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4 CONTINUED OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

5 TUESDAY, JULY 28, 2015

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 10:20 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, Barton,
14 Shimkus, Blackburn, Lance, Guthrie, Olson, Kinzinger,
15 Bilirakis, Johnson, Long, Ellmers, Collins, Cramer, Eshoo,
16 Doyle, Welch, Clarke, Loeb sack, Rush, Matsui, Lujan, and

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17 Pallone (ex officio).

18 Staff present: Ray Baum, Senior Policy Advisor for
19 Communications and Technology; Andy Duberstein, Deputy Press
20 Secretary; Gene Fullano, Detailee, Telecom; Kelsey Guyselman,
21 Counsel, Telecom; Grace Koh, Counsel, Telecom; Tim Pataki,
22 Professional Staff Member; David Redl, Counsel, Telecom;
23 Charlotte Savercool, Legislative Clerk; Christine Brennan,
24 Democratic Press Secretary; Jeff Carroll, Democratic Staff
25 Director; David Goldman, Democratic Chief Counsel,
26 Communications and Technology; Ashley Jones, Democratic
27 Director of Communications, Member Services and Outreach;
28 Lori Maarbjerg, Democratic FCC Detailee; Tim Robinson,
29 Democratic Chief Counsel; and Ryan Skukowski, Democratic
30 Policy Analyst.

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31 Mr. {Walden.} We will call to order the Subcommittee on
32 Communications and Technology, and I want to welcome everyone
33 here today, and wish a very good morning to Chairman Wheeler
34 and Commissioner Pai. Delighted to have you back before the
35 Subcommittee again this year. We appreciate the work you are
36 doing at the FCC, and look forward to your testimony, and our
37 opportunities to pursue some issues. At the risk of sounding
38 a bit like a broken record, however, I continue to be
39 concerned with the Commission's failure to adhere to sound
40 regulatory process.

41 For the nearly 5 years that I have had the opportunity
42 to Chair this Subcommittee, as you all know, I have
43 consistently pushed to make the FCC a better, more
44 transparent agency, and yet it seems like the chasm between
45 Commissioners deepens over time. When the Committee
46 considered process reform legislation a few months ago, I had
47 hope we had reached the bottom of that well, that the
48 Commission would begin to find its way back to the
49 collegiality and honest policy debates and compromises that
50 have characterized it since 1934. Unfortunately, that

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51 appears not to be the case. And if Commissioner Pai's
52 testimony is any indication, things might actually be getting
53 worse at the Commission, and that is disappointing, to say
54 the least.

55 With all that is going on at the Commission, and in the
56 world of communications, we have much ground to cover in
57 today's hearing, which likely will necessitate a second round
58 of questioning. To get things started, let me highlight five
59 areas of policy concern that I, and some other members of
60 this Committee, have. First, the auction. For a successful
61 auction we all know that the sellers and buyers need to fully
62 understand and support the rules. Yet, when it comes to the
63 band plan, questions and uncertainty still abound. Layered
64 on top is growing concern regarding how the re-pack will
65 work, including as it relates to the future of low powered
66 television stations and translators. Now, it was never our
67 intent that these diverse voices in the marketplace would get
68 fully silenced. And then there are the issues of potential
69 interference which have come up, which, as we all know, when
70 mishandled, can doom an auction, as has occurred in the past.

71 Second, the FCC's action on the designated entity issue

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72 raises some concerns for many of us. While the FCC majority
73 claims that its changes will strengthen the integrity of the
74 program, a goal we all share, sadly, I am afraid they simply
75 replace one set of rules that were gamed with a new set yet
76 to be gamed. The Commission's new rules remove the
77 obligation to provide facilities-based service, and permit
78 leasing of 100 percent of the spectrum purchased. Now, that
79 sets the stage for sophisticated spectrum arbitragers,
80 financed by taxpayer dollars, to participate in the next
81 spectrum auction, bringing nothing to the competitive market.
82 The Chairman's advocacy for this outcome is puzzling, given
83 the assurances that the changes would protect the program
84 from ``slick lawyers taking advantage of loopholes in the
85 program to unjustly enrich their sophisticated clientele.''

86 Third, the Telephone Consumer Protection Act. My
87 colleague from New Mexico and I have had serious bipartisan
88 discussions about the approach the FCC has taken as it
89 relates to the fundamental nature of democracy and American
90 practical communications in a wireless age. Beyond that,
91 members of the Subcommittee are just beginning to hear from
92 adversely affected users about the disruption this new ruling

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93 will have on a variety of companies, and the consumers they
94 try to serve.

95 Fourth, expansion of the Lifeline Program. All one has
96 to do is read today's story in Politico regarding the
97 problems over at the Department of Agriculture's Rural
98 Utility Service to understand why it is so essential, before
99 any agency moves to spend money, it should have tight control
100 and a budget. Unfortunately for ratepayers, in a party line
101 vote the FCC decided to rush forward to expand the Lifeline
102 Program into broadband with little reform, and no limit on
103 the spending.

104 Fifth, admit the swirl of controversy that continues to
105 surround the actions the Commission takes, let us not lose
106 sight of what is not getting done. For example, the AM
107 revitalization proceeding has been described by some as
108 grinding to a halt, despite the Chairman's assurances to this
109 Subcommittee. The quadrennial review of the limitations on
110 ownership of broadcast properties continues to languish, in
111 open violation of the Commission's legal obligation.

112 Let me close with this. Each member of the Commission
113 is very bright, talented, and thoroughly passionate. And

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114 yet, as evidenced by recent public comments of Commissioner
115 O'Reilly, and the testimony today of Commissioner Pai, it is
116 clear that they believe the process at the FCC too often
117 fails to include them in a meaningful and substantive way.
118 And we hear similar complaints from stakeholders who feel
119 ignored or shut out altogether. This is neither necessary
120 nor helpful, as the Commission, and all of us in Congress,
121 try to work through the complicated issues in today's rapidly
122 involving communications world.

123 And on a final note, on the good news side of things, at
124 least if you have the background I have, I--pleased to note
125 that AT&T today announced that they are--reached an agreement
126 to allow FM chips in cell phones, making at least the second
127 carrier to do so, and we hope that other carriers will follow
128 suit.

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

130 ***** COMMITTEE INSERT *****

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|

131 Mr. {Walden.} With that, I have used up my time, and
132 turn to the gentlelady from California.

133 Ms. {Eshoo.} Thank you, Mr. Chairman, and good morning
134 Chairman Wheeler, Commissioner Pai. Welcome back to the
135 Committee. We are happy to see you, and we--as I said, we
136 welcome you back.

137 Today's hearing marks the Chairman's third appearance
138 before our Subcommittee in just over 4 months. In fact, the
139 Congressional Research Service tells me that the Chairman's
140 eight appearances before Congress this year marks a new
141 record. So congratulations, Mr. Chairman. Put that one up
142 on your wall. In the past 14 years no FCC Chair has
143 testified more times before Congress in a single calendar
144 year, and of course we are only in the seventh month of 2015.
145 It is our Subcommittee's responsibility to conduct robust
146 oversight, and in so doing we should hear regularly from the
147 Chairman and his fellow Commissioners.

148 Responsible oversight includes recognition that the FCC-
149 -and I think that we should be doing this. I mean, there are
150 many things to raise that are legitimate, at least in the

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151 minds of those that raise them, but we should include a
152 recognition that the FCC is undertaking an unprecedented
153 series of steps to promote competition, enhance public
154 safety, and ensure that consumers are protected against
155 deceptive or misleading billing practices. Here are a few
156 highlights of the Commission's work over the past year.
157 Modernize the E-rate Program to increase the presence of Wi-
158 Fi in classrooms, and bolster higher capacity Internet
159 connections to the anchor institutions in our communities
160 across the country, our schools and our libraries. Raised a
161 record 44.9 billion, with a B, dollars from the AWS-3
162 auction. Repealed the outdated and anti-consumer sports
163 blackout rules which, for 4 decades, 40 years, prevented fans
164 from watching games on television when they were not sold
165 out. I think there are a lot of people in the country that
166 are really thrilled about that. Launched a new consumer help
167 center to streamline the complaint process, and improve how
168 consumers interact with the FCC. And at this point, Mr.
169 Chairman, I would like to ask unanimous consent to place into
170 the record a really terrific article from Forbes entitled,
171 ``How the FCC Saved Me \$1,800''. If you haven't read it,

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172 everyone should, so I ask--

173 Mr. {Walden.} Without objection.

174 [The information follows:]

175 ***** COMMITTEE INSERT *****

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|

176 Ms. {Eshoo.} --that--thank you. Freed up 150 megahertz
177 of spectrum in the 3.5 gigahertz band for mobile broadband.
178 Established indoor location accuracy rules for wireless calls
179 made to 911. That is a--that could be a lifesaving step
180 right there. Adopted bright line rules that prevent
181 broadband providers from engaging in blocking, throttling,
182 and paid prioritization. Levied a \$100 million against a
183 major telecommunications provider for misleading consumers
184 about their unlimited data plans. Pre-empted state laws in
185 Tennessee and North Carolina that prevented local communities
186 from deploying broadband, which they want to do across the
187 country.

188 All of this and more in just one year, and there is much
189 more ahead as the FCC prepares to undertake the world's first
190 voluntary incentive auction, and a technology transition to
191 an all IP world that preserves the core values of
192 competition, public safety, and consumer protection. So I
193 thank both the Chairman and the Commissioner for your
194 continuing commitment to a modern telecommunications
195 marketplace, and I yield the remainder of my time to the

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196 gentleman from Vermont, Mr. Welch.

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

198 ***** COMMITTEE INSERT *****

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199 Mr. {Welch.} Thank you very much. Welcome, Chairman
200 Wheeler and Commissioner Pai. We really appreciate the work
201 that you are doing. Just a couple of points. I am very
202 encouraged by the tech transitions progress that you have
203 been making. That is going to be very helpful to many more
204 businesses that need efficiencies, and this is going to be
205 helpful to consumers. I hope you don't stop there. One of
206 my main concerns, I know a concern of many of us, is to have
207 competition as much as possible in this area. We really do
208 believe that that leads to innovation, and better prices for
209 the consumers. So the special access issues continue to be
210 of top concern to me.

211 And then finally I would like to just remind you of the
212 bipartisan rural working group that Mr. Latta and I have set
213 up, because there is so many of us, even if we represent
214 urban areas, that have rural districts that have special
215 problems, and oftentimes aren't the big markets, so we want
216 to continue to work with the entire Commission to try to make
217 certain that the rural service is there, and will be there,
218 and will be the highest quality. Thank you very much, and I

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219 yield back the balance of my time.

220 [The prepared statement of Mr. Welch follows:]

221 ***** COMMITTEE INSERT *****

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222 Mr. {Walden.} The gentleman yields back, the gentlelady
223 yields back. The Chair recognizes the gentlelady from
224 Tennessee, Mrs. Blackburn.

225 Mrs. {Blackburn.} Thank you, Mr. Chairman, and I want
226 to welcome you both. We appreciate that you are here. I
227 will say I disagree with my colleague from California, as she
228 talked about Tennessee. We saw that as stepping on states'
229 rights, Mr. Chairman, and you know that you and I disagree on
230 that. I am pleased that you all are here. I know you all
231 saw the CTIA report last week, and I am sure you have read
232 the op-ed in today's paper by each of your predecessors, Mr.
233 Janikowski and Mr. McDowell. Getting spectrum to the
234 marketplace is where we need to have our focus. And rather
235 than getting off into all these tangential issues, your focus
236 should be the core of your mission, which is dealing with
237 spectrum deployment and usage. And when you look at the
238 expected increase in the wireless arena, it draws more
239 attention to this.

240 You know, I was thinking, as I was preparing for this
241 hearing, when you go back and look at the industrial

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242 revolutions that we have had in this country, looking at the
243 agricultural and the industrial mechanization revolutions,
244 when you look at technology, information, we are almost at a
245 point of being able to say there is this wireless revolution
246 that is going on, because business transactions, health care,
247 so many things are going to depend on this spectrum, and we
248 want to make certain that you are focused on this. So we
249 welcome you. We know that we have to be diligent in this.
250 We look at what South Korea is already talking about doing,
251 South Korea, and Japan, and the 5G, and recapturing the
252 momentum that at one point they had. And we don't want them
253 to be the world leader. We want to be the world leader, and
254 we have got to have you work with us on this.

255 At this time I yield the balance of my time to Mr.
256 Latta.

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

258 ***** COMMITTEE INSERT *****

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259 Mr. {Latta.} Well, thank you very much, and I thank the
260 gentlady for yielding. And I want to thank Chairman
261 Wheeler and Commissioner Pai for being with us again. It is
262 great to see you both, and I look forward to your statements,
263 and also to our questions today.

264 The communications and technology industry is a very
265 productive and dynamic sector of economy. This is largely
266 due to bright, innovative minds, and in part because this
267 industry has been lightly regulated, with the ability to grow
268 and evolve to the demands of the consumers. Therefore, we
269 cannot afford to overlook the significance of the regulatory
270 policies and how the FCC's decisions impact the industry's
271 success. This is why I am concerned with many of the actions
272 proposed--the FCC, and the general lack of transparency,
273 efficiency, and accountability at the agency. I hope today's
274 hearing will provide us with an opportunity to discuss in
275 more detail the Commission's policies, decisions, and
276 processes. And I thank the gentlady from yielding, and I
277 yield back.

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

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279 ***** COMMITTEE INSERT *****

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|

280 Mrs. {Blackburn.} Yield back my time.

281 Mr. {Walden.} The gentlelady yields back. The Chair
282 recognizes the gentleman from New Jersey, Mr. Pallone, for 5
283 minutes.

284 Mr. {Pallone.} Thank you, Mr. Chairman, and thank you
285 to Chairman Wheeler and Commissioner Pai for coming back here
286 today. I know it has been a busy few months since you last
287 testified before this Subcommittee, and I appreciate your
288 willingness to come and give us an update.

289 I am particularly grateful for this opportunity to hear
290 from Chairman Wheeler about how he is addressing the
291 priorities of the Democratic members of the Subcommittee,
292 many of which are shared by our Republican colleagues. Our
293 members are champions for improving universal access to
294 broadband in the many underserved rural areas of our country.
295 They have also been tireless advocates for the rights of
296 residents of our vast tribal lands, and too often those
297 living on tribal lands are unfairly left on the wrong side of
298 the digital divide. I hope to hear how the FCC can help our
299 efforts to improve deployment to these areas where the

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300 economics along are not enough.

301 Our members have also been devoted to improving public
302 safety communications. This is especially meaningful for
303 those of us whose districts were impacted by disasters like
304 Hurricane Sandy, who believe that everyone should be able to
305 call for help in an emergency, and I hope we hear more about
306 what the Commission is doing to make our vision into a
307 reality.

308 Our members also share Chairman Wheeler's commitment to
309 competition. That is why we led the charge to overhaul the
310 FCC's designated entity program. Under the new rules that
311 the FCC recently adopted, the program encourages robust
312 participation from bona fide small businesses, while allowing
313 innovative business models more in line with today's dynamic
314 wireless market. And we have also stood with our Ranking
315 Member Eshoo in her battle to free up more spectrum for
316 unlicensed use. These airwaves can lower barriers to entry,
317 and allow for more vigorous competition.

318 And finally I hope to learn more about what the
319 Commission can do to support our work to protect consumers.
320 For instance, I know several members of the Subcommittee have

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321 been focused on the FCC's recent actions to address
322 robocalls. We all agree that more needs to be done to crack
323 down on unwanted commercial calls, and I hope to hear what
324 the Commission can do to address the issues our members have
325 raised.

326 I would like to yield 1 minute each of the time--well, I
327 guess a minute and a half to Mr. Doyle, and then a minute and
328 a half to Ms. Matsui.

329 [The prepared statement of Mr. Pallone follows:]

330 ***** COMMITTEE INSERT *****

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331 Mr. {Doyle.} Thank you very much, Mr. Pallone, for
332 yielding. Thank you, Mr. Chairman, for holding this hearing,
333 and to Commissioner Wheeler and Commissioner Pai, thank you
334 both for being here today.

335 Mr. Chairman, I would like to recognize the
336 accomplishments of the Commission, and of this Chairman.
337 Since Tom Wheeler took over as Chairman, the FCC has done
338 much to advance our nation's telecommunications agenda. From
339 establishing the FCC's open Internet order, to keeping the
340 incentive action on track, updating the Lifeline Program for
341 the Internet age, and meting out steep fines to
342 telecommunication companies that abuse consumers.

343 I also want to comment the Chairman for advancing a pro-
344 competitive agenda, both in wire line and wireless service.
345 The Commission's upcoming vote on tech transitions, its
346 action on special access, and the establishment of the
347 spectrum reserve in the incentive auction are all important
348 steps towards preserving and promoting competition. Mr.
349 Chairman, keep up the good work, thank you. And I will yield
350 to our colleague, Ms. Matsui.

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

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

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353 Ms. {Matsui.} Thank you very much for yielding to me.
354 Welcome back, Chairman Wheeler, and Commissioner Pai. It is
355 great to see you again. I know you have a busy agenda, and I
356 want to briefly highlight two priorities that I know we are
357 all interested in.

358 The first is making more spectrum available. Spectrum
359 is our nation's invisible infrastructure of the 21st century.
360 It is critical to keep our wireless economy growing. We need
361 to talk about how to put more spectrum into the pipeline so
362 we can continue to meet the demand. Congressman Guthrie and
363 I have a bipartisan bill to create new incentives for Federal
364 users. We need to continue to explore these solutions.

365 The second is making broadband access more affordable.
366 Millions of Americans are still on the wrong side of the
367 digital divide. The Lifeline Program can, and should, help
368 these Americans get, and stay, connected. I know the FCC has
369 started work on these very important reforms, but we need to
370 finish the job.

371 I look forward to working with the whole Commission as
372 we talk about these matters, and hopefully make progress on

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373 this. And I yield back the balance of my time. Thank you.

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

375 ***** COMMITTEE INSERT *****

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376 Mr. {Walden.} The gentlelady yields back, the gentleman
377 yields back. And I think all time has now expired. So now
378 we will go to our two distinguished witnesses, the Chairman
379 of the Federal Communications Commission, Mr. Wheeler. We
380 are delighted to have you back. Apparently we are really
381 delighted, because we have you a lot, and that is a good
382 thing. And so we welcome you and Commissioner Pai, but Mr.
383 Wheeler, why don't you go ahead and lead off? Yeah, it is a
384 modern technology thing.

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385 ^STATEMENTS OF THE HONORABLE TOM WHEELER, CHAIRMAN, FEDERAL
386 COMMUNICATIONS COMMISSION; AND THE HONORABLE AJIT PAI,
387 COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION.

|

388 ^STATEMENT OF TOM WHEELER

389 } Mr. {Wheeler.} I am tempted to make some comment about
390 being national champion of appearances before, but I wouldn't
391 want--

392 Mr. {Walden.} We can arrange that.

393 Mr. {Wheeler.} I wouldn't want to go down that route.

394 But in the 10 weeks--in all seriousness, in the 10 weeks
395 since I was last before this Committee, there has been a lot
396 happening, and I look forward to discussing it with you
397 today. We have made significant progress to begin the
398 incentive auction on March 29, 8 months from tomorrow, so
399 there is a lot of pressure on here. We have continued to
400 grapple with the tech transitions issues that were raised by
401 the movement from analog to IP networks. And we have
402 approved one merger, with conditions. Another was withdrawn,

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403 and a new one was added. And then, of course, on top of
404 that, the Appeals Court stayed--or denied the request for a
405 stay for the open Internet rules.

406 But one issue which, frankly, caught me by surprise was
407 that which was raised by a letter signed by every member of
408 this Subcommittee having to do with local number portability,
409 and I wanted to report directly to you on that. Our rules
410 require that local number portability be ubiquitous, but it
411 looks as though the manner in which the industry has set up
412 the system does not fulfill that requirement, and I
413 appreciate this Committee bringing this to our attention.
414 Implementation of the rule apparently requires that a mobile
415 carrier have a presence in the home market of the ported
416 phone number before the transition can occur. And this is
417 something, of course, that is not possible for smaller
418 regional carriers.

419 So the effect of this is that if I were to move from
420 Washington to a market served by a carrier not in Washington,
421 and to choose that carrier in a competitive choice process, I
422 couldn't port my number. That is contrary to our rules, and
423 I have asked that it be fixed. Yesterday I wrote the four

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424 major carriers, as well as their trade associations, asking
425 that they identify a solution and report back within 60 days.
426 I believe the carriers are in the best position to fix this,
427 and I look forward to their response. But I do want to say
428 to this Committee, after raising this issue in unanimity,
429 that if this approach doesn't fix it with dispatch, we will
430 have to find other approaches that do. But I really
431 appreciate the way that this Committee called that to our
432 attention, because we had not seen that previously.

433 On another matter frequently raised by the Committee, I
434 am pleased to report that the FCC has completed an exchange
435 of letters with the Telecommunications Agency of Mexico, IFT,
436 to harmonize TV and wireless spectrum on both sides of the
437 border. Mexico is in the midst of its DTV transition, and
438 we, as you know, are heading into an incentive auction and
439 relocation of broadcast and mobile licenses. Where on the
440 spectrum Mexican--Mexico places its DTV licenses could,
441 therefore, affect us, and our U.S. licenses, and where we
442 place our licenses could affect, excuse me, affect them. But
443 thanks to the hard work of the International Bureau and the
444 Spectrum Auction Task Force, and the good faith negotiations

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445 of the Mexican IFT, this major hurdle has been vaulted. And
446 I want to especially thank my counterpart in Mexico, Chairman
447 Contreras Saldivar, and his Commissioners, for their
448 leadership on this matter. To the North, we have been making
449 similarly productive progress with our friends the Canadians.
450 I believe that once we have a decision next week on incentive
451 auction procedures that we will be able to conclude that
452 coordination as well.

453 And finally, we have had frequent discussions with this
454 Committee about the open Internet rule. Now that the D.C.
455 Circuit has put it on an expedited track for judicial review,
456 we are only 6 months or so away from that ruling, which I
457 know we all have been waiting for. So thank you, Mr.
458 Chairman, Ranking Member. I look forward to discussing
459 these, and any other issues you may want to raise.

460 [The prepared statement of Mr. Wheeler follows:]

461 ***** INSERT A *****

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|

462 Mr. {Walden.} Thank you, Chairman, appreciate the
463 update. We will now go to Commission Pai. We are delighted
464 to have you before the Subcommittee again, and please go
465 ahead with your testimony.

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|

466 ^STATEMENT OF AJIT PAI

467 } Mr. {Pai.} Thank you, Mr. Chairman. Chairman Walden,
468 Ranking Member Eshoo, members of the Subcommittee, thank you
469 for inviting me to testify. This hearing comes at a critical
470 time. The FCC is making judgments that will shape the
471 communications landscape for years to come. I will start
472 with the broadcast incentive auction. The FCC is empowered
473 to conduct this auction because of your bipartisan efforts.
474 It is therefore disappointing that this proceeding has been
475 run in a partisan manner. Time and again Commissioner Mike
476 O'Reilly and I have offered common sense ideas for improving
477 auction rules and procedures. Often we receive no response
478 at all. When we do receive a response, it is almost always
479 no.

480 Fortunately, it isn't too late to change course.
481 Broadcasters, wireless carriers, and unlicensed advocates all
482 agree that the Commission's current band plan is seriously
483 flawed. I stand ready to work with these stakeholders, and
484 my fellow Commissioners, to do what Congress did when it

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485 passed the landmark incentive auction legislation, compromise
486 to find a consensus solution.

487 Here specifically is what we should focus on. The
488 proposed band plan allows for too much variability, and would
489 put too many broadcast stations in the wireless portion of
490 the 600 megahertz band. This will both impair spectrum that
491 will be sold in forward auction, and cause interference
492 between broadcast and wireless services. In my view, the
493 Commission should try to minimize band plan variability. If
494 broadcast stations must be placed in the wireless portion of
495 the band, they should go in the uplink spectrum, not the
496 downlink, or the duplex gap. And, in order to reach a
497 compromise, we also need to make more information public.
498 Right now stakeholders and Commissioners alike are
499 essentially being asked to take on faith that, unless we
500 adopt every aspect of the Commission's proposals, the
501 incentive auction will end in an apocalyptic failure. But I
502 prefer the Reagan approach, trust, but verify.

503 Next I would like to discuss the FCC's Designated
504 Entity, or DE, Program, which has been plagued with abuse.
505 Even though the program is supposed to help small businesses,

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506 large corporations routinely try to game the system. And
507 that is why I was disappointed when the FCC recently voted to
508 make it easier for big companies to profit from the program.
509 We were promised FCC action to close loopholes that could be
510 exploited by slick lawyers. Instead the Commission re-opened
511 loopholes that it had closed on a bipartisan basis years ago,
512 loopholes through which a minimally competent attorney could
513 drive a truck. Specifically, the FCC paved the way for DEs
514 to obtain a 35 percent discount on auction spectrum, and then
515 turn around and immediately lease 100 percent of it to a
516 large incumbent carrier.

517 Now, at the time we were told that opening up new
518 loopholes in our DE rules was a ``attack on economic
519 inequality'', but this assertion is baffling. So let us be
520 clear, those who will profit from these new DE loopholes are
521 speculators who are already firmly ensconced in the famed one
522 percent. Case in point, under the new rules Donald Trump
523 would be allowed to own most of a DE, get a taxpayer funded
524 discount on spectrum, and then lease all of that spectrum to
525 AT&T or Verizon. So, during the Commission's deliberations I
526 made simple proposals to prevent this kind of abuse of the DE

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527 Program. For example, I proposed that anyone making over \$55
528 million a year should be prohibited from owning a DE and
529 getting taxpayer funded benefits. Unfortunately, the
530 majority rejected this, and other common sense reforms.

531 Shifting gears, when it comes to broadband, as
532 Congressman Welch pointed out, too many rural areas are being
533 left behind. Specifically, we are failing areas served by
534 small telecommunications failures. That is because of a
535 quirk of regulatory history. Our rules governing these
536 carriers give universal service support only to companies
537 that offer telephone service, not standalone broadband
538 service. That is why I put forward earlier this month a
539 specific plan for correcting this historical accident. My
540 plan is based on the principles set forth in a May letter by
541 115 members of the House of Representatives, led by
542 Congressman Kevin Cramer. This group urged the FCC to adopt
543 an immediate, targeted solution to the standalone broadband
544 problem, and to implement a much simpler and straightforward
545 plan for rate of return carriers than was adopted for price-
546 kept carriers.

547 I humbly submit that is exactly what my plan does. It

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548 implements a single page of rule changes to existing
549 universal service regulations to solve the standalone
550 broadband problem. These simple amendments would let rule
551 consumers choose broadband as a standalone service. It would
552 give carriers the assurance they need to increase broadband
553 deployment. And, critically, they would do all of this
554 within the existing budget.

555 Chairman Walden, Ranking Member Eshoo, members of the
556 Committee, thank you once again for inviting me to testify.
557 I look forward to answering your questions, and continuing to
558 work with you, and your staff, in the time to come.

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

560 ***** INSERT B *****

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|

561 Mr. {Walden.} Thank you, Commissioner Pai. We
562 appreciate your testimony as well.

563 Chairman Wheeler, as you know, LPTV and translators play
564 an important role in providing important information and
565 programming to consumers and businesses, and especially on--
566 when it comes to the translators serving difficult to reach
567 terrain and rural communities. What do you plan to do to
568 minimize the impacts of re-packing on LPTV and translators to
569 help ensure that their important programming continues to
570 reach viewers?

571 Mr. {Wheeler.} Thank you, Mr. Chairman, and we share
572 your interest in making sure that this voice continues. As
573 you know, the spectrum legislation does not create a re-
574 packing role, a role in re-packing, for translators. So the
575 question becomes, what do you do about it? So here is what
576 we are going to do. One, there are channels--we are going to
577 help them find channels, if they get displaced as a part of
578 the auction.

579 Mr. {Walden.} Okay.

580 Mr. {Wheeler.} One of the things that is the reality of

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581 an auction is you don't really know where the displacement is
582 going to happen, because you don't know the outcome of the
583 auction. So step one is we will work through that. Step two
584 is that we are going to begin a rulemaking that will allow
585 for channel sharing by LPTV stations. Just as we are
586 counting on channel sharing--

587 Mr. {Walden.} Right.

588 Mr. {Wheeler.} --in the broadcast auction. And that
589 kind of technology should provide the similar kind of
590 solution. And thirdly, the rule is constructed in such a way
591 that they don't have to vacate until the wireless carrier, in
592 fact, is ready to turn off service. So there is a
593 significant buffer of time in there. But we believe that, as
594 we help them find new channels, and as we have a new rule
595 that allows for channel sharing, that that will be able to
596 mitigate the kind of impact that you are concerned about.

597 Mr. {Walden.} And aren't you going to also give them--
598 like in the DTV transition there was an opportunity to apply,
599 they got some preference to move.

600 Mr. {Wheeler.} I am--

601 Mr. {Walden.} In the application process. I will get

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602 back to you.

603 Mr. {Wheeler.} Let me get back to you on--

604 Mr. {Walden.} It was the displacement relief.

605 Mr. {Wheeler.} Yeah. There is a--so there is a--we are
606 laying out a whole process that will help them through this
607 process in finding those kind of new channels.

608 Mr. {Walden.} All right. Thank you. I want to talk
609 about some of the financial issues, because you have spoken
610 about them eloquently before the Appropriations Committee,
611 and publicly, and I know that you addressed field agents
612 during a recent agenda meeting regarding the issue of closing
613 the field offices. And you seemed to, you know, take special
614 point that your budget comes from Congress and all, which is
615 true.

616 And I want to ask--Commissioner Pai, is it true that the
617 Enforcement Bureau's front office management staff has more
618 than doubled size since 2008?

619 Mr. {Pai.} That is my understanding, yes.

620 Mr. {Walden.} Is that true, Mr. Wheeler?

621 Mr. {Wheeler.} No, sir.

622 Mr. {Walden.} It is not?

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623 Mr. {Wheeler.} No, sir. The enforcement staff is now--
624 I can give you the exact statistic--20 percent smaller than
625 it was under Chairman Martin, and that, since I have come
626 into office, we have reduced the front office staff by 14
627 percent.

628 Mr. {Walden.} Okay. Yeah, we will--we want to follow
629 up, because obviously there is a disagreement among you two
630 on this--

631 Mr. {Wheeler.} Yeah.

632 Mr. {Walden.} --matter. Isn't it also a fact that the
633 Enforcement Bureau has more vehicles than field agents?

634 Mr. {Wheeler.} Yes, sir.

635 Mr. {Walden.} All right.

636 Mr. {Wheeler.} And that--so, you know, I will tell you
637 a story. I went to Anchorage--I have been trying to visit--

638 Mr. {Walden.} Yeah.

639 Mr. {Wheeler.} --the offices. We have a policy that
640 says you have to have two employees in each vehicle. And--
641 because there is one that is driving, and one that is working
642 the equipment. And you, you know, it is like texting and
643 driving. And we have two people in the Anchorage office, and

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644 we have two vehicles. That--

645 Mr. {Walden.} Is that--but we are talking--

646 Mr. {Wheeler.} That--

647 Mr. {Walden.} --across the--it is more than just

648 Anchorage--

649 Mr. {Wheeler.} No, it is across--this is--and this was

650 one of the problems that we inherited when we walked into the

651 door, that there had been this purchasing. So what we're

652 trying to do now is reposition those vehicles--

653 Mr. {Walden.} Right.

654 Mr. {Wheeler.} --so they will be available for the

655 strike teams when they come in.

656 Mr. {Walden.} And what about--and I--we keep hearing

657 stories that you all have cars and drivers, and all that sort

658 of thing at the Commission. Is that true? Actually, we--I

659 don't know about you all, I don't have a car and driver,

660 other than my little Prius out there. But is that true?

661 Don't the--don't you--

662 Mr. {Pai.} Mr. Chairman, it is true--

663 Mr. {Walden.} Yeah?

664 Mr. {Pai.} --although I do try to walk whenever I can.

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665 Mr. {Walden.} It shows. Yeah.

666 Mr. {Wheeler.} And I have got a--

667 Mr. {Walden.} All right.

668 Mr. {Wheeler.} --Fitbit to try to--

669 Mr. {Walden.} Yeah. All right. My time has run out.

670 Mr. {Pai.} It is not my walking, but--

671 Mr. {Walden.} Turn to the gentlelady from--

672 Ms. {Eshoo.} Thank you. I want to start with Chairman

673 Wheeler. I just want to ask my questions, and then you can

674 respond to them. And I have--

675 Mr. {Wheeler.} Yes, ma'am.

676 Ms. {Eshoo.} --one for Commissioner Pai. You stated--

677 you said in your opening statement that the upcoming

678 incentive auction has ``more moving parts than a Swiss

679 watch'', and I agree. And one example is the reserve

680 trigger, which I think is really very, very important. And

681 it is critical that we get it right, because we want to

682 ensure that competitive providers have real access to

683 spectrum. So can you commit to addressing the concerns of

684 the competitive carriers prior to the start of the auction?

685 So that is my first question.

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686 My second question is, some of the medical community
687 have suggested that the FCC delay implementation or
688 consideration of its technical rules for the use of channel
689 37 by unlicensed TV white space devices. Now, delay is, I
690 think, highly concerning, because this is one of the three
691 channels that tech companies say are, at a minimum, needed in
692 this band to stimulate and sustain investment in enhanced Wi-
693 Fi. So do you think that your proposal already adequately
694 protects patients, and will prevent harmful interference to
695 hospitals? I think that, you know, those are--I could ask a
696 lot of questions, but I think that those two are really
697 important.

698 And also this year there--Mr. Chairman, there have been
699 eight broadcast television blackouts involving almost 30 U.S.
700 cities. Can you tell us when the FCC will complete its
701 review of the good faith rules, and when we can expect new
702 rules to be put in place to better protect consumers? So
703 those are my questions to you, and a quick one to
704 Commissioner Pai.

705 I read recently, and he is not here, but--something that
706 Commissioner O'Reilly said, and it is a quote of his, but it

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707 does deal with FCC's--the FCC's governing principles. And he
708 stated that one of the FCC's governing principles should be
709 that the Internet is not a necessity in the everyday lives of
710 Americans. And I know that, you know, he brought up that it
711 is not even close to being a human right. I mean, I don't
712 think that is the jurisdiction of this Committee, human
713 rights, but it is disturbing to me that we would move away
714 from that, relative to a principle, and I wanted to know if
715 you agree or disagree, you want to add or subtract from it.
716 So I will go to Chairman Wheeler first, and then to
717 Commissioner Pai.

718 Mr. {Wheeler.} Thank you, Ms. Eshoo. Let me see if I
719 can hit those one, two, three.

720 Ms. {Eshoo.} Um-hum.

721 Mr. {Wheeler.} With--

722 Ms. {Eshoo.} Reserve trigger--

723 Mr. {Wheeler.} Reserve--

724 Ms. {Eshoo.} --channel 37--

725 Mr. {Wheeler.} As far as the--

726 Ms. {Eshoo.} --interference--

727 Mr. {Wheeler.} --reserve trigger--

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728 Ms. {Eshoo.} Um-hum.

729 Mr. {Wheeler.} --is concerned--

730 Ms. {Eshoo.} And the blackouts.

731 Mr. {Wheeler.} --what we have tried to do is to make
732 sure that there is reserve spectrum available. It is never
733 before done. As Mr. Welch and others have pointed out, it is
734 an important component of delivering service to rural areas.
735 The question then becomes, after you do that, do you want to
736 create rules that allow people to withdraw from the auction
737 early, and not have to pay as much as if an auction had been
738 ongoing? And that is what is being requested. That is not
739 what is currently in our proposal. That--we don't think that
740 there should be a quick out, I have got what I want, let me
741 stop the bidding right now for reserve spectrum.

742 Secondly, insofar as you are--channel 37 and medical
743 devices, we changed--in our upcoming order, we have changed,
744 from 180 meters to 380 meters, the distance that an
745 unlicensed device would be allowed close to these facilities,
746 facilities that are using channel 37. And that number was
747 arrived at as a result of some studies that were done by the
748 medical telemetry folks, and so that is how that number--why

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749 that number was increased.

750 There is a failsafe in here, however, and that is that,
751 as you know, that all unlicensed spectrum has to go through a
752 coordination process that involves a database, where you--

753 Ms. {Eshoo.} Um-hum.

754 Mr. {Wheeler.} --get permission to use it, if you go
755 by--knowing that there is nobody there. If that 380 meters
756 is insufficient in a particular area because of some rare
757 equipment they have got, or whatever, that database can be
758 adjusted to say, no, you can't do it here. So I think that
759 what we have done, in regard to medical equipment, is two-
760 fold. One, to expand the absolute blackout area, and two,
761 then to have in there a flexible system that will reflect
762 what reality is and shut down if there is a situation that
763 would cause interference.

764 In regard to your third question, regarding TV blackouts
765 and good faith negotiations, we intend to have an NPRM out by
766 September the 4th, as this Committee has told us to do, on
767 that topic, and to be discussing exactly what are the full
768 set of issues that should be involved in good faith.

769 Ms. {Eshoo.} Um-hum.

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770 Mr. {Pai.} Thank you, Congresswoman, for the question.
771 I embrace the FCC's charge as given by Congress. In fact,
772 the first charge in the Communications Act, which is to make
773 available, so far as possible, to all the people in the
774 United States rapid, efficient nationwide communication
775 services. And in the digital age that increasingly, as you
776 know, means broadband. And I believe that not only because I
777 am a son of rural America, whose parents currently live on
778 the opposite side of the digital divide, but I also have seen
779 it as a Commissioner across this country.

780 A few weeks ago I was in Dillard, Nebraska, population
781 287, where I visited C and C Processing, a husband and wife
782 meat processing plant that, 20 years ago, was literally a two
783 person operation, and now, thanks to a broadband connection,
784 they export at retail to every state in the country, and
785 around the world. They have exported wholesale to Whole
786 Foods and--

787 Ms. {Eshoo.} So you are saying you disagree with--

788 Mr. {Pai.} Well, what I am saying is that I embrace
789 different policies to make sure that broadband deployment is
790 as wide and as deep as possible. I will leave the semantics

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791 for others to debate. I am focused on our job, as enmeshed
792 in Section--

793 Mr. {Walden.} The gentlewoman's time--

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

795 Mr. {Walden.} The gentlewoman's--

796 Ms. {Eshoo.} Thank you--

797 Mr. {Walden.} --time has expired.

798 Ms. {Eshoo.} --Mr. Chairman.

799 Mr. {Walden.} The Chair now recognizes the gentlelady
800 from Tennessee, Mrs. Blackburn.

801 Mrs. {Blackburn.} Thank you, Mr. Chairman. Okay,
802 Commissioner Wheeler, I want to thank you for your letter
803 dealing with the spectrum auction in small businesses. We
804 got it yesterday, and I may come back to you with a couple of
805 more questions on that. You know my concern, and I
806 appreciate your responses. All right. I think we can all
807 agree that we are for a successful spectrum auction.
808 Everybody agree for that?

809 Mr. {Wheeler.} Yes.

810 Mrs. {Blackburn.} Okay. I am so happy we are all on
811 the same page. Make your day, right? Let us talk about the

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812 steps. And, Commissioner, you were just laying out some of
813 the steps you thought were necessary. Let us back it up a
814 little bit. And I think when you look at the CTIA report
815 that came out--and, Mr. Chairman, I think we--I want to
816 submit that to the--for the record, if no one has put that
817 into the record.

818 Mr. {Walden.} Without objection.

819 Mrs. {Blackburn.} Okay. I think that the prelude to a
820 successful auction, and to the steps that you just
821 articulated, is to know how much spectrum that you have. And
822 we know Federal agencies are squatting on a lot of spectrum,
823 and that they are not utilizing it. They are sitting on it
824 just in case they think they might want to do something with
825 it. And when you look at 13 years between the auction and
826 the deployment, that is a lot of time. And you look at the
827 increased usage that we are expecting, I think that it is
828 dangerous to, first of all, not inventory and know exactly
829 what you have got. So, Mr. Chairman, to you, have you
830 inventoried the Federal agencies, and do you know how much
831 spectrum they are squatting on, and what you can recoup?

832 Mr. {Wheeler.} First off, Mrs. Blackburn, I would like

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833 to identify with exactly what you are talking about.

834 Mrs. {Blackburn.} Okay.

835 Mr. {Wheeler.} We share the same goals.

836 Mrs. {Blackburn.} I am so--

837 Mr. {Wheeler.} I--

838 Mrs. {Blackburn.} --excited that we agree on something.

839 Mr. {Wheeler.} Well, this is--we could be--

840 Mrs. {Blackburn.} This is a good day.

841 Mr. {Wheeler.} --violent agreement as well.

842 Mrs. {Blackburn.} Good.

843 Mr. {Wheeler.} You know, I--

844 Mrs. {Blackburn.} Good.

845 Mr. {Wheeler.} When I was President of CTIA, I happened

846 to be the guy that negotiated the first deal with the

847 government to repurpose Defense Department spectrum. Here is

848 what I found, as a way of answering your question about

849 squatting. The Corps of Engineers, for instance, said they

850 were fully utilizing a piece of spectrum because once a month

851 it took a reading on a dam level.

852 Mrs. {Blackburn.} Right.

853 Mr. {Wheeler.} I don't think that is fully utilizing.

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854 So the question we have to work through is how do you
855 encourage Federal agencies, and all users, to think in terms
856 of what is full application? So the answer is we know--to
857 your question is we know who uses what spectrum. The
858 specific use inside that spectrum, however--

859 Mrs. {Blackburn.} Okay.

860 Mr. {Wheeler.} --is something that the licensee
861 controls.

862 Mrs. {Blackburn.} Okay. I don't want to run out of
863 time. Now, if you know who has how much spectrum, have you
864 put this into one report? Mr. Pai, Commissioner Pai, have
865 you seen a report that says this is how much that is out
866 there? Could you quantify a number--

867 Mr. {Pai.} I have not seen a particular report about
868 how Federal users are actually using the spectrum that they
869 have, and I do agree--

870 Mrs. {Blackburn.} And how much they have?

871 Mr. {Pai.} And it would be very helpful to have that.

872 Mrs. {Blackburn.} I think it would too, before we get
873 too far down this road. What I would like to ask you to do
874 is quantify this. And you and I know, all of us know, the

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875 way you can re-pack this, and tighten it up, you can better
876 utilize the spectrum, but these Federal agency--yeah, I have
877 got to tell you, we have just done an IG report on wasteful
878 spending, and not following what the IG has asked them to do,
879 looking at 4 years of these IG reports. If you don't force
880 the issue, they are not going to take the action. And
881 spectrum is a very valuable commodity right now, and we
882 cannot allow Federal agencies, through laziness, or lack of
883 creativity, or lack of innovation, to squat on this spectrum.

884 So, before we get too far afield with the 350 megahertz
885 auction and further, I would like for you to come back to us
886 and say, this is what the--each of these different
887 departments has, and this is what their utilization is, and
888 this is how we can pull that back and re-deploy this into the
889 marketplace and auction it. Because if we need a Federal
890 override for something, just like with the AM band, come back
891 and do something like that, but don't let them squat on this
892 spectrum.

893 Mr. Pai, before my--my time has run out. I will come
894 back for the second round. Yield--

895 Mr. {Walden.} All right, the gentlelady's time has

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896 expired. We will now go to the gentleman from New Jersey,
897 Mr. Pallone.

898 Mr. {Pallone.} Thank you, Mr. Chairman. Chairman
899 Wheeler, I have three questions in three different areas I
900 want to try to get in, so I am going to ask you to respond
901 fairly quickly, if you can. You committed that the FCC would
902 complete a proceeding by the end of this year to make our
903 wireless networks more resilient--this deals with
904 communications and emergencies--and I wanted to thank you
905 again for that commitment. Last week former Commissioner
906 Adelstein promised that the tower industry would work closely
907 with your staff to install new rules for network resiliency.
908 We are approaching the heart of hurricane season, and the
909 third anniversary of Sandy is almost upon us, so what is the
910 status of the FCC's proceeding on network resiliency?

911 Mr. {Wheeler.} So we are working with the industry on
912 that, Mr. Pallone. It is essential that a tower be able to
913 stand up. I think we probably also have to address the
914 backup power issue because if you don't--if the tower is
915 standing, but there is no juice to it, so it is not worth
916 anything, so these all fit together into a total package.

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917 And I would be happy to do a more detailed response on that,
918 if you would like.

919 Mr. {Pallone.} Okay. If you do have something you
920 could update us with now, through the Chairman, I would like
921 to maybe have a written response, if we could, without
922 objection.

923 Mr. {Walden.} All right.

924 Mr. {Pallone.} Thank you. Then the second question is,
925 with regard to designated entities, in my opening statement I
926 mentioned I support your recent decision to modify the FCC's
927 designated entity rules, and since the rules have passed,
928 however, I have heard criticism that just as the FCC closed
929 some loopholes, it opened others. So how do you respond to
930 those critics that question these decisions?

931 Mr. {Wheeler.} I think that we have tightened up the
932 rules substantially, and would be happy to discuss the
933 specific ways in which we have done that. The key think is
934 also, if you take a look at--and I have got to be real
935 careful at how I talk about this, because it is a pending
936 proceeding, but if you look at what is currently on the
937 record with regard to the DEs and their relationship with

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938 Dish in the AWS-3 auction, we used a totality of
939 circumstances test that had never been applied before to say,
940 we don't think that that is a good idea, at a staff level.
941 That is coming to the Commission, so, again, I have to rule
942 on that, so I won't go any further.

943 But the fact of the matter is that we then took that
944 totality of the circumstances and put it into the DE rules in
945 this re-write that we just did. So I think that we have
946 shown that there is a total picture you have to look at, one,
947 and two, that we have the--whatever it takes to step up and
948 blow the whistle and say, that is not right.

949 Mr. {Pallone.} Okay. With regard to the incentive
950 auction and consumer outreach, as we head towards the
951 incentive auction in the early part of next year, I become
952 concerned about whether consumers will be prepared for the
953 transition. In many ways, this education effort will be even
954 more difficult than the one we faced with the digital TV
955 transition, because we don't have funding for consumer
956 outreach this time, and we will have to deal with a flash
957 cut.

958 So I raised this issue with the National Association of

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959 Broadcasters, and I can say that they committed to working
960 with us to start planning on how best to reach out to
961 consumers. My question is, can you commit to working with us
962 and the broadcasters to devise a comprehensive plan to ensure
963 that consumers will know what they need to do to continue to
964 watch over the air TV?

965 Mr. {Wheeler.} Yes, sir.

966 Mr. {Pallone.} Okay. You have actually answered all
967 this in 4 minutes, so I will yield back the balance of my--

968 Mr. {Walden.} Well done.

969 Mr. {Pallone.} --time.

970 Mr. {Walden.} The Chairman now recognizes the gentleman
971 from Texas, Mr. Barton, up next.

972 Mr. {Barton.} Thank you, Mr. Chairman, and thank you
973 and the Ranking Member for this hearing. Thank our two
974 Commissioners, the Chairman, Commissioner Pai, for being
975 here.

976 I am one of the advocates for low power television, and,
977 as we all know, they don't have any real standing in this
978 repackaging of the spectrum, if the mainline broadcasters
979 give it back. But they do have a product. They have

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980 provided valuable service to the country, and I would like to
981 see them helped in some way, if at all possible. So my
982 question to both of you, we will start with the Chairman, and
983 then Commissioner Pai, what can be done to ensure that we
984 still have low power television once this repackaging is
985 complete?

986 Mr. {Wheeler.} Thank you, Mr. Barton, and I would like
987 to associate myself with this position that you have taken.
988 Low power is an important voice in the community, and
989 translators as well. I set up a special meeting with low
990 power operators out at the NAB last year, at their big
991 convention, to make sure that I was hearing from them, and we
992 were talking about it. I think that there are multiple
993 things that we can do inside the statutory constraint that
994 you referenced. One is that we will help them find new
995 channels after the moving of the--firstly, we don't know
996 which low powers are going to be affected, because we don't
997 know what is--

998 Mr. {Barton.} Right.

999 Mr. {Wheeler.} --going to happen in the auction. We
1000 don't know what is going to be available for them to move, so

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1001 we don't know what is going to happen there. So we all have
1002 to kind of sit in limbo, and watch for that. But then, even
1003 beyond that, we are going to begin a rulemaking from which we
1004 will allow low power and translators to share a channel, just
1005 like we are allowing licensees, broadcast licensees, full
1006 power licensees, to share a channel. And that will create--
1007 that will take advantage of the benefits of digital, and
1008 create another path.

1009 Mr. {Barton.} So you do see that there will still be a
1010 role for low power television?

1011 Mr. {Wheeler.} Yes, sir.

1012 Mr. {Barton.} Okay. Mr. Pai?

1013 Mr. {Pai.} Congressman, I share your assessment, and
1014 the Chairman's assessment, that low power television provides
1015 valuable service in Texas, Utah, Nebraska, all across this
1016 country. And that is why I flagged, almost 3 years ago, the
1017 importance of making sure that, within the statutory
1018 constraints, the FCC does what it can, in the context of the
1019 incentive auction, especially in markets where we don't need
1020 spectrum to help them stay in business.

1021 My concern is, however, that certain of the policy cuts

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1022 that we are on the brink of making might end up impairing
1023 LPTV, and the vacant channel proceeding is one example of
1024 that, where the FCC has said, okay, if there is a vacant
1025 channel, or two vacant channels available after the incentive
1026 auction, then we will reserve those from license uses. And,
1027 you know, not to denigrate, obviously, the importance of
1028 unlicensed, but nonetheless, this is the TV band that we are
1029 talking about, and if LPTV translators--LPTV stations don't
1030 have a place to go, it seems to me that we should do what we
1031 can to prioritize their staying in business.

1032 Mr. {Barton.} Thank you. Thank the both of you, and
1033 with that, Mr. Chairman, I yield back.

1034 Mr. {Walden.} The gentleman yields back. The Chair now
1035 recognizes the gentlelady from California, Ms. Matsui, for 5
1036 minutes.

1037 Ms. {Matsui.} Thank you, Mr. Chairman.

1038 Mr. {Doyle.} Mr. Chairman--

1039 Ms. {Eshoo.} Mr. Doyle.

1040 Mr. {Walden.} I am just going by the list that your
1041 staff--

1042 Mr. {Doyle.} I was here well before the gavel--

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1043 Mr. {Walden.} Well--

1044 Mr. {Barton.} I will give my 2 minutes to Mr. Doyle. I
1045 had a minute 55.

1046 Mr. {Walden.} I am just going by the list your staff
1047 provided, so--

1048 Ms. {Matsui.} I don't want to get in the middle of
1049 this.

1050 Mr. {Walden.} We will go with whatever you want.

1051 Mr. {Doyle.} You don't go in order?

1052 Mr. {Barton.} If Mr. Doyle will vote for my bill--

1053 Mr. {Doyle.} I will yield to Ms.--

1054 Mr. {Barton.} --to repeal the ban on crude oil exports--
1055 -

1056 Mr. {Doyle.} I am going to yield to Ms. Matsui. Go
1057 ahead.

1058 Mr. {Walden.} I will go with--I am just going by their
1059 list, so--your list, so go ahead, Ms. Matsui.

1060 Ms. {Matsui.} Thank you very much, and Mr. Doyle, thank
1061 you very much too.

1062 Chairman Wheeler, after next year's incentive auction
1063 the FCC would have implemented the last auction Congress

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1064 identified in the 2012 Spectrum Act, yet consumer demand for
1065 wireless services that rely on spectrum continues to explode,
1066 and we know it takes a long time for--to plan for any new
1067 spectrum auction. Mr. Chairman, do you agree that we need to
1068 create a spectrum pipeline for the next decade?

1069 Mr. {Wheeler.} Yes, ma'am.

1070 Ms. {Matsui.} Okay. Now, what do you think are the
1071 first steps for the policymakers to consider?

1072 Mr. {Wheeler.} Well, I think that you and Mr. Guthrie
1073 have pointed a way towards that by providing some
1074 Congressional oversight and encouragement in the process.
1075 The--as Mrs. Blackburn indicted, clearly the FCC has a role
1076 to say, okay, where are the current allocations? But it then
1077 goes to the Executive Branch to determine the allocation
1078 within--

1079 Ms. {Matsui.} Um-hum.

1080 Mr. {Wheeler.} --specific executive agencies, and to
1081 answer those questions. I would look forward to working
1082 with--and we do have a good working relationship with NTIA
1083 and--to try and address these issues. And I think that this
1084 is something that both NTIA and the FCC can work together on.

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1085 But I also need to be really candid and say that the
1086 kind of leadership that you and Mr. Guthrie are showing, that
1087 this Committee has shown, in keeping the spotlight on, and
1088 keeping the pressure on, is essential to paying attention to
1089 things downtown.

1090 Ms. {Matsui.} Well, we intend to keep the spotlight on,
1091 so thank you. Congress tasked the FCC with balancing many
1092 priorities in the upcoming incentive auction, unleashing new
1093 spectrum for licensed mobile broadband, protecting consumer
1094 access to local broadcasting, and creating new opportunities
1095 for unlicensed spectrum use. If done right, the FCC can
1096 ensure that the incentive auction clears a significant amount
1097 of beachfront spectrum needed to fuel our wireless economy,
1098 while protecting over the air broadcasting, and preserving
1099 the chance for unlicensed innovation.

1100 I know a lot of concerns have been raised, and that the
1101 FCC is scheduled to make some key decisions at your August
1102 meeting. Chairman Wheeler, what is the FCC doing to make
1103 sure stakeholders can feel confident in the incentive
1104 auction?

1105 Mr. {Wheeler.} Well, thank you, Congresswoman. You

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1106 know, the challenge of the incentive auction is--it is like a
1107 very complex crossword puzzle, except for the fact that there
1108 is no picture on the front of the box, okay?

1109 Ms. {Matsui.} Yeah.

1110 Mr. {Wheeler.} And so what we have been trying to do is
1111 to make sure that, of all the parties that are interested,
1112 that they can walk away with a solution. It may not be what
1113 they have come in and asked for. And as a person who used to
1114 also go in and ask the FCC to do things my way on spectrum
1115 auctions, I know it doesn't always have to be that way, but
1116 you need to make sure that, for instance, as Ms. Eshoo and I
1117 discussed for medical devices, that you have an answer there,
1118 that you have an answer for wireless mikes, that you have an
1119 answer for unlicensed spectrum. And all of these have to
1120 balance out. And I believe that the item that we are
1121 bringing forward contains that kind of balance. Would I like
1122 to tweak it here or tweak it there, certainly, but you push
1123 here, and something--

1124 Ms. {Matsui.} Yeah.

1125 Mr. {Wheeler.} --busts over here. And so I think that
1126 the spectrum auction team, headed by Gary Epstein and Howard

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1127 Symons, have done an excellent job in wading through all of
1128 this.

1129 Ms. {Matsui.} Okay. I am going to ask you too, are we
1130 on track to see the incentive auction successfully completed
1131 next year in a way that preserves the goals that Congress
1132 intended?

1133 Mr. {Wheeler.} Yes, ma'am.

1134 Ms. {Matsui.} Okay. I am a longtime advocate for
1135 modernization of the Lifeline Program. Broadband is a
1136 necessity, whether it is applying for a job, growing a small
1137 business, or parents helping their kids with homework, and I
1138 applaud the FCC for starting a rulemaking earlier this year
1139 to bring Lifeline into the 21st century. Mr. Chairman, what
1140 are the next steps for Lifeline reform?

1141 Mr. {Wheeler.} I hope that we will have a rulemaking to
1142 follow up on the Notice of Proposed Rulemaking as soon as
1143 comments and reply--comments are closed, and we can sift
1144 through them and move forward. But I think that--and let me
1145 address an issue that Commissioner Pai was dealing with a
1146 moment ago. Broadband is the information pathway--

1147 Ms. {Matsui.} Um-hum.

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1148 Mr. {Wheeler.} --of the 21st century, and to deny
1149 access to that is to deny access to the 21st century.

1150 Ms. {Matsui.} Right.

1151 Mr. {Wheeler.} And I think we need to have policies
1152 that make sure that everyone in America has access to that
1153 essential pathway of the 21st century.

1154 Ms. {Matsui.} I agree with you. Thank you very much,
1155 and I yield back.

1156 Mr. {Walden.} The gentlelady's time has expired, and
1157 yields back. The Chair now recognizes the Vice-Chair of the
1158 Subcommittee, the gentleman from Ohio, Mr. Latta.

1159 Mr. {Latta.} Thank you very much, Mr. Chairman, and
1160 again, gentlemen, thanks for being here. Commissioner Pai,
1161 if I could start my questions with you, we all know that
1162 consumers are offered an array of video choices today, and
1163 new Internet delivered options are also complimented by the
1164 growing use of consumer apps to watch traditional TV on
1165 mobile devices. As a result, it seems that more online
1166 entertainment options, such as Netflix, and other over the
1167 top providers have transformed the marketplace. I am going
1168 to ask these couple questions. With that said, Commissioner,

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1169 what is your assessment of the video marketplace, and can you
1170 remember a time when consumers have had so much choice in
1171 the--in that market?

1172 Mr. {Pai.} Congressman, thanks for the question. I
1173 can't think of a time when consumers of video services have
1174 ever had it better. Having grown up in the era of three
1175 broadcast stations, and no satellite, and no cable, I can
1176 tell you that now, when I can power up Crackle on my laptop
1177 at--wherever I want, on whatever device I want, it is really
1178 a benefit. And I think that is part of the reason why I came
1179 out a couple weeks ago, and I said that I don't think that
1180 the FCC needs to regulate so-called over the top video. And
1181 that is consistent with what the Digital Media Association,
1182 which represents Apple, Amazon, Pandora, Sony, YouTube, and
1183 others said just last week. This is not a marketplace that
1184 has failed. It is thriving, and let us leave well enough
1185 alone.

1186 Mr. {Latta.} So, in your opinion, that is what is
1187 driving innovation?

1188 Mr. {Pai.} Absolutely, and that is one of the great
1189 things about the broadband revolution, is that all these

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1190 business models are thriving because everyone can deliver
1191 these services over the Internet.

1192 Mr. {Latta.} Okay. Let me follow up with this. Should
1193 the government be out there picking winners and losers in
1194 this space, or trying to impose new technology mandates to
1195 potentially so that--slow that innovation and limit that
1196 choice?

1197 Mr. {Pai.} Absolutely not. I think the worst thing the
1198 government could do would be to regulate either the entire
1199 marketplace, or pick out particular business models for
1200 disparate regulatory treatment. That will simply serve to
1201 distort the marketplace, and we will never know which
1202 business model consumers really would prefer.

1203 Mr. {Latta.} Thank you. Turning to you, Mr. Chairman,
1204 if I may, you know, my district is Northwest/West Central
1205 Ohio, and you are kind of familiar with it in your days back
1206 in Ohio. I have a lot of general community hospitals, and
1207 other larger hospital associations in my district, and a
1208 number of these hospitals have expressed a very serious
1209 concern to the Commission regarding the technical rules for
1210 the use of the channel 37 by unlicensed TV white spaces

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1211 devices.

1212 It has already been decided that channel 37 will be
1213 available for use by unlicensed devices in part of the
1214 incentive auction proceedings, however, technical rules that
1215 provide or protect wireless medical telemetry service, WMTS,
1216 assistance also allow for the safe use of the TV white spaces
1217 devices that have not been mutually agreed upon. Let me ask
1218 you, do you agree that the--that because wireless devices
1219 could cause harmful interference to hospital operations, and
1220 jeopardize patient safety, it is vitally important that all
1221 parties have the opportunity to work cooperatively to reach a
1222 consensus industry agreement on this issue before the
1223 Commission considers it in the August open meeting?

1224 Mr. {Wheeler.} So I agree that there is a technological
1225 challenge that we have to make sure that we deal with, and I
1226 believe that we have a belt and suspenders approach to that.
1227 The belt is to say that 380 meters from such a site is a no-
1228 go zone, which is a--essentially tripling of where we were
1229 before in response to what the WMTS folks have said, and some
1230 of the trials they have run up in Minnesota.

1231 But the suspenders are also that the database, that is

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1232 the coordination database, that must be used for unlicensed
1233 purposes, if there is a problem in Northern Ohio, in a
1234 particular area, that information gets fed into the database,
1235 and that then becomes a no-fly zone. And so what we have put
1236 in place is hard rock, and flexibility, that is going to
1237 deliver the kind of security that I think that both you and
1238 we are looking for.

1239 Mr. {Latta.} But do you think the--they have that--
1240 enough time to make sure they get that information to the
1241 Commission before your August meeting? Do you think there is
1242 enough time? Because, you know, as--here we are on--what is
1243 it, the, you know, the 27th of--or--of July, that--or 28th
1244 that we are right at that point?

1245 Mr. {Wheeler.} So they have just submitted to us
1246 additional information from these field tests, and it was
1247 based upon that that we altered what our proposal is. This
1248 is not an issue that hasn't been--being dealt with since you
1249 passed the Spectrum Act. I mean, this is something that has
1250 been going on for multiple years. Their tests were really
1251 helpful in that regard. That is why we tried to make sure
1252 that we harmonize with the kinds of things that they

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1253 discovered in those tests, and provide the flexibility to
1254 move in and do something if, in fact, there is an aberration.

1255 I mean, this is--this kind of goes to Mrs. Blackburn's
1256 point about sharing. This is the whole reality about
1257 sharing, that we want to create a structure that says that
1258 you can deal with the aberrations. And this Committee told
1259 us in statute to do that, and that was a wise Decision on
1260 your part, and we are following through on that.

1261 Mr. {Latta.} Well, thank you. Mr. Chairman, if I may,
1262 I would like to submit for the record a statement from the
1263 American Hospital Association.

1264 Mr. {Walden.} Without objection.

1265 [The information follows:]

1266 ***** COMMITTEE INSERT *****

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|

1267 Mr. {Latta.} Thank you.

1268 Mr. {Walden.} The Chair now recognizes the gentleman

1269 from Vermont. Just kidding. Mr. Doyle from--

1270 Mr. {Doyle.} Boy, that--

1271 Mr. {Walden.} --Pennsylvania.

1272 Mr. {Doyle.} That would have really gone bad.

1273 Mr. {Welch.} Mr. Chairman, if your goal was to get his

1274 attention, you succeeded.

1275 Mr. {Walden.} Just wanted to make sure he was awake.

1276 Mr. Doyle.

1277 Mr. {Doyle.} Thank you, Mr. Chairman. Gentlemen,

1278 welcome. Commissioner Pai, I was just listening to your

1279 opening statement, where you were lamenting how you and

1280 Commissioner O'Reilly have all these wonderful ideas that are

1281 met with either no response, or no. And I just want you to

1282 know, we on the Democratic side, we are feeling your pain.

1283 It is called being in the minority.

1284 Mr. {Walden.} Would the gentleman--

1285 Mr. {Doyle.} We know that feeling.

1286 Mr. {Walden.} --just for a second. We have been

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1287 informed by the folks that do the streaming, Mr. Wheeler, if
1288 you could pull that microphone closer? In the Internet Age,
1289 they are not able to hear you quite as well, so--

1290 Mr. {Doyle.} Thank you, Mr.--we feel your pain, I just
1291 want you to know. Chairman Wheeler, I have questions for
1292 you. I know, like me, you are a strong advocate for a
1293 competitive telecommunications marketplace, and you have been
1294 a great advocate in moving these long stalled issues forward.
1295 I have a number of questions and concerns about the special
1296 access proceeding. First, I am concerned that the window for
1297 moving forward on special access reform is narrowing,
1298 particularly with this latest extension of the comment
1299 window. Additionally, I have heard that the FCC still hasn't
1300 made the data from the special access data request available
1301 to the stakeholders. With the comment deadline looming, when
1302 will the stakeholders be able to access this data in order to
1303 make fully informed comments for the proceeding?

1304 Mr. {Wheeler.} Thank you, Mr. Doyle. I don't know the
1305 specific date. We will announce a specific date. I can't
1306 free form it here, but obviously there have been multiple
1307 challenges with special access that start with a collection

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1308 of data that was thwarted for years, and we were finally able
1309 to begin collecting that data. Insofar as--we will make sure
1310 that data is on the record, and on the record in a timely
1311 manner. And I share your interest in wanting to make sure
1312 that we have an opportunity to address the special access
1313 question, but it needs to be fact-based.

1314 Mr. {Doyle.} Um-hum. I mean, can you give us any idea
1315 when you anticipate the Commission taking action on the
1316 proceeding? I mean, is--are we talking--is it going to be in
1317 my lifetime?

1318 Mr. {Wheeler.} Sir, I hope it is while I am Chairman,
1319 and that that is a shorter period than your lifetime.

1320 Mr. {Doyle.} Let me ask you another thing. And, like a
1321 lot of people on this Committee, and our Ranking Member, Ms.
1322 Eshoo, I also have concerns about the trigger for the
1323 spectrum reserve in the incentive auction. We have all been
1324 working hard to ensure that this auction will enhance
1325 competition for wireless broadband, and that consumers will
1326 reap the benefits of lower prices and greater innovation. To
1327 that end, what is the Commission doing to address the
1328 concerns that many of us have about the reserve trigger,

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1329 particularly in regard to the trigger coming into play so
1330 late in the auction?

1331 Mr. {Wheeler.} Well, there--the issue of--are--and let
1332 me be sure which trigger you are talking about. Are you
1333 triggering the assignment round issue, or are you triggering
1334 the--go ahead, if you want to--

1335 Mr. {Doyle.} No, the--so--the reserve.

1336 Mr. {Wheeler.} The reserve? The--so the question then
1337 becomes, are you going to cut back on the amount of bidding
1338 that goes on for reserve spectrum? And we have taken the
1339 position that you should not. That, first of all, the
1340 reserve has been created. That in itself is a huge step,
1341 that there are a lot of people on this Committee, and on the
1342 Commission, disagree with.

1343 Then the question becomes, do you want the auction to
1344 function through the whole process, or do you want to
1345 truncate it for a quicker trigger for this spectrum, while
1346 the other spectrum auction keeps going? And it seems to me
1347 that what that ends up doing is reducing participation in the
1348 auction. It probably reduces the prices people will pay,
1349 because it means that, here in the reserve, you know, you

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1350 stop, while the bidding keeps going on up here in the
1351 unreserved. And I think an auction is something that
1352 proceeds to a conclusion, not an auction that gets terminated
1353 to favor one party or another. And so the establishment of
1354 the reserve is a huge point. I think now we--what we should
1355 not be doing is picking winners and losers inside that
1356 reserve.

1357 Mr. {Doyle.} Um-hum. Thank you, Mr. Chairman. I will
1358 yield back.

1359 Mr. {Walden.} The gentleman yields back. The Chair now
1360 recognize the gentleman from Illinois, Mr. Shimkus, for 5
1361 minutes.

1362 Mr. {Shimkus.} Thank you, Mr. Chairman. Welcome. You
1363 both agree that, to facilitate rural broadband deployment
1364 really is going to take USF reform, is that correct? Would
1365 you--

1366 Mr. {Wheeler.} Yes, sir, we both--

1367 Mr. {Shimkus.} And Commissioner Pai?

1368 Mr. {Pai.} Yes, sir.

1369 Mr. {Shimkus.} And, Commissioner Pai, in your opening
1370 statement you mentioned some principles. Can you re-state

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1371 those real quickly again for me? I caught a couple of them,
1372 but I didn't--

1373 Mr. {Pai.} So with respect to my rural broadband plan,
1374 it would be a two-fold plan. First and foremost would be
1375 targeted changes to our universal service rules to allow
1376 essentially rated return carriers to get universal service
1377 support for the costs that they incur for deploying broadband
1378 in rural areas. And so currently those--that support only
1379 extends to voice service. I would let them get that support
1380 if they offered broadband as a standalone service.

1381 Secondly, creating a voluntary path where rate of return
1382 carriers could, at their option, get into a similar Connect
1383 America fund that we have for price gap carriers. And
1384 obviously the so-called ACAN model in that regard isn't
1385 perfect, but nonetheless, if rate of return carriers find it
1386 to be preferable, they should be given a limited window to be
1387 able to do that.

1388 Mr. {Shimkus.} Thank you. Chairman Wheeler, this is
1389 all--these are all kind of rural, you know, questions for
1390 rural service, so it is really appealing to the constituency
1391 representing about a third of the State of Illinois, so it is

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1392 like a lot of the rural areas. So this is on this dropped
1393 call issue still. I mean, I go to some of my either family-
1394 owned phone--

1395 Mr. {Wheeler.} Yes, sir.

1396 Mr. {Shimkus.} --companies, or the co-ops that I still
1397 have out there, and I think we talked about the last couple
1398 hearings--

1399 Mr. {Wheeler.} Yes.

1400 Mr. {Shimkus.} --that we have been with, and the--it
1401 is--the intermediary carriers called the least cost routers,
1402 they--

1403 Mr. {Wheeler.} Right.

1404 Mr. {Shimkus.} --seem to be the problem. Can you tell
1405 me how we are going to--because you know these companies.
1406 They get blamed if the call gets dropped. It is an
1407 intermediary carrier that is doing it, and it causes all
1408 sorts of problems.

1409 Mr. {Wheeler.} Thank you, Congressman. Yes, and you
1410 put your finger on--it is the intermediate carrier, and it is
1411 the failure on the part of the major carriers to police their
1412 subcontractors, if you will. So we have done several things.

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1413 First of all, there used to be a game that got played where
1414 they would give a false ring, you know, to pretend the call
1415 was being completed, when it really wasn't. We have got a
1416 rule in place saying that is out of business.

1417 Secondly is that we have been enforcing this. Within
1418 the last few weeks we fined Verizon \$2 million, and required
1419 them to do \$3 million of additional improvements to stop
1420 this, because in 26 rural areas they weren't paying attention
1421 to this, which is the heart of the problem. It is this going
1422 to what you call the intermediate carriers that they need to
1423 be paying attention to.

1424 And thirdly is that we have a data survey out there
1425 right now to try and identify exactly what the extent and
1426 other causes might be so that we can take additional action,
1427 if warranted. But yes, sir, we understand that the call
1428 completion is a serious issue, and we want to be all over it.

1429 Mr. {Shimkus.} Well, that is good, because we are going
1430 into the August break, and I know they will have--

1431 Mr. {Wheeler.} You are going to hear about it.

1432 Mr. {Shimkus.} I am--they are going to come visit me
1433 again during the break, and they are going to ask, and so I

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1434 am glad I got a chance to ask the question, and continue to
1435 address this issue.

1436 Last question, Commissioner Pai, when it comes to the IP
1437 transition, and the ability to upgrade technologies, we kind
1438 of talked about that earlier, do all providers face a
1439 regulatory level playing field when it comes to making
1440 upgrades and provide their customers with the newest
1441 technology?

1442 Mr. {Pai.} Congressman, I don't think they do. I think
1443 that some segments of the industry face no barrier to
1444 deciding to deploy next generation infrastructure that
1445 connects people to digital opportunities. On the other hand,
1446 another segment faces antiquated rules that essentially
1447 require them to maintain the networks of yesterday, the
1448 copper-based FTDM networks. And obviously every dollar they
1449 have to spend maintaining those networks is by definition a
1450 dollar they can't spend deploying fiber that would allow them
1451 to compete with others.

1452 And so that is why I have said that, look, if we want to
1453 have more broadband competition, let us have a level playing
1454 field, regulatorily speaking, in which every single provider

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1455 has the strongest possible incentive to deploy fiber to the
1456 home to compete for that customer's attention.

1457 Mr. {Shimkus.} Great. And I will just end on--Chairman
1458 Wheeler, thank you for your work on 911. I am glad you--we
1459 talked prior, and I look forward to getting together with
1460 Ranking Member Eshoo to--

1461 Mr. {Wheeler.} Thank you, sir.

1462 Mr. {Shimkus.} There is always work to be done in this-
1463 -

1464 Ms. {Eshoo.} Right.

1465 Mr. {Shimkus.} --field, and--

1466 Ms. {Eshoo.} Would you yield just--

1467 Mr. {Shimkus.} I would--

1468 Ms. {Eshoo.} --for--

1469 Mr. {Shimkus.} Yeah.

1470 Ms. {Eshoo.} --10 seconds? Thank you. I thank the
1471 gentleman, and we are going to work together on that. How
1472 does the Commission come up with the amount of what a fine is
1473 going to be? I mean, in one case it is 100 million. You
1474 just mentioned two million. You know, I mean, these are
1475 considerable sums, so how do you--do you have a set of rules

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1476 around that, or--

1477 Mr. {Wheeler.} For some kinds of issues, such as
1478 Lifeline, there is a schedule. For others it is a, again,
1479 totality of the circumstances kind of a situation, where you
1480 make a judgment call.

1481 Ms. {Eshoo.} And your department--

1482 Mr. {Shimkus.} My time has expired.

1483 Ms. {Eshoo.} --makes the call?

1484 Mr. {Wheeler.} Yes, ma'am, um-hum.

1485 Mr. {Walden.} Time has expired. Now go to the
1486 gentleman from Vermont, Mr. Welch, for 5 minutes.

1487 Mr. {Welch.} Thank you very much. I thank both of you
1488 for joining us today.

1489 Chairman Wheeler, universal service, a really important
1490 issue, and I know that you have been implementing some
1491 reforms, and I am asking you to tell us what is the status of
1492 that, and what are you doing to make sure at the FCC that
1493 public resources are being responsibly used? And, actually,
1494 you can both answer that.

1495 Mr. {Wheeler.} Thank you, Congressman, because
1496 Commissioner Pai and I share the belief that he has been

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1497 talking about here, insofar as the dichotomy between narrow
1498 band and broadband, and that needs to be fixed. I think I go
1499 a little further in my approach than Commissioner Pai does.
1500 I have developed what I have now started calling the Walden
1501 Rule, because--

1502 Mr. {Walden.} Please.

1503 Mr. {Wheeler.} I--because I read the other day that you
1504 said, Mr. Chairman, ``that USF should spend money where no
1505 one else will spend''. And that is a core principle. And as
1506 this Committee has been telling us so often, you need to
1507 review what our rules are.

1508 Mr. {Welch.} Right.

1509 Mr. {Wheeler.} The fact that we are spending money for--
1510 -to subsidize the telephone company around Disney World, just
1511 because we always have, doesn't make a lot of sense. The
1512 fact that we have no guidelines for operating expenses--we
1513 just had a man in Hawaii go to jail for tax fraud. He is a
1514 provider of--recipient of universal service--rural universal
1515 service funds, and it ended up that he was charging his
1516 family's education expenses to universal service, and people
1517 were having to pay for it. We ought to have some standards

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1518 for what is in OPICS. We ought to have some standards for
1519 what is in CAPX.

1520 I was just asked the other day to approve a waiver for a
1521 universal service trial to a company that could not produce
1522 audited financial statements. That is wrong. This isn't my
1523 money. This is the people's money. We need to get it out.
1524 That is why Commissioner O'Reilly, Commissioner Clyburn, and
1525 I are working together on a bipartisan package of reforms for
1526 how we are going to deal with making sure that rate of return
1527 carriers have what Commissioner Pai I think has called a two
1528 track solution, and that is that we have a model that deals
1529 with the new broadband realities, and then we have a review
1530 of what the standards ought to be for the old system.

1531 Mr. {Welch.} Right.

1532 Mr. {Wheeler.} And we are moving down that path.

1533 Mr. {Welch.} Let me hear a little from Commissioner
1534 Pai. Thank you, Mr. Chairman.

1535 Mr. {Pai.} Congressman, I think you captured the
1536 sentiment perfectly in your opening remarks, when you said
1537 that, when it comes to broadband, rural service should be
1538 there, and be high quality. And that is exactly why I have

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1539 proposed this plan, to make sure that, when it comes to rural
1540 Americans, we don't leave them on a so-called slow lane when
1541 it comes to broadband. We give them the exact same
1542 opportunity they would have whether they were in Montpelier
1543 or in New York City.

1544 And my concern, however, is that, given the timeframe
1545 that we have committed to, which is to get this done by the
1546 end of the year, I think it would be better to embrace the
1547 approach that Congressman Cramer, and over 100 other members,
1548 including 20 members of this Committee, embrace, which is to
1549 have a targeted solution to the standalone broadband problem.
1550 I completely agree with the Chairman, there are abuses in the
1551 system that need to be corrected, and I stand willing and
1552 able to work with him and the other Commissioners to change
1553 that, but we can't let the necessary and the perfect be the
1554 enemy of the good.

1555 Mr. {Welch.} Well, thank you very much. You know, the
1556 other thing, Lifeline, my view is that it is a really
1557 important program, but there is fraud, there is abuse. And
1558 one of the things that happens around here is that, out of
1559 frustration, when there is fraud and abuse, sometimes we

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1560 attack the very existence of the program, rather than reform
1561 it. And I think where there is bipartisan agreement is that
1562 anything we can do to limit fraud and abuse, obviously, we
1563 want to do. What is the progress on Lifeline?

1564 Mr. {Wheeler.} So--thank you, Mr. Welch. The--

1565 Mr. {Welch.} And that is for both of you.

1566 Mr. {Wheeler.} The--we are going to have a rulemaking
1567 on Lifeline hopefully before the year is out. It depends on
1568 the comments and everything that we receive. And it begins
1569 with overhaul. I mean, there are two problems with Lifeline.
1570 One, it was designed wrong, and two, it was overseen wrong.
1571 It was, you know, other than that, everything is fine. But
1572 it was designed wrong.

1573 I mean--so, for instance--the--and I must say, this was
1574 put in place by a previous administration, okay, we have--
1575 which we have inherited. It is ridiculous to have the people
1576 who are benefitting from the receipt of the funds be those
1577 certifying that the folks--getting them to the right folks.
1578 It is ridiculous that you not require those people who are
1579 receiving the funds to keep records. And on the
1580 administration side, it is ridiculous that you not have a

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1581 database for duplicates, and that you not put structures in
1582 place to be able--so what we have done, since we came in, 25
1583 percent reduction on expenditures on Lifeline. 20 million
1584 people who were inappropriately on it are no longer on it.
1585 And \$100 million in penalties.

1586 But--so we have done what we can to fix the oversight.
1587 What this rulemaking is going to do is continue that, and fix
1588 the underlying rule problems.

1589 Mr. {Welch.} Thank you. My time is up, but I don't
1590 know if you want to let Commissioner Pai add anything?

1591 Mr. {Walden.} He might address the eligibility
1592 database. I don't think we got to that. Commissioner Pai?

1593 Mr. {Pai.} Congressman, I obviously support, you know,
1594 the Chairman's vision, at least, of having a more fiscally
1595 responsible program. My problem, however, is that we didn't
1596 adopt some of the more basic reforms. For example, capping
1597 or putting a budget on the program, as every other universal
1598 service fund has. Targeting broadband adoption, which is
1599 really the critical issue, we want these funds to connecting
1600 people who are offline to help them get online. But
1601 currently 34 percent of American households, over 40 million

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1602 households, are eligible for the program. And so if we are
1603 going to have--modernize the program to target broadband, let
1604 us make sure we have fiscal responsibility measures in place,
1605 and let us make sure we target the help to people who really
1606 need it. And that is, I think, an important conversation to
1607 have.

1608 Mr. {Walden.} What about the eligibility database?
1609 Where are you on that?

1610 Mr. {Wheeler.} So--

1611 Mr. {Pai.} Sorry, go ahead.

1612 Mr. {Wheeler.} Go ahead, no.

1613 Mr. {Pai.} No, after you.

1614 Mr. {Wheeler.} The duplication database, we have in
1615 place and operational, and it is working quite well. Insofar
1616 as the eligibility database, the issue is our ability to get
1617 access to data held by state agencies, principally, and we
1618 are in the process of working our way through that.

1619 Mr. {Walden.} That is something we need to get done,
1620 obviously.

1621 Mr. {Wheeler.} I agree.

1622 Mr. {Walden.} I will go now to the gentleman from New

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1623 Jersey, Mr. Lance, for 5 minutes.

1624 Mr. {Lance.} Thank you, Mr. Chairman. Commissioner
1625 Pai, I want to speak with you about the FCC's recent order
1626 regarding TCPA. You stated in your dissent that the attempt
1627 to modernize it, ``is likely to leave the American consumer,
1628 not to mention American enterprise, worse off''. Can you
1629 elaborate to the Committee how you believe the Commission may
1630 not have gotten this correct, and what it should have done to
1631 protect the American consumer?

1632 Mr. {Pai.} Thank you, Congressman, for the question. I
1633 begin from the premise that unwanted robocallers are a plague
1634 on the American consumer. I don't want to get those calls, I
1635 know the Chairman doesn't want to get them. Nobody wants to
1636 get them. My problem, however, with the Commission's order
1637 is that it takes us in the opposite direction. For one
1638 thing, it exempted entire industries from the TCPA. So now,
1639 for example, the prison pay phone industry can robocall you.
1640 Additionally, it dramatically expanded the range of devices
1641 that are now considered to be auto-dialers. So now, if you
1642 use your smartphone to make a telephone call, that is
1643 technically an auto-dialer, subject to the TCPA.

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1644 Similarly, it opened the loopholes for reassigned
1645 numbers. There are 37 million numbers that are re-assigned
1646 every single year. A lot of legitimate businesses have no
1647 reason to know if they have that number in stock, and they
1648 have the prior phone number's owner--the consent of that
1649 owner--they have no reason to know that that number has been
1650 reassigned, unless they can face TCPA liability. Those are
1651 the kinds of loopholes that I think are simply going to
1652 generate even more litigation, and litigation has already
1653 become a flood. There were 14 class actions filed in 2008.
1654 Last year alone there were something like 1,918. And so my
1655 concern is that we are opening up a lot of these loopholes.

1656 At the same time, we are not cracking down on the really
1657 bad actors, which are the unwanted robocallers. For example,
1658 we didn't create, contrary to what I would have preferred, to
1659 create a safe harbor for carriers to allow them to develop
1660 technology to block foreign robocallers. We didn't take more
1661 aggressive enforcement measures, despite the fact that we got
1662 96,000 complaints last year for violations of the Do Not Call
1663 registry. In the first 9 months--or the first 7 months of
1664 this year, even though I called for it in January, we have

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1665 had one citation from the Enforcement Bureau against the Do
1666 Not Call registry violators, and that is unacceptable to me.

1667 Mr. {Lance.} Why do you think the Commission did not
1668 have a safe harbor rule?

1669 Mr. {Pai.} I am not sure why, to be honest with you.
1670 But what I can tell you is that it has created tremendous
1671 uncertainty among the host of legitimate businesses that have
1672 their consumers' consent, and want to communicate important
1673 information. Everyone from, you know, restaurants to the Los
1674 Angeles Lakers have faced class action lawsuits for trying to
1675 communicate with people who have voluntarily communicated
1676 with them.

1677 Mr. {Lance.} Thank you. Chairman?

1678 Mr. {Wheeler.} Thank you, Mr. Lance. Several things.
1679 First of all, we wanted to make sure that--let me just go
1680 down Commissioner Pai's list. Exemptions, we wanted to make
1681 sure that there were opportunities for--if your doctor, or a
1682 hospital, needs to do something because of a medical
1683 emergency, or your bank needs to contact you because of
1684 fraud, or something like that, that there should be those
1685 kinds of exemptions, and they are not big loopholes.

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1686 Secondly, on the question of--you get to make one
1687 mistake, and discover that the Lance phone has been
1688 transferred. You don't have to do this three, four, or
1689 hundreds of times, as some people have. You can say, excuse
1690 me, this is not the number, and just provide notification.

1691 Thirdly, the--it was the Congress that created the
1692 private right of action, and that is something that is a
1693 decision that is out of our hands. But to your key point
1694 about the safe harbor and the carrier solution, specifically
1695 we address that, because the carriers were saying to us, we--
1696 we are afraid to offer blocking services that--because you
1697 might charge us with blocking calls, doing just that, which
1698 would be a violation of our rules. And so we amended the
1699 rules to say, no, that is not a violation.

1700 And we now have a workshop coming up where we are
1701 bringing the carriers, and other affected parties, in to sit
1702 down to say, okay, exactly how do you do it? Because how you
1703 handle a VOIP call is different from how you handle a TDM
1704 call. And how do you put those in place? But this is
1705 something that--where we have said to the carriers, our rules
1706 now specifically allow you to block calls where you are

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1707 requested by consumers. Please do.

1708 Mr. {Lance.} Thank you. Any sur-rebuttal, Commissioner
1709 Pai?

1710 Mr. {Pai.} Congressman, I would simply point out that
1711 the safe harbor wasn't given enough granularity, and--to say
1712 the least. And if a carrier is willing to trust an agency
1713 that has proven itself to be more than willing to fine a
1714 company up to \$100 million for the violation of rules that
1715 don't exist, I would urge them not to rely on a safe harbor
1716 that doesn't provide much guidance at all.

1717 Mr. {Wheeler.} You are not encouraging folks not to not
1718 block calls? Are we together on the fact that, yes, we want
1719 them to be blocking calls?

1720 Mr. {Pai.} On that we agree, which is precisely why I
1721 propose that the agency create a very detailed, specific
1722 guideline for how the safe harbor would operate.

1723 Mr. {Wheeler.} I don't want to send mixed messages--
1724 say, no, we can't do it because there is--

1725 Mr. {Lance.} Thank you. My time has expired, and thank
1726 you for the rebuttal, the sur-rebuttal, the sur-sur-rebuttal,
1727 and the sur-sur-sur-rebuttal.

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1728 Mr. {Pai.} And feel free to call either one of us at
1729 home if you would like to follow up.

1730 Mr. {Wheeler.} That is right.

1731 Mr. {Walden.} I have got a pre-recorded message we
1732 will--

1733 Mr. {Wheeler.} That is right.

1734 Mr. {Walden.} --send you. I do think there are issues
1735 we will--the Committee will proceed to talk about on this
1736 issue, though, as it relates to democracy and--

1737 Mr. {Lance.} Thank you, Mr. Chair.

1738 Mr. {Walden.} We will go now to Mr. Loeb sack of Iowa
1739 for 5 minutes.

1740 Mr. {Loeb sack.} Thank you, Mr. Chair. I really just
1741 want to come back to one issue that was already brought up,
1742 but--and have you elaborate a little bit on that, Mr.
1743 Wheeler. But in--before I actually ask that specific
1744 question, I always just like to talk about rural broadband,
1745 as you might imagine, both of you, and just how important it
1746 is for places like Iowa, but not just places like Iowa, just
1747 all over the country. And I know we have bipartisan support
1748 to make sure that we have rules in place, make sure that we

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1749 have programs in place, incentives in place, to expand that
1750 broadband availability to so many folks around the country.

1751 We know it is an economic development issue. We know it
1752 is a health issue, you know, when we talk about the spectrum,
1753 for example, issue for hospitals, making sure that, you know,
1754 I heard from someone this morning about that, making sure
1755 that they have the broadband available, and make sure that
1756 they can do what they need to do for their patients.

1757 We know it is important for education. I often talk
1758 about the University of Iowa, how they have a program where
1759 they offer AP classes, but it doesn't do any good in those
1760 rural areas if those folks cannot access what the University
1761 of Iowa offers. And we know that farmers, it is very, very
1762 important for farmers to be able to have access to broadband
1763 so they can make decisions, obviously, for planting, and for
1764 their businesses in general, and on and on and on. I was in
1765 Centreville, Iowa for one of my 24 town hall meetings on
1766 broadband--small town, and there were 27 people at that
1767 meeting on a weekday afternoon at 2:00 in the afternoon
1768 because it is just so absolutely critical for them to be able
1769 to have this broadband coverage.

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1770 So really my question goes back to what I think was
1771 already mentioned. You know, earlier this year 115 members,
1772 myself included, wrote to you, Mr. Wheeler--Chairman Wheeler,
1773 urging reform of the portion of the high cost program that
1774 supports small rural broadband providers so that they could
1775 receive USF support for lines, over which customers opted to
1776 purchase only broadband, rather than traditional voice
1777 service, as is the current practice. The rural broadband
1778 industry submitted a data-only broadband reform plan to the
1779 FCC in 2013, but the FCC has not yet acted on this plan. Are
1780 there issues with the reform plan specifically proposed by
1781 the Rural Broadband Industry that prevent the FCC from acting
1782 on it as proposed? And if you could just elaborate on that,
1783 I would appreciate it.

1784 Mr. {Wheeler.} Thank you, Congressman. There are,
1785 what, something like 114 different carriers in Iowa. I mean,
1786 you are--you represent the poster child of the rural
1787 challenge for rate of return carriers. And it is outrageous
1788 that, you know, if you are--if you live in rural America you
1789 are 30 times more likely not to be able to get broadband as
1790 if you live in an urban area.

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1791 So there are two components. One is dealing with things
1792 through the price cap carriers. And we recently released
1793 what will be \$10 billion over 6 years to seven carriers to
1794 build their facilities. And I have--I love seeing the
1795 headlines that pop up across the country that we get in our
1796 report that so-and-so carrier announces they are going to
1797 spend \$27 million to bring broadband to this area, as a
1798 result of our funds.

1799 Then we go to the rate of return carriers. The
1800 challenge with rate of return carrier, and how we deal with
1801 it, is that the program has been in place for so long, and
1802 the circumstances have changed over that period. Now, as I
1803 say, I agree strongly with Commissioner Pai that this
1804 bifurcation between narrow band and broadband doesn't make
1805 any sense, but we have got to do better than just slapping
1806 that Band-Aid on. We have to be saying, how do we make sure
1807 that we can bring this whole program forward?

1808 So we sat down with the rural carriers to say, how can
1809 we do that? And to try and reach a consensus, because there
1810 are a couple of rural carrier associations who don't agree
1811 with themselves, as you know, how do you do that? And we--it

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1812 is encouraging. We have agreed on--everybody has agreed on
1813 this two step--or this two prong process that I laid out a
1814 minute ago. And I am optimistic that Commissioner O'Reilly,
1815 and Commissioner Clyburn, and myself, who are all working
1816 together with the rural carriers to come up with a package
1817 proposal, will be able to get this done, and that I--we will
1818 be able to live up to the commitment that we made over in the
1819 other body to have it done by the end of the year.

1820 Mr. {Loebsack.} Thank you. Thank you, Mr. Wheeler.
1821 Thank you, Mr. Chair, and I yield back.

1822 Mr. {Walden.} The gentleman yields back. The Chair
1823 recognize the gentleman from Kentucky, Mr. Guthrie, for 5
1824 minutes.

1825 Mr. {Guthrie.} Thank you, Mr. Chairman, and thank you
1826 for being here. And my first question is for Commissioner
1827 Pai, and it is three parts. If you need to--I will ask, and
1828 if you need it repeated, I can do so as well, but this all
1829 flows together. But why do you oppose putting broadcasters
1830 in the duplex gap, and why is it important to minimize the
1831 number of broadcast stations placed in the wireless portion
1832 of the 600 megahertz band after the incentive auction? And I

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1833 can stop there. I will go ahead and give you the three, and
1834 see--maybe you can answer one. Why do you believe it is
1835 preferable to put broadcast stations in the uplink portion--
1836 or the wireless band, rather than the downlink? And you have
1837 suggested that the Commission hold an en banc hearing to
1838 discuss issues related to the 600 megahertz plan. Why do you
1839 such a hearing would be helpful?

1840 Mr. {Pai.} Congressman, thanks for the question. I was
1841 transcribing as quickly as I could, so if I miss one, please
1842 let me know. In terms of putting broadcasters in the duplex
1843 gap, one of the things that a typically disparate industry,
1844 as the wireless industry, the broadcasters, and unlicensed
1845 advocates agree on, is that placing broadcasters in duplex
1846 gap would be a terrible idea. Wireless companies don't like
1847 it because it would impair downlink spectrum, which they have
1848 told us is critical--more critical for them, in terms of
1849 meeting consumer demand. Broadcasters have told us it is not
1850 optimal because the duplex gap is the only exclusively
1851 reserved spectrum for wireless microphones, which a lot of
1852 broadcasters rely on, and unlicensed advocates have told us
1853 as well that if you have a full powered broadcaster out

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1854 there, unlicensed devices will get drowned out. And so that
1855 is part of the reason why I have said consistently that we
1856 need to do what the record suggests, and that is moving them
1857 somewhere other than the duplex gap.

1858 That raises the question, well, where do you put them?
1859 And as between the downlink and the uplink, I don't think
1860 there is any question, certainly not in terms of the record
1861 itself, that there is tremendous opposition to putting them
1862 in downlink. If you think about it, everyone carrying a
1863 smartphone around now relies tremendously on downlink
1864 spectrum. We are always downloading things from the
1865 Internet. So putting a broadcaster in the downlink will--
1866 first of all, it will impair a lot of the spectrum that is
1867 slated to be sold before at auction, make it a lot less
1868 appealing. Secondly, it will end up causing tremendous
1869 problems, in terms of interference between broadcast and
1870 wireless issues.

1871 And here the 700 megahertz auction is a really
1872 cautionary tale. Think about all the efforts that this
1873 Committee--that the Commission had to deal with because we
1874 had broadcasters in channel 51, and we had wireless carriers

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1875 in the adjacent A block of the 700 megahertz band. Those
1876 issues took a long time to resolve, and it was really
1877 challenging. Here we are talking about co-channel, in
1878 addition to adjacent channel interference. Plus, remember,
1879 this is the last spectrum auction, hopefully, we are going to
1880 have in some time with respect to this band, so broadcasters
1881 placed in downlink will be there essentially permanently. So
1882 this is not a problem we will be able to work around.

1883 So that is why I would prefer, based on what I have seen
1884 in the record, to place broadcasters, if they have to be put
1885 in the wireless band, to be placed in the uplink. Wireless
1886 carriers have told us it is technically preferable for a
1887 couple of reasons. First, they can minimize the amount of--
1888 or they can minimize the problems it would cause, in terms of
1889 interference, because you could just simply put a base
1890 station filter on. It would be a lot easier, since base
1891 stations are smaller in number, fixed in location, as opposed
1892 to putting a filter on a mobile device, which everyone is
1893 carrying around, and is always moving.

1894 So in terms of the en banc hearing, which I think was
1895 your third question, one of the reasons why I think it would

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1896 be helpful is that the Commission has simply not made
1897 available enough data, in terms of the simulations for these
1898 clearing scenarios, the data, and the assumptions that
1899 underlie those simulations. And we have heard from
1900 everybody, from unlicensed advocates, to broadcasters, and
1901 wireless carriers, we need more data, and we need to give you
1902 more meaningful input before you make a decision.

1903 And so that is why I thought, you know, let us just
1904 bring them all into a room, let us have everybody
1905 participate, and so then we, the Commissioners, can have a
1906 fully informed discussion before we vote on August 6, or
1907 whatever it is, to make sure that the band plan is right. I
1908 mean, Congress only gave us one chance to get it right, and
1909 if we don't, then I am afraid the cost could be substantial.

1910 Mr. {Guthrie.} Okay. I am going to try to get another
1911 question in, and for Commissioner Pai as well. So you said
1912 hopefully this is the last spectrum auction for a long time,
1913 I think you said?

1914 Mr. {Pai.} With respect to 600 megahertz, yes.

1915 Mr. {Guthrie.} Well, do you believe enough is being
1916 done to ensure there is a long term national strategy to make

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1917 additional spectrum available for commercial use, and if not,
1918 what else do you believe should be done?

1919 Mr. {Pai.} Thanks for the question. I think,
1920 consistent with what the Chairman has said, what
1921 Congresswoman Matsui and Congresswoman Blackburn have said,
1922 we need to make sure that there is more spectrum in the
1923 pipeline. I look at, you know, the proliferation of
1924 broadband as a Commissioner--as a consumer, and I think that
1925 is a great thing. I look at it as a Commissioner, I wonder,
1926 how are we going to supply this spectrum that, you know, all
1927 these devices, you know, connected to the Internet are going
1928 to need? And that is part of the reason why I have been so
1929 bullish about getting more licensed and unlicensed spectrum
1930 out there.

1931 Mr. {Guthrie.} Do you think Congressional action is
1932 needed?

1933 Mr. {Pai.} I think in some cases it might be. With
1934 respect to Federal users in particular, it would be very
1935 helpful. And I know that you and Congresswoman Matsui have
1936 been leaders on that, and I thank you for that legislation.

1937 Mr. {Guthrie.} Chairman Wheeler, I only have about 20

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1938 some seconds, but to comment on what he was about, the
1939 national--more available spectrum?

1940 Mr. {Wheeler.} Yes, sir.

1941 Mr. {Guthrie.} May not be enough time.

1942 Mr. {Wheeler.} I--yes, sir, and I would like to

1943 identify with what you and Congresswoman Matsui are doing.

1944 And, if we get a chance, I would like to also respond to your
1945 first question as well.

1946 Mr. {Guthrie.} Okay. I only have 9 seconds, so I yield
1947 back, sorry.

1948 Mr. {Walden.} The gentleman yields back. The Chair now
1949 recognizes the gentlelady, Ms. Clarke, for 5 minutes.

1950 Ms. {Clarke.} Thank you, Mr. Chairman, and I thank our
1951 Ranking Member. I, of course, thank our panelists this
1952 afternoon for your updates regarding the agency's activities.

1953 I have a few concerns that I would like to have you
1954 address, and one of them worries me a bit, and it is what is
1955 not in your testimony, it is how the Commission will address
1956 continuing challenges in diversity and representation in the
1957 media and telecom industries. We are in the 21st century.
1958 We look at our nation, and its diversity, and I think there

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1959 is a widespread acknowledgement that, you know, it is--it--
1960 what we see, in terms of industry, is really just not
1961 reflective of who we are as a country.

1962 So I would like to ask, first of all, Chairman Wheeler,
1963 where is the Commission's focus on the completion of the
1964 diversity studies, and how can this data be used to create a
1965 more nuanced and tailored policies and reforms that advance
1966 equity and inclusion? And second to that is what metrics and
1967 accountability structures are in place to ensure that
1968 vulnerable populations and their communities will be
1969 adequately served through these proposals?

1970 Mr. {Wheeler.} Thank you very much, Ms. Clarke. The
1971 media report that I had promised to the Committee by the
1972 middle of next year will include a topic on diversity. It
1973 has, frankly, been an issue that has been caught--has caught
1974 up previous reports. The--but I think that there is a couple
1975 of things we can take up. I--there is a substantial increase
1976 in the number of broadcast licensees since I became Chairman,
1977 in large part--minority broadcast licensees in large part
1978 because of what we did on the JSA rules, because those rules
1979 were being used to keep opportunity away from minority

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1980 entrepreneurs. And so I am proud of that effort.

1981 Secondly is that I think we all have to recognize, as a
1982 point that Mr. Latta was raising previously, and the
1983 importance of how the television business is changing, and
1984 the opportunity that is reflected by over the top providers.
1985 And there has been a difference up here on whether we ought
1986 to do what this Committee did for direct broadcast satellite
1987 for over the top. And that is to say that you can't hold
1988 content back. You can't have various leverage points,
1989 because I think over the top programming creates incredible
1990 new opportunities for minorities.

1991 And lastly, we have been talking a lot about the
1992 designated entity rules, and the wireless auction. And I
1993 feel strongly that what this Congress asked us to do was to
1994 be creating opportunities for minorities, women, and rural
1995 individuals to participate in wireless. And that is what we
1996 did in the DE rules, and that the suggestions that have been
1997 made by my colleagues on the Republican side actually would
1998 have limited the ability for real live DEs, rather than
1999 hypothetical DEs, to participate.

2000 Ms. {Clarke.} So on the subject of DEs, and Mr. Pyle--

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2001 Commissioner Pai, excuse me, we--I will have you respond as
2002 well. It appears that we have probably cracked the code of
2003 only one part of supporting small businesses, gained access
2004 to capital to enable to compete in the wireless industry.
2005 How can the Commission facilitate more secondary market
2006 transactions for DEs and other small businesses, especially
2007 those owned by women and minorities, with the private sector?

2008 Mr. {Wheeler.} Were you addressing that to him? So I
2009 think that we need to make sure that--again, the JSA rule was
2010 very helpful in that regard, and has performed as expected.
2011 You know, we have made it clear that when broadcast licensees
2012 come in for transfers, and they are--and they are complying
2013 with the rule which says that they can't now have control of
2014 multiple licensees in a market, that we will look favorably
2015 upon them selling those assets to minority entrepreneurs.
2016 And, in fact, that has been successful.

2017 Ms. {Clarke.} Thank you, Chairman. Commissioner, I
2018 have run out of time, but hopefully we can get a response
2019 from you as well. Thank you.

2020 Mr. {Pai.} Right now, or for the record, or--whichever.

2021 Mr. {Walden.} Probably for the record, because I want

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2022 to keep moving forward, I think.

2023 Mr. {Pai.} Okay.

2024 Mr. {Walden.} Mr. Olson from Texas, you are recognized
2025 for 5 minutes.

2026 Mr. {Olson.} I thank the Chair, and welcome Chairman
2027 Wheeler and Commissioner Pai. Since I have been on the
2028 energy and Commerce Committee, since 2011, consumer privacy
2029 has been a focus of my work for the people of Texas 22. In
2030 the 112th and 111th Congress, that work was done on the
2031 Commerce, Manufacturing, and Trade Subcommittee because they
2032 had jurisdiction over the FTC. But the FCC has grabbed that
2033 authority to regulate the broadband ISPs, taken it from the
2034 FTC, and now it is with the FCC, and now it is under this
2035 Committee's jurisdiction.

2036 The good news is you haven't lost me. I am still with
2037 you. But folks back home want to know why. What was the
2038 problem with the FTC and broadband ISPs that forced this
2039 change? And a matter of time, would you--Chairman Wheeler 1
2040 minute, and you, Mr. Pai, 1 minute to respond to his
2041 comments. Chairman Wheeler, why was it changed--

2042 Mr. {Wheeler.} Thank you, Congressman. The--as you

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2043 know, the FTC Act, writ large, says that it does not have
2044 jurisdiction over common telecommunications carriers, common
2045 carriers. And so when we said that ISPs were
2046 telecommunications carriers, it triggered that. What your
2047 constituents should know, however, is that we work closely
2048 with the FTC, their jurisdiction, insofar as its providers.
2049 And whatever we do, which will be forthcoming in the next few
2050 months, on our privacy proposals, we will do our best to
2051 harmonize so that there is a common set of concepts that
2052 govern privacy.

2053 Mr. {Olson.} Okay, great. That gave me some time back.
2054 Mr. Pai, your response, Mr. Pai.

2055 Mr. {Pai.} Congressman, unfortunately, the FCC's
2056 reclassification of Internet Service Providers as common
2057 carriers had a two-fold hit on consumers. First, it deprived
2058 the FTC of jurisdiction, as the Chairman has pointed out,
2059 because of the common carrier exemption, jurisdiction that
2060 the FTC has explicitly been given Congressional authorization
2061 for under things like CAPA.

2062 Secondly, because the FCC then arrogated that issue for
2063 itself, unfortunately, our authority under the statute is

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2064 relatively circumscribed. As you pointed out, Section 222,
2065 CPNI, pretty narrow, arcane piece of the privacy puzzle, if
2066 you will. So we don't actually have any rules in place.

2067 And, moreover, the guidance, so-called, that we have
2068 given out has been completely unhelpful. For example, in May
2069 of this year, our Enforcement Bureau put out a guidance with
2070 respect to privacy and it said, and I quote, ``The
2071 Enforcement Bureau intends that broadband providers should
2072 employ effective privacy protections in line with the core
2073 tenets of basic privacy protections.'' What does that mean?
2074 I have no idea, ISPs have no idea, consumers have no idea.

2075 Mr. {Olson.} I have no idea.

2076 Mr. {Pai.} And so I would rather have let the experts
2077 of the FTC, who have protected consumers for these many years,
2078 handle this issue based on law that you have given them.

2079 Mr. {Pai.} And so you believe it is important that the
2080 FTC has expertise to handle these issues, as opposed to the
2081 FCC, correct?

2082 Mr. {Pai.} Expertise and legal authority, yes.

2083 Mr. {Olson.} Okay. And the Chairman talked another
2084 issue, about privacy and edge providers. Chairman Wheeler, a

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2085 consumer interest group filed a petition asking you to start
2086 a rulemaking to oppose consumer privacy protections on edge
2087 providers. When are we going to see your response? Do you
2088 believe that edge providers should have a different standard
2089 protection than ISPs?

2090 Mr. {Wheeler.} Thank you very much, Congressman. First
2091 of all, you know, the Commission has, for decades, been
2092 enforcing privacy under the CPNI rules on telecommunications
2093 carriers. So it is not as though we fell into this patch.
2094 There is a long history of privacy protection for--in--with--
2095 regarding telecommunications carriers.

2096 Insofar as extending our jurisdiction to the edge
2097 providers, I have said repeatedly that that is not our
2098 intention. I don't know when the specific response to that
2099 specific petition will be coming out. I will be happy to get
2100 you a date. I don't know what the planning process on it is.

2101 Mr. {Olson.} Okay, thank you. Commissioner Pai, your
2102 response?

2103 Mr. {Pai.} I think this is part of the problem. When
2104 the FCC crossed this Rubicon on February. If you believe, as
2105 the majority did at the time, that the Internet is a virtuous

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2106 cycle, and you have Internet Service Providers and edge
2107 providers acting with one another to provide a better
2108 consumer experience, it would seem to follow logically, then,
2109 that if an edge provider is acting in an anti-competitive or
2110 anti-consumer way, then why shouldn't the FCC have the
2111 jurisdiction to extend those same rules to Internet--or to
2112 edge providers.

2113 And, moreover, if you look at the Internet conduct
2114 standard, it is not clear to me, a priori, why the FCC should
2115 limit its focus on Internet Service Providers. You could
2116 easily see a dominant edge provider engaging in anti-
2117 competitive conduct. And so that is part of the uncertainty
2118 that, unfortunately, the FCC opened up, and I hope we don't
2119 follow that to its logical conclusion.

2120 Mr. {Olson.} Well, thank you both. I yield back the
2121 balance of my time.

2122 Mr. {Walden.} The gentleman yields back the balance of
2123 his time. The Chair recognizes the gentleman from Illinois,
2124 Mr. Rush, for 5 minutes.

2125 Mr. {Rush.} I want to thank you, Mr. Chairman, and I
2126 want to thank you and the Ranking Member for today's hearing.

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2127 Mr. Chairman, Commissioner Pai, I welcome both of you to
2128 today's hearing. So good to see you once again.

2129 Mr. Chairman, I want to lift up one of the most
2130 troubling and egregious matters that is under the
2131 consideration of the FCC. And I am referring to the prison
2132 phone call rates. I understand that FCC is poised to make a
2133 ruling on in-state phone rates for prison phone calls. That
2134 said, Mr. Chairman, we must stop this immoral practice of
2135 avaricious greed and unabashed exploitation of the poor, the
2136 very ones least able to afford this phone rate robbery.

2137 Additionally, Mr. Chairman, once and for all we must do
2138 away with the practice of site commission kickbacks, and we
2139 must cap in-state phone rates. As you know, Mr. Chairman,
2140 prison call--the prison call industry is a multi-billion
2141 dollar business. And if there is any doubt, I want to call
2142 your attention to a recent Huffington Post article entitled
2143 ``Prisoners Pay Millions to Call Loved Ones Every Year. Now
2144 This Company Wants Even More''. And this article referenced
2145 how Securus--a company called Securus, the 7th largest
2146 company in the prison phone call rate industry, Securus
2147 bragged to its investors about its \$404.6 million future

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2148 profits on the backs of the very same poor.

2149 Mr. Chairman, as you know, I have been fighting this
2150 issue for over a decade, and it is now time for the FCC to
2151 take action, and rein in these predatory practices by capping
2152 the rate at five cents per minute, and eliminating all
2153 ancillary fees. But more importantly, Mr. Chairman, the FCC
2154 must also be a step ahead of these predatory companies that
2155 are right now trying to circumvent the laws by offering video
2156 phone calls at the same predatory rates that they offer for
2157 phone calls--telephone calls.

2158 Mr. Chairman, my question is, when will the FCC rule on
2159 this legalized telephonic terrorism?

2160 Mr. {Wheeler.} Thank you very much, Mr. Rush. This is--
2161 -I agree, this is a very serious issue, and you and I can--
2162 and people across America owe a huge debt of gratitude to
2163 Commissioner Clyburn, who took--this issue had been sitting
2164 on the desk of the FCC for 10 years, since Martha Wright
2165 filed her first petition, and brought it forward, so that
2166 there was a decision about inter-state.

2167 But you know what happens, is that whack-a-mole starts
2168 getting played here. Okay, we can't do it her, so we will

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2169 move it over here. Well, next month we have a decision on
2170 that, on intra-state, that we are doing next month. The
2171 point that you make about video phones is another legitimate
2172 point. I mean, the reality here is that what we are talking
2173 about is a monopoly that is granted to prisons to determine
2174 how people communicate. And like any monopoly, it ends up
2175 being exploitive. And the people who are hurt by that
2176 exploitation are the very people who rely on it. And I can
2177 assure you, sir, that Commissioner Clyburn keeps our feet to
2178 the fire on this, and that I am fully supportive of her
2179 efforts.

2180 Mr. {Rush.} I want--that is good news, Mr. Chairman,
2181 and I am just apoplectic about this situation. And I don't
2182 know--well, let me move on. If I have--my time is up.

2183 Mr. {Walden.} Time has expired. Yeah, I should tell
2184 you, we are going to do a second round of questions, so if
2185 you are here for that, there will be more time. We will now
2186 go to the gentleman from Florida, Mr. Bilirakis, for 5
2187 minutes.

2188 Mr. {Bilirakis.} Thank you, Mr. Chairman, I appreciate
2189 it. Thanks to both of you for showing up today, and thank

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2190 you for your testimony.

2191 Chairman Wheeler, in March we discussed public safety
2192 interference complaint responses, and a resulting quarterly
2193 report, which you thought was a good idea. I know you have
2194 provided some information. Have you posted what you provided
2195 the Committee on the website so the public can see what is
2196 going on, and what you are doing?

2197 Mr. {Wheeler.} Sure.

2198 Mr. {Bilirakis.} You have?

2199 Mr. {Wheeler.} No, I am saying--would we, or--

2200 Mr. {Bilirakis.} Have you posted online--

2201 Mr. {Wheeler.} I can't answer that question
2202 specifically, sir. I will get you the answer--

2203 Mr. {Bilirakis.} Can you get that information--

2204 Mr. {Wheeler.} Sure.

2205 Mr. {Bilirakis.} --to us as soon as possible?

2206 Mr. {Wheeler.} Yes, sir.

2207 Mr. {Bilirakis.} Yeah. And if you haven't, I mean, can
2208 you post that online as soon as possible?

2209 Mr. {Wheeler.} I think that is a good point, sir.

2210 Mr. {Bilirakis.} Okay, very good. Commissioner Pai,

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2211 there has been a lot of attention and concern regarding the
2212 designated entity auction rules. Do you believe there are
2213 now correctly--are they now correctly balanced, and if not,
2214 what should be done to fix them?

2215 Mr. {Pai.} Unfortunately, Congressman, I don't think
2216 they are. In fact, the agency has moved in the opposite
2217 direction. My principle for this small business program is
2218 that it should benefit small businesses. But, unfortunately,
2219 the agency, having loosened some of the restrictions that
2220 were imposed on a bipartisan basis several years ago, has now
2221 opened the door for large corporations to abuse the program
2222 and, ironically enough, squeeze out a lot of the small
2223 businesses, minorities, women, and others, who need access to
2224 capital in order to provide facilities-based service.

2225 And we saw that in the most recent AWS-3 auction, where
2226 small carriers tried to compete, but they weren't able to
2227 because the deep-pocketed Fortune 500 corporation used shell
2228 companies to prevent them from bidding. And that is part of
2229 the reason why I proposed what I thought were pretty common
2230 sense reforms. If you are making in the upper eight figures,
2231 you don't need a taxpayer-funded discount in order to

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2232 participate in a spectrum auction. If you are a genuine
2233 small business, with less than \$15 million of revenue, you
2234 don't need more than \$50 million of taxpayer-funded bidding
2235 credits in order to get spectrum at an auction. If you are a
2236 genuine business, you should be able to provide facilities-
2237 based service, not simply flip your spectrum to a large
2238 incumbent corporation the minute the auction is over.

2239 Unfortunately, it fell one vote short, and all of those
2240 proposals, which would, I submit, have restored faith--public
2241 faith in the small business program.

2242 Mr. {Bilirakis.} Thank you. Chairman Wheeler, in the
2243 open Internet order you committed to take steps to prevent
2244 increases in poll attachment rates that might result from
2245 reclassifying broadband. What steps have you taken since the
2246 order to prevent such increases, and what additional steps
2247 are expected, sir?

2248 Mr. {Wheeler.} Thank you, Congressman. That--there is
2249 a proceeding underway to do that that we started in the last,
2250 what was it, 6 weeks, 8 weeks, somewhere like that. And it
2251 is to--it is designed to make sure that there is parity
2252 between telecommunications service and cable service

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2253 attachment fees.

2254 Mr. {Bilirakis.} Okay. Again, can you continue to
2255 update us on this?

2256 Mr. {Wheeler.} Yes, sir.

2257 Mr. {Bilirakis.} Appreciate it very much. All right,
2258 Mr. Chairman, I yield back.

2259 Mr. {Walden.} Okay. Yeah. So now we will go to--let
2260 us see. Mr. Johnson is next--

2261 Mr. {Johnson.} Thank you.

2262 Mr. {Walden.} --for 5 minutes.

2263 Mr. {Johnson.} Thank you, Mr. Chairman. Chairman
2264 Wheeler, in a recent response to questions for the record as
2265 to whether you think stakeholders who cannot afford to have
2266 regulatory lawyers or lobbyists in Washington, D.C. should
2267 also have the same access that other stakeholders have, you
2268 made a point that the Commission does not have funding for
2269 routine field hearings, and similar activities, yet your
2270 emissary, Ms. Sone, has been routinely traveling to various
2271 events. In fact, it seems that both you and Ms. Sone have
2272 been wheels up quite frequently in your travels. So let me
2273 pose the question this way. Given that you apparently have a

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2274 robust travel budget, isn't the real issue how you elect to
2275 spend the money?

2276 Mr. {Wheeler.} Thank you, Congressman. I think the
2277 people who I keep turning down, saying no, I am not going to
2278 come talk, would probably disagree, and my travel is
2279 significantly less than other members of the Commission. But
2280 your point is a well taken point, and that is that decisions
2281 get made. There is a travel budget that each Commissioner
2282 has, and that is for his or her discretion. There is not--

2283 Mr. {Johnson.} Okay. Well, you have answered my
2284 question. It really is up to your discretion on how you
2285 spend the money. So could you let us know, for the record,
2286 how much the FCC has spent on travel in fiscal year 2013,
2287 2014, and 2015 so far?

2288 Mr. {Wheeler.} By--

2289 Mr. {Johnson.} Could you--

2290 Mr. {Wheeler.} By Commissioner?

2291 Mr. {Johnson.} --get that back?

2292 Mr. {Wheeler.} By Commissioner?

2293 Mr. {Johnson.} Yeah.

2294 Mr. {Wheeler.} Yes, sure.

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2295 Mr. {Johnson.} Okay, great. I would like to see that.
2296 Commissioner Pai, I was listening closely to your discussion
2297 with my colleague, Mr. Bilirakis, regarding the designated
2298 entity program, and I am really struggling a bit with
2299 Commissioner Wheeler's--or Chairman Wheeler's decision to
2300 eliminate the attributable material relationship rule, and
2301 the facilities requirement in the competitive bidding rules
2302 for a couple of reasons, and you pointed those out. You made
2303 a compelling case that this sets the state for arbitrage.

2304 So how are we going to prevent that from happening?
2305 How--what actions does the Commission need to take to make
2306 sure that these rural small carriers are able to get the
2307 credits that the Designated Entity Program was designed to
2308 give them so that they can serve those underserved, unserved
2309 areas?

2310 Mr. {Pai.} Thanks for the question, Congressman. I
2311 think, to be honest, we first need to return to the status
2312 quo, before the most recent decision, and we need to adopt
2313 some common sense reforms to make sure that large
2314 corporations don't game the system again.

2315 And to be sure the order did take some of these

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2316 measures, you know, prohibiting a single corporation from
2317 using multiple bidders in the same market and the same
2318 auction, but, you know, that is low hanging fruit that is
2319 already prohibited by the criminal anti-trust laws. I am
2320 talking about genuine reforms of the DE Program to make sure
2321 that the people who need the help, the people who want to
2322 serve folks in Ohio, or Kansas, can be able to do that.

2323 And, you know, I have--I am--some of those reforms, you
2324 know, limiting the amount of bidding credits people can get,
2325 making sure that large DEs can't own a majority--large
2326 companies can't own a majority of a DE, making sure that we
2327 preserve that AMR, as it is known, so that people don't end
2328 up flipping all of the spectrum to the entrenched incumbents,
2329 those are the kinds of common sense reforms that don't have a
2330 partisan affiliation to them. And I think, you know, I wish
2331 the majority had agreed with me.

2332 Mr. {Johnson.} Yeah. Well, I can tell you that it is a
2333 real concern for me, and I am sure other colleagues that
2334 represent rural areas of the country. I have got high school
2335 students that don't have access to broadband Internet
2336 service, and, as a result, they either have to go to a public

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2337 library nearby, or some other location, maybe to where they
2338 can get a wireless signal or something like that, to do their
2339 homework, to do research, to do that kind of thing. And this
2340 is 2015, for crying out loud.

2341 Mr. {Pai.} If I could just add a coda, one of the
2342 reasons why the facilities-based requirement is so important
2343 is because in a lot of cases the larger providers don't see
2344 the business case in building out to that school, or to that
2345 area, whereas a smaller rural provider, who actually does
2346 want to connect those folks to the Internet wirelessly, they
2347 have a strong incentive to make sure that those folks are
2348 connected. So when those rural providers are squeezed out,
2349 because there is no more facilities-based requirement, and
2350 speculators can come in and take the spectrum and flip it to
2351 the big incumbents, that really does impact those consumers.

2352 Mr. {Johnson.} Okay. All right. Well, thank you. Mr.
2353 Chairman, I yield back.

2354 Mr. {Walden.} Thank you. And now we go to the
2355 gentleman from Missouri, Mr. Long, for 5 minutes.

2356 Mr. {Long.} Thank you, Mr. Chairman, and thank you all
2357 for being here today. Mr. Chairman, on--or Chairman Wheeler,

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2358 on July 24, 4 days ago, your agency announced that--granted
2359 with conditions approval of the transfer of control licenses
2360 and authorizations from DirecTV to AT&T. We hear much about
2361 your agency's 180 day shot clock for reviewing such
2362 transfers, yet your agency's conditional grant of approval
2363 took over twice that amount of time, as you are well aware,
2364 over 400 days. I have got some questions that I would like
2365 to have answers to. Number one, what is the point of the
2366 shot clock?

2367 Mr. {Wheeler.} Well, the shot clock is aspirational, to
2368 begin with, but it is something that we try to manage to.
2369 The difficulty in this particular situation was that we were
2370 hung up by a court proceeding and a court Decision that
2371 itself took as long as the shot clock. And so we--and--that
2372 specifically dealt with the kind of information that we could
2373 have on the public record. And we had to get through that
2374 before we could get through the decision.

2375 Mr. {Long.} Well, on the 170th day of the 180 shot
2376 clock your agency stopped it for 3 months. What--

2377 Mr. {Wheeler.} Because of the court Decision. We had--

2378 Mr. {Long.} That was the same thing you are talking

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2379 about, the court--

2380 Mr. {Wheeler.} Yes.

2381 Mr. {Long.} --Decision?

2382 Mr. {Wheeler.} So the reality here is that in--and

2383 there is right now, pending before Commissioner Pai and me--

2384 have you--yet? I mean, that is not a set up question. I

2385 don't know the answer to it.

2386 Mr. {Pai.} What--on what? I am sorry.

2387 Mr. {Wheeler.} On the protective order.

2388 Mr. {Pai.} I just saw it yesterday, so--

2389 Mr. {Wheeler.} Okay. So we have put out a--an order

2390 for--to outline how you protect confidential information so

2391 that we can be in compliance with the court so that this will

2392 not happen again. And the absence of that was what held up

2393 this proceedings.

2394 Mr. {Long.} Okay. Commissioner Pai, same question to

2395 you. Do you have the same opinion on why the shot clock was

2396 stopped at the 170th day, or what the benefit of the shot

2397 clock is?

2398 Mr. {Pai.} Congressman, I do have a different view.

2399 The agency inflicted a wound on itself, which is why the

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2400 court had to intervene. The court didn't simply, out of
2401 whole cloth, decide to participate in this proceeding. What
2402 happened was, in the context of that transaction and another
2403 transaction, the agency decided to try to get all kinds of
2404 confidential information from programmers and--without any
2405 kind of due process. And so the programmers naturally sued.

2406 I urged the agency to try to reach a settlement, because
2407 this information wasn't really necessary to resolution of the
2408 issues in the transaction, and a unanimous D.C. Circuit Court
2409 of Appeals agreed with me, calling the FCC's decision an
2410 unexplained and substantial departure from previous policy.
2411 And miraculously, even though they remanded it and told the
2412 FCC, look, here is the road map you need to follow if you
2413 want this information, despite having said the information
2414 was critical, ultimately the agency didn't even seek it or
2415 rely on it in making the decision. So that is why I said,
2416 look, the shot clock needs to be more than aspirational, it
2417 needs to be a rule. Just as there are 24 seconds in the NBA,
2418 there should be 180 days, period, for the FCC, with
2419 extensions for extenuating circumstances. But, nonetheless,
2420 we need to give both the public and the parties a lot of

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2421 certainty as to how the FCC is going to do--

2422 Mr. {Long.} Okay. Let me move on. I have got another
2423 question here for Chairman Wheeler. 3 days prior to your
2424 agency's conditional grant of approval of the transfer,
2425 control of license and authorization from DirecTV and AT&T,
2426 the Department of Justice announced that, after an extensive
2427 investigation, it concluded that the combination of AT&T's
2428 land-based Internet video business with DirecTV's satellite-
2429 based video business does not pose a significant risk to
2430 competition.

2431 Although the Justice Department closed its investigation
2432 without imposing any conditions on the transaction, your
2433 agency announced that it was imposing a number of conditions
2434 to address potential harms presented by the combination of
2435 AT&T and DirecTV, despite the Justice Department's view that
2436 the combination of the two video businesses did not pose a
2437 significant risk to competition. What significant risks to
2438 competition did your agency identify that the Justice
2439 Department apparently missed?

2440 Mr. {Wheeler.} Thank you, Congressman, and we worked
2441 closely with the Justice Department on this, and I don't

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2442 think that there was a sliver of light between us. The
2443 reality--

2444 Mr. {Long.} And how can--

2445 Mr. {Wheeler.} The reality--

2446 Mr. {Long.} How can you say that--

2447 Mr. {Wheeler.} Because we have a different test. We
2448 have--

2449 Mr. {Long.} You have a what?

2450 Mr. {Wheeler.} We have a different test. They have an
2451 anti-trust test that they face. We have a public interest
2452 test that we are supposed to measure by. So we have actually
2453 two different standards that we measure to. And what was
2454 happening here was that in about 25 percent of the area--of
2455 AT&T's service area, DirecTV was a competitor to AT&T for
2456 video service. And so eliminating that competition, the
2457 question became, does that create an incentive, then, to
2458 eliminate broadband competition as well?

2459 So what we required was that AT&T expand its broadband
2460 coverage, which increased competition for broadband by a
2461 significant amount, and created an opportunity for those
2462 video providers not to have to go through an increasingly

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2463 decreasing--increasingly--a decreasing choke point--

2464 Mr. {Long.} You just wanted to see if I was paying
2465 attention.

2466 Mr. {Wheeler.} --insofar as--

2467 Mr. {Long.} We have got a red light on our backboard.
2468 My 5 minute shot clock has expired, so I will be back for
2469 round two.

2470 Mr. {Wheeler.} Good.

2471 Mr. {Long.} The Chair now recognizes the gentleman from
2472 New York, Mr. Collins.

2473 Mr. {Collins.} Thank you, Mr. Chairman. Mr. Wheeler,
2474 the big issue that I have been involved in is pirate radio,
2475 which you may know. And back in early June pretty much every
2476 New York member of Congress, as well as--

2477 Mr. {Wheeler.} Yes, sir.

2478 Mr. {Collins.} --New Jersey sent you a letter. And
2479 while the issue may not be a terrible issue, you know, in
2480 some parts of the country, it truly is in New York City, as
2481 evidenced by--not often you can get 27 members of New York to
2482 agree. Upstate and downstate, we are like two different
2483 worlds. So I guess I--to sum it up, we are extraordinarily

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2484 disappointed that the FCC has clearly said it is not a
2485 priority. I mean, the--we got the letter just from you
2486 yesterday.

2487 And it--and I understand budget concerns, and--I guess
2488 what I am trying to--the point I want to emphasize is this is
2489 an issue, even though it is not to you, and you are the
2490 Chairman. You know, we really don't appreciate you saying
2491 that--as you put in here, the time and expense of pursuing
2492 these cases present particular difficulties in the current
2493 flat budget environment, where the Commission's staffing is
2494 at its lowest point in 30 years. Overtime is less available,
2495 so, accordingly, we must prioritize our work based on
2496 existing resources and harm to the public. Thus, matters
2497 posing an imminent threat to public safety, or directly
2498 harming large numbers of consumers, must take precedence over
2499 other matters, such as pirate radio.

2500 So, I mean, I understand what you are saying, but, you
2501 know, what is the size of your budget? I mean--

2502 Mr. {Wheeler.} So I--Congressman, I--that letter, and
2503 those particular words which I wrote were not designed to say
2504 that this is a low priority, but designed to say that first

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2505 issue is public safety. Pirate radio has to exist inside
2506 that, and I believe that we have been very aggressive. We
2507 have--so during my Chairmanship, we have had 200 private
2508 radio enforcements. In the last year we have had 100 alone.
2509 And--

2510 Mr. {Collins.} How many in New York, just--

2511 Mr. {Wheeler.} I don't know the exact number, but I
2512 would say 90--not--maybe not--80 percent of those. And so
2513 what we have done is--and sure--and Commissioner O'Reilly,
2514 when he was meeting with the New York broadcasters, really
2515 focused on that, and he helped us focus on that. So we
2516 formed an inter-agency working group, task force, to work
2517 with the NAB and the New York broadcasters on this issue to
2518 make sure--

2519 Mr. {Collins.} Well, and--so you had that meeting, and
2520 the fourth point on that that came out was basically that you
2521 need more folks in your local enforcement office. That--I
2522 think that--point number four of that hearing was additional
2523 FCC enforcement options.

2524 Mr. {Wheeler.} That was one--right, that was one of the
2525 things that they--

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2526 Mr. {Collins.} But in another hearing we talked about
2527 how you have been reducing the local field offices, and
2528 pulling those folks back to headquarters. And some of us
2529 would presume that is to be ready to enforce Title 2, which
2530 we can disagree on as well. But it seems a little
2531 disingenuous, and our big concern is words are words, actions
2532 are actions, and the actions have not convinced me, and I
2533 think other members, that it is at all a priority. Your
2534 letter, while it said maybe someday, if we have got nothing
2535 else to do, we will see what we might want to find in pirate
2536 radio, that is--it is a low priority for the FCC.

2537 Mr. {Wheeler.} If that is how you interpret it, I
2538 apologize, because that is not what was meant. There is--so
2539 the New York office, the Boston office, and the Miami office,
2540 which is where prior--pirate radio tends to exist, those
2541 three areas. This is a whack-a-mole--I keep using the whack-
2542 a-mole today, but this is a whack-a-mole kind of situation--

2543 Mr. {Collins.} Well, sure, that is what pirate radio
2544 is. They--

2545 Mr. {Wheeler.} --where people keep--

2546 Mr. {Collins.} Absolutely.

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2547 Mr. {Wheeler.} --moving around. Now--so one of the
2548 things I think that I encouraged in that letter is that
2549 Congress can also be helpful, because we can't go--we can go
2550 and shut somebody down, and he or she moves to this spot,
2551 boom, they are up again.

2552 Mr. {Collins.} Right.

2553 Mr. {Wheeler.} And we are just constantly chasing. If
2554 Congress could also enact--make it illegal to aid and abet
2555 the carrying out of this--and I think that is also what the
2556 NAB group has recommended. If we can get at those who are
2557 aiding and abetting--because there is a cabal that pulls this
2558 off, right? Well, he moved to my apartment over here, you
2559 move to this space over here. And then you go see the--we
2560 didn't know anything about this, you know. And so there is a
2561 totality of the package here. I mean, 200 enforcements. We
2562 have a task force working on it. We could use some
2563 additional authority so we could have some teeth.

2564 Mr. {Collins.} I--I am about out of time, so two
2565 things. One is, maybe this is a rhetorical question, but I
2566 will ask it. There have been suggestions that the FCC has
2567 actually directed field offices to step down and back away

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2568 from enforcement. Any truth in that?

2569 Mr. {Wheeler.} I have heard that--

2570 Mr. {Collins.} Right.

2571 Mr. {Wheeler.} --suggestion. I have not--

2572 Mr. {Collins.} So I am going to put it right out here.

2573 Mr. {Wheeler.} I have heard that suggestion. I have

2574 not seen that command.

2575 Mr. {Collins.} And it did not come from you?

2576 Mr. {Wheeler.} Did not come from me.

2577 Mr. {Collins.} Could you provide me the language that
2578 you might suggest? Because I can appreciate, you know, don't
2579 bring me a problem without a solution. Can you bring me the
2580 language that we might put in--

2581 Mr. {Wheeler.} Great.

2582 Mr. {Collins.} --to some other legislation that would
2583 assist you on the pirate radio?

2584 Mr. {Wheeler.} Thank you, sir.

2585 Mr. {Collins.} It is an important issue for us in New
2586 York, and we just don't want to be the last thing on Friday
2587 afternoon at 4:59, somebody said I have 1 minute until I go
2588 home, let me see what I can do on pirate--

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2589 Mr. {Wheeler.} Yes, sir.

2590 Mr. {Collins.} --radio. Thank you.

2591 Mr. {Wheeler.} Thank you.

2592 Mr. {Collins.} I yield back.

2593 Mr. {Walden.} The gentleman yields back. The Chair now
2594 recognizes the gentleman from North Dakota, Mr. Cramer.

2595 Mr. {Cramer.} Thank the Chairman, and the Ranking
2596 Member, once again for suffering along with me as you wait
2597 for the last questioner. And thanks to both of you as well.
2598 And thank you, Commissioner Pai, for referencing the letter
2599 that 114 of my closest friends and I sent to the Chairman and
2600 to the FCC regarding standalone, and to both of you for
2601 addressing it so thoroughly today. And I might just hone in
2602 a little bit on some of the finer points regarding the
2603 timeline. Because in the letter I received, Mr. Chairman,
2604 from you yesterday you often referred to a lack of consensus.
2605 There seems to be some consensus. You pledged that by the
2606 end of the year we will solve this, but we need more
2607 consensus from stakeholders. As you both know, of course,
2608 the--community presented a plan in 2013, modified somewhat
2609 over the last couple of years to meet moving targets.

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2610 I might ask you, Commissioner Pai, you know, you have
2611 offered up I think the--I think your quote there from your
2612 plan was simple amendments to existing rules as an outcome.
2613 And one of the things I have noticed around here, and I have
2614 certainly noticed in regulatory bodies, having served on one,
2615 we can tend to complicate simple things. My goal is usually
2616 the opposite of that. Are there issues in the--plan that
2617 prevent this from going forward, or prevent us from
2618 utilizing, you know, that as the model, or are there other
2619 issues that have, you know, caused this to take so long? You
2620 know--

2621 Mr. {Pai.} Thanks for the question, Congressman, and
2622 thank you also for your kind words about my proposal, which
2623 in turn is modeled on your letter. I think--stepping back
2624 60,000 feet, I think the problem is basically this. There
2625 are a number of problems with the high cost fund, A, B, C, D,
2626 E. Problem A, however, is standalone broadband service, and
2627 my position has been consistent with your letter, and a
2628 companion letter in the Senate, that--let us adopt targeted
2629 changes to our rules to make sure that rate of return
2630 carriers aren't penalized for offering broadband as a

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2631 standalone service. Now, that is not to say that problems B,
2632 C, D, E aren't important, but, for the purposes of this
2633 issue, standalone broadband service, let us get that piece of
2634 it done, and then turn to the other issues.

2635 Now, the issue with the rate of return carriers and the
2636 consensus, I appreciate the efforts of my colleagues to try
2637 to find that consensus, but nonetheless, number one, it is
2638 not necessary to resolve those issues, to adopt a standalone
2639 broadband solution, and number two, if we end up waiting
2640 until a consensus emerges on those other issues, I fear we
2641 are not going to meet the deadline we set for ourselves
2642 publicly for getting this done by the end of the year.

2643 Mr. {Cramer.} Chairman Wheeler, can we meet the end of
2644 the year deadline? Is there a reason we can't meet that, and
2645 are we attaching too many other things to the simple
2646 solution?

2647 Mr. {Wheeler.} Those are the two right questions.

2648 Mr. {Cramer.} Yeah.

2649 Mr. {Wheeler.} The--I am trying to do that. It is my
2650 goal to do it. I expect to do it. A couple of points here.
2651 In order to do that, you cannot be wedded to consensus. As

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2652 you know from your previous term, at some point in time you
2653 have got to pull up and shoot.

2654 Mr. {Cramer.} Indeed.

2655 Mr. {Wheeler.} Boy, am I trying to get consensus. But
2656 if you can't get everybody to agree at some point in time,
2657 you have got to put--and we will put forward a proposal on
2658 that in a timely basis in order to do things by the end of
2659 the year. Because, at the root of this, is that we have got
2660 to do better for rural consumers, period. And it is not just
2661 one simple fix. It is a broader set of fixes. Because I am
2662 in violent agreement on the narrow band/broadband issue, but
2663 it is not enough.

2664 And then we also have a responsibility to those people
2665 who are paying for this every month in their phone bills, to
2666 make sure that the money is spent responsibly. And I hope we
2667 have consensus. I am working for consensus. But if we can't
2668 have consensus, we need to have progress.

2669 Mr. {Cramer.} Well, there are other issues the FCC has
2670 taken up this year that I wish there would have been more
2671 consensus on, so I don't want consensus or--to mean 100
2672 percent, as you might imagine.

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2673 Shifting, then, just a little bit with my remaining
2674 time, we spent some time talking about, of course, the
2675 auction. I am--I was about to call it the voluntary auction.
2676 That is what it used to be called. I think it still is. It
2677 has--the word voluntary is how it is often referred to,
2678 because, of course, it is, in fact, voluntary, both opting in
2679 and opting out. And, as you know, the \$1.75 billion that
2680 Congress has put in for, you know, the repacking fund is
2681 probably not going to be enough, considering that we are
2682 looking at, what, 1,100, maybe, TV stations that are going to
2683 have to involuntarily move.

2684 How are we going to--is there a plan to deal with that
2685 shortfall that I can assure my rural North Dakota
2686 broadcasters that they won't have to bear all the costs?
2687 Maybe Commissioner Pai first, and then the Chairman with the
2688 remaining time.

2689 Mr. {Pai.} Congressman, I have long suggested that we
2690 should treat the 1.75 billion relocation fund as a budget at
2691 the FCC, and structure the auction in such a as to minimize
2692 the possibility that we would exceed it, and ultimately end
2693 up putting the onus on the broadcasters to pay up.

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2694 The other issue that I have heard, most recently in
2695 Nebraska from a group of broadcasters, is that the 36 months
2696 is not necessarily as long as it might seem, that it is--
2697 there is a shortage of people who are able to do the work,
2698 there is a shortage of the equipment that is necessary for
2699 the repacking to be done, and that you--the Commission should
2700 be mindful of that as well as it progresses. So I share your
2701 concern, and I want to make sure that broadcasters, to the
2702 extent possible, are not--are held harmless, in terms of
2703 necessary expenditures.

2704 Mr. {Cramer.} Chairman, do you want to speak--

2705 Mr. {Wheeler.} I think Commissioner Pai has identified
2706 the key issue, and that is we do need to make sure that we
2707 are--we have to live within a budget, and we want to manage
2708 things within a budget. The--you gave us that number. We
2709 can't change that number, and we have got to come up with a
2710 program that will make it work.

2711 Mr. {Cramer.} Thank you both. Thank you, Mr. Chairman.

2712 Mr. {Walden.} And if you hang around, Mr. Cramer, we
2713 are going to do a second round. You could be, like, really
2714 quick on the shot clock here. We are now going to go to the

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2715 gentleman from New Mexico, Mr. Lujan, for 5 minutes.

2716 Mr. {Lujan.} Mr. Chairman, thank you so much for having
2717 us here today. Ranking Member Eshoo, it is an honor to be
2718 with--here with both of you. Chairman Wheeler, Commissioner
2719 Pai, thank you for joining us as well.

2720 I appreciate the testimony centered around rural access.
2721 As Commissioner Pai said, he is a rural guy, I am a rural
2722 guy. I think Chairman Walden also represents a very rural
2723 district, as we talk about many parts of the country that
2724 need broadband access, and affordability. And you have heard
2725 me say this many times, Chairman Wheeler, we can have
2726 connectivity at 30,000 feet when we are flying across the
2727 United States in an airplane, there is no reason that we
2728 cannot have connectivity when we are on the ground traveling
2729 all across America, not only in rural communities, tribal
2730 communities, and states like mine, in New Mexico.

2731 With that being said, in New Mexico, for example, 77
2732 percent of those living rural communities, and 89 percent
2733 living in tribal communities lack access to advanced
2734 broadband. Chairman Wheeler, as you said in your testimony,
2735 you have pursued an aggressive agenda at the FCC that

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2736 includes reforming the E-rate Program, modernizing the
2737 Lifeline Program, and establishing the Connect America Fund.
2738 Can you discuss what this agenda means for people who lack
2739 sufficient access to broadband and communication services,
2740 not just with buildout, but also with making it more
2741 affordable so people are able to take advantage once there is
2742 a buildout program?

2743 Mr. {Wheeler.} Yes, sir. Thank you, Congressman, and I
2744 hope that we can do significantly better than as--the speeds
2745 that are delivered in the air, and that is what we are doing.
2746 The, you know, I have been in New Mexico multiple times, in
2747 tribal areas, and other very remote areas in New Mexico to
2748 personally visit and talk to the individuals involved.

2749 I remember a situation that--there was a fiber going
2750 down this side of the road, a fiber on an Indian reservation,
2751 and over here, about 100 yards away, was a high school, and
2752 up here was the library. And they couldn't get a connection
2753 from the fiber to the high school because it was cost-
2754 prohibitive, and the E-rate Program wasn't paying for that.
2755 Now we pay for that, and that is in large part because of
2756 these kinds of specific examples that we have seen. We need

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2757 to make sure this is the case.

2758 We also need to make sure that low income individuals
2759 who are, unfortunately, disproportionately represented on
2760 tribal areas have access to broadband support to connect
2761 them. And that is why we are not only overhauling, but
2762 changing the orientation of the lifeline program to go to
2763 broadband.

2764 Mr. {Lujan.} And, Chairman Wheeler, in all these
2765 areas--I am going to submit some other questions into the
2766 record to flesh these areas out, but, you know, as we do
2767 this, I really appreciate the conversation that we have had
2768 today, and the focus, and seeing how we can grow the rural
2769 family as well, and see how we get more attention there.

2770 The other place that I want to complement both of you,
2771 Commissioner Pai, Chairman Wheeler, and get your perspective
2772 is on modernizing the FCC. You have embarked on expanding
2773 electronic filing and distribution, decreasing backlogs, and
2774 improving responsiveness to consumers. Can you both tell me
2775 what you are doing to provide greater information to
2776 consumers, including improving--sorry, transparency and
2777 accountability, standardizing forms, digitizing the process,

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2778 including the submittal of documents?

2779 Mr. {Wheeler.} Boy, am I glad you asked that question.

2780 Mr. {Lujan.} And you both support that effort?

2781 Mr. {Wheeler.} The--

2782 Mr. {Lujan.} Yes, Commissioner Pai?

2783 Mr. {Pai.} Yes.

2784 Mr. {Lujan.} Yes?

2785 Mr. {Wheeler.} On my first trip to our consumer
2786 operation in Gettysburg, I saw in the corner a humongous
2787 machine that the staff proudly announced to me could take 17
2788 different forms and put them into one envelope. And I said,
2789 well, why are we sending out 17 different forms? And they
2790 said, well, because that is the way we do it. So you contact
2791 the FCC on a robocall issue, and we will send you the form
2792 for robocall, as well as the form for loudness on
2793 commercials, as well as the form for every other kind of
2794 complaint we had. And I said, wait a minute, we can do
2795 better than this.

2796 Mr. {Lujan.} And those forms are required to be sent
2797 back.

2798 Mr. {Wheeler.} And the, you know, and the--

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2799 Mr. {Lujan.} Those forms--

2800 Mr. {Wheeler.} And I would talk to consumers, you know,
2801 who would say, what am I supposed to do with this? Which
2802 form am I supposed to--so we now have totally updated it, put
2803 it on the Web. We just won a prize for being one of the best
2804 government sites--consumer interface sites on the Web. And
2805 most of all, we are then taking that information and putting
2806 it back into what should we be doing to help us focus on our
2807 priorities.

2808 Mr. {Lujan.} That is great. Mr. Chairman, you know, if
2809 there are other areas that we can work on in this space, I
2810 am--look forward to having those conversations. And if I am
2811 able to, because of the length of the line, Mr. Chairman, I
2812 look forward to the second round--

2813 Mr. {Walden.} Indeed.

2814 Mr. {Lujan.} Thank you, Chairman.

2815 Mr. {Walden.} I don't know if you can get there from
2816 here. Which we are going to start now, so thank you.

2817 I want to go back to this issue of LPTV and translators,
2818 and maybe Commissioner Pai--Chairman Wheeler. There is all
2819 this talk now at the Commission about setting aside an entire

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2820 channel for unlicensed. And I support unlicensed, we have
2821 made a lot of unlicensed available, there is more to be done,
2822 but won't setting aside a whole channel for unlicensed
2823 contribute to the problem that we are hearing from translator
2824 and the LPTV community? Commissioner.

2825 Mr. {Pai.} Mr. Chairman, it will by definition, to the
2826 extent that a particular vacant channel is allocated solely
2827 for unlicensed. That means--in the TV band, that means an
2828 LPTV's station can't occupy it post-auction.

2829 Mr. {Wheeler.} In--

2830 Mr. {Walden.} Chairman Wheeler?

2831 Mr. {Wheeler.} --reality, probably not, because what we
2832 are talking about here are using TV white spaces, and
2833 creating these kinds of additional applications for
2834 unlicensed in those areas where the duplex gap is not
2835 sufficient. And that is going to be a handful of areas that
2836 I doubt will be any areas that are the typical LPTV rural
2837 kind of area.

2838 Mr. {Walden.} So you are--will you commit to LPTV and
2839 translators having priority, then, over unlicensed?

2840 Mr. {Wheeler.} No. We are going to--so it was really

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2841 clear--

2842 Mr. {Walden.} In the TV band?

2843 Mr. {Wheeler.} Now, it was--I think that the mandate

2844 from this Committee is clear. The mandate from this

2845 Committee is that there is no priority given to LPTV.

2846 Mr. {Walden.} True.

2847 Mr. {Wheeler.} And the Committee also said, however,

2848 that we need to be encouraging unlicensed. I think--I don't

2849 think that it comes down to that kind of a solution, though,

2850 Mr. Chairman, with all due respect. I think that it is

2851 possible, and what we are just breaking our tails on, is to

2852 be able to accomplish both of these, and I think we will be

2853 successful.

2854 Mr. {Walden.} Yeah. I would say--my recollection of

2855 the statute, which we together helped write here, was--

2856 Mr. {Wheeler.} You wrote it.

2857 Mr. {Walden.} --that unlicensed was never set aside as

2858 a priority to go create a nationwide band. In fact, we had a

2859 lot of discussion about that very fact, that you don't go

2860 clear all this and then give it away to, in effect, some

2861 pretty major operators. You know, Commissioner Pai?

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2862 Mr. {Pai.} And this is part of the reason why I
2863 suggested that we adopt a technically sound solution to where
2864 to put broadcasters if we put them in the wireless--

2865 Mr. {Walden.} Right.

2866 Mr. {Pai.} --band. If we put them in the uplink, then
2867 we avoid this entire issue altogether, whereas in the duplex
2868 gap, we not only impair unlicensed, which has to find a
2869 home--downlink.

2870 Mr. {Wheeler.} You want to--should we discuss--I mean
2871 this is a really good point that Commissioner Pai has raised,
2872 that there is serious concern on. So, first of all, let us
2873 remember what we are talking about here, is how do we
2874 minimize the aggregate impact across the country? And that
2875 means that in a handful of markets, you--it is a percentage
2876 that can be--is in single digits, okay, you--that there is an
2877 issue. He is proposing that you put it in the uplink, put
2878 the interference in the uplink. What that does is knock out
2879 an entire bay station.

2880 Mr. {Walden.} Right.

2881 Mr. {Wheeler.} The impact is much broader.

2882 Mr. {Walden.} I think you have got disagreement with

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2883 Commissioner Pai, but I am going to have to move along here.
2884 My concern is there are a lot of--I hear from my colleagues
2885 all over the west, there are concern these translators are
2886 going to go dark because they are going to get squished out.
2887 And if they get squished out because you created a whole band
2888 of unlicensed, that only adds to the problem. And there is a
2889 public interest obligation underpinning all of this at the
2890 Commission to provide for.

2891 Now, I realize they are not classy. I realize they
2892 don't have all the rights, and all that. I was a licensee of
2893 translators myself. I knew I could be pushed out. But
2894 through this you have got some flexibility here to manage,
2895 and that is, I guess, what we are calling--

2896 Mr. {Wheeler.} Yeah, we--

2897 Mr. {Walden.} I want to switch gears to go to the TCPA
2898 issue very quickly, because this issue of auto-dialer has
2899 come up. And, in your order, you adopted a pretty broad
2900 definition of an auto-dialer, although you acknowledged, and
2901 I quote, ``there are outer limits of the capacity of
2902 equipment to be an auto-dialer, and there must be more than a
2903 theoretical potential that the equipment could be modified to

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2904 satisfy the auto-dialer definition.'" Is my iPhone an auto-
2905 dialer?

2906 Mr. {Wheeler.} No, sir.

2907 Mr. {Walden.} Then let me ask you this. There are at
2908 least three apps that we found, Dial My Calls, Call Bot
2909 Automated Calling, and Voxling that would turn my iPhone into
2910 an auto-dialer.

2911 Mr. {Wheeler.} So the issue that we were trying to deal
2912 with in this order was not the hardware, but the impact,
2913 because the--since Congress acted in 1991, the technology has
2914 changed. And the--what Congress's instructions to us were is
2915 no contact from auto-dialers without--

2916 Mr. {Walden.} But--

2917 Mr. {Wheeler.} --permission.

2918 Mr. {Walden.} But my--

2919 Mr. {Wheeler.} I am taking that--

2920 Mr. {Walden.} --question to you, though, is if I push
2921 somebody's name, Chairman Wheeler's--I don't ever dial your
2922 number. I just push--

2923 Mr. {Wheeler.} Correct.

2924 Mr. {Walden.} --Chairman Wheeler, and it dials. To me--

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2925 -is that an auto-dialer?

2926 Mr. {Wheeler.} No, sir.

2927 Mr. {Walden.} Okay. If I have a database of names that
2928 I want to reach out to, let us say voters, and I want to turn
2929 them out to vote, and I have a device that calls until
2930 somebody answers, and then I can take the call, is that an
2931 auto-dialer?

2932 Mr. {Wheeler.} Yes, sir.

2933 Mr. {Walden.} Okay. So I no longer can do that? If I
2934 have a tele-town hall in my office, which I do, and there is
2935 some company that does--calls all those thousands of people
2936 in my district, are they now prohibited from doing this?

2937 Mr. {Wheeler.} Unless the consumer has asked to get
2938 this. This is a--the--Congress was--the statute is very
2939 explicit.

2940 Mr. {Walden.} So tele-town halls now by members of
2941 Congress, and most members do that, are now against--

2942 Mr. {Wheeler.} I am--all I am doing is--

2943 Mr. {Walden.} No, I am asking you the question.

2944 Mr. {Wheeler.} --the statute. No, sir. That is right.

2945 Mr. {Walden.} So those are prohibited, and your

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2946 contention is always have been?

2947 Mr. {Wheeler.} Yes, sir.

2948 Mr. {Walden.} Wow. That is interesting. That would be
2949 news to a lot of people. Commissioner Pai?

2950 Mr. {Pai.} Mr. Chairman, I think part of the reason why
2951 it is indisputable that a smartphone is an auto-dialer under
2952 the FCC's new interpretation--if you look at the statute, it
2953 says a capacity to randomly or sequentially dial a number. I
2954 explicitly said capacity means the actual capacity. The
2955 smartphone has, in itself, intrinsically the ability to do
2956 that. The majority rejected my argument and said, no, you
2957 could download an app. There are all kinds of other things
2958 you could do to effectively make the smartphone an auto-
2959 dialer, even if it isn't intrinsically.

2960 And that is part of the reason why literally every
2961 communications device, other than a rotary phone, I give the
2962 majority credit for accepting those, nonetheless is now
2963 subject to TCPA liability as an auto-dialer. And that is not
2964 good for consumers, that is not good for providers. It is
2965 not good for anybody, other than trial lawyers.

2966 Mr. {Walden.} Well, and we are hearing from others out

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2967 there who are--I mean, there is this issue with the health
2968 care exchanges, and whether or not insurance companies can
2969 follow up and, like, notify you that it is time for you to
2970 come in and have some tests done. I have been told that may
2971 be prohibited now. I mean, are you aware of that? Are you
2972 hearing those issues?

2973 Mr. {Pai.} That is the first I have heard of it, but it
2974 doesn't surprise me, because now we have seen it from a
2975 number of different industries. They are just uncertain
2976 about what the rules of the road are.

2977 Mr. {Walden.} Yeah.

2978 Mr. {Wheeler.} We--so understand what we were doing,
2979 Mr. Chairman, was responding to a series of petitions. We
2980 did not issue a rule. People petitioned us and said, what is
2981 the rule--what does your--

2982 Mr. {Walden.} Right, but you interpreted.

2983 Mr. {Wheeler.} And so--and if somebody wants to
2984 petition us on the kinds of things you talk about, we can
2985 deal with that.

2986 Mr. {Walden.} Right.

2987 Mr. {Wheeler.} On the health care issue one, we

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2988 specifically had an exemption for being--bank fraud, health
2989 care, things like this. And for government agencies.

2990 Mr. {Walden.} And with changing technology, 40 percent
2991 of Americans no longer have a land line, right?

2992 Mr. {Wheeler.} Right.

2993 Mr. {Walden.} I know you spoke out and said, basically,
2994 pollsters could go the way of, you know, blacksmiths, I
2995 guess.

2996 Mr. {Wheeler.} Well, they have been, right.

2997 Mr. {Walden.} Well, I guess my point is--so that
2998 industry, in effect, in terms of trying to do a random sample
2999 is now put out this--

3000 Mr. {Wheeler.} But--

3001 Mr. {Walden.} --in this effect, right? How do you do a
3002 random sample on a poll if you can't randomly sample and
3003 dial?

3004 Mr. {Wheeler.} So I once sat down with Peter Hart to
3005 write a piece--

3006 Mr. {Walden.} Right.

3007 Mr. {Wheeler.} --exactly on that, insofar as wireless,
3008 because you can't have random--you can't get to the wireless

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3009 numbers.

3010 Mr. {Walden.} Right.

3011 Mr. {Wheeler.} You don't know what they are. So that
3012 went by the board. The issue here is, if you come to us and
3013 you say, the statute says, which it does, that the only folks
3014 who are allowed to be called are those who want to be
3015 \called--

3016 Mr. {Walden.} Got it.

3017 Mr. {Wheeler.} --and I am supposed to be a strict
3018 constructionalist of the statute--

3019 Mr. {Walden.} Well, we have seen some examples by the
3020 Court where they would disagree with your interpretation of
3021 statute on other issues--

3022 Mr. {Wheeler.} Let me--

3023 Mr. {Walden.} --rather violently and directly.

3024 Mr. {Wheeler.} And you are constantly encouraging me to
3025 be a strict constructionalist.

3026 Mr. {Walden.} Well, I think we are just figure out the
3027 impact--

3028 Mr. {Wheeler.} Yeah. I understand.

3029 Mr. {Walden.} --of your ruling as it relates to--I have

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3030 gone way beyond my time, but I will now defer to my colleague
3031 from California, Ms. Eshoo.

3032 Ms. {Eshoo.} Thank you, Mr. Chairman. Well, it is an
3033 important discussion, and I think that we need to talk about
3034 this some more, because it is--what went into the statute was
3035 like holding a mirror up to the country at that time.

3036 Mr. {Wheeler.} In '91, right?

3037 Mr. {Walden.} In '91. That is a long time ago. That
3038 is many, many moons ago, when you think of generations of--
3039 how many generations of technology changes have taken place.
3040 So whether someone wants to be a strict constructionist or
3041 whatever, I think that we have to have the elasticity to stay
3042 up with the times. I mean, each one of us represents 750,000
3043 people. Now, maybe we have got to reach out to every single
3044 one of them if we possibly can, but, in my view, meeting with
3045 people relative to a telephone town hall meeting has been
3046 overwhelmingly embraced. Not just accepted, but embraced by
3047 my constituents. Plus it saves tons of money, and they get
3048 to just ask whatever they want. So these are, you know, I
3049 don't think they would be satisfied--well, this is what the
3050 statute says. I think they would say, change whatever you

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3051 have to change, but keep up with the changes that are taking
3052 place. So it is important.

3053 I--since we are going into a second round, and maybe it
3054 is just the Chairman and myself. No, that is--two others?
3055 Good, Billy and Ben. I want to talk about your budget. The
3056 House appropriators have really screwed the FCC, in plain
3057 English, in my view. And I don't think it is funny, I think
3058 it is serious. I mean, we had members asking questions today
3059 about travel budgets. I think that whatever you do, and
3060 however you do it, it would be interesting to see if it
3061 tracks along with what--how members of Congress are allowed
3062 to handle their MRA. I don't know, but it may be something
3063 for us to discuss. Now, the fiscal year appropriations bill
3064 has \$315 million in it. That reflects a cut of \$25 million
3065 below the fiscal year 2015 enacted level, and 73 million
3066 below the request. Now, they also have placed in riders
3067 that--relative to net neutrality and all of that.

3068 Now, what I would like to ask you, Mr. Chairman, is have
3069 you had conversations with the appropriators? Is there
3070 anyone from the majority here that has been asked to lean in
3071 with the appropriators? I mean, we are constantly putting on

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3072 the FCC, and in oversight, all of these issues come up. I
3073 don't know who is--who is going to do this work and follow up
3074 with every member's request about what they want? You wanted
3075 to close offices, members said don't close them, we need them
3076 open. But, I mean, there are so many things that are reliant
3077 on dollars. And I am not talking about having a load of
3078 extra dough. I am talking about the agency being able to
3079 carry out its responsibilities. So what I would like to know
3080 from you is, have you had conversations with the
3081 appropriators on the majority side? Have you had
3082 conversations with the majority side here to see what can be
3083 worked out with the budget?

3084 I don't know, you know, these riders, the President is
3085 not going to sign something like that. And, at the end of
3086 the day, I think that the appropriations process is so messed
3087 up around here because we don't have regular order, speaking
3088 of transparency, and process, and all of that, that we are
3089 going to end up with an omnibus bill. And if we--and I think
3090 that is what is going to happen. So compare and contrast
3091 what your present budget is, because an omnibus really--
3092 doesn't really allow for that much more, and address for us

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3093 any conversations, or how you are following up with the
3094 appropriators did to the budget of your agency.

3095 Mr. {Wheeler.} Thank you, Congresswoman. We have had
3096 conversations with everybody who will listen, and some who
3097 won't. The--and I mean that only in a flippant remark. I
3098 am--

3099 Ms. {Eshoo.} Um-hum.

3100 Mr. {Wheeler.} --not saying people aren't listening.
3101 We have talked to this Committee, we have talked to their
3102 Committee. We--I was honored that the Chairman came to the
3103 Appropriations Committee, which I think--the first time that
3104 I have ever known that a Chairman has actually come--

3105 Mr. {Walden.} Second time. I was there last year.

3106 Mr. {Wheeler.} Did I--I missed you, then. I was--
3107 sorry.

3108 Mr. {Walden.} I was right behind you and waving.

3109 Mr. {Wheeler.} Okay. The--so that he has got a record
3110 now for--twice.

3111 Ms. {Eshoo.} But that is not the point.

3112 Mr. {Wheeler.} But the--

3113 Ms. {Eshoo.} I want to know about the money.

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3114 Mr. {Wheeler.} But, yes, we have to live with the
3115 number that the Congress gives us. It is that, you know, it
3116 is that simple.

3117 Ms. {Eshoo.} Have you, in response to what the
3118 appropriators have done--and I don't know, Mr. Chairman, were
3119 you there to support the appropriators in cutting the budget,
3120 or against it?

3121 Mr. {Walden.} I was there to listen to the
3122 appropriators--

3123 Ms. {Eshoo.} I see.

3124 Mr. {Walden.} Yeah.

3125 Ms. {Eshoo.} You didn't testify?

3126 Mr. {Walden.} No. No, I was there to hear what they
3127 had to say.

3128 Ms. {Eshoo.} I see. Have you come up with--you know
3129 what I would like to ask you to do? Two things. What you--
3130 what your--you will be able to do--

3131 Mr. {Wheeler.} Um-hum.

3132 Ms. {Eshoo.} --with a budget that is reduced by 25
3133 million--

3134 Mr. {Wheeler.} Yes, ma'am.

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3135 Ms. {Eshoo.} --and also--and the top line things that
3136 you have to do. I mean, we have got to move forward with a--
3137 with the auction, with the voluntary auction, and, you know,
3138 all the top line items. And also, if we have an omnibus
3139 bill, what that does. And I would look--I look forward to
3140 reviewing that. I think it should be sent to everyone on
3141 the--

3142 Mr. {Wheeler.} Thank you.

3143 Ms. {Eshoo.} --Committee.

3144 Mr. {Wheeler.} We would be---

3145 Ms. {Eshoo.} I would really like to see that, because--

3146 Mr. {Wheeler.} Do you mean--

3147 Ms. {Eshoo.} --we are walking into something that I
3148 think the members of this Subcommittee, that have oversight
3149 responsibility, are going to have to understand, that we
3150 either have to curb our appetite for giving the FCC
3151 assignments that--if they don't have the dollars to carry
3152 them out, then they don't have the dollars to carry them out.
3153 Something has going to go.

3154 Mr. {Wheeler.} I will tell you one interesting thing.
3155 We are currently at the lowest number of full time employees

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3156 in modern history for the agency.

3157 Ms. {Eshoo.} Thank you.

3158 Mr. {Walden.} Thank the gentlelady. Now go to the
3159 gentleman from Missouri, Mr. Long.

3160 Mr. {Long.} I was very impressed that I got to follow
3161 the Chairman for the first time--

3162 Mr. {Walden.} You hang around long enough--

3163 Mr. {Long.} Felt kind of like Sally Field. I thought,
3164 they really do like me. Then I looked around and no one else
3165 was here, so--Commissioner Pai, I have got a question for
3166 you. It has been reported that the Chief of the Enforcement
3167 Bureau has acknowledged that many of his cases fall into the
3168 legal gray area where companies might not even realize they
3169 are doing anything wrong. I know you have raised concerns
3170 about this. Can you kind of explain your concerns, and what
3171 could be done to address them?

3172 Mr. {Pai.} Thanks for the question, Congressman. I
3173 think, unfortunately, many of the FCC's more high profile
3174 enforcement initiatives have betrayed that basic principle of
3175 due process, and that is not an FCC law. That is going back
3176 to King John signing the Magna Carta 800 years ago this

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3177 summer at Runnymede. And I think part of the reason why I
3178 have been so outspoken about it is that if private actors,
3179 from companies all the way to individuals, don't know what
3180 the rules of conduct are, then they have no reason to know
3181 that their conduct is violating what the FCC thinks should be
3182 the rule.

3183 And with respect to certain notices of apparent
3184 liability the agency has issued, it is almost more a, you
3185 know, quest for headlines first, and we will figure out the
3186 law later, if at all. But that has it precisely backwards.
3187 To me, we should look at the facts, we should look at what
3188 the law is. If there is a gap in the law, let us change it
3189 to make sure that people are abiding by what we think is
3190 proper conduct. But we can't sanction somebody for violating
3191 a rule that they have no reason to know, or don't know,
3192 exists.

3193 Mr. {Long.} Okay. Thank you. And, Chairman Wheeler
3194 and Commissioner Pai, to the two of you, I am curious about
3195 the Broadcasters Relocation Fund, and how those monies are
3196 going to be spent. The fund is currently at \$1.75 billion,
3197 as you know, and obviously that fund was set up to pay for

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3198 all of the relocation costs to the broadcasters you are
3199 required by the FCC to move to a new channel as part of the
3200 auction. After examining these issues for the last few
3201 years, has the FCC determined how many stations is able--it
3202 is able to re-pack with that 100--\$1.75 billion fund?

3203 Mr. {Wheeler.} It is a--thank you, Congressman. It is
3204 a moving target, depending upon the characteristics of who
3205 participates in the auction. Do you have to move an antenna?
3206 Do you have to build a taller antenna? How far do you have
3207 to move it? I mean--

3208 Mr. {Long.} Now, can you give me a ballpark on the
3209 number?

3210 Mr. {Wheeler.} The--I will--I can get back to you with
3211 one, sir. I don't have one on the top of my head. But what
3212 we have tried to do is to develop a set of rules that can
3213 live inside of that, and so let me get you the number we use
3214 for denominator in that.

3215 Mr. {Long.} Okay. I would--

3216 Mr. {Wheeler.} Because I don't know it off the top of
3217 my head.

3218 Mr. {Long.} --appreciate it. And, Commissioner Pai,

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3219 same question to you.

3220 Mr. {Pai.} I have heard estimates that it will cost
3221 somewhere north of \$3 billion to relocate all the
3222 broadcasters. And, if that figure is correct, and we only
3223 have 1.75 billion in the relocation fund, then it necessarily
3224 follows that broadcasters would be out of pocket for that
3225 extra 1-1/4 billion. And that is something that I hope to
3226 avoid, and certainly I am willing to work with you and the
3227 Chairman, and my colleagues, to make sure that doesn't
3228 happen.

3229 Mr. {Long.} Well, that is--do you have any estimate on
3230 the number that the 1.75 billion--that is the number I am
3231 trying to get to, how many that would cover?

3232 Mr. {Pai.} No, unfortunately, I don't, because, as the
3233 Chairman pointed out, you know, quite eloquently that there
3234 are a lot of moving parts to this, and every broadcaster is
3235 unique.

3236 Mr. {Long.} Okay. Because I have heard some figures,
3237 and I have difficulty believing that 1.75 billion will cover
3238 the estimated number that they are talking about. So if you-
3239 -both of you could get back to me on that, I would appreciate

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3240 it. And I am going to yield back with a minute 37 to go.

3241 Mr. {Walden.} The gentleman yields back. The Chair
3242 recognizes the gentleman from New Mexico, Mr. Lujan.

3243 Mr. {Lujan.} Thank you, Chairman Walden, and I would
3244 like to associate myself with the questions that both Ranking
3245 Member Eshoo and Chairman Walden were asking pertaining to
3246 what appears now to be our inability to reach out to the
3247 American people to be able to get feedback from them.

3248 Chairman Wheeler, as we talked about these telephone
3249 town halls, when I travel the 13th Congressional District of
3250 New Mexico, especially in rural communities, one of the
3251 things that I hear from members of the community that I
3252 represent was sometimes I have to travel 3 or 4 hours just to
3253 get to town centers, not even city centers, is how much they
3254 appreciate being able to weigh in.

3255 So if the rule requires them to opt into this program,
3256 how would we reach out to seven, 800,000 constituents for
3257 them to opt in? We can't sent them an e-mail because, based
3258 on a 2015 press release coming from the FCC, only 52--or 48
3259 percent of those making less than \$25,000 have broadband
3260 service at home. And so if we can't reach out to them to opt

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3261 in, do I send them a letter, which is what the FCC is working
3262 against? You don't want to be sending letters and forms out
3263 to opt in, and then you would have to check a box yes or no,
3264 and then you get the letter back in. I certainly hope that
3265 we can look at this to see how we can address this. And I
3266 know it is something that I visited with Chairman Walden, and
3267 with Ranking Member Eshoo, with both the majority and
3268 minority staffs on this, so I look forward to working with
3269 you on that as well.

3270 With that being said, just some additional questions
3271 about broadband penetration. There has been a little bit of
3272 conversation today about broadband, and, Chairman Pai, do you
3273 see broadband penetration or accessibility in rural parts of
3274 the country to broadband as a necessity or a luxury?

3275 Mr. {Pai.} Well, Congressman, thanks for the question.
3276 As I said in response to Congresswoman Eshoo earlier, my goal
3277 has been always to make sure that any American anywhere,
3278 whether it is on a tribe in New Mexico, or somewhere in my
3279 home state of Kansas, anyone who wants digital opportunity,
3280 in terms of a broadband connection, should be able to get it.
3281 And that is why I have laid out proposals on rule of

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3282 broadband, on e-rate, on wireless infrastructure, on five
3283 gigahertz spectrum, to make sure that we have a bunch of
3284 competitors out there all competing to provide every American
3285 with that opportunity. And, you know, as far as the semantic
3286 classification of it, that is something that I will leave to
3287 wiser minds than myself, but my focus--

3288 Mr. {Lujan.} But with the semantics associated with the
3289 difference between necessity and luxury, how would you
3290 characterize the importance of accessibility to broadband in
3291 rural parts of the country?

3292 Mr. {Pai.} I think it is absolutely critical, and one
3293 of the things I have enjoyed in this job is having a chance
3294 to travel to small towns, from Diller, Nebraska, to Fort
3295 Yukon, Alaska to be able to see how people have used
3296 broadband to get opportunities they otherwise wouldn't have.
3297 This--I am sure this is the case in your district, but I have
3298 seen it a lot of rural districts that if people don't get
3299 that high speed connection, they will move somewhere else.
3300 They will move to another state, or a bigger city to get it.
3301 And that is unfortunate, because I think there are a lot of
3302 ideas in rural America that are probably withering on the

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3303 vine for lack of that broadband connection.

3304 Mr. {Lujan.} Um-hum.

3305 Mr. {Pai.} And that is something that I am passionate
3306 about, and I would be more than happy to work with you--

3307 Mr. {Lujan.} I appreciate that, yeah. Well, I would
3308 characterize it as a necessity, not a luxury. I really
3309 appreciate you considering it or characterizing it as
3310 absolutely critical. I would agree with that assessment as
3311 well.

3312 With that, Commissioner Pai, as we look to the Lifeline
3313 Program as well--and in the testimony that--or your dissent
3314 to the 2015 order, in it there were some concerns associated
3315 with the cost to the program to date. And in your dissent
3316 you did recognize that there had been some reforms, that we
3317 looked back to 2012, understanding that in 2005, 2008, we saw
3318 a transformation of Lifeline that went from rotary--land line
3319 phones to being able to go into mobile phones, and now into
3320 smartphone apparatus. Since then, in 2012, the Commission
3321 came forward with a unanimous opinion, which resulted in a
3322 reduction of \$214 million in savings in 2012, with a
3323 substantial projection going into 2014. I am trying to still

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3324 get the numbers on what those realized savings were as well.

3325 But in your dissent you also listed a concern where

3326 there were providers that were signing people up

3327 fraudulently, which we need to crack down on, and we share

3328 that concern. But in the 2015 order that you dissented,

3329 there was a reform in there that did state that we would--

3330 that the FCC would remove the ability for providers to sign

3331 people up for Lifeline--or for verification.

3332 Mr. {Pai.} Um-hum.

3333 Mr. {Lujan.} Is that something that--with that

3334 principle, is that something that you agree with, and were

3335 there other areas that you disagreed with in the order? But

3336 is that something that you could agree with that we could

3337 work on together?

3338 Mr. {Pai.} Well, I would love to work with you on that,

3339 and I do think that verification is a critical issue. I

3340 think one of the problems that I cited in my dissent is the

3341 case--is the fact that fly by night operators, like Icon

3342 Telecom in Oklahoma, they just created so-called Lifeline

3343 customers out of whole cloth, got a lot of money for doing

3344 it, and the CEO ended up pocketing \$20 million, and spent it

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3345 on his own private expenses. And that is something we need
3346 to weed out. We need more enforcement action, we need to
3347 reform the rules, and we need to have that conversation about
3348 how to have a fiscally responsible program.

3349 Mr. {Lujan.} And so I appreciate the reforms the
3350 Commission has put in place. The last question I have is, is
3351 \$1.6 billion the right cap? Because you and I share a
3352 concern with broadband availability in communities, but I
3353 would hope that we both would agree that it is not just
3354 accessibility from an infrastructure perspective to
3355 broadband, it is also an affordability question in many rural
3356 parts of the country. What is the right number for a cap,
3357 and should it be arbitrary, or should it be based on data?

3358 Mr. {Pai.} I do believe it should be fact-based, and
3359 that is part of the reason why I suggested a cap or a budget
3360 of \$1.6 billion, because the program was at 800 million in
3361 2009. It is now at 1.6, and that is the only one of the
3362 universal service fund programs that isn't capped. And so
3363 what I suggested was, we need to have a balance here. We
3364 need to make sure that we target the people who are offline
3365 in the Lifeline Program.

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3366 We also have to make sure that we are responsible
3367 stewards of the consumers' tax dollars. After all, this is
3368 paid for by consumers, and 1.6 seemed to me to be a good
3369 conversation--a good starting point to have.

3370 Mr. {Lujan.} But 1.6 is based on last year's numbers.
3371 There is no--the only data associated there is that is what
3372 the number rounds up, and year to year that number changes,
3373 understanding that the inflation from 2008 to 2012 was
3374 because the reforms were necessarily in place that helped us
3375 back that number down with the reforms in 2012, and the
3376 recent actions by the FCC in 2015.

3377 So, Mr. Chairman, this is an area maybe where we can
3378 work on it together as well, but I look forward to have more
3379 conversations in this space as well. Thank you for the time,
3380 Mr. Chairman.

3381 Mr. {Walden.} Thank you, and we appreciate your
3382 participation, and that of our witnesses. And, speaking of
3383 outdated data, just in closing, the quadrennial review I
3384 referenced in my opening statement is now--I think the last
3385 one we got is probably 8 years old, so I hope the Commission
3386 will deal with the quadrennial ownership report on a basis as

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3387 required by statute. AM modernization is still something
3388 high on a number of our priorities, and on the de-stack
3389 issue, we ask in stellar that the Commission deal with the
3390 downloadable security issues, and it appears that Committee
3391 was given direction to work disaggregation of data on a video
3392 stream. So, again, we are after the downloadable security
3393 issue.

3394 I have one letter to put in the record from Care
3395 Payment, without objection.

3396 [The information follows:]

3397 ***** COMMITTEE INSERT *****

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|

3398 Mr. {Walden.} And I think you heard, Mr. Chairman,
3399 bipartisan concerns here on TCPA. We realize you are
3400 implementing the law, it appears a law that was created back
3401 in '91, when you got charged for incoming phone calls.
3402 Nobody is talking about robocalls here for cell phones. None
3403 of us want that. But I think there is an issue here where we
3404 need to take a look at that law.

3405 So, with that, thank you for your diligence, and your
3406 patience, and with that, Subcommittee stands adjourned.

3407 [Whereupon, at 1:15 p.m. the Subcommittee was
3408 adjourned.]