CONTINUED OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION
TUESDAY, JULY 28, 2015
House of Representatives,
Subcommittee on Communications and Technology
Committee on Energy and Commerce
Washington, D.C.

The Subcommittee met, pursuant to call, at 10:20 a.m.,
in Room 2322 of the Rayburn House Office Building, Hon. Greg
Walden [Chairman of the Subcommittee] presiding.
Members present: Representatives Walden, Latta, Barton,
Shinkus, Blackburn, Lance, Guthrie, Olson, Kinzinger,
Bilirakis, Johnson, Long, Ellmers, Collins, Cramer, Eshoo,
Doyle, Welch, Clarke, Loebsack, Rush, Matsui, Lujan, and
Pallone (ex officio).

Staff present: Ray Baum, Senior Policy Advisor for Communications and Technology; Andy Duberstein, Deputy Press Secretary; Gene Fullano, Detailee, Telecom; Kelsey Guyselman, Counsel, Telecom; Grace Koh, Counsel, Telecom; Tim Pataki, Professional Staff Member; David Redl, Counsel, Telecom; Charlotte Savercool, Legislative Clerk; Christine Brennan, Democratic Press Secretary; Jeff Carroll, Democratic Staff Director; David Goldman, Democratic Chief Counsel, Communications and Technology; Ashley Jones, Democratic Director of Communications, Member Services and Outreach; Lori Maarbjerg, Democratic FCC Detailee; Tim Robinson, Democratic Chief Counsel; and Ryan Skukowski, Democratic Policy Analyst.
Mr. {Walden.} We will call to order the Subcommittee on Communications and Technology, and I want to welcome everyone here today, and wish a very good morning to Chairman Wheeler and Commissioner Pai. Delighted to have you back before the Subcommittee again this year. We appreciate the work you are doing at the FCC, and look forward to your testimony, and our opportunities to pursue some issues. At the risk of sounding a bit like a broken record, however, I continue to be concerned with the Commission’s failure to adhere to sound regulatory process.

For the nearly 5 years that I have had the opportunity to Chair this Subcommittee, as you all know, I have consistently pushed to make the FCC a better, more transparent agency, and yet it seems like the chasm between Commissioners deepens over time. When the Committee considered process reform legislation a few months ago, I had hope we had reached the bottom of that well, that the Commission would begin to find its way back to the collegiality and honest policy debates and compromises that have characterized it since 1934. Unfortunately, that
appears not to be the case. And if Commissioner Pai’s testimony is any indication, things might actually be getting worse at the Commission, and that is disappointing, to say the least.

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

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

Third, the Telephone Consumer Protection Act. My colleague from New Mexico and I have had serious bipartisan discussions about the approach the FCC has taken as it relates to the fundamental nature of democracy and American practical communications in a wireless age. Beyond that, members of the Subcommittee are just beginning to hear from adversely affected users about the disruption this new ruling...
will have on a variety of companies, and the consumers they try to serve.

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

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

Let me close with this. Each member of the Commission is very bright, talented, and thoroughly passionate. And
yet, as evidenced by recent public comments of Commissioner O’Reilly, and the testimony today of Commissioner Pai, it is clear that they believe the process at the FCC too often fails to include them in a meaningful and substantive way. And we hear similar complaints from stakeholders who feel ignored or shut out altogether. This is neither necessary nor helpful, as the Commission, and all of us in Congress, try to work through the complicated issues in today’s rapidly involving communications world.

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

[The prepared statement of Mr. Walden follows:]

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

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

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

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

Mr. {Walden.} Without objection.

[The information follows:]

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

All of this and more in just one year, and there is much more ahead as the FCC prepares to undertake the world’s first voluntary incentive auction, and a technology transition to an all IP world that preserves the core values of competition, public safety, and consumer protection. So I thank both the Chairman and the Commissioner for your continuing commitment to a modern telecommunications marketplace, and I yield the remainder of my time to the
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gentleman from Vermont, Mr. Welch.

[The prepared statement of Ms. Eshoo follows:]

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

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

[The prepared statement of Mr. Welch follows:]

*************** COMMITTEE INSERT ***************
Mr. {Walden.} The gentleman yields back, the gentlelady yields back. The Chair recognizes the gentlelady from Tennessee, Mrs. Blackburn.

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

You know, I was thinking, as I was preparing for this hearing, when you go back and look at the industrial
revolutions that we have had in this country, looking at the agricultural and the industrial mechanization revolutions, when you look at technology, information, we are almost at a point of being able to say there is this wireless revolution that is going on, because business transactions, health care, so many things are going to depend on this spectrum, and we want to make certain that you are focused on this. So we welcome you. We know that we have to be diligent in this. We look at what South Korea is already talking about doing, South Korea, and Japan, and the 5G, and recapturing the momentum that at one point they had. And we don’t want them to be the world leader. We want to be the world leader, and we have got to have you work with us on this.

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

[The prepared statement of Mrs. Blackburn follows:]

*************** COMMITTEE INSERT ***************

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

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

[The prepared statement of Mr. Latta follows:]
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Mrs. {Blackburn.} Yield back my time.

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

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

I am particularly grateful for this opportunity to hear from Chairman Wheeler about how he is addressing the priorities of the Democratic members of the Subcommittee, many of which are shared by our Republican colleagues. Our members are champions for improving universal access to broadband in the many underserved rural areas of our country. They have also been tireless advocates for the rights of residents of our vast tribal lands, and too often those living on tribal lands are unfairly left on the wrong side of the digital divide. I hope to hear how the FCC can help our efforts to improve deployment to these areas where the
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300 economics along are not enough.
301 Our members have also been devoted to improving public safety communications. This is especially meaningful for those of us whose districts were impacted by disasters like Hurricane Sandy, who believe that everyone should be able to call for help in an emergency, and I hope we hear more about what the Commission is doing to make our vision into a reality.

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

318 And finally I hope to learn more about what the Commission can do to support our work to protect consumers.
320 For instance, I know several members of the Subcommittee have
been focused on the FCC’s recent actions to address robocalls. We all agree that more needs to be done to crack down on unwanted commercial calls, and I hope to hear what the Commission can do to address the issues our members have raised.

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

[The prepared statement of Mr. Pallone follows:]

*************** COMMITTEE INSERT ******************
Mr. {Doyle.} Thank you very much, Mr. Pallone, for yielding. Thank you, Mr. Chairman, for holding this hearing, and to Commissioner Wheeler and Commissioner Pai, thank you both for being here today.

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

I also want to comment the Chairman for advancing a pro-competitive agenda, both in wire line and wireless service. The Commission’s upcoming vote on tech transitions, its action on special access, and the establishment of the spectrum reserve in the incentive auction are all important steps towards preserving and promoting competition. Mr. Chairman, keep up the good work, thank you. And I will yield to our colleague, Ms. Matsui.
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351  [The prepared statement of Mr. Doyle follows:]

352  ****************** COMMITTEE INSERT ******************
Ms. {Matsui.} Thank you very much for yielding to me.

Welcome back, Chairman Wheeler, and Commissioner Pai. It is great to see you again. I know you have a busy agenda, and I want to briefly highlight two priorities that I know we are all interested in.

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

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

I look forward to working with the whole Commission as we talk about these matters, and hopefully make progress on
And I yield back the balance of my time. Thank you.

[The prepared statement of Ms. Matsui follows:]
Mr. {Walden.} The gentlelady yields back, the gentleman yields back. And I think all time has now expired. So now we will go to our two distinguished witnesses, the Chairman of the Federal Communications Commission, Mr. Wheeler. We are delighted to have you back. Apparently we are really delighted, because we have you a lot, and that is a good thing. And so we welcome you and Commissioner Pai, but Mr. Wheeler, why don’t you go ahead and lead off? Yeah, it is a modern technology thing.
Mr. {Wheeler.} I am tempted to make some comment about being national champion of appearances before, but I wouldn’t want--

Mr. {Walden.} We can arrange that.

Mr. {Wheeler.} I wouldn’t want to go down that route. But in the 10 weeks--in all seriousness, in the 10 weeks since I was last before this Committee, there has been a lot happening, and I look forward to discussing it with you today. We have made significant progress to begin the incentive auction on March 29, 8 months from tomorrow, so there is a lot of pressure on here. We have continued to grapple with the tech transitions issues that were raised by the movement from analog to IP networks. And we have approved one merger, with conditions. Another was withdrawn,
and a new one was added. And then, of course, on top of that, the Appeals Court stayed—or denied the request for a stay for the open Internet rules.

But one issue which, frankly, caught me by surprise was that which was raised by a letter signed by every member of this Subcommittee having to do with local number portability, and I wanted to report directly to you on that. Our rules require that local number portability be ubiquitous, but it looks as though the manner in which the industry has set up the system does not fulfill that requirement, and I appreciate this Committee bringing this to our attention.

Implementation of the rule apparently requires that a mobile carrier have a presence in the home market of the ported phone number before the transition can occur. And this is something, of course, that is not possible for smaller regional carriers.

So the effect of this is that if I were to move from Washington to a market served by a carrier not in Washington, and to choose that carrier in a competitive choice process, I couldn’t port my number. That is contrary to our rules, and I have asked that it be fixed. Yesterday I wrote the four
major carriers, as well as their trade associations, asking
that they identify a solution and report back within 60 days.
I believe the carriers are in the best position to fix this,
and I look forward to their response. But I do want to say
to this Committee, after raising this issue in unanimity,
that if this approach doesn’t fix it with dispatch, we will
have to find other approaches that do. But I really
appreciate the way that this Committee called that to our
attention, because we had not seen that previously.

On another matter frequently raised by the Committee, I
am pleased to report that the FCC has completed an exchange
of letters with the Telecommunications Agency of Mexico, IFT,
to harmonize TV and wireless spectrum on both sides of the
border. Mexico is in the midst of its DTV transition, and
we, as you know, are heading into an incentive auction and
relocation of broadcast and mobile licenses. Where on the
spectrum Mexican--Mexico places its DTV licenses could,
therefore, affect us, and our U.S. licenses, and where we
place our licenses could affect, excuse me, affect them. But
thanks to the hard work of the International Bureau and the
Spectrum Auction Task Force, and the good faith negotiations
of the Mexican IFT, this major hurdle has been vaulted. And I want to especially thank my counterpart in Mexico, Chairman Contreras Saldivar, and his Commissioners, for their leadership on this matter. To the North, we have been making similarly productive progress with our friends the Canadians. I believe that once we have a decision next week on incentive auction procedures that we will be able to conclude that coordination as well.

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

[The prepared statement of Mr. Wheeler follows:]

*************** INSERT A ************
Mr. {Walden.} Thank you, Chairman, appreciate the update. We will now go to Commission Pai. We are delighted to have you before the Subcommittee again, and please go ahead with your testimony.
STATEMENT OF AJIT PAI

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

Fortunately, it isn’t too late to change course. Broadcasters, wireless carriers, and unlicensed advocates all agree that the Commission’s current band plan is seriously flawed. I stand ready to work with these stakeholders, and my fellow Commissioners, to do what Congress did when it
passed the landmark incentive auction legislation, compromise
to find a consensus solution.

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

Next I would like to discuss the FCC’s Designated Entity, or DE, Program, which has been plagued with abuse. Even though the program is supposed to help small businesses,
large corporations routinely try to game the system. And that is why I was disappointed when the FCC recently voted to make it easier for big companies to profit from the program. We were promised FCC action to close loopholes that could be exploited by slick lawyers. Instead the Commission re-opened loopholes that it had closed on a bipartisan basis years ago, loopholes through which a minimally competent attorney could drive a truck. Specifically, the FCC paved the way for DEs to obtain a 35 percent discount on auction spectrum, and then turn around and immediately lease 100 percent of it to a large incumbent carrier.

Now, at the time we were told that opening up new loopholes in our DE rules was a "attack on economic inequality", but this assertion is baffling. So let us be clear, those who will profit from these new DE loopholes are speculators who are already firmly ensconced in the famed one percent. Case in point, under the new rules Donald Trump would be allowed to own most of a DE, get a taxpayer funded discount on spectrum, and then lease all of that spectrum to AT&T or Verizon. So, during the Commission’s deliberations I made simple proposals to prevent this kind of abuse of the DE
Program. For example, I proposed that anyone making over $55 million a year should be prohibited from owning a DE and getting taxpayer funded benefits. Unfortunately, the majority rejected this, and other common sense reforms.

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

I humbly submit that is exactly what my plan does. It
implements a single page of rule changes to existing universal service regulations to solve the standalone broadband problem. These simple amendments would let rule consumers choose broadband as a standalone service. It would give carriers the assurance they need to increase broadband deployment. And, critically, they would do all of this within the existing budget.

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

[The prepared statement of Mr. Pai follows:]

*************** INSERT B ***************
Mr. {Walden.} Thank you, Commissioner Pai. We appreciate your testimony as well.

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

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

Mr. {Walden.} Okay.

Mr. {Wheeler.} One of the things that is the reality of
an auction is you don’t really know where the displacement is going to happen, because you don’t know the outcome of the auction. So step one is we will work through that. Step two is that we are going to begin a rulemaking that will allow for channel sharing by LPTV stations. Just as we are counting on channel sharing--

Mr. {Walden.} Right.

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

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

Mr. {Wheeler.} I am--

Mr. {Walden.} In the application process. I will get
Mr. {Wheeler.} Let me get back to you on--

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

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

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

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

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

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

Mr. {Wheeler.} No, sir.

Mr. {Walden.} It is not?
Mr. {Wheeler.} No, sir. The enforcement staff is now--
I can give you the exact statistic--20 percent smaller than
it was under Chairman Martin, and that, since I have come
into office, we have reduced the front office staff by 14
percent.

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

Mr. {Wheeler.} Yeah.

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

Mr. {Wheeler.} Yes, sir.

Mr. {Walden.} All right.

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

Mr. {Walden.} Yeah.

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

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

Mr. {Wheeler.} That--

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

Mr. {Wheeler.} No, it is across--this is--and this was one of the problems that we inherited when we walked into the door, that there had been this purchasing. So what we’re trying to do now is reposition those vehicles--

Mr. {Walden.} Right.

Mr. {Wheeler.} --so they will be available for the strike teams when they come in.

Mr. {Walden.} And what about--and I--we keep hearing stories that you all have cars and drivers, and all that sort of thing at the Commission. Is that true? Actually, we--I don’t know about you all, I don’t have a car and driver, other than my little Prius out there. But is that true?

Don’t the--don’t you--

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

Mr. {Walden.} Yeah?

Mr. {Pai.} --although I do try to walk whenever I can.
Mr. {Walden.} It shows. Yeah.

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

Mr. {Walden.} All right.

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

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

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

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

Ms. {Eshoo.} Thank you. I want to start with Chairman Wheeler. I just want to ask my questions, and then you can respond to them. And I have--

Mr. {Wheeler.} Yes, ma’am.

Ms. {Eshoo.} --one for Commissioner Pai. You stated--you said in your opening statement that the upcoming incentive auction has `more moving parts than a Swiss watch', and I agree. And one example is the reserve trigger, which I think is really very, very important. And it is critical that we get it right, because we want to ensure that competitive providers have real access to spectrum. So can you commit to addressing the concerns of the competitive carriers prior to the start of the auction?

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

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

I read recently, and he is not here, but--something that Commissioner O’Reilly said, and it is a quote of his, but it
does deal with FCC’s governing principles. And he stated that one of the FCC’s governing principles should be that the Internet is not a necessity in the everyday lives of Americans. And I know that, you know, he brought up that it is not even close to being a human right. I mean, I don’t think that is the jurisdiction of this Committee, human rights, but it is disturbing to me that we would move away from that, relative to a principle, and I wanted to know if you agree or disagree, you want to add or subtract from it.

So I will go to Chairman Wheeler first, and then to Commissioner Pai.

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

Ms. {Eshoo.} Um-hum.

Mr. {Wheeler.} With--

Ms. {Eshoo.} Reserve trigger--

Mr. {Wheeler.} Reserve--

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

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

Ms. {Eshoo.} --interference--

Mr. {Wheeler.} --reserve trigger--
Ms. {Eshoo.} Um-hum.

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

Ms. {Eshoo.} And the blackouts.

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

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

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

Ms. {Eshoo.} Um-hum.

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

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

Ms. {Eshoo.} Um-hum.
Mr. {Pai.} Thank you, Congresswoman, for the question.

I embrace the FCC’s charge as given by Congress. In fact, the first charge in the Communications Act, which is to make available, so far as possible, to all the people in the United States rapid, efficient nationwide communication services. And in the digital age that increasingly, as you know, means broadband. And I believe that not only because I am a son of rural America, whose parents currently live on the opposite side of the digital divide, but I also have seen it as a Commissioner across this country.

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

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

Mr. {Pai.} Well, what I am saying is that I embrace different policies to make sure that broadband deployment is as wide and as deep as possible. I will leave the semantics
for others to debate. I am focused on our job, as enmeshed
in Section--

Mr. {Walden.} The gentlewoman’s time--

Ms. {Eshoo.} Thank you very much.

Mr. {Walden.} The gentlewoman’s--

Ms. {Eshoo.} Thank you--

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

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

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

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

Mr. {Wheeler.} Yes.

Mrs. {Blackburn.} Okay. I am so happy we are all on
the same page. Make your day, right? Let us talk about the
steps. And, Commissioner, you were just laying out some of
the steps you thought were necessary. Let us back it up a
little bit. And I think when you look at the CTIA report
that came out--and, Mr. Chairman, I think we--I want to
submit that to the--for the record, if no one has put that
into the record.

Mr. {Walden.} Without objection.

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

Mr. {Wheeler.} First off, Mrs. Blackburn, I would like
to identify with exactly what you are talking about.

Mrs. {Blackburn.} Okay.

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

Mrs. {Blackburn.} I am so--

Mr. {Wheeler.} I--

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

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

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

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

Mrs. {Blackburn.} Good.

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

Mrs. {Blackburn.} Good.

Mr. {Wheeler.} When I was President of CTIA, I happened to be the guy that negotiated the first deal with the government to repurpose Defense Department spectrum. Here is what I found, as a way of answering your question about squatting. The Corps of Engineers, for instance, said they were fully utilizing a piece of spectrum because once a month it took a reading on a dam level.

Mrs. {Blackburn.} Right.

Mr. {Wheeler.} I don’t think that is fully utilizing.
So the question we have to work through is how do you encourage Federal agencies, and all users, to think in terms of what is full application? So the answer is we know--to your question is we know who uses what spectrum. The specific use inside that spectrum, however--

Mrs. {Blackburn.} Okay.

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

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

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

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

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

Mrs. {Blackburn.} I think it would too, before we get too far down this road. What I would like to ask you to do is quantify this. And you and I know, all of us know, the...
way you can re-pack this, and tighten it up, you can better utilize the spectrum, but these Federal agency--yeah, I have got to tell you, we have just done an IG report on wasteful spending, and not following what the IG has asked them to do, looking at 4 years of these IG reports. If you don’t force the issue, they are not going to take the action. And spectrum is a very valuable commodity right now, and we cannot allow Federal agencies, through laziness, or lack of creativity, or lack of innovation, to squat on this spectrum. So, before we get too far afield with the 350 megahertz auction and further, I would like for you to come back to us and say, this is what the--each of these different departments has, and this is what their utilization is, and this is how we can pull that back and re-deploy this into the marketplace and auction it. Because if we need a Federal override for something, just like with the AM band, come back and do something like that, but don’t let them squat on this spectrum.

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

Mr. {Walden.} All right, the gentlelady’s time has
expired. We will now go to the gentleman from New Jersey, Mr. Pallone.

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

Mr. {Wheeler.} So we are working with the industry on that, Mr. Pallone. It is essential that a tower be able to stand up. I think we probably also have to address the backup power issue because if you don’t--if the tower is standing, but there is no juice to it, so it is not worth anything, so these all fit together into a total package.
And I would be happy to do a more detailed response on that, if you would like.

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

Mr. {Walden.} All right.

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

Mr. {Wheeler.} I think that we have tightened up the rules substantially, and would be happy to discuss the specific ways in which we have done that. The key think is also, if you take a look at--and I have got to be real careful at how I talk about this, because it is a pending proceeding, but if you look at what is currently on the record with regard to the DEs and their relationship with
Dish in the AWS-3 auction, we used a totality of circumstances test that had never been applied before to say, we don’t think that that is a good idea, at a staff level. That is coming to the Commission, so, again, I have to rule on that, so I won’t go any further.

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

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

So I raised this issue with the National Association of
Broadcasters, and I can say that they committed to working with us to start planning on how best to reach out to consumers. My question is, can you commit to working with us and the broadcasters to devise a comprehensive plan to ensure that consumers will know what they need to do to continue to watch over the air TV?

Mr. {Wheeler.} Yes, sir.

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

Mr. {Walden.} Well done.

Mr. {Pallone.} --time.

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

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

I am one of the advocates for low power television, and, as we all know, they don’t have any real standing in this repackaging of the spectrum, if the mainline broadcasters give it back. But they do have a product. They have
provided valuable service to the country, and I would like to see them helped in some way, if at all possible. So my question to both of you, we will start with the Chairman, and then Commissioner Pai, what can be done to ensure that we still have low power television once this repackaging is complete?

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

Mr. {Barton.} Right.

Mr. {Wheeler.} --going to happen in the auction. We don’t know what is going to be available for them to move, so
we don’t know what is going to happen there. So we all have
to kind of sit in limbo, and watch for that. But then, even
beyond that, we are going to begin a rulemaking from which we
will allow low power and translators to share a channel, just
like we are allowing licensees, broadcast licensees, full
power licensees, to share a channel. And that will create--
that will take advantage of the benefits of digital, and
create another path.

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

Mr. {Wheeler.} Yes, sir.

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

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

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

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

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

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

Mr. {Doyle.} Mr. Chairman--

Ms. {Eshoo.} Mr. Doyle.

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

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

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

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

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

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

Mr. {Doyle.} You don’t go in order?

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

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

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

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

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

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

Chairman Wheeler, after next year’s incentive auction the FCC would have implemented the last auction Congress
identified in the 2012 Spectrum Act, yet consumer demand for wireless services that rely on spectrum continues to explode, and we know it takes a long time for--to plan for any new spectrum auction. Mr. Chairman, do you agree that we need to create a spectrum pipeline for the next decade?

Mr. {Wheeler.} Yes, ma’am.

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

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

Ms. {Matsui.} Um-hum.

Mr. {Wheeler.} --specific executive agencies, and to answer those questions. I would look forward to working with--and we do have a good working relationship with NTIA and--to try and address these issues. And I think that this is something that both NTIA and the FCC can work together on.
But I also need to be really candid and say that the kind of leadership that you and Mr. Guthrie are showing, that this Committee has shown, in keeping the spotlight on, and keeping the pressure on, is essential to paying attention to things downtown.

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

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

Mr. {Wheeler.} Well, thank you, Congresswoman. You
know, the challenge of the incentive auction is—it is like a very complex crossword puzzle, except for the fact that there is no picture on the front of the box, okay?

Ms. {Matsui.} Yeah.

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

Ms. {Matsui.} Yeah.

Mr. {Wheeler.} --busts over here. And so I think that the spectrum auction team, headed by Gary Epstein and Howard
Symons, have done an excellent job in wading through all of this.

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

Mr. {Wheeler.} Yes, ma’am.

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

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

Ms. {Matsui.} Um-hum.
Mr. {Wheeler.} --of the 21st century, and to deny access to that is to deny access to the 21st century.

Ms. {Matsui.} Right.

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

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

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

Mr. {Latta.} Thank you very much, Mr. Chairman, and again, gentlemen, thanks for being here. Commissioner Pai, if I could start my questions with you, we all know that consumers are offered an array of video choices today, and new Internet delivered options are also complimented by the growing use of consumer apps to watch traditional TV on mobile devices. As a result, it seems that more online entertainment options, such as Netflix, and other over the top providers have transformed the marketplace. I am going to ask these couple questions. With that said, Commissioner,
what is your assessment of the video marketplace, and can you remember a time when consumers have had so much choice in the--in that market?

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

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

Mr. {Pai.} Absolutely, and that is one of the great things about the broadband revolution, is that all these
business models are thriving because everyone can deliver these services over the Internet.

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

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

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

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

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

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

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

Mr. {Wheeler.} So they have just submitted to us additional information from these field tests, and it was based upon that that we altered what our proposal is. This is not an issue that hasn’t been--being dealt with since you passed the Spectrum Act. I mean, this is something that has been going on for multiple years. Their tests were really helpful in that regard. That is why we tried to make sure that we harmonize with the kinds of things that they
discovered in those tests, and provide the flexibility to
move in and do something if, in fact, there is an aberration.
I mean, this is--this kind of goes to Mrs. Blackburn’s
point about sharing. This is the whole reality about
sharing, that we want to create a structure that says that
you can deal with the aberrations. And this Committee told
us in statute to do that, and that was a wise Decision on
your part, and we are following through on that.

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

Mr. {Walden.} Without objection.

[The information follows:]
Mr. {Latta.} Thank you.

Mr. {Walden.} The Chair now recognizes the gentleman from Vermont. Just kidding. Mr. Doyle from--

Mr. {Doyle.} Boy, that--

Mr. {Walden.} --Pennsylvania.

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

Mr. {Welch.} Mr. Chairman, if your goal was to get his attention, you succeeded.

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

Mr. Doyle.

Mr. {Doyle.} Thank you, Mr. Chairman. Gentlemen, welcome. Commissioner Pai, I was just listening to your opening statement, where you were lamenting how you and Commissioner O’Reilly have all these wonderful ideas that are met with either no response, or no. And I just want you to know, we on the Democratic side, we are feeling your pain. It is called being in the minority.

Mr. {Walden.} Would the gentleman--

Mr. {Doyle.} We know that feeling.

Mr. {Walden.} --just for a second. We have been
informed by the folks that do the streaming, Mr. Wheeler, if you could pull that microphone closer? In the Internet Age, they are not able to hear you quite as well, so--

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

Mr. {Wheeler.} Thank you, Mr. Doyle. I don’t know the specific date. We will announce a specific date. I can’t free form it here, but obviously there have been multiple challenges with special access that start with a collection
of data that was thwarted for years, and we were finally able
to begin collecting that data. Insofar as--we will make sure
that data is on the record, and on the record in a timely
manner. And I share your interest in wanting to make sure
that we have an opportunity to address the special access
question, but it needs to be fact-based.

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

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

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

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

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

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

Then the question becomes, do you want the auction to function through the whole process, or do you want to truncate it for a quicker trigger for this spectrum, while the other spectrum auction keeps going? And it seems to me that what that ends up doing is reducing participation in the auction. It probably reduces the prices people will pay, because it means that, here in the reserve, you know, you
stop, while the bidding keeps going on up here in the unreserved. And I think an auction is something that proceeds to a conclusion, not an auction that gets terminated to favor one party or another. And so the establishment of the reserve is a huge point. I think now we—what we should not be doing is picking winners and losers inside that reserve. Mr. {Doyle.} Um-hum. Thank you, Mr. Chairman. I will yield back. Mr. {Walden.} The gentleman yields back. The Chair now recognize the gentleman from Illinois, Mr. Shimkus, for 5 minutes. Mr. {Shimkus.} Thank you, Mr. Chairman. Welcome. You both agree that, to facilitate rural broadband deployment really is going to take USF reform, is that correct? Would you— Mr. {Wheeler.} Yes, sir, we both— Mr. {Shimkus.} And Commissioner Pai? Mr. {Pai.} Yes, sir. Mr. {Shimkus.} And, Commissioner Pai, in your opening statement you mentioned some principles. Can you re-state
those real quickly again for me? I caught a couple of them, but I didn’t--
Mr. {Pai.} So with respect to my rural broadband plan, it would be a two-fold plan. First and foremost would be targeted changes to our universal service rules to allow essentially rated return carriers to get universal service support for the costs that they incur for deploying broadband in rural areas. And so currently those--that support only extends to voice service. I would let them get that support if they offered broadband as a standalone service.

Secondly, creating a voluntary path where rate of return carriers could, at their option, get into a similar Connect America fund that we have for price gap carriers. And obviously the so-called ACAN model in that regard isn’t perfect, but nonetheless, if rate of return carriers find it to be preferable, they should be given a limited window to be able to do that.
Mr. {Shimkus.} Thank you. Chairman Wheeler, this is all--these are all kind of rural, you know, questions for rural service, so it is really appealing to the constituency representing about a third of the State of Illinois, so it is
like a lot of the rural areas. So this is on this dropped call issue still. I mean, I go to some of my either family-owned phone--

Mr. {Wheeler.} Yes, sir.

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

Mr. {Wheeler.} Yes.

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

Mr. {Wheeler.} Right.

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

Mr. {Wheeler.} Thank you, Congressman. Yes, and you put your finger on--it is the intermediate carrier, and it is the failure on the part of the major carriers to police their subcontractors, if you will. So we have done several things.
First of all, there used to be a game that got played where they would give a false ring, you know, to pretend the call was being completed, when it really wasn’t. We have got a rule in place saying that is out of business.

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

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

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

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

Mr. {Shimkus.} I am--they are going to come visit me again during the break, and they are going to ask, and so I
am glad I got a chance to ask the question, and continue to
address this issue.

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

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

And so that is why I have said that, look, if we want to
have more broadband competition, let us have a level playing
field, regulatorily speaking, in which every single provider
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has the strongest possible incentive to deploy fiber to the home to compete for that customer’s attention.

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

Mr. {Wheeler.} Thank you, sir.

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

Ms. {Eshoo.} Right.

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

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

Mr. {Shimkus.} I would--

Ms. {Eshoo.} --for--

Mr. {Shimkus.} Yeah.

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

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

Ms. {Eshoo.} And your department--

Mr. {Shimkus.} My time has expired.

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

Mr. {Wheeler.} Yes, ma’am, um-hum.

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

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

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

Mr. {Wheeler.} Thank you, Congressman, because Commissioner Pai and I share the belief that he has been
talking about here, insofar as the dichotomy between narrow
band and broadband, and that needs to be fixed. I think I go
a little further in my approach than Commissioner Pai does.
I have developed what I have now started calling the Walden
Rule, because--

Mr. {Walden.} Please.

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

Mr. {Welch.} Right.

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

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

Mr. {Welch.} Right.

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

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

Mr. {Pai.} Congressman, I think you captured the
sentiment perfectly in your opening remarks, when you said
that, when it comes to broadband, rural service should be
there, and be high quality. And that is exactly why I have
proposed this plan, to make sure that, when it comes to rural Americans, we don’t leave them on a so-called slow lane when it comes to broadband. We give them the exact same opportunity they would have whether they were in Montpelier or in New York City.

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

Mr. {Welch.} Well, thank you very much. You know, the other thing, Lifeline, my view is that it is a really important program, but there is fraud, there is abuse. And one of the things that happens around here is that, out of frustration, when there is fraud and abuse, sometimes we
attack the very existence of the program, rather than reform it. And I think where there is bipartisan agreement is that anything we can do to limit fraud and abuse, obviously, we want to do. What is the progress on Lifeline?

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

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

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

I mean--so, for instance--the--and I must say, this was put in place by a previous administration, okay, we have--which we have inherited. It is ridiculous to have the people who are benefitting from the receipt of the funds be those certifying that the folks--getting them to the right folks. It is ridiculous that you not require those people who are receiving the funds to keep records. And on the administration side, it is ridiculous that you not have a
database for duplicates, and that you not put structures in place to be able--so what we have done, since we came in, 25 percent reduction on expenditures on Lifeline. 20 million people who were inappropriately on it are no longer on it. And $100 million in penalties.

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

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

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

Mr. {Pai.} Congressman, I obviously support, you know, the Chairman’s vision, at least, of having a more fiscally responsible program. My problem, however, is that we didn’t adopt some of the more basic reforms. For example, capping or putting a budget on the program, as every other universal service fund has. Targeting broadband adoption, which is really the critical issue, we want these funds to connecting people who are offline to help them get online. But currently 34 percent of American households, over 40 million
households, are eligible for the program. And so if we are going to have—modernize the program to target broadband, let us make sure we have fiscal responsibility measures in place, and let us make sure we target the help to people who really need it. And that is, I think, an important conversation to have.

Mr. {Walden.} What about the eligibility database?

Where are you on that?

Mr. {Wheeler.} So—

Mr. {Pai.} Sorry, go ahead.

Mr. {Wheeler.} Go ahead, no.

Mr. {Pai.} No, after you.

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

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

Mr. {Wheeler.} I agree.

Mr. {Walden.} I will go now to the gentleman from New
Jersey, Mr. Lance, for 5 minutes.

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

Mr. {Pai.} Thank you, Congressman, for the question. I begin from the premise that unwanted robocallers are a plague on the American consumer. I don’t want to get those calls, I know the Chairman doesn’t want to get them. Nobody wants to get them. My problem, however, with the Commission’s order is that it takes us in the opposite direction. For one thing, it exempted entire industries from the TCPA. So now, for example, the prison pay phone industry can robocall you. Additionally, it dramatically expanded the range of devices that are now considered to be auto-dialers. So now, if you use your smartphone to make a telephone call, that is technically an auto-dialer, subject to the TCPA.
Similarly, it opened the loopholes for reassigned numbers. There are 37 million numbers that are re-assigned every single year. A lot of legitimate businesses have no reason to know if they have that number in stock, and they have the prior phone number’s owner—the consent of that owner—they have no reason to know that that number has been reassigned, unless they can face TCPA liability. Those are the kinds of loopholes that I think are simply going to generate even more litigation, and litigation has already become a flood. There were 14 class actions filed in 2008. Last year alone there were something like 1,918. And so my concern is that we are opening up a lot of these loopholes.

At the same time, we are not cracking down on the really bad actors, which are the unwanted robocallers. For example, we didn’t create, contrary to what I would have preferred, to create a safe harbor for carriers to allow them to develop technology to block foreign robocallers. We didn’t take more aggressive enforcement measures, despite the fact that we got 96,000 complaints last year for violations of the Do Not Call registry. In the first 9 months—or the first 7 months of this year, even though I called for it in January, we have
had one citation from the Enforcement Bureau against the Do
Not Call registry violators, and that is unacceptable to me.
Mr. {Lance.} Why do you think the Commission did not
have a safe harbor rule?
Mr. {Pai.} I am not sure why, to be honest with you.
But what I can tell you is that it has created tremendous
uncertainty among the host of legitimate businesses that have
their consumers’ consent, and want to communicate important
information. Everyone from, you know, restaurants to the Los
Angeles Lakers have faced class action lawsuits for trying to
communicate with people who have voluntarily communicated
with them.
Mr. {Lance.} Thank you. Chairman?
Mr. {Wheeler.} Thank you, Mr. Lance. Several things.
First of all, we wanted to make sure that--let me just go
down Commissioner Pai’s list. Exemptions, we wanted to make
sure that there were opportunities for--if your doctor, or a
hospital, needs to do something because of a medical
emergency, or your bank needs to contact you because of
fraud, or something like that, that there should be those
kinds of exemptions, and they are not big loopholes.
Secondly, on the question of—you get to make one mistake, and discover that the Lance phone has been transferred. You don’t have to do this three, four, or hundreds of times, as some people have. You can say, excuse me, this is not the number, and just provide notification.

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

And we now have a workshop coming up where we are bringing the carriers, and other affected parties, in to sit down to say, okay, exactly how do you do it? Because how you handle a VOIP call is different from how you handle a TDM call. And how do you put those in place? But this is something that—where we have said to the carriers, our rules now specifically allow you to block calls where you are
Mr. {Lance.} Thank you. Any sur-rebuttal, Commissioner Pai?

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

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

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

Mr. {Wheeler.} I don’t want to send mixed messages—say, no, we can’t do it because there is—

Mr. {Lance.} Thank you. My time has expired, and thank you for the rebuttal, the sur-rebuttal, the sur-sur-rebuttal, and the sur-sur-sur-rebuttal.
Mr. {Pai.} And feel free to call either one of us at home if you would like to follow up.

Mr. {Wheeler.} That is right.

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

Mr. {Wheeler.} That is right.

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

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

Mr. {Walden.} We will go now to Mr. Loebsack of Iowa for 5 minutes.

Mr. {Loebsack.} Thank you, Mr. Chair. I really just want to come back to one issue that was already brought up, but--and have you elaborate a little bit on that, Mr. Wheeler. But in--before I actually ask that specific question, I always just like to talk about rural broadband, as you might imagine, both of you, and just how important it is for places like Iowa, but not just places like Iowa, just all over the country. And I know we have bipartisan support to make sure that we have rules in place, make sure that we
have programs in place, incentives in place, to expand that broadband availability to so many folks around the country. We know it is an economic development issue. We know it is a health issue, you know, when we talk about the spectrum, for example, issue for hospitals, making sure that, you know, I heard from someone this morning about that, making sure that they have the broadband available, and make sure that they can do what they need to do for their patients. We know it is important for education. I often talk about the University of Iowa, how they have a program where they offer AP classes, but it doesn’t do any good in those rural areas if those folks cannot access what the University of Iowa offers. And we know that farmers, it is very, very important for farmers to be able to have access to broadband so they can make decisions, obviously, for planting, and for their businesses in general, and on and on and on. I was in Centreville, Iowa for one of my 24 town hall meetings on broadband--small town, and there were 27 people at that meeting on a weekday afternoon at 2:00 in the afternoon because it is just so absolutely critical for them to be able to have this broadband coverage.
So really my question goes back to what I think was already mentioned. You know, earlier this year 115 members, myself included, wrote to you, Mr. Wheeler—Chairman Wheeler, urging reform of the portion of the high cost program that supports small rural broadband providers so that they could receive USF support for lines, over which customers opted to purchase only broadband, rather than traditional voice service, as is the current practice. The rural broadband industry submitted a data-only broadband reform plan to the FCC in 2013, but the FCC has not yet acted on this plan. Are there issues with the reform plan specifically proposed by the Rural Broadband Industry that prevent the FCC from acting on it as proposed? And if you could just elaborate on that, I would appreciate it.

Mr. {Wheeler.} Thank you, Congressman. There are, what, something like 114 different carriers in Iowa. I mean, you are—you represent the poster child of the rural challenge for rate of return carriers. And it is outrageous that, you know, if you are—if you live in rural America you are 30 times more likely not to be able to get broadband as if you live in an urban area.
So there are two components. One is dealing with things through the price cap carriers. And we recently released what will be $10 billion over 6 years to seven carriers to build their facilities. And I have--I love seeing the headlines that pop up across the country that we get in our report that so-and-so carrier announces they are going to spend $27 million to bring broadband to this area, as a result of our funds.

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

So we sat down with the rural carriers to say, how can we do that? And to try and reach a consensus, because there are a couple of rural carrier associations who don’t agree with themselves, as you know, how do you do that? And we--
is encouraging. We have agreed on--everybody has agreed on this two step--or this two prong process that I laid out a minute ago. And I am optimistic that Commissioner O’Reilly, and Commissioner Clyburn, and myself, who are all working together with the rural carriers to come up with a package proposal, will be able to get this done, and that I--we will be able to live up to the commitment that we made over in the other body to have it done by the end of the year.

Mr. {Loebsack.} Thank you. Thank you, Mr. Wheeler.

Thank you, Mr. Chair, and I yield back.

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

Mr. {Guthrie.} Thank you, Mr. Chairman, and thank you for being here. And my first question is for Commissioner Pai, and it is three parts. If you need to--I will ask, and if you need it repeated, I can do so as well, but this all flows together. But why do you oppose putting broadcasters in the duplex gap, and why is it important to minimize the number of broadcast stations placed in the wireless portion of the 600 megahertz band after the incentive auction? And I
can stop there. I will go ahead and give you the three, and see--maybe you can answer one. Why do you believe it is preferable to put broadcast stations in the uplink portion-- or the wireless band, rather than the downlink? And you have suggested that the Commission hold an en banc hearing to discuss issues related to the 600 megahertz plan. Why do you such a hearing would be helpful?

Mr. {Pai.} Congressman, thanks for the question. I was transcribing as quickly as I could, so if I miss one, please let me know. In terms of putting broadcasters in the duplex gap, one of the things that a typically disparate industry, as the wireless industry, the broadcasters, and unlicensed advocates agree on, is that placing broadcasters in duplex gap would be a terrible idea. Wireless companies don’t like it because it would impair downlink spectrum, which they have told us is critical--more critical for them, in terms of meeting consumer demand. Broadcasters have told us it is not optimal because the duplex gap is the only exclusively reserved spectrum for wireless microphones, which a lot of broadcasters rely on, and unlicensed advocates have told us as well that if you have a full powered broadcaster out
there, unlicensed devices will get drowned out. And so that is part of the reason why I have said consistently that we need to do what the record suggests, and that is moving them somewhere other than the duplex gap.

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

And here the 700 megahertz auction is a really cautionary tale. Think about all the efforts that this Committee--that the Commission had to deal with because we had broadcasters in channel 51, and we had wireless carriers
in the adjacent A block of the 700 megahertz band. Those issues took a long time to resolve, and it was really challenging. Here we are talking about co-channel, in addition to adjacent channel interference. Plus, remember, this is the last spectrum auction, hopefully, we are going to have in some time with respect to this band, so broadcasters placed in downlink will be there essentially permanently. So this is not a problem we will be able to work around.

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

So in terms of the en banc hearing, which I think was your third question, one of the reasons why I think it would
be helpful is that the Commission has simply not made available enough data, in terms of the simulations for these clearing scenarios, the data, and the assumptions that underlie those simulations. And we have heard from everybody, from unlicensed advocates, to broadcasters, and wireless carriers, we need more data, and we need to give you more meaningful input before you make a decision.

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

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

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

Mr. {Guthrie.} Well, do you believe enough is being done to ensure there is a long term national strategy to make
Mr. {Pai.} Thanks for the question. I think, consistent with what the Chairman has said, what Congresswoman Matsui and Congresswoman Blackburn have said, we need to make sure that there is more spectrum in the pipeline. I look at, you know, the proliferation of broadband as a Commissioner—as a consumer, and I think that is a great thing. I look at it as a Commissioner, I wonder, how are we going to supply this spectrum that, you know, all these devices, you know, connected to the Internet are going to need? And that is part of the reason why I have been so bullish about getting more licensed and unlicensed spectrum out there.

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

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

Mr. {Guthrie.} Chairman Wheeler, I only have about 20
some seconds, but to comment on what he was about, the national--more available spectrum?

Mr. {Wheeler.} Yes, sir.

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

Mr. {Wheeler.} I--yes, sir, and I would like to identify with what you and Congresswoman Matsui are doing. And, if we get a chance, I would like to also respond to your first question as well.

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

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

Ms. {Clarke.} Thank you, Mr. Chairman, and I thank our Ranking Member. I, of course, thank our panelists this afternoon for your updates regarding the agency’s activities. I have a few concerns that I would like to have you address, and one of them worries me a bit, and it is what is not in your testimony, it is how the Commission will address continuing challenges in diversity and representation in the media and telecom industries. We are in the 21st century. We look at our nation, and its diversity, and I think there
is a widespread acknowledgement that, you know, it is--it--what we see, in terms of industry, is really just not reflective of who we are as a country.

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

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

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

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

Ms. {Clarke.} So on the subject of DEs, and Mr. Pyle--
Commissioner Pai, excuse me, we--I will have you respond as well. It appears that we have probably cracked the code of only one part of supporting small businesses, gained access to capital to enable to compete in the wireless industry. How can the Commission facilitate more secondary market transactions for DEs and other small businesses, especially those owned by women and minorities, with the private sector?

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

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

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

Mr. {Walden.} Probably for the record, because I want
to keep moving forward, I think.

Mr. {Pai.} Okay.

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

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

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

Mr. {Wheeler.} Thank you, Congressman. The--as you
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know, the FTC Act, writ large, says that it does not have
jurisdiction over common telecommunications carriers, common
carriers. And so when we said that ISPs were
telecommunications carriers, it triggered that. What your
constituents should know, however, is that we work closely
with the FTC, their jurisdiction, insofar as its providers.
And whatever we do, which will be forthcoming in the next few
months, on our privacy proposals, we will do our best to
harmonize so that there is a common set of concepts that
govern privacy.

Mr. {Olson.} Okay, great. That gave me some time back.
Mr. Pai, you response, Mr. Pai.
Mr. {Pai.} Congressman, unfortunately, the FCC’s
reclassification of Internet Service Providers as common
carriers had a two-fold hit on consumers. First, it deprived
the FTC of jurisdiction, as the Chairman has pointed out,
because of the common carrier exemption, jurisdiction that
the FTC has explicitly been given Congressional authorization
for under things like CAPA.
Secondly, because the FCC then arrogated that issue for
itself, unfortunately, our authority under the statute is
relatively circumscribed. As you pointed out, Section 222, CPNI, pretty narrow, arcane piece of the privacy puzzle, if you will. So we don’t actually have any rules in place.

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

Mr. {Olson.} I have no idea.

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

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

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

Mr. {Olson.} Okay. And the Chairman talked another issue, about privacy and edge providers. Chairman Wheeler, a
consumer interest group filed a petition asking you to start a rulemaking to oppose consumer privacy protections on edge providers. When are we going to see your response? Do you believe that edge providers should have a different standard protection than ISPs?

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

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

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

Mr. {Pai.} I think this is part of the problem. When the FCC crossed this Rubicon on February. If you believe, as the majority did at the time, that the Internet is a virtuous
cycle, and you have Internet Service Providers and edge providers acting with one another to provide a better consumer experience, it would seem to follow logically, then, that if an edge provider is acting in an anti-competitive or anti-consumer way, then why shouldn’t the FCC have the jurisdiction to extend those same rules to Internet—or to edge providers.

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

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

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

Mr. {Rush.} I want to thank you, Mr. Chairman, and I want to thank you and the Ranking Member for today’s hearing.
Mr. Chairman, Commissioner Pai, I welcome both of you to today’s hearing. So good to see you once again.

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

Additionally, Mr. Chairman, once and for all we must do away with the practice of site commission kickbacks, and we must cap in-state phone rates. As you know, Mr. Chairman, prison call—the prison call industry is a multi-billion dollar business. And if there is any doubt, I want to call your attention to a recent Huffington Post article entitled "Prisoners Pay Millions to Call Loved Ones Every Year. Now This Company Wants Even More". And this article referenced how Securus—a company called Securus, the 7th largest company in the prison phone call rate industry, Securus bragged to its investors about its $404.6 million future
profits on the backs of the very same poor.

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

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

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

But you know what happens, is that whack-a-mole starts getting played here. Okay, we can’t do it her, so we will
move it over here. Well, next month we have a decision on that, on intra-state, that we are doing next month. The point that you make about video phones is another legitimate point. I mean, the reality here is that what we are talking about is a monopoly that is granted to prisons to determine how people communicate. And like any monopoly, it ends up being exploitive. And the people who are hurt by that exploitation are the very people who rely on it. And I can assure you, sir, that Commissioner Clyburn keeps our feet to the fire on this, and that I am fully supportive of her efforts.

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

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

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

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

Mr. {Wheeler.} Sure.

Mr. {Bilirakis.} You have?

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

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

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

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

Mr. {Wheeler.} Sure.

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

Mr. {Wheeler.} Yes, sir.

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

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

Mr. {Bilirakis.} Okay, very good. Commissioner Pai,
there has been a lot of attention and concern regarding the designated entity auction rules. Do you believe there are now correctly--are they now correctly balanced, and if not, what should be done to fix them?

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

And we saw that in the most recent AWS-3 auction, where small carriers tried to compete, but they weren’t able to because the deep-pocketed Fortune 500 corporation used shell companies to prevent them from bidding. And that is part of the reason why I proposed what I thought were pretty common sense reforms. If you are making in the upper eight figures, you don’t need a taxpayer-funded discount in order to
participate in a spectrum auction. If you are a genuine small business, with less than $15 million of revenue, you don’t need more than $50 million of taxpayer-funded bidding credits in order to get spectrum at an auction. If you are a genuine business, you should be able to provide facilities-based service, not simply flip your spectrum to a large incumbent corporation the minute the auction is over.

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

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

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

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

Mr. {Wheeler.} Yes, sir.

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

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

Mr. {Johnson.} Thank you.

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

Mr. {Johnson.} Thank you, Mr. Chairman. Chairman Wheeler, in a recent response to questions for the record as to whether you think stakeholders who cannot afford to have regulatory lawyers or lobbyists in Washington, D.C. should also have the same access that other stakeholders have, you made a point that the Commission does not have funding for routine field hearings, and similar activities, yet your emissary, Ms. Sone, has been routinely traveling to various events. In fact, it seems that both you and Ms. Sone have been wheels up quite frequently in your travels. So let me pose the question this way. Given that you apparently have a
robust travel budget, isn’t the real issue how you elect to spend the money?

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

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

Mr. {Wheeler.} By--

Mr. {Johnson.} Could you--

Mr. {Wheeler.} By Commissioner?

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

Mr. {Wheeler.} By Commissioner?

Mr. {Johnson.} Yeah.

Mr. {Wheeler.} Yes, sure.
Mr. {Johnson.} Okay, great. I would like to see that.

Commissioner Pai, I was listening closely to your discussion with my colleague, Mr. Bilirakis, regarding the designated entity program, and I am really struggling a bit with Commissioner Wheeler’s—Chairman Wheeler’s decision to eliminate the attributable material relationship rule, and the facilities requirement in the competitive bidding rules for a couple of reasons, and you pointed those out. You made a compelling case that this sets the state for arbitrage. So how are we going to prevent that from happening?

How—what actions does the Commission need to take to make sure that these rural small carriers are able to get the credits that the Designated Entity Program was designed to give them so that they can serve those underserved, unserved areas?

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

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

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

Mr. {Johnson.} Yeah. Well, I can tell you that it is a real concern for me, and I am sure other colleagues that represent rural areas of the country. I have got high school students that don’t have access to broadband Internet service, and, as a result, they either have to go to a public
library nearby, or some other location, maybe to where they
can get a wireless signal or something like that, to do their
homework, to do research, to do that kind of thing. And this
is 2015, for crying out loud.

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

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

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

Mr. {Long.} Thank you, Mr. Chairman, and thank you all
for being here today. Mr. Chairman, on--or Chairman Wheeler,
on July 24, 4 days ago, your agency announced that—granted
with conditions approval of the transfer of control licenses
and authorizations from DirecTV to AT&T. We hear much about
your agency’s 180 day shot clock for reviewing such
transfers, yet your agency’s conditional grant of approval
took over twice that amount of time, as you are well aware,
over 400 days. I have got some questions that I would like
to have answers to. Number one, what is the point of the
shot clock?

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

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

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

Mr. {Long.} That was the same thing you are talking
about, the court--

Mr. {Wheeler.} Yes.

Mr. {Long.} --Decision?

Mr. {Wheeler.} So the reality here is that in--and there is right now, pending before Commissioner Pai and me--have you--yet? I mean, that is not a set up question. I don’t know the answer to it.

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

Mr. {Wheeler.} On the protective order.

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

Mr. {Wheeler.} Okay. So we have put out a--an order for--to outline how you protect confidential information so that we can be in compliance with the court so that this will not happen again. And the absence of that was what held up this proceedings.

Mr. {Long.} Okay. Commissioner Pai, same question to you. Do you have the same opinion on why the shot clock was stopped at the 170th day, or what the benefit of the shot clock is?

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

The agency inflicted a wound on itself, which is why the
court had to intervene. The court didn’t simply, out of whole cloth, decide to participate in this proceeding. What happened was, in the context of that transaction and another transaction, the agency decided to try to get all kinds of confidential information from programmers and--without any kind of due process. And so the programmers naturally sued. I urged the agency to try to reach a settlement, because this information wasn’t really necessary to resolution of the issues in the transaction, and a unanimous D.C. Circuit Court of Appeals agreed with me, calling the FCC’s decision an unexplained and substantial departure from previous policy. And miraculously, even though they remanded it and told the FCC, look, here is the road map you need to follow if you want this information, despite having said the information was critical, ultimately the agency didn’t even seek it or rely on it in making the decision. So that is why I said, look, the shot clock needs to be more than aspirational, it needs to be a rule. Just as there are 24 seconds in the NBA, there should be 180 days, period, for the FCC, with extensions for extenuating circumstances. But, nonetheless, we need to give both the public and the parties a lot of
certainty as to how the FCC is going to do--

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

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

Mr. {Wheeler.} Thank you, Congressman, and we worked closely with the Justice Department on this, and I don’t
think that there was a sliver of light between us. The reality--

Mr. {Long.} And how can--

Mr. {Wheeler.} The reality--

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

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

Mr. {Long.} You have a what?

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

So what we required was that AT&T expand its broadband coverage, which increased competition for broadband by a significant amount, and created an opportunity for those video providers not to have to go through an increasingly
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2463 decreasing--increasingly--a decreasing choke point--

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

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

2467 Mr. {Long.} We have got a red light on our backboard.

2468 My 5 minute shot clock has expired, so I will be back for round two.

2469 Mr. {Wheeler.} Good.

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

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

2477 Mr. {Wheeler.} Yes, sir.

2478 Mr. {Collins.} --New Jersey sent you a letter. And while the issue may not be a terrible issue, you know, in some parts of the country, it truly is in New York City, as evidenced by--not often you can get 27 members of New York to agree. Upstate and downstate, we are like two different worlds. So I guess I—to sum it up, we are extraordinarily
disappointed that the FCC has clearly said it is not a priority. I mean, the--we got the letter just from you yesterday.

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

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

Mr. {Wheeler.} So I--Congressman, I--that letter, and those particular words which I wrote were not designed to say that this is a low priority, but designed to say that first
issue is public safety. Pirate radio has to exist inside
that, and I believe that we have been very aggressive. We
have--so during my Chairmanship, we have had 200 private
radio enforcements. In the last year we have had 100 alone.
And--

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

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

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

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

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

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

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

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

Mr. {Collins.} Right.

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

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

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

Mr. {Collins.} Right.

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

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

Mr. {Wheeler.} I have heard that suggestion. I have not seen that command.

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

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

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

Mr. {Wheeler.} Great.

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

Mr. {Wheeler.} Thank you, sir.

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

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

Mr. {Wheeler.} Thank you.

Mr. {Collins.} I yield back.

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

Mr. {Cramer.} Thank the Chairman, and the Ranking Member, once again for suffering along with me as you wait for the last questioner. And thanks to both of you as well. And thank you, Commissioner Pai, for referencing the letter that 114 of my closest friends and I sent to the Chairman and to the FCC regarding standalone, and to both of you for addressing it so thoroughly today. And I might just hone in a little bit on some of the finer points regarding the timeline. Because in the letter I received, Mr. Chairman, from you yesterday you often referred to a lack of consensus. There seems to be some consensus. You pledged that by the end of the year we will solve this, but we need more consensus from stakeholders. As you both know, of course, the--community presented a plan in 2013, modified somewhat over the last couple of years to meet moving targets.
I might ask you, Commissioner Pai, you know, you have offered up I think the--I think your quote there from your plan was simple amendments to existing rules as an outcome. And one of the things I have noticed around here, and I have certainly noticed in regulatory bodies, having served on one, we can tend to complicate simple things. My goal is usually the opposite of that. Are there issues in the--plan that prevent this from going forward, or prevent us from utilizing, you know, that as the model, or are there other issues that have, you know, caused this to take so long? You know--

Mr. {Pai.} Thanks for the question, Congressman, and thank you also for your kind words about my proposal, which in turn is modeled on your letter. I think--stepping back 60,000 feet, I think the problem is basically this. There are a number of problems with the high cost fund, A, B, C, D, E. Problem A, however, is standalone broadband service, and my position has been consistent with your letter, and a companion letter in the Senate, that--let us adopt targeted changes to our rules to make sure that rate of return carriers aren’t penalized for offering broadband as a
standalone service. Now, that is not to say that problems B, C, D, E aren’t important, but, for the purposes of this issue, standalone broadband service, let us get that piece of it done, and then turn to the other issues.

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

Mr. Cramer. Chairman Wheeler, can we meet the end of the year deadline? Is there a reason we can’t meet that, and are we attaching too many other things to the simple solution?

Mr. Wheeler. Those are the two right questions.

Mr. Cramer. Yeah.

Mr. Wheeler. The--I am trying to do that. It is my goal to do it. I expect to do it. A couple of points here. In order to do that, you cannot be wedded to consensus. As
you know from your previous term, at some point in time you have got to pull up and shoot.

Mr. {Cramer.} Indeed.

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

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

Mr. {Cramer.} Well, there are other issues the FCC has taken up this year that I wish there would have been more consensus on, so I don’t want consensus or—to mean 100 percent, as you might imagine.
Shifting, then, just a little bit with my remaining time, we spent some time talking about, of course, the auction. I am—I was about to call it the voluntary auction. That is what it used to be called. I think it still is. It has—the word voluntary is how it is often referred to, because, of course, it is, in fact, voluntary, both opting in and opting out. And, as you know, the $1.75 billion that Congress has put in for, you know, the repacking fund is probably not going to be enough, considering that we are looking at, what, 1,100, maybe, TV stations that are going to have to involuntarily move.

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

Mr. {Pai.} Congressman, I have long suggested that we should treat the 1.75 billion relocation fund as a budget at the FCC, and structure the auction in such a as to minimize the possibility that we would exceed it, and ultimately end up putting the onus on the broadcasters to pay up.
The other issue that I have heard, most recently in Nebraska from a group of broadcasters, is that the 36 months is not necessarily as long as it might seem, that it is--there is a shortage of people who are able to do the work, there is a shortage of the equipment that is necessary for the repacking to be done, and that you--the Commission should be mindful of that as well as it progresses. So I share your concern, and I want to make sure that broadcasters, to the extent possible, are not--are held harmless, in terms of necessary expenditures.

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

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

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

Mr. {Walden.} And if you hang around, Mr. Cramer, we are going to do a second round. You could be, like, really quick on the shot clock here. We are now going to go to the
gentleman from New Mexico, Mr. Lujan, for 5 minutes.

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

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

With that being said, in New Mexico, for example, 77 percent of those living rural communities, and 89 percent living in tribal communities lack access to advanced broadband. Chairman Wheeler, as you said in your testimony, you have pursued an aggressive agenda at the FCC that
includes reforming the E-rate Program, modernizing the Lifeline Program, and establishing the Connect America Fund. Can you discuss what this agenda means for people who lack sufficient access to broadband and communication services, not just with buildout, but also with making it more affordable so people are able to take advantage once there is a buildout program?

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

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

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

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

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

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

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

Mr. {Wheeler.} The--

Mr. {Lujan.} Yes, Commissioner Pai?

Mr. {Pai.} Yes.

Mr. {Lujan.} Yes?

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

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

Mr. {Wheeler.} And the, you know, and the--
Mr. {Lujan.} Those forms--

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

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

Mr. {Walden.} Indeed.

Mr. {Lujan.} Thank you, Chairman.

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

I want to go back to this issue of LPTV and translators, and maybe Commissioner Pai--Chairman Wheeler. There is all this talk now at the Commission about setting aside an entire
channel for unlicensed. And I support unlicensed, we have made a lot of unlicensed available, there is more to be done, but won’t setting aside a whole channel for unlicensed contribute to the problem that we are hearing from translator and the LPTV community? Commissioner.

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

Mr. {Wheeler.} In--

Mr. {Walden.} Chairman Wheeler?

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

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

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

Mr. {Walden.} In the TV band?

Mr. {Wheeler.} Now, it was--I think that the mandate from this Committee is clear. The mandate from this Committee is that there is no priority given to LPTV.

Mr. {Walden.} True.

Mr. {Wheeler.} And the Committee also said, however, that we need to be encouraging unlicensed. I think--I don’t think that it comes down to that kind of a solution, though, Mr. Chairman, with all due respect. I think that it is possible, and what we are just breaking our tails on, is to be able to accomplish both of these, and I think we will be successful.

Mr. {Walden.} Yeah. I would say--my recollection of the statute, which we together helped write here, was--

Mr. {Wheeler.} You wrote it.

Mr. {Walden.} --that unlicensed was never set aside as a priority to go create a nationwide band. In fact, we had a lot of discussion about that very fact, that you don’t go clear all this and then give it away to, in effect, some pretty major operators. You know, Commissioner Pai?
Mr. {Pai.}  And this is part of the reason why I suggested that we adopt a technically sound solution to where to put broadcasters if we put them in the wireless--

Mr. {Walden.}  Right.

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

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

Mr. {Walden.}  Right.

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

Mr. {Walden.}  I think you have got disagreement with
Commissioner Pai, but I am going to have to move along here. My concern is there are a lot of--I hear from my colleagues all over the west, there are concern these translators are going to go dark because they are going to get squished out. And if they get squished out because you created a whole band of unlicensed, that only adds to the problem. And there is a public interest obligation underpinning all of this at the Commission to provide for.

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

Mr. {Wheeler.} Yeah, we--

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

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

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

Mr. {Walden.} But--

Mr. {Wheeler.} --permission.

Mr. {Walden.} But my--

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

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

Mr. {Wheeler.} Correct.

Mr. {Walden.} --Chairman Wheeler, and it dials. To me--
Mr. {Walden.} Okay. If I have a database of names that I want to reach out to, let us say voters, and I want to turn them out to vote, and I have a device that calls until somebody answers, and then I can take the call, is that an auto-dialer?

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

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

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

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

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

Mr. {Walden.} So those are prohibited, and your
contention is always have been?

Mr. {Wheeler.} Yes, sir.

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

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

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

Mr. {Walden.} Well, and we are hearing from others out
there who are—I mean, there is this issue with the health care exchanges, and whether or not insurance companies can follow up and, like, notify you that it is time for you to come in and have some tests done. I have been told that may be prohibited now. I mean, are you aware of that? Are you hearing those issues?

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

Mr. {Walden.} Yeah.

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

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

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

Mr. {Walden.} Right.

Mr. {Wheeler.} On the health care issue one, we
specifically had an exemption for being—bank fraud, health care, things like this. And for government agencies.

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

Mr. {Wheeler.} Right.

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

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

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

Mr. {Wheeler.} But—

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

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

Mr. {Walden.} Right.

Mr. {Wheeler.} --exactly on that, insofar as wireless, because you can’t have random—you can’t get to the wireless
numbers.

Mr. {Walden.} Right.

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

Mr. {Walden.} Got it.

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

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

Mr. {Wheeler.} Let me--

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

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

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

Mr. {Wheeler.} Yeah. I understand.

Mr. {Walden.} --of your ruling as it relates to--I have
gone way beyond my time, but I will now defer to my colleague from California, Ms. Eshoo.

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

Mr. {Wheeler.} In ’91, right?

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

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

Now, what I would like to ask you, Mr. Chairman, is have you had conversations with the appropriators? Is there anyone from the majority here that has been asked to lean in with the appropriators? I mean, we are constantly putting on
the FCC, and in oversight, all of these issues come up. I don’t know who is--who is going to do this work and follow up with every member’s request about what they want? You wanted to close offices, members said don’t close them, we need them open. But, I mean, there are so many things that are reliant on dollars. And I am not talking about having a load of extra dough. I am talking about the agency being able to carry out its responsibilities. So what I would like to know from you is, have you had conversations with the appropriators on the majority side? Have you had conversations with the majority side here to see what can be worked out with the budget?

I don’t know, you know, these riders, the President is not going to sign something like that. And, at the end of the day, I think that the appropriations process is so messed up around here because we don’t have regular order, speaking of transparency, and process, and all of that, that we are going to end up with an omnibus bill. And if we--and I think that is what is going to happen. So compare and contrast what your present budget is, because an omnibus really--doesn’t really allow for that much more, and address for us
any conversations, or how you are following up with the appropriators did to the budget of your agency.

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

Ms. {Eshoo.} Um-hum.

Mr. {Wheeler.} --not saying people aren’t listening.

We have talked to this Committee, we have talked to their Committee. We--I was honored that the Chairman came to the Appropriations Committee, which I think--the first time that I have ever known that a Chairman has actually come--

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

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

sorry.

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

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

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

Mr. {Wheeler.} But the--

Ms. {Eshoo.} I want to know about the money.
Mr. {Wheeler.} But, yes, we have to live with the number that the Congress gives us. It is that, you know, it is that simple.

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

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

Ms. {Eshoo.} I see.

Mr. {Walden.} Yeah.

Ms. {Eshoo.} You didn’t testify?

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

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

Mr. {Wheeler.} Um-hum.

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

Mr. {Wheeler.} Yes, ma’am.
Ms. {Eshoo.} --and also--and the top line things that you have to do. I mean, we have got to move forward with a-- with the auction, with the voluntary auction, and, you know, all the top line items. And also, if we have an omnibus bill, what that does. And I would look--I look forward to reviewing that. I think it should be sent to everyone on the--

Mr. {Wheeler.} Thank you.

Ms. {Eshoo.} --Committee.

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

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

Mr. {Wheeler.} Do you mean--

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

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

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

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

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

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

Mr. {Pai.} Thanks for the question, Congressman. I think, unfortunately, many of the FCC’s more high profile enforcement initiatives have betrayed that basic principle of due process, and that is not an FCC law. That is going back to King John signing the Magna Carta 800 years ago this
summer at Runnymede. And I think part of the reason why I have been so outspoken about it is that if private actors, from companies all the way to individuals, don’t know what the rules of conduct are, then they have no reason to know that their conduct is violating what the FCC thinks should be the rule.

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

Mr. {Long.} Okay. Thank you. And, Chairman Wheeler and Commissioner Pai, to the two of you, I am curious about the Broadcasters Relocation Fund, and how those monies are going to be spent. The fund is currently at $1.75 billion, as you know, and obviously that fund was set up to pay for
all of the relocation costs to the broadcasters you are
required by the FCC to move to a new channel as part of the
auction. After examining these issues for the last few
years, has the FCC determined how many stations is able--it
is able to re-pack with that 100--$1.75 billion fund?

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

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

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

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

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

Mr. {Long.} --appreciate it. And, Commissioner Pai,
same question to you.

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

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

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

Mr. {Long.} Okay. Because I have heard some figures, and I have difficulty believing that 1.75 billion will cover the estimated number that they are talking about. So if you--both of you could get back to me on that, I would appreciate
it. And I am going to yield back with a minute 37 to go.

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

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

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

So if the rule requires them to opt into this program, how would we reach out to seven, 800,000 constituents for them to opt in? We can’t sent them an e-mail because, based on a 2015 press release coming from the FCC, only 52— or 48 percent of those making less than $25,000 have broadband service at home. And so if we can’t reach out to them to opt
in, do I send them a letter, which is what the FCC is working
against? You don’t want to be sending letters and forms out
to opt in, and then you would have to check a box yes or no,
and then you get the letter back in. I certainly hope that
we can look at this to see how we can address this. And I
know it is something that I visited with Chairman Walden, and
with Ranking Member Eshoo, with both the majority and
minority staffs on this, so I look forward to working with
you on that as well.

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

Mr. {Pai.} Well, Congressman, thanks for the question.
As I said in response to Congresswoman Eshoo earlier, my goal
has been always to make sure that any American anywhere,
whether it is on a tribe in New Mexico, or somewhere in my
home state of Kansas, anyone who wants digital opportunity,
in terms of a broadband connection, should be able to get it.
And that is why I have laid out proposals on rule of
broadband, on e-rate, on wireless infrastructure, on five gigahertz spectrum, to make sure that we have a bunch of competitors out there all competing to provide every American with that opportunity. And, you know, as far as the semantic classification of it, that is something that I will leave to wiser minds than myself, but my focus--

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

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

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

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

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

But in your dissent you also listed a concern where there were providers that were signing people up fraudulently, which we need to crack down on, and we share that concern. But in the 2015 order that you dissented, there was a reform in there that did state that we would-- that the FCC would remove the ability for providers to sign people up for Lifeline--or for verification.

Mr. {Pai.} Um-hum.

Mr. {Lujan.} Is that something that--with that principle, is that something that you agree with, and were there other areas that you disagreed with in the order? But is that something that you could agree with that we could work on together?

Mr. {Pai.} Well, I would love to work with you on that, and I do think that verification is a critical issue. I think one of the problems that I cited in my dissent is the case--is the fact that fly by night operators, like Icon Telecom in Oklahoma, they just created so-called Lifeline customers out of whole cloth, got a lot of money for doing it, and the CEO ended up pocketing $20 million, and spent it
on his own private expenses. And that is something we need to weed out. We need more enforcement action, we need to reform the rules, and we need to have that conversation about how to have a fiscally responsible program.

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

Mr. {Pai.} I do believe it should be fact-based, and that is part of the reason why I suggested a cap or a budget of $1.6 billion, because the program was at 800 million in 2009. It is now at 1.6, and that is the only one of the universal service fund programs that isn’t capped. And so what I suggested was, we need to have a balance here. We need to make sure that we target the people who are offline in the Lifeline Program.
We also have to make sure that we are responsible stewards of the consumers’ tax dollars. After all, this is paid for by consumers, and 1.6 seemed to me to be a good conversation—a good starting point to have.

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

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

Mr. {Walden.} Thank you, and we appreciate your participation, and that of our witnesses. And, speaking of outdated data, just in closing, the quadrennial review I referenced in my opening statement is now—I think the last one we got is probably 8 years old, so I hope the Commission will deal with the quadrennial ownership report on a basis as
required by statute. AM modernization is still something high on a number of our priorities, and on the de-stack issue, we ask in stellar that the Commission deal with the downloadable security issues, and it appears that Committee was given direction to work disaggregation of data on a video stream. So, again, we are after the downloadable security issue.

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

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

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

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