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6 OVERSIGHT OF THE FEDERAL COMMUNICATIONS

7 COMMISSION

8 TUESDAY, MARCH 22, 2016

9 House of Representatives

10 Subcommittee on Communications and

11 Technology

12 Committee on Energy and Commerce

13 Washington, D.C.

14

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17 The subcommittee met, pursuant to call, at 10:15 a.m., in

18 Room 2123 Rayburn House Office Building, Hon. Greg Walden

19 [chairman of the subcommittee] presiding.

20 Members present: Representatives Walden, Latta, Barton,

21 Shimkus, Blackburn, Lance, Guthrie, Olson, Pompeo, Kinzinger,

22 Bilirakis, Johnson, Long, Ellmers, Collins, Cramer, Upton (ex

23 officio), Eshoo, Doyle, Yarmuth, Clarke, Loeb sack, DeGette,

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24 Butterfield, Matsui, McNerney, Lujan, and Pallone (ex officio).

25 Staff present: Gary Andres, Staff Director; Ray Baum, Senior
26 Policy Advisor for Communications and Technology; Mike
27 Bloomquist, Deputy Staff Director; Leighton Brown, Deputy Press
28 Secretary; Rebecca Card, Assistant Press Secretary; Gene Fullano,
29 Detailee, Telecom; Kelsey Guyselman, Counsel, Telecom; Tim
30 Pataki, Professional Staff Member; David Redl, Chief Counsel,
31 Telecom; Charlotte Savercool, Professional Staff, Communications
32 and Technology; Dan Schneider, Press Secretary; Dylan Vorbach,
33 Deputy Press Secretary; Gregory Watson, Legislative Clerk,
34 Communications and Technology; Christine Brennan, Minority Press
35 Secretary; Jeff Carroll, Minority Staff Director; David Goldman,
36 Minority Chief Counsel, Communications and Technology; Jerry
37 Leverich, Minority Counsel; Lori Maarbjerg, Minority FCC
38 Detailee; Ryan Skukowski, Minority Policy Analyst; and Andrew
39 Souvall, Minority Director of Communications, Outreach and Member
40 Services.

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41 Mr. Walden. I call the Subcommittee on Communications and
42 Technology to order and welcome our distinguished panel, the
43 chairman and Federal Communication Commission commissioners,
44 thank you for being here this morning. Good morning Chairman
45 Wheeler. Commissioners, thank you all for joining us.

46 I want to start this morning with two points of personal
47 privilege. First, would you all join me in wishing Commissioner
48 Clyburn a very joyous and happy birthday? It is not every day
49 you turn 30, including today. But, oh, well. We know you think
50 of it as a present to be here with us today.

51 Thank you for your great service to the country and may you
52 have many, many more wonderful birthdays ahead, not necessarily
53 celebrated with us.

54 Second, today is the last hearing that my good friend of
55 nearly 30 years, an extraordinary counselor, Ray Baum will serve
56 as a member of our committee staff. As fate would have it, our
57 parents were friends back in the 1930s. Ray and I won back the
58 seats that our fathers had both held and both had been defeated
59 by Democrats in, when we were elected to the Oregon legislature
60 in 1988. He followed me as House Majority Leader and then later
61 served as a member of the Oregon Public Utility Commission,
62 appointed by a Democratic governor. And then another Democratic
63 governor appointed him to serve as chairman of the Public Utility

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64 Commission and he served as the chair of the state Federal-State
65 Joint Board on Universal Service as well. A really exciting
66 topic, if anybody wants to get too deeply into, Ray can take you
67 there.

68 He has given us more than the 5 years he committed, when I
69 convinced him and his wife to come to Washington and I hope we
70 all wish him well as he begins a new journey with the broadcasters.
71 Ray, thanks for decades of strong, fair, and effective public
72 service for Oregonians and all Americans. Godspeed on your new
73 journey.

74 Ms. Eshoo. Mr. Chairman? Mr. Chairman?

75 Mr. Walden. I would yield to my friend from California.

76 Ms. Eshoo. I thank the chairman. We all wish Ray the
77 absolute best because he has given his best here. He has always
78 been a gentleman. He is a public policy expert. He has given
79 his all to the committee and during times when it was difficult
80 for him to do that because he was battling something in terms of
81 his health but he never missed a beat. And I call that real
82 dedication, dedication to not only our committee and the work and
83 the responsibilities of this committee but ultimately for the
84 American people.

85 So, God bless you, Ray. We are going to miss you a great
86 deal. Thank you for everything that you have done on behalf of

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87 all of us.

88 Mr. Walden. The gentleman from New Mexico.

89 Mr. Lujan. Thank you, Mr. Chairman. And Ray, this is a
90 surprise to me, sir, but I also had the honor of working with Ray
91 Baum and learning from Ray Baum back when he was a utility
92 commissioner and I was on the New Mexico commission as well. And
93 it has been an honor working with you, Ray. Many successes and
94 I look forward to continuing to work with you. You are a great,
95 great person and you truly are an asset to America. I look forward
96 to learning from you and working with you in your future endeavors.

97 Mr. Walden. Thank you. Now, on to our hearing.

98 We are entering what will most likely be, if tradition holds,
99 the final chapter in the history of the FCC under Chairman
100 Wheeler's leadership. As the record clearly shows, while we have
101 worked together on many public policy issues, we have also been
102 at odds at times on process and policy.

103 While the Commission began with a commitment to reform the
104 agency from within, we know that the Commission has implemented
105 only half of the recommendations of the 2014 FCC Process Reform
106 Working Group. This is why I believe true reforms require changes
107 in law that can transcend any particular chairman or any
108 particular commission. The public deserves no less.
109 Unfortunately, sharp divisions within the Commission are widely

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110 reported. With the rapidly changing communications marketplace,
111 we have never needed this independent agency to work together for
112 the public interest more than now.

113 And I have to admit there are times when I have expressed
114 my displeasure with the FCC's actions and its failure to adhere
115 to the will and intent of Congress. For example, notwithstanding
116 passage of the bipartisan legislation requiring that existing
117 JSAs be grandfathered from the FCC's controversial revisions to
118 the ownership rules, the FCC's media bureau recently terminated
119 a JSA in spite of this restriction, evoking a strong bipartisan
120 rebuke. And the recent Senate report on how the chairman and his
121 general counsel capitulated to the White House demands regarding
122 net neutrality proceeding illustrates, without question, the
123 willingness of agency leadership to subvert what I would call fair
124 and open process to political pressure from the White House.

125 But that is not all. I am concerned about the FCC's actions
126 regarding set top boxes and what that means for copyrighted
127 programming and consumer privacy. While the FCC has wrapped its
128 proposal in pro-competition and pro-consumer bunting a broad
129 range of stakeholders, including content providers, program
130 distributors, large and small, and civil rights groups have
131 emerged pointing out that the proposal raises serious concerns
132 about its downside. I am sure that we will hear more about that

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133 from our other committee members today.

134 Meanwhile, the chairman has circulated a proposal to impose
135 privacy rules on ISPs modeled on those for the old telephone
136 network. Instead of making the proposal public for all to see,
137 all the public gets is a fact sheet. Words matter, to quote others
138 on this committee. Mr. Chairman, I call on you to make that
139 proposal available for all to see, including for commissioners
140 to comment upon. And I think that would be helpful and important.

141 And the chairman has circulated his plan to expand the
142 Lifeline program to subsidize mobile and fixed broadband internet
143 access and contemplates increasing spending by \$750 million.
144 Again, because this proposal is not public, we have only the FCC's
145 fact sheet to guide our understanding. While it appears the
146 chairman has proposed a budget mechanism, certainly a necessary
147 step, and reforms to combat waste, fraud, and abuse, which we
148 support going after all of that, the devil is in the details as
149 to whether they are meaningful details which we cannot see until
150 the item is adopted and released. Notably absent from the FCC's
151 marketing materials is a discussion of the financial impact of
152 the proposal on the families that pay each month through fees on
153 their phone bills to support the program.

154 These are all significant matters that will define how we
155 communicate for years to come. It will not serve the American

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156 people if they are resolved in a manner that ignores opposing
157 views, discredits opposing input on its face, and gives short
158 shrift to collaboration in favor of expediency. Good process --
159 openness, transparency, and accountability -- honest policy
160 debate, and compromise are the catalyst for balanced, sustainable
161 outcomes.

162 Finally, let me end with this. If all goes as planned, and
163 it appears that it will, the incentive auction will begin on March
164 29th. And I commend the Commission and its staff and the chairman
165 for moving this process along. It has been a very difficult road,
166 never traveled before. I consider the legislation that got us
167 here some of the most important work to have come out of our
168 subcommittee, legislation that reflected bipartisan agreement,
169 reached through debate and compromise. I think it is something
170 we can all be proud of.

171 We all hope the auction is a success. And, of course, only
172 time will tell. But, Mr. Chairman, you have recognized this is
173 only the beginning of a very complex endeavor. I was pleased to
174 see that your staff has already turned to the post-auction repack
175 issues. There are, of course, controversies about the
176 sufficiency of the 39-month time line and the \$1.75 billion set
177 aside fund to fund it. In addition, I remain concerned about
178 keeping translators and low-power television stations on the air

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179 as appropriate under the rules. I remind the FCC of the age-old
180 requirement that licensed stations supersede unlicensed uses of
181 broadcast spectrum. Know that we take these issues seriously,
182 and I know you do, and will continue to work closely with you and
183 your team as this phase of the post auction proceeds to make sure
184 that the intent of the law is followed and that free over-the-air
185 broadcast programming is not adversely affected.

186 Again, thank you for your good work on the auction.

187 I guess I have used up all the time I had. So, with that,
188 I would recognize the gentlelady from California for opening
189 remarks and again thank the chairman of the Commission for the
190 work you do and for being here today.

191 Ms. Eshoo. Thank you, Mr. Chairman, and good morning to you.
192 And welcome back to the chairman and each of the commissioners.
193 It has been 4 months since you have been here. I think that you
194 have made optimum use of the 4 months since you were last here
195 because there are a series of actions that are being taken up at
196 the Commission that I think put consumers first, strengthen
197 competition and advance innovation.

198 At the top of that list is the agency's vote last month that
199 would make it easier for consumers to buy a set top box or an app
200 from someone other than their cable company. This technology
201 neutral proposal means that any company will be able to

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202 manufacture a set top box or design an app and sell it to consumers.
203 Should a consumer wish to continue renting their set top box from
204 their pay TV provider, they can. No one is going to take it away
205 from them. I don't know if there is that much of a love affair
206 with the set top box but if they want it they can keep it. Very
207 importantly, the FCC's proposal is an opportunity to enhance
208 access to independent and minority programming, giving consumers
209 the ability to choose between set top boxes or apps with improved
210 search functionality and user interfaces.

211 Nearly 50 years ago, the FCC took action to give consumers
212 choice as to whether they wanted to rent their landline telephone
213 from Ma Bell. Consumers not only saved money but innovation
214 thrived in the telephone market.

215 The FCC is also busy in its efforts to modernize its Lifeline
216 program to make broadband more affordable to low-income
217 Americans. This has long been the goal of, I think, the entire
218 committee, certainly huge support on our side of the aisle. Under
219 the proposal to be voted on next week for the first time ever,
220 for the first time ever low-income consumers will be able to use
221 the \$9.25 per month Lifeline support towards stand-alone
222 broadband service. Access to broadband is the 21st century's
223 lifeline providing a pathway to jobs, education, healthcare and
224 so much more.

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225 The FCC's action will further our nation's progress toward
226 bridging the digital divide that has really haunted our country.
227 We have looked for ways, talked about it, dreamed about it, hoped
228 for it, and I think that this is a major step forward of reaching
229 the goal, the President's goal of bringing high-speed broadband
230 to 20 million more Americans by 2020.

231 In just a matter of days, the FCC will begin its first
232 voluntary incentive spectrum auction with global mobile traffic
233 expected to increase nearly eight-fold, eight-fold between 2015
234 and 2020 and wireless carriers taking steps to deploy 5G. I think
235 it is critical that we continue efforts to free up more spectrum
236 for both licensed and unlicensed use.

237 At the same time, the FCC will take critical action at its
238 March meeting to protect the privacy of broadband consumers,
239 efforts to continue to reform the special access market. And Mr.
240 Chairman, I hope this is just closed, done, accomplished at the
241 end of this year.

242 Transition to Next-Gen 911 and ensuring the internet remains
243 open and accessible to all Americans.

244 None of these are small tasks but taken together, not only
245 individually, but taken together I think that this will leave a
246 remarkable imprimatur on the country of this commission's work.

247 So, I thank you. I look forward to a lively discussion and

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248 questions that you are going to be asked. And again, thank you
249 for being here and the work that you are doing. And I yield back.

250 Mr. Walden. The gentlelady yields back the balance of her
251 time. The chair recognizes the chairman of the full committee,
252 the distinguished gentleman from Michigan, Mr. Upton.

253 The Chairman. Well, thank you, Mr. Chairman. I just want
254 to echo the words for Ray Baum and I would say, with apologies
255 to the rest of the staff, I don't know of a more professional
256 hard-working leader that we have had in Ray over the last 5 years.
257 He has helped set the standard. We work as a team on both sides
258 of the aisle. Yes, of course, we disagree from time to time on
259 certain issues but we are not disagreeable and he has set that
260 bar and we really appreciate his very hard work. I knew about
261 his background before and he has been an integral cog in all that
262 we have done and we all appreciate that friendship and
263 professionalism from Day 1.

264 Chairman Wheeler and members of this committee, welcome back
265 for sure.

266 Last November, the House did pass by a voice vote H.R. 2583,
267 the FCC Process Reform Act, a testament of our bipartisan
268 commitment to solidify the FCC as a model of openness,
269 transparency, and collegiality. This committee has pursued FCC
270 process reform on a bipartisan basis, going back to the 112th

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271 Congress, and I am proud of our continued efforts to improve the
272 function and transparency of our government.

273 Underscoring the need for this legislation are, of course,
274 the continued reports of process failures and divisive
275 partisanship at the FCC. The FCC is the steward of one of the
276 most vibrant and innovative sectors of our national economy.
277 Significant matters remain before it and the stakes are certainly
278 high. The communications and technology sectors are among our
279 nation's most precious economic assets, the pinnacle of
280 innovation and something that we should be rightly so proud of.

281 Given the stakes, two of our FCC's most recent proposals are
282 cause for concern. The Chairman recently presented his colleagues
283 with a proposal to impose new requirements on the video
284 subscription market and a new privacy regime for internet service
285 providers. These proposals have the potential to harm the very
286 sectors that they are attempting to preserve and stimulate. The
287 Commission should look with a skeptical eye at calls to regulate
288 part of a market at the request of competitors.

289 And as the chairman seeks to implement what is likely the
290 final year of his agenda, it is no less important now that matters
291 are addressed through a process that is open and transparent,
292 informed through robust debate, and resolve through bipartisan
293 compromise. These were procedures that once set the FCC apart

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294 and should be returned to. It is only through this approach that
295 we can avoid uncertainty and the threat to investments.

296 And I yield to Mr. Latta, Blackburn, and Cramer.

297 Mr. Latta. With that, I appreciate the chairman for
298 yielding and I also want to thank the Commissioner for being with
299 us today.

300 I am always continually amazed by the success and the
301 productivity of the communications and technology industry. This
302 dynamic sector is a bright spot in our economy, as it rapidly
303 advances and evolves to meet consumer demands. Given the Federal
304 Communications Commission's integral role in this marketplace,
305 it is critical that Congress monitor its regulatory policies that
306 impact the industry's success.

307 With that said, I am concerned with some of the actions and
308 proposals emerging from the Commission. Take for instance, the
309 set top box Notice of Proposed Rulemaking which seeks to replace
310 the failed cable card regime with yet another government-dictated
311 standard. And Congressman Green and I worked together to get our
312 bill language inserted into stellar to eliminate the integration
313 band, we intended to rid the marketplace of an outdated
314 technological mandate. However, rather than allowing consumer
315 demands and competitions to shape the industry, the FCC has placed
316 it upon itself to inhibit the future of pay TV with unnecessary

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317 government involvement. The NPRM will surely impede innovation
318 and limit consumer choice.

319 With that, I look forward to today's hearing and I will yield
320 back to the chairman. Thank you.

321 Mrs. Blackburn. I thank you, Mr. Chairman, for yielding.
322 We are appreciative of the Commissioner's time in coming here
323 before us this morning. There are concerns, as you have heard
324 from some of the policies that you have moved forward with, net
325 neutrality, municipal broadband. The actions that were taken in
326 North Carolina and Tennessee in muni broadband were so radical
327 that even DOJ didn't support what you were doing.

328 We also have concerns pertaining to AllVid and lessening of
329 the protections that are there for patent holders and copyrights.

330 So, lots to discuss today. So, we thank you for your time
331 and your preparation in being here. And I yield to Mr. Cramer.

332 Mr. Cramer. Thank you for yielding. Thank you to all three
333 of you.

334 I guess I would just associate myself, as much as anything,
335 with the chairman of the full committee and the chairman of the
336 subcommittee and put a finer point, perhaps on the set top box
337 rule. While I have all the same concerns they have, I have a
338 special particular concern about its impact, the disproportionate
339 impact it would have on smaller video providers, rural video

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340 providers, and a number of us are always looking out for the
341 smaller, rural providers.

342 And then I would just one other issue and that is that I
343 continue to hear from especially my rural telephone cooperatives
344 of call dropping issues. And if maybe after the hearing somebody
345 could hook up with my staff, I would like to get the latest from
346 you all. Because we just heard from Tyler Kilde of Griggs County,
347 for example. They are having as many as five complaints a month
348 and that still seems awfully high. And I yield back. Thank you.

349 Mr. Walden. The gentleman yields back.

350 Mr. Cramer. And I love Ray, too.

351 I, too, served as a public service commissioner. He was
352 legend then, too.

353 Mr. Walden. I thank the gentleman for his comments. And
354 all time has been consumed. So, now we go to the ranking member
355 of the full committee, Mr. Pallone of New Jersey for opening
356 comments.

357 Mr. Pallone. Thank you, Mr. Chairman and also Ranking
358 Member Eshoo. And thank you to all five commissioners for
359 testifying today.

360 Anyone who thought the FCC would slow down this year
361 certainly underestimated the agency. The Commission has teed up
362 an impressive number of important issues, including the incentive

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363 auction set to launch next week. The auction counts as one of
364 the most ambitious efforts the agency has ever undertaken. The
365 air waves that can be freed up through this auction, both licensed
366 and unlicensed, will ensure consumers feel the full power of the
367 mobile revolution.

368 But as important as it is to help consumers of mobile
369 services, the auction can also be considered successful if it
370 works for broadcast viewers as well. Back in New Jersey, we
371 understand the importance of a seamless transition after the
372 auction because disasters like Hurricane Sandy can strike at any
373 time and when they do, viewers depend on their local broadcasters.

374 Fortunately, all five FCC commissioners have committed to
375 ensuring viewers do not lose signal as a result of the repacking
376 process. That is why I drafted the Viewer Protection Act to give
377 them all the tools they need to keep this commitment. This bill
378 will prevent viewers' TVs from going dark, while also ensuring
379 consumers of mobile broadband benefit from the incentive auction
380 as soon as possible.

381 Hurricane Sandy also showed the importance of phones in an
382 emergency. When the hurricane hit New Jersey, we did not just
383 watch our TVs or listen to our radios but we also looked to our
384 mobile phones. Unfortunately, too many of those devices let us
385 down when we needed them the most. And that is why I introduced

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386 the Sandy Act so that we are better prepared the next time disaster
387 strikes.

388 The Sandy Act has a number of common sense proposals to
389 improve access to communications in a disaster. For instance,
390 the Sandy Act would help ensure the customers of any wireless
391 carrier can get signal, even if their own carrier service goes
392 down. No one should be left without any bars on their phone when
393 a compatible network is still working.

394 The bill would also create a database of critical personnel
395 to keep public safety officials and the carriers in better touch
396 during an emergency when every second counts.

397 I have been in close contact with both Chairman Wheeler and
398 the carriers to talk about how to get this done and I want to thank
399 them both for taking these issues so seriously. I am optimistic
400 that we are close to a breakthrough that would put us in a better
401 position for when the next disaster strikes.

402 And again, I think the chairman, Ms. Eshoo, and the
403 commissioners for being here today. I look forward to today's
404 discussion.

405 I have about 2 and 1/2 minutes left. I would like to split
406 that between Mr. Doyle and Mr. Butterfield and yield first to Mr.
407 Doyle.

408 Mr. Doyle. Thank you. I appreciate you yielding to me.

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409 And I want to thank the chairman for holding the hearing. And
410 to our witnesses, this is like deja vue all over again. These
411 guys are here all the time. But welcome back. We are glad to
412 see you.

413 The Lifeline program connects millions of people around the
414 country to their only source of communication and I just wanted
415 to take a minute to congratulate Commissioner Clyburn for her
416 leadership on this issue and the efforts of the full commission
417 to modernize this program and bring it into the 21st century.

418 I also want to commend the Commission on moving forward on
419 broadband privacy reform. I agree that it is critical for FCC
420 rules to be updated to suit our modern needs and that these rule
421 recognize the privileged position ISPs hold in acting as
422 gatekeepers for the rest of the internet.

423 So, Mr. Chairman, that is all I have to say and I would be
424 happy to yield back to you so that you can yield to our other
425 colleague.

426 Mr. Pallone. I yield -- oh, yes. Thank you.

427 Mr. Doyle. It is just a matter of time.

428 Mr. Pallone. Oh, my God, we started out all right. I yield
429 the rest of the time to Mr. Butterfield. Thanks.

430 Mr. Butterfield. Thank you, very much, Mr. Pallone. Let
431 it be said that our colleague from Pennsylvania set a record today.

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432 Thank you, Mike Doyle. I thought you were going to eat up all
433 of that time.

434 But thank you, Mr. Pallone. Let me begin by sharing with
435 my colleagues and thanking the commissioners for their incredible
436 work and thank you for coming today.

437 I join my many other colleagues in applauding the Commission
438 for expanding the Lifeline program to subsidize broadband
439 services but I am afraid one of the unintended consequences of
440 the current proposal would be the creation of a co-pay requirement
441 on low-income participants of Lifeline, as well as a phase out
442 of voice-only.

443 And so, Mr. Chairman, I urge the Commission to preserve a
444 no-charge option for Lifeline participants who may not be able
445 to afford even a modest co-pay and to maintain a voice-only option.
446 It is crucial. It is crucial for Lifeline
447 beneficiaries in my congressional district and across the country
448 that the expansion of the program to include broadband will not
449 be at the expense of essential voice services.

450 Regarding the set top box proposal, I am also concerned with
451 the potential for many unintended consequences like many of those
452 raised in the Op Ed written by Henry Waxman, including the ability
453 to enforce copyright protections for content creators and
454 distributors as well as the potential negative impact the proposal

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455 could have on diversity and inclusion of minority voices.

456 Along with other stakeholders, I am concerned that the
457 proposal could lead to a new forum of digital redlining.

458 Therefore, Mr. Chairman, I ask unanimous consent to include three
459 items into the record.

460 Very briefly, the first letter is addressed to Chairman
461 Wheeler signed by ten civil rights organizations urging the
462 Commission to postpone the set top box proposal until a study can
463 be conducted.

464 [The information follows:]

465

466 *****COMMITTEE INSERT 1*****

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467 Mr. Butterfield. Second, is an Op Ed from our good friend,
468 Henry Waxman, that cautions the Commission to explore the myriad
469 of unintended consequences that could arise from the set top box
470 proposal.

471 [The information follows:]

472

473 *****COMMITTEE INSERT 2*****

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474 Mr. Butterfield. Finally, the third is a copy of comments
475 filed by the Center on budget and policy priorities, which urges
476 the Commission to not require any -- any cost sharing in order
477 to participate in the Lifeline program because evidence shows that
478 doing so would dampen low-income household's ability to
479 participate.

480 [The information follows:]

481

482 *****COMMITTEE INSERT 3*****

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483 Mr. Butterfield. Thank you.

484 Mr. Walden. Without objection.

485 Mr. Butterfield. Thank you, Mr. Chairman.

486 With that, I yield back and I thank you.

487 Mr. Walden. The gentleman's time has expired. All times
488 has expired for opening statements. I want to again welcome the
489 chairman and the commissioners here this morning.

490 And Chairman Wheeler, obviously, we are going to start with
491 you this morning. Welcome back and I look forward to your
492 comments.

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493 STATEMENT OF TOM WHEELER, CHAIRMAN, U.S. FEDERAL COMMUNICATIONS
494 COMMISSION; MIGNON CLYBURN, COMMISSIONER, FEDERAL COMMUNICATIONS
495 COMMISSION; JESSICA ROSENWORCEL, COMMISSIONER, FEDERAL
496 COMMUNICATIONS COMMISSION; AJIT PAI, COMMISSIONER, FEDERAL
497 COMMUNICATIONS COMMISSION; MICHAEL O'RIELLY, COMMISSIONER,
498 FEDERAL COMMUNICATIONS COMMISSION

499

500 STATEMENT OF TOM WHEELER

501 Mr. Wheeler. Thank you, Mr. Chairman and members of the --
502 Mr. Walden. But we would ask you to pull that microphone
503 pretty close. Thank you.

504 Mr. Wheeler. Let me start off with the topic that many of
505 you were addressing and that is the upcoming spectrum auction.
506 It is only going to be a week -- is it not coming through?

507 Mr. Walden. Yes, you have got to get it really close.
508 Really close. There you go.

509 Mr. Wheeler. You know I have seldom been accused of not
510 projecting and I will --

511 One week from today the green flag goes down on the incentive
512 spectrum auction. As the committee has noted, this is the first
513 time this has been tried in the world.

514 This committee developed the authorizing statute and you all
515 have been very involved in the intervening years as the pieces

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516 of the puzzle were being built. I would be terribly remiss if
517 I didn't mention the incredible work of Gary Epstein and the
518 Incentive Auction Task Force at the FCC in this regard. Gary and
519 Howard Simons, along with an A plus team have rustled wrestled
520 with issues that no one ever before has had to deal with and it
521 brought us to the threshold of this historic auction.

522 Now, many have asked about the impact of the D.C. Circuit's
523 decision that Latina Broadcasting should be provisionally
524 certified to participate in the auction. That decision will not
525 delay the March 29th start date for participating broadcasters
526 to make their initial commitments.

527 After March 29th, as we always planned, the auction team will
528 analyze the initial commitments and calculate the initial
529 clearing target. We had said this process would take 3 to 4 weeks.
530 The late hour inclusion of Latina will require us to update our
531 data files and ensure that the auction system is properly
532 functioning with the updated data prior to circulating the initial
533 clearing target.

534 Staff is working through the operational effects of
535 including Latina so that we can make those updates. But we have
536 always planned the auction bidding in the reverse auction will
537 begin in May and we still expect that will happen.

538 Insofar as the forward auction, in which the wireless

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539 carriers participate, we will proceed with the previously
540 announced schedule. There are 104 parties that have expressed
541 interest, a 50 percent increase over the number of qualified
542 bidders in the record-setting AWS-3 auction. Of course, not all
543 applicants may become qualified bidders but we are currently
544 working with them and plan to have a final list by April 6th. The
545 forward auction, of course, will follow the close of the reverse
546 auction.

547 In the coming weeks, we will continue our bidding education
548 and training activities so that both reverse and forward auction
549 bidders have plenty of time to become familiar with the bidding
550 systems before the respective auctions begin.

551 We are finally at the point where we move from the theoretical
552 to the real world. For months, various hypotheses have been put
553 forward predicting one effect or another to happen in the auction.
554 Next week, the wisdom of this committee in creating a marketplace
555 that will begin to deliver market-driven decisions to replace all
556 those studies and theories with real marketplace conclusions will
557 begin.

558 I look forward to discussing this and other issues with you
559 today. But before I conclude, I want to once again reiterate the
560 need for Congress to become involved in the ability of
561 Next-Generation 911 to protect Americans. Twenty-first century

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562 lifesaving is being blocked by the realities of getting beyond
563 20th century technology. We at the FCC have done all in our power
564 on this topic, including convening a year-long task force to
565 report on the challenges being faced. That report is now complete
566 and has been submitted to this committee. We look forward to
567 working with you on this important priority.

568 Thank you, Mr. Chairman.

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

570

571 *****INSERT 4*****

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572 Mr. Walden. Thank you, Mr. Chairman.

573 And now we go to Ms. Clyburn for your opening statements.

574 Commissioner, go ahead.

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575 STATEMENT OF MIGNON CLYBURN

576

577 Ms. Clyburn. Thank you.

578

579 Chairman Walden, Ranking Member Eshoo, distinguished
580 members of the subcommittee, please allow me to begin by offering
581 my thoughts and prayers to the families and victims of this
582 morning's attacks in Brussels.

582

583 I am grateful for the opportunity to appear before you this

584

585 Competition, competition, competition. It is a phrase we
586 have heard Chairman Wheeler repeat time and time again but today,
587 I wish to preview an axiom of my own: community, community,
588 community.

588

589 In communities across this nation, be they urban or suburban,
590 rural or tribal, there is a communications divide, a divide when
591 it comes to broadband access, affordability and infrastructure
592 and a divide when it comes to the speeds necessary to take
593 advantage of all the internet has to offer.

593

594 This lack of connectivity has disadvantaged so many of our
595 communities that Congress and the Commission wisely decided to
596 act by taking a few simple steps to help bridge these chronic
597 divides.

597

First, allow me to applaud the leadership of this

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598 subcommittee as you consider commonsense proposals to streamline
599 and lower costs associated with the deployment of broadband. I
600 stand ready to work with you in support of bipartisan proposals
601 that will speed the deployment of broadband to more Americans.

602 Second, I am pleased to have work collaboratively with my
603 colleagues Chairman Wheeler and Commissioner O'Rielly to create
604 a blueprint for rate of return carriers so that rural communities
605 are not left behind.

606 Third, and this is critical, once connected broadband
607 service must be affordable. The Commission has a statutory duty
608 to ensure that services are affordable and that low-income
609 consumers have access to advanced services comparable to those
610 available in urban areas. But for far too long, the Commission
611 has fallen short of this directive. We have the capacity,
612 however, to change this.

613 The chairman has circulated an order that, if adopted, would
614 put Lifeline on the soundest footing of all of our universal
615 service programs. The proposal seeks to achieve this by
616 declining support to providers, unless a neutral third party has
617 determined that a household is eligible, eliminating duplicates,
618 and requiring minimum standards.

619 Now, my office has been inundated with concerns about the
620 call for minimum standards, particularly for mobile voice, but

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621 the strongest part of the FCC's process, one that is the envy of
622 regulators from across the globe is that our process enables
623 parties to give and receive feedback. If parties believe that
624 the current proposal does not strike the right balance, I have
625 been clear from the beginning that I am open to taking and making
626 appropriate adjustments and I plan to live up to that promise.
627 I am committed to providing qualified Lifeline consumers with
628 choice and competitive 21st century options. And I am committed
629 to addressing those outstanding concerns that reflect the input
630 of our state regulatory partners, as well as those forward-looking
631 providers who are engaged and committed to real reform.

632 Finally, I am excited about the possibilities of 5G and its
633 ability to fundamentally transform the way we live and interact
634 with each other. I believe that the best way to deploy spectrum
635 and the infrastructure required to deploy those 5G services is
636 for the industry to talk with local governments and communities,
637 for them to find out what the specific needs of the communities
638 are and coordinate with them on how a 5G future can actually help
639 those communities address their short- and long-term needs.
640 Working together on these and other initiatives will bring
641 communities closer together, ensuring that they are better
642 connected and ready for the challenges facing them.

643 Thank you, again, for the opportunity to speak with you this

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644 morning and I look forward to answering any questions you may have.

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

646 *****INSERT 5*****

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647 Mr. Walden. Thank you, Commissioner. We appreciate your
648 service on the Commission and your comments this morning.

649 Now, we go to Commissioner Rosenworcel. Good morning.
650 Welcome. We are glad to have you here. And please go ahead with
651 your testimony.

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652 STATEMENT OF JESSICA ROSENWORCEL

653

654 Ms. Rosenworcel. Good morning, Chairman Walden, Ranking
655 Member Eshoo, and members of the committee. Thank you for having
656 me here today. And let me add my best wishes to the chorus for
657 Ray Baum.

658 Last week I had the privilege of speaking in Austin, Texas
659 at South by Southwest. It is a festival for the connected, a place
660 to get a glimpse of the future. From virtual reality to robotics,
661 it is all there on the streets of Austin.

662 Last week I also spent time in California in a rural farming
663 community in the Coachella Valley. It is a place where most roads
664 lead to fields but where broadband has not made its way to most
665 households.

666 Now, I can say with confidence I am probably the only person
667 who was in both of those communities last week. But as dissimilar
668 as they seem, they have something in common. They both know that
669 future lies in connectivity. They both know that access to modern
670 communications is no longer a luxury. It is where we create. It
671 is where we innovate. It is a necessity for full participation
672 in civic and commercial life.

673 Now expanding this access is front and center at the FCC.
674 We will shortly begin work on the world's first spectrum incentive

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675 auction. We will have work to do to repack our nation's
676 broadcasters. We are updated our universal service policies and
677 we are exploring spectrum frontiers for 5G wireless service.

678 But I want to focus on two things we can do right now that
679 will make a difference for the least connected and most-connected
680 among us. We can make more space for Wi-Fi and we can help bridge
681 the Homework Gap.

682 First up, Wi-Fi. The 2.4 gigahertz band, where Wi-Fi makes
683 its primary home is getting mighty crowded. The demand for 5
684 gigahertz Wi-Fi is also growing. So, before we overwhelm Wi-Fi
685 as we know it, we need more efforts to secure more unlicensed
686 spectrum. There is no shortage of reasons why this is a good idea.
687 Wi-Fi democratizes internet access. It helps wireless carriers
688 manage their networks through the offloading of traffic and it
689 encourages permissionless innovation, just like what I saw all
690 last week on the streets of Austin. And it is responsible for
691 more than \$140 billion in economic activity every year.

692 But historically, the legislative process has overlooked the
693 value of unlicensed spectrum because it gets low marks in the
694 scoring process at the Congressional Budget Office. Yet, this
695 accounting misses the mark. It is outdated because the broader
696 benefits of unlicensed spectrum to the economy are so great. So
697 in any effort to increase the licensed spectrum pipeline, we need

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698 to explore a cut for unlicensed. Call it the Wi-Fi dividend.

699 And right now at the FCC, we have a golden opportunity for
700 a Wi-Fi dividend in the upper portion of the 5 gigahertz band.
701 We have a consensus framework for testing this band for unlicensed
702 use, while also protecting incumbent efforts to use it for vehicle
703 safety. So, we need to work now with our colleagues at the
704 Department of Transportation and the Department of Commerce and
705 get this testing underway.

706 We also have unlicensed opportunities in the guard bands in
707 the 600 megahertz band and millimeter wave spectrum at 64 to 71
708 gigahertz. We need to seize all of them.

709 Second, I want to talk about another issue that matters for
710 the future of connectivity and that is the Homework Gap. Today,
711 roughly seven in ten teachers assign homework that requires access
712 to the internet but FCC data suggests that as many as one in three
713 households in this country do not subscribe to broadband service.
714 So, think about those numbers and where they overlap. That is
715 what I call the Homework Gap.

716 So, if you were a student in a household without broadband,
717 just getting homework done is hard. Applying for a scholarship
718 is challenging. And while some students may have access to a
719 smartphone, let me submit to you that a phone is just not how you
720 want to research and type a paper, apply for jobs, or further your

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721 education.

722 That is why the Homework Gap is the cruelest part of our new
723 digital divide. But it is within our power to bridge it and more
724 Wi-Fi can help. In fact, in Coachella Valley, where I was last
725 week, they are using Wi-Fi on school buses and turning ride time
726 into connected time for homework. But more can be done. And
727 modernizing a Lifeline program to support online access in
728 households with school-aged children is critical. And I think
729 the sooner we act, the sooner we bridge this gap and give more
730 students a fair shot at 21st century success.

731 Thank you.

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

733

734 *****INSERT 6*****

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735 Mr. Walden. Thank you.

736 Now, we will go to Commissioner Pai. We are honored to have
737 you before the panel again this morning. So, please go ahead.

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738 STATEMENT OF AJIT PAI

739

740 Mr. Pai. Chairman Walden, Ranking Member Eshoo, members of
741 the committee, and the indefatigable Ray Baum, thank you for
742 holding this hearing and giving me the opportunity to testify.

743 I want to focus this morning on two issues where this
744 subcommittee has led and where, unfortunately, the FCC is falling
745 behind: FCC process reform and broadband deployment.

746 I first want to begin by thanking the subcommittee for its
747 long-standing focus on FCC process reform. While I firmly
748 believe that the agency is at its best when it operates in a
749 bipartisan, collaborative and transparent manner, unfortunately,
750 the agency has not lived up to that standard recently. First,
751 the FCC continues to be run in a partisan fashion. Since December
752 of 2013, there have been 20 separate party-line votes at our
753 monthly meetings. That is twice as many as under Chairmen Martin,
754 Copps, Genachowski, and Clyburn combined.

755 Second, collaboration has fallen by the wayside. During my
756 first 18 months on the job, Chairman Genachowski and Chairwoman
757 Clyburn led us to consensus 89.5 percent of the time on FCC meeting
758 items. Over the past 2 years, that number has dropped
759 precipitously to 56.4 percent.

760 Reflecting this shift, the Chairman's Office frequently

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761 shares non-public information with the press and select outside
762 parties, while leaving commissioners in the dark. For example,
763 2 weeks ago, FCC leadership shared the chairman's Lifeline
764 proposal with the New York Times and promoted it on a call with
765 reporters before sharing it with my office. That is hardly an
766 opening for good faith collaboration and it epitomizes how
767 business is now done at the agency.

768 Third, the FCC continues to shun transparency. Just last
769 week, the chairman's office denied a request from me and
770 Commissioner O'Rielly to release the Rating Return Form Plan
771 before we vote. Even though Commissioner O'Rielly helped write
772 it and even though real advocates have told us that, quote, it
773 is absolutely essential to see the written words on the page to
774 understand the actual effectiveness of the reforms.

775 Or take the idea of being more transparent with our
776 enforcement process. The FCC has had success in recent years
777 proposing headline-grabbing fines but its follow-through has been
778 abysmal. Since 2011, the FCC has proposed over \$374 million in
779 fines but it has collected only \$7.8 million. That is a meager
780 2 percent recovery rate. Only with additional transparency can
781 the public and this subcommittee hold the FCC accountable for this
782 colossal failure.

783 Now, none of this has to be this way. When I testified before

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784 this subcommittee a year ago, there was widespread agreement that
785 the FCC's process was broken. The chairman, himself,
786 acknowledged that legitimate issues had been raised. And he
787 announced a process reform task force.

788 I took this project seriously and I suggested reforms.
789 Among other things, I suggested that the chairman provide final
790 versions of an order a set time before we vote. I proposed that
791 every commissioner respond when one of us proposes edits. And
792 I suggested that every commissioner provide his or her input by
793 a date certain.

794 After participating in dozens of meetings, the chairman's
795 task force has accomplished nothing. Not a single reform has been
796 made one year later. Indeed, the task force has proven to be a
797 Potemkin village designed to persuade Congress that the agency
798 is doing something on process reform and, hence, that legislation
799 and oversight aren't required. But at this point, the only way
800 to ensure meaningful FCC process reform is through legislation
801 and vigorous oversight.

802 I want to turn next to the topic of broadband deployment and
803 I salute the subcommittee for its leadership in this area. For
804 its part, there is more that FCC can and should be doing. On
805 spectrum, we need to open the 5 gigahertz band to unlicensed
806 innovation, as Ranking Member Eshoo and I recently called for in

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807 a joint op ed.

808 We need to move forward with another 12,500 megahertz of
809 millimeter-wave spectrum and we need to launch a rulemaking to
810 study spectrum above 95 gigahertz.

811 On the wireline infrastructure side, we must continue to
812 reform our rules for pole attachments. Let's reduce the cost that
813 utilities charge internet service providers for preparing the
814 poles and conduit. These make-ready costs, as they are known,
815 are a major barrier to competitive entry and the subcommittee
816 rightly targeted them as ripe for reform.

817 Let's exclude a pole owner's capital costs when establishing
818 pole attachment rates. This would reduce broadband prices and
819 spur deployment.

820 And let's start adjudicating pole attachment disputes with
821 dispatch. Although the Commission has a special enforcement
822 docket for these cases, complaints tend to languish. We have
823 three from 2014 and two from 2015 still pending. We need to be
824 adjudicating those in weeks not years.

825 Chairman Walden, Ranking Member Eshoo, members of the
826 subcommittee, thank you once again for holding this hearing. I
827 look forward to answering your questions and working with you to
828 ensure a better future for all Americans and, particularly, the
829 Kansas Jayhawks.

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

831

832 *****INSERT 7*****

833 Mr. Walden. Wow, that last point kind of got slipped in
834 there!

835 Speaking of which, Chairman Wheeler, I didn't see Ohio State
836 in the NCAA but my Ducks are certainly there.

837 Okay, now, we will move right along to Commissioner --

838 Mr. Wheeler. Can I duck that question?

839 Mr. Walden. Yes, we have got a long way to get even during
840 the -- anyway, back to football.

841 Okay, now we go to Commissioner O'Rielly. Good morning and
842 set us back on course.

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843 STATEMENT OF MICHAEL O'RIELLY

844

845 Mr. O'Rielly. Thank you, Chairman Wheeler, Ranking Member

846 --

847 Mr. Walden. I don't think your mike is on there.

848 Mr. O'Rielly. There we go.

849 Mr. Walden. There we go.

850 Mr. O'Rielly. Thank you, Chairman Walden, Ranking Member

851 Eshoo, members of the subcommittee for the honor of appearing

852 before you today. I add my comments about Ray and he knows my

853 thoughts about him as well.

854 Let me start with the issue of FCC process reform, as my

855 colleague did. I find it necessary to reiterate that my efforts

856 are not about undermining the chairmanship. As I have previously

857 stated, even if every one of my proposals were adopted, the

858 chairman would still control the agenda and win every vote.

859 Additionally, this is not a response to the process or outcome

860 of net neutrality. These problems existed prior to that

861 particular item and remain today. Instead, my efforts attempt

862 to empower the public to engage with the Commission through a fair

863 process, rather than one deeply slanted to ensure that only the

864 right insiders get information and can influence outcomes.

865 At the same time, we must ensure that the rights of

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866 commissioners are not overrun by the chairman and the entrenched
867 bureaucracy. Take, for example, our rules prohibiting all
868 employees, including commissioners, from releasing non-public
869 information about our proceedings. It sounds noble until you
870 realize that the current practice prevents testing out ideas and
871 exchanging creative ways to consider an issue. Moreover, the
872 rule is being applied in a discriminatory manner to ensure that
873 the chairman and certain staff can push selected information to
874 favored parties, while the commissioners remain muzzled.

875 As for the chairman's process review task force, it is
876 important for the subcommittee to realize what is actually
877 occurring. The chairman came before this body three times last
878 year and essentially said that my ideas were legitimate and he
879 was going to consider each one through a special task force. The
880 reality is, 1 year later that task force has shown its real purpose
881 to diffuse the debate and deflect legislation in Congress. Just
882 Friday, ironically, the last day of so-called Sunshine Week, the
883 message was delivered that the general counsel, chairman, and
884 other majority commissioners, have objected to almost each and
885 every idea I raised. My proposal is to beef up written rationales
886 for statutory authority, provide a check for instances when
887 delegated authority is being taken too far, represent the opposing
888 viewpoints when allowing outside witnesses at open meetings, or

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889 give the public more information about proposals being considered
890 were all denied. They were even unwilling to agree to such basic
891 courtesies as holding off on press rollout until an item has
892 actually been circulated to commissioners.

893 In sum, all the chairman's leadership team can agree to do
894 is minutia, such as setting expectations for timelines to post
895 proposed edits on our internal email chains.

896 This demonstrates that there is no intention of making any
897 real changes absent congressional directives that would improve
898 the ability of Americans to participate in the government.

899 To the extent the subcommittee reads additional areas to
900 review, I would observe that the Office of General Counsel has
901 turned from an office focused on providing mutual legal analysis
902 and defending Commission items before the courts into what it
903 believes is effectively a sixth commissioner, with the ability
904 to supersede the views of duly appointed and sworn commissioners.
905 This is harmful to the FCC as an institution and will ensure that
906 impartiality and rule of law are forever limited to the realm of
907 secondary considerations.

908 Turning to substance, I applaud the subcommittee for its
909 extensive efforts to increase the amount of commercial spectrum
910 and remove barriers to the deployment of wireless facilities.
911 Part of my attention is focused on opening up millimeter waves

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912 for the Next-Generation networks. Accordingly, all potential
913 bands should be considered and simple and proven licensing
914 frameworks should be adopted to ensure maximum investment and
915 innovation.

916 The Commission also appears on track to meet its commitment
917 to provide further relief for small cell siting but more can be
918 done to increase infrastructure deployment, namely, concluding
919 the decades-old twilight tower review and addressing localities
920 that continue to hinder facility siting. In the same vein, we
921 must increase our efforts to open up the 5.9 gigahertz band for
922 unlicensed use. Combining these frequencies with adjacent 5
923 gigahertz spectrum would permit increased throughput, speed and
924 capacity. It is not my intention to prevent or undermine
925 dedicated short-range communications deployment, as sharing can
926 occur without causing harmful interference to safety of life
927 applications.

928 Thank you very much, Mr. Chairman.

929 [The prepared statement of Mr. O'Reilly follows:]

930

931 *****INSERT 8*****

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932 Mr. Walden. Mr. O'Rielly, thank you. And we appreciate all
933 the testimony of all the members and the chairman.

934 Commissioner, Pai, I have several questions about the
935 privacy NPRM you are considering. Press reports indicate that
936 the predicate is an assumption that ISPs have unique access to
937 user data, thus requiring regulation. Is this true?

938 Mr. Pai. Thank you for the question, Mr. Chairman.
939 Unfortunately, under the SEC's current rules, I am prohibiting
940 from disclosing even to you, the chairman of the subcommittee,
941 the particular details of the proposal unless the chairman
942 expressly authorizes it.

943 Mr. Walden. Seriously, you can't disclose even to us?

944 Mr. Pai. Under the current FCC rules, that is correct.

945 Mr. Walden. Chairman Wheeler, could you address this? I
946 am confused as to why your fellow commissioners are not allowed
947 to answer questions as to what is in the privacy proposal you have
948 circulated but I understand you and your media team and others
949 are free to speak about it in public.

950 This, to me, is an issue I think we -- I know it is running
951 that way. Perhaps it has run that way in the past but it seems
952 peculiar that the other commissioners can't comment but you can.
953 Will you let them comment? Can you address this whole --

954 Mr. Wheeler. So, I don't think that I heard Commissioner

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955 Pai answer the question you asked him, which was is there a
956 difference between the data that an ISP sees and one an edge
957 provider sees.

958 Mr. Walden. So, what I said is that I had several questions.

959 Mr. Wheeler. Answering that question has nothing to do with
960 what any specific paragraph of a proposal might say.

961 Mr. Walden. Right.

962 Mr. Wheeler. Point one. If I may, point two: There is a
963 full-throated, already, discussion about these kinds of concepts
964 which don't translate into the specific language.

965 And three, with respect, sir, three, the Notice of Proposed
966 Rulemaking is very specific and the reason you have a Notice of
967 Proposed Rulemaking is so specific language can be put out so that
968 it can be commented on by the public and have a full-voiced debate,
969 which we will have on the specific language of this item starting
970 next week.

971 Mr. Walden. I think it is intriguing to me and disheartening
972 to me that the Commission is set up in a way that the chairman
973 can propose something, the chairman can talk about something, and
974 I am not picking on you, personally, here, but just the way the
975 system works. It is like if I proposed a bill circulated among
976 all of us and then my friend, Mr. Doyle, is prohibited from
977 communicating on it publicly or Mr. Pallone, I think you would

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978 have a different view of our process.

979 Commissioner Pai, is that not a corollary that, in effect,
980 that is what happens? A chairman of the FCC, take Mr. Wheeler
981 out of it, any chairman can propose something; that chairman or
982 chairwoman can comment on it ad infinitum, the New York Times,
983 anybody, but you, as a commissioner can't, even to us?

984 Mr. Pai. That is exactly right, Mr. Chairman. It is a
985 bizarre state of affairs where we have to pass something before
986 the American public is allowed to see it, with a narrow and
987 particularly notable exception of the chairman and his staff being
988 able to push out misleading fact sheets, do press calls, and
989 otherwise push their agenda before this full-throated discussion
990 has had a chance to terminate.

991 Mr. Walden. Commissioner O'Rielly, do you encounter the
992 same problem?

993 Mr. O'Rielly. Yes, sir. I have written about this and I
994 believe the chairman has an opportunity to write a simple letter
995 to authorize all commissioners to speak as needed on any item
996 through the end of his tenure. He has declined to do that, so
997 far.

998 Mr. Walden. Have other chairs done that?

999 Mr. O'Rielly. They have provided more specifics on
1000 particular items but what I am suggesting is that the current

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1001 process is just simply broken. I am not sure that other
1002 commissioners or other chairmen have provided such descriptions
1003 as my colleague has provided where you are getting the blog, you
1004 are getting the press rollout, you are getting the fact sheets
1005 that are not accurate.

1006 Mr. Walden. And you are prohibited from commenting?

1007 Mr. O'Rielly. I am actually prohibiting from correcting the
1008 fact sheets when people come and meet with me. I can't say you
1009 know I know you think it is going this way but actually that is
1010 not true. I am not allowed to tell them gee, you are completely
1011 wrong; I have read the item, that is not right.

1012 Mr. Walden. This just flies in the face of open transparent
1013 government, in my opinion and needs to change. And Chairman, I
1014 would hope you would take Commissioner O'Rielly's comments to
1015 heart. I don't know if we have to pass something here, put an
1016 appropriation bill or what, but this just -- this is 2016. This
1017 is not 1816. We want an open and transparent process so the public
1018 can comment. We do it or we try to the best of our ability here
1019 by putting bills out for discussion. We have rules that are made
1020 available. Everybody has a chance. I think it just needs to
1021 change.

1022 I want to ask one other question in the 7 seconds I have left
1023 and it is to you, Mr. Wheeler. The quadrennial review, broadcast

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1024 ownership rules due by June 30th. I know you all have had a lot
1025 on your plate. I have commended you for the work on the auction
1026 and all but this one is a thorn under the -- a burr under the saddle,
1027 8 years late. What is it going to take to get a quadrennial --

1028 Mr. Wheeler. I intend to have it on the floor in the schedule
1029 that I gave you, sir.

1030 Mr. Walden. You will get it done?

1031 Mr. Wheeler. And we've been working on it for months.

1032 Mr. Walden. So, it is going to be done this time by June
1033 30?

1034 Mr. Wheeler. I am going to put on the floor.

1035 Mr. Walden. All right, my time has expired.

1036 We will now go to the ranking member on the subcommittee,
1037 Ms. Eshoo, for questions for 5 minutes.

1038 Ms. Eshoo. Thank you, Mr. Chairman.

1039 Chairman Wheeler, you have and the full commission has some
1040 huge issues before it. So, I want to go through three of them:
1041 copyright -- this all has to do with the set top box proposal --
1042 the issue of copyright, the issue of privacy, and the issue of
1043 impact on minorities both from the professional side and from the
1044 consumer side.

1045 First, on copyright. Copyright is important to all of us.
1046 We know that it is both the life blood of the more than one industry

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1047 and they depend on it being protected.

1048 Now, there are critics in all of this and that is not a
1049 surprise. When a major shift is proposed and disruptive, it is
1050 disruptive to a \$20 billion income to the cable industry. So,
1051 of course people are going to fight very hard because there is
1052 a lot of money on the table.

1053 But on the issue of copyright, does anything about this
1054 arrangement and the FCC's proposal change under your proposed
1055 rules, relative to copyright?

1056 Mr. Wheeler. Thank you, Ms. Eshoo, the answer is no. And
1057 let me just excerpt paragraph 71 of the proposal.

1058 To achieve the statutory mandate, our regulations must
1059 ensure that navigation devices 1) have content protection that
1060 protects content from theft, piracy, and hacking; 2) cannot
1061 technically disrupt, impede, or impair the delivery of services.
1062 It goes on beyond that but the fact of the matter is that we have
1063 specified copyright protection is essential and can be
1064 maintained. And I would submit that there are tens of millions
1065 of examples of that called iPhones, iPads, smart TVs, where
1066 copyright protection has been maintained through set top box-like
1067 activities.

1068 Ms. Eshoo. Now, does the FCC give away any new or unpaid
1069 rights to distribute video programming?

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1070 Mr. Wheeler. No, ma'am.

1071 Ms. Eshoo. Okay, the answer is no. Now, in your first
1072 answer, are there additions to the protection of copyright or is
1073 it the same set of principles and rules that apply today?

1074 Mr. Wheeler. Well, the interesting thing is that we
1075 actually took the language from the current cable card license,
1076 which has been very successful in protecting copyright.

1077 Ms. Eshoo. Okay. Now, on to the whole issue of
1078 minority-focused programming. Critics alleged that the FCC's
1079 proposed rule, and you know this, would actually limit the
1080 availability of minority programming and content. Now, Robert
1081 R. Johnson and our members have a copy of the letter that I received
1082 last night. I think it is an important letter to read and I would
1083 like to ask for unanimous consent, Mr. Chairman, for Mr. Johnson's
1084 letter to be part of the record.

1085 [The information follows:]

1086

1087 *****COMMITTEE INSERT 9*****

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1088 Mr. Walden. Without objection.

1089 Ms. Eshoo. Thank you very much.

1090 Now, why is this issue even being raised? There is a woeful
1091 record under what we are operating under now because the cable
1092 companies have really moved at a glacial pace in their efforts
1093 to make more minority programming available to consumers.
1094 Essentially, there are two or three large cable companies
1095 effectively determining today what the American public sees and
1096 how they see it.

1097 So, I don't know why there is a defense of this abysmal record
1098 when we have an opportunity to open new doors to diverse
1099 programming. Do you want to respond to this?

1100 Mr. Wheeler. Well, thank you, Ms. Eshoo.

1101 Ms. Eshoo. Or would you respond to this, please?

1102 Mr. Wheeler. There are four African American owned channels
1103 in the 500-channel universe on a cable system.

1104 Ms. Eshoo. Four out of how many?

1105 Mr. Wheeler. In a 500-channel universe. And most of them
1106 are on the most expensive tier, by the way.

1107 But the interesting thing here is that there are literally
1108 hundreds of programmers who are seeking to get on and they are
1109 having the door slammed in their face. So, the question is how
1110 do you provide a way -- how do you create equal opportunity so

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1111 that these programmers can have an equality of standing with the
1112 few handful that are there and have competition and opportunity?

1113 Mr. Walden. The gentlelady's time has expired.

1114 Ms. Eshoo. Well, my time has expired. Thank you, Mr.

1115 Chairman.

1116 Mr. Walden. Thank you. We will now go to the vice chair

1117 of the full committee, the gentlelady from Tennessee, Mrs.

1118 Blackburn, for 5 minutes.

1119 Mrs. Blackburn. Thank you, Mr. Chairman. And I wanted to

1120 first raise an issue involving a consortium of schools in

1121 Tennessee, USAC has denied millions of dollars in E-Rate funding

1122 to the Sweetwater Consortium and many rural schools could be

1123 detrimentally impacted. And the school districts stand to be

1124 financially crippled by the denial and, of course, the education

1125 opportunities limited and suffer significantly with such a

1126 decision.

1127 The Sweetwater Consortium just received a final decision

1128 from USAC on Friday denying their appeal and my office is

1129 continuing with other offices to gather information from the

1130 interested parties and we expect that this is going to end up with

1131 you all before very long.

1132 And Mr. Chairman, the Tennessee delegation wrote the FCC last

1133 year and received a response on July 21, 2015. We appreciate

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1134 that. I understand that USAC needs to be a thorough watchdog of
1135 the taxpayer dollars and that the commission is not yet in a
1136 position to offer an opinion on the merits of USAC's review and
1137 you have noted that in your response to us. However, I am
1138 concerned about the amount of time that the process has taken and
1139 I know Chairman Wheeler, you also expressed that concern in our
1140 reply and I will just say that we look forward to working with
1141 you to find a resolution to this.

1142 Commissioner O'Rielly, I want to thank you for your letter
1143 or it was your statement of dissent on the choices in the AllVid
1144 issue. And I agree with you that it is regulation by speculation.

1145 And Mr. Chairman, you just said you know that hundreds are
1146 seeking a way to get on, talking about some of the independent
1147 producers and the content producers that are seeking an avenue
1148 for the content they produce. And I have to tell you you don't
1149 create equal opportunity by not paying people for what they have
1150 created.

1151 And Chairman Pai, coming to you, I will have to tell you,
1152 a lot of my content producers that are there in Tennessee, they
1153 are very concerned about the set top box proposal and about
1154 honoring copyright. The text of the proposal is something that
1155 has caused them tremendous concern and they talk about it and they
1156 bring it up to me. The chairman had said oh, we are going to honor

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1157 those copyright laws but then they are reading this and they are
1158 saying I don't see how this matches because it would mandate that
1159 pay TV providers transmit to third parties all the programming
1160 the pay provider's license, allowing third parties to use that
1161 without obtaining the permission of the copyright holders or of
1162 compensating them.

1163 And you know one of the concerns is the way the proposal
1164 explicitly declines to prohibit third parties from replacing or
1165 altering advertising or manipulating the content.

1166 So, I would like for you to respond to me. Doesn't the
1167 proposal exceed the FCC's authority and create conflicts between
1168 commission regulations, and copyright, and contract law?

1169 Mr. Pai. Congresswoman, I believe it does and your
1170 constituents are not alone. One of the most notable features of
1171 this proceeding is that we heard from a variety of minority
1172 programmers, networks like Ovation, individuals like Eva
1173 Longoria, minority advocates like MMTC, as well as members of this
1174 body, 30 members of the Congressional Black Caucus, for instance,
1175 who told us to a person that this would compromise the legitimate
1176 intellectual property rights of content creators and minority
1177 content creators, in particular, had in their creations.

1178 Mrs. Blackburn. I thank you for that. I would hope that
1179 the Commission will look very closely at what some of these

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1180 innovators and content creators are pushing forward to the
1181 marketplace and protecting their copyright laws.

1182 To do this where you are looking at the set top box proposal
1183 that is out there, I think is a dangerous step. It diminishes
1184 the value of content. It diminishes the ability of those who have
1185 created this to be appropriately paid. It undercuts and
1186 undermines contract law. And for people who are innovating in
1187 this space, as we have more delivery avenues that are opening up
1188 to us, I think that the proposal that is out there is a dangerous
1189 proposal when it comes to the validity and the value of contracts.

1190 And I yield back.

1191 Mr. Walden. The gentlelady's time has expired.

1192 We will now go to the ranking member of the full committee,
1193 Mr. Pallone for 5 minutes.

1194 Mr. Pallone. Thank you, Mr. Chairman.

1195 I wanted to start with Commissioner Rosenworcel. I wanted
1196 to publicly thank you for coming up to my district right before
1197 that last major snowstorm to discuss the Sandy Act and how to
1198 improve communications during disasters.

1199 One idea we had coming out of these discussion is whether
1200 we could take a city in the area impacted by Sandy, where we could
1201 work with industry and government officials to develop best
1202 practices that could be used across the country. So, I just

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1203 wanted to ask you, do you think that that would be a worthwhile
1204 experiment.

1205 Ms. Rosenworcel. Thank you, Congressman Pallone. So, I
1206 have been in your district just after Hurricane Sandy and now I
1207 can say I have been there just before Snowstorm Jonas. So, I know
1208 that Mother Nature's wrath visits the New Jersey coastline with
1209 some frequency.

1210 And I think that developing a smart city that is a resilient
1211 city on the coast is a terrific idea and my hope is that by
1212 preparing for the worst, we can take those best practices from
1213 New Jersey and export them all around the country.

1214 Mr. Pallone. Thank you.

1215 I wanted to ask Commissioner O'Rielly about pirate radio.
1216 I wanted to personally thank you for leadership in addressing this
1217 spike in pirate radio stations. And the last time you were here,
1218 we talked about how this is an important issue. And I was hoping
1219 to be able to introduce a bill that would put a stop to these
1220 illegal signals.

1221 I know you have a long background in crafting legislation.
1222 Do you have any suggestions for what to include in a bill like
1223 that?

1224 Mr. O'Rielly. So, one of the issues that I have been working
1225 on and the Commission has been gracious and the chairman has been

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1226 gracious in helping me facilitate is getting to some of the money
1227 side of the equation. How do we dry up money for pirate radio
1228 broadcasters. And I think that is something where we can focus
1229 in legislation and we are working with your good staff in trying
1230 to target how to get at the money part from -- we have a number
1231 of people that are advertising. We have political campaigns that
1232 are advertising on pirate radio stations. We have concert venues
1233 that are advertising. We need to figure out how best to go after
1234 the money side.

1235 But I want to be careful on that. I want to make sure that
1236 it is narrowly targeted so that we don't go after those who are
1237 trying to a good job that are unfortunately captured in that
1238 universe, such as building owners and renters. We want to go
1239 after those that are facilitating, not those that may have
1240 provided some --

1241 Mr. Pallone. Thank you. Well, we will work together.

1242 Mr. O'Rielly. I would like that.

1243 Mr. Pallone. Chairman Wheeler, I released earlier this year
1244 a discussion draft bill called the Viewer Protection Act, which
1245 we have discussed that would make sure that consumers keep access
1246 to the channels that stay on the air after the incentive auction.
1247 And while I hope this bill will be bipartisan, I have heard from
1248 some of my colleagues that they want to wait until we know how

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1249 many broadcasters will need to be repacked.

1250 At the same time, it is critical that the bill is introduced
1251 with enough time to go through regular order. So, it is really
1252 when the repacking process begins.

1253 So, I think it would be helpful for us to all better
1254 understand the schedule for the auction going forward. Could you
1255 walk us through your estimate of how the next few months would
1256 play out paying particular attention to when we would know how
1257 many broadcasters will need to be repacked?

1258 Mr. Wheeler. Thank you, Mr. Pallone.

1259 As I said in my statement, the reverse auction bidding will
1260 start in May. Exactly when in May, we don't know yet. It depends
1261 upon what we find out when we are sorting through all this data
1262 to come up with a channel plan.

1263 How long it lasts after that is a function of the marketplace.
1264 If I were a betting man, and I have no insight into this because
1265 it is totally in control of the market, not in control of the
1266 Commission, but I think we are looking at, if we start in May,
1267 sometimes late summer, early football season that we have a
1268 resolution. But again, that is something that is out of my
1269 control, our control and that the market will determine.

1270 Mr. Pallone. All right. Well, thank you all. I
1271 appreciate your input on all these questions. I yield back, Mr.

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1272 Chairman.

1273 Mr. Walden. The gentleman yields back. The chair now
1274 recognizes the gentleman from Texas, the former chairman of the
1275 committee, Mr. Barton, for 5 minutes.

1276 Mr. Barton. Well, thank you, Mr. Chairman, and I welcome
1277 the Commission to the Energy and Commerce Committee.

1278 So far, nobody is asking one question about your budget,
1279 which is, theoretically, why we are here. And I am going to
1280 continue that tradition and not ask you any questions about the
1281 budget.

1282 My question, though, is extremely serious, actually. This
1283 morning we had three explosions rock Brussels airport and metro
1284 station. We think at least 26 people have been killed. There
1285 are over 100 that have been injured. The last time the Commission
1286 was before this subcommittee was just after the Paris attack and
1287 I asked Mr. Wheeler then what the committee could do in conjunction
1288 with the FCC to try to counter these terrorist attacks in the way
1289 that they use the internet to broadcast their terrorism.

1290 Mr. Commissioner, Chairman, you mentioned that maybe the
1291 Congress needed to update the definition of what a lawful
1292 intercept is under CALEA. Have you all looked at that since you
1293 were before the committee? If so, do you have any recommendations
1294 for the committee?

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1295 And I want to be clear, I am not trying to ask the FCC to
1296 shut down the internet but I do think that in an open society you
1297 can strike a balance between openness and protecting the public
1298 good. So, I am going to ask the question to the chairman but if
1299 the other commissioners want to chime in, you are very welcome
1300 to.

1301 Mr. Wheeler. Thank you, Mr. Barton. And yes, this is a
1302 tragic time and a terribly serious issue.

1303 The Congress has said to the FCC that our responsibility,
1304 and I use that word not just our authority, our responsibility
1305 is to make sure that in the networks that we regulate there is
1306 the equipment to carry out lawful intercepts. That is the
1307 definition that Congress has given us and the scope of our
1308 authority.

1309 The question of what is a lawful intercept is something that
1310 is beyond the statutory authority that you have given us. The
1311 discussion that we had last time was to the effect that it is up
1312 to Congress to make the determination as to what is the scope of
1313 a lawful intercept. But I will assure you, sir, that we will fully
1314 take the steps necessary to make sure that the equipment that is
1315 required to be able to make that lawful intercept is in place.

1316 Mr. Barton. Okay. Any of the other commissioners want to
1317 comment? Okay.

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1318 Something a little bit more mundane, this issue of set top
1319 boxes, which the chairman alluded to and Congresswoman Blackburn
1320 alluded to. I am co-chair with the Privacy Caucus here in the
1321 House. And there is real concern that you are going to make it
1322 possible, perhaps inadvertently, to allow the collection of large
1323 amounts of data, perhaps even megadata without the consent or
1324 knowledge of the customer or of the client.

1325 Mr. Chairman, you were not real forthcoming to our
1326 subcommittee chairman, Mr. Walden. Can you at least acknowledge
1327 that it is an issue and you have got very cognizant to try to
1328 whatever the Commission does, protect the legitimate privacy
1329 rights of the individual?

1330 Mr. Wheeler. Without a doubt, Congressman. And let me see
1331 if I can be specific on this because if you say I wasn't specific
1332 enough.

1333 Section 631 of the Act establishes privacy expectations on
1334 cable operators and satellite providers. And they then have that
1335 relationship with Roku and TiVo and folks that they are now working
1336 with to say you will, they say in their contracts with them, you
1337 will maintain the same kind of privacy protections that we do.
1338 And what we are saying is that any competitive box, set top box
1339 or app, has to be able to make the same kind of assurances and
1340 that if those assurances are not made, that the cable operator

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1341 then doesn't have to do business with that box and that just like
1342 smart TVs and tablets and smartphones, all have that same kind
1343 of ability to collect information and have the FTC oversight, that
1344 if the protections that we have put in place are still not
1345 sufficient, that the FTC has authority to do something. And as
1346 recently as last week, the FTC put out a notice to smart TV
1347 manufacturers that they intended to.

1348 Mr. Barton. Okay, my time has expired. Thank you, Mr.
1349 Chairman.

1350 Mr. Walden. Thank you, Mr. Barton.

1351 We will now turn to the gentleman from Pennsylvania, Mr.
1352 Doyle, for questions.

1353 Mr. Doyle. Thank you, Mr. Chairman. Chairman Wheeler, I
1354 want to thank you for your leadership on special access and for
1355 advancing this issue through a very thorny process. It is
1356 critical that we get this right and it is critical that we get
1357 this done. I believe your team is working diligently on this
1358 proceeding. I would only ask that as you work through this issue,
1359 you be sensitive to the harm that is being done at this moment
1360 to competition across the country and that as you proceed, you
1361 keep in mind that this is an ongoing issue that is not only hurting
1362 competitors but hurting consumers as well.

1363 With regards to Lifeline, as you move forward with Lifeline,

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1364 I have asked you to be mindful and ensure that low-income Americans
1365 can still use this program with no additional cost. Opening up
1366 the program to more competition and enabling participants to
1367 choose how they use their subsidy is great. But I would ask you
1368 to take particular care to ensure that three options remain
1369 available and that enough flexibility exists in the program so
1370 that people don't lose their access to this critical resource.

1371 With regards to privacy, thank you again for moving forward
1372 on this issue. I was happy to see the Commission take action in
1373 the order to prohibit super cookies, as well as the enforcement
1374 action it took on the same issue. However, I must say I was
1375 disappointed to not see a prohibition on deep packet inspection
1376 or a proposal to prohibit companies from manipulating consumers
1377 into giving up their privacy for a discount on their bills.
1378 Privacy shouldn't be a luxury for a few that can afford it.

1379 So, as you move forward with this proceeding, I would ask
1380 the Commission ensure that it is not enabling ISPs that charge
1381 consumers for their own privacy.

1382 And finally, on zero rating, I remain concerned about zero
1383 rating in the marketplace. Studies have shown that consumers,
1384 by far, prefer zero rated apps and services when faced with the
1385 expense of busting their data caps. This gives ISPs a natural
1386 advantage in the marketplace and enables them to choose winners

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1387 and losers.

1388 I don't think that we need a blanket ban on zero rating but
1389 when ISPs zero rate their own apps and when zero rating programs
1390 are anti-competitive, consumers are being harmed. So, I would
1391 ask, Chairman Wheeler, to encourage you to take action to police
1392 these programs.

1393 Now, I went through all this quickly to give you some time.
1394 You and Commissioner Pai, you know Commissioner Pai said quite
1395 a few things today that I think might have hurt your feelings and
1396 I wanted to give you an opportunity to maybe comment on your
1397 stewardship of the commission.

1398 And also there seems to be a disagreement here on whether
1399 or not on the issue of set top boxes that copyright is being
1400 protected and that whether it is true that people can take other
1401 people's content and not pay for it. So, in the remaining 2
1402 minutes and 26 seconds, Mr. Chairman --

1403 Mr. Wheeler. That is all I have.

1404 Mr. Doyle. -- the floor is yours.

1405 Mr. Wheeler. Let me see if I can kind of tick through a
1406 couple of them. Number one, on the copyright issue. You know
1407 the interesting thing is that there are today the equivalent of
1408 competitive set top boxes available in the market. For instance,
1409 Google Chrome. Now, a lot of things that we hear about oh, this

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1410 is Google's big plan to take over cable TV -- malarkey. The Google
1411 Chrome, which attaches in your port in your TV to allow you to
1412 get things off of the web, does not violate copyright, does not
1413 overlay commercials, does not do all of the horrible things that
1414 everybody said a set top box like that would do and because
1415 copyright law is sacrosanct.

1416 The second thing is I think the people would go crazy revolt
1417 if something like that happened. So, that is on the copyright
1418 issue.

1419 Secondly, on the process issue, there was an interesting
1420 dichotomy of criticism that we have heard this morning. One is
1421 that we have been operating in a unilateral fashion and not being
1422 collegial. And the other is that the collegial efforts that we
1423 have had to address process that hasn't resulted in a consensus
1424 being built are somehow witness of a nefarious intent. I find
1425 those two to be in conflict.

1426 And so the other issues you raised, you are absolutely right.
1427 Lifeline, we have to make sure that Lifeline is updated and that
1428 it is available and the fast thing -- have I got time? The key
1429 thing here is that digital is cheaper than analogue voice. You
1430 notice that every single consumer who signs up to LTE service,
1431 which is 80 some percent of Americans get free unlimited voice
1432 but if you are a poor person, we are limiting what you can do.

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1433 We are saying you can't get on the internet. You can't have
1434 access. We are going to stick you in this analogue world. And
1435 that is one of the things that we are going to take on.

1436 Mr. Doyle. Thank you, Mr. Chairman. I am glad your feelings
1437 weren't hurt.

1438 Mr. Johnson.[Presiding.] The gentleman's time has expired.
1439 I now recognize the gentleman from Ohio, Mr. Latta.

1440 Mr. Latta. Thank you very much. And to the Commission,
1441 thanks very much for being here today. And oddly enough,
1442 Commissioner Pai, I am going to be talking to you and asking some
1443 questions about set top boxes and integration band. It seems like
1444 something that has been discussed quite a bit this morning. As
1445 you know, Congressman Green and I were able to secure language
1446 in stellar to eliminate the integration band in order to rid the
1447 marketplace of outdated technology and to foster greater
1448 competition innovation.

1449 The FCC is now contemplating mandates that would leave
1450 multichannel video programming distributors no choice to provide
1451 a box on top of the third-party device. This would once again
1452 bring us back to the problems of integration band of higher cost
1453 to consumers for devices and higher energy costs for them as well.
1454 And in this committee room where we were having the Secretary of
1455 Energy reports, he even said that about higher energy costs.

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1456 He stated that the FCC should be seeking a boxless solution,
1457 which I believe is the feature of pay TV. Does the apps based
1458 proposal that was put forth through the Downloadable Security
1459 Technology Advisory Committee, the DSTAC, get consumers to a
1460 boxless world?

1461 I want to ask you also, as you answer that question, what
1462 we are looking at with the FCC's proposing, are we going forward,
1463 backwards, staying static, and I think what the consumers out
1464 there want to know is where are we going to be in 10 years, not
1465 where we were 10 years ago. Commissioner?

1466 Mr. Pai. Thank you for the question, Congressman. I think
1467 the best, if I could tackle the second question first, to
1468 encapsulate what the FCC's approach has been is back to the future.
1469 Instead of moving to an app-based world where consumers can
1470 finally free themselves of this expensive clunky equipment that
1471 consumes a lot of energy and doesn't provide the functionality
1472 they want, the FCC is doubling down on 1990s technology. And it
1473 is essentially going to force MVPDs, cable operators and the like,
1474 to do one of two things. Number one, either reengineer their
1475 entire network or number two, supply consumers with a second box.

1476 Now, I submit to you that the natural effect is going to be
1477 the second be reengineering a network is extremely expensive,
1478 compared to simply supplying a second box. That is not what

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1479 consumers want to do. And so I would have hoped that the agency,
1480 going to the first question, would have teed up in a full and fair
1481 manner the other proposal that the Downloadable Security
1482 Technology Advisory Committee proposed. One, to be clear, was
1483 the majority's approach, which was to have this 1990s technology
1484 embraced yet again. But the other one was an app-based approach.
1485 And instead, there is a very slanted three-paragraph discussion
1486 in this huge document asking why the app-based approach would end
1487 to the destruction of America and other things bad. And I think
1488 if we embrace this in a full and fair manner, allow the American
1489 people to comment, we wouldn't be in the pickle we are in, where
1490 the former chairman of this committee, Mr. Waxman just yesterday
1491 said that this approach is a 20th century solution to a problem
1492 the market is already solving on its own.

1493 Mr. Latta. Why is that? Why did the FCC do that?

1494 Mr. Pai. Well, I think frequently, the natural inclination
1495 of the agency of late has been to solve problems that don't exist.
1496 But secondly, I think that there is a recognition among some people
1497 that this marketplace hasn't developed as expected. And I
1498 completely agree with him. The reason is that this entire
1499 marketplace is the creation of a 20-year regulatory framework that
1500 is highly intrusive. And I would humbly submit that technical
1501 mandates and agency micromanagement is not the way to get us to

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1502 the next stage of the digital video revolution. Instead, we
1503 should embrace a more consumer-friendly approach, an apps-based
1504 approach, for example, and let the marketplace develop. You are
1505 free from some of these legacy regulations that have simply held
1506 us back.

1507 The set top box is not the way of the future. My kids are
1508 not going to know what a set top box or some of this other equipment
1509 is. What they will be familiar with is being able to access the
1510 content they want on the device they want using an app or other
1511 device that they want. That is the future, not the 1990s.

1512 Mr. Latta. Let me follow-up, Commissioner. Over the past
1513 the Congress -- I have introduced a bill that required the FCC
1514 to conduct a cost-benefit analysis at the time of the Notice of
1515 Proposed Rulemaking and again at the time that the final rule is
1516 issued. I think it is important for the public and the Commission
1517 to have a better understanding of monitor impact of the FCC rules.

1518 In respect to the proposed set top box rules, I believe it
1519 would be of great value to identify the cost and benefits this
1520 rule would have on consumers and MVPDs, especially in small and
1521 medium sized providers.

1522 Did the Commission complete a cost-benefit analysis of this
1523 rule?

1524 Mr. Pai. It did not.

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1525 Mr. Latta. Why not?

1526 Mr. Pai. I think, frankly, because if you objectively
1527 tallied up the possible costs and benefits, it would be fairly
1528 clear that the Commission's approach would have yielded,
1529 ultimately, disadvantages to the consumer at the end of the day.

1530 Mr. Latta. Well, thank you very much and, as my time
1531 expires, I yield back. Thank you very much.

1532 Mr. Johnson. I thank the gentleman for yielding back. I
1533 know recognize the gentleman from Iowa, Mr. Loesback.

1534 Mr. Loesback. I apologize, Mr. Chair. I was thinking that
1535 I was not going to go for a little bit yet.

1536 But thanks to all of you for being here. I really appreciate
1537 this conversation we are having. I was going to ask about set
1538 top box but I think I am going to forego that one this time. I
1539 think it has being covered pretty exhaustively.

1540 I do want to say, Commissioner Pai, I am all for the Jayhawks,
1541 too because I am an Iowa State alum but, hopefully, the Cyclones
1542 are going to do well as well.

1543 Mr. Pai. I didn't sign on to that, Congressman.

1544 Mr. Loesback. That is okay. It is all right.

1545 I do speak to former Congressman Jim Wright quite often about
1546 these issues, as you can imagine.

1547 But at any rate, and Commissioner Rosenworcel, in

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1548 particular, I know you are all concerned about rural broadband,
1549 but thank you so much for your tremendous efforts on that front.
1550 I look forward to seeing you in Iowa at some point down the road
1551 as well, when we can chat with some of our folks in Iowa who are
1552 particularly concerned about this. So, thank you.

1553 What I would like to do is first ask Chairman Wheeler about
1554 the enhanced transparency issue, having to do with broadband
1555 development and small businesses. You have your particular order
1556 that was out there but then I worked with Chairman Walden and other
1557 members recently to get a bipartisan bill passed where you know
1558 we have a different approach to that in terms of how we define
1559 small business and extend the period for the exemption, if you
1560 will, for these small broadband providers. And there is really
1561 broad bipartisan support to make sure that we provide the
1562 necessary regulatory relief to these folks so that they really
1563 can in fact expand that broadband capability to as many folks in
1564 these rural areas as possible.

1565 And we are hopeful that the Senate will take this up and that
1566 the President would sign whatever legislation comes out of this.
1567 But if that is not the case, might it be true that the FCC does
1568 intend to further exempt small providers from the enhanced
1569 transparency rules?

1570 Mr. Wheeler. Thank you, Congressman. As you know, we have

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1571 exempted them and I recently extended that exemption. Any
1572 decision -- there has been a lot of talk about the transparency
1573 of process and everything here. It is inappropriate for me to
1574 sit here and say oh, yes, there will be an extension or whatever.
1575 We will go through the process. We will build the appropriate
1576 record and act accordingly.

1577 Mr. Loesback. Right.

1578 Mr. Wheeler. Just like what we have done thus far.

1579 Mr. Loesback. Right, I am recognizing that there is that
1580 bipartisan support here to extend it further, if you will.

1581 Do any of the others here want to comment on that particular
1582 issue at this point?

1583 Ms. Clyburn. On that particular issue, as the chairman
1584 alluded to, we are going through a Paperwork Reduction Act
1585 process, which will look at and examine the impact on those
1586 particular carriers. I think I believe it is 100,000 lines and
1587 below. I was pushed for them being exempted while we review that
1588 and see if the impact is in proportion with their capacity.

1589 Mr. Loesback. Thank you.

1590 And also, Chairman Wheeler, on the incentive auction, Mr.
1591 Chairman, regarding the upcoming incentive auction itself, I am
1592 concerned about the impact that the FCC's repacking plan might
1593 have on broadcasters and dealers in rural America, as you might

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1594 imagine.

1595 If the FCC implements a regional repacking plan, will
1596 broadcasters in areas like Iowa be repacked last because there
1597 is less of a spectrum crunch? And if so, can you assure me that
1598 broadcasters in rural markets will have as much time to transition
1599 as broadcasters in areas where there is a spectrum crunch? I am
1600 concerned that there is a 39-month deadline to transition and
1601 whether broadcasters in rural areas may not be able to start right
1602 away. Can you address that issue?

1603 Mr. Wheeler. Thank you, Congressman. This one of the
1604 reasons why we have now, as the chairman indicated, begun the pivot
1605 to okay, what happens after the auction. Everybody is thinking
1606 about the bidding. But okay, then you have to implement it. And
1607 we are putting together a team that will deal with that question.

1608 One of the proposals on the table right now is some kind of
1609 regional repacking plan. We have not yet made a decision on that.
1610 There are all kinds of extenuating circumstances that exist in
1611 various parts of the country. Clearly, it doesn't make sense to
1612 have the limited assets of folks who erect antennas racing hither
1613 and yon to be able to do things.

1614 Mr. Loesback. Right.

1615 Mr. Wheeler. We have to be able to manage that appropriately
1616 and to deal with the kinds of issues that you raise.

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1617 I can't sit here and say, sir, I have got the written out
1618 answer but I can say, sir, yes, sir, we are on top of that.

1619 Mr. Loesback. Thank you very much.

1620 Again, you can see the rural theme to my questions here,
1621 obviously. But I know that a lot of folks here on this panel and
1622 on the larger committee have these very same concerns that I have
1623 on a bipartisan basis. That is why I have raised those issues.

1624 Thank you, Mr. Chair, I yield back the remainder of my time.

1625 Mr. Johnson. I thank the gentleman for yielding back. The
1626 chair now recognizes the gentleman from Illinois, Mr. Shimkus.

1627 Mr. Shimkus. Thank you, Mr. Chairman. It has been a good
1628 hearing. I think we have talked about a broad-range of different
1629 issues that you all are dealing with.

1630 I have two, one has already been asked. So, that will save
1631 me a little bit of time. In the country right now, there is a
1632 revolt brewing in the country. And I attribute it to a couple
1633 of things. One thing I attribute it to is an understanding of
1634 the legislative activities of passing of bills and then the bill
1635 being signed into law, also understanding that the Executive
1636 Branch is defined by the constitution to enforce those laws.

1637 So, when we see duly passed statutes in a law and then an
1638 agency disregard that, that is kind of leading to this revolt and
1639 this frustration out there. And I can say I mean I just came

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1640 through a primary and so I was with the public 24/7 for 2 months
1641 and it is visceral and it is real.

1642 So, Commissioner Pai, I want to ask this question first
1643 because this is an example. I think it spreads across the
1644 agencies, not just here.

1645 So, we passed a bill signed into law on joint service
1646 agreements that then delayed that for 10 years. It wasn't
1647 ambiguous. There weren't exceptions included. It just said all
1648 JSAs. Of course I think you were surprised. I was shocked to
1649 see that last month that the chairman's office forcing parties
1650 to eliminate JSAs through merger review.

1651 How is this not an example of this frustration out in America
1652 of an agency disregarding the clear statute of law and
1653 congressional intent? And could you comment on that?

1654 Mr. Pai. Thank you for the question, Congressman. I think,
1655 unfortunately, is that a paradigmatic example of the agency's
1656 disrespect for the rule of law, it is pretty rare that this body,
1657 as you know all too well, reaches overwhelming bipartisan
1658 agreement on anything. But in December of 2015, with a unified
1659 voice, both houses of Congress and the President instructed the
1660 agency to grandfather existing joint sales agreements between
1661 certain broadcast TV stations. The agency simply thumbed its
1662 nose at that statutory command and ordered the unwinding of

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1663 certain joint sales agreements, including one joint sales
1664 agreement by Entravision in my home state of Kansas, which
1665 provides the only Spanish language news in the state.

1666 That is remarkable for two reasons. Number one, it is
1667 obviously diverse programming that I and my fellow Kansans could
1668 benefit from. But secondly, it also contradicts an express
1669 commitment to the Congress of FCC leadership last year that there
1670 is quote nothing in what we are doing that would make that, the
1671 Entravision JSA, go away. Now, that was simply flouted. And I
1672 think it is telling that a couple of weeks ago, a bipartisan group
1673 of 12 senators, led by Senator Roy Blunt, Senator Dick Durbin,
1674 including Senators Tim Scott, Charles Schumer and others told the
1675 agency that it was quote bypassing congressional will and ignoring
1676 bipartisan concerns by forging ahead with this path.

1677 And so if the agency can't be constrained by law, then it
1678 is pretty much just the caprice of one individual, a majority of
1679 commissioners at any given point in time. And that is not how
1680 I think the agency should operate under any leadership --

1681 Mr. Shimkus. Commissioner O'Rielly?

1682 Mr. O'Rielly. I agree with my colleague on both the content
1683 and the point he is making and the point you made.

1684 And I take it to another example. And I know we have talked
1685 about set top boxes in a number of different questions. But if

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1686 you look at the statute, the Commission is taking this beyond the
1687 equipment itself and taking it to applications. And the statute
1688 says converter boxes, interactive communications equipment, and
1689 other equipment. And yet we are taking it to applications. And
1690 first we take equipment and interpret it to be software and then
1691 software goes to applications. So, applications have nothing to
1692 do with the set top boxes as they operate today would be covered
1693 by our rules. Mr. Shimkus. And I just want to end on this.
1694 Because this kind of also talks about this aspect. I am very
1695 concerned about the FCC process debate and the opening statements
1696 on that because maybe some of these things that have occurred,
1697 had there been an open process -- you know what? I would call
1698 on the commissioners to enact civil disobedience and disregard
1699 the chairman's edict. And if the chairman can speak to people
1700 anyplace, anytime on something coming down, I would challenge you.
1701 I did some research. No one has done that yet. But by golly,
1702 if there is ever a time to fight for transparency in the rule of
1703 law, it is now. It is in this environment. And I would encourage
1704 you to do that.

1705 And I yield back my time.

1706 Mr. Johnson. I thank the gentleman for yielding back. I
1707 now recognize the gentlelady from Colorado, Ms. DeGette.

1708 Ms. DeGette. Thank you so much.

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1709 As a former constitutional lawyer, I was really quite
1710 dismayed to hear Commissioner's Pai's testimony about that the
1711 commissioners are prohibited from commenting on future rules.
1712 And Chairman Wheeler, someone asked you that question. I didn't
1713 quite get the answer. So, I am going to ask you a series of
1714 questions and I would like you help me clarify this.

1715 Under the current rules of the FCC, commissioners are
1716 prohibited from releasing the language of pending rules until they
1717 are voted on in the proceedings. Is that right?

1718 Mr. Wheeler. Yes, ma'am, for the final rule but under NPRM,
1719 one of the things we have done, during my administration is put
1720 out the draft language.

1721 Ms. DeGette. So, you put out draft language. Is that
1722 correct?

1723 Mr. Wheeler. The Notice of Proposed Rulemakings that we
1724 vote on always include in them a rebuttable presumption here is
1725 what we are proposing in terms of specific language.

1726 Ms. DeGette. Okay, stop.

1727 Mr. Wheeler. So, we could have the kind of debate we had
1728 today.

1729 Ms. DeGette. Stop. Stop.

1730 Mr. Wheeler. Yes.

1731 Ms. DeGette. Now, so you do put out proposed language--

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1732 Mr. Wheeler. Yes, ma'am.

1733 Ms. DeGette. -- in the Notice of Proposed Rulemaking.

1734 Then you debate on it and you vote on it.

1735 Mr. Wheeler. Yes, ma'am.

1736 Ms. DeGette. And then the rule is released, right?

1737 Mr. Wheeler. Yes, ma'am.

1738 Ms. DeGette. Now, do you have a prohibition on
1739 commissioners talking about the proposed rules in advance of the
1740 vote? Yes or no will work.

1741 Mr. Wheeler. No.

1742 Ms. DeGette. Thank you.

1743 Mr. Wheeler. Because -- and we have these discussions,
1744 speeches, blogs. As a person who has spent 30 years practicing
1745 before the Commission, I can assure you that throughout history
1746 there has been an ongoing dialogue where commissioners have been
1747 speaking out, speaking publicly, talking to the various parties.

1748 Ms. DeGette. So, under your leadership, what you are saying
1749 is that when there is a proposed rulemaking, commissioners are
1750 allowed to exercise their first amendment rights and speak about
1751 the pending proceedings. Correct?

1752 Mr. Wheeler. What I am saying is that nothing has changed.

1753 Ms. DeGette. Can you just answer my question?

1754 Mr. Wheeler. I am sorry. Would you please --

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1755 Mr. Loesback. Yes. Are commissioners allowed to speak
1756 publicly about proposed rulemakings?

1757 Mr. Wheeler. They are allowed to speak about the substance
1758 of the rulemaking.

1759 Ms. DeGette. Right.

1760 Mr. Wheeler. The rule that they keep citing goes to can they
1761 take the specific language and circulate it.

1762 Ms. DeGette. Right. See, that is what I am trying to help
1763 you get out.

1764 Mr. Wheeler. Okay.

1765 Ms. DeGette. So, they can talk about the proposed
1766 rulemaking.

1767 Mr. Wheeler. Yes, ma'am.

1768 Ms. DeGette. But they are not allowed to release the
1769 underlying language while it is still under consideration. Is
1770 that correct?

1771 Mr. Wheeler. Other than the Notice of Proposed Rulemaking,
1772 where it is --

1773 Ms. DeGette. And what is the rationale for doing that?

1774 Mr. Wheeler. It has always been that way, ma'am.

1775 Ms. DeGette. And what is the rationale?

1776 Mr. Wheeler. I believe the rationale is in order to
1777 facilitate deliberation amongst the commissioners.

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1778 Ms. DeGette. Great, thank you. That is all I was trying
1779 to ask you.

1780 Now, Commissioner Clyburn, in your written testimony, you
1781 mentioned interest in how the broadband can play a role in
1782 healthcare outcomes. And as you might know, Chairman Upton and
1783 I and the whole rest of the Energy and Commerce Committee are
1784 working on 21st Century Cures. A lot of this bill relies on
1785 expansion of the ability to collect data and then to aggregate
1786 that data in clinical trials. And so I just wanted to let you
1787 know that I think what you are talking about is really important
1788 and I think we need to be working together to make sure that we
1789 can get these benefits all around the country because part of the
1790 whole process with this big data and healthcare research is to
1791 get a much bigger diversity both geographically and ethnically
1792 of people who are involved in clinical trials.

1793 So, I would like to be able to work with you going forward
1794 to making sure that we can achieve these ends.

1795 Ms. Clyburn. Absolutely. We have a Connect2Health Task
1796 Force and we look forward to working with your office to realize
1797 the potential that health and technology, that marriage, would
1798 bring.

1799 Ms. DeGette. Thanks. So, you know I have got a few seconds
1800 left. Let me just go back to what I was talking to Chairman

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1801 Wheeler about because what I was trying to get out of him is this.
1802 Once it was explained to me, I can see a real reason why you would
1803 want the proposed actual language of the proposed rules to be
1804 handled through the chairman's office. And you would want to have
1805 people be able to talk internally about that and you wouldn't want
1806 people just releasing bits and pieces of that language.

1807 So, I agree with that but I also think it is important that
1808 the commissioners can exercise their first amendment rights
1809 without releasing that language. And I think that is what is
1810 happening now. So, I think we just need to everybody take a deep
1811 breath and step back and try to have a little bit more comity on
1812 the whole commission.

1813 Thank you. I yield back.

1814 Mr. Johnson. I thank the gentlewoman for yielding back. I
1815 now recognize Mr. Lance from New Jersey.

1816 Mr. Lance. Thank you.

1817 And I also practiced constitutional law in New Jersey. And
1818 so I would like to ask Commissioner Pai and Commissioner O'Rielly
1819 to comment on the colloquy between my colleague, Congresswoman
1820 DeGette and the chairman.

1821 Mr. Pai. Thanks for the opportunity, Congressman.

1822 It is flatly not true that commissioners have full and fair
1823 latitude to discuss what is in a commission proposal or a

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1824 commission order.

1825 Right now, I cannot hand you this document, which is the
1826 Commission's Notice of Proposed Rulemaking on privacy. I cannot
1827 quote you anything in this document in the Commission's Notice
1828 of Proposed Rulemaking.

1829 Mr. Lance. And if you were to do that, would you be subjected
1830 to some sort of legal action?

1831 Mr. Pai. Absolutely. There are sanctions that are
1832 unspecified in our rules but I have no doubt that I wouldn't be
1833 given the benefit of the Rule of Lenity when it comes to enforcing
1834 it.

1835 Mr. Lance. Commissioner O'Rielly, this, to me, is as clear
1836 as mud.

1837 Mr. O'Rielly. So, I agree to the point that you may be
1838 concerned about the specific language being shared but even the
1839 ideas themselves. Nonpublic information is the term used in the
1840 rule. So, anything that is nonpublic. So, if there is an idea
1841 in here --

1842 Mr. Lance. Presumably, that is nonpublic. I do not know
1843 what is in that document of 15 or 20 or 30 pages. And there is
1844 no way I, in the branch of government that is mentioned in Article
1845 I of the Constitution, I am not privy to that. Is that accurate?

1846 Mr. O'Rielly. That is accurate.

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1847 Mr. Lance. Commissioner Pai?

1848 Mr. Pai. Well one thing is that the rationale for keeping
1849 all of this secret is completely baseless. I mean there is no
1850 reason why we couldn't have deliberations while still having
1851 transparency.

1852 And first of all we don't have internal deliberations now
1853 on any item of significance. So, the suggestion is simply
1854 inaccurate. But even beyond that, there is no reason why if you
1855 propose a bill, Congresswoman, and it goes on the Web site, there
1856 is no reason why you and Congressman Lance can't sit down and
1857 hammer out agreements and have deliberations in a full and fair
1858 way.

1859 And the agency is no different. The American public
1860 deserves to know what we are going to do before we propose to do
1861 it and I don't think that is too much to ask.

1862 Mr. Lance. And if you were to release only a portion of it
1863 and if you were to mischaracterize a portion of it, undoubtedly,
1864 another member of the commission would say no, this is the full
1865 and fair interpretation of the larger document. And this happens
1866 in the branch of government in which we are involved and I would
1867 hope in the executive branch as well.

1868 So, if for some reason you were to mischaracterize or not
1869 fully disclose the entire intent of the document under the

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1870 marketplace of ideas, wouldn't that be corrected by another member
1871 of the Commission? Commissioner Pai, Commissioner O'Rielly,
1872 please.

1873 Mr. O'Rielly. Absolutely right. So, I agree with your
1874 analysis and it could be corrected by -- but it actually happens
1875 today under the current structure because the fact sheets that
1876 are being put out and are inaccurate and I don't have the right
1877 under our rules to correct them.

1878 Mr. Lance. And you characterize them as inaccurate and that
1879 may be true, that may not be true. I tend to think it is true.
1880 But regardless of whether it is true or not, what would be wrong
1881 with a full discussion?

1882 Mr. O'Rielly. I would be fully comfortable releasing
1883 information so we could make a judgment whether my analysis is
1884 right or wrong.

1885 Mr. Lance. Commissioner Pai?

1886 Mr. Pai. Nothing would be better than to avoid all this he
1887 said/she said disputes by releasing the document. That way,
1888 there is no debate about context. Everybody can see for himself
1889 or herself.

1890 Mr. Lance. And whether or not this has been the situation
1891 over the years regarding the commission, do you believe, gentlemen
1892 that it would be better moving forward if this were to change and

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1893 place it in the subjunctive voice, if this were to change? And
1894 why do you think it should change?

1895 Mr. Pai. Whoever is leading the agency, Republican or
1896 Democrat, I would hope that they would embrace the same spirit
1897 of transparency that the Congress has, in terms of making things
1898 public before they are voted upon.

1899 Mr. Lance. Commissioner Rosenworcel, your comments on the
1900 discussion I have had with your colleagues?

1901 Ms. Rosenworcel. Well, thank you. I have not found that
1902 our existing policies get in the way of me having substantive
1903 conversations with stakeholders of every stripe.

1904 I am a little bit confused by the difficulties that my
1905 colleagues are having. I know that they, too, held regular
1906 meetings with public interest authorities, industry, and have
1907 general discussions about the matters before us. I am sure that
1908 every one of us here uses those discussions to inform our
1909 deliberations and our decision-making and voting.

1910 Mr. Lance. In your opinion, do you and I have a right to
1911 go back and forth in the document that Commissioner Pai has at
1912 his desk?

1913 Ms. Rosenworcel. I believe we have the right to go back and
1914 forth and discuss any matter that is before the agency.

1915 Mr. Lance. I don't know what is contained in that document.

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1916 Are you able to release to me what is contained in that document?

1917 Ms. Rosenworcel. I don't believe we are.

1918 Mr. Lance. And why is that, Commissioner?

1919 Ms. Rosenworcel. I believe that is under our Commission's
1920 rules right now.

1921 Mr. Lance. Well, I understand what the rules are. I am
1922 questioning the rules. I obviously understand what the rules
1923 are. The rules may say that this room is painted pink. It is
1924 actually painted green. I understand what the rules are. Do you
1925 agree with the rules?

1926 Ms. Rosenworcel. I think that we can do more so that our
1927 discussions are transparent but I also think it is essential that
1928 we preserve the right to have deliberations among the five of us
1929 and actually review the text and discuss the text among all of
1930 us.

1931 So, I think we should strive to be more transparent but I
1932 think we have to preserve some space for honest deliberation.

1933 Mr. Lance. I think it is essential to the American people
1934 that we, in the first branch of government, under Article I, have
1935 the ability to review what is contained in that document.

1936 Thank you, Mr. Chairman.

1937 Mr. Johnson. I thank the gentleman for yielding back. And
1938 now the chair recognizes the gentlelady from California, Mr.

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1939 Matsui.

1940 Ms. Matsui. Thank you, Mr. Chairman. And I am not a
1941 constitutional lawyer so I cannot provide any more clarity to this
1942 but I appreciate the discussion and Commissioner Rosenworcel's
1943 response.

1944 We need to talk something I am passionate about and that is
1945 Lifeline. Access to broadband is absolutely essential for
1946 participation in the 21st century economy. We all know this that
1947 affordability has been a major obstacle for the Americans that
1948 live on the wrong side of the digital divide. We all know that
1949 broadband is not a luxury but an absolute necessity. And as
1950 Commissioner Rosenworcel always says, for parents helping kids
1951 with their homework, and for businesses in all our communities,
1952 and for every American to succeed.

1953 I am thrilled that the FCC is finally modernizing their
1954 Lifeline program into the 21st century. It has been something
1955 I have been calling for since 2009, when I introduced I believe
1956 the first legislation to expand Lifeline to broadband.

1957 Now, as we do so, I hope the FCC makes sure that these changes
1958 are beneficial to the low-income consumers the program is designed
1959 to help, and I believe others have brought up this concern, and
1960 does not harm the vulnerable consumers in the Lifeline program
1961 today.

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1962 What I have heard are concerns about the FCC's proposed
1963 changes to support for mobile voice service. And as we expand
1964 Lifeline to broadband, we can't forget that low-income consumers
1965 still need to be able to make voice calls, especially 911 in the
1966 event of an emergency.

1967 Chairman Wheeler, quickly, can you explain the proposed
1968 changes you are making to Lifeline support for mobile voice
1969 services?

1970 Mr. Wheeler. Thank you, Congresswoman. The goal is to
1971 create a glide path, a phase-in where over the next 3 and 1/2 years,
1972 we are moving from an all-analogue Lifeline service to a digital
1973 Lifeline service, where we can take advantage of the fact that
1974 a digital voice minute costs less than an analogue voice minute
1975 and by the sheer fact that we are now delivering things digitally,
1976 give those using their phone, in your example, access to the
1977 internet as well.

1978 So, let me give you a specific example. We are talking about
1979 2 gigabits of data being the minimum threshold in 2018, as we phase
1980 in. Two gigabits of data for the existing price would be giving
1981 the consumer access to 1700 web pages and 900 minutes of voice
1982 talk.

1983 There are 50 percent of the existing Lifeline users use less
1984 than 100 minutes. Two-thirds use less than 200 minutes. So,

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1985 what we are talking about here is a quantum leap in the ability
1986 to have access to minutes and this incredible ability to access
1987 the internet.

1988 Ms. Matsui. Okay. Commissioner Clyburn, do you think that
1989 you struck the right bands here?

1990 Ms. Clyburn. We are still deliberating. We are listening
1991 to parties and winding up our ex parte process. When I started
1992 on this, it was a process that a lot of people did not want to
1993 take this particular journey.

1994 Ms. Matsui. Right.

1995 Ms. Clyburn. We are on the cusp of making a tremendous
1996 change for those 39 million households that are eligible. And
1997 I am looking forward to continuing working with you to make sure
1998 that this program is one that we can all be proud of.

1999 Ms. Matsui. Okay, thank you. I often speak about the need
2000 for global access to spectrum to fuel our wireless economy.
2001 Spectrum is the invisible infrastructure that powers mobile
2002 networks.

2003 As we look ahead to 5G, networks will be transporting more
2004 data than ever before. But wireless services also rely on wires,
2005 which is one of the reasons I care about special access reform.

2006 Commissioner Rosenworcel, do you agree that we need a
2007 competitive special access market so that the United States can

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2008 continue to lead the world in 5G?

2009 Ms. Rosenworcel. Thank you for the question. Yes, I do and
2010 I agree with your assessment that while wireless networks require
2011 wired infrastructure as well.

2012 Ms. Matsui. Okay, thank you and I yield back.

2013 Ms. Eshoo. Will the gentlelady yield her remaining time to
2014 me?

2015 Ms. Matsui. So, if I may, yes, I yield.

2016 Ms. Eshoo. Thank you. There was something that was said
2017 earlier from the panel about in search of a problem that doesn't
2018 have a solution or we don't need one et cetera, et cetera, relative
2019 to set top boxes.

2020 And I just want to put this on the record. Since the
2021 Telecommunications Act opened everything up to competition,
2022 including set top boxes, the price of everything else has gone
2023 down 90 percent. The increase of fees for set top boxes has
2024 increased by 185 percent and it is consumers that are picking up
2025 the tab. And it is, essentially, a monopoly. It is essentially
2026 a monopoly.

2027 In my district, talk about boxes, they say think outside the
2028 box, we don't have any boxes. I think it is about time that in
2029 the 21st century that we really open up set top boxes because --

2030 Mr. Johnson. The gentlelady's time has expired.

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2031 Ms. Eshoo. Thank you.

2032 Mr. Johnson. The chair now recognizes the gentleman from
2033 Texas, Mr. Olson.

2034 Mr. Olson. I thank the chair and welcome to our FCC
2035 commissioners. Happy Birthday, Commissioner Clyburn.

2036 Ms. Clyburn. Thank you.

2037 Mr. Olson. Commissioner Rosenworcel, did you have a chance
2038 to go by the County Line Barbeque at South by Southwest out there
2039 on 2222?

2040 Ms. Rosenworcel. No, I went to Salt Lick.

2041 Mr. Olson. You have to come back.

2042 And Commissioner Pai, you brought up the NCAA March Madness.
2043 And our chairman did as well. I am a proud Texan, guys. I have
2044 to tell you, the Aggies from College Station, Texas A&M University
2045 had the greatest comeback ever in college basketball. Down 12
2046 with 39 seconds left, double overtime, we are moving on. So, we
2047 will play Kansas maybe in Houston for the final four.

2048 My first question is about privacy for you Commissioner Pai
2049 and Commissioner O'Rielly. The purpose of the NPRM is to get
2050 input from the stakeholders before drafting and passing a rule
2051 -- before -- input before. There are no conclusions. But the
2052 Texans I work for back home say this privacy initiative of this
2053 proposed rule is full of conclusions. They say that is putting

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2054 the cart before the horse.

2055 So my question is, are there tentative conclusions in this
2056 NPRM for privacy?

2057 Mr. Pai. There are, Congressman.

2058 Mr. Olson. Mr. O'Rielly, are there conclusions?

2059 Mr. O'Rielly. Yes, there are.

2060 Mr. Olson. There are conclusions. Is there a record to
2061 base these conclusions upon, something like an NOI, a Notice of
2062 Intent that was passed this year? Is there some NOI out there
2063 to base these conclusions upon?

2064 Mr. Pai. There is not.

2065 Mr. Olson. And what they are based upon, any clue? I can
2066 tell the people back home yes, they are there, they got there why?

2067 Mr. Pai. I can't tell you the motivation for any particular
2068 conclusion. But with the entire reason for this enterprise, it
2069 is important to remember that the FCC disrupted the work that the
2070 FTC had done. The FTC had regulated this entire ecosystem
2071 consistently for the past decade. Now, having disrupted that
2072 with the net neutrality order last year, it is incumbent now upon
2073 the FCC to formulate what the privacy rules will be in the internet
2074 service provider space.

2075 Mr. O'Rielly. So to your point in terms of the cart before
2076 the horse, here is a quote from an FCC staffer working on the

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2077 issues. He said in terms of precise information about how
2078 information is being used right now, I don't know that we have
2079 that. They don't know what is being used by the ISPs today but
2080 we have a solution in the proposals.

2081 Mr. Olson. The people back home say that does not add up.
2082 That doesn't -- well, I won't say what they will say back home.
2083 But one final question.

2084 Has the Commission caught itself in a corner where to undo
2085 these rules, these new mandates, is that going to be really hard
2086 to do when this rule comes out? Can we stop this or is it pretty
2087 much the train has left the station?

2088 Mr. Pai. I think, unfortunately, Congressman, the
2089 Commission is proposing to leave the station in a certain
2090 direction and notwithstanding what the American people might tell
2091 us after this document finally becomes public, the Agency's
2092 direction, as you will see is pretty clear.

2093 Mr. Olson. Mr. O'Rielly, any comments on that, sir?

2094 Mr. O'Rielly. I agree that it would be challenged. I
2095 suspect it will be challenged in court. And we will see if they
2096 survive that. And barring a change in direction of the
2097 Commission, I think they --

2098 Mr. Olson. The people back home are so tired of having to
2099 go to courts to get the rules enforced the way they are written.

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2100 They just say they are sick and tired of going to courts.

2101 I want to switch gears and talk about the upcoming spectrum
2102 option in rural Texas. It is 1 week away. Now, I am talking about
2103 this issue a lot back home with the Texas Association of
2104 Broadcasters, the TAB, and they are worried about losing parts
2105 of their spectrum, the spectrum not being compensated. The
2106 towers might have to be moved and that cost a lot of money. And
2107 the FCC has not given any assurance that they will be fully
2108 reimbursed, especially in rural areas.

2109 The example they gave me was Amarillo, Texas, a decent size
2110 town, about 2,000 people in the panhandle. They have nine TV
2111 stations there, four Spanish language stations, four. They came
2112 here to D.C., met with the FCC and their concerns were basically
2113 dismissed. They said don't worry; it will be taken care of; all
2114 will be fine. And if it is not fine, we have got your back. That
2115 was not reassuring.

2116 Does the FCC have enough funds to cover rural TV stations
2117 if they have to build a new tower or lose their spectrum? Is there
2118 money out there to do that or is that just a wish and a prayer?

2119 Mr. O'Rielly. Well, I will answer it this way. I don't know
2120 the answer to that and part of it is because we have a variable
2121 band plan. So, we don't know how many people -- how much spectrum
2122 we are actually selling. We are going to let the market decide

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2123 some of those things through the good legislation you do.

2124 So, we don't know how many people are going to be displaced.
2125 And so some of that will require a little bit of time to figure
2126 out. What I have said, that I would be the first one here if the
2127 1.75 is not sufficient to advocate that Congress reconsider this
2128 number.

2129 Mr. Olson. Thank you. Mr. Pai, anything to add about that,
2130 sir?

2131 Mr. Pai. I would agree with Commissioner O'Rielly and I
2132 would just add that that is one of the reasons why I have
2133 consistently said that we should have treated the \$1.75 billion
2134 as a budget, rather than a soft suggestion.

2135 Mr. Olson. Thank you. I am out of time. On behalf of the
2136 Aggies, whoop!

2137 Mr. Johnson. The gentleman yields back with a whoop. And
2138 with that, I recognize the gentleman from Kentucky, Mr. Yarmuth.

2139 Mr. Yarmuth. Thank you, Mr. Chairman. Thanks to all of you
2140 for being here today and for doing what you are doing to ensure
2141 that there is access to broadband throughout our country so that
2142 everyone can participate in 21st century economy.

2143 Come November, it is estimated by some that there will have
2144 then spent somewhere in the neighborhood of \$10 billion on
2145 political advertising in this cycle. A lot of that is going to

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2146 be spent by entities, candidates, and party organizations that
2147 are required by law to disclose their donors. But a significant
2148 portion of it would be spent by front groups that are under no
2149 requirement to disclose their donors. That is why Ms. Eshoo and
2150 I and 168 of our colleagues wrote to Chairman Wheeler asking the
2151 Commission to use its authority under Section 317 to require the
2152 disclosure of donors for all of these front ads, front
2153 organization ads.

2154 And we wrote in January. I received this response during
2155 March 10th from the chairman and it is basically a thank you for
2156 writing response, something I don't think that you would believe
2157 that we would be satisfied with. And while I don't think that
2158 necessarily we expected you to say okay, we will do that right
2159 away, I certainly expected more than this. And what particularly
2160 disturbs me is that when we talked about the basis for the
2161 Commission's refusal to do it is based on their definition of
2162 editorial -- using the standard of editorial control, based on
2163 a 1979 interpretation by staff as to what the standard for be to
2164 determine what a sponsoring organization is.

2165 And you mentioned that in January proceedings that you
2166 expanded the requirements to cable companies and satellite
2167 providers and so forth as if that would be satisfactory to us.
2168 Personally, I think that really is a further institutionalization

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2169 of the deception of American public because this standard of
2170 editorial control is absolutely the most useless standard for the
2171 American people in trying to decide or trying to determine the
2172 credibility of political advertising.

2173 I spent most of my career in media prior to coming to Congress
2174 and I have a little bit of an idea what editorial control is. And
2175 in these situations, these groups, Americans for Puppies and
2176 Kittens or Americans for a Brighter Tomorrow, they don't have
2177 editorial control. They may be crafting a message but they don't
2178 have control of that message.

2179 So, if you could imagine, the American Petroleum Institute,
2180 they want to form one of these front groups and fund it. Can you
2181 imagine what would happen if they organization that they funded,
2182 America for a Brighter Tomorrow, ran ads saying we need to do away
2183 with burning all fossil fuels? Those ads wouldn't stay up very
2184 long. They don't have control. They are doing what their
2185 funders want them to do. And that is why this is such a deceit
2186 that has been fostered on the American people. They don't have
2187 any idea who is saying that puppies and kittens are great.

2188 And until we get this kind of disclosure, billions and
2189 billions of dollars will be spent to deliberately deceive American
2190 voters. And I don't understand why the Commission would not at
2191 least enter into a review of the standard they are using, you are

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2192 using, to determine what is the most beneficial standard for
2193 deciding what is a true sponsor. A sponsor is who pays for it.
2194 And in this situation, those entities that are paying for it are
2195 not willing to be public, which is why they are using the facades
2196 that they are using.

2197 So, in terms of the public interest, in terms of a vital and
2198 open democracy and a transparent democracy, I would request, first
2199 of all, I would reassert our request to take action. But short
2200 of that, I would hope that maybe we could meet with Commission
2201 staff to talk about this whole notion of editorial content and
2202 exactly what their perception is -- I mean of editorial control
2203 and see exactly what their perception of editorial control is.
2204 Because as a former editor, I know who has control of the editorial
2205 process and I know who has control of the advertising process.
2206 And this would be like Coca-Cola saying we are wanting an ad, put
2207 a soft drink ad and you said okay, well you have to say paid for
2208 by Ogilvy and Mather or Leo Burnett, or one of the advertising
2209 agencies, instead of Coca-Cola.

2210 So, hopefully, we can see this decision and work with us to
2211 do something that is more sensible. I yield back.

2212 Mr. Johnson. I thank the gentleman for yielding back. The
2213 chair now recognizes the gentleman from Illinois, Mr. Kinzinger.

2214 Mr. Kinzinger. Thank you, Chairman. And thank you all for

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2215 being here. I know it is like Christmas Day for you when you get
2216 to come before us. So, I appreciate having you. Thanks for your
2217 service.

2218 Mr. Chairman, Chairman Wheeler, we have had conversations
2219 in the past regarding the rate regulation bill that I introduced
2220 last year. And at the time of our initial conversation, there
2221 was a lot of concern regarding the authority your commission
2222 possesses but chooses to forbear for the most part in regards to
2223 rate regulation. And I appreciate the forbearance of that. I
2224 want to make that clear.

2225 During that conversation, we talked about putting into
2226 statutory law a phrase that would ensure yours and future
2227 commissions do not have the ability to set out retail rates on
2228 broadband internet, which I think is an important role for
2229 Congress to play, to have a voice. But now since the time of our
2230 original conversation, you, along with many of our colleagues on
2231 this committee have said that the bill I introduced is far greater
2232 than what it seems and that it could end the ability of the FCC
2233 to regulate a plethora of other activities that were not in the
2234 bill. And I understand those concerns and I am willing to work
2235 with anyone that is willing to work with me to ensure that the
2236 intent of the bill is moved forward in a reasonable manner.

2237 Following a number of conversations and negotiations with

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2238 members on both sides of the aisle, you passed what I think was
2239 an excellent amendment to the bill being a recent markup to ensure
2240 that a number of issues brought forward by our colleagues and
2241 yourself were specifically exempted from adding or detracting
2242 from the current FCC authority.

2243 Now, not more than a few hours after we passed that bill out
2244 of committee, you were in front another committee in Congress
2245 where the same issues was brought forward. In that hearing, I
2246 have the transcripts actually, you again stated that we will not
2247 regulate broadband rates. Again, I appreciate that. And you
2248 then said that you would be willing to offer your assistance to
2249 Representative Crenshaw in developing legislative language on
2250 this topic. More specifically, you agreed to provide them with
2251 language and assistance within a couple of weeks from the date
2252 of that hearing, which was March 15th. Would you be willing to
2253 provide that language to our committee when it is completed, which
2254 will be around March 29th?

2255 Mr. Wheeler. Yes, sir.

2256 Mr. Kinzinger. Okay. I also want to clear something up.
2257 In a recent markup on H.R. 2666, a letter from you was entered
2258 into the record in which you go to great length to explain why
2259 my bill is inconsistent with your comments before a Senate approps
2260 committee. Given that I read you the text of the bill before it

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2261 was originally introduced and you stated that this is what we are
2262 trying to accomplish, I am a bit confused by your letter. So,
2263 I just want to clear something up.

2264 This is just yes or no. Do you believe that the FCC should
2265 have the authority to regulate rates after the fact through
2266 enforcement?

2267 Mr. Wheeler. Yes, sir.

2268 Mr. Kinzinger. Okay.

2269 Mr. Wheeler. What I was talking about was the question of
2270 de-forbearing.

2271 Mr. Kinzinger. Okay.

2272 Mr. Wheeler. And I believe that in the Open Internet rule,
2273 as we did, we should forbear from rate regulation.

2274 Mr. Kinzinger. But you believe that you should have the
2275 authority to regulate rates. Even though you choose not to at
2276 this time, the Commission should have that authority to be able
2277 to regulate broadband rates.

2278 Mr. Wheeler. Yes, sir.

2279 Mr. Kinzinger. That is kind of inconsistent --

2280 Mr. Wheeler. It is because here is what is the concept. So,
2281 for instance, Chairman Walden's amendment that you just
2282 referenced here, the amendment to your original idea, when she
2283 said hey, this will not have any impact on paid prioritization

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2284 because obviously, if something is paid, there is a rate being
2285 charged.

2286 Mr. Kinzinger. Well, sir, and I appreciate it. I am
2287 willing to work with you but what I am kind of confused about is
2288 you went from saying hey, we are going to forbear it, we have no
2289 intention of regulating rates on the internet. And I liked the
2290 concept of what your bill is, even if you don't like the details.
2291 We are willing to work with you on the details but you are saying
2292 that you actually disagree that you actually should have the
2293 ability to regulate broadband rates.

2294 Mr. Wheeler. That is what I am trying to address, the issue
2295 of rates. So, for instance, as Chairman Walden's amendment said,
2296 well, paid prioritization could be a rate. That is not what we
2297 are talking about. Throttling could be rates and we have all
2298 agreed we don't want to do throttling. Because how do you
2299 throttle? There is a rate you are paying. You are delivering less
2300 than the service that you say that you are going to offer.
2301 Therefore, there is a rate impact --

2302 Mr. Kinzinger. And I understand. Even though there is a
2303 lot of details but we went from you saying I agree we should not
2304 be able to regulate broadband rates to now saying we should
2305 regulate broadband rates but I will forbear it for this moment.
2306 There is details and that is my point is we are willing to work

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2307 with you on a lot of these details.

2308 Mr. Wheeler. Yes, sir.

2309 Mr. Kinzinger. And we are happy to do it with the other side
2310 of the aisle, with you all and I think that is important but maybe
2311 we made a little headlines.

2312 To Commissioner Pai, do you believe that the Open Internet
2313 order leaves open the ability of the FCC to regulate rates in any
2314 fashion after the fact and do you believe that Congress should
2315 act?

2316 Mr. Pai. Yes and yes. And I think the chairman's
2317 commitment should be taken at its word that rate regulation is,
2318 indeed, on the table. And I don't think -- it shouldn't be that
2319 big of a leap if the President has said when he instructed the
2320 FCC to adopt Title II, I don't want the FCC to regulate broadband
2321 internet access rates. If the chairman says I don't want to
2322 regulate broadband internet access rates and I don't have a
2323 problem with Congress codifying that, there should not be an
2324 objection when Congress actually tries to codify that commitment.

2325 Mr. Kinzinger. That is right. And that is the role of
2326 Congress is to make these laws to make these things that we want
2327 our folks to live by or not live by and I guess I am confused but
2328 unfortunately, I am out of time.

2329 So, thank you all. Thanks for being here.

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2330 Mr. Wheeler. Thank you.

2331 Mr. Johnson. I thank the gentleman for yielding back and
2332 I recognize now Ms. Clarke from New York.

2333 Ms. Clarke. I thank you, Mr. Chairman and I thank our
2334 ranking member. Good afternoon, Chairman Wheeler, and to the
2335 entire panel of commissioners seated before us today.

2336 My time is short so I want to get right to my question. Mr.
2337 Chairman, as you know some of my colleagues in the Congressional
2338 Black Caucus, the Congressional Hispanic Caucus and I have
2339 expressed our concerns about the potential irreparable harm the
2340 set top box proposal could have on small minority programmers,
2341 content providers, and broadcasters. This concern was also
2342 expressed recently by Adonis Hoffman, a former chief of staff to
2343 a Democratic FCC commissioner and I quote, if the FCC adopts the
2344 Wheeler proposal in a final order later this year, it will embed
2345 a regime that creates more, not fewer hurdles for smaller players,
2346 new entrants, and minority content providers to pierce the Silicon
2347 curtain. End quote.

2348 Mr. Chairman, you continue to have said that you don't
2349 believe that this disruption will harm or limit minority and
2350 independent programming. So, has the FCC gathered evidence to
2351 this effect? Has a disparity study been conducted to surface the
2352 unintended consequences of this proposal for programmers whose

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2353 viability is not only driven by increased viewership but also
2354 proven business models?

2355 Mr. Wheeler. Thank you, Congresswoman. The entire NPRM is
2356 designed to elicit this kind of information and then to collect
2357 that information in the first round and then to have a rebuttal
2358 to that information or adding --

2359 Ms. Clarke. Okay, so there has been no study. No. Okay.

2360 Mr. Wheeler. No, what I am saying is that is the process.
2361 We are collecting that right now.

2362 Ms. Clarke. Okay. So, I have asked the Congressional
2363 Research Service to perform a study on the impact of the set top
2364 box proposal on small and minority programmers and content
2365 providers and broadcasters. I consider this a reasonable
2366 request. Would you consider delaying the rulemaking until the
2367 report is completed and to work with the committee to address any
2368 concerns that may be raised by a report?

2369 Mr. Wheeler. Well, we would look forward to working with
2370 you and the committee on any issues that are raised in this, as
2371 you and I have discussed previously on this.

2372 Ms. Clarke. So you would consider a delay?

2373 Mr. Wheeler. I don't know how long the delay would be,
2374 ma'am.

2375 Ms. Clarke. Okay, we can talk about that.

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2376 Mr. Wheeler. Yes.

2377 Ms. Clarke. Commissioner Clyburn, I want to commend and
2378 congratulate you on all your efforts on inmate calling services.
2379 It has meant so much to so many families across our nation and
2380 I know it will happen.

2381 I have a question about the modernization of the Lifeline
2382 program. I am hearing from many constituents that they are
2383 concerned with a portion of the proposal that would start charging
2384 for services that have been free for years. I think that has been
2385 a consistent theme here this morning. Would you further explain
2386 the proposal of the modernization of the Lifeline program?

2387 Ms. Clarke. Well, what we are attempting to do, and it was
2388 a very simple, for me, objective to ensure that the Lifeline
2389 program looks much like everyone else's offerings and options and
2390 opportunities. Right now, it just goes to finance voice services
2391 and we believe in a 21st century economy world that is
2392 insufficient.

2393 So, we are still in a deliberative stage. I have heard
2394 concerns, as I mentioned in my opening remark from consumers that
2395 are concerned, particularly on a mobile voice problem -- a mobile
2396 voice consider it to be a problem here.

2397 But what I want to assure you is I am going to take all of
2398 those into considerations because I want, as I have the option

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2399 to pay little, none, or more, depending on my ability and what
2400 I want from the market and that is what we are attempting to create
2401 all price points starting at zero.

2402 Ms. Clarke. So, my question is related to the maintenance
2403 of the voice service for constituents that may not have access
2404 to high speed broadband or may not want to adopt the modern
2405 technology because they are seniors or disabled or perhaps less
2406 literate. Is the FCC being too presumptuous that broadband will
2407 be competitively available to all Americans in the next 3 years,
2408 as outlined in the agency's draft proposals?

2409 Ms. Clyburn. I will answer this way and more succinctly,
2410 based on time. It is my wish that whatever your desire is from
2411 a communications standpoint, whatever your need is from a
2412 communications standpoint, that this is a program that answers
2413 your needs.

2414 Ms. Clarke. Very well. Mr. Chairman, I yield back. Thank
2415 you very much.

2416 Mr. Johnson. I thank the gentlelady for yielding back. The
2417 chair now recognizes itself for 5 minutes.

2418 Chairman Wheeler, recently, I was shown a quote attributed
2419 to a former venture capitalist, you, regarding the FCC's
2420 regulation of what was then a cutting edge innovative service.
2421 And I quote, I would hope the Commission recognizes that despite

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2422 the fact that they have very capable and dedicated individuals,
2423 it is not smarter than the functions of the marketplace. In that
2424 regard, I would just point to the cellular industry. The reason
2425 the industry has reached the level it has is because the FCC was
2426 smart enough to know that they didn't have all the knowledge. End
2427 quote.

2428 So, looking at the situation with Binge On and other
2429 products, you have a team scrutinizing them, notwithstanding the
2430 overwhelming consumer response. It sounds like now the FCC's
2431 Enforcement Bureau does have all of the knowledge, in your
2432 opinion. So, what has changed at the FCC since you made that
2433 statement as head of CTIA?

2434 Mr. Wheeler. Well far be it from me to challenge the wisdom
2435 of that statement, Congressman. The model what we built for the
2436 Open Internet is based on Section 332 and what I was speaking about
2437 at that time. And the job that the Congress and the Commission
2438 did in saying it is a common carrier and here are the things from
2439 which you will forbear. And that the responsibilities of common
2440 carriage continue to obtain them. And just like the common
2441 carriage responsibilities of data roaming were applied to
2442 wireless carriers in the last several years, so, too, do we then
2443 look at other common carriage responsibilities that may fall out
2444 and be affected by internet service providers.

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2445 Mr. Johnson. Okay, well, great. So, it sounds like your
2446 position has changed, that now the Enforcement Bureau does have
2447 more of the knowledge than the private market.

2448 Let's go on to a second question. On your watch, and one
2449 of our colleagues earlier said we are not really talking about
2450 your budget, which is what you are here to talk about but I am
2451 going to segue to that.

2452 On your watch, average personnel costs for employees in the
2453 Enforcement Bureau have grown faster than was the case under
2454 Chairman Genachowski. Certainly average salaries for those in
2455 the enforcement bureau have grown faster during your tenure than
2456 was the case under your predecessor. How do you explain this
2457 trend toward higher spending?

2458 Mr. Wheeler. You have given me a piece of information that
2459 I was unaware of and I will be happy to --

2460 Mr. Johnson. Would you get back to us and take that question
2461 for the record? Thank you. We would like to know that.

2462 Also, Chairman Wheeler, the FCC, as a matter of practice
2463 sends a contingent of Enforcement Bureau field agents to the Super
2464 Bowl. Correct?

2465 Mr. Wheeler. Yes, sir.

2466 Mr. Johnson. It is the job of these field agents to ensure
2467 that no harmful or malicious interference interrupts

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2468 communications, broadcasting, or public safety. Is that
2469 correct?

2470 Mr. Wheeler. Yes, sir.

2471 Mr. Johnson. A group went this year. Am I correct, this
2472 past January -- February?

2473 Mr. Wheeler. Yes, sir.

2474 Mr. Johnson. I assume that, given the task, that this team
2475 is responsible for they are made up of primarily engineers that
2476 can resolve those problems. Is that correct?

2477 Mr. Wheeler. I don't know the answer to that, sir.

2478 Mr. Johnson. Okay. Could you get back to us on that?

2479 Mr. Wheeler. Yes, sir.

2480 Mr. Johnson. Did the chief of the Enforcement Bureau attend
2481 the Super Bowl as part of the FFC's presence this year?

2482 Mr. Wheeler. I don't know the answer to that, sir.

2483 Mr. Johnson. Would you get back to us on that?

2484 And do you know if any Enforcement Bureau chiefs in the past
2485 have attended the Super Bowl?

2486 Mr. Wheeler. I don't know the answer to that.

2487 Mr. Johnson. Okay, so there are three or four questions for
2488 you, if you would get back to us on those.

2489 Sticking with you, Chairman Wheeler, but changing focus, as
2490 the head of an important agency, I am sure you are aware of the

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2491 challenges that have arisen in agencies and departments like the
2492 EPA, the IRS, and the State Department with respect to the use
2493 of non-official means of communication, often to avoid or allay
2494 things like the Administrative Procedures Act or the Freedom of
2495 Information Act and the Federal Records Act.

2496 Does the FCC have a policy that clearly requires FCC
2497 employees to comply with these rate obligations and how do you
2498 enforce that policy and ensure that personnel cell phones and
2499 direct messaging over social media platforms are not use by your
2500 employees to avoid the sunshine and openness we expect in a
2501 regulatory agency like the FCC?

2502 Mr. Wheeler. I am sorry, let me see what I understand. You
2503 are saying what policy do we have to make sure that you don't do
2504 business on private --

2505 Mr. Johnson. Yes, essentially.

2506 Mr. Wheeler. That is policy.

2507 Mr. Johnson. Do you have that policy?

2508 Mr. Wheeler. Yes, sir.

2509 Mr. Johnson. What do you do to enforce it? What kind of
2510 enforcement mechanisms do you have in place?

2511 Mr. Wheeler. We don't go spying on our employees.

2512 Mr. Johnson. I am sorry?

2513 Mr. Wheeler. We don't go looking at what our employees are

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2514 doing.

2515 Mr. Johnson. How do you enforce it?

2516 Mr. Wheeler. We have the rule in place.

2517 Mr. Johnson. So you don't enforce it.

2518 Mr. Wheeler. If there is a complaint made against the rule,
2519 I am sure we will enforce it.

2520 Mr. Johnson. Okay. What I hear you saying is you don't
2521 enforce it.

2522 I yield back and now I recognize Mr. McNerney from California
2523 for 5 minutes.

2524 Mr. McNerney. I thank the chair.

2525 Concerning the ISP privacy proposal, Chairman Wheeler, I
2526 believe that consumers should have control over their data, what
2527 they disclose and how their data is used. Recognizing that the
2528 average internet users may not be aware of the multiple entities,
2529 such as the ISP and Web sites, the collective data, will your
2530 proposal ensure that consumers have an understanding of what
2531 entities are collecting their information?

2532 Mr. Wheeler. Yes, sir.

2533 Mr. McNerney. How will do you that?

2534 Mr. Wheeler. So, there are three legs to this stool.

2535 First, is transparency, that it must be disclosed what information
2536 is being collected and then how that information is used when it

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2537 is collected.

2538 The second is that you must be given choice insofar as do
2539 you want that information to be collected and used.

2540 And the third is that that information must be secured so
2541 that it does not end up violating your privacy by leaking out to
2542 some other source.

2543 Mr. McNerney. Are you going to require opt-ins or opt-outs
2544 as part of this?

2545 Mr. Wheeler. Yes, sir.

2546 Mr. McNerney. So the consumers will have to opt-in or
2547 opt-out, depending on what they want?

2548 Mr. Wheeler. Any information that is collected by an ISP
2549 may not be distributed to a non-ISP, in other words, may not be
2550 sold to an advertiser or somebody like this, without the opt-in
2551 consent of the consumer.

2552 Mr. McNerney. Thank you. Data security is a critical
2553 element of the ISP privacy proposal, at least in my opinion. One
2554 of the things you can do is called out by requiring reasonable
2555 steps but what does the Commission mean by reasonable steps? What
2556 does that constitute?

2557 Mr. Wheeler. So, that is noticed by the absence of
2558 reasonable steps. The reality is that one company's solution may
2559 be as adequate as another's solution but what we don't want to

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2560 do is to say here is the black and white cookie cutter that
2561 everybody has to do. Let's for instance, let me give you an
2562 example.

2563 There was one company that allowed their employees to operate
2564 -- allowed is the wrong word -- under whose supervision where
2565 employees sold the information for about 280,000 customers.
2566 There must be a reasonable structure in place to prevent that kind
2567 of activity.

2568 Mr. McNerney. So, you don't believe in establishing a
2569 standard through some process and then applying that standard.

2570 Mr. Wheeler. We establish the expectation that you will do
2571 it but there are multiple ways that it can be accomplished.

2572 Mr. McNerney. Okay, thank you.

2573 Regarding set top boxes, as you know, I wrote a letter to
2574 you with Mr. Barton and Mrs. Ellmers regarding the privacy issues
2575 under your proposals. I appreciate you responded. We got that
2576 letter last week. Although, I have a few questions about the
2577 certification process.

2578 How would consumers go about raising a potential violation
2579 of self-certification or independent certification?

2580 Mr. Wheeler. So, the enforcement exists as it does today
2581 under Section 631 applicable to wireless carriers, that that is
2582 the expectation that applies. Their first role of responsibility

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2583 is the cable operator themselves. And the second is an
2584 appropriate complaint to the FTC or the state AG but that we have
2585 the same level of privacy protections that get put in place today
2586 with existing alternative set top boxes, such as TiVo and Roku.

2587 Mr. McNerney. Well then who would decide an evaluation that
2588 warrants a revocation?

2589 Mr. Wheeler. The revocation of the license?

2590 Mr. McNerney. And the certification.

2591 Mr. Wheeler. So, the cable operator can make that decision
2592 and there can be enforcement action taken by the FTC or the AGs.

2593 Mr. McNerney. Thank you.

2594 Commissioner Clyburn, I am also interested in the Lifeline
2595 but in California, our customers get a state subsidy, along with
2596 a Wi-Fi subsidy and yet, some of our providers are saying that
2597 even with that with the most generous state subsidy in the United
2598 States, they are still not able to supply, provide the basic
2599 services that are available warranted. Do you see that -- I mean
2600 how do you see addressing that problem?

2601 Ms. Clyburn. Our universal service construct has always
2602 been viewed through a public and private lens. And we always knew
2603 that there will be certain limitations from a government
2604 standpoint in terms of allocation of resources, be it state or
2605 local. And so what we are attempting to do through our other

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2606 initiatives and conversations and partnerships that we are
2607 continuing to forge is to ensure that the market has options that
2608 would be more in line with the affordability construct in which
2609 you laid out.

2610 And so, it is a continuing work in process and I think we
2611 are on the correct trajectory to marry and close these spots.

2612 Mr. McNerney. So, there may be co-payments involved?

2613 Ms. Clyburn. We always knew that \$9.25 from a federal coffer
2614 would not be enough in all cases to bridge the divide. And that
2615 is why it is so important for, as you mentioned, states like
2616 California, who recognize that, who complement the front
2617 economically and we are hoping for more interaction with the
2618 private marketplace to bring things closer to affordability for
2619 those who could use, who need broadband the most.

2620 Mr. McNerney. Thank you, Mr. Chairman for indulging me.

2621 Mr. Johnson. I thank the gentleman for yielding back.

2622 The chair now recognizes the gentleman from Florida, Mr.
2623 Bilirakis.

2624 Mr. Bilirakis. Thank you, very much, Mr. Chairman. I
2625 appreciate it. Thanks to the panel for their testimony today.

2626 I have a couple of questions. Chairman Wheeler, I
2627 understand that a lot of robocalls or automated text messages are
2628 an unwelcome part of modern life and should be limited, as they

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2629 are now, under the telephone Consumer Protection Act but in some
2630 cases, consumers, customers have a legitimate need and a real
2631 desire to receive important information from some businesses.
2632 For example, utilities may need to contact their customers with
2633 information about outages, repairs, service restoration or other
2634 important service updates. This is especially true in a
2635 situation we face in Florida when we have hurricanes and tropical
2636 storms. So, it is a public safety issue.

2637 I understand there is a petition from electric and gas
2638 utilities currently pending at the Commission to clarify that the
2639 TCPA does not apply to non-telemarketing informational
2640 communications from utilities to their customers. Does the
2641 Commission plan to act on this or can you comment on the status
2642 of the petition, please?

2643 Mr. Wheeler. Thank you, Congressman. I am unfamiliar with
2644 that specific petition. We are dealing with several issues that
2645 come out of TCPA. I would love to get back to you with an answer
2646 on that.

2647 Mr. Bilirakis. Please do. Please do. Thank you.

2648 I have a second question for Chairman Wheeler. We recently
2649 had FirstNet up here, along with your Public Safety Bureau. One
2650 of the things we discussed was the level of coordination between
2651 FCC and FirstNet on closing FCC field offices, since the field

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2652 agents play a critical role, I am sure you will agree in resolving
2653 interference to public safety communications. Yet, I still don't
2654 have a clear answer to my question.

2655 Was there any consultation between FirstNet and the FCC about
2656 reducing the size of the field office presence? And a simple yes
2657 or no will do.

2658 Mr. Wheeler. I don't believe so, sir.

2659 Mr. Bilirakis. You don't believe so?

2660 Mr. Wheeler. Correct.

2661 Mr. Bilirakis. That is probably a no. Is that correct?

2662 Mr. Wheeler. Yes, sir.

2663 Mr. Bilirakis. Yes, okay.

2664 Mr. Wheeler. To the best of my knowledge.

2665 Mr. Bilirakis. All right.

2666 Commissioners Pai and O'Rielly, the market definition in the
2667 chairman's set top box proposal seems divorced from the reality
2668 of how consumers watch video today. The video market already
2669 competes for consumers getting numerous viewing options, based
2670 on single programs channels or bundles.

2671 Isn't the FCC's market definition backward-looking,
2672 considering where the market is going? What do you think?

2673 Mr. Pai. Congressman, I agree with that characterization.
2674 I can't put it better than the former chairman of this committee,

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2675 Henry Waxman, who said just yesterday that this is a 20th century
2676 solution to a problem that the market is already solving on its
2677 own.

2678 Mr. O'Rielly. I agree.

2679 Mr. Bilirakis. Mr. O'Rielly, please?

2680 Mr. O'Rielly. I agree.

2681 Mr. Bilirakis. Thank you.

2682 Next question for the entire panel. Is the Commission
2683 worried about all the automated telephone dialing system cases
2684 being decided in court on a case-by-case basis? Should the
2685 Commission revisit the definition and help to bring clarity to
2686 the issue so that businesses can have clearer guidance? We will
2687 start with the chairman, please.

2688 Mr. Wheeler. Thank you, Congressman. We had a large
2689 proceeding on that within the last 6 or 8 months and what we are
2690 trying to hue to is the specific language that is in TCPA that
2691 says that insofar as wireless calls are concerned, the wireless
2692 subscriber has the right to determine whether or not you get
2693 called.

2694 Mr. Bilirakis. Commissioner Clyburn, please?

2695 Ms. Clyburn. So, I interpreted your -- hopefully my
2696 interpretation is in sync with the spirit of your question. One
2697 of the things that we recognize is that every situation is

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2698 different and we must have the capacity when it comes to intake
2699 of those calls and complaints, which are huge, they are a larger
2700 number, that we each have the capacity to compartmentalize them
2701 and address them. So, how we look at them in mesh.

2702 There are a lot of commonalities to many of these calls and
2703 we will address them in such a manner that would be in sync with
2704 that.

2705 Mr. Bilirakis. Thank you. Any other commissioner wish to
2706 comment?

2707 Ms. Rosenworcel. As the chairman alluded to, we did address
2708 autodialer capacity in the summer of 2015, in our most recent
2709 decision under the Telephone Consumer Protection Act.

2710 But if I could make one point, it would be a plea. This is
2711 a law from 1991 and one of the challenges that the agency has right
2712 now is we are taking all sorts of technologies that did not exist
2713 in the early 1990s and trying to figure out how to fit them into
2714 this old law. We are, as a result, struggling with more robocalls
2715 for consumers and more challenging lawsuits for companies that
2716 never intended to be on the wrong side of the consumers they are
2717 calling.

2718 Mr. Bilirakis. Mr. Pai, should the Commission revisit the
2719 definition and help to bring clarity to the issues so that business
2720 have clear guidance?

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2721 Mr. Pai. Without question, Congressman. But in the
2722 absence of the Commission doing that, and I don't see any
2723 indication that it will, I think as Commissioner Rosenworcel
2724 pointed out, it would be helpful for Congress to update the
2725 Telephone Consumer Protection Act.

2726 A number of strange situations we find ourselves in now is
2727 on one hand having perverted the definition of autodialer to
2728 include everything more sophisticated than the rotary phone, all
2729 these legitimate businesses are now seeking a special exemption
2730 from the FCC from the TCPA's strictures and the various class
2731 actions that are sure to follow.

2732 At the same time, the administration is exempting entire
2733 categories of favored robocallers, such as government student
2734 debt collectors, the present payphone industry and others. They
2735 get a pass, whereas, a lot of these legitimate businesses don't.
2736 That is an untenable state of affairs.

2737 Mr. Bilirakis. Commissioner O'Rielly?

2738 Mr. O'Rielly. I will just say I agree. I think the
2739 definition was wrong at the time and we should clarify.

2740 Mr. Bilirakis. Thank you. I yield back, Mr. Chairman. I
2741 appreciate it.

2742 Mr. Johnson. I thank the gentleman for yielding back.

2743 And the chair now recognizes the gentleman from Missouri,

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2744 Mr. Long.

2745 Mr. Long. Thank you, Mr. Chairman. And before I give my
2746 remarks, I would like to just, along with many others, send out
2747 thoughts and prayers to the victims of the tragedy in Brussels
2748 today, including a U.S. service member and four of his family
2749 members that were injured and three Mormon missionaries, who were
2750 also injured, too, of which I know are Jason Chaffetz, Chairman
2751 of Oversight and Government Reform, constituents of his.

2752 And another note, I note the passing of my predecessor's
2753 father, Roy Blount's dad. Roy Blount passed away last night and
2754 I know that a lot of folks had not heard that yet.

2755 And I want to add to the accolades, even though he is not
2756 in the room, that everyone has been throwing out to Ray Baum today.
2757 And you know after he wrote Wizard of Oz, I thought he would be
2758 done. I thought he could live off of his residuals.

2759 But Ray is a great guy. And I came to Congress from a
2760 different background than most. I was an auctioneer and a real
2761 estate broker for over 30 years. I am a salesman. And a salesman
2762 has to be upbeat, optimistic, open. And Ray, I have never seen
2763 him in a bad mood. He is always upbeat, optimistic, and open,
2764 regardless of the challenge. I wish him the best of luck of the
2765 NAB. And I just realized out in the hall that he is 1 week younger
2766 than I am. Now, I know you can't tell by looking because I look

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2767 younger than him, I am sure. But anyway, congratulations to Ray
2768 on his move.

2769 Commissioner Rosenworcel, I want to commend you on your trip
2770 down to Austin promoting the broadband to rural areas, which is
2771 a very, very key object or whatever that we have been working on,
2772 that we need to work on. I, too, spoke in Austin and participated
2773 in a panel 10 days ago today on that very subject on delivering
2774 rural broadband to the rural areas, which for the students in their
2775 studies and everything, it is critical that we get that done. So,
2776 I just wanted to congratulate you on your trip to Austin to promote
2777 the same thing.

2778 Chairman Wheeler, in the spirit of John Dingle, I am going
2779 to ask you for yes or no answers to my questions. I have got a
2780 few here. I don't have a lot.

2781 But Chairman Wheeler, I would like to focus this morning,
2782 or this afternoon I guess it is now, on your treatment of
2783 television joint sales agreements, known as JSAs. I don't know
2784 if you are aware but there is a JSA in my district between TV
2785 stations KSNF and KODE in Joplin, Missouri. And it was because
2786 of this JSA that KODE was able to buy Doppler radar, which, at
2787 the time, was obviously a benefit to the Joplin community. But
2788 in 2011, when the EF5 tornado ripped through Joplin, killing 161
2789 people in a town of 50,000, so everyone knew someone from that

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2790 tragedy, when it ripped through Joplin, there wasn't anything much
2791 more important in my community than the Doppler radar, which
2792 tracked a multiple vortex tornado that stayed on the ground for
2793 six miles. And the reason KODE was able to afford this piece of
2794 weather equipment was because of the JSA.

2795 Now, I have got to admit that I was pretty frustrated with
2796 the FCC when they made the decision back in 2014 to basically
2797 outlaw JSAs, especially when I saw firsthand the difference they
2798 can make to small and medium sized markets like Joplin. Clearly,
2799 also in my hometown of Springfield, there is a JSA operating there.
2800 Clearly, many others in Congress had the same frustration, which
2801 is why last year, we included a 10-year grandfather for JSAs
2802 created before March of 2014 in the omnibus spending bill.

2803 Chairman Wheeler, again, in the spirit of John Dingle, yes
2804 or no answer. Were you aware of the passage of this law?

2805 Mr. Wheeler. Yes, sir.

2806 Mr. Long. Okay, good. I thought that when Congress passed
2807 the law, it would have been the end of the conversation on JSAs
2808 but, unfortunately, to my surprise, I see the FCC has decided to
2809 use the merger process to circumvent a recently passed law. In
2810 a number of instances, the FCC has not provided the law's 10-year
2811 grandfather to JSAs involved in a merger. Is that correct, yes
2812 or no?

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2813 Mr. Wheeler. No, sir.

2814 Mr. Long. That is not correct?

2815 Mr. Wheeler. That is not correct.

2816 Mr. Long. I am aware that --

2817 Mr. Wheeler. Would you like me to explain?

2818 Mr. Long. I am aware that you argue that there is

2819 long-standing precedent that gives the FCC the right to modify

2820 new licenses. Have you read the language in the omnibus bill that

2821 grandfathers JSA?

2822 Mr. Wheeler. Yes, sir.

2823 Mr. Long. Can you tell me if the omnibus language includes

2824 any exceptions to the 10-year grandfather in the JSAs?

2825 Mr. Wheeler. It talks about license --

2826 Mr. Long. Yes or no?

2827 Mr. Wheeler. It talks about --

2828 Mr. Long. Can you answer yes or no for me? Let me repeat

2829 the question and I would like a yes or no.

2830 Can you tell me if that omnibus language includes any

2831 exceptions to the 10-year grandfather in the JSAs?

2832 Mr. Wheeler. In the definition of license --

2833 Mr. Long. Yes or no? Can you give me a yes or no? That

2834 is a simple question.

2835 Mr. Wheeler. Yes.

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2836 Mr. Long. Thank you. Did the language include any
2837 exception in the case of merger reviews or FCC precedent? Yes
2838 or no?

2839 Mr. Wheeler. Yes.

2840 Mr. Long. And in the case where the FCC precedent that
2841 conflicts with a federal statute which trumps, isn't the statute
2842 -- it is in the statute, isn't it?

2843 Mr. Wheeler. The statute does not conflict.

2844 Mr. Long. It appears others were as surprised as I was with
2845 your interpretation of the statute. Now the statute recently,
2846 the 12 bipartisan senators representing a full political spectrum
2847 from Senators Schumer and Durbin to Senators Blunt and Wicker sent
2848 you a letter telling you the congressional intent of that omnibus
2849 language, mainly to grandfather all JSAs created before March 14
2850 and you are in receipt of that letter, yes or no?

2851 Mr. Wheeler. Yes, sir.

2852 Mr. Long. Okay, I yield back.

2853 Mr. Johnson. I thank the gentleman for yielding back.

2854 The chair now recognizes the gentlelady from North Carolina,
2855 Mrs. Ellmers.

2856 Mrs. Ellmers. Thank you, Mr. Chairman and thank you to our
2857 panel. I am going to continue the tradition that we are carrying
2858 on here of Congressman Dingle.

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2859 And Mr. or, excuse me, Chairman Wheeler, as you know, I have
2860 legislation requiring the FCC publish any rule changes on their
2861 Web site within 24 hours, H.R. 2589. Transparency has been a
2862 priority for this administration. So, I find it strange that some
2863 have balked at this proposal. To that end, I would like to ask
2864 you a few yes or no questions.

2865 Does the FCC have the ability to publish rule changes online
2866 within 24 hours?

2867 Mr. Wheeler. Yes.

2868 Mrs. Ellmers. They do. So, you confirm that within 24
2869 hours we will be able to publish that information at the FCC?

2870 Mr. Wheeler. You were asking the question do we have the
2871 technical ability to publish within 24 hours.

2872 Mrs. Ellmers. And your answer is yes, correct?

2873 Mr. Wheeler. Yes.

2874 Mrs. Ellmers. Thank you. Now, I want to move on to another
2875 subject. Chairman Wheeler, I have been a little disturbed to read
2876 about the FCC's quote anti-business bias in a recent Hill article.
2877 The commissioner's job is to ensure that the communications
2878 marketplace is functioning to promote benefits for consumers and
2879 not to be beholden to radical special interest groups. Are you
2880 really listening to the wide range of stakeholders involved in
2881 the FCC matters or is there a real bias, as been pointed out in

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2882 this article?

2883 Mr. Wheeler. Yes and no.

2884 Mrs. Ellmers. Yes and no?

2885 Mr. Wheeler. Yes, I am -- there were two questions there.

2886 One was am I listening and the other is there a bias.

2887 Mrs. Ellmers. So yes, to you are listening and no to the

2888 bias.

2889 Mr. Wheeler. Yes, I am listening. No, there is no bias.

2890 Mrs. Ellmers. Thank you. Okay.

2891 So, in 2012, there was a white paper that was created and

2892 Mr. Chairman, I ask unanimous consent to submit this for the

2893 record.

2894 [The information follows:]

2895

2896 *****COMMITTEE INSERT 10*****

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2897 Mr. Johnson. Without objection, so ordered.

2898 Mrs. Ellmers. Thank you. It was a white paper on video
2899 reform from one of these groups, a special interest group called
2900 Public Knowledge, which seems to indicate that you are listening
2901 to very few voices.

2902 I look at the executive summary and find that there are four
2903 recommendations listed here that you have basically initiated by
2904 your administration. And I will go through a couple of them, as
2905 time allows.

2906 One, the FCC should issue a declaratory ruling that
2907 multichannel video programming distributors, it goes on to say,
2908 may not engage in unfair methods of competition or deceptive acts
2909 and practices with regard to online video distributors. You
2910 started this process to -- to that question, have you not started
2911 that process?

2912 Mr. Wheeler. I am sorry, I am confused here. I wasn't
2913 chairman in 2012 and I am kind of --

2914 Mrs. Ellmers. You were part of the FCC at that time, though.

2915 Mr. Wheeler. No, ma'am.

2916 Mrs. Ellmers. You were --

2917 Mr. Wheeler. I was a businessman then.

2918 Mrs. Ellmers. Okay but basically the point I am making is
2919 that in this 2012 -- not that you were there in 2012. This white

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2920 paper was generated in 2012. But the point I am trying to make
2921 is that you are adhering to this white paper.

2922 Mr. Wheeler. I am sorry, ma'am, I am unfamiliar with that
2923 white paper.

2924 Mrs. Ellmers. Okay. Well, then I will just point out then
2925 that this particular white paper outlined this particular
2926 suggestion and you are following it.

2927 Mr. Wheeler. On which topic or recommendation?

2928 Mrs. Ellmers. Okay, I will read it again for you. The FCC
2929 should issue a declaratory ruling that multichannel video
2930 programming distributors, and it goes on to say, may not engage
2931 in unfair methods of competition or deceptive acts and practices
2932 with regard to online video distributors. And that is part of
2933 the white paper.

2934 You started this process with questions to that practice.
2935 Is that not true?

2936 Mr. Wheeler. I guess -- I apologize. An online video
2937 distributor is --

2938 Mrs. Ellmers. Okay, I will tell you what. Let's leave that
2939 one aside.

2940 Mr. Wheeler. Okay.

2941 Mrs. Ellmers. The FCC, and this is, again, in the white
2942 paper, the FCC should begin a proceeding to determine which

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2943 regulations ought to apply to OVDs that choose to operate as MVPDs
2944 themselves. You have begun this rulemaking as well, have you not?

2945 Mr. Wheeler. Thank you. I have proposed and then have not
2946 --

2947 Mrs. Ellmers. Yes or no? Yes or no?

2948 Mr. Wheeler. Have not moved on.

2949 Mrs. Ellmers. Okay. Well, there again, I would like to
2950 submit a couple more of the quotes from the white paper. We are
2951 submitting the white paper for the record.

2952 But you know, Chairman, I will be honest and tell you at this
2953 point, and after watching this process, I am not sure exactly whose
2954 opinion you are actually taking --

2955 Mr. Johnson. Will the gentlelady yield?

2956 Mrs. Ellmers. My time has expired. And this is troubling
2957 to me. So, this is very troubling and I think that we need to
2958 take more time to acknowledge the fact that you may be taking
2959 opinions that are truly biased and that is very frightening to
2960 me moving forward.

2961 And I yield back, Mr. Chairman.

2962 Mr. Johnson. Did the gentlelady want to specifically say
2963 what she wanted to add to the record there, your last comment?

2964 Mrs. Ellmers. Well I what will say is I basically, Mr.
2965 Chairman, and I thank you, I have a couple of quotes and basically

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2966 I will ask for those yes or no answers in written form.

2967 Mr. Johnson. Without objection, so ordered.

2968 Mrs. Ellmers. Thank you.

2969 Mr. Johnson. The gentlelady has expired.

2970 The chair now recognizes Mr. Collins from New York.

2971 Mr. Collins. Thank you, Mr. Chairman. And thank you,
2972 witnesses. It is almost this is a 3-hour hearing. I have to
2973 admit I took a break and had lunch.

2974 What would be a hearing without the New York guy asking about
2975 pirate radio? So, here we go. I don't think I will take the whole
2976 5 minutes. But Mr. Wheeler, you and I have had this discussion
2977 back and forth.

2978 Mr. Wheeler. Yes, sir.

2979 Mr. Collins. And so in questions after, following the March
2980 19 oversight hearing, you were asked about the report that showed
2981 a decline in enforcement in pirate radio. And the question was,
2982 has any guidance or instruction been given by the Office of the
2983 Chairman or Enforcement Bureau to commission staff not to enforce
2984 the statute or commission rules with regard to unlawful
2985 operations?

2986 July 21, we did a get a response, July 21, 2015, from you
2987 that stated the Office of the Chairman and the Enforcement Bureau
2988 have not given or instructed to the commission staff not to enforce

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2989 the statute or commission rules with regard to unlawful operation.

2990 I am assuming you remember that.

2991 Mr. Wheeler. Yes, sir.

2992 Mr. Collins. Okay. So, 1 week later, July 28 we spoke again
2993 in this hearing and I asked you if there was any truth to the
2994 reports to the suggestion that the FCC had actually directed field
2995 offices to step down and back away from an enforcement. You
2996 responded, and I quote, I have heard that. And you further added
2997 that any such command did not come from you.

2998 So, last December, the existence of an internal email within
2999 the Enforcement Bureau, this was last December, was disclosed that
3000 in October of 2014 the staff of the Bureau's Northeast Region was
3001 informed that the FCC's response to pirate radio operations was
3002 being scaled back and the Enforcement Bureau would not be issuing
3003 notices of apparent liability to the majority of individuals
3004 engaged in such unlawful behavior.

3005 So, my question is, since that disclosure came forward last
3006 December, have you looked into that directive.

3007 Mr. Wheeler. I have not looked into that, which I maybe had,
3008 you know was not compos mentis or something at the time. As you
3009 read that into the record, I do not remember that. But I have
3010 taken serious interest in pirate radio. And I am told that about
3011 20 percent of the activities of the Enforcement Bureau are

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3012 directed to pirate radio; that we have had about 130 enforcement
3013 actions last year; that we continue on that.

3014 And I would add my voice to Commissioner O'Rielly's comment
3015 earlier about one of the realities that we are finding here is
3016 that we need to get to those who enable it. We can't just pat
3017 ourselves on the back for playing whack-a-mole, that we need to
3018 get to those that enable it. And if there could be legislation
3019 that would address that and empower us to do with --

3020 Mr. Collins. Well, I have got a couple of questions. First
3021 of all, I would like, if you could, look into that directive and
3022 get back to our committee --

3023 Mr. Wheeler. Thank you.

3024 Mr. Collins. -- about who issued that directive. We would
3025 like to know where that came from. But also, recently--

3026 Mr. Wheeler. The email does not say? I am sorry. There
3027 is the email. Is there an email?

3028 Mr. Collins. I don't have the details.

3029 Mr. Wheeler. Okay, I will get on top of that.

3030 Mr. Collins. But real quickly, my last point. You just
3031 mentioned the need for congressional action to take on the
3032 landlords and the others that might be behind the scenes working
3033 on this. But by the same token, there was recently released from
3034 the FCC an advisory notice from the Enforcement Bureau that stated

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3035 that the FCC already has the ability to take FCC enforcement
3036 against those individuals. Your own bulletin said that.

3037 So, I think that it is a bit disingenuous to say you need
3038 congressional action when your own Enforcement Bureau regulations
3039 says you have already got the authority.

3040 Mr. Wheeler. We would love to come back to you and be able
3041 to specifically identify the legislative authority that we are
3042 talking about. I believe --

3043 Mr. Collins. But your own enforcement people say you have
3044 already got the authority. So, I would encourage you to, move
3045 forward.

3046 Mr. Wheeler. I think the question is what is the extent of
3047 that --

3048 Mr. Collins. In my last 12 seconds, because I don't want
3049 to hold us over, I just also want to ask a very direct question
3050 because it has been suggested that senior managers of the
3051 Enforcement Bureau do not want to shut down pirate radio
3052 operations because they serve certain communities, certainly
3053 within New York City, that might not have otherwise access to that.

3054 Is there any truth in that?

3055 Mr. Wheeler. Well, that would be wrong.

3056 Mr. Collins. And so there is no truth in that? And it would
3057 be wrong.

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3058 Mr. Wheeler. It is news to me.

3059 Mr. Collins. Okay, well I appreciate that fairly direct
3060 answer.

3061 With that, Mr. Chairman, I yield back.

3062 Mr. Johnson. I thank the gentleman for yielding back.

3063 And the chair now recognizes the ranking member, Ms. Eshoo.

3064 Ms. Eshoo. Thank you, Mr. Chairman. I have a unanimous
3065 consent request to place into the record a compilation of
3066 documents. The documents include press reports documenting that
3067 broadband investment has not decreased as a result of the Title
3068 II reclassification. The documents also include an analysis of
3069 FCC filings and earnings reports of the major telecom companies,
3070 similarly showing that broadband investment has not decreased and
3071 also a letter relative to broadband privacy rulemaking, all of
3072 which we have shared with your counsel and ask that these be placed
3073 in the record.

3074 [The information follows:]

3075

3076 *****COMMITTEE INSERT 11*****

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3077 Mr. Johnson. Without objection, so ordered.

3078 Ms. Eshoo. Thank you, Mr. Chairman.

3079 Mr. Johnson. I remind members that they have -- first of
3080 all, I want to thank the panel for being with us today. Thank
3081 you very much. I am not used to sitting in this chair. So, I
3082 almost forgot that part. Thank you for being here.

3083 I remind members that they have 10 business days to submit
3084 questions for the record. And I ask the witnesses to respond to
3085 the questions promptly. Members should submit their questions
3086 by the close of business on April 6th.

3087 Without objection, the subcommittee is adjourned.

3088 [Whereupon, at 1:12 p.m., the subcommittee was adjourned.]