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6 OVERSIGHT OF THE

7 FEDERAL COMMUNICATIONS COMMISSION

8 TUESDAY, JULY 12, 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, Scalise, Lance, Guthrie, Olson, Pompeo,

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

23 officio), Eshoo, Doyle, Welch, Yarmuth, Clarke, Loeb sack, Rush,

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1 DeGette, Butterfield, Matsui, McNerney, Lujan, and Pallone (ex
2 officio).

3 Staff present: Gary Andres, Staff Director; Elena Brennan,
4 Staff Assistant; Rebecca Card, Assistant Press Secretary; Gene
5 Fullano, Detailee, Telecom; Theresa Gambo, Admin/Human
6 Resources; Jay Gulshen, Staff Assistant; Kelsey Guyselman,
7 Counsel, Telecom; Grace Koh, Counsel, Telecom; David Redl, Chief
8 Counsel, Telecom; Charlotte Savercool, Professional Staff,
9 Communications and Technology; Dan Schneider, Press Secretary;
10 Gregory Watson, Legislative Clerk, Communications and
11 Technology; Jeff Carroll, Minority Staff Director; David Goldman,
12 Minority Chief Counsel, Communications and Technology; Jerry
13 Leverich, Minority Counsel; Lori Maarbjerg, Minority FCC
14 Detailee; Dan Miller, Minority Staff Assistant; Matt Schumacher,
15 Minority Press Assistant; Ryan Skukowski, Minority Policy
16 Analyst; Andrew Souvall, Minority Director of Communications,
17 Outreach and Member Services.

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1 Mr. Walden. I call to order the Subcommittee on
2 Communications and Technology. I want to thank the chairman and
3 the commissioners for being here once again today. I think this
4 is our sixth oversight hearing, probably more to come before the
5 end of the year just for scheduling purposes for all of you.
6 Obviously, it is our important responsibility to continue to be
7 in active dialogue with the Commission and its chairman and those
8 that we oversee. It is both our responsibility, our obligation,
9 and a good opportunity. I was going to say and a joy. Anna says
10 fun to continue this. It is a very important segment of our
11 economy, as you know, with lots of issues at stake.

12 I want to just talk about several things that are on my mind
13 this morning that I know the Commission is actively engaged in.
14 One, as you know, Mr. Chairman, we have four, well, I don't know,
15 since 2010 or so, complained about no update, meaningful update
16 in the ownership rules. I am told that the Commission majority
17 has now voted on that and I am also told that we probably won't
18 see many changes when it comes to the ownership rules and
19 regulations in the NPRM. And yet, the marketplace to me has
20 changed dramatically since 2004. Further, the Congress has sent
21 very specific views to the Commission through the legislative
22 process that I hope have not been ignored when it comes to JSAs
23 and other issues. That would be very disappointing.

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1 Obviously, I know several of you are concerned about the
2 future of 911 as are we. And we are also concerned about states
3 identifying in your own reports that levying money from consumers
4 for 911 purposes and then turnaround and spend it in non-911
5 related areas. And so I would like to get your views on that
6 because we are not a blank check and neither are you the consumers.
7 So ownership rules, 911, obviously pretty important when we look
8 at things.

9 I would love to get an update from you on the incentive
10 auction to the extent you can discuss that. Obviously, there are
11 lots of issues related to the number of participating stations,
12 the amount of spectrum available, and whether that meets up with
13 capital. We all want to see a successful auction and I know you
14 do too, and you and your teams have worked very, very hard in a
15 very complicated part of the area.

16 Merger authority continues to be an issue. It has been
17 brought to my attention by some that continue to be requirements
18 put on either sales or mergers that my opinion I get right up on
19 the line, not of extortion necessarily, but certainly pretty heavy
20 handed. I think of one involving a broadcast sale where
21 apparently there was a pending complaint about indecency and the
22 people involved in the sale had to waive their rights of appeal,
23 couldn't put money in escrow in order to get approval and I would

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1 like to know if that is true or not and why the Commission might
2 have gone that way. Also, the over-billed requirements
3 apparently in the Charter- Time Warner merger, I would be curious
4 to know why that was necessary going forward.

5 Obviously, we remain concerned about communication among the
6 commissioners and the chairman and vice versa and how that is
7 going. We would love to get your update on your views of that
8 from each of you and the sort of process reforms that we have talked
9 about and in many cases in a bipartisan way legislated here at
10 least through the House and kind of what you are seeing in terms
11 of where the Commission is at from each of your perspectives.

12 I know having been both in the minority and the majority,
13 it is a lot easier in the majority, but that is also where you
14 have to maintain, it is your responsibility to maintain an open
15 process with the minority to the extent you may have differences,
16 but hopefully there is a fair opportunity for the minority to have
17 their say. We try to do that here. Sometimes we are even
18 successful at it. We pass a lot of bipartisan legislation out
19 of this subcommittee and full committee. It is always our intent
20 to get to that point if we can.

21 So obviously, a lot of issues before us. I look forward to
22 your testimony. With that, I would yield the balance of my time
23 to the vice chair of the committee, Mr. Latta.

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1 Mr. Latta. Well, thank you very much, Mr. Chairman, for
2 yielding and thanks for our commissioners for being with us today.

3 Lately, the Federal Communications Commission has
4 proposed substantial rules without respect to their full effects
5 and implications. The rules proposed on privacy requirements for
6 broadband Internet service providers go beyond protecting
7 consumers' data and fragments the current successful privacy
8 framework established by the Federal Trade Commission.

9 Another example I am still very concerned with is the
10 Commission's vision on the set-top box proposal. No one is
11 opposed to the goal of promoting alternatives to pay TV provider
12 set-top boxes, but the FCC's plan is not the answer for addressing
13 consumer demands.

14 I am, however, encouraged that the Commission has seemed more
15 open to making necessary changes to the chairman's proposal. I
16 urge the Commission to continue to work with the industry to
17 develop an alternative plan that will foster competition and
18 innovation while protecting small TV providers from onerous
19 regulations, offer consumers more choice of privacy protection
20 and safeguarding programming content and license agreements.

21 Concerning the Commission's integral role in this
22 marketplace, we must be watchful of the regulatory policies it
23 places on the communications and technology industries. Today's

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1 hearing is an opportunity to maintain proper oversight of the FCC,
2 Mr. Chairman, and I look forward to today's hearing and I
3 appreciate and I yield back.

4 Mr. Walden. The gentleman yield's back the balance of his
5 time. The chair recognizes the gentlelady from California, the
6 ranking member of the subcommittee, Ms. Eshoo, for opening
7 comments.

8 Mr. Eshoo. Thank you, Mr. Chairman, for holding this
9 oversight hearing. Good morning to you, Mr. Chairman, and the
10 members of the Commission. It is good to see all of you.

11 This is the first oversight hearing since the Federal Appeals
12 Court decision that upheld the FCC's net neutrality rules took
13 place. I think and many think the ruling was a clear victory for
14 the American people who believe in a free and open Internet and
15 ensures that the Internet will remain a platform for innovation
16 well into the future.

17 So congratulations to you, Mr. Chairman, to the
18 commissioners, to the staff, to all the public advocacy
19 organizations and the millions of people that contacted the
20 Commission.

21 The court's ruling also makes clear that the FCC is the sole
22 federal agency with authority to protect broadband users'
23 privacy. Now some still argue that the Federal Trade Commission

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1 is the agency that should handle privacy protections for
2 broadband. But the fact is that the FTC lacks the authority to
3 do so. Under the law today, only the FCC can protect broadband
4 user privacy. We can have a debate over the details of what the
5 FCC should put into place, but I think the authority question is
6 settled.

7 Beyond privacy, the FCC has two other key issues it needs
8 to act on before the end of the year. The first is opening up
9 the set-top box market to more competition. The cable industry
10 has put forward an alternative proposal and I am encouraged by
11 the industry's recognition that competition is needed and that
12 is actually required by law.

13 The second issue is special access reform. INCOMPAS and
14 Verizon have come together in an unprecedented way to provide the
15 FCC with a framework to promote competition in this market. And
16 we are all grateful to Congressman Doyle for leading on this issue
17 relentlessly for over a decade. It is over a decade, isn't it,
18 Mike, at least that? Yes, it feels that way anyway. So I
19 urge the Commission to take advantage of the opportunities that
20 the agreement presents to finally finish special access reform
21 before the end of the year.

22 And finally, I think it is really a source of shame that the
23 majority continues to attack the Lifeline Program. Now whether

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1 it is an attempt to put an artificial cap on the fund or legislation
2 to outright strip support for mobile phone service, I think that
3 message is very clear. The majority is willing to rip away
4 lifesaving communication tools from our most vulnerable citizens,
5 including the ability to dial 911. I don't know which
6 commissioner would be willing to give that up themselves.

7 So my thanks to Chairman Wheeler for his leadership, to each
8 commissioner for your work and for being here today, and I yield
9 the remaining time that I have to Representative Doyle.

10 Mr. Doyle. I want to thank you, Anna, for yielding to me.
11 And Mr. Chairman and the Commission, I want to add my voice to
12 congratulate you on your victory last month in the U.S. Court of
13 Appeals. I am glad to see the court affirmed what I and many of
14 my colleagues have argued for years, that the FCC has the authority
15 to ensure that the Internet remains an open platform for
16 innovation and competition. This is a great victory for
17 consumers and the Internet ecosystem at large.

18 There is one area that I believe merits investigation and
19 it is the Anti-Competitive Zero Rating, particularly when it is
20 married with restrictive data caps. These policies, I believe,
21 have the potential to harm consumers and inhibit innovation. I
22 would like to see the Commission take some action to address these
23 harmful policies.

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1 Finally, I want to also add my voice to urge the Commission.
2 You have got three big things on the table to get done. And I
3 would hope that the Commission finds a way to work together and
4 get all three. Special access, I really don't want to go through
5 another FCC commissioner on special access and I think a solution
6 is at hand. And I would urge you to follow through on that.

7 I also believe, like Anna, that there is a path forward on
8 set-top boxes. There has been an alternative solution offered
9 by cable that I think merits consideration and we should take a
10 look at and with regards to privacy, I know it is tough. I know
11 there is issues between FCC and FTC, but I do believe if you all
12 work together that there is a solution to be found and I urge you
13 to try to do that before you finish up your work this year. Thank
14 you. I yield back.

15 Mr. Walden. The gentlelady yields back the balance of her
16 time. The chair recognizes the gentleman of the full committee,
17 the chairman of the full committee, the gentleman from Michigan,
18 Mr. Upton.

19 The. Chairman. Thank you, Mr. Chairman. Chairman Wheeler,
20 members of the Commission, thank you again for joining us.

21 Over the many times that we have convened, our message has
22 been, my message has been consistent. The FCC has jurisdiction
23 over one of the most important and vibrant sectors of our economy.

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1 Decisions are critical to innovation, jobs, and our nation's
2 leadership in global technology.

3 What you do and how you do it has tremendous impact on all
4 of us today, tomorrow, and for lots of years to come. And it
5 matters here in Washington. It matters at home in Michigan. It
6 matters across the country.

7 We ask you to follow the lead of this committee and its
8 pursuit to improve the FCC process for the betterment of all
9 stakeholders. And dating back to the 112th Congress, we worked
10 in a bipartisan way to usher H.R. 2583, the FCC Process Reform
11 Act through the House.

12 And we urge the agency to engage in a fair, open, transparent
13 process in the execution of its mission. We stress that your
14 loyalty to these things provides the certainty that nurtures
15 innovation, investment, and job creation.

16 When we last met, the chairman had recently presented his
17 colleagues with a proposal to impose new requirements on the video
18 subscription market and a new privacy regime for Internet service
19 providers. These proposals have the potential to harm the very
20 sectors that are attempting to preserve and stimulate and concerns
21 continue to grow on both sides of the aisle.

22 American consumers across the country and job creators are
23 concerned with continued innovation, investment, and job creation

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1 that the communications and technology industries have delivered
2 in the past. If you approach these significant matters and all
3 others in the last couple of months, do so with an eye towards
4 the successful policies that have fostered the video market and
5 the Internet that are the cornerstones of American society. It
6 is not time to throw in the towel. There remain opportunities
7 to work across the aisle to get things done that really impact
8 consumers, resolving concerns about rural call completion,
9 successfully completing the incentive auction, and preventing the
10 waste, fraud, and abuse in the Universal Service Fund should be
11 bipartisan issues that we can agree on.

12 Let us continue to work to the better, putting more of a
13 premium on cooperation. There is a lot at stake and we need to
14 get that done. I yield the balance of my time to Ms. Blackburn.

15 Ms. Blackburn. Thank you, Mr. Chairman. I join in
16 welcoming each of you. We are so pleased that you are here. You
17 have heard a myriad of issues that we are continuing to work on
18 and appreciate that you would take the time to come and update
19 and engage in conversations with us.

20 Today, I am going to focus much of my attention on the set-top
21 box issue. This is something we are hearing a good bit about and
22 I am pleased that independent programmers have come to you with
23 what could be an alternative approach that would still protect

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1 content. I should say it would protect content.

2 For my content creators in Tennessee and individuals that
3 I am hearing from, they are very concerned about this, not only
4 in the domestic market, but what it would do to licensing
5 agreements, etcetera, and their ability to work through this
6 process. My content creators believe that if you create
7 something, it is yours, and you deserve to be compensated on it.

8 So I am pleased that you are here to enter into this
9 discussion. We appreciate so much your time and your
10 preparation, and Mr. Chairman, I yield back.

11 Mr. Walden. The gentlelady yields the balance of her time.
12 The chair recognizes the Good morning from New Jersey, Mr.
13 Pallone, ranking member of the full committee.

14 Mr. Pallone. Thank you, Mr. Chairman. Today's hearing
15 comes weeks after the FCC's sweeping net neutrality victory before
16 the D.C. Circuit. The court's decision was a major victory for
17 Internet consumers and small businesses and the ruling was a
18 momentous step towards legal certainty that the Internet remains
19 an open platform for everyone. It was also a strong recognition
20 of pro-consumer and pro-innovation policies that Democrats have
21 championed for years. The court's decision helps create a
22 stronger foundation for future policies that put consumers in the
23 driver's seat.

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1 And now as we look ahead, we still have a number of issues
2 before us including how to deal with Internet privacy. A recent
3 study by the National Telecommunications and Information
4 Administration found 84 percent of Americans are worried about
5 their privacy and security online. And we must take these
6 concerns seriously. And I appreciate the Federal Trade
7 Commission who oversees privacy on websites providing thoughtful
8 input into the FCC's proceedings. We should give consumers more
9 protection online and not less.

10 During this oversight hearing today, we are likely to hear
11 more from our Republican colleagues about the Lifeline Program,
12 that keeps our nation's low-income families connected. For
13 months, Republicans have used charges of waste, fraud, and abuse
14 to justify wrong-headed bills designed to rip phones away from
15 those who need them the most.

16 This morning I am releasing a Democratic committee staff
17 report that investigated the on-going Republican charges. The
18 report found that Republican allegations of more than \$500 million
19 in fraud are baseless, relying on unfounded assumptions and bad
20 data. In order to get to their \$500 million claim, Republicans
21 first assumed that every Lifeline recipient in a homeless shelter,
22 in a veterans' group home, in a nursing home or just living with
23 roommates to get by, that nearly every one of these people got

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1 their phone as a result of fraud. There is simply no way to
2 justify these assumptions and it is incredibly counterproductive
3 to any serious discussions on how to improve and strengthen this
4 program.

5 Our report finds that most of the waste, fraud, and abuse
6 that have plagued the program resulted from policies the FCC
7 adopted during the Bush Administration and while some waste,
8 fraud, and abuse likely still does take place, the FCC has worked
9 hard over the past few years to track it down and wipe it out.
10 Nearly \$1 billion of unnecessary spending has been eliminated from
11 the program as a result of the FCC's actions over the last 6 years.

12 So I will repeat what I have been saying for months.
13 Lifeline is a successful program that helps more than ten million
14 Americans and we need to protect it. If my colleagues are serious
15 about eliminating waste, fraud, and abuse in the program, stop
16 these over-the-top accusations. Our report has a number of
17 recommendations on productive ways to move forward. And so I
18 encourage our Republican colleagues to work with us to make this
19 critical program stronger.

20 I would like to yield, well, I want to thank the commissioners
21 for testifying here today and I will yield the remainder of my
22 time to Congresswoman Clarke.

23 Ms. Clarke. I thank the ranking member for yielding me time.

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1 I thank our chairman and ranking member for this morning's
2 oversight hearing.

3 Mr. Chairman and FCC commissioners, good morning.
4 According to the U.S. Census Bureau, by the mid-2040s, if not
5 before, America will be a majority/minority nation, meaning that
6 the majority of Americans will be non-European descent people of
7 color. It is critical that his population has access to news,
8 information, and entertainment that is reflective of their
9 experiences and their perspective. Without this representation,
10 there is no voice reflective of their stories and without a voice,
11 our cultural content suffers, thus decreasing cross-cultural
12 communication and understanding.

13 My core concerns focus on equity and inclusion and the media
14 and telecommunications industry. And I am particularly
15 concerned that we are not doing enough to create parity for all
16 stakeholders.

17 I recently formed the House Congressional Multi-Cultural
18 Media Caucus where caucus members will offer suggestions and
19 recommendations to the FCC to ensure that these tenets are
20 considered when public policy decisions are being made. The goal
21 is simple, to create economic sustainability and viability of
22 multi-cultural media in any ecosystem. The owners of our
23 nation's media are shaping the public's narrative and it is

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1 important that it is inclusive in both representation on the
2 airwaves, as well as ownership of its assets.

3 Thank you very much, Mr. Ranking Member, and I yield back
4 the balance of my time, his time to him.

5 Mr. Walden. And he yields it back to the committee. So
6 thank you all for your opening comments. We will go now to the
7 chairman and the commissioners for their testimony.

8 And Mr. Chairman, we welcome you back before our
9 subcommittee. And I think you have heard from members on both
10 sides of the aisle about issues they are deeply concerned about
11 and the direction of the FCC and we appreciate your being here
12 to respond to those and any other comments you may have.

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1 STATEMENTS OF THE HONORABLE TOM WHEELER; CHAIRMAN, FEDERAL
2 COMMUNICATIONS COMMISSION; THE HONORABLE MIGNON L. CLYBURN,
3 COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; THE HONORABLE
4 JESSICA ROSENWORCEL, COMMISSIONER, FEDERAL COMMUNICATIONS
5 COMMISSION; THE HONORABLE AJIT PAI, COMMISSIONER, FEDERAL
6 COMMUNICATIONS COMMISSION; AND THE HONORABLE MICHAEL O'RIELLY,
7 COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

8
9 STATEMENT OF THE HONORABLE TOM WHEELER

10 Mr. Wheeler. Thank you very much, Mr. Chairman, Ranking
11 Member, and all members of the committee.

12 Today is a special day, obviously, with this committee coming
13 together. We also have to recognize it is a special day for
14 another reason. It is Commissioner Rosenworcel's birthday
15 today.

16 Mr. Walden. Happy birthday.

17 [Applause.]

18 Mr. Wheeler. We can find unanimity on that resolution.

19 Ms. Rosenworcel. Such a great way to spend my birthday here
20 with you all.

21 [Laughter.]

22 Mr. Walden. Is there a hint of sarcasm?

23 Mr. Wheeler. I have got three quick topics to address, some

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1 of which you also have raised, Mr. Chairman, and I look forward
2 to have questions from you and the rest of the committee: the
3 incentive auction, the national priority of 5G, and as you
4 indicated, 911, next generation 911.

5 The incentive auction has sure put the lie to the claim that
6 broadcasters wouldn't show up and participate. And the credit
7 goes to this committee, your leadership, the ranking member's
8 leadership for your foresight, vision, and leadership in creating
9 this first in the world auction.

10 The broadcasters have made available 126 megahertz. And
11 what is really significant is that 99 percent of all the licenses
12 that would be created are unimpaired licenses. And we spent a
13 lot of time together worrying about impairment issues. It is the
14 world's first reverse auction. It worked flawlessly and kudos
15 are owed to Gary Epstein and Howard Symons and the team that has
16 been working literally for years to follow through on your
17 instructions.

18 And now it is time to move on to the forward auction. For
19 as long as I can remember and I am sure you, too, that the wireless
20 industry has been pleading for more spectrum. Well, they got it
21 and it is beach-front spectrum at 600 megahertz. Our job is to
22 create a market that makes that spectrum available. We now know
23 the ask in that market and we will soon know the bid.

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1 We have received the up-front payments from the wireless
2 carriers, qualifying them to bid. And we will shortly be issuing
3 a PN, public notice, indicating who those bidders are.

4 If there is no bid ask alignment, we will start over with
5 a reduced supply and we will keep working that until the market
6 is made. Because of how licenses are assigned, the steps would
7 be 120 megahertz, 114 megahertz, 108 megahertz, 84 megahertz.
8 But I will remind everyone that the average of the FCC auctions
9 over the years has been about 45 megahertz. So this is a big deal
10 no matter what the number is.

11 The bottom line is that your mandate is under way. The
12 decisions made in the design of the auction are working. The
13 systems are functioning and a market has been created for the first
14 time ever.

15 On Thursday, we will vote on another important spectrum issue
16 to open up high band spectrum for fifth generation wireless
17 licensed and unlicensed spectrum. It is another world first. We
18 will be the first nation to identify high band 5G spectrum which
19 means that in the last 2 years, we have made available low band
20 spectrum, mid band spectrum, and high band spectrum.

21 Europe, by comparison, is talking about how maybe by 2020
22 they will have low band and mid band and what their plans are for
23 high band are still very much up in the air.

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1 Our leadership in this is a national priority. The 21st
2 century belongs to high speed, high capacity, low latency wireless
3 networks. And if we are the first in the world to move as we are
4 hopefully going to do on Thursday, we will create a home field
5 advantage for those American companies and American workers who
6 are involved in infrastructure, software and services.

7 Our plan is to make the spectrum available and then get out
8 of the way of the technology. The reality of our networks that
9 we live in today is a reality that was created years ago, a decade
10 ago, by decisions that were made or weren't made. The decision
11 that we are going to make on Thursday will affect where this
12 country is going to be for decades to come.

13 Lastly, every time that I have been before you, I have urged
14 Congress to legislate, to protect public safety over the next
15 generation 911 capabilities. Mr. Chairman, thank you for raising
16 it today. The Commission has gone about as far as our authority
17 can take it. I know Commissioner Rosenworcel has been touring
18 911 facilities. She wrote a spot on op ed on the topic and I know
19 she has some thoughts in her testimony. And I have some
20 recommendations in my prepared text as well.

21 But here is the reality. Absent congressional action, there
22 is no national program to improve public safety by applying the
23 technology of next generation 911. We are in the second decade

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1 of the 21st century and we are still relying on mid-20th century
2 technology.

3 I appreciate the opportunity to be here, Mr. Chairman, and
4 I look forward to engaging in discussion on any topics you may
5 want to ask.

6 [The prepared statement of Tom Wheeler follows:]

7

8 *****INSERT 1*****

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1 Mr. Walden. I thank the chairman. Obviously, we are
2 willing to have that discussion on 911. We also, I would remind
3 him, did a lot on FirstNet and enhancing that and some 911
4 enhancements there. We know there is more to be done.

5 We now recognize the former chairman, chairwoman of the
6 Commission, the gentlelady, Ms. Clyburn. Thank you for being
7 here, commissioner, we look forward to your comments.

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1 STATEMENT OF THE HONORABLE MIGNON L. CLYBURN

2

3 Ms. Clyburn. Thank you very much. Chairman Walden,
4 Ranking Member Eshoo, distinguished members of the subcommittee,
5 thank you for the opportunity to once again appear before you this
6 morning to share my priorities and vision for a more connected
7 America.

8 Building on my mantra, community, community, community, in
9 April I launched a ConnectingCommunities tour as a way to hear
10 firsthand about the opportunities and challenges of bringing
11 affordable, diverse, and competitive communications services to
12 all Americans.

13 Last month, I traveled to the ranking member's district and
14 met several key innovators who are using technology to drive
15 advancements in healthcare, broadband infrastructure,
16 connectivity, and viewpoint diversity. Next month, I will travel
17 to Congressman Lujan's district to learn about the unique
18 communications needs of tribal communities.

19 Now as I travel the country, people voice a common refrain,
20 robust competition, affordably priced communications services,
21 and policies that will enable innovation to flourish.

22 Broadband is the way that a 21st century America connects
23 with communities. It is with this in mind that I continue to

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1 prioritize affordable broadband opportunities.

2 Modernizing our Lifeline Program was a momentous step in
3 bringing affordable broadband to more Americans, but we can and
4 must do more to make sure those economically disadvantaged are
5 not priced out of the digital opportunity and the digital economy.

6 Broadband is not truly available unless it is affordable.
7 How can we make this happen? It starts with better data and a
8 thorough analysis of consumer broadband costs. It also means
9 making sure that affordability is a factor in how the Commission
10 evaluates technology transitions. And it also means moving
11 forward on a permanent Mobility Fund to bring the benefits of
12 affordable mobile broadband to those currently without.

13 Our great nation is on the cusp of ushering in the next
14 generation of wireless broadband with the Commission's action
15 this week to free up high band spectrum for innovative 5G services.
16 With an ever-increasing percentage of low-income Americans
17 reliant on mobile broadband for online access, it is imperative
18 that we ensure that they can reap the benefits of 5G and they are
19 not left in the digital darkness.

20 But my quest to connect all communities is not limited to
21 broadband. It is also about examining how best to promote the
22 availability of diverse and independent sources of video
23 programming. The Commission heard repeated concerns of

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1 independent and diverse programmers from every conceivable
2 ideological spectrum and followed through with the adoption of
3 a Notice of Inquiry this past February.

4 I am now working with Chairman Wheeler to determine next
5 steps, but no matter the outcome, I believe the Commission has
6 come out of this fact-finding exercise better positioned to
7 identify solutions that can enhance our access to independent and
8 diverse voices.

9 Finally, I continue to believe that transparency should be
10 a driving principle in the Commission's work to promote consumer
11 choice, competition, and innovation.

12 It should come as no surprise that billing issues rank among
13 the top consumer complaints at the FCC. Knowing this, I partnered
14 with Congressman Doyle on an op-ed calling for the nation's
15 communications providers to lead the way by voluntarily improving
16 transparency and disclosure of "below-the-line" fees. Enhanced
17 transparency will ensure that when consumers sign up for service,
18 either online or in a store, that they will not have to wait for
19 their first bill to learn what their total monthly costs will be.

20 Thank you once again for allowing me to share my priorities
21 with you this morning. And I look forward to answering any
22 questions you may have.

23 [The prepared statement of Mignon L. Clyburn follows:]

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*****INSERT 2*****

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1 Mr. Walden. Thank you very much, Ms. Clyburn. We
2 appreciate your testimony and your work at the Commission.

3 We now go to Ms. Rosenworcel. Thank you for being here
4 again. Happy birthday to you and we are glad we could celebrate
5 it with you.

6 Ms. Rosenworcel. Thank you.

7 Mr. Wheeler. Please go ahead.

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1 STATEMENT OF THE HONORABLE JESSICA ROSENWORCEL

2

3 Ms. Rosenworcel. Good morning, Chairman Walden and members
4 of the subcommittee. Thank you for the opportunity to appear
5 before you today.

6 This week the Commission has the future on its agenda. At
7 our monthly meeting on Thursday, we will adopt a framework for
8 high band spectrum to help develop the next generation of wireless
9 services, known as 5G. This is exciting because the future
10 belongs to the connected. And the United States should lead.

11 However, I want to spend my time today not talking about the
12 future, but instead talking a little bit about the here and now
13 and what can be done right now to help improve our nation's
14 emergency number system.

15 Last month, I was in Dallas, a city that is still reeling
16 from the events of last week when a peaceful protest collapsed
17 into unthinkable violence. While in Dallas, I spent time with
18 Betty Wafer. She is the kind of person who knows the Big D inside
19 and out. She was born and raised in the city and over the course
20 of 33 years has risen to the top of its public safety ranks. She
21 now wears the uniform and is in charge of 911 Communications for
22 the Dallas Police Department. There is not a lot she hasn't seen.
23 Like most people who work the 911 front lines, she has a steely

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1 calm. After all, these are people who listen to us at our most
2 troubled, and then help ensure that help is on the way.

3 And as we walked through the Dallas 911 center, Ms. Wafer
4 spoke about how technology has changed during her more than three
5 decades on the job and how it has altered the ways we reach out
6 in times of emergency. And the numbers back her up because
7 nationwide we now call 911 240 million times a year. And more
8 than 70 percent of those calls are made from wireless phones rather
9 than traditional landline phones. In other words, the bulk of
10 our emergency calls come over a different technology than the 911
11 system was designed to use.

12 This is a problem. Because while technology has changed so
13 much in our lives, the communications systems used by our nation's
14 911 call centers have not fully kept pace. I know because I have
15 seen this firsthand, not just in Dallas, but in the nearly two
16 dozen 911 call centers I have visited all across the country from
17 Alaska to Arkansas, California to Colorado, Nevada to New Jersey,
18 Vermont to Virginia and many more places in between.

19 It is not that work is not being done. I mean in the last
20 2 years alone, with my colleagues we have been able to put in place
21 policies to advance texting to 911. We have devised a framework
22 to improve the ability of 911 call centers to identify the location
23 of emergency calls made from wireless phones. And this is

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1 progress. But what can come next is even bigger.

2 Next generation 911 services can support a whole new range
3 of video and data communications. For those who call in an
4 emergency, it will mean an opportunity to offer real-time video
5 from an accident. It will mean the ability to provide first
6 responders with instantaneous pictures of a fleeing suspect or
7 emergency incident. And those are the kind of capabilities that
8 make public safety both more effective and more responsive.

9 But to remake the nation's 911 systems to fully reflect the
10 digital age, it takes funding. And historically supporting our
11 nation's roughly 6,000 911 call centers has been strictly a local
12 affair. There is no national program or annual federal revenue
13 source. But still, there is one thing this committee can do right
14 now to kick start local 911 modernization.

15 It is this. As you know, the Middle Class Tax Relief and
16 Job Creation Act of 2012 authorized a series of spectrum auctions
17 at the Commission. These auctions have already raised billions.
18 And the proceeds from these auctions are dedicated to some
19 initiatives that get a lot of attention like FirstNet, like
20 assisting broadcasters with relocation in the 600 megahertz band,
21 and like deficit reduction. But there is program these spectrum
22 auctions fund that has not get gotten the glory it deserves and
23 that is a program for next generation 911.

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1 Section 6503 reinstates the joint 911 Implementation Office
2 and authorizes a \$115 million grant program for next generation
3 911. You might be familiar with it because this committee
4 developed the program. But it has stalled and has yet to begin
5 more than 4 years after this committee created it and after
6 Congress authorized its creation.

7 So I think if you can help us you can put on the pressure
8 because it is time to get it up and running. It is the best
9 near-term resource we have to put next generation 911 in place.
10 And while these funds are limited, they can have broad impact if
11 we use them wisely and fund next generation 911 projects that can
12 be a blueprint for updating services in Dallas and nationwide.

13 Thank you.

14 [The prepared statement of Jessica Rosenworcel:]

15

16 *****INSERT 3*****

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1 Mr. Walden. Thank you, Commissioner Rosenworcel. We
2 appreciate you bringing that to our attention. Obviously, we get
3 pretty frustrated when agencies and commissions don't do what they
4 are mandated to do by statute on a timely manner. And so we are
5 happy to follow up with that.

6 We will now go to Commissioner Pai. Commissioner Pai, thank
7 you for joining us. We look forward to your testimony as well.

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1 STATEMENT OF THE HONORABLE AJIT PAI

2

3 Mr. Pai. Thank you, sir. Chairman Walden, Ranking Member
4 Eshoo, and members of the subcommittee, thank you for
5 giving me the opportunity to testify this morning. Since 2012,
6 it has been an honor to work with you on a bipartisan basis on
7 many issues.

8 Kari's Law is a good example of this. Dialing 911 should
9 always work, but it sometimes doesn't. And the reason is that
10 many phone systems require callers to dial an access code like
11 a 9 before the call is placed. Kari's Law would help fix this
12 by making direct 911 calling the default on those systems.

13 Thanks to your work, along with the courageous efforts of
14 Kari's father, Hank Hunt, the House of Representatives recently
15 passed this legislation. I hope the Senate does so and that this
16 bipartisan measure soon becomes law.

17 I would like to focus the rest of my testimony on two
18 important topics: the FCC's set-top box proposal and its Lifeline
19 Program.

20 First, set-top box. The breadth of opposition to the
21 Commission's set-top box proposal signals how badly its scheme
22 misses the mark. My friend and colleague, Commissioner
23 Rosenworcel, rightly observed that the FCC's proposal has real

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1 flaws and we need to find another way forward.

2 What should that way forward look like? In my view, first,
3 it must protect the intellectual property of content creators and
4 safeguard minority programmers. As Jesse Jackson put it, the
5 FCC's proposed rules would allow third-party set-top box
6 manufacturers to "pull networks apart, ignore copyright
7 protections, and dismantle the local and national advertising
8 streams that have traditionally supported high quality,
9 multi-cultural content." That is why Congresswoman Yvette
10 Clarke and many other members of the Congressional Black Caucus
11 have called upon the FCC to analyze the impact of these proposed
12 rules on the diversity of programming and independent and minority
13 television programming before pushing ahead. We should heed
14 those voices.

15 Second, we must address the challenges faced by small video
16 providers. The record makes clear that the FCC's proposed rules
17 would have a disproportionate impact on small companies. Indeed,
18 the American Cable Association has stated that the FCC's proposal
19 would force over 200 small operators to go out of business or to
20 stop offering video service. Separately, bipartisan groups of
21 61 Representatives, led by Congressman Kevin Cramer and 10
22 Senators have expressed serious concern along these lines.

23 Third, we must protect Americans' privacy. Senator Patrick

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1 Leahy has stressed that the "same federal privacy protections and
2 enforcement mechanisms that apply to proprietary set-top boxes
3 today should apply to third-party navigation systems as well."
4 In other words, all consumers should have the same privacy
5 protections. Unfortunately, the FCC's proposal fails this basic
6 test.

7 And fourth, we must embrace the technology of the future
8 instead of clinging to the hardware of the past. Americans are
9 increasingly accessing video programming through apps. With an
10 app, there is no need to have a set-top box or the rental fee that
11 goes along with it. With an app, your smart phone, your tablet,
12 or your smart television can be your navigation device.

13 Recently, as has been mentioned by members of the panel,
14 stakeholders have proposed an app-based approach. My office is
15 currently reviewing this promising proposal and I look forward
16 to hearing what the members of this subcommittee think about it.

17 The next topic is Lifeline. The FCC must be vigilant in
18 stopping abuse of the Universal Service Fund. Hard-working
19 Americans deserve to know that the money they contribute each and
20 every month to the fund isn't wasted or put to fraudulent use.
21 Unfortunately, the FCC's recent investigation of Total Call
22 Mobile suggests that American taxpayers should be worried.
23 Although my own investigation is still ongoing, the waste, fraud,

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1 and abuse in the Lifeline Program appears greater than I had
2 imagined.

3 Consider this. The National Lifeline Accountability
4 database or NLAD, is supposed to check whether a subscriber
5 already receives Lifeline service. But an unscrupulous wireless
6 reseller can override that determination simply by checking a box
7 and so wireless resellers have enrolled over 4.2 million
8 subscribers using this override process since October of 2014.
9 That is more than 35 percent of all subscribers enrolled in
10 NLAD-participating states. And that is more than the population
11 of the State of Oregon. The annual price to the taxpayer for these
12 overrides alone is steep, about \$476 million. That is not my only
13 concern.

14 Wireless resellers have overridden other federal
15 safeguards, enrolled actual duplicates, claimed support for
16 phantom customers, and otherwise exploited loopholes in the
17 program that likely resulted in hundreds of millions of dollars
18 in USF money and taxpayer money going to wireless resellers
19 instead of to deserving, low-income consumers. That is
20 outrageous.

21 I plan to work with this committee and my colleagues to
22 stopping this spending spree and I particularly appreciate the
23 decision of Committee Chairman Fred Upton to investigate this kind

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1 of waste, fraud, and abuse.

2 Chairman Walden, Ranking Member Eshoo, members of the
3 subcommittee, thank you once again for giving me the opportunity
4 to testify. I look forward to answering your questions and
5 working with you in the time to come.

6 [The prepared statement of Ajit Pai follows:]

7

8 *****INSERT 4*****

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1 Mr. Walden. Thank you, Commissioner Pai, we appreciate
2 your diligence and your comments this morning.

3 We will now go to Commissioner O'Rielly. Thanks for being
4 with us, again for enlightening us on what your views are at the
5 Commission and issues before the country. Please go ahead with
6 your testimony.

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1 STATEMENT OF THE HONORABLE MICHAEL O'RIELLY

2
3 Mr. O'Rielly. Thank you, Mr. Chairman. Thank you for the
4 honor to appear before you today.

5 Let me start my testimony on an issue raised by my colleague,
6 the Lifeline Program. I continue to be troubled by the waste,
7 fraud, and abuse in the program and worry that it is not on a
8 sufficiently sound footing. In retrospect, I had urged the
9 Commission to address these concerns before expanding Lifeline
10 to include broadband. When it became clear that the Commission
11 was on a different track, I recommended reforms be paired with
12 adequate measures to safeguard the program and protect consumers
13 that pay fees to support the fund, including establishing
14 procedures to stop new payments to a provider if certain metrics
15 were exceeded, a concept I have referred to as creating circuit
16 breakers.

17 These ideas were ultimately rejected, in part, because the
18 Lifeline order took the position that the reforms put in place
19 since 2012 including the creation of a National Lifeline
20 Accountability Database were highly effective. Sadly, that has
21 not been the case. If more is not done to correct the situation,
22 everyone should expect more incidents of waste, fraud, and abuse.

23 Turning to the debate over set-top boxes, I share the

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1 concerns that many members of this committee have expressed about
2 the Commission's proposed technology mandate as contained in the
3 NPRM. In my dissent to that item, I argued that the proposal could
4 significantly impede innovation in video delivery and put at risk
5 valuable content as well as consumer privacy without assurances
6 that anyone would save one thin dime. I have taken the position
7 that it would make more sense to get rid of set-top boxes
8 altogether. A common-sense, technology-friendly replacement
9 for set-top boxes already exists in the form of downloadable apps,
10 which can serve as the basis for a consensus approach to the
11 set-top box quandary. Various video providers have strengthened
12 this argument and approach by firm commitments on timing and
13 price.

14 Another issue of interest to the subcommittee is the
15 Commission's long-awaited attempt at the required Quadrennial
16 Review of media ownership rules. While American consumers
17 embrace players such as MVPDs, over-the-top video players,
18 websites, streaming music services, and satellite radio as part
19 of their daily lives, broadcasters and newspapers alone are
20 saddled with rules from a bygone era. I believe the Commission
21 can better promote localism, competition, and diversity and be
22 consistent with the public interest by thoughtfully removing
23 outdated restrictions to media combinations.

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1 It has been argued that now is a bad time to introduce any
2 disruption in the existing media ownership regime, due to the
3 ongoing broadcast incentive auction. However, nothing excuses
4 the retention of all the stale rules regarding radio and newspaper
5 industries which will see little to no impact from the auction.
6 Moreover, Congress was well aware of the Quadrennial Review
7 requirements when it authorized the auction, and no special
8 "pending auction results" or "during the auction" exemption was
9 enacted. So the incentive auction cannot and does not let the
10 Commission off the hook regarding its responsibilities to modify
11 the rules in response to the marketplace conditions that actually
12 exist today.

13 On another matter, the Commission seems intent on adopting
14 broadband privacy rules this year, but if the current proposal
15 is adopted, it will affect the consumer Internet experience and
16 reverberate throughout the technology industry for years to come.
17 In addition to the legal problems I have previously articulated,
18 the Commission has not justified imposing dramatically higher
19 burdens on one segment of the Internet economy. By most accounts,
20 current privacy structures, including the FTC's framework, have
21 provided ample and appropriate protections for consumers. The
22 FCC's proposal, however, goes much further. Instead of creating
23 privacy rules based on consumer expectations and the sensitivity

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1 of the data, the FCC's proposal would require heightened consent
2 for many consumer activities and could even prohibit certain
3 practices that many consumers find beneficial.

4 The record is full of many thoughtful comments from a wide
5 range of participants, and I can only hope that the Commission
6 will take them into account when crafting the final rules.

7 Lastly, let me mention that my written testimony raises the
8 need to consider legislation to enact fees in a spectrum-sharing
9 environment where mutual exclusivity which is needed to trigger
10 an auction is not obtained. I would be pleased to follow up on
11 this topic if interest warrants.

12 Thank you for the opportunity to testify and I stand ready
13 to answer any of your questions.

14 [The prepared statement of Michael O'Rielly follows:]

15

16 *****INSERT 5*****

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1 Mr. Walden. Thank you, Commissioner O'Rielly, and yes, we
2 will look forward to further discussions on that last topic you
3 raised.

4 I am going to open up the questioning round. First of all,
5 before I get started on questions, I do have a letter for the record
6 signed by 14 law professors, economists, and experts on the
7 operation of the Internet that details a number of very serious
8 legal, economic, and constitutional concerns with regard to the
9 FCC's proposed new rules for broadband privacy, some of which you
10 have raised. Without objection, we will put that in the record.

11 Now some questions. I met recently with folks from the
12 Oregon Shakespeare Festival in Oregon, the Manhattan Theater Club
13 and others, about this issue of licensed and unlicensed wireless
14 microphones. Apparently, the FCC set a limit of 50 or more you
15 can get licenses. Under 50, you can't. I don't know why 50 was
16 chosen, but I do know representing one of the best theater
17 companies in the world, the Shakespeare Theater Festival in
18 Ashland, they are very concerned because they don't use 50 mikes,
19 but now they can't get licensing and they are going to have a real
20 mess. It is going to be expensive. It is a problem. It is not
21 the sort of thing normally rises to a hearing level. I will follow
22 up in writing with you, but just know from what they indicated
23 it is a serious issue that will affect them and every other. There

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1 are only a couple of theater companies apparently on Broadway
2 maybe that are big enough to get licensed and you have got all
3 these regional ones that will be adversely affected.

4 I want to go Lifeline since that has been brought up. Here,
5 I will look forward to getting a copy of the Democrats' committee
6 report. I was not aware of that. Have not read it. Look forward
7 to the information and digesting it. But I am concerned,
8 Commissioner Pai, about what you said about 4.2 million consumers
9 somehow get signed up and override one of the safeguards against
10 fraud and abuse.

11 I also know the Commission attempted to find common ground
12 in a bipartisan way on this issue to try to get to a cap. Frankly,
13 we were thinking the Commission was moving in a good, solid
14 direction and I don't know what happened there. I understand
15 there is an IG investigation, so I won't pursue it, but something
16 went off the rails there. I am disappointed by that because we
17 thought we were going to get the professional agency doing its
18 professional job in that area and getting a cap that seemed to
19 be reasonable and responsible. Very disappointed.

20 So talk to me about this \$4.2 million. Talk to me about the
21 level of waste, fraud, and abuse. From what I have read in the
22 press reports and the Democrats' position paper, they say there
23 is no fraud, waste, or abuse increase after '08. Is that the case?

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1 Mr. Pai. Well, thank you for the question, Mr. Chairman.
2 My investigation is ongoing, so these results are preliminary,
3 but thus far, I have uncovered five different species of fraud.
4 The fraud that you asked about was what is known as an independent,
5 economic, household verification or IEH. Essentially, enforcing
6 the FCC's rule that not more than one person in a particular
7 household can get a Lifeline subsidy.

8 Now based on the figures that I have received from the
9 Universal Service Administrative Company, or USAC, which
10 administers the Lifeline Program on our behalf, since October of
11 2014, wireless resellers have enrolled over \$4.2 million
12 subscribers in the Lifeline Program. That is over one third of
13 the total enrollment in the program.

14 The annual price to the taxpayer just for these overrides
15 for 1 year is \$476 million. That is just one type of fraud, the
16 type of fraud that the staff report talks about.

17 The other four kinds are also critical, however. Simply
18 duplicates, essentially one person getting the same Lifeline
19 subsidy. Just for those overrides as well, those duplicates,
20 there are hundreds of thousands of them since between October and
21 May of 2015, October of 2014 and May of 2015. USAC is compiling
22 the additional analysis beyond that. Those duplicates cost \$23
23 million. There is a third which is phantom subscribers.

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1 Essentially, these resellers tell the NLAD we have a certain
2 number of subscribers, but then when it actually comes to be paid,
3 they file a different form suggesting they have a higher number
4 of subscribers and they get paid based on that higher amount.
5 Those phantom subscribers, as they are called, cost the taxpayers
6 millions more.

7 There is also what is known as the TPIV or Third Party
8 Independent Verification process. Those two cost \$122 million
9 because of the override of identity vectors.

10 And fifth and finally, address overrides cost \$55 million.
11 Altogether, we are talking about --

12 Mr. Walden. Why do we even have an address override
13 capability by a vendor?

14 Mr. Pai. I think it is a serious problem and that is one
15 of the reasons why I started this investigation is to figure out
16 if there is a problem with this loophole and if there is, we need
17 to fix it on a bipartisan basis.

18 Mr. Walden. Chairman Wheeler, moving to a topic high on your
19 mind on 911, is there anything that prevents the states from moving
20 forward with these enhancements in their 911 facilities? Is
21 there any federal prohibition on that? And second, do you think
22 states that take money from consumers under the auspices of 911
23 and then spend it on non-911 related services should continue to

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1 get federal support or is that something we should look at, saying
2 if you are going to divert this money, you are not going to get
3 the federal money?

4 Mr. Wheeler. Thank you, Mr. Chairman. You know, almost 20
5 years ago I worked with Mr. Shimkus on the first national 911 bill.
6 And one of the things that was in that bill was that the FCC should
7 try and work with the states to do exactly what you have talked
8 about and how can you have a state-wide program? There is
9 resistance to state-wide programs. There are exceptions to it
10 obviously, it is for 50 states, but there is a resistance to that
11 in many instances.

12 Mr. Walden. But don't you think because I am going to run
13 out of time as I have now, do you think we ought to go down a path
14 of considering cutting off support if states are raising money
15 under the auspices of 911 -- if I am a consumer in Oregon and I
16 am paying a 911 fee, I am thinking that is going to 911 services.
17 I will tell you it really irritates you then to find out as a
18 consumer no, that is just a scam.

19 If this was a private entity, if this was a private phone
20 company, how long would you put up with that on the below-the-line
21 billing practice?

22 Mr. Wheeler. And unfortunately, it is not new news. It
23 goes back again, back to 20 years it has been happening. And I

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1 agree with you. If this were commercial, this would be a fraud,
2 deceptive advertising.

3 Mr. Walden. Deceptive advertising. And Ms. Rosenworcel,
4 in terms of NTSA because we understand that is who has jurisdiction
5 over what we mandated in the act a couple of years ago, happy to
6 work with them, bring them in as well. Because as I said, you
7 all know this first hand because you all have missed a few
8 deadlines that are in statute in terms of reports back to us. We
9 will push on NTSA to find out why they have not followed the
10 statutory guidance of this Congress in their activities and
11 appreciate the work you are doing. Unfortunately, it may be your
12 birthday, but I am over time.

13 So we will go to Ms. Eshoo now.

14 Mr. Eshoo. Thank you, Mr. Chairman, and I would be glad to
15 work with you on the issue of microphones in theaters.

16 And I think that we should really seriously examine this
17 issue of 911, the dollars that are collected by states, and then
18 God knows what they do with the money. They use for it for
19 everything but what the dollars are collected for. I think there
20 should be a nexus between the federal dollars that are expended
21 and sent to states in order to set up what we know we need to serve
22 the public well and if they want to take money from people, blow
23 it elsewhere, I don't think they should qualify for federal funds.

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1 So I would be glad to work with you on that.

2 On the issue of set-top boxes, I just want to make this
3 comment and I think that it is a very important one. Because it
4 is a huge allegation which I don't think sticks and that is the
5 issue of minorities and what all of that represents relative to
6 cable.

7 Twenty years ago, the Telecom Act was passed. In the ensuing
8 20 years, out of 500 channels there are 4 African-American
9 programmers that have programs and 2 Hispanic. So to say that
10 the FCC's proposal that wants to unlock all of this to give
11 opportunity and ignore what has happened under what cable -- the
12 cable industry has done, really is a head scratcher to me. I don't
13 understand how anyone can say with the straight face that the cable
14 industry has really made progress. So I just want to set that
15 down.

16 Mr. Chairman, some of the critics of your proposed broadband
17 privacy rules argue that any rules you adopt should apply to edge
18 providers as well as to broadband providers. So I have two
19 questions. Does the FCC in your view have authority to extend
20 privacy rules to edge providers? And also, critics argue that
21 the FCC lacks the necessary expertise to develop and enforce
22 privacy rules.

23 Do you want to comment on both of those?

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1 Mr. Wheeler. Thank you very much, Congresswoman.

2 Mr. Eshoo. And just briefly because I have more questions.

3 Mr. Wheeler. First of all, the answer is no, we do not intend
4 to extend our reach to edge providers. And second, and I have
5 now forgotten your second -- what was your second one?

6 Mr. Eshoo. Does the FCC have the necessary expertise?

7 Mr. Wheeler. Oh, yes.

8 Mr. Eshoo. Because your critics are saying --

9 Mr. Wheeler. For decades, for decades.

10 Mr. Eshoo. -- give it to the FTC. We love the FTC, except
11 there is other legislation to take just about every jurisdiction
12 away from the FTC. So I mean we have got some hypocrisy here,
13 really.

14 Mr. Wheeler. Congresswoman, the reality is that for
15 decades, we have been regulating the use of network information
16 in the telephone network saying you cannot -- a phone company
17 cannot make it available to a third party without the consumers'
18 permission. It is exactly the same kind of concept that we are
19 talking about in broadband.

20 Mr. Eshoo. Good. Thank you. To Commissioner Pai, you
21 assert that all duplicate households, subscribers, have been
22 enrolled fraudulently. At least that is what I heard you say
23 including those living in multi-household addresses like nursing

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1 homes, homeless shelters, veteran group homes. In what you have
2 undertaken to examine all of this, have you examined the -- what
3 I just mentioned, these multi-household addresses? Have you
4 included them? Excluded them? And tell me that first.

5 Mr. Pai. Thanks for the question, Congresswoman. So based
6 on the information that I have collected, 4.2 million which
7 represents 35 percent of all Lifeline --

8 Mr. Eshoo. I know that. You already testified to that.
9 But I am asking you specifically in this investigation that you
10 have taken on, have you examined multi-household addresses
11 because they exist. They exist in my congressional district, in
12 everyone's congressional district. And if you are using those
13 multi-household addresses to allege that there is fraud, then you
14 know what, you have to be really careful with this. You really
15 have to be careful with this.

16 Mr. Pai. I agree completely, Congresswoman, and that is why
17 I said we don't know if it is potentially fraudulent. We need
18 to investigate given the magnitude of that number.

19 Mr. Eshoo. So you don't know, you are just saying it might
20 be?

21 Mr. Pai. That is why I did the investigation to figure out
22 what the facts are.

23 Mr. Eshoo. It might be.

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1 Mr. Pai. Correct.

2 Mr. Eshoo. It might be. Do you have any evidence of fraud
3 yet?

4 Mr. Pai. In some of the other areas, we have uncovered
5 potential fraud, but I --

6 Mr. Eshoo. So there is no area that you have discovered
7 fraud yet, is that correct?

8 Mr. Pai. Well, I think if you look at all of the --

9 Mr. Eshoo. No, just answer me yes or no.

10 Mr. Pai. I believe I have uncovered potential fraud. We
11 just need to gather --

12 Mr. Eshoo. No. Just answer me yes or no. Have you
13 uncovered any fraud so far? That is fair, okay?

14 Mr. Pai. To date, I have not reached that conclusion.

15 Mr. Eshoo. Not. Okay. Thank you very much.

16 Mr. Wheeler. Congresswoman, we do know the facts. I would
17 be happy to give them for the record. There are 2.2 million
18 Lifeline subscribers today who live in 890,000 multiple resident
19 addresses. I have got a list here. So for instance, the
20 Kalamazoo Gospel Mission, the Louisville Rescue Mission, the
21 Associated Ministries of Tacoma, Rescue Mission Christian
22 Ministry in Roanoke, etcetera, etcetera.

23 The total represents --

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1 Mr. Walden. Conveniently located in the members of the
2 subcommittee's districts.

3 Mr. Wheeler. I am sorry, what?

4 Mr. Walden. Just by happenchance members of the
5 subcommittee.

6 Mr. Eshoo. We all have them in our districts. They said
7 that.

8 Mr. Walden. I know.

9 Mr. Wheeler. The point being that it is about 16 percent
10 of our total. The Census Bureau tells us that somewhere between
11 20 and 50 percent, depending upon your economic situation, 20 to
12 50 percent of American households are doubled up households, just
13 like these ones that I read. We are at 16 percent which is the
14 low end.

15 So the answer to the question, yes, we do know what the number
16 is. We do know the households.

17 Mr. Walden. So you are going to say there is no fraud there.
18 Yes or no?

19 Mr. Wheeler. I am going to say to you, sir, that we are
20 vigilantly working and the reason that we know --

21 Mr. Walden. Just like Commissioner Pai.

22 Mr. Wheeler. The reason that we know this is because we have
23 been out making these kinds of investigations.

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1 Mr. Walden. Right. We do know there was a case of fairly
2 substantial fraud that you all have gone over after, right?

3 Mr. Wheeler. And the reality on that case, as is most of
4 Commissioner Pai's so-called statistics is that he is reading from
5 yesterday's newspaper.

6 Mr. Walden. I don't care if it is yesterday's or a month
7 ago.

8 Mr. Wheeler. These were set down in 2015.

9 Mr. Walden. Right. What was the dollar amount in that?

10 Mr. Wheeler. \$51 million was our fine.

11 Mr. Walden. Do you think that is an insignificant number?

12 Mr. Wheeler. No, I am sorry, that was our fine. There were
13 37,000 individuals --

14 Mr. Eshoo. And that was the private sector ripping off the
15 public sector, and the FCC went after them.

16 Mr. Walden. And what is what we are all talking about doing
17 more of.

18 Mr. Wheeler. The root of the problem goes back to the fact
19 that the program was designed at the outset to be one where the
20 fox was guarding the hen house. What the original FCC proposal
21 plan was that we have been playing whack-a-mole with for the last
22 8 years --

23 Mr. Shimkus. Mr. Chairman, I would ask for regular order

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1 and getting back to the schedule.

2 Mr. Wheeler. It was to how do we deal with this reality and
3 the design was bad. It is an important program, poorly designed.
4 And we have been playing catch up ball and in our recent order,
5 we put a national verifier in place.

6 Mr. Walden. I am going --

7 Mr. Wheeler. Which changes the game entirely.

8 Mr. Walden. And as you know, I have said publicly, you all
9 have been cleaning it up. The notion that all of the kinks is
10 out of the system I think it would be hard to defend.

11 We will now go to --

12 Mr. Eshoo. I yield back.

13 [Laughter.]

14 Mr. Walden. We will now go to the vice chair of the full
15 committee, Ms. Blackburn.

16 Ms. Blackburn. And I will promptly change the topic.
17 Chairman Wheeler, let us go to the E-rate funds. I have talked
18 to you about the Sweetwater Consortium.

19 Mr. Wheeler. Yes, ma'am.

20 Ms. Blackburn. And we brought it up at the last hearing.
21 That is a group of 46 schools in Tennessee. They serve hundreds
22 of thousands, a third of the school children in our state. And
23 they have been denied \$60 million in funding for 4 years and in

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1 your response you submitted after the last hearing, you state the
2 Consortium's appeal was filed on May 9th. It is currently pending
3 with the Wireline Bureau. What is the status update?

4 Mr. Wheeler. So thank you, Congresswoman. I mean it is not
5 unrelated to the discussion we just had because it is how do you
6 follow the rules to make sure that waste, fraud, and abuse is
7 mitigated? And one of the rules in E-rate Program is there should
8 be competitive bidding. And in the Sweetwater example there was
9 no competitive bidding. Therefore, it was not in accord with the
10 structure of the rules put in place to try to mitigate exactly
11 the kind of thing the chairman has been talking about. That is
12 now currently on appeal before the Bureau.

13 Ms. Blackburn. And when do we expect a resolution?

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

15 Ms. Blackburn. Okay, well, let me move on to set-top box
16 because as I mentioned earlier, this is something of great concern
17 and I am going to channel John Dingell for a few minutes. We just
18 have his 90th birthday in this room, so I want all of you to think
19 very concisely and give me a yes or a no. I know I do need the
20 luck. Mr. Barton is right.

21 Okay, question number one. Do you agree that the initial
22 FCC set-top proposal is flawed?

23 Mr. Chairman, I will start with you. Let us go quickly down

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1 the line. The clock is ticking.

2 Mr. Wheeler. Everything is designed to seek improvement.

3 Ms. Blackburn. I said yes or no. Okay, okay. Ms. Clyburn?

4 Ms. Clyburn. Yes or no.

5 Ms. Blackburn. Which one do you want, pick one? You are
6 saying both. Okay.

7 Ms. Rosenworcel. I will make it easy, yes.

8 Ms. Blackburn. Okay.

9 Mr. Pai. Yes.

10 Mr. O'Rielly. Yes.

11 Ms. Blackburn. All right, question two, do you agree that
12 if the FCC is to move forward, it should follow a different
13 approach than outlined in the NPRM?

14 Mr. Wheeler. That is what we are trying to do right now.

15 Ms. Blackburn. Okay.

16 Mr. Wheeler. We are working with the industry.

17 Ms. Blackburn. Okay.

18 Ms. Clyburn. Yes.

19 Ms. Rosenworcel. Yes.

20 Mr. O'Rielly. Yes.

21 Ms. Blackburn. I like this. Do you agree that the pay TV
22 provider alternative shows some promise.

23 Mr. Wheeler. One page is not a proposal. It is a press

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1 release.

2 Ms. Blackburn. Does it show promise?

3 Mr. Wheeler. Oh, does it show promise?

4 Ms. Blackburn. Yes.

5 Mr. Wheeler. Yes, the great thing is that it lowered the
6 temperature so we can talk together. Yes, it shows promise.

7 Ms. Blackburn. Okay.

8 Ms. Clyburn. Yes.

9 Ms. Rosenworcel. Needs work, but yes.

10 Mr. Pai. Yes.

11 Mr. O'Rielly. Yes.

12 Ms. Blackburn. You all are doing really well on this.

13 Okay, I met with the Copyright Office yesterday and they have got
14 some concerns about this proposal. So do you agree that no matter
15 what the FCC does, it must not diminish copyright law, jeopardize
16 the security of content, or undermine the license and advertising
17 models that finance programming in the first place?

18 Mr. Wheeler. Copyright protection and the protection of
19 contracts which exceed the authority of the Copyright Office are
20 essential and must be an essential part.

21 Ms. Blackburn. So I take that as a yes.

22 Mr. Wheeler. They must be an essential part.

23 Ms. Clyburn. Copyright security and privacy must be in

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1 place.

2 Ms. Rosenworcel. Yes.

3 Mr. Pai. Yes.

4 Mr. O'Rielly. Yes.

5 Ms. Blackburn. Okay, would you agree that the original
6 set-top box proposal effectively renders content worthless?

7 Mr. Wheeler. No.

8 Ms. Clyburn. No.

9 Ms. Rosenworcel. My office has met with the Copyright
10 Office and I know that the Copyright Office has expressed concern
11 about just what you describe, so I think that more work is
12 necessary on our part.

13 Ms. Blackburn. Commissioner Pai?

14 Mr. Pai. Yes, I agree with Commission Rosenworcel.

15 Ms. Blackburn. Okay.

16 Mr. O'Rielly. Yes.

17 Ms. Blackburn. Okay, thank you all for that. You have left
18 me 30 seconds to wrap up so I am grateful for that.

19 I will tell you this. Meeting with content producers and
20 the independents that are there in Tennessee, individuals that
21 have the ability and have been creating a lot of cable TV
22 programming, things of this nature, what they find and Mr.
23 Chairman, going back to what you said, if this original proposal,

1 the set-top box proposal got out there, they would be paid for
2 the first round, but basically, the ability to go in and to
3 negotiate those licenses is something they feel would be stripped
4 from them. And they think not only does it have domestic, it also
5 has international implications because of the ability to hack in
6 and grab that digital file and then to utilize it.

7 I think that you have got a long way to go on set-top boxes
8 and I am pleased to hear that you are willing to work on that.
9 I yield back.

10 Mr. Walden. Thank you. The gentlelady yields back. The
11 chair recognizes for a point of personal privilege, the gentlelady
12 from California.

13 Mr. Eshoo. Thank you, Mr. Chairman. I meant to do this at
14 the beginning of the hearing. Former chairman of our full
15 committee is with us today in the hearing room and I want to
16 acknowledge his presence, former congressman and chairman of the
17 full Energy and Commerce Committee, Billy Tauzin. Welcome.

18 [Applause.]

19 Mr. Walden. Thank you. The gentlelady yields back. The
20 chair now recognizes the gentleman, the ranking member of the full
21 committee, the gentleman from New Jersey for 5 minutes.

22 Mr. Pallone. Thank you, Mr. Chairman. It is good to see
23 Chairman Tauzin here as well.

24 Chairman Wheeler, I am trying to get your commitment to three
25 things, so I am trying to move quickly here to cover all three.

1 The first is about the set-top box. I have seen encouraging
2 reports from the press that you have been negotiating with
3 stakeholders on a compromise proposal in the set-top box
4 proceeding. I urge you to work swiftly toward a resolution that
5 will benefit consumers. For me, that resolution must include
6 adequate protections for content. Consumers will not care how
7 their TVs work if they can no longer get their favorite content.

8 So my question, can you commit to me that before you vote
9 on final rules that you will work with the Copyright Office as
10 well as other copyright experts inside and outside the government
11 to make sure your plan will not run afoul of intellectual property
12 laws?

13 Mr. Wheeler. I can go beyond that, Mr. Pallone, to say we
14 will work with the copyright holders as well because the Copyright
15 Office has only a limited area of jurisdiction and there are a
16 lot of issues such as contracts and things like this that are
17 important to the copyright holders.

18 Mr. Pallone. Thank you, Mr. Chairman. Next is about the
19 Lifeline Program. You heard during my opening statement today
20 that Democratic committee staff issued an interim report
21 concluding that evidence does not support Republican allegations
22 of \$500 million of waste, fraud, and abuse in the FCC's Lifeline
23 Program. And the report also includes several recommendations
24 for the FCC. And these recommendations include first having the
25 FCC periodically review the Lifeline Program data for new trends;

1 second, preventing the use of fraudulent snap cards as
2 verification for Lifeline subscribers; third, making sure the
3 independent economic household worksheet is not being abused; and
4 lastly, studying whether safeguards that have been implemented
5 in some states can improve the program at a national level.

6 And again, it may be difficult to say yes outright, but I
7 just would like you, if possible, to follow these recommendations
8 to help prevent fraud from the Lifeline Program, if you could
9 comment on that.

10 Mr. Wheeler. Thank you, Congressman. I haven't seen the
11 report.

12 Mr. Pallone. I know you haven't.

13 Mr. Wheeler. Those sound like very logical recommendations
14 that ought to be pursued.

15 Mr. Pallone. All right, thanks again. We are going quickly
16 here. And then lastly, on the SANDy Act, a few months ago, I was
17 proud to announce that the nation's wireless carriers were
18 committing to voluntarily comply with the wireless portions of
19 my bill called the SANDy Act. And I wanted to thank you for
20 working with me to make sure that the carriers are making the
21 networks more accessible during emergencies. But because this
22 wireless resiliency agreement is just voluntary, ongoing
23 oversight is critical. So with that in mind, could you update
24 us on the implementation of the wireless network resiliency
25 cooperative framework and how the FCC is making sure that carriers

1 live up to their commitments?

2 You have 2 minutes left, so take your time.

3 Mr. Wheeler. Thank you, Congressman. The industry has
4 done an excellent job after your leadership pushing this issue.
5 And industry should be commended for stepping up like this. As
6 you say, our job in this environment now is to be the watchdog,
7 to check on the process.

8 The first step in this activity had to do with the upcoming
9 hurricane season. And what is the industry doing to prepare for
10 something that we know is coming and has been the source of so
11 many difficulties in your district and elsewhere up and down the
12 East Coast in particular.

13 And so the industry has been working on that and later this
14 month, I can't give you the specific date, but it is in the next
15 couple of weeks, our Public Safety Bureau who has responsibility
16 for us, is sitting down with the industry to review the things
17 that they have put in place and to make sure that indeed that is
18 stepping up to the commitment that they made to you and to us as
19 a result of your leadership on this issue.

20 Mr. Pallone. All right. Thank you so much. I appreciate
21 it. And I yield back, Mr. Chairman.

22 Mr. Latta. [presiding] Thank you very much. The
23 gentleman yields back and the chair now recognizes for five
24 minutes the gentleman from Texas the chairman emeritus of the full
25 committee.

1 Mr. Barton. Thank you, Mr. Chairman. And we have given
2 Chairman Tauzin the big head. He is out there grinning like a
3 Cheshire Cat as he got introduced by Anna. We will have to make
4 sure we put him back in his place and find out who is clients are
5 and see if we can't do him some harm or something.

6 [Laughter.]

7 Mr. Wheeler. Mr. Barton, could I just make one observation?
8 Looking at that picture up there and the chairman sitting here
9 in the audience. One is a lot younger than the other.

10 Mr. Barton. Actually, he looks pretty good.

11 Mr. Wheeler. But I would not want to make that observation
12 about another portrait.

13 Mr. Barton. Exactly.

14 Mr. Wheeler. Because that would be wrong.

15 Mr. Barton. I look nothing like that.

16 [Laughter.]

17 Mr. Barton. It is probably why Chairman Upton hadn't put
18 his portrait up yet. Anyway, it is good to see Billy.

19 I am going to have to do something I almost never do and that
20 is in a hearing like this bring up a constituent issue, but it
21 is the only way I know to maybe get some action.

22 Mansfield Independence School District is one of the best
23 public school districts in my congressional district. It is a
24 community of about 80,000 in the suburbs of Dallas-Fort worth.
25 Several years ago, they got \$1 million from the Universal Service

1 Administrative Company to do some Internet access for their
2 low-income classrooms. They received \$1 million over three
3 funding cycles.

4 They applied for another \$820,000. That application was
5 denied and at the same time USAC said oh, by the way, that \$1
6 million we have already given you, you have got to give it back.
7 They have been trying for the last 2 years to resolve this issue
8 without success. My district office has sent several letters to
9 try to help resolve the issue without success. Their last appeal
10 was cursorily denied without any explanation.

11 So Mr. Chairman, I am asking you if you would ask your staff
12 to do something unusual which was to take a personal look at this
13 and see if we can't resolve it. I don't personally have a problem
14 that their request for additional funding was denied. I
15 understand how tight those funds are. But I have got a real
16 problem if they agreed to fund it. They gave them the \$1 million
17 over three cycles and then asked for it back. Can you look into
18 that?

19 Mr. Wheeler. Yes, sir, Mr. Barton.

20 Mr. Barton. Okay, I appreciate that. Now my policy
21 question, I am the co-chairman of the Privacy Caucus and I am way
22 back when one of the people that helped put into place what we
23 now call Caller ID. Under the proposed rulemaking have to --
24 instead of certain information being automatically included and
25 then you can opt out of that information being used, you are going

1 to go to an opt-in procedure where consumers have to opt-in to
2 certain information. If you do that, in all probability, a lot
3 of consumers will not opt-in. And if they don't, you make it
4 almost impossible for Caller ID, as we know it today, to be
5 utilized.

6 Can you all, all the Commission take a look at that? I know
7 we are trying to protect privacy, but my premise is if somebody
8 is calling me, I should have the right to know who is calling me
9 and I make the decision whether I take that phone call. That means
10 that you have to have the phone number and in most cases some sort
11 of a personal identifier, Congressman Billy Tauzin is calling Joe
12 Barton or vice versa. If you don't have that basic information,
13 you really don't give people that are receiving the call the
14 opportunity to decide whether they want to take the call.

15 Mr. Wheeler. Thank you, Mr. Barton. I think you raise a
16 very good point. What our privacy rules are directed at, that
17 is poor English, what we are trying to get to in the privacy rules
18 is the broadband area. You are talking about telephony item. I
19 don't believe it is the intent to overturn -- we are talking about
20 how you have some consistency back and forth between the two, but
21 we are not trying to rewrite what is going on in the telephony
22 world. But I will definitely -- it is onboard, sir.

23 Mr. Barton. I appreciate the Commission, all the other
24 commissioners taking a look at that.

25 I yield back, Mr. Chairman.

1 Mr. Latta. Thank you. The gentleman yields back and the
2 chair now recognizes for 5 minutes the gentleman from
3 Pennsylvania.

4 Mr. Doyle. Thank you, Mr. Chairman. Chairman Wheeler, I
5 want to thank you for your leadership on business data services
6 or special access. I think I have really been working on it 8
7 years. It just feels like a decade. This issue has been pending
8 before the Commission too long and I appreciate your leadership
9 on it. But I just want to give you a minute to just tell us why
10 completing the proceeding is so important and what is online for
11 the American consumer?

12 Mr. Wheeler. Well, you know, it is really interesting,
13 Congressman. Back in the day when I was president of CTIA, I
14 remember being at board meetings and the wireless carriers coming
15 in and saying 30 percent of my operating cost is what I am paying
16 for backhaul because I am dealing with an area that has been
17 totally unregulated and can't you do something about that?

18 And then the providers, the principal providers of this
19 backhaul services, also wireless carriers would raise their hand
20 and say uh, no, we can't go there, we can't go there. So this
21 has been an issue that I have been dealing with for probably as
22 long as you have been dealing with as well.

23 The reason I tell that story is because wireless is -- wired
24 infrastructure is essential for wireless. And it will become
25 even more essential in 5G because 5G is a multiple of much smaller

1 cells that all have to be connected.

2 And so what we are talking about here, yes, we are talking
3 about competitive services, but yes, we are also talking about
4 if we are going to have this national priority and we are going
5 to be the world leaders in 5G, you have got to be able to connect
6 it and you have got to be able to connect them at reasonable rates.
7 That is why this is an important proceeding.

8 Mr. Doyle. Thank you. Commissioner Clyburn, as you had
9 noted, the two of us wrote a joint op-ed on below the lines fees.
10 We have seen these fees skyrocket across the telecommunication
11 marketplace in recent years and we know what they cost consumers.
12 Tell me, what tools does the FCC have to address the proliferation
13 of this practice?

14 Ms. Clyburn. I was pleased to bring this to the attention
15 of those who already know it. One of the things I am pleased about
16 with the attention that we got with the op-ed is the fact that
17 our advisory committee is actually taking this up, is moving ahead
18 because surprises again -- that is the type of surprise that you
19 do not want when you sign up for services.

20 So when you talk about people, especially with individuals
21 who are on fixed income, it is really important what they sign
22 up for, the financial expectations they have are realized and as
23 I said, I am pleased to let you know that we are going to follow
24 up with this to ensure that the information flow that is at the
25 type of transparency needed for this will get more attention and

1 more traction in the days to come.

2 Mr. Doyle. Thank you. Commissioner Wheeler, I want to go
3 back and talk a little bit about zero rating and the fear that
4 a lot of us have that this has the potential to have some
5 anti-competitive effects on the marketplace.

6 Studies have shown that users overwhelmingly prefer apps and
7 services that are zero rated and I believe that if these services
8 aren't properly policed, it could have the same effect as paid
9 privatization or anti-competitive interconnection and a range of
10 other behaviors that are restricted in the Open Internet Order.

11 So what steps is the Commission taking to examine these
12 offerings and ensure that they are not harming consumers?

13 Mr. Wheeler. Thanks, Congressman. You know, we took a long
14 and hard look at the zero rating question during the Open Internet
15 proceeding and decided that a case-by-case approach was better
16 than a broad-brush approach. The question really boils down to
17 what is the impact on consumers? What is the impact on
18 competition? And what is the impact on innovation?

19 And if you can have positive checkmarks in that, but it is
20 zero rating, then you shouldn't catch it in some kind of blanket.
21 But you also want to have the ability to go through and say no,
22 that is not pro consumer, that is not pro competition, that is
23 no pro innovation.

24 So what we have been doing is gathering information about
25 the various zero rating items that are out there, as well as

1 various proposals, to try and be able to put together the kind
2 of analysis that helps you answer that kind of question and that
3 is what we are in the process of doing right now.

4 Mr. Doyle. Thank you. And I would just close by saying with
5 regards to Lifeline, is there no fraud in the program? Of course,
6 we know there is no fraud. Is the fraud as prolific as
7 Commissioner Pai suggests? We know that is not true either.

8 The danger with the kind of information, Commissioner Pai,
9 that you stated is that somehow the potential for fraud somehow
10 gets translated in the newspapers as actual fraud and the public
11 believes that this number is this big and we know the number isn't
12 zero. It is somewhere in between this big and zero. And I just
13 think we all need to be responsible when we throw out numbers that
14 we don't lead taxpayers to believe that there is this massive type
15 of fraud going on. And I would end by saying that the fraud is
16 being committed by companies, not the poor, and I think that should
17 be emphasized, too. Thank you, I yield back.

18 Mr. Latta. The gentleman's time has expired. And the chair
19 now recognizes himself for 5 minutes. First, if I could ask you,
20 Commissioner Pai, and then follow up with you, Commissioner
21 O'Rielly, two of the FCC's major rulemakings this year seem to
22 be at odds with each other. On the one hand, the FCC has proposed
23 rules with very prescriptive broadband privacy regulations and
24 on the other hand, consumers' privacy and viewing data is left
25 completely exposed in a highly controversial set-top box

1 proceeding.

2 Has the majority of staff of the Commission ever discussed
3 this with you?

4 Mr. Pai. No, Congressman.

5 Mr. O'Rielly. The contradiction between the act -- no.

6 Mr. Latta. So that is a no. Okay. Thank you.

7 Commissioner O'Rielly, let me go on. I have been very active with
8 the Internet of things here in committee with some other members
9 and what will the spectrum frontiers order in the development of
10 the 5G mean for the Internet of things?

11 Mr. O'Rielly. So if the chairman alluded to what activity
12 we are going to take, I want to be careful on getting too much
13 into this, but the opportunities of what it can bring and the
14 connectivity for expanding the universe to the Internet of things,
15 the billions and billions of devices and applications that will
16 be made available, be connected with our high band spectrum is
17 going to be monumental for decades to come, assuming that we get
18 our rules right.

19 Mr. Latta. Even what you said at the very end, what I have
20 been hearing during these discussions, you just said the words
21 "if we get our rules right." What I have been hearing from
22 everyone that we have been having in is that the one thing that
23 they worry about is on the legislative and the regulatory side
24 making sure that they pretty much all of a sudden might be shut
25 down from getting these things done out there.

1 And so when you say getting them done right, how would you
2 foresee in the future of getting things done right at the
3 Commission?

4 Mr. O'Rielly. Well, I am in negotiations with the chairman
5 and his team to try and finesse some of the points that are in
6 the item. I like the general direction of where it is going, but
7 we have to make sure that the licensing structure to make sure
8 that the bands are available in a way that carriers are apt to
9 use them. We want to make sure that it coincides with what the
10 applications and the industry and the manufacturing world plan
11 to use them as well. So we are trying to finesse some of those
12 finer points.

13 Mr. Latta. Thank you very much. Commissioner Pai, with my
14 remaining time, one of my concerns of the FCC's set-top box
15 proposal is the disproportionate impact it would have on small
16 companies. The costs to comply could result taking funds away
17 from other initiatives and services that benefit consumers.

18 As someone that represents -- and you have been out to my
19 district and thank you very much. My district goes from very,
20 very rural to urban. This is a great concern of mine because
21 small, paid TV companies typically provide communications
22 services to the rural areas. As the Commission considers
23 alternative approaches to their proposal, how are you seeking to
24 balance the cost and benefits for the small operators and their
25 customers?

1 Mr. Pai. That is a great question, Congressman. It was a
2 privilege to have met with the small cable companies and other
3 small video providers in your district and around the country.
4 The concern they generally express about the FCC is that the burden
5 of regulations falls disproportionately on them since they don't
6 have the scale to comply. I think in the set-top box proceeding
7 that the concern has been brought home by the fact that 61
8 Representatives, 10 Senators have expressed bipartisan concern
9 that this cost and benefit analysis has not been done generally,
10 and it especially has not been done with respect to small
11 businesses. And so that is a concern I take very seriously and
12 I hope the Commission does as well.

13 Mr. Latta. Well, thank you very much and I am going to yield
14 back the balance of my time and recognize the gentleman from
15 Vermont who also co-chaired the Rural Caucus here on the Energy
16 and Commerce Committee for 5 minutes.

17 Mr. Welch. Thank you very much, Mr. Chairman. I welcome
18 the FCC Commissioners. We really appreciate the work that you
19 do. First, I just note that the D.C. Court of Appeals supported
20 in its entirety the net neutrality rule. That was very debated
21 and very contentious, but it is resolved legally, at least at that
22 stage. And I hope that that means that we will be able to focus
23 on some of the other efforts that require some bipartisan
24 cooperation like the homework gap in like the deployment of 5G.

25 I want to ask some questions about three areas, the homework

1 gap, the special access, and 5G. And I will start with the
2 homework gap.

3 Commissioner Rosenworcel, thank you for your aggressive
4 leadership on this. It really makes a difference in Vermont and
5 a lot of our rural areas. Actually, urban areas as well. About
6 70 percent of teachers, as you know, according to the FCC's
7 statistics, assign homework that requires Internet access, but
8 only about 33 percent of households are really able to take
9 advantage of that.

10 Representative McKinley and I have a bill that I think can
11 help a bit on this. And I am going to be introducing another bill
12 on that as well, that would require the FCC to issue new rules
13 that would ensure providers of mobile broadband Internet that
14 participate in the Lifeline Program to offer subscribers mobile
15 devices that are Wi-Fi capable. Do you have a view on this bill
16 and how it could help the homework gap?

17 Ms. Rosenworcel. Well, thank you, Congressman Welch, and
18 I appreciate your leadership on this subject, too, with the
19 Digital Learning Equity Act. As you mentioned, seven in ten
20 teachers assign homework that requires Internet access and one
21 in three households does not have access. And where that overlaps
22 is a homework gap and it is the cruelest part of the digital divide.
23 Anything we can do to help fill that gap is going to help students
24 and the tethering you describe is ideal and could be really useful.

25 Mr. Welch. Thank you. And Chairman Wheeler, I want to ask

1 you a little bit of follow up on what Congressman Doyle asked you
2 about special access. This is going to be a big deal, obviously,
3 for all of America, but we are going to have a challenge in rural
4 America as well with the cost of infrastructure being what it is.

5 Can we have some assurance that the rules that will be
6 promulgated will take into account the extraordinary challenges
7 that have existed in rural America about having access to the
8 infrastructure that is essential for it to have the Internet?

9 Mr. Wheeler. Thank you, Mr. Welch. Yes, and as you know,
10 the programs that we have for addressing that issue in rural
11 America are extensive and we should not be coming out with a rule
12 that unfairly targets. There is the reality that there needs to
13 be a competitive environment and you have to be dealing with how
14 do you incentivize that competition.

15 Mr. Welch. Thank you. And Mr. Pai, I will ask you, too.
16 On 5G, again, it is sort of similar to what I was just talking
17 to Chairman Wheeler about. It is a different infrastructure.
18 You are not going to have as many of the pipes and wires, but there
19 continue to be challenges in rural America. And at the very
20 beginning of establishing rules that are going to be absolutely
21 essential to the build out of 5G, there has to be integrated into
22 it the challenges in rural, hilly America, whether it is
23 Appalachia with Mr. McKinley or rural Vermont for me.

24 And can you comment on what steps can be taken in order to
25 treat rural America as the first-class citizen?

1 Mr. Pai. Thanks for the question, Congressman. I take this
2 seriously, both as a commissioner and also as a rural American
3 myself, having grown up in a small town in Kansas. I think
4 increasingly what we are seeing is a digital divide where people
5 in the bigger cities can take as granted that they will have fiber
6 and other advantaged technologies that allow them to have
7 high-speed connectivity.

8 In rural areas, like ours, it might be a copper line that
9 has faded over time. And how do we promote the deployment of fiber
10 in rural areas where you can't necessarily have a business case?
11 That is the \$64,000 question.

12 We have part to play in that with our Universal Service Fund,
13 and so I pushed, for example, for a support for stand-alone
14 broadband to make sure that that fiber was available. I think
15 it is also the IP transition is critical for us to give the private
16 sector the maximum incentive to connect every American, rural
17 Americans, tribal Americans, and others with that fiber and I
18 think additionally, we always need to be forward thinking. If
19 there are other regulations that some of the smaller competitors
20 tell us about that are standing in the way, we need to have an
21 open mind.

22 I have met with some small providers, in some cases one and
23 two-man shops, who have told us look, your rules in this case or
24 that case are holding us back. We are not a big company, help
25 us out. I think that could go a long way.

1 Mr. Welch. Thank you. I yield back. Thank you, all.

2 Mr. Lance. [presiding] Thank you very much. The chair
3 recognizes Mr. Shimkus.

4 Mr. Shimkus. Thank you, Mr. Chairman. Welcome,
5 Commissioners, it is great to see you all.

6 Sometimes we quibble too much. I am getting a little
7 frustrated today. We are picking at each other for things that
8 there is a lot of agreement. I think there are people we know,
9 we need a Universal Service Fund. The question is how it is going
10 to be properly deployed. Should it go into broadband now? Do
11 we need to clean up the abuse in Lifeline? The answer is yes.
12 We all know that. So these levels, again, I get frustrated.

13 I think the set-top box thing that was raised, I think you
14 raised a question, opened it up. I think there has been response
15 and I think there is a consensus growing that we should move to
16 an app-driven world.

17 I think the last time we met, I think people use that now,
18 and I hope that we just get some of these what are perceived to
19 be very contentious issues away from us so we can address other
20 things.

21 911, as was mentioned, we did pass a mandate on grants,
22 prohibition on grants if the states were stealing 911 dollars.
23 We could do that.

24 So there are a lot of things -- there is more things that
25 unite us than divide us. That is all I am going to say.

1 But I do want to address, this might be your last time here.
2 I mean the chairman said maybe not. It could be. I have been
3 really focusing on what is the FCC for the future. And I ascribe
4 to a lot of the debate that it is a time for a rewrite of the
5 Telecommunications Act for a lot of reasons. If you pull up the
6 website we have a Consumer and Government Affairs Bureau. We have
7 an Enforcement Bureau, an International Bureau, Media Bureau,
8 Public Safety and Homeland Security, Wireless and
9 Telecommunication, Line Competition, those are bureaus. Under
10 the bureaus like the Wireline Competition Bureau we have a bureau
11 chief, three deputy chiefs, one chief of staff, a data officer,
12 economist, three associates bureau chiefs one program manager of
13 the USF, two -- I mean you have got an army over there.

14 So the first question is, and it is great to have Chairman
15 Tauzin here because in the telecom rewrite which I wasn't a member
16 yet, but I have been here 20 years, what was the Wireline
17 Competition Bureau, what was it designed to do after the rewrite
18 of the '96 Act, Chairman Wheeler?

19 Mr. Wheeler. Thank you, Mr. Shimkus. As you all sit here,
20 I would like to identify myself with your remarks about how --
21 yes, we do -- it is interesting. But 91 percent of our decisions
22 are unanimous.

23 The Wireline Competition Bureau was created after the Act,
24 because the Act required several specific actions by the
25 Commission to make decisions --

1 Mr. Shimkus. Okay, fast forward today. What does it do
2 today?

3 Mr. Wheeler. It oversees activities in the wireline world.
4 So for instance, what we are dealing with on Thursday which is
5 the move from analog to IP and what are the expectations there
6 when service is discontinued is something that comes out of the
7 Wireline Bureau.

8 Mr. Shimkus. My point is I think that when we had part of
9 the questions and answers, you talked about telephony and
10 broadband. They are merged. We have a lot of stuff, a lot of
11 telephony goes over broadband and we still have some stovepipe
12 administration programs and procedures.

13 Mr. Wheeler. They are merging. And yes, we have --

14 Mr. Shimkus. Well, there is a nexus and definitely the nexus
15 isn't in the way they were designed. I would challenge you to
16 start looking at the FCC 2.0 or 3.0 or the future because we are
17 just -- we are not there.

18 On the website, the wireless -- just simple things. When
19 you look at the organizational charts, you are not standard.
20 Everybody has got their own little, how they portray their
21 organizational structure. There is like two that have different
22 formats. Three that are the same. And the Wireless Competition
23 website comes up page not found.

24 Mr. Wheeler. I am sorry, what?

25 Mr. Shimkus. Page not found.

1 Mr. Wheeler. It does?

2 Mr. Shimkus. Yes. Just for your information.

3 Mr. Wheeler. Thank you.

4 Mr. Shimkus. So I would really hope and my time is running
5 out. Chairman Wheeler, you have kind of pushed, and I will ask
6 Commissioner O'Rielly to weigh in, too, because he has mentioned
7 this, that there is a reason that you have procedures in place
8 and that they are working, but you also form multiple task forces
9 to look at FCC processes.

10 Can you comment on what you found out and then Commissioner
11 O'Rielly can you respond to these task forces?

12 Mr. Wheeler. So we have been working through a process.
13 Your time has run out.

14 Mr. Shimkus. This would be the first time that you have ever
15 said time has run out.

16 [Laughter]

17 Mr. Shimkus. I wonder why that is.

18 Mr. Wheeler. You said this may be my last chance, Mr.
19 Shimkus, so I don't want to miss that. But Commissioner O'Rielly
20 earlier this week had an excellent blog on process reform in which
21 he identified 24 specific issues. So I will let Commissioner
22 O'Rielly respond to that.

23 Mr. O'Rielly. I appreciate the chairman's kind words. The
24 difficulty has been that on process reform the task force that
25 we set up was intended to look at some of the ideas that I had

1 already previously talked about and the offices all assigned
2 somebody and they have gone round and round and round for months
3 on end and we have gotten absolutely nowhere. So that is why I
4 put up the bar to kind of show where we are at the moment. We
5 are nowhere.

6 The chairman says that a lot of these are good ideas, but
7 we can't get any of them to move forward and these are not the
8 biggest ticket items. The biggest ticket item I know he doesn't
9 agree with. He said he would do it over his dead body and I was
10 willing to take him at his word.

11 [laughter]

12 But that being said, there are things that can make our
13 organization work better and we will have improved collegiality.

14 Mr. Shimkus. And I would just, reclaiming my time, and I
15 know I am -- I would just hope that in our last cycle here, we
16 start talking about how we can make it all work better and move
17 forward, not backwards. And I yield back my time.

18 Mr. Lance. Thank you and for the first time as chair, time
19 has run out. Ms. Clarke, you are recognized.

20 Ms. Clarke. Thank you so much, Mr. Chairman, and I thank
21 our ranking member.

22 Chairman Wheeler, it appears that some progress is being made
23 on the set-top box issue and I want to applaud your efforts to
24 solicit and consider alternate proposals from industry.

25 However, I believe that for the Commission to continue down this

1 path, based upon the telecom law of 20 years ago with regard to
2 the technology hardware that is set-top box is quickly becoming
3 obsolete. It is, in fact, a fool's errand. I hope that this
4 debate, however, has been useful in unearthing the complexity and
5 layers of issues that intersect and so profoundly impact on
6 consumers and the industry that are impacted by creating this new
7 ecosystem.

8 I hope that the rulemaking will be done in a way that we can
9 look to a 21st century model. And as you know, the GAO has
10 approved my request for an impact study. Clearly, my preference
11 would be that no action is taken prior to the GAO study, following
12 your own advice to trust and verify.

13 However, if there remains an insistence on moving ahead, I
14 would like to have your assurances that you will work with me to
15 ensure that the findings of the proposal's impact on
16 multi-cultural media will be integrated into any file rulemaking.

17 Mr. Wheeler. Thank you, Ms. Clarke. You and I have talked
18 about this repeatedly and you know that I do feel strongly about
19 the importance of making sure that the Commission step up its role
20 to make sure that we do create opportunity to multi-cultural
21 media.

22 Ms. Clarke. Absolutely, but my question was --

23 Mr. Wheeler. Would I work with you? Yes, ma'am.

24 Ms. Clarke. And when the GAO study findings come out that
25 we will review them together and see how they can be incorporated

1 into a final rule.

2 Mr. Wheeler. And I hope that what we are doing is in the
3 process right now building a record.

4 Ms. Clarke. I hope so, too. But I am talking about the GAO
5 study. I am very specific about what I am looking at.

6 Mr. Wheeler. Yes.

7 Ms. Clarke. Okay, very well. Thank you. On June 27th, you
8 circulated a fact sheet describing an item provided in response
9 to the Third Circuit's remand in the wake of the Prometheus
10 decision. Five minority ownership proposals suggested by MMTC
11 were excluded, including the extension of the MVPD procurement
12 rule to all communications platforms, a rule introduced in advance
13 by my colleague, Congressman Rush.

14 Would you be willing to commit to the extension of this rule
15 across all platforms recognizing industry convergence? I think
16 this is one of the things that has become self-evident through
17 this process.

18 Mr. Wheeler. There is a real challenge that we face under
19 the Supreme Court's strict scrutiny standard.

20 Ms. Clarke. I am clear on that.

21 Mr. Wheeler. And the ability to get through that standard
22 becomes a threshold to all of this. If there is a way that you
23 think that that could be done, I am interested.

24 Ms. Clarke. Let us talk about that. Chairman Walden --
25 Chairman Lance, I would like unanimous consent to submit a letter

1 for the record signed by myself, Congressman Rush, and Congressman
2 Butterfield to Chairman Wheeler requesting the extension of the
3 MVPD procurement rule to all FCC regulated entities.

4 Mr. Lance. Without objection.

5 Ms. Clarke. Thank you. Finally, Mr. Chairman, you have
6 noted that the media and telecom ecosystems are converging
7 rapidly. Leading the way in this convergence is advertising
8 whose messages cut across media platforms from AM radio to
9 wireless apps to everything in between.

10 When the FCC banned discrimination in ad placement in 2008,
11 the agency recognized how critical advertising is in facilitating
12 the diversity of voices and ownership. Under the current
13 statutory authority, it appears that the Commission can ask the
14 industries it regulates for information on the use of
15 minority-owned advertising agencies and their current status with
16 minority owned media ad placement.

17 Would you be willing to make such an information request of
18 both the agencies you regulate and edge providers to provide the
19 results to members of this subcommittee within 90 days of today's
20 hearing?

21 Mr. Wheeler. Thank you, Congresswoman. I am not familiar
22 with the specifics, so a blanket yes ma'am, but I would like to
23 learn more and see what can be done.

24 Ms. Clarke. Very well. Chairman Wheeler, I will also be
25 submitting to the record follow-up questions regarding the

1 Commission's movement on secondary market transactions for
2 minority owners. Having said that, Mr. Chairman, thank you.

3 Mr. Lance. Thank you very much, Congresswoman. I will
4 recognize myself for 5 minutes.

5 I am pleased to see that we are discussing 5G technology.
6 Just yesterday, Verizon Wireless in the district I serve in
7 Basking Ridge, New Jersey, announced that it had completed its
8 5G radio specification, the first U.S. carrier to do so and I look
9 forward to working with all of the members of the Commission and
10 the members of this committee on this issue.

11 For Commissioner Pai, with all of the convergence going on
12 in the communications industry and the Internet ecosystem, policy
13 makers strive to make laws and regulations that are technology
14 neutral so as not to disadvantage one company over another in the
15 marketplace because competition among firms on a level playing
16 field is, in my judgment, beneficial to all consumers.

17 If the FCC applies a certain set of rules to ISPs that differ
18 significantly from the rules that apply to other participants in
19 the Internet ecosystem, would that be considered technology
20 neutral?

21 Mr. Pai. Congressman, I do not believe it would be
22 considered technology neutral.

23 Mr. Lance. And do you believe that this is a possibility
24 moving forward?

25 Mr. Pai. It is not only a possibility, the FCC itself

1 recognized that in paragraph 130 of the privacy NPRM.

2 Mr. Lance. Thank you. Commissioner O'Rielly, would you
3 like to comment on that, please?

4 Mr. O'Rielly. I agree, I don't believe it is technology
5 neutral and I think that is the path we are headed for.

6 Mr. Lance. Thank you. For Commissioner Pai as well, and
7 also Commissioner O'Rielly, one of the foremost concerns of
8 consumers today are Caller ID spoofing calls and I have worked
9 on this issue, scammers using IP-based technology to spoof the
10 phone number, the name and pose as a legitimate financial
11 institution or law enforcement agency to scam consumers and
12 Congressman Barton raised this as well.

13 It is my understanding that there is an effort underway among
14 service providers and third parties with directory listing
15 information to develop a protocol to verify the Caller ID
16 information before sending the call to consumers. This protocol
17 relies on the sharing of data. Under the FCC's proposal if we move
18 to an opt-in consent regimen, there are concerns that this effort
19 could be undermined. Would you please comment, Commissioner Pai?

20 Mr. Pai. Thanks for your question, Congressman. I think
21 this highlights part of the problem. One of the unintended
22 consequences of the FCC's intended approach by diverging from what
23 the Federal Trade Commission previously had done apply more of
24 a consumer-based approach, the FCC has highly-prescriptive
25 regulations that would single out certain players in the echo

1 system for disparate regulation. I think one of the harms could
2 be to consumers in that regard. And that is part of the reason
3 why the FTC staff itself recently commented to the FCC that this
4 two track privacy scheme that is in development is something that
5 is not going to benefit consumers in the long run.

6 Mr. Lance. Commissioner O'Rielly?

7 Mr. O'Rielly. I would agree. I think the unintended
8 consequence that you highlighted gets to the point of the rush
9 to judgment. We are trying to move this expeditiously to finish
10 by the end of this term, the end of this year. This is a very
11 sensitive topic. It is a very complicated topic and it should
12 be done on a timeline such as that.

13 Mr. Lance. Thank you. There are constituents of mine as
14 well as just about everyone here on the dais and we have petitions
15 pending at the FCC. However, we know that in some cases
16 petitioners can wait years before having a resolution. Former
17 Chairman Emeritus Barton discussed this. This is also true of
18 constituents of mine.

19 What more can be done to clear pending petitions so
20 individuals and businesses who have business before the FCC can
21 have certainty as to what is occurring?

22 Commissioner Pai?

23 Mr. Pai. Thanks for the question, Congressman. My very
24 first speech as a commissioner, I targeted this as an area of good
25 government reform. I think the public expects and deserves to

1 be given an answer. Tell me yes, tell me no, but just tell me
2 something.

3 One thing we can do that I teed up 4 years ago was apply
4 Section 7 more vigorously which requires the FCC to rule on
5 applications for new products and services within a year. It is
6 essentially a dead letter for many years at the FCC. We should
7 impose more deadlines on ourself and I think we should also impose
8 more sunset clauses so that regulations don't persist well past
9 their due date. They have to be revisited every now and then.
10 And those are the kinds of things on a bipartisan basis that would
11 ensure that every member of the American public gets an answer
12 that is responsive and that matches marketplace reality.

13 Mr. Lance. Mr. O'Rielly?

14 Mr. O'Rielly. I would agree with my colleague's comments.
15 I would also say that in the legislation that this committee has
16 addressed, it would require us to set deadlines on a number of
17 things in the petitions. We can move that without -- we can do
18 that ourselves. It would be helpful to have legislation. I am
19 supportive of that, but we can do that notwithstanding and I would
20 like to see us do so.

21 Mr. Lance. Thank you very much. I yield back the balance
22 of my time and I recognize Congresswoman DeGette.

23 Ms. DeGette. Thank you, Mr. Chairman. I just want to
24 clarify a couple of things that we have been talking about this
25 morning. The first one is this set-top box proposal and the

1 alternatives that have been proposed. One of my big concerns as
2 the co-chair of the Privacy Caucus with Mr. Barton is protecting
3 consumer privacy.

4 And so Chairman Wheeler, I just wanted to ask you
5 irrespective of what path the set-top box final rules goes, does
6 the FCC plan to retain enforcement authority over any violations
7 of Section 631 and 338?

8 Mr. Wheeler. Yes, ma'am.

9 Ms. DeGette. Thanks. The second area I wanted to talk
10 about very briefly is this lingering discussion of waste, fraud,
11 and abuse in Lifeline. Always I hear -- I have been in Congress
12 now for a while I always hear people criticize waste, fraud, and
13 abuse. This is certainly something we can agree on on a
14 bipartisan basis. Nobody wants to see waste, fraud, and abuse.
15 We are opposed on a bipartisan basis to waste, fraud, and abuse.
16 I think it is important to get that on the record and so when I
17 hear people like Commissioner Pai talk about waste, fraud, and
18 abuse in the system, I take that seriously and I think that we
19 should all talk about this investigation and these findings and
20 is it true and what are we going to do about it?

21 And so Chairman Wheeler, I thought I might give you the
22 opportunity to talk about some of the actions that the FCC has
23 taken either during or before your tenure to combat fraud, waste,
24 and abuse, and is this an issue that you take seriously moving
25 forward?

1 Mr. Wheeler. Thank you very much, Congresswoman, and yes,
2 it is hard to understate the seriousness of something like this
3 for two reasons. One, as has been pointed out, this is the
4 people's money.

5 Ms. DeGette. Right.

6 Mr. Wheeler. But two, if waste, fraud, and abuse is being
7 used to compromise the ability of individuals who deserve to have
8 connectivity and to threaten the program than it is worse, even
9 worse.

10 This is a program -- we are existing in an environment where
11 technology is moving ahead and people are falling behind. We must
12 be vigilant. What we have been doing, as I said before, is playing
13 whack-a-mole on this, that there was a design for the program that
14 said we will let the fox guard the henhouse, that we are going
15 to count on self-certification from those who get the money to
16 say yes, this is a real person, yes, this is a good address,
17 etcetera. That is the way the program was designed at the outset
18 and we spent the last 8 years playing whack-a-mole trying to beat
19 those down as new attacks on that pop-up.

20 Ms. DeGette. So that is great. I am glad you recognize,
21 as I do that this is a problem. Can you give me some concrete
22 examples about what the Commission is doing and also maybe respond
23 a little bit to what Commissioner Pai said in about 30 seconds?

24 Mr. Wheeler. As Commissioner Pai said we just had a \$51
25 million judgment against a company called Total Call Mobile which

1 was engaged in virulent fraud. We have actually shut them down
2 so that they are not getting any funds going forward now.

3 Because this is a law enforcement issue, I can't give you
4 specifics other than to say that both the Enforcement Bureau using
5 civil means and the Inspector General of the Commission working
6 with the Justice Department and the FBI for criminal prosecution
7 are moving forward and have identified over a dozen specific
8 instances where you need to be going after.

9 Ms. DeGette. Thanks, and if you could please supplement
10 your testimony today to tell me what processes the Commission is
11 putting into place within its network to prevent fraud, waste,
12 and abuse?

13 And Commissioner Rosenworcel, since it is your birthday, I
14 just have to ask you one question. How do you think that the
15 expansion of broadband to the Lifeline Program will help close
16 the homework gap that you talked about in your testimony?

17 Ms. Rosenworcel. Thank you. If you don't have access to
18 modern communications today, you don't have a fair shot at
19 prosperity in the 21st century. And that is especially true for
20 school children. Pencil and paper doesn't cut it any more. So
21 what we can do with Lifeline could make a big difference for
22 students by giving them the connectivity they need to simply do
23 their homework.

24 Ms. DeGette. Thank you. Thank you very much, Mr. Chairman.

25 Mr. Lance. Thank you very much. The chair recognizes Mr.

1 Scalise.

2 Mr. Scalise. Thank you, Mr. Chairman. I first wish you
3 Happy Birthday, Commissioner Rosenworcel. I promise not to ruin
4 it by singing to you. I couldn't imagine where else you would
5 rather be than on your birthday than here.

6 I really appreciate all the Commissioners coming to talk
7 to us about a number of things that we are interested in that I
8 think people across the country are interested in in relation to
9 the decisions that the FCC is considering in making.

10 I do want to applaud Congressman Shimkus' comment that it
11 is long past time to consider rewrite of the '96
12 Telecommunications Act. I have been talking about this for a long
13 time. I would be remiss if I didn't bring up the fact that this
14 was the mobile telecommunications device, the last time our laws
15 were written. And today, when we do so many new and innovative
16 things on this device, we are still governed by the laws that were
17 available when this device was the main smart phone. And we do
18 need to change those laws.

19 As we consider some of those changes, I have also been
20 critical of the '92 Cable Act and the need to update that. I think
21 at the time they were really good laws that some of the people
22 that wrote those laws are here in this room and they were very
23 valid and modern when they were written, but it is our
24 responsibility to go and identify those areas where we need to
25 modernize.

1 And I have also been very careful to point out that as we
2 are modernizing those laws, we need to respect copyright law. The
3 basic idea that somebody that created content ought to be
4 compensated for the negotiations that occur and how that content
5 is best distributed. And that brings me to the latest proposal
6 that the FCC is considering dealing with set-top boxes.

7 And I would be remiss if I didn't bring more modern
8 technology, and so when you look at this set-top box which is
9 actually being used today in the marketplace, I would hope that
10 we don't look at it under the prism that we have got to figure
11 out a way to make this device the main source of content
12 distribution for consumers and again, I will go to the more modern
13 device that I use. I can literally stream and am streaming ESPN
14 right here on this app on my smart phone. I will be in person
15 when LSU plays Wisconsin and the Speaker and I are going to have
16 a difference of opinion when the Tigers beat the Badgers in Lambeau
17 Field, but if you are not there, you could actually watch the game
18 live on this device. And so it is incredible how much innovation
19 has occurred in the marketplace. And a lot of it is through the
20 app-based world. And I would hope that we don't force the one
21 size fits all as we are looking at the different approaches.

22 I do want to ask you, Chairman Wheeler, the Motion Picture
23 Association of America had submitted a comment, as many have, on
24 the set-top box. In their reply, they had sent you a comment and
25 said, "Our ask is straight forward. That in seeking to ensure

1 set-top box competition, the FCC not give third parties our
2 content without our permission and without compensation, not put
3 our content at risk of theft, and not threaten the economics
4 underpinning the creation of programming that is fostering a
5 second Golden Age of Television."

6 So what I want to ask you is have you started looking closer
7 maybe at different alternatives including app-based technologies
8 as opposed to just looking at different ways to distribute through
9 this archaic device, as the industry is looking at different
10 innovations that are even more convenient for consumers like this.

11 If you could share that with me and I would like to ask some
12 of the other commissioners as well.

13 Mr. Wheeler. Thank you, Congressman. Yes, the answer to
14 your question is yes. I loved your show and tell here.

15 Mr. Scalise. All of this will be in a museum. This is
16 actually a lot more valuable than when I bought it a few years
17 ago.

18 Mr. Wheeler. And it is even beyond this. I mean I just read
19 that Pokemon is back on an app of all things. So that is how
20 rampant the changes are. But let me be specific to your question.

21 The set-top boxes are not going away. I learned an
22 interesting thing the other day in Business Week, an article about
23 Comcast, that they are delivering 40,000 set-top boxes a day. And
24 this of their X1, their latest whiz-bang. So set-top boxes are
25 not going away.

1 Mr. Scalise. And I have seen some great innovations --

2 Mr. Wheeler. And these apps are important.

3 Mr. Scalise. And these companies compete against each other
4 and I don't want us to be interfering with their competition.

5 Mr. Wheeler. And apps are very important and one of the
6 concerns that we are trying to learn in the proposal that NCTA
7 put forward, for instance, is that there are those who are
8 suggesting that the way in which they are structuring their apps'
9 proposal, actually requires a new gateway for every television.
10 That is a second box. This committee has told us a lot about how
11 much you don't like second boxes.

12 So we are trying to work our way through this. I am
13 encouraged that we will be able to get through it. I have lived
14 through all of those evolutions up there and I know that we will
15 -- none of them were easy and we will continue to work through
16 it, but we are going to be in serious discussions as to how do
17 we make sure that we have a solution that follows the statute and
18 offers consumers choice both in hardware and software.

19 Mr. Scalise. And I know I am out of time. I wanted to ask
20 Commissioner Pai about privacy. I will submit that for the
21 record, just on expectation of privacy and you have been pretty
22 vocal about that in the past.

23 Mr. Pai. Well, thanks, Congressman. I personally embrace
24 the twin goals that the White House set forth in the 2012 Privacy
25 Report that consumers should have a uniform expectation of privacy

1 and that there should be a level playing field with respect to
2 all providers in the Internet ecosystem. And those are the twin
3 goals that I will carry forward in this proceeding.

4 Unfortunately, the FCC's proposal right now singles out
5 Internet service providers for disparate regulation despite the
6 fact that they are nascent players in the online advertising
7 market and that is part of the reason why we have seen, for example,
8 around the administration's first FTC chair, Jon Leibowitz,
9 suggests that this type of disparate regulation would not be good
10 for consumers in the long run.

11 Mr. Scalise. Yes, different standards. I appreciate it,
12 Mr. Chairman. I yield back.

13 Mr. Lance. Thank you very much. The chair recognizes
14 Congresswoman Matsui.

15 Ms. Matsui. Thank you, Mr. Chairman. I want to thank the
16 Commission for appearing before us again. It is great to see you.

17 Mr. Chairman, I know you all, all of you, appreciate the need
18 for greater access to spectrum to fuel our wireless economy. The
19 FCC has done a lot of important work in this area. The incentive
20 auction, as you say, is under way and I was encouraged to see the
21 FCC identify an ambitious clearing target, so congratulations.

22 There is ongoing work to identify government spectrum for
23 commercial use. I appreciate the FCC started a proceeding on the
24 1675 to 1680 megahertz which Representative Guthrie and I wrote
25 to you about along with many of our colleagues. I look forward

1 to continuing to work with you to bring that spectrum to auction.

2 And later this week, the Commission is voting on the spectrum
3 frontiers proposal to open up high frequency bands for 5G, the
4 next generation of wireless broadband. This is all progress and
5 there is more to do if we want the United States to continue to
6 lead the global wireless economy.

7 Chairman Wheeler, as I said, this is all progress. Can you
8 elaborate on our broader strategy to ensure that the United States
9 will continue to lead the world in 5G and I have additional
10 questions for you, too.

11 Mr. Wheeler. Thank you, Congresswoman. I will be really
12 brief then. What we hopefully are going to do on Thursday is to
13 become the first nation in the world to identify high band spectrum
14 for 5G. And that coupled with what we have already done in low
15 band and what we have already done in mid band, puts this country,
16 its manufacturers, its entrepreneurs and innovators, it gives
17 them a home field advantage. And that, I truly believe, and I
18 was saying to one of my colleagues yesterday, the decision we make
19 Thursday could actually be the most important decision this
20 Commission makes this year.

21 Ms. Matsui. That is great. Chairman Wheeler, as you know,
22 I am very interested in how we improve spectrum efficiency and
23 spur innovation so that we can maximize the benefits of this finite
24 resource. We often talked about this in the context of mobile
25 phones and wireless carriers. But innovation is important for

1 all spectrum uses including over-the-air broadcasting. I know
2 that a coalition including public broadcasters and consumer
3 electronics manufacturers have submitted a proposal for next
4 generation TV standard which could allow broadcasters to innovate
5 within their existing spectrum. I understand the FCC has sought
6 comment on that proposal.

7 Mr. Chairman, what are the next steps as the FCC considers
8 this proposal and will you take further action this fall?

9 Mr. Wheeler. Thank you, Congresswoman. I don't know
10 exactly where we are on being able to commit to it this fall kind
11 of agenda. The record has just closed on this. We are in the
12 process of working our way through it. Then, of course, we will
13 be meeting serially and ad nauseam with all of the players to try
14 and collect the basic information to be able to have an informed
15 decision going forward.

16 Ms. Matsui. Thank you very much. And let me just say that
17 I really want to comment on Lifeline. I am very passionate about
18 it and I know other commissioners are passionate about it. I just
19 really feel that this is so important for not only connectivity,
20 but the fact of the matter is that there are so many people in
21 our country who are unserved and under served in both rural and
22 urban areas. In order to bring us to a point where economically
23 we could really be competitive, we need to make sure that everyone
24 participates. So I encourage all of you to proceed further
25 because I think this is an area where we really need to ensure

1 that we make a lot of progress. And I do thank you for everything
2 you are doing and I yield back. Thank you.

3 Mr. Lance. All right. Thank you. We will be adjourning.
4 We have a vote and we will be back. The chair has announced that
5 we are in adjournment. Thank you.

6 [Whereupon, at 12:26 p.m., the subcommittee recessed, to
7 reconvene at 12:48 p.m., the same day.]

8 Mr. Lance. The committee will reconvene, ladies and
9 gentlemen. The chair recognizes Mr. Kinzinger of Illinois.

10 Mr. Kinzinger. Thank you, Mr. Chairman. Thank you all for
11 being here and bearing with us on the votes and schedule.

12 Mr. Chairman, I have a very rural district that is served
13 by a number of companies that specializes in providing services
14 such as power distribution into areas with unique infrastructure
15 needs. In my district, there is about 50,000 people served by
16 rural electrical co-ops who provide safe and reliable services
17 on a continuous basis. The issue of those co-ops have brought
18 forward to your Commission and into my office is the timely
19 distribution of information when you have service-related
20 outages, interruptions, maintenance issues, things like that, and
21 how that could -- anything that basically could negatively affect
22 the consumer.

23 As I am sure you are aware, I am talking about the TCPA
24 regulations that were first introduced two decades ago before the
25 advent of majority of the technology we use today was invented.

1 Are you aware of the petition filed by Edison Electric
2 Institute and the AGA requesting expedited action by your agency
3 by a utility-specific exemption from parts of TCPA regulations?

4 Mr. Wheeler. Yes, sir.

5 Mr. Kinzinger. Have you met with representatives of the
6 industry to hear their concerns, who are my constituents, their
7 views on the importance of service related text messages, phone
8 calls, that they want to receive regarding outages, maintenances,
9 and other issues?

10 Mr. Wheeler. I haven't met with them directly, sir. My
11 staff has.

12 Mr. Kinzinger. Okay. Do you have any plans for responding
13 to the petition or a time frame?

14 Mr. Wheeler. I put a proposal on the floor in December.

15 Mr. Kinzinger. Okay. Do you have any idea on timing beyond
16 the staff?

17 Mr. Wheeler. It is up to them. Mr. Kinzinger. Do you
18 have more to add?

19 Mr. Wheeler. Commissioner Rosenworcel is now telling me it
20 was adopted.

21 Mr. Kinzinger. Okay, great. Commissioner O'Rielly, could
22 the FCC have set up an enforcement regime modeled after the FTC's
23 enforcement regime? And is there any way that the two agencies
24 could have worked out an enforcement regime that took better
25 advantage of the FTC's expertise?

1 Mr. O'Rielly. I think you are getting into the issue of
2 privacy. I think there was an opportunity and still is an
3 opportunity to work in cooperation with the FTC. I think the path
4 that we are headed down though would not allow that. Hopefully,
5 we will change course. I am not too optimistic at the current
6 time.

7 Mr. Kinzinger. Can you talk just a little about I guess
8 about the benefits of their expertise and --

9 Mr. O'Rielly. So the FTC has been working on privacy 15 plus
10 years. I worked on it when I was a staff member here and oversaw.
11 They built an extensive backhaul of material. They have hundreds
12 of people working on the issue.

13 Compare that to the FCC, we have maybe 15 people working on
14 it. And our experience is this narrow in terms of what the scope
15 is and also how long we have been working on it. So I would argue
16 that we should adapt and adopt a lot of the approach from the FTC.
17 They have a different statute that governs their operations than
18 us. It is an enforcement model structure, but they have been able
19 to get to a place that provides, I believe, and I think most people
20 that operate in the space, privacy protections for consumers and
21 ensures that the privacy is treated fairly without jeopardizing
22 the Internet and the Internet experience.

23 Mr. Kinzinger. It would seem to make sense to learn from
24 what other agencies have done as we implement it. Let me ask you
25 another question, different subject. This committee spent a

1 great of time considering infrastructure issues. As we move
2 towards 5G, infrastructure becomes both more important and more
3 complicated with networks running on many, many small cells
4 instead of the more traditional macro towers.

5 Can you tell us what the Commission is doing to enable the
6 infrastructure deployment, and particularly, can you give us a
7 status update on this proceeding regarding distributed antenna
8 systems?

9 Mr. O'Rielly. Sure, the chairman may be better to answer
10 your last part as to the status. I only have so much say in the
11 activities of the Bureau, but I have been pushing the agency to
12 move a number of items that would allow greater infrastructure
13 buildout. There is going to be more need for buildout. People
14 are talking of it being ten times the number in terms of macro
15 cells compared to the small cells, so to try and build that
16 infrastructure, it is going to be smaller, but you are going to
17 need more of them. You are going to need to get backhaul to them.
18 You are going to need to get power to those sites and that is a
19 very difficult universe.

20 We have a number of localities who we believe in federalism,
21 but we have a number of localities that have been problematic in
22 terms of allowing infrastructure builds. We have been trying to
23 build best case scenarios, but we also have worst case scenarios
24 and we are trying to use the authority that we have that Congress
25 has granted us to push those localities to allow greater

1 infrastructure because in the same breath that we will hear from
2 a mayor that my citizens want broadband. At the same time they
3 will say but we don't want you to build. It is a push-pull. And
4 so we are obligated to try and make available Internet access and
5 broadband.

6 Mr. Kinzinger. Sounds like politics. With that I will
7 respect the time and yield back. Thank you.

8 Mr. Lance. Thank you very much. The chair recognizes Mr.
9 McNerney of California.

10 Mr. McNerney. I thank the chairman. I want to thank the
11 Commission for your hard work. I mean this is interesting, but
12 it is complicated and sometimes controversial, so I appreciate
13 your work on this.

14 I am glad to hear that the chairman of the subcommittee and
15 the ranking member are interested in the wireless microphone
16 licensing issue and I offer to work with anyone on that.

17 Chairman Wheeler, regarding set-top boxes, one of the goals
18 outlined in an FCC fact sheet about your initial proposal was
19 better prices for customers. This goal is especially important
20 for customers in my district which has high unemployment and high
21 poverty rates. Are better prices for consumers still a priority
22 considering the apps-based approach?

23 Mr. Wheeler. Thank you very much, Congressman. You know,
24 set-top box forced rentals because you really have no choice, have
25 been going up at about five percent a year every year like

1 clockwork. And so yes, it is a very serious concern. And one
2 of the reasons why I believe the Congress mandated that we have
3 a competitive -- we assure that there is a competitive set-top
4 box, or navigation device which is what the language uses, was
5 for that very reason because competition has the effect of having
6 an impact on lowering prices.

7 Mr. McNerney. It should any way.

8 Mr. Wheeler. It should.

9 Mr. McNerney. Commissioner Clyburn, do you believe that the
10 adoption of the apps-based approach could in any way disadvantage
11 low-income consumers?

12 Ms. Clyburn. I believe that the direction in which we are
13 headed and the proposed regime and the outcome that all of that
14 envisions should bring overall net benefits to all in terms of
15 a more openness, more competition, adherence to Section 629.

16 And again, we are keeping in mind all of the privacy,
17 security, and other protocols that is without question as a
18 baseline, but what we want is more options. What we want is more
19 affordability. What we want is more competition and more people
20 having access and I think that is the direction in which we are
21 headed.

22 Mr. McNerney. Well, I hate to ask a procedural question,
23 but going to apps-based approach, is there going to be another
24 new Notice of Proposed Rulemaking?

25 Mr. Wheeler. I think the notice that we put out is broad

1 enough at this point in time to be able to justify it because we
2 asked for what are other approaches to the whole.

3 And certainly there is a record developing on this, sir, so you
4 can't say that there wasn't a record.

5 Mr. McNerney. Moving on to Lifeline, I would like to thank
6 Mr. Pai for acknowledging the difference between potential
7 widespread fraud and widespread providers. I encourage you to
8 keep that distinction in mind as we move forward.

9 Mr. Wheeler, the Lifeline Program is a critical resource in
10 my district. More than 56,000 households participate. How
11 would capping the budget for Lifeline Program impact the Lifeline
12 recipients?

13 Mr. Wheeler. Thank you, Congressman. What it does is it
14 disincentivizes the offering of service because if you look at --
15 you need to be able to say to someone who is going to provide
16 service you can count on \$9.25 a month because you have got to
17 amortize equipment, you have to worry about all of the expenses
18 associated with this and you can count on that kind of a cash flow.

19 If you say well, it is \$9.25 today, but tomorrow, could be
20 \$6, then you create an economic disincentive to be offering the
21 service. So what we tried to put in place was a budget that said
22 okay, when you get to 90 percent of this number, then it is time
23 for the Commission to come back and revisit what is going on. How
24 do you put a mechanism in there? We don't want things just go
25 whacko here, but how do you put a mechanism in first control while

1 creating incentive at the same time?

2 Mr. McNerney. Moving on to the 911 technology issue, how
3 do you see the FCC gaining the authority that you feel you need
4 to move forward with adapting the new technology?

5 Mr. Wheeler. I think this committee is in charge of that
6 question, sir, with all due respect.

7 Mr. McNerney. Okay. Good. I have 18 seconds, so Mr.
8 Wheeler, I am interested in the privacy issue as well. If the
9 Commission allows paper privacy practice in moving forward with
10 this rulemaking, how will it ensure that the costs of incent of
11 Internet service is not inflated so that consumers are forced to
12 accept the discount in order to use that to keep their information
13 from being --

14 Mr. Wheeler. Thank you, Congressman. Excellent question.
15 So I think that everybody agrees that privacy isn't a luxury. You
16 can kind of start there. And as your question indicates, this
17 is a very complex issue, and so we specifically called it out in
18 our rulemaking and said can we please have everybody's thoughts
19 on what the best way is to do it. I haven't got an answer for
20 you yet, but we are searching for it.

21 Mr. McNerney. Thank you, Mr. Chairman.

22 Mr. Lance. Thank you very much. The chair recognizes Mr.
23 Bilirakis of Florida.

24 Mr. Bilirakis. Thank you, Mr. Chairman. I appreciate it
25 very much and I want to thank the panel for their testimony today.

1 Welcome.

2 Like many of my colleagues on both sides of the aisle, I think
3 it is imperative for you to listen to the chorus of concerns for
4 your set-top box NPRM and embrace the apps-based approach that
5 won't shackle the industry to a hardware-dependent model moving
6 forward.

7 My constituents and I are also concerned about the likelihood
8 of confusion that will grow exponentially with your new ISP
9 privacy proposals under our Title II. It does not make a lot of
10 sense to me to regulate Internet service providers under one new
11 set of untested rules and allow everyone else to continue under
12 the successful FTC privacy standard.

13 My constituents want to be sure that their important
14 information is security protected online at all times. The best
15 way to ensure this is to consistently apply uniform standards to
16 all of their information so they don't have to worry that their
17 information can be treated differently depending on who they are
18 providing it to.

19 This recent trend towards differentiating between types of
20 companies that can potentially compete against one another in the
21 free market is a troubling regulatory development in my opinion.
22 I want to follow up on a matter that we have discussed in the past
23 few meetings regarding the FCC field offices, Mr. Chairman.

24 I along with many of my colleagues from both sides of the
25 aisle were concerned about the impact of losing the fields' boot

1 on the ground presence, especially with regard to resolving
2 interference to public safety communications. You have
3 consistently stated the FCC will continue to meet its speed of
4 disposal metric for public safety interference. The FCC will
5 respond to 99 percent within one day and that response is typically
6 an email to the complaint, so I don't really consider that a
7 response.

8 However, you have since disclosed that it takes 28 days, I
9 understand, on average to resolve the interference to end it. In
10 one sentence or less, Chairman Wheeler, has that data point
11 changed since you closed the field offices?

12 Mr. Wheeler. I can't answer that with specificity, sir, but
13 the need to get out and deal with what are the realities in each
14 interference situation, for instance, one of the major
15 interferers is ballast in neon bulbs. So I remember a situation
16 where our inspectors go and knock on a beauty shop door and they
17 have no idea what is going on. How do you find it in here? It
18 becomes an ongoing extensive process to get through it, but I can't
19 -- I'll try to find what the answer is to your question, but I
20 don't know it off the top of my head.

21 Mr. Bilirakis. Please get that to us as soon as possible.
22 Again, members from both sides of the aisle are interested in this,
23 our constituents come first.

24 So moving on, Commissioner Pai and O'Rielly, a European
25 commentary recently asserted that rather than move towards the

1 type of harmonization our privacy rules achieved in Europe, the
2 FCC's proposal and I quote "seems to be instead moving towards
3 fragmentation and more prescriptive rules for Internet service
4 providers versus other Internet companies including some of the
5 largest users of personal data."

6 She indicated that "from European eyes, it appears strange
7 to see the U.S. normally a leader on digital issues taking this
8 apparently retrograde step."

9 Now that the privacy shield agreement was formally approved
10 earlier today, what does it mean for Europe to have harmonized
11 privacy standards and transatlantic reliance on the FTC model
12 whereas domestically the FCC rules could lead to fragmentation
13 of our privacy regime? Whoever wants to take it first.

14 Mr. Pai. Congressman, thanks for the question. Those
15 concerns are shared domestically included by myself and I think
16 part of the reason why the privacy shield was notable was that
17 it is backed up by Federal Trade Commission enforcement and the
18 U.S. Commerce Department represented to the European Union that
19 FTC enforcement was an adequate way to ensure that at least
20 domestically those privacy protections would be upheld.

21 Unfortunately, I think what the FCC has done according to
22 the FTC's own staff comments it is carved out for special and more
23 onerous regulation Internet service providers and so as you
24 pointed out in your question we now have a two-track regime.
25 Ironically, the new competitors in the online advertising market

1 apparently will face more onerous regulation than everybody else
2 who will face FTC regulation. And I think that is something that
3 ultimately will redound to consumers' detriment.

4 Mr. Bilirakis. Commissioner O'Rielly?

5 Mr. O'Rielly. I would agree with my colleague's comment.
6 I hate to admit it, but it looks like Europe is taking a more
7 thoughtful approach than the United States on this issue.

8 Mr. Bilirakis. Thank you. Commissioner Pai -- oh, I know
9 there is not much -- can I have 30 seconds?

10 Mr. Lance. Certainly.

11 Mr. Bilirakis. Thank you very much, Mr. Chairman, I
12 appreciate it.

13 Commissioner Pai, what is so unique about the Lifeline aspect
14 of the Universal Service Program where a basic fiscal
15 responsibility measure like a firm budget cap is still not applied
16 to a program with such a storied history by some, not all, of the
17 participants in the Lifeline Program?

18 Mr. Pai. Thanks for the question, Congressman. I think the
19 Lifeline Program like all of the Universal Service Programs are
20 focused on one things, supplying digital opportunities to
21 Americans who otherwise might not have them. And that is part
22 of the reason why I think it is so important for the FCC to be
23 a wise fiscal steward of all of the dollars that taxpayers put
24 into that fund.

25 Part of the reason why I supported a budget is that it was

1 the only one of the four Universal Service Fund programs that
2 wasn't budgeted. I think it tends to promote more wise and
3 careful spending to make sure that those dollars go to the people
4 in need and I think that is something that all of us can agree
5 on.

6 Mr. Bilirakis. Definitely. Thank you very much. I
7 appreciate it. I yield back, Mr. Chairman.

8 Mr. Lance. Thank you very much. The chair recognizes Mr.
9 Yarmouth of Kentucky.

10 Mr. Yarmuth. Thank you very much, Mr. Chairman, and I very
11 much appreciate this hearing. I am not sure I could have gone
12 another 2 months without an FCC fix.

13 [Laughter]

14 And I would also like to agree with Mr. Shimkus and Mr.
15 Scalise about, I think, the desirability of rewriting the act,
16 although I might suggest that it is going to be a lot harder given
17 the pace of change in this field, it is going to be a lot harder
18 than it was in '96 and certainly a lot harder than '34.

19 I know you have all heard me say before, we are talking about
20 the pace of change that innovation is requiring companies to make
21 investments to support user demand. Just last weekend in my
22 district it was reported that AT&T has finally built out their
23 fiber footprint and it is great. It is great for my constituents
24 and I know it has been said many times in this hearing already
25 how important this is for the country and I commend the Commission

1 on its work in expanding broadband so everyone can participate
2 in the economy.

3 That being said, the way we receive content from
4 broadcasters, radio, and newspapers is changing rapidly and I
5 remember when I was growing up we had two television stations in
6 Louisville, two radio stations that reported news, and two
7 newspapers that were owned by the same company that owned one of
8 the television stations and one of the radio stations, so I really
9 understood the -- I would have understood the need for cross
10 ownership regulation at that point. But now in today's world and
11 I come from a media background. I owned a newspaper. My son now
12 owns a newspaper which he is also doing broadcasting. Every
13 broadcaster is doing print media. They are not doing it in
14 newsprint. But they are doing it on line.

15 Pew Research said 62 percent of Americans now get their news
16 from social media. I saw a Nielsen report a couple of weeks ago,
17 among Millennials, only 24 percent watched any television last
18 year and I actually validated that with a group. I was with 30
19 Yale students. I said how many of you watch television this year.
20 Everybody raised their hand. I said how many of you watched the
21 television set? Two raised their hand.

22 So as I think of all this, I am wondering and I read the fact
23 sheet, the update on the Commission's plans on cross ownership
24 rules. And I know Mr. O'Rielly, you have been outspoken about
25 your opinion that we don't need it, we don't need them. I noticed

1 in that update it says that the rule will reinforce the idea that
2 is necessary in the public interest. So I am kind of curious in
3 the 2 minutes and 20 seconds I have left, let you have a take a
4 shot first for a minute as to why you don't think they are necessary
5 anymore and then I would like to have somebody who believes, can
6 explain to me where the public interest benefits from?

7 Mr. O'Rielly. So I haven't said to eliminate. There is
8 five rules with different parts to each one. So I haven't said
9 to eliminate them in total. There are definitely paths that I
10 want to see us recognize that we should modernize. You highlight
11 the experience of newspapers. The newspaper industry is in a very
12 troubled state, but we are going to maintain -- you will see soon
13 enough our activity on our media ownership rules. I think you
14 are going to find it is even stronger than what is on the fact
15 sheet. It is actually in a more prescriptive and additional route
16 requirements. So I think that is in the wrong direction.

17 But based on where the media is today, where Millennials are
18 taking their information, where consumers are taking their
19 information, where news is being provided, so one of the arguments
20 that I made and this is a point in my testimony is that we can't
21 do anything on television because we have the incentive auction
22 going, but that has no impact on the newspaper/radio side and we
23 make the point that those markets are not the same and they are
24 not competing against each other in the item, so it is hard to
25 me to fathom that we can't at least do some reform over here, but

1 we are not planning to do so. So we are going to lock in the rules
2 for another 4 years or longer and it hasn't changed since 2004.

3 I think that is very problematic given what has changed in
4 that time frame for users' experience, for consumers' experience,
5 and for producers' experience. And I just think that we have to
6 thoughtfully change our rules, modernize them while still
7 respecting localism, competition, diversity, and the public
8 interest. We can do both. We are not doing it in this item.

9 Mr. Yarmuth. Mr. Chairman, do you want to take a shot at
10 that or any of the others?

11 Mr. Wheeler. So thank you, Mr. Yarmuth. You know, I think
12 we have to put this in perspective. This committee was very
13 explicit and the court, Third Circuit, very explicit saying hey,
14 it has been 8 years since you guys have made any kind of decision
15 on this. It wasn't because we weren't trying. It was because
16 there wasn't a majority that would coalesce around an idea.

17 So step one is is there a majority that will coalesce around
18 an idea. Step two is, all of the commissioners have not yet
19 expressed themselves in this proceeding. And are there ways that
20 those two groups can work together on this and I think that is
21 yet to be seen. But the point of the matter is that the reason
22 we took this two-year step is because for 8 years nobody has ever
23 been able to figure out where is something we can all agree on
24 and that is still an item that is very much under discussion.

25 Mr. O'Rielly. We are in the exact same spot as we were

1 before. Nothing is going to change, yet the marketplace is
2 changing before our very eyes.

3 Mr. Wheeler. That is the key thing. The market is
4 changing, even Pokemon.

5 Mr. Lance. Thank you very much. The chair recognizes Mr.
6 Johnson of Ohio.

7 Mr. Johnson. Thank you, Mr. Chairman, and I, too, thank the
8 panel for being with us today.

9 Chairman Wheeler, the FCC recently levied a \$34.5 million
10 fine against a Chinese company for selling equipment that is
11 illegal in the United States, jammers. Did that Chinese company
12 respond to the FCC in the course of the penalty proceeding to
13 defend itself?

14 Mr. Wheeler. I can't answer that with specificity.

15 Mr. Johnson. Can you get back to me on that?

16 Mr. Wheeler. Yes, sir.

17 Mr. Johnson. Okay, do you expect that the Treasury will ever
18 see any of the \$34.5 million fine that the FCC assessed?

19 Mr. Wheeler. I quit hypothesizing some time ago.

20 Mr. Johnson. Let us take a wild guess because I don't think
21 we will. And that being the case, does it not give you concern
22 about the enforcement mechanisms proposed in your set-top box
23 proposal that will likely result in offshore companies
24 manufacturing and selling set-top boxes in the United States?
25 Are you going to have repeats of this kind of thing.

1 Mr. Wheeler. I understand your point. So one of the things
2 that we are -- this is on the table as we work through with the
3 industry, what is the right kind of approach.

4 Mr. Johnson. Do you have concerns about collecting the
5 money and enforcing though with your proposal as it is? I mean
6 if we can't enforce it on China, and you have no certainty that
7 we can, how does your proposal stack up?

8 Mr. Wheeler. So the way the rulemaking works is --

9 Mr. Johnson. I know how the rulemaking works. Do you have
10 concerns about the enforcement mechanism? That is a very narrow
11 question.

12 Mr. Wheeler. And we are trying to resolve those concerns
13 as we go through this process.

14 Mr. Johnson. So you do have concerns?

15 Mr. Wheeler. As we go through this process.

16 Mr. Johnson. Okay, great.

17 Mr. Wheeler. It has been raised in --

18 Mr. Johnson. One of the things that we focused on is the
19 uncertainty that results from poor processes. On May 4th of this
20 year, an opinion and order was released by the Enforcement Bureau
21 in a complaint proceeding. The complaint was filed with the FCC
22 on May 13, 2004. It took the FCC almost 12 years to resolve the
23 complaint. Were you aware of this?

24 Mr. Wheeler. Which proceeding are you speaking of, sir?

25 Mr. Johnson. I can get you that information. I don't have

1 which specific proceeding, but are you aware of that?

2 Mr. Wheeler. I am not aware of that, sir.

3 Mr. Johnson. Okay, I will follow up with questions for the
4 record.

5 Mr. Wheeler. Great. Thank you.

6 Mr. Johnson. Also, Chairman Wheeler, you recently
7 submitted the FCC's management report on Inspector General and
8 other audit reports to the committee. The report discloses that
9 in March of last year the IG issued a report on the FCC's management
10 of civil monetary penalties. I think the IG testified back in 2014
11 that he was going to do this and that the report found that the
12 FCC had not collected all the penalties and fines that it could
13 have.

14 You reported to this committee that of the IG's 13
15 recommendations, ten remain open. Is that correct? Do I have
16 that number right?

17 Mr. Wheeler. I don't know by the count, sir. I know that
18 we submitted the report to you.

19 Mr. Johnson. Okay, but you reported to us that of the IG's
20 13 recommendations, 10 remain open. Do you know how many of the
21 recommendations still remain open?

22 Mr. Wheeler. No, sir.

23 Mr. Johnson. You do not?

24 Mr. Wheeler. No, sir.

25 Mr. Johnson. Do you have any idea when the remaining

1 recommendations will be closed out?

2 Mr. Wheeler. Working with the IG.

3 Mr. Johnson. Well, there is a lot you don't know today,
4 isn't it? Is your memory failing or what? You don't remember
5 the report and the recommendations? I mean you testified before
6 this committee on these matters.

7 Mr. Wheeler. Yes, sir.

8 Mr. Johnson. Yes, sir to what? You do remember or you don't
9 remember?

10 Mr. Wheeler. I am giving you straight and truthful answers.

11 Mr. Johnson. Well, no, you are saying you don't know. Can
12 you get back to the committee on these things?

13 Mr. Wheeler. Yes, sir.

14 Mr. Johnson. I will turn these questions in as well.
15 Commissioner O'Rielly, you blogged about the FCC's handling of
16 penalties, is that correct?

17 Mr. O'Rielly. That is accurate.

18 Mr. Johnson. Did the chairman's office share this report
19 with you?

20 Mr. O'Rielly. I am not aware of that report, no, sir.

21 Mr. Johnson. You are not aware of the report.

22 How can this be a commission, Mr. Wheeler, Chairman Wheeler,
23 when the report is not even shared with all the members of the
24 Commission? You testified earlier that the majority of decisions
25 are made unanimously among the Commission. How can you make

1 decisions when a critical report like this is not shared with all
2 the members?

3 Mr. Wheeler. No, I think it is shared with the members.

4 Mr. Johnson. He just said it is not. So your opinion
5 differs from theirs.

6 Mr. Chairman, I yield back. We are not going to get to the
7 bottom of this today. Thank you.

8 Mr. Lance. Thank you very much. The chair recognizes Mr.
9 Rush of Illinois.

10 Mr. Rush. I want to thank you, Mr. Chairman. It is always
11 a pleasant time when the Commission comes before the subcommittee
12 and I certainly want to welcome you all to this hearing.

13 Commissioner Clyburn, can you explain to me how does your
14 set-top box proposal requiring pay TV to provide free information
15 for those the device makers when worked with the cable industries
16 ask and fetch model?

17 I heard from many in the cable industry that information
18 flows does not exist in the network and that the FCC's set-top
19 box proposal is impossible to comply with. Do you agree with
20 this?

21 Ms. Clyburn. So again, I am trying to wrap my head around
22 your question. You are saying that there is a charge that our
23 current proposal will not realize -- if you could restate --

24 Mr. Rush. There is no mechanism within the set-top box that
25 will concur or will allow them to get the information that you

1 are requesting from the manufacturers of the set-top boxes.

2 Ms. Clyburn. So one of the things, if I am in sync with your
3 question, one of the things that we are hoping for here is more
4 competition and again, if there are either standards with the
5 current set-top box ecosystem where there is a neutral agree-upon
6 standard by a standard setting body, then I believe if I am
7 answering your question, I am struggling a little bit, so forgive
8 me if I am not understanding. A standard setting body would set
9 the protocols that will enable the manufacturers to be in sync
10 with what the ecosystem or what the protocols are in place. So
11 if I am not reaching --

12 Mr. Rush. I understand that the cable industry is saying
13 that the information that you are requesting that it does not exist
14 in their network and that your proposal that you have before --
15 that you are considering is impossible because there is no way
16 for them to gather the information.

17 Ms. Clyburn. Okay, so one of the things that we are
18 discussing in this particular item is right now 99 percent of
19 individuals rent their -- get their set-top box, rent their
20 set-top box from the particular provider whether it is a cable
21 or a satellite provider.

22 What we are putting forth is whether or not this should be
23 a more competitive regime, a more neutral, possibly a more neutral
24 regime which a lot of people, especially those who are independent
25 programmers are saying would be needed in order for more people

1 to take part. So again, I will follow up with you. I am not sure
2 I am hitting the mark, but that is my --

3 Mr. Rush. I really appreciate your answer. Chairman
4 Wheeler, how did you come to the conclusion or the Commission come
5 to the conclusion that the FCC does not have a basis for
6 instituting race and gender based standard preferences.
7 Specifically, I am interested in what information study was
8 emphasized and was collected to reach this conclusion?

9 Mr. Wheeler. Thank you very much, Congressman. This is one
10 of the most vexing issues that the Commission faces. The Supreme
11 Court in the Adarand decision was very strict in terms of what
12 it said was possible. We have been trying to work our way through
13 that.

14 What we did -- an approach, I can't speak specifically to
15 a specific item at this point in time, but an approach to that
16 is to view things on a revenue basis and how is it that you can
17 provide incentives to small businesses and should the
18 Commission's policies follow that. And also then, how do we do
19 things such as our JSA order which has resulted in an increase
20 in minority ownership of broadcast.

21 Mr. Rush. Mr. Chairman, earlier there was an initial 30
22 seconds granted to a member.

23 Mr. Long. [presiding] Okay, that is fine. We do have a
24 vote, so we need to wrap it up pretty quick.

25 Mr. Rush. I just want to ask a simple question.

1 Commissioner, Chairman, what would be your response to a request
2 for the FCC to review all of the research into the health risk
3 of non-thermal exposure to RF radiation? I am concerned about
4 that because as you know I am a cancer survivor.

5 Mr. Wheeler. Thank you, Congressman. We would be very
6 receptive to the input from the scientific agencies of the
7 government, but for us to say that we are a scientific agency is
8 a stretch.

9 Mr. Rush. Okay. Thank you. I yield back.

10 Mr. Long. I thank the gentleman for yielding back and I now
11 recognize myself for 5 minutes of questioning.

12 Chairman Wheeler, earlier Commissioner Pai was talking about
13 some facts and figures and you referred to them as not -- so-called
14 facts, I think was your term. What I am going to refer to is not
15 so-called, so I would like your response. The FCC's recent
16 enforcement action against Total Call Mobile is the latest example
17 of pervasive and ongoing waste, fraud, and abuse in the Lifeline
18 Program. As part of that proceeding, the FCC directed Total Call
19 to explain why Lifeline payments should not be suspended. Total
20 Call failed to do so and you issued a second order temporarily
21 suspending payments until it does comply. That tells me that in
22 spite of everything Total Call is still participating in the
23 Lifeline Program. What does the FCC have to do to stop paying
24 these companies? And what does the FCC have to do to kick them
25 out of the program?

1 Mr. Wheeler. Thank you, Congressman. We have stopped to
2 put them on notice that from May forward, they are not going to
3 get paid. There are due process issues in here. They have
4 rights. We have to make sure that those rights are followed, but
5 we have, as of middle of June, end of June, I guess, put them on
6 notice that we are not going to be funding.

7 Mr. Long. Okay, because I know that on March 7th which
8 predates the middle of May, you were talking about, they were
9 clearly aware of pending enforcement action for defrauding the
10 program against them. Representatives of Total Call then met
11 with Commission staff that discussed Total Call's development of
12 Lifeline broadband products. They stated their plans on rolling
13 out in California and eventually nationwide. What is the FCC
14 doing to get the ratepayers' money back?

15 Mr. Wheeler. So we have, as I have said, we have told them
16 we will not fund going forward and we have levied a \$57 million
17 action against them.

18 Mr. Long. Okay. Thank you. Commissioner Rosenworcel --

19 Mr. Wheeler. \$51 million, I am sorry. \$51 million.

20 Mr. Long. I thought that is what he said the first time.

21 Commissioner Rosenworcel, the chairman has testified that
22 the FCC is looking at the burdens placed on providers in order
23 to make it easier for carriers to participate in the Lifeline
24 Program. Given the near decade of waste, fraud, and abuse reached
25 over \$1 billion by the chairman's estimate and with the recent

1 enforcement action demonstrating that it continues, wouldn't it
2 be fair for the American consumers and businesses that pay the
3 bills to make it more difficult to ensure that these companies
4 are going to play by the rules? Hasn't the FCC learned anything?

5 Ms. Rosenworcel. Listen, I appreciate the question. I
6 think that Lifeline is an essential program. You don't have a
7 fair shot in the 21st century if you don't have modern
8 communications and frankly, I think that access to data has become
9 the dial tone of the digital age. We are trying to update this
10 program to reflect that and at the same time, get rid of waste,
11 fraud, and abuse. And if we have bad actors, and companies that
12 abuse this program, we should throw the book at them. We should
13 fine them, and we should kick them out of the program.

14 Mr. Long. Okay, Thank you. Chairman Wheeler, if someone
15 is using your credit card illegally and charging \$100 a month,
16 let us say for a year when you discover and stop and stop those
17 payments, do you consider that a savings or so when you stop
18 finding illegal Lifeline subscribers, are they really saving
19 American consumers and businesses that pay into the fund anything?
20 Is there any savings there?

21 Mr. Wheeler. I know that his has been characterized that
22 way. I think the fact of the matter is, Congressman, that there
23 are many things to celebrate here. And that is that offenders
24 were caught. Offenders were prosecuted. And the offenses were
25 stopped and that there continues ongoing investigations both at

1 the criminal level and at the civil level.

2 Mr. Long. Okay, thank you. Thank you for your testimony
3 today. I am going to yield back the remainder of my time and give
4 Mr. Collins the chair and his time seeing as we have a vote, so
5 hopefully we can adjourn instead of recessing and calling you all
6 back.

7 Mr. Wheeler. Thank you, Congressman. The patient Mr.
8 Collins.

9 Mr. Collins. [presiding] Thank you, and just in case,
10 chairman, could I get a note of missing a vote in case I do miss
11 it.

12 Mr. Wheeler. To whom it may concern?

13 Mr. Collins. Yes, give me a to whom it may concern just in
14 case I miss the vote. It is a motion to adjourn which is just
15 a procedural thing. It will vote 430 to 0, so if I do, I do.

16 And you know what, I don't have a question today on pirate
17 radio.

18 Mr. Wheeler. I was ready.

19 Mr. Collins. I knew you were ready.

20 Mr. Wheeler. I was ready. I want to tell you there is 91
21 actions that have been taken through May of this year on pirate
22 radio compared to 130 for all last year and it is now taking up
23 20 percent of our field force time. We listened to you --

24 Mr. Collins. I will call that a success. If nothing else,
25 when you look at me you think pirate radio and when you sit at

1 that spot at the end of the dais, you just have to pick the issue.
2 You can always know someone else won't ask about.

3 Mr. Wheeler. But the other part about it, yes, you do have
4 that certain image. But the other part about it is we weren't
5 just looking at you. We are trying to listen to you and be
6 responsive.

7 Mr. Collins. Well, no, Mr. O'Rielly even went and busted
8 somebody in Brooklyn.

9 Mr. O'Rielly. I appreciate the chairman's comment.

10 Mr. Collins. I wasn't even trying to bring up pirate radio.
11 Actually, we all have the same issues and concerns. So let me
12 just maybe end this hearing today talking about one issue that
13 I think we would like some clarity on and that is the issue of
14 cell phones and the Telephone Consumer Protection Act. We always
15 know that that came up when we had landlines. Now we have cell
16 phones and the two in particular, one of them is I represent some
17 folks that do the student debt collections on the federal student
18 loans. And I know recently the FCC did come out and I think took
19 a step in clarifying that if someone is making a call on behalf
20 of the Federal Government, then the TCPA does not apply other than
21 the normal rules surrounding any call.

22 And the debt collection people just wanted me to ask you,
23 chairman, kind of a yes or no, that if they are making phone calls
24 collecting on student debt, they would like clarity that the TCPA
25 does not apply to them.

1 Mr. Wheeler. That is not what we said. We said the TCPA
2 applies in that there are rules inside that. So the Congress,
3 you all passed the statute saying that federal debt collection
4 should be allowed under TCPA. Then we said that there are several
5 tests here under that. So for instance, is that the debt needs
6 to be delinquent. Okay?

7 Mr. Collins. Okay, yes.

8 Mr. Wheeler. That there should be a limit on the number of
9 calls that can be made a month.

10 Mr. Collins. Is there just a reasonable test on that?

11 Mr. Wheeler. No, it is three calls a month. That there
12 ought to be a right to request the consumer to say stop. That
13 is at the core of the TCPA, that I have got the right to say I
14 don't want to harassed and if the consumer wants to say please
15 don't be making these calls any more, that is at the core of TCPA.

16 Mr. Collins. If they were delinquent. They abided by the
17 three calls and the consumer had not asked to stop and they make
18 a phone call, then they are fine.

19 Mr. Wheeler. Yes, sir.

20 Mr. Collins. That is good.

21 Mr. Wheeler. There is a fourth component.

22 Mr. Collins. Okay.

23 Mr. Wheeler. To be clear, which is a limit on the number
24 of calls you make to a wrong number or to a reassigned number,
25 but it is also a rational kind of a test.

1 Mr. O'Rielly. I will just say I think the chairman is
2 talking about the one preceding, where it is responding to the
3 act that Congress initiated in the budget piece. But we just
4 recently issued and released an item on Broadnet that I think
5 answers this particular issue because it gets to the point of
6 whether the Federal Government is covered by TCPA and those
7 collectors who are doing it on behalf of the Federal Government
8 would not be covered and therefore we clarified that. So I think
9 he is talking about the one item which we are going to clarify
10 later this summer at some point, but I think it has been clarified
11 --

12 Mr. Wheeler. I didn't understand your question to be about
13 robocalls or about teletownhall. I thought it was about debt
14 collection.

15 Mr. Collins. Debt collection on federal student loans.

16 Mr. Wheeler. Yes, which is what we just laid out.

17 Mr. Collins. The four steps.

18 Mr. Wheeler. Yes, sir.

19 Mr. Collins. And again, just so I can be clear to my folks
20 who may be watching this because they were actually saying they
21 were afraid to make some phone calls because they would then be
22 having a complaint, potential fines against them and they weren't
23 -- they were looking for some clarity, so again, if the loan is
24 delinquent, they limit themselves to three phone calls. The
25 consumer hasn't asked to stop and -- what was the last one?

1 Mr. Wheeler. And only for debt collection and wrong numbers
2 and reassigned numbers.

3 Mr. Collins. Then they are not subject to the TCPA.

4 Mr. Wheeler. That is what we are proposing.

5 Mr. Collins. The last issue is and the confusion again on
6 the cell phone piece and the TCPA implied consent versus actual
7 consent. So a consumer now fills out an application or registers
8 on some website and one of the questions is can we have your cell
9 phone number and they fill in the cell phone number. So some
10 people are saying that is implied consent. You gave me your cell
11 phone number, so I can call you. Others would say that no, maybe
12 we should have an affirmative box they have to check, I hereby
13 authorize you to call me.

14 And I know the FCC is looking into that and that is one of
15 those things that right now is a little bit of a quagmire. I can't
16 believe we are nuancing that, well, you filled it in, but you
17 didn't check a box.

18 So really the question here is I am assuming that is an issue
19 that the FCC is going to continue to work on and I just wondered
20 if there is any time frame where that might be clarified?

21 Mr. Wheeler. The threshold of the statute was to give the
22 consumer control and the question then becomes what is control?
23 And yes, sir, we are working on that issue.

24 Mr. Collins. Very good. I am sure I did miss my vote, so
25 if I could get that get out of jail free excuse from you when I

1 leave.

2 I want to thank you all for coming. You know, I am not sure
3 how often we will get the five of you back in this room because
4 we have such a limited schedule, but if by some chance we don't,
5 I want to as a new member of this committee thank you for our
6 opportunity, mine personally, the last year and a half, this
7 Congress, to interact with you. So the hearing of the
8 Subcommittee on Communications and Technology is now adjourned.
9 And I would like remind members that they have 10 days to submit
10 questions for the record.

11 [Whereupon, at 1:34 p.m., the Subcommittee was adjourned.]