began providing demonstrations on Capitol Hill in November, 2014. Your staff received a demonstration on November 21, 2014. We expect a broader program launch before the end of the calendar year and will keep the Committee staff apprised of our work. The Commission thoroughly investigated the best method for upgrading its system and managed to procure a system at \$343,380. We provided actual projected costs and cost savings in a chart at "Walden #3."

#### **Question 2:**

**Do you view the FCC's Office of Native American Policy (ONAP) as one that is primarily focused on advocating for policies that are responsive to tribal needs? If so, what are the outcomes? What has actually changed?**

- **Does ONAP have the resources to play a more service-focused role within the FCC- one specifically tailored to meet the demand within tribal nations for assistance with FCC programs? What kind of additional resources would ONAP need to serve this function?**

Response:

The FCC has provided significant, ongoing support to the Office of Native Affairs and Policy (ONAP) and its activities since it established the office through a unanimous order and reprogramming in 2010. Current appropriations legislation and the pending Senate bill provide \$300,000 for ongoing Commission work with Tribal entities. Other than the Office of Inspector General, which has an independent budget process, no other Commission office or activity has a specific funding designation. Because ONAP is part of the Consumer and Governmental Affairs Bureau (CGB), we also are able to ensure significant administrative efficiencies with other bureau offices while maintaining positions for seven specifically designated ONAP staffers, including a chief, deputy, attorneys and policy specialists.

Currently, ONAP has a designated core mission of promoting the deployment and adoption of communications services and technology throughout Tribal lands and Native Communities as well as ensuring robust government-to-government consultation with federally-recognized Tribal governments and increased coordination with Native organizations. ONAP handles ongoing consultation with American Indian Tribes, Alaska Native Villages, Native Hawaiian Organizations, and other Native and Tribal entities, and is the official Commission contact point for these activities. ONAP coordinates with FCC Bureaus and Offices and with grassroots inter-Tribal government organizations in hosting the FCC's Tribal Broadband, Telecom, and Media Consultation and Training Workshops in unserved regions of Indian Country.

During FY 2015, ONAP hosted five Tribal consultation workshops, in Idaho, Minnesota, California, Tennessee, and Oklahoma. ONAP held one in FY 2013, and six in FY 2012. ONAP attends numerous Tribal conferences and conventions, and routinely engages in onsite Tribal consultations throughout the nation, including in Alaska and Hawaii. ONAP also is responsible for managing the FCC-Native Nations Broadband Task Force, comprised of elected and appointed Tribal leaders and FCC senior leaders. Originally created in 2011, the Task Force was renewed in October, 2014.

ONAP has worked with Commissioners, bureaus, and offices, as well as with other government agencies, state regulatory commissions, private organizations, and the communications industries, to develop and implement FCC policies regarding Tribal Nations and Native communities. Recent examples of ONAP activities have included coordination with the Wireless Telecommunications Bureau concerning the Positive Train Control (PTC) policy development and settlement, including hosting two Tribal field consultations in Oklahoma and South Dakota on PTC, as well as assisting with the Navajo Nation waiver for the AWS-3 auction.

ONAP provides routine and substantial assistance to the Wireline Bureau concerning the needs of Tribal entities, including the analysis of the E-rate modernization docket affecting Tribal schools and libraries. Other examples of policies developed with ONAP's input include the Mobility and Tribal Mobility Funds, the Tribal Government Engagement Obligation, Tribal Lifeline and Link Up reforms, and the Tribal Priority for Full Power FM Radio licensing. In addition, ONAP has provided input on individual adjudicatory, enforcement, licensing, and regulatory petitions, such as eligible telecommunications carrier designations.

ONAP issued an Annual Report of its activities for Calendar Year 2012, and in June 2014 provided a report to the Appropriations Committees on the implementation of the Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes. The Annual Report is provided online at <http://transition.fcc.gov/cgb/onap/ONAP-AnnualReport03-19-2013.pdf>. In the Second Quarter of FY 2015, ONAP will submit a Report to Congress on the implementation of the FY 2014 budget for Tribal consultation and coordination, and any additional resource needs, consistent with directives associated with the appropriations legislation.

**Does ONAP have the resources to play a more service-focused role within the FCC- one specifically tailored to meet the demand within tribal nations for assistance with FCC programs? What kind of additional resources would ONAP need to serve this function?**

Utilizing its CGB and ONAP funds, the FCC provides targeted assistance to meet the demand within tribal nations for assistance with FCC programs. For example, on November 19, 2014, ONAP conducted a Tribal E-Rate Training session at the Santa Fe Indian School in New Mexico. ONAP will be holding similar trainings in other regions of Indian Country in the coming year. These activities, combined with ongoing consultations, focused outreach and synergies with other CGB actions such as the implementation of the new Consumer Complaint Database, demonstrate a commitment to meeting the demand for assistance within the four corners of the Commission's appropriations request. ONAP, like all FCC programming would greatly benefit from full funding for the FCC during Fiscal Year 2015. Unfortunately, flat funding and sequestration during the past several years has left consumer-based programming lacking in general outreach funds.

### **The Honorable Henry Waxman**

#### **Question 1:**

**Mr. Hunt's testimony asserts that the FCC has refused to allow the IG to hire criminal investigators despite the authority granted to the IG. But are there other legal considerations with respect to hiring Section 1811 criminal investigators? Are there other applicable laws or federal workplace rules that may need to be considered?**

#### **Response:**

The FCC passes through the Office of Inspector General's (OIG) budget request to the Office of Management and Budget (OMB) and Congress, including Salaries and Expenses (S&E) accounts. Through this process, the OIG exercises independent discretion in determining the size and composition of its staff in accord with Section 8G of the Inspector General Act and subject to standard federal hiring and employment regulations and statutes. The OIG has chosen to utilize the Commission's Human Resources office, as opposed to standing up its own office or contracting with another federal agency for Human Resource functions.

Because the Communications Act of 1934 does not provide specific authority for hiring Section 1811 Criminal Investigators or equivalents, the FCC's Chairman is legally responsible for ensuring

that a decision to bring these employees to the FCC would comply with all applicable laws and federal workplace rules. Unlike virtually all other hires, Section 1811 employees (i.e. criminal investigators) are a special and unique category. In part, because such employees can be authorized to carry weapons their hiring requires particular scrutiny and consideration by the Chairman, in his delegated responsibility for the administration of the agency's internal affairs. The question of armed employees in our buildings, field offices, and acting for the agency in using weapons raises important and complicated questions regarding overall agency security and liability, employee safety, training, and storage of weapons.

A recent Congressional Research Service publication examined the role of Inspector Generals across the government and identified the laws and regulations that vest certain OIGs with law enforcement authority, which permits the use of guns and ammunition. The report also described some of the requirements and expectations of OIGs that have law enforcement authority, and includes some reasons that OIGs have expressed a need for law enforcement authority. This report is helpful in understanding the range of issues and concerns that the Chairman must consider in addressing Section 1811 employees. See <http://fas.org/sgp/crs/misc/R43722.pdf>

**Question 2:**

**How do you respond to Mr. Hunt's assertion that former Chairman Genachowski approved the IG's request to hire Section 1811 criminal investigators, only to be overturned by Chairman Wheeler?**

**Response:**

Chairman Genachowski did not approve the IG's request to hire Section 1811 criminal investigators. There was an error during his tenure related to the hiring process for potential criminal investigators, permitting an initial listing for this sort of personnel without appropriate Commission approval. This matter was corrected at that time and the listing was removed prior to Chairman Wheeler's arrival at the Commission.

The OIG's request for Section 1811 criminal investigators has been an active request during the tenures of at least five Chairmen. Chairman Wheeler is currently studying the issue, looking at the questions about agency security and liability noted above and considering how armed OIG personnel would integrate with the missions of the FCC and the FCC OIG.