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OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

TUESDAY, NOVEMBER 17, 2015

House of Representatives,

Subcommittee on Communications and Technology,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to notice, at 10:15 a.m., in Room 2123, Rayburn House Office Building, Hon. Greg Walden [chairman of the subcommittee] presiding.

Present: Representatives Walden, Latta, Barton, Shimkus, Blackburn, Scalise, Lance, Guthrie, Olson, Pompeo, Kinzinger, Bilirakis, Johnson, Long, Ellmers, Collins, Cramer, Upton (ex officio), Eshoo, Doyle, Welch, Yarmuth, Clarke, Loeb sack, Rush,

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

Staff Present: Ray Baum, Senior Policy Advisor, Communications and Technology; Rebecca Card, Assistant Press Secretary; Andy Duberstein, Deputy Press Secretary; Gene Fullano, Detailee, Telecom; Kelsey Guyselman, Counsel, Telecom; Peter Kielty, Deputy General Counsel; Grace Koh, Counsel, Telecom; David Redl, Counsel, Telecom; Charlotte Savercool, Professional Staff, Communications and Technology; Gregory Watson, Legislation Clerk, Communications and Technology; Jean Woodrow, Director, Information Technology; Christine Brennan, Minority Press Secretary; Jeff Carroll, Minority Staff Director; David Goldman, Minority Chief Counsel, Communications and Technology; Tiffany Guarascio, Minority Deputy Staff Director and Chief Health Advisor; Jerry Leverich, Minority Counsel; Lori Maarbjerg, Minority FCC Detailee; Tim Robinson, Minority Chief Counsel; and Ryan Skukowski, Minority Policy Analyst.

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Mr. Walden. Good morning, everyone. And welcome to the Subcommittee on Communications and Technology and our oversight hearing on the Federal Communications Commission.

I want to welcome the Chairman and all of the Commissioners. We are glad to have you here again. We appreciate your joining us today.

As you know, it is our job to not only initiate innovative legislation and work with all of you on various individual legislative and regulatory priorities, but it is also our job to conduct rigorous and appropriate oversight of the Federal Communications Commission. And that is the subject of the hearing that we have today.

Sadly, it is clear by various actions of this and previous commissions that Congress has delegated too much flexibility at times and authority to the FCC. And it seems that, regardless of what our clear legislative intent is, too often that clear intent gets misunderstood or, worse, obfuscated or obstructed. So, colleagues, we have to do a better job when we write these bills so as to limit FCC authority, not to expand it.

This committee has placed an emphasis on improving the FCC's processes when it comes to conducting the people's business. The full House has concurred with our work on multiple occasions, including as recently as last night, when the House passed the FCC Process Reform Act of 2015 unanimously. This effort arises from complaints and suggestions from the public and from various Commissioners over the

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years under various Chairs. Better process at the FCC will result in more transparent decisionmaking, where all the Commissioners have a meaningful opportunity to participate.

And, Chairman Wheeler, while you have made important improvements, and I commend you for that -- you have reduced backlogs, you have implemented a new complaint process, among other items -- members of your own Commission are driven to publicly express their frustrations with the bigger decisionmaking process at times, so it is distressing to hear of somewhat bitter divisions.

Now, let me give you three specific issues that concern me and many of us on the committee.

First, our lawyers believe the FCC has disregarded the clear directive in the STELA Reauthorization Act of 2014 by expanding the scope of the DSTAC Working Group beyond what was ever intended by the committee. So that is number one.

Number two, the FCC has promulgated rules designed to preempt State laws regarding municipal broadband absent congressional authority to do so.

And, of course, the FCC continues its 8-year-long failure to complete its required quadrennial review of media ownership rules. I wonder what penalties would befall a licensee of the Commission that so failed to follow the law.

And that is just the list of things that have already happened.

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The Commission has a number of pending proceedings that threaten to walk the same tired path of partisan, predetermined outcomes.

The Commission has announced a rulemaking to, quote, "clarify the FCC's expanded privacy authority under the new Internet rules," close quote, even when some cheerleaders for Title II common carrier regulation of the Internet access are coming to realize just how wide a net this self-granted authority casts over the Internet. If IP addresses are equivalent to phone numbers under Title II, just how will commerce flow in a broadband world? What is the FCC's definition of "privacy" under a law designed for hand-cranked telephones?

The Commission appears poised to move forward on an item to redefine multichannel video programming distributor, or MVPD, to include linear over-the-top video providers. This is billed as a way to promote online video as a competitor to traditional cable and satellite providers, yet many over-the-top providers assert that government intervention is not warranted and that this will chill investment and innovation in the nascent, growing sector.

And the Commission appears ready to move forward to expand the scope of the universal service Lifeline program without adopting controls to prevent ballooning costs. While this Commission has taken some steps to reduce waste, fraud, and abuse -- and I commend you for that -- much work remains in these areas, and the program still lacks meaningful spending controls. This, despite the fact the contribution

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factor for universal service -- that is the percentage of consumers' bills the FCC collects each month to support the Universal Service Fund program -- will rise to 18 percent in January, and that is an all-time high.

Serious concerns about the misguided management and reward system of the Enforcement Bureau have risen to the point that Chairman Upton, the vice chairman of this subcommittee, Mr. Latta, and I have asked the Government Accountability Office to conduct an independent investigation into how decisions are made, how fines are determined, and how employee performance is assessed.

In addition to these concerns, many stakeholders have expressed overarching concern that the FCC is adopting and applying its rules in an arbitrary fashion, singling out certain companies or industries for asymmetric regulation. This concern is buttressed, in their view, by so many 3-to-2 votes.

With the spectrum auction less than 4 months away, I would also like to get your assurance that the Federal Communications Commission will fully and faithfully implement the law that was passed by Congress that broadcasters will not be forced to participate and that the Commission will make all reasonable efforts to preserve broadcaster coverage, prevent interference, and make sure that consumers can continue to enjoy their over-the-air viewing.

Two final notes. First, congratulations to the FCC on your

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October 23 unanimous vote to adopt the AM radio revitalization order, providing needed relief to the struggling AM radio industry. To quote the NAB press release, "a great day for AM radio and for millions of listeners across America." I especially commend Commissioner Pai for his leadership on this issue and for all of you for coming together and finally getting this done.

And I also want to congratulate Commissioners Rosenworcel and O'Rielly for their bipartisan efforts on 5G wireless. Keep it up.

There is no lack of leadership or ability among the five people sitting before us today. You are all accomplished, recognized leaders. Our job is to change the system so each of you is a full participant in these incredibly important and complex decisions in a rapidly changing communications world.

With that, I will turn to my friend from California, Ms. Eshoo, for her opening comments.

[The prepared statement of Mr. Walden follows:]

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Ms. Eshoo. Thank you, Mr. Chairman.

And good morning, Mr. Chairman and members of the Commission. It is always great to see you here, the full Commission.

I want to start out by commending the Chairman and, certainly, the Commissioners. The Chairman began his job as the Chairman of the Commission 2 years ago this month. I don't know what the exact date was, Mr. Chairman, but I know it was 2 years ago. And it may seem to you like 100 years, some days anyway.

But in the staff memorandum, if members have read it, I just want to go through what I think is an honor roll of addressing issues. This is taking on a great deal, and I think they are all worthy of mention. Some of my colleagues are not going to agree, but, obviously, I think it is very important: net neutrality, spectrum legislation, public safety, AWS-3 auction, incentive auctions, the pending merger transactions, universal service, the E-rate, Lifeline, Rural Health Care Program, tech transition, consumer protection, public safety, enforcement, and I think there is -- well, obviously, there has been work on process reform.

And when I name off all of these areas, imagine the work that is underneath one or two words. So, whether Commissioners have agreed or disagreed on parts of policies that come under those umbrellas, you have taken on a huge workload, and I salute you. I have served with either five or six chairmen and commissions, and I think that this is



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the most proactive commission and chairman that we have worked with. So thank you. I salute you.

More than a decade ago, the Columbia Business School professor Eli Noam examined the relationship between entrepreneurship and government and telecommunications. He concluded that entrepreneurial firms exist in the telecom sector -- and this is so interesting to me -- not despite of government but, rather, because of it.

So let's assess how. Competition has been foundational in the Communications Act for more than 80 years, eight decades. So we do get some things right around here. Actions such as the Carterfone decision, the breakup of AT&T, and the 1996 Telecom Act demonstrated that when incumbents fail to innovate that the public sector has to step up to protect consumers and promote competition.

But what should communications policy look like in the second decade of the 21st century? In the Internet age, it begins with open, interconnected networks that empower consumers and businesses to use the devices and the services of their choosing. Robust, enforceable open Internet rules prevent broadband providers from blocking or throttling lawful online content or engaging in paid prioritization.

It means reforming legacy video laws that hinder innovation and consumer choice while protecting incumbent interests. And it means ensuring that consumers can buy a set-top box from someone other than their pay-TV provider. The lack of competition in the set-top box

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space has left consumers paying, on average, what some people think is whopping: \$231 a year on rental fees alone. Why we allow this to continue I don't know, but it really does need to be addressed.

So, to promote competition, we also need commonsense policies that make it easier for new companies to enter the broadband market. And I want to thank Commissioner Rosenworcel for highlighting in her testimony today the "dig once" policy that the chairman of our subcommittee and myself launched and on a bipartisan basis have promoted to promote broadband and do it in a very smart way.

Finally, competition should be embedded in the decisions we make on spectrum. A balanced spectrum policy that recognizes the importance of both licensed and unlicensed spectrum is going to enhance competition, it will drive down prices, and it will unlock new innovation. It is an innovation platform in our country, and we can't lose sight of that.

So my special thanks to you, Mr. Chairman, for your superb leadership; to each Commissioner for your leadership, for your working together. Even when you disagree, I think you do it -- it is not personal, it is about the policy. And we all benefit from a variety of views.

And more than anything else, I want to -- I will be gone from this world, but what I want written about the 21st century is that it was an American century.

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I have gone over my time. I apologize to Congresswoman Matsui. I was going to yield time to her, but perhaps somebody else will.

Thank you, Mr. Chairman.

And thank you --

Mr. Walden. Thank you.

Ms. Eshoo. -- Commissioners.

[The prepared statement of Ms. Eshoo follows:]

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Mr. Walden. I will now turn to the chairman of the full committee, the gentleman from Michigan, Mr. Upton, for opening comments.

The Chairman. Well, thank you, Mr. Chairman.

As we all know, 2 years ago, this committee welcomed a newly sworn-in Chairman Wheeler to this very hearing room. Our message then for the new Chair and the entire Commission was short and sweet: Given the FCC's jurisdiction over one of the most important sectors of our economy, the decisions that they would make would be critical to innovation, jobs, and our Nation's global leadership in technology.

And, today, our request is just as simple: In executing its functions, the agency must operate with openness and transparency for the benefit of American consumers and job creators.

Unfortunately, notwithstanding our clear and numerous concerns, the FCC has been plagued at times by process failures and a lack of healthy and honest policy debate. Ultimately, this has produced uncertainty in the market, harming our economy and the robust communication sector's ability to create the jobs that all Americans need.

There remains many significant matters to be decided by the Commission. These are opportunities for the FCC to get back on track, to demonstrate its commitment to process reform and return to the bipartisan policymaking that was once a hallmark of the FCC.

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What you collectively do together matters to folks in Michigan and across the country, whose daily lives have been transformed by technology. And if the process can be improved, we will all be better for it.

I yield the balance of my time to Mrs. Blackburn and then Mr. Latta.

[The prepared statement of the chairman follows:]

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Mrs. Blackburn. Thank you, Mr. Chairman.

I want to say thank you to each of the Commissioners for taking your time to be here. It has been a while since we have had the full panel, and we are appreciative for this because we do have some questions. And FCC actions over the past several months have raised some questions about transparency and accountability and, as our chairman likes to say, regulatory humility or the lack thereof. So those are issues we want to cover with you today.

We also are going to want to talk some about net neutrality and the Commission's potential entry into the online privacy realm. That has been the jurisdiction of the FTC, so we are a bit concerned about that and about how your policies seem to go about pushing the concept of picking winners and losers, which is not your job. The marketplace should do that.

I am also going to have some questions about your decision to preempt State laws in Tennessee and North Carolina on the muni broadband issue. The chairman touched on this. You have a position there that even DOJ found that it could not support. So this is of concern to us.

We thank you for being here to answer the questions.

And I yield the balance of the time to Mr. Latta.

[The prepared statement of Mrs. Blackburn follows:]

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Mr. Latta. Well, thank you very much. I appreciate the gentlelady for yielding.

And, Mr. Chairman, thanks for today's hearing.

And to the Commission, thanks very much for being with us today.

Over the past year, this subcommittee has devoted many hearings to oversight of the FCC. This attention has not been misplaced. The communications and technology industry is a very productive and dynamic sector of our economy. We cannot afford to overlook the significance of regulatory policies and how the FCC's decisions affect the success of this vibrant industry.

Without proper oversight, some actions emerging from the FCC, like the Downloadable Security Technical Advisory Committee proposals, can go unchecked and have negative impacts on a thriving industry. DSTAC, established by the FCC as directed by Congress, was formed to make recommendations on a software-based, downloadable security system for securing video content. However, the FCC allowed the DSTAC to focus on navigation interface issues, as well as downloadable security. This action goes against clear direction from Congress. As a result, the technical working group failed to achieve its intended purpose.

I look forward to hearing from the Commissioners today on this issue, Mr. Chairman. And I yield back the balance of my time.

[The prepared statement of Mr. Latta follows:]



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Mr. Walden. The gentleman yields back the balance of the chairman's time.

And we will now go to the ranking member of the full committee, the gentleman from New Jersey, Mr. Pallone.

Mr. Pallone. Thank you, Chairman, and I also want to thank our ranking member for holding this hearing.

And thank you to all the Commissioners for coming up to talk with us once again.

This is the fourth FCC oversight hearing we have had this year. I certainly appreciate the efforts the Republicans have put into overseeing the Commission. Oversight of all the agencies under our committee's jurisdiction is always a top priority for Democrats, and, still, I wish the committee had been as energetic this year about other problems the American people are grappling with, such as climate change, safe drinking water, or domestic violence in sports.

Nevertheless, today's hearing is at least timely. We just recently commemorated the third anniversary of when Hurricane Sandy ripped through the East Coast. The storm left people across my district stranded without communication, some of them for weeks. And so I have spent the past 3 years making sure that we are better prepared for the next time disaster strikes. Because unless we do more to control climate change, there will be a next time.

And that is why, yesterday, I introduced the SANDy Act to make

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sure people have better access to communications in an emergency. The bill recognizes the importance of phone service, TV, and radio during emergencies. I hope that the proposal in that bill, along with the efforts at the FCC to make networks more resilient, will mean that we never have a repeat of the communication failures from 3 years ago.

But as important as network resiliency is, the FCC role in helping consumers is much broader. So I would like to briefly mention my other priorities for the Commission.

First, online video. The future of communications is video, and the future of video is online and mobile. I thank the Commission for its ongoing work to understand this dynamic market, but I urge you to always remain focused on putting consumers first. Above all, the Commission's priority should be making sure consumers are the ones deciding what services and devices meet their needs.

Second is spectrum. To make sure consumers can access the content they choose wherever they choose on whatever device they choose, they need more spectrum. The FCC is doing its part to meet this demand through its record-breaking spectrum auction earlier this year and its first-of-its-kind incentive auction set for early next year. I hope that Congress can continue to do our part by building on our recent work in the budget deal. We must find new ways to free more spectrum. We have not done enough.

I know I have a couple other people here that want to use my time,

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but, before I yield, I wanted to thank Chairman Walden for his willingness to revisit the matter of broadcast ownerships. The chairman called a hearing to explore this issue a few months ago but had to cut it short. And this is an issue that the American people care deeply about, so I appreciate the fact that the chairman has offered to complete the hearing on December 3, and I look forward to it.

So I thank, again, our witnesses. I look forward to hearing from you all about the important work the FCC is doing to help consumers.

I have 2 minutes. I would like to give 1 minute to Mr. Butterfield and 1 to Ms. Matsui. We will start with Mr. Butterfield.

[The prepared statement of Mr. Pallone follows:]

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Mr. Butterfield. I will do it very quickly, Mr. Pallone. Thank you very much for yielding.

And thank you, Mr. Chairman, for convening this important hearing today.

And to Commissioner Wheeler and to your colleagues, thank you so very much for coming.

I would like to very quickly mention one thing because I may not be able to get it out during the remainder of the hearing. This is very important to me, and it is important to members of the Congressional Black Caucus. I recall that when I was a judge, when I was lawyer, and now as a community-based Congressman, I have run into this problem constantly throughout the years, and that has to deal with telephone calls from prisoners. Even when I was a trial judge, I used to get collect calls from those who were incarcerated.

And you, Mr. Wheeler, and your Commission have addressed this issue, and I want to thank you and Ms. Clyburn and the others who worked so diligently on this.

A call that used to cost as much as \$14 per minute -- a lot of people don't realize this -- \$14 per minute now costs 11 cents per minute. A 15-minute phone call used to be up to \$210 -- a 15-minute call, \$210. Now it is \$1.65 per minute.

And I just want to commend you for your bold step in making that happen. I have a friend who is in prison. I visit him four times a

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year. And it is a big conversation among the population in the prison, how they have been relieved of these burdensome phone calls. And so I want to thank you for your work in that area.

And now I yield to my friend, Ms. Matsui.

[The prepared statement of Mr. Butterfield follows:]

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Ms. Matsui. Thank you very much for yielding to me.

Welcome back, Chairman Wheeler and Commissioners. We appreciate the work you are doing in many areas.

One of my top priorities is making more spectrum available. The recently passed Budget Act took important first steps, but I believe Congress and the FCC need to build upon these provisions to identify new spectrum opportunities.

We also share many other priorities, from modernizing the Lifeline program for broadband to keeping the incentive auction on track. I look forward to hearing more about the FCC's progress on promoting a competitive market for special access services.

I also urge the Commission to work with the subcommittee to ensure any products of the set-top box working group process serve the public interest.

Thank you, and I yield back.

[The prepared statement of Ms. Matsui follows:]

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Mr. Walden. The gentlelady yields back.

All time has expired.

We will now go to the Chairman of the Federal Communications Commission, the Honorable Mr. Wheeler, for your opening statement. It is good to see you.

And I just want to stipulate for the record, the red I am wearing has nothing to do with Ohio State.

Let's go now to Mr. Wheeler.



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STATEMENTS OF THE HON. TOM WHEELER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; THE HON. MIGNON CLYBURN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; THE HON. JESSICA ROSENWORCEL, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; THE HON. AJIT PAI, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; AND THE HON. MICHAEL O'RIELLY, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

STATEMENT OF THE HON. TOM WHEELER

Mr. Wheeler. Mr. Chairman, it is a privilege to be here. Ms. Eshoo, Mr. Pallone.

The color facts speak for themselves, sir.

I have a prepared statement in the record, and I look forward to discussing a vast array of topics that have been suggested here today.

Let me begin by applauding this body and the House for the bipartisan passage of H.R. 2583. We understand the process reforms that you seek, and we will comply with the law.

Briefly, today, let me focus on three topics that only Congress can resolve and pledge to work with this committee in addressing them.

As I have said every time that I have been here, we have a crisis in bringing public safety communications into the digital era. We all mourn the events in Paris and the tragedy that happened there, but it

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reminds us of the need for constant preparedness and vigilance.

When September 11 happened in this country, we discovered problems with the interoperability among our first responders, and Congress stepped up to address that. Mr. Pallone's new proposal that he just spoke about reminds us of the need to improve network resiliency in disasters.

And there is another lurking problem, and that is the difficulty of our 6,800 public safety answering points, our 911 operators, and the difficulty they are having adopting the next generation, the digital generation, of 911 capabilities. They risk becoming analog islands in a digital sea. The current systems are costly to operate and with limited capabilities compared to digital. The transition is expensive. It requires new equipment and new systems. It requires running redundant analog and digital during the conversion.

There needs to be a national solution, national coordination, and national help to find the funds, perhaps from future auctions. It is worthy of public hearings, I would urge, Mr. Chairman, to illuminate the issue and the potential solutions, and we would look forward to working with the committee in that regard.

Secondly, this committee has taken really important steps on infrastructure construction, and more opportunities await. You know, there are really three goals. When you look at infrastructure, there are really three goals. How do you provide for clarity, consistency,

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and completion -- the three C's of infrastructure.

Insofar as clarity is concerned, today, court decisions decide infrastructure policy. Congress should decide infrastructure policy. You know, we need policy on activities that are deemed normally not to have significant impact on the environment. We need to eliminate the need for permits on technology upgrades without negative effects. We need to have the presumption that one commercial approval works for others; you don't have to have repetitive approvals. And we need to address the challenge in the Clean Water Act that says that when you dig up a street to replace the sewer you are prohibited by law from laying fiber. It just doesn't make any sense. Talk about "dig once."

Insofar as consistency, only Congress can streamline the siting of facilities on Federal lands. There are just too many agencies with too many diverse processes to do serially.

And on the question of completion, there needs to be certainty in the decisions. The reality is that appeals from the shot clock -- we establish a shot clock, and then it goes to court in appeals, and it just delays the process further. One example of a solution was recently passed in the State of California, where the California law says that if a decision is not made within the shot clock it is deemed granted.

So clarity, consistency, and completion are the goals we need to focus on for infrastructure, and we looked forward to working with you

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on those.

And, finally, I know that this committee is concerned about pirate radio. During my tenure, we have taken 280 enforcement actions against pirate radio. That is in the last 2 years. Commissioner O'Rielly has been a real leader in keeping us focused on this. We are working with the NAB on a joint task force on pirate radio.

But we need more tools. We are playing Whac-a-Mole right now. Every time a station pops up, we whack it. We need to have consequences for those who facilitate those stations popping up, the landlords who look the other way because helping pirates is risk-free. Congress could make it illegal to aid or abet pirate radio operations, and, in the process, denying them the opportunity to operate in this way would be a significant means of thwarting the continued growth of pirate radio.

On these and all other issues, we look forward to working with this committee. And I thank you for the opportunity to be here.

[The prepared statement of Mr. Wheeler follows:]

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Mr. Walden. Mr. Chairman, thank you for those recommendations and suggestions. Thanks for being here. We look forward to the questions.

We will now go to the Honorable Ms. Clyburn, Commissioner of the Federal Communications Commission.

Thanks for your good work on the issues raised by Mr. Butterfield. And we look forward to your testimony.

#### **STATEMENT OF THE HON. MIGNON CLYBURN**

Ms. Clyburn. Thank you, Chairman Walden, Ranking Member Eshoo, distinguished members of the committee. I appreciate the opportunity to appear before you this morning in the company of my colleagues.

We are living during an incredibly exciting time. America remains the land of opportunity. Technological advancements abound, providing new means to achieve the American Dream. And broadband is one of the biggest enablers of that dream. It is breaking down barriers to health care through remote monitoring, it is offering new paths to jobs and training, and it is providing our children with world-class learning.

Most Americans enjoy ubiquitous access to broadband, but the number of those who do not remains high. I am both humbled and grateful that, from the directive issued by you, that the FCC has the obligation,

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ability, and opportunity to serve our Nation by acting to close chronic opportunity divides.

My written testimony, which I ask to be included in the record, focuses on a promise and opportunities made possible by universal access to broadband, and it outlines our efforts to close those remaining communications access gaps.

The Mobility Fund. While many of us enjoy nearly ubiquitous mobile coverage, pockets of our Nation remain in darkness. In 2001, a bipartisan FCC adopted a dedicated Mobility Fund, but it has yet to be implemented. I believe that it is imperative that we move quickly to adopt a permanent Mobility Fund to eliminate coverage gaps across our Nation.

Lifeline. The statute accords equal weight to rural high-cost areas and low-income consumers when it comes to ensuring access to service reasonably comparable to those we enjoy in urban areas, and it is time that the FCC do so, as well. It is time to move from merely criticizing to fixing remaining problems in Lifeline.

So I fully support the modernization of the program to address the affordability divide. And I believe that the steps we have already taken and the plan we have outlined in our notice of proposed rulemaking would not only eliminate incentives for waste, fraud, and abuse but enable Lifeline to become truly a real communications bridge to help Americans in need to get back on their feet.

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The incentive auction. The Commission has worked hard to implement your directives regarding the incentive auction. And I am proud that we adopted rules to incentivize smaller companies to deploy wireless networks in areas that lack advanced services.

And, as you have heard, the reform of inmate calling services. I am deeply grateful that we finally acted, in the absence of a functional marketplace, to provide affordable communication services for those wanting and needing to stay in touch with the currently incarcerated. Too many families, friends, and attorneys are making unconscionable choices to stay in touch. And our Nation is plagued by the highest recidivism rate in the world in part because families cannot afford to maintain regular contact and too many former inmates go home as strangers and are unable to readjust.

Our Connect to Health program. That task force is an effort to reach beyond the Beltway to focus on game-changing projects and stimulating new collaborations between public and private stakeholders and local communities that are seeking to solve health challenges through broadband-enabled solutions.

And, lastly, we talked about it, the AM revitalization item. This bipartisan compromise addressed and met the needs of small businesses, AM radio owners, and the public by taking steps to increase the viability of AM radio stations through access to an FM translator.

Mr. Chairman, this sums up my testimony. The rest is in the

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record. And I look forward to any questions you may have.

[The prepared statement of Ms. Clyburn follows:]

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Mr. Walden. Commissioner, thank you for your good work, and thanks for sharing those items with us.

We will now go to Commissioner Rosenworcel.

Thank you for being here. We look forward to your testimony, as well.

#### STATEMENT OF THE HON. JESSICA ROSENWORCEL

Ms. Rosenworcel. Good morning, Chairman Walden, Ranking Member Eshoo, and members of the subcommittee. Thank you for the opportunity to appear before you today along with my colleagues at the FCC.

Today, communications technologies account for one-sixth of our economy, and that is no wonder, because these are the networks that carry all aspects of modern, commercial, and civic life. They are changing at a breathtaking pace, requiring us all to think boldly about the future. And, in the months ahead, the FCC will do just that as we begin the world's first spectrum incentive auction, work to speed the IP transition, and update universal service and media policies. This is lofty stuff.

But I want to begin today by talking about the least glamorous part of the communications revolution. I want to talk about infrastructure. Because no amount of new fiberoptic facilities or spectrum matters without good policies on the ground.

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I believe it is time to take a comprehensive look at deployment practices and find a way to make them more consistent all across the country. We can begin with "dig once" policies, which can pave the way for more broadband deployment.

And the notion behind "dig once" is simple. When construction crews are building or repairing roads, deploying broadband conduit at the same time adds only 1 percent to the cost of highway projects. But this small change can have big impact, yielding more broadband investment, more universal access, and more competition.

We should also focus on Federal lands, which make up as much as one-third of our national real estate. We can expedite deployment here by creating an open data inventory of Federal infrastructure assets that can help support broadband and wireless deployment.

We also need standard contracts from the GSA to facilitate deployment of antenna structures on Federal property. And, while we are at it, we should consider extending FCC's shot-clock policies for State and local jurisdictions to Federal authorities so those who want to deploy infrastructure get a timely response.

Not all of these policies can be acted on by the Commission alone, but I believe it is essential that we work with you and our Federal colleagues to help put them in place.

Now, these gritty realities of network deployment may not get the glory, but they are important. Of course, it is also important that

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we focus on what we can do with our new networks. So now I want to talk about how our networks are used for learning.

When I was growing up, homework required just a paper, pencil, and my brother leaving me alone. That is no longer true, because today 7 in 10 teachers assign homework that requires access to broadband. But FCC data suggests as many as one in three households do not subscribe to broadband service.

Now, if you think about those numbers, where they overlap is what I call the homework gap. And if you are a student in a household without broadband, now just getting your homework done is hard. Applying for a scholarship is challenging. And while some students may have access to a smartphone, let me submit to you that a phone is just not how you want to research and type a paper, apply for jobs, or further your education.

These students enter the job market with a serious handicap. And that is a job market today where half of all jobs require some level of digital skills. By the end the decade, that number jumps to 77 percent. But the loss here, ultimately, is more than individual, because it is a loss to our collective human capital and shared economic future that we need to address.

Now, to address it is going to require a mix of public and private initiatives, modernizing FCC work to support connectivity in low-income households, more WiFi, more competition, and better

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infrastructure. But I think the sooner we act, the sooner we bridge the homework gap and give more students a fair shot at 21st-century success.

Now, learning, of course, is just one example of how new communications technologies are remaking our world. There are others. Just last week, we had a cruel reminder from abroad that when the unthinkable occurs our security so often depends on connectivity. And in the days and weeks ahead, I know our horror will not fade, but our resilience will only grow. And at home and abroad, we need to study the mix of public alerts, first-responder communications, and social networking that facilitated safety. Those lessons can make us stronger, and we should submit ourselves to the discipline of learning them.

Thank you. I look forward to answering any questions.

[The prepared statement of Ms. Rosenworcel follows:]

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Mr. Walden. Thank you, Commissioner.

I will now turn to Commissioner Pai for your opening comments. Thanks for being with us. We look forward to your testimony.

**STATEMENT OF THE HON. AJIT PAI**

Mr. Pai. Thank you, sir.

Chairman Walden, Ranking Member Eshoo, members of the subcommittee, thank you for inviting me to testify today. Since 2012, it has been a pleasure to labor alongside you on these issues of critical importance, and I look forward to continuing that work in the time to come.

This morning, I would like to share my perspective on three important issues on which members of this subcommittee have recently focused, and I will start with broadband deployment.

Before shovels even hit the dirt, Internet service providers must navigate a dizzying array of Federal, State, and local obstacles, and this comes at a cost. Every week spent negotiating with a municipality for access to local rights of way is another week that consumers must wait for a faster service. Every dollar spent complying with outdated regulations is a dollar that could have been spent delivering digital opportunities. I have heard and seen this for myself, everywhere from Fargo, North Dakota, to Hammond, Louisiana.

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I applaud the work of this subcommittee on breaking down the barriers to broadband infrastructure deployment. On a bipartisan basis, you have examined six bills that could boost broadband deployment, including the Broadband Conduit Deployment Act of 2015. This bill would help ensure that fiber accompanies every new highway and, thereby, improve broadband across America. This kind of work in the weeds is exactly what is needed if we are going to spur private-sector investment.

Unfortunately, in my view, the FCC has not been as focused in promoting the digital revolution. The decision to regulate Internet service providers, like Ma Bell of yore, is a case in point, but that is not the only problematic decision. The FCC has also impeded the IP transition, making it harder for carriers to leave behind the fading copper networks of yesterday and focus on building next-generation networks.

It is time for the Commission to change course. We should recognize that competition is the best guarantor of consumer welfare, certainly more than pervasive regulation. We should embrace the IP transition and clear out the regulatory underbrush that has slowed down the rollout of new services. And we should work with this subcommittee on further breaking down the barriers to infrastructure investment.

Speaking of changing course, I hope the Commission will soon abandon its quest to regulate the over-the-top video market. So far,

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we have left this market to evolve on its own, and that has been a wise approach, in my opinion. As the Digital Media Association, which represents over-the-top providers including Apple, Microsoft, and Sony, put it, "The tremendous developments in over-the-top services have emerged in an environment that permits innovators to be flexible and unencumbered." And so the Commission's proposal, as they put it, "could end up backfiring, reducing resources and opportunities for these innovators rather than expanding them."

And, last month, Ranking Member Pallone called on the FCC to hit the "pause" button on regulating streaming video because consumers are beginning to have more programs to choose from, more ways to get them, and more options on prices. I wholeheartedly agree. And I think that the FCC should embrace the paradigm he expressed this morning of putting consumers first.

One last concern I raise for the subcommittee's consideration is the agency's enforcement process. I applaud the leaders of this subcommittee for asking the GAO last month to investigate the management of the FCC's Enforcement Bureau.

To be blunt, the FCC's enforcement process has gone off the rails. The FCC routinely asserts that companies have violated never-adopted rules, ignores facts that get in the way of good press, and plucks forfeiture amounts out of thin air.

Things weren't always this way. Under Chairman Genachowski's

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leadership, I only dissented on one enforcement action, and that was because I thought the proposed forfeiture amount was too low. Under Acting Chairwoman Clyburn's leadership, I didn't dissent on any Enforcement Bureau actions, not one. But in the last 13 months, I have voted against 10. To be clear, I haven't changed my approach. It is the Commission's approach that has changed.

One further problem is that Commissioners themselves can't oversee the enforcement process. On June 24, I asked the Enforcement Bureau to provide me with a list of their open investigations. One day before our last oversight hearing, the Chairman's office told me they believed they were a week or two away from supplying this information. Five months later, my office has followed up on this request no less than 12 separate times, and I still haven't received a list of open investigations.

This is unacceptable. As someone nominated by the President and accountable to this body and to the American public for making FCC policy, I should be able to find out what the FCC, including its bureaus, is doing. That I can't indicates that the agency's process is broken.

Chairman Walden, Ranking Member Eshoo, members of the subcommittee, thank you once again for holding this hearing. I appreciate your concern about areas of interest to the FCC and look forward to working with you once again in the time to come.

[The prepared statement of Mr. Pai follows:]



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Mr. Walden. Thank you, Commissioner Pai. That is very disturbing. We will follow up on that.

Mr. O'Rielly, we are delighted to have you before the committee. Commissioner, please go ahead with your opening comments.

**STATEMENT OF THE HON. MICHAEL O'RIELLY**

Mr. O'Rielly. Thank you, Mr. Chairman. Thank you for the honor to be before this subcommittee to help further its oversight responsibility over the Federal Communications Commission.

During my 2-year tenure, I have tried to be true to my principles, look for areas of agreement with my colleagues, and move past any disagreements that we may have. This subcommittee is right to focus significant attention on the Commission, given how our decisions impact the American economy. In retrospect, I wish I had pushed for more FCC hearings when I advised committee members years ago.

With your indulgence, I would like to touch on four areas to help further the discussion.

First, a key priority for me is expanding the amount of commercial spectrum available and updating infrastructure rules to facilitate build-out. While the Spectrum Pipeline Act is a step in the right direction, industry experts indicate that 350 megahertz of licensed spectrum will be needed to meet projected demand by the end of the

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decade. Inevitably, Federal Government users must reduce their footprint. And we need to incentivize this transition, including instituting Federal Government spectrum user fees.

The Commission's efforts to release more spectrum for commercial use include the upcoming broadcast incentive auction, a proceeding targeting specific bands above 24 gigahertz, and examining the best ways to open the 5.9-gigahertz band for unlicensed use.

But no matter how much new spectrum is available, substantial infrastructure upgrades are needed. And I have discussed a number of ways to promote build-out in my written testimony.

Second, the Commission recently moved to reduce barriers to private-sector, not government, foreign investment by proposing to extend the common carrier streamlined review process to broadcast licensees. This action is not just about increasing capital for domestic broadcasters but also about expanding the ability of U.S. firms to invest internationally.

At the same time, fixing the process at the Commission will do nothing to alleviate the problems inherent in the opaque and lengthy Team Telecom review process. I respectfully request this body to consider ways to work across committee jurisdiction to craft an oversight function for Team Telecom that is grounded in fact and legitimacy rather than the whims of any Federal department at any given moment.

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Third, I repeat my call for some badly needed process reforms at the Commission. Top of this list is allowing those interested in Commission open meeting items to see the exact text being proposed to engage in a clear and level playing field, not through a dense fog of spin.

Other reform ideas I have advocated were summarily deferred to a process review task force. My office has been actively engaged in this process, but suffice it to say that no action has occurred yet. The committee's legislation in this area is both helpful and needed.

Lastly, the subcommittee should be concerned about the potential for Commission mission creep. Nearly every week, the Commission expansively interprets the Communications Act to claim broad authority outside that originally contemplated by the law. Without proper constraints, it is easy to see this or a future Commission trying to micromanage business practices of edge providers or online companies.

The Commission's strong interest in regulating privacy and data security is a troubling example with major implications for the tech economy and those businesses that transact with customers online. The Commission should not freelance in an area where it has little expertise. The communications sector is much too important to the economy to be saddled with experimental regulations from any and all interested agencies.

So, with that, I thank the chairman and wish to yield back.

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

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Mr. Walden. Commissioner O'Rielly, thank you.

And thanks to all the Commissioners and the Chairman for being here and for your comments.

I am going to start.

Commissioner Rosenworcel, I noted in your recent testimony in the Senate that you supported cost-benefit analysis in the FCC's decisionmaking, reflecting what the President has proposed in his 2011 Executive order. Is that correct?

Ms. Rosenworcel. Thank you for the question, Chairman Walden.

I did acknowledge that the President issued an Executive order in July of 2011 --

Mr. Walden. Right.

Ms. Rosenworcel. -- directing agencies to the extent possible to follow cost-benefit analysis, yes.

Mr. Walden. And you support that?

Ms. Rosenworcel. I can support an Executive order, yes.

Mr. Walden. Some I do; some I don't.

Commissioner Pai, do you support that concept, as well, the cost-benefit analysis in the FCC's decisionmaking, reflecting the President's order of 2011 for the other agencies?

Mr. Pai. I do wholeheartedly, Mr. Chairman.

Mr. Walden. Mr. O'Rielly?

Mr. O'Rielly. Absolutely, Mr. Chairman.

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Mr. Walden. Commissioner Clyburn?

Ms. Clyburn. I support the concept.

Mr. Walden. So, Commissioner Wheeler, it looks --

Mr. Wheeler. Oh, my goodness.

Mr. Walden. -- like you have three to two here right now, or three to one. Is this something we can look forward to you maybe circulating?

Mr. Wheeler. Well, I think the first thing that I clearly don't need to remind this committee --

Mr. Walden. You are an independent agency not subject to the --

Mr. Wheeler. -- that we are --

Mr. Walden. -- President's Executive order.

Mr. Wheeler. -- independent --

Mr. Walden. That is why you can show leadership and --

Mr. Wheeler. You knew it.

Mr. Walden. Yes.

Mr. Wheeler. And it is hard not to believe in cost-benefit analysis.

Mr. Walden. Okay.

Mr. Wheeler. And the purpose of rulemakings is to conduct that kind of cost-benefit analysis and to discover, through the advocacy process, what are the costs --

Mr. Walden. All right, but --

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Mr. Wheeler. -- and what are the benefits and make a decision on it.

Mr. Walden. As you know this process, I only have 5 minutes, so I am going to cut to the chase here.

Is that something you are willing to put out for the Commission to consider in a formal basis, that you will do cost-benefit analyses?

Mr. Wheeler. So, Mr. Chairman, I have not specifically looked at the Executive order you referenced. Let me take a look at it, and I will be happy to get a response to you.

Mr. Walden. All right. I will make sure and get it to you.

This issue that Commissioner Pai raised is obviously disturbing to the committee. And he details how this has not been an issue in the past, now contends it is an issue. He has been trying to get access to what the Enforcement Bureau is looking at.

If I were on the Commission, I would feel that responsibility and feel like I had the authority to get that. What is the issue there, Chairman?

Mr. Wheeler. Thank you, Mr. Chairman.

I think that the issue here is the difference between a law enforcement activity and a policy deliberation. And in the law enforcement side of things, you are dealing with sensitive information, you are dealing with information that can move markets, you are dealing with a presumption of innocence, that somebody's name gets dragged



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through the press --

Mr. Walden. Well, but I guess if --

Mr. Wheeler. -- and -- but let me --

Mr. Walden. Because if prior Chairs have been willing to share that information, is there a specific --

Mr. Wheeler. It is not my understanding that that is the case, sir, that the law enforcement activities have always been --

Mr. Walden. But are all of these law enforcement, or are they just --

Mr. Wheeler. They are all law enforcement, yes, sir.

Mr. Walden. All right. Commissioner Pai seems to have a disagreement. I am going to try and sort this out.

Commissioner Pai?

Mr. Pai. Mr. Chairman, a couple of responses.

First, I think, fundamentally, every Commissioner has the responsibility to understand, because we are accountable for the policy decisions that any subordinate bureau makes.

Secondly, I have a security clearance comparable to any member of the Enforcement Bureau. I have been privy to some of the most sensitive government operations there are, far more sensitive, for example, than deciding whether or not Lyft or Uber or somebody else should get a citation from the Enforcement Bureau.

Additionally, I think that it is a question of selective

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prosecution that has been raised. For example, on issues like the TCPA, our number-one source of complaints is for violations of the Do Not Call Registry. Yet, when we adopted the TCPA rules, we only had one Enforcement Bureau citation on the books. Why is that?

Pirate radio. Commissioner O'Rielly has long been beating the drum, yet it wasn't a priority till --

Mr. Walden. All right.

Mr. Pai. -- recently. I want to understand why that is.

Mr. Walden. Commissioner O'Rielly, have you had similar sort of problems?

Mr. O'Rielly. I agree with my colleague on a number of fronts. And he raised these issues -- I have raised them before publicly. I have a problem with a number of aspects of our Enforcement Bureau, both in the selective prosecution but also getting information.

For instance, we have been trying to work on pirate radio for a while. In July, we adopted an item. I have been pushing them to do the policy statement that all of us agreed to do. It wasn't until last week, when this hearing was announced, or 2 weeks ago, that we actually finally got some ideas out of the Enforcement Bureau in terms of how to address pirate radio.

So I am troubled by how irresponsible they are to the concerns that we have and the activities that we would like to see addressed. But then, also, on the prosecution side, deep problems in terms of some

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of the items that we have adopted against my wishes.

Mr. Walden. All right. My time for questions has expired. To be continued.

We turn now to the gentlelady from California, Ms. Eshoo.

Ms. Eshoo. Thank you, Mr. Chairman.

Thank you for all of your opening statements.

There is something that I failed to mention in my opening statement, and I think it is important enough to circle back. I was talking about new competition and when it is unlikely to emerge. An example is the \$40-billion-a-year special access market. The FCC, I believe, has to act decisively to reform the market and stop anticompetitive practices. So I know that you are working on it, but I want to underscore it, because this isn't something that is small.

I would also like to recognize Ambassador Verveer, who is in the audience.

And thank you for your extraordinary service to our country, Mr. Ambassador. Welcome. You enhance the hearing room with your presence. Thank you very much.

Mr. Walden. Here, here.

Ms. Eshoo. Now, some questions.

Commissioner O'Rielly, in March, you called for the Commission to proceed with setting rules and policies that affirmatively permit foreign ownership of broadcast licensees above the 25-percent cap. I

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know that the proposed rulemaking was unanimously adopted last month.

Can you just quickly state what you think will come out of that proposal?

Mr. O'Rielly. Absolutely.

Ms. Eshoo. Because I think it is a very important one.

Mr. O'Rielly. No, I think so, as well. And I agree. And I thank the good work of my colleagues, including the Chairman, who has been very cooperative on this issue.

We have worked to try and provide a clear path for foreign investment into U.S. broadcast properties from the private sector, not the government, not foreign governments. And, in doing so, we think we can increase the amount of capital available for broadcasters in terms of things that they may need to do. That is very important.

But it also, as I talked about in my testimony, it is also about allowing U.S. investors internationally. This has been a barrier that is pointed on in a number of --

Ms. Eshoo. It does raise capital.

Mr. O'Rielly. Absolutely.

Ms. Eshoo. It raises capital. So thank you, and thank you for working on that.

Commissioner Rosenworcel, you need to know that the chairman leaned over and said, "What did you do to get so many Commissioners to talk about 'dig once'?" One of these days, it is going to pass the

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Congress. But thank you. And thank you to the Chairman and anyone else that -- I think that Commissioner Clyburn also said something about it.

You suggested that legislative efforts to increase licensed spectrum, you know, for the licensed spectrum pipeline, should also include unlicensed. Obviously, you know that I am a huge proponent of unlicensed spectrum. You have called this the WiFi dividend.

Now, in crafting legislation, how do we ensure that the enormous economic value of unlicensed is reflected in CBO's scoring?

I almost didn't ask you this, because you are not a CBO person, but you have been on the inside of the government. And this is a problem. Anyway, do you want to take a shot at it?

Ms. Rosenworcel. Thank you for the question, difficult though it is.

Everyone in this room has probably used unlicensed spectrum today.

Ms. Eshoo. Sure.

Ms. Rosenworcel. Maybe it has been WiFi, your garage-door opener, an RFID tag when you were at the store, or a baby monitor overnight. Everyone in this room has used it. It is a huge part of our daily lives, and it is a huge part of our economy, responsible for more than \$140 billion in economic activity annually.

Ms. Eshoo. Right.

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Ms. Rosenworcel. So, when we talk about spectrum policy, we need to make sure we talk both about licensed and unlicensed. And when legislation moves through this committee, including a swath of unlicensed is a good thing for the wireless economy. It is what I have called the WiFi dividend.

The challenge, as you acknowledge, comes with the Congressional Budget Office, which reviews spectrum legislation and has a heavy bias towards spectrum that gets auctioned and sold through the FCC's auction process. It strikes me that that accounting is outdated because it doesn't account for the \$140 billion in economic activity every year that is dependent on unlicensed spectrum.

And so the idea behind a WiFi dividend is to continue to move unlicensed spectrum when licensed legislation comes about. And I think, if we do that, we can see the economy grow and the Internet of Things really flourish.

Ms. Eshoo. Yeah, that is great. Thank you.

Mr. Chairman, our Senate colleagues have done a study and concluded that consumers pay an average of \$231 annually. I said that in my opening statement. What are we going to do about this?

I think that section 629 is pretty specific in terms of its intention to give consumers a choice in what device they want to use. Do you want to comment on this?

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

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Just last week, we closed a comment period in which we were asking for responses to the DSTAC report that Mr. Latta had referenced, and I think we need to then decide what we do to go on from there.

You know, I was reading section 629 this morning in anticipation it might be a topic. And I note that it specifically says that the Congress is telling the FCC to "assure," quote/unquote, the availability of competitive navigation devices.

So we are going to get the comments in. We had a really fulsome DSTAC process. It produced two separate reports. We put both of those out for comments. The comments closed last week. We will review them and decide what happens next.

Ms. Eshoo. My time has expired. I have more questions. I don't know if we are going to do more than one round.

Mr. Walden. We will try to.

Ms. Eshoo. Thank you very much.

Mr. Walden. We will go now to Mr. -- Mrs. Blackburn, I am sorry, is next.

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RPTR BAKER

EDTR HOFSTAD

[11:13 a.m.]

Mrs. Blackburn. Thank you, Mr. Chairman.

Chairman Wheeler, I want to talk about the Downloadable Security Technical Advisory Committee report and the final report it issued on development of downloadable security systems that would facilitate the delivery of video programming over third-party services. And, as you can imagine and as we have talked many times, my content producers in Nashville have a lot of concern about this.

And one of the proposals would allow MVPD service to be disassembled into individual piece parts that any retail device manufacturer could selectively reassemble into a new configuration and a new service. And it is similar to the AllVid concept considered by the FCC in 2010. Disaggregating this MVPD content would also lead third parties to circumvent -- to circumvent -- the consumer protections that are built into regulated MVPD service but not into AllVid.

So, with respect to AllVid, I am concerned by ideas that are being pushed right now by some individuals and groups that would allow third parties to use the content for their own service in ways that violate the licensing terms and without consent of the content creator.



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And we have a TV marketplace that is producing more video content than ever, so why would the government support this kind of intervention and theft?

Mr. Wheeler. Thank you, Ms. Blackburn.

I think the first reality here is that, you know, AllVid was an idea from half a dozen years ago. The world has moved on substantially since then.

As I indicated to Ms. Eshoo, the goal of DSTAC was to address exactly the question that you raise. And there were strong opinions on both sides. And the conclusions, the comments on it have just been filed.

I can assure you that it is no one's goal to thwart the security that protects the sanctity of copyrights and that we will review the record that has been developed accordingly.

Mrs. Blackburn. So we can be assured that you all are not going to diminish the right of these content creators to control their content, correct?

Mr. Wheeler. We have to protect copyright, madam.

Mrs. Blackburn. Okay.

Let me move on. I watched some video statements made by Jonathan Chambers over at the North Carolina Rural Center's Rural Broadband Conference that was held back in September. And he did a presentation called "Build It Anyway." And he, in this, personally talked about

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how he personally secured \$100 million, which he referred to as a tiny amount of money, for a rural broadband experiment.

And I want to play that right now.

[Video shown.]

Mrs. Blackburn. Okay. If we can come back to the questioning.

Mr. Chairman, were you aware of this presentation and aware that he was discussing \$100 million as a tiny amount of money? Because I can assure you, to my constituents in Tennessee, it is not a tiny amount of money.

Mr. Wheeler. I am unaware, but you just gave me a new piece of information. I had not seen that video, nor had I heard a report of this presentation.

Mrs. Blackburn. Are you aware of this supposed experiment?

Mr. Wheeler. Yes. We all voted on that experiment. And the question is, are there alternative ways to get broadband delivery in rural areas? We have a crisis in terms of broadband in rural America --

Mrs. Blackburn. The private sector, I think, can probably --

Mr. Wheeler. And these were private -- so the issue is we are currently subsidizing one group of people who build fiber. And so the question was, should there be tests of others who also build fiber, such as electric co-ops, and whether they can provide service where it is not being provided? And that is what this test was about.

Mrs. Blackburn. But to the tune of \$100 million?

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Mr. Wheeler. That is what the test is about. Yes, ma'am.

Mrs. Blackburn. You think that that is worth \$100 million?

Mr. Wheeler. There are huge areas --

Mrs. Blackburn. Okay.

Mr. Wheeler. -- of our country that are not being served by broadband.

Mrs. Blackburn. Is this an example of regulatory humility with which you approach your job?

Mr. Wheeler. No, I think our responsibility, I hope, is to make sure that we are using funds to expand the reach of broadband and to do so creatively.

Mrs. Blackburn. Mr. Chairman, I have letters from both the Governor and the Lieutenant Governor of the State of Tennessee I would like to submit for the record about their concerns --

Mr. Walden. Without objection.

Mrs. Blackburn. -- with overriding muni broadband.

[The information follows:]

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Mrs. Blackburn. I yield back.

Mr. Walden. The gentlelady yields back.

I recognize the ranking member of the full committee, Mr. Pallone, for 5 minutes.

Mr. Pallone. Thank you, Mr. Chairman.

I mentioned earlier that, yesterday, I introduced the Securing Access to Networks in Disasters, or SANDy, Act. And the SANDy Act is a result of an examination of what went wrong during Hurricane Sandy 3 years ago and incorporates some lessons learned.

I wanted to ask initially, Commissioner Rosenworcel, I know you visited New Jersey shortly after Sandy struck, and, based on your experiences, do you have any suggestions for legislative steps we can take to help consumers during emergencies and disasters?

Ms. Rosenworcel. Thank you, Congressman Pallone.

I did, in fact, visit the New Jersey shore right after Hurricane Sandy hit, and I won't soon forget what I saw: the coast ripped apart by wind and rain and the people who lived there and their stamina and fortitude and desire to rebuild. I know that our communications networks worked during that storm, but not all of them, and on the New Jersey coast, far too few of them.

So I think your SANDy legislation is a terrific start to force us to look at network resiliency in a new way, to come up with master contacts for our Nation's 911 call centers, and also to adjust the

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Stafford Act to reflect a priority of communications service providers in crisis.

Mr. Pallone. Thank you.

Let me ask Chairman Wheeler: A second component of this issue involves network resiliency. And, as you know, over 40 percent of the wireless towers went out in New Jersey during Sandy. What is the status of the FCC's proceeding on network resiliency?

Mr. Wheeler. So we have had a 911 network resiliency proceeding which we completed, and we continue to work on the other resiliency issues. I think that your legislation is helping to focus on these issues and will provide some more responsibilities to follow through on.

Mr. Pallone. All right. I am going to follow up with you about some of this after the hearing --

Mr. Wheeler. Great.

Mr. Pallone. -- if that is okay.

Let me ask you, Chairman Wheeler, about the incentive auction. I know that running a successful incentive auction next year is one of your top priorities, and that --

Mr. Wheeler. Yes, sir.

Mr. Pallone. -- is one of mine, as well. And I have heard some concerns that the software you are using to run the auction may not be ready in time. So I just wanted to give you a chance to respond.

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You know, two questions. When do you expect the incentive auction software package to be finalized? And do you plan to give the impacted industries practice rounds with the software before the auction starts?

Mr. Wheeler. Thank you very much, Mr. Pallone.

The software packages are being developed over time, are virtually all completed at this point, and are being run through an internal red team process, an outside, third-party, break-it process, if you will.

And then, specifically to your question, we will be having trials and mock auctions, where it will be tested ultimately by those who are going to use it.

Mr. Pallone. Okay.

Let me just ask you about pirate radio. I know you have been fairly successful lately in finding bipartisan support on a number of things. And I think an issue that you discussed that should have bipartisan support are the problems with the proliferation of illegal pirate radio stations. You mentioned it in your statement.

Do you think that there are any changes in the law that could help the FCC better enforce against illegal pirate radio stations?

Mr. Wheeler. Yes, sir. And this has been an effort that Commissioner O'Rielly and I have both been working on, and he has particularly been the cattle prod on the activity.

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But, as I said in my statement, it is Whac-a-Mole right now. They pop up, we jump on them, they pop up, we jump on them. But they just move to the next place.

And landlords turn a blind eye to this. If there was a way that we could go and say to the landlords, "Excuse me, you have some liability in this decision, as well" -- they just see it as income. "Hey, I have somebody that is going to start paying me money for this space. I will rent it out to them." But if they understood that there were consequences from that kind of enabling and illegal act, I think that would be very helpful.

Mr. Pallone. Okay.

Did you want to respond, Mr. O'Rielly?

Mr. O'Rielly. No. I agree with the Chairman's comments. I think I want to be careful exactly on approaching landlords. We would like to have an education process, as well. Many may not be familiar. I do not want to expose landlords in a broad category. I want to be careful when we do it.

But it is not just landlords. It is political campaigns that advertise on these illegal pirate stations. And there are a lot of other -- concert promoters. There are things that we need to educate the community that should not be participating with these pirate radios. They are illegal, and we should go after all the mechanisms to eliminate them.

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Mr. Pallone. All right. Thanks a lot.

Thank you, Mr. Chairman.

Mr. Walden. We will now turn to the gentleman from Texas, Mr. Barton, for 5 minutes.

Mr. Barton. Well, thank you, Mr. Chairman.

I apologize to the Commission for not being here for their opening statements. As you know, we have the House Subcommittee, and they are meeting at 10, so we always have to go back and forth. So I missed their statement, but I am appreciative of the Commission being here.

Those of you that have attended hearings like this in the past, my normal routine would be to start asking the Chairman and the other members a series of questions about low-power television. I am going to submit those for the record, so I am not going to disappoint you, but we will put them in the written part of the record.

[The information follows:]

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Mr. Barton. What I am going to do is kind of go off script -- yeah, and Greg says, "Uh-oh" -- but in a positive way, I hope, bipartisan.

We just had this terrible attack in Paris, and hundreds of people were killed. We need to do something about it. ISIS and the terrorist networks can't beat us militarily, but they are really trying to use the Internet and all of the social media to try to intimidate and beat us psychologically.

My question -- and I will start with the Chairman, but then each of the members of the Commission: Isn't there something we can do under existing law to shut those Internet sites down? And I know they pop up like weeds, but, once they do pop up, shut them down, and then turn the Internet addresses over to the appropriate law enforcement agencies to try to track them down?

I mean, I would think that, even in an open society, when there is a clear threat, they have declared war against us, our way of life, they have threatened to attack this very city that our Capitol is in, that we could do something about the Internet social-media side of the equation.

So I would start with the Chairman and then anybody else who wishes to comment.

Mr. Wheeler. Thank you, Mr. Barton.

You know, as you have done, we cannot underestimate the challenge here. I am not sure that our authority extends to picking and choosing

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amongst Web sites, but I do think there are specific things that we can do. As you --

Mr. Barton. Well, do we need to, on a bipartisan basis, give additional authority to shut some sites down?

Mr. Wheeler. One of the issues here is the question of what is a lawful intercept is something that the Congress can define. You did it in CALEA. Things have moved on since then. You know, you read in the press that they were using PlayStation 4 games to communicate on, which is outside the scope of anything ever considered in CALEA. And so there are probably opportunities to update the lawful intercept concept.

I think there is also a question about the security of our networks. You know, there have been 17 fiber cuts in the Bay Area in the last few months mysteriously happening. You know, there were two fiber cuts yesterday, not in the Bay Area but elsewhere in the country. We need to have some kind of a big-data capability of determining what is happening to our network out there. Because it is not just people getting on the network; it is, perhaps, people doing things to the network.

We have the only reporting system in the Nation, that we run, called the Network Outage Reporting System, NORS. We don't have the ability to use that to go for big data, to have big-data analysis. It is barely holding together with baling wire and glue because it is using

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ancient technology. We have been asking for appropriations to upgrade that.

I know the appropriation process is still underway, and I know it is not this committee, but this experience has called out the importance of network security. And if we can't connect the dots -- you know, after 9/11, we kept hearing about "We couldn't connect the dots, we couldn't connect the dots." We have the ability inside our systems to use big data to connect the dots, but we don't have --

Mr. Barton. Well, my time --

Mr. Wheeler. -- the capacity to do it.

Mr. Barton. -- is about to expire. I would assume it is a "yes" answer, that the Commission will work with the committee if we need to update our laws to do so.

Mr. Wheeler. It is a capital "Yes," sir.

Mr. Barton. Okay.

Is there anybody else who wants to comment on that before -- my time just expired.

Ms. Eshoo. Well, I want to thank you for raising this. And I know that the FBI, relative to the cuts in the Bay Area, have said that they need to deal with HPSCI, the House Permanent Select Committee on Intelligence. And so we will just --

Mr. Barton. Well, it is a clear and present danger.

Ms. Eshoo. Yeah. Of course it is.

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Mr. Barton. They have declared war against us.

Ms. Eshoo. And I don't think any of this is coincidental either.

Mr. Barton. And they are using the Internet in an extremely offensive, inappropriate --

Ms. Eshoo. Effective way.

Mr. Barton. -- way against us. And we ought to be able to make it, at a minimum, much more difficult and, hopefully, absolutely shut it down.

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

But I will get you my questions on low-power TV.

Mr. Wheeler. I look forward to them, sir.

Mr. Walden. The gentleman yields back the balance of his time.

The chair now recognizes the gentleman from Pennsylvania, Mr. Doyle.

Mr. Doyle. Thank you, Mr. Chairman.

And I just want to say to Mr. Barton, I wholeheartedly agree with what you said, too, and hopefully we can work on that.

Chairman Wheeler, at the risk of sounding like a broken record, I want to talk to you a little bit about special access.

Mr. Wheeler. Yes, sir.

Mr. Doyle. First, I want to thank you for the Commission's continued work on special access. And while I was somewhat concerned that the comment deadlines were once again extended, I want to applaud

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the Commission for beginning its investigation into tariff rates and conditions in these markets. I believe that the Commission has worked hard and diligently on this proceeding. I just wish you would work faster. However, I know some of my colleagues on the other side of the aisle have taken issue with this proceeding.

Mr. Chairman, I have two questions.

First, if ILECs are using their market position to charge anticompetitive rates to competitors, jacking up prices for competing services, or driving competitors out of business, do consumers benefit from that?

And, secondly, does investment in broadband infrastructure increase or decrease in competitive markets?

Mr. Wheeler. Well, I think the answer to the first is "no," and the answer is "increase" in the second.

You know, one of the things that gets lost in this issue is we call it "special access." Boy, there is a term that doesn't say anything. What we are talking about is services that are necessary for competition. We ought to start calling these "competitive services."

Because you can't have cell densification, which makes wireless networks work better, without backhaul, which requires this special access. You can't have the Internet of Things in 5G built out. It is going to do nothing but expand the need for this, let alone the kind

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of competitive services you were talking about that increases service opportunity by competitive providers and lowers costs.

So I think we ought to call it what it is. This is services that are essential for competition.

Mr. Doyle. Thank you, Mr. Chairman.

Mr. Chairman, I also want to ask you, the Commission recently decided, in evaluating spectrum transitions, to take a closer look at deals that involve low-band spectrum. And the FCC recognized the unique value of that spectrum and the fact that there is already significant concentration of that spectrum among just a few carriers.

You have now evaluated several transactions in which you have conducted that enhanced review, but in each case you still decided to allow further concentration of low-band spectrum. Just last week, the Commission approved a transaction where the buyer exceeded the low-band screen established by the Commission.

My question is, what is the point of creating a mechanism for enhanced review if the Commission is not prepared to use it?

Mr. Wheeler. Well, thank you, Congressman.

I think there are two parts to that. One is you always want to have this enhanced review because that, in itself, is putting a stake in the ground, if you will.

Secondly is it is a review. And so the question becomes, is there a legitimate application that overcomes that stake in the ground? And,

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in this particular instance, which involves some rural broadband, some rural spectrum for AT&T, the Commission reached the decision that, yes, on the merits, this would be enhancing to service to consumers.

Mr. Doyle. Thank you.

Mr. Chairman, let me ask you, on privacy, I am concerned about some of the ongoing reports we are seeing that ISPs are tracking consumers online by using tracking headers and other types of unsecure technologies that can endanger consumer privacy and user security. Third-party companies are already publicly claiming that they are using these super-cookies to track users online. Mr. Chairman, I just want to urge the Commission to take action and rein in these harmful practices.

And, finally, on set-top boxes, the DSTAC recently released its report on new proposals that would allow consumers to buy and use third-party devices for video programming. I believe the future of this technology is over-the-top services. I encourage the Commission to continue working on this issue. Pay-TV subscribers should not have to suffer exorbitant rental fees for poorly designed and produced equipment. And I would urge the Commission to continue your work on these proceedings.

Mr. Chairman, thank you and all of the Commission for being here before us today. I know we see you frequently, and we appreciate your input and the work that you are doing on the Commission.

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I yield back.

Mr. Walden. The gentleman yields back the balance of his time.

The chair now recognizes the vice chair of the Subcommittee on Communications and Technology, the gentleman from Ohio, Mr. Latta.

Mr. Latta. Thank you very much, Mr. Chairman, for yielding.

And, again, to the Commissioners for being here, thanks very much.

If I could go back to a question the chairman had asked a little bit earlier to Commissioners Clyburn and Rosenworcel.

Do you have access to the Enforcement Bureau's work?

Ms. Clyburn. Every 2 to 3 weeks, I have meetings with the Enforcement Bureau. We go through items, you can call them hot topics, so to speak. Some of them are extremely hot. You know, some are at, I guess, the genesis of some of the conversations here today.

So I have never felt that there was any information that I requested or that I needed to know what is going on in the bureau, know what's going on in the ecosystem, and make a decision that might come up to us. I have never felt --

Mr. Latta. Okay. Let me ask this, though. You say you have a meeting every couple of weeks. How current is that information from the Enforcement Bureau? Is it something that has happened in the last 2 weeks, or is it something that has gone on for weeks and months beforehand?

Ms. Clyburn. It depends on the status of the item, so it is just



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all of the above.

Mr. Latta. Could I ask a followup on that, then? When you say it is the status of the item, how many would be older type of enforcement work?

Ms. Clyburn. If I had to handicap it based on the last three or four meetings, sort of 50-50. Again, you have ongoing -- an item might get teed up, and then you will get a status --

Mr. Latta. So some of them have been going on for a lot longer before you ever find out about it.

Ms. Clyburn. Naturally. And when you talk about, you know, NALs, notice of apparent liability, and process, you get updates. And these often take quite a bit of time, because, again, there is due process to the party that might have the NAL. So it can be a mixture there.

Mr. Latta. Okay.

Let me ask Commissioner Rosenworcel, what is your response to that?

Ms. Rosenworcel. My access is virtually the same as what Commissioner Clyburn just described.

Mr. Latta. Commissioner Pai?

Mr. Pai. So the conversation thus far has focused on things that are circulated to the Commissioners for a vote -- a notice of apparent liability, for instance.

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What I am talking about is a list of open investigations, things that the Enforcement Bureau is doing without our knowledge that is not ultimately, perhaps, going to be presented to us for a vote.

Quite often, we hear about these things only when they reach the press. And, for example, the recent Hilton letter of inquiry is something that I learned about and my staff learned about because of press reports.

And it seems to me that it is not too much to ask for the people who are tasked by this body with setting communications policy to understand what it is --

Mr. Latta. Let me --

Mr. Pai. The Enforcement Bureau is not an independent agency with --

Mr. Latta. Yeah, let me interrupt, if I could. When you say you got something from a press report, how long had that Enforcement Bureau's work been going on prior to you even seeing it in the newspaper?

Mr. Pai. I am not sure how long it had been going on, but it was issued contemporaneously with some other enforcement actions we took that very day.

Mr. Latta. Okay.

If I could ask Commissioner O'Rielly?

Mr. O'Rielly. I have similar problems. But can I give you an example that just happened yesterday? We came out with an FTC-FCC

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memorandum of understanding. I had an opportunity to talk to some folks at the FTC. They were notified of it on last Thursday. I learned of it yesterday morning. So, I mean, it is just a lack of sharing.

Mr. Latta. Okay. Thank you.

Commissioner Pai, if I could go on to another question for you. In June, Congressman Green and I sent a letter to Chairman Wheeler stating our concerns with the direction of the DSTAC and urged the Commissioner to follow the clear statutory language set forth in STELA and ensure that the DSTAC inquiry and report do not go beyond the bounds of the statute. And, unfortunately, changes were not made to DSTAC, which was unable to reach a consensus on recommendations for downloadable security solutions for set-top boxes.

DSTAC produced a report with two recommendations, one that would rely on apps, and one referred to the AllVid. And, again, the gentlelady from Tennessee had asked some questions questioning to the Commissioner on this, or the Chairman of the Commission.

If I could ask you, Commissioner Pai, on the app, if apps are already prevalent in the market and used on smartphones, smart TVs, and Apple TVs, et cetera, why isn't the FCC keeping focused on consumer demands and preferences rather than looking backward to the AllVid approach?

Also, are you concerned that such a strict technological mandate, which would take years to develop, would be obsolete by the time it

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is even implemented?

Mr. Pai. Thank you for the question, Congressman. And I understand that is a widespread concern. I think that here regulatory humility is called for, not just because it is imperative that the FCC hew strictly to the mandate that was set forth in the law but also because, as you pointed out and have pointed out various times before, this marketplace is changing rapidly, and so any FCC intervention could have unintended consequences.

So, therefore, I don't think it is appropriate for us to issue technological mandates or otherwise adopt proposals that could frustrate innovation, that could allow for the theft of content, that could otherwise stand in the way of consumer benefits.

Mr. Latta. Okay.

Well, thank you. My time has expired.

And, Mr. Chairman, if I could ask unanimous consent to enter the letter from Congressman Green and myself --

Mr. Walden. Without objection.

Mr. Latta. -- into the record.

[The information follows:]

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Mr. Walden. I appreciate that.

We will now go to Mr. Loeb sack from Iowa.

Mr. Loeb sack. Thank you, Mr. Chair. Thanks for having this hearing.

It is good that all five of you are here today. I really appreciate your presence and responding to questions.

Before I ask my question about USF, which I ask almost every time we have somebody here at least, I do want to mention again that I think that Mr. Barton raised a very serious issue here, you know, not necessarily what we can do with the Internet and restricting it, whatever the case may be, but I think bigger questions beyond that even.

And, Chairman Wheeler, I was very happy to hear you -- or not happy, but I appreciate the fact that you had some information on fiber cuts.

You know, I was on the Armed Services Committee for 8 years before I got on this committee. Traveled overseas to zones of conflict often. I guess it heightens my concern, obviously, about what happened in Paris. We all are concerned about that. But then we bring it home here to our infrastructure in the United States. And the Internet fiber, all of this is part of our infrastructure.

It is absolutely essential that we know where all of this is so that we can protect it and so we can make sure that we can prevent an attack on that part of our infrastructure. I think it is really

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critical. So thank you for addressing that. And I am sure we are going to go forward with this, in cooperation with you folks, to make sure that we can prevent those kinds of attacks from happening on that very important part of our infrastructure.

I do want to ask about universal service. You all know -- I think I have mentioned this a number of times -- that I represent a very rural district. When I first got on this committee earlier this year, I went to all 24 counties, and I talked to folks about rural broadband and how important it is for the economy, for education, for health care, for farmers, economic development, on and on and on.

And folks are very frustrated in my district, especially when it comes to the USF. And so I kind of want to know what the status is, if we can have a status update for fixing the standalone broadband problem that ties the Universal Service Fund to voice service, denies support for broadband-only service in areas served by smaller rural carriers.

We have gotten bipartisan support to do something about the USF and to reform it so that we really can bring that service to folks in these rural areas. It is bipartisan.

And so I would like to get a little update, if I could, from you, Chairman Wheeler, about where we are on that. And I promised folks last week when I was talking to them that I would ask you directly about that.

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Mr. Wheeler. Thank you, Congressman.

And, yes, this is a bipartisan effort. And we have a bipartisan working group of three of us up here -- Commissioner O'Rielly, Commissioner Clyburn, and myself -- who are working on a rate-of-return carrier reform package that we hope to have on the floor of the Commission next month.

Mr. Loebsack. Good.

Mr. Wheeler. You know, a lot of people have focused on a December date that we had talked about in a Senate hearing. We are not going to be controlled by the calendar, but we want to get this done quickly.

The key issue here is whether or not we are going to make sure that the money is spent for the expansion of broadband. Because that is what your consumers want. They say, how do I get broadband further out into my areas?

There are some proposals that are put forth that are called fixes to this that say, okay, we will send the money out, but there is no requirement that it actually expand broadband.

Mr. Loebsack. That is right.

Mr. Wheeler. And our group, the three of us, are working to say, how do we make sure that we have money that is going out to rural areas that will result in expansion of broadband service?

Mr. Loebsack. I appreciate that.

Did you want to say something, as well, Commissioner Rosenworcel?

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Ms. Rosenworcel. Oh, sure.

Mr. Loebsack. Or Commissioner Clyburn?

Ms. Clyburn. We get mixed up all the time.

Mr. Loebsack. Sorry about that.

Ms. Clyburn. One of the reasons why I am so excited about working with this group is, I asked myself a question: Is there a mechanism in place when it comes to these carriers that will tell us how many households are connected? And when I could not answer that question, I said: We have to do something beyond modernizing this program. We need a way to track to make sure that we are on target, to make sure that the moneys are going to close the broadband gap.

And so this is why it is so important for us to make sure that each dollar we spend is to enable broadband deployment.

Mr. Loebsack. Thank you.

Ms. Clyburn. And I am proud to work with these men to see that that happens.

Mr. Loebsack. Thanks to all of you. I really appreciate it.

I am near the end of my time. I do want to submit, however, a question for the record on video relay service, if I may, Mr. Chair. I would like to be able to submit that question, as well.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*



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Mr. Loebsack. Thank you so much. I yield back.

Mr. Latta. [Presiding.] The gentleman yields back.

The chair now recognizes the gentleman from Illinois, the chairman of the Subcommittee on Environment and the Economy, for 5 minutes.

Mr. Shimkus. Thank you, Mr. Chairman.

Hey, Loebsack, how many counties?

Mr. Loebsack. Twenty-four.

Mr. Shimkus. I have 33. So I just say "ditto" to his comments, and I don't have to go down that route.

But I would also -- the good response, what popped in her head was the failure of broadband stimulus to do a lot of what we want it to do in rural America. And it was the overbuilding of competitive areas. And just on the record, being here for a while helps you remember some of the old stories, and we lost a great opportunity there.

Chairman, you mentioned clarity, consistency, completion?

Mr. Wheeler. Yes.

Mr. Shimkus. I like that. I am starting to wrap my mind around reliability, affordable, and sustainable. I think those are also good goals to reach in a lot of different areas. And I think it highlights telecommunication in the next era for all Americans, again, dealing with the rural changes.

But that goes to an issue that we talked about the last time, I

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think, when the full Commission was here. We still have a terrible problem with dropped calls in rural America. And I talked to the association this morning, said I would raise it.

I think the last answer was, "We have the rules to enforce it." I think our folks don't see it that way. Or my point is, they are still having a problem, and it is not fixed.

Do you want to comment briefly on that?

Mr. Wheeler. Thank you. Thank you, Mr. Shimkus.

Mr. Shimkus. Briefly.

Mr. Wheeler. I mean, there are several things. One -- I will be. Watch how fast.

One is that we did pass a rule that false rings, which is what was going on, are no longer allowed.

Secondly, we have moved against -- we heard a lot about enforcement today. We have moved against three major carriers who were allowing this to happen. We just finished with Verizon, for instance, with a \$2 million fine, a requirement that they do \$3 million to fix the situation. Because they knew it was going on, and they did nothing about it.

So, yes, sir, we are trying to be aggressive on this front.

Mr. Shimkus. And let me have a followup. What is the status of this data collection effort? And will this information be made public? And, if not, why?

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Mr. Wheeler. We are --

Mr. Shimkus. On the call completion question.

Mr. Wheeler. On the call completion, yeah. We are completing that. And to the extent that there is nonconfidential data, it will be on the record.

Mr. Shimkus. Okay. Thank you.

I want to talk also about -- because the ranking member of the subcommittee and I, you know, we do the first responders. And Ranking Member Pallone talked about his proposal. FirstNet has to get its act together. FirstNet came to see us. I think they are making better strides. But they are on the hook if we have another major event, and we have not moved aggressively.

Now, in discussions with me, they say they now understand that they have to, in essence, contract with people who build out networks, which was what we were trying to say when we fought on the legislation to begin with.

But shame on us and shame on FirstNet and shame on the Commission if we have another event and we cannot communicate. So we need to all have our shoulders at the wheel and do what we can to push this.

Commissioner O'Rielly?

Mr. O'Rielly. Can I only say that, when we were working on the statute on behalf of -- I was working on behalf of a number of Senators, the structure that is now outlined is something I disagreed with. And

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the Commission actually doesn't have a great role in FirstNet. NTIA, at the Department of Commerce, has a greater role in its oversight function. I lost that debate, and now we have a process exactly playing out how I thought it might.

Mr. Shimkus. I think I lost some of the debate during that discussion, too, and I am not sure it is appropriately placed. And I don't think we have a -- I am just concerned. I am glad they came to visit with me. But the public is not going to say, "Oh, it is NTIA," right?

Mr. O'Rielly. True.

Mr. Shimkus. They are going to say FCC, they are going to say Members of Congress and the executive branch.

Mr. O'Rielly. No, I tried to provide authority to the FCC through that process. I just lost that discussion. So if Congress wishes to give us more authority, we would be happy to have more involvement.

Mr. Shimkus. Thank you.

And let me just continue with you. That memo you received, you got it yesterday?

Mr. O'Rielly. Yes, sir.

Mr. Shimkus. You said the FTC had it Thursday?

Mr. O'Rielly. Yes, sir.

Mr. Shimkus. Commissioner Pai, when did you get that memo?

Mr. Pai. I saw it on the Web site yesterday.

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Mr. Shimkus. Commissioner Rosenworcel?

Ms. Rosenworcel. Yesterday.

Mr. Shimkus. Commissioner Clyburn?

Ms. Clyburn. The same.

Mr. Shimkus. Chairman Wheeler, do you want to respond?

Mr. Wheeler. I have been working on it for 18 months. The reality here is that it was signed yesterday, it became effective yesterday, and that --

Mr. Shimkus. But you understand the problem. This is illustrative of this debate about communicating. And I know we have, you know, three to two, and I know Democrats have the majority, but I would hope the Commissioners are kind of one big, happy family and work together to move telecommunications processes. Just like we do on this committee, right?

So I think it is just a little --

Ms. Eshoo. Thank you, Brother Shimkus.

Mr. Shimkus. -- illustrative, and everybody should have the information when everyone has the information.

And I yield back.

Mr. Latta. The gentleman's time has expired, and he yields back.

The chair now recognizes the gentlelady from California for 5 minutes.

Ms. Matsui. Thank you, Mr. Chairman.

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Chairman Wheeler, Congress tasked the FCC with balancing many priorities in the incentive auction, including protecting access to local broadcasting.

Now, during the last few weeks, I had a chance to meet with many of our Sacramento broadcasters. They work hard to keep my constituents informed. My local broadcasters have also told me that they are invested in the success of the incentive auction.

I believe the incentive auction can clear the beachfront spectrum to fuel our wireless economy while making sure Sacramentans and consumers across the Nation still get the local news and information that they need.

My local broadcasters also brought up the concern that they could be at risk of losing their license after the auction if they aren't able to transition to a new channel assignment within 39 months. I know how critical it is to get the spectrum into the market, but we need to make sure that this transition doesn't leave TV viewers in the dark.

Chairman Wheeler, my question is: How can the FCC, number one, make sure broadcasters successfully make this transition after the auction? And, two, what is the FCC's plan if broadcasters can't meet the FCC's deadline?

Mr. Wheeler. Thank you very much, Ms. Matsui.

I totally agree on the importance of local community broadcasting

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and why it has to remain after the auction.

Here is how it works. We had 36 months that the statute said before you have to move off after getting money. Then we put 3 months in for construction permits, which is how you got to 39 months.

Now, the interesting thing is that the National Association of Broadcasters, in our proceedings, said, "Oh, we only need 30 months." But, be that as it may, what we would do in this kind of a situation that you outlined is to have an extension. I mean, there is a 6-month extension at least that you can get on this that we will be able to work through.

And, you know, I don't think that this is a -- this is not a drop-off-the-edge-of-the-table situation for anybody. As we see that things are approaching the edge of the table, there are solutions that can be taken.

But, at the same point in time, those who are bidding on spectrum need to know that there is some certainty that they are going to get it, or else it doesn't have any value to them. And so we look at 39 months, we look at the extension, we look at certainty, and I think we can work it out.

Ms. Matsui. So you will balance this out and work with them.

Mr. Wheeler. I think we can work with them, yes.

Ms. Matsui. Okay, great. I can assure my locals then.

Mr. Wheeler. Yes, ma'am.

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Ms. Matsui. Thank you.

Commissioner Rosenworcel, you have spoken about the need for smart spectrum policies so that the United States can continue to lead the world in 5G. I know the FCC has taken some recent steps to look at opening up higher-frequency spectrum bands for next-generation mobile services. Congress has also acted. The Bipartisan Budget Act included important provisions.

Now, Commissioner Rosenworcel, what more can the FCC do to identify new spectrum opportunities? What more can Congress do?

Ms. Rosenworcel. Thank you, Congresswoman Matsui, for the question.

Today, as you probably know, the bulk of our spectrum activity takes place at 3 gigahertz or below, but, going forward, we are going to look way, way up there. And when we do, if we combine really stratospheric frequencies with dense networks of small cells, we are going to develop wireless services that go further and faster than ever before.

It is absolutely imperative that the FCC lead when we deal with this issue, because the rest of the world is starting to look at high-band spectrum and trying to find ways to deploy. We have a rulemaking, and it is important that we conclude that rulemaking and identify bands where we can proceed.

Ms. Matsui. Okay. Great.



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Chairman Wheeler, you have highlighted the FCC's work on a spectrum above 24 gigahertz as critical for 5G. I hope the FCC will move forward expeditiously so that we can create a climate for American leadership in 5G.

And I know this is really important. We just ought to reiterate this. When do you expect to issue final rules for this important proceeding?

Mr. Wheeler. Thank you, Congresswoman.

As Commissioner Rosenworcel just indicated, we just developed in this proposed rulemaking for 28-gig, 37-gig, and 39-gig bands, as well as for 64 to 71 for unlicensed purposes. And we did that in a timely manner so that we could go to the World Radio Conference in Geneva, which is being held right now, and get a leg up, if you will, on advocating our position to the world.

Ms. Matsui. Okay.

Mr. Wheeler. So that was step one. We will close this rulemaking by the summer, clearly. And I have also committed to my colleagues that we will also open a new rulemaking on additional spectrum up in the higher bands.

Ms. Matsui. Okay. Good.

Well, thank you very much.

And I know my time is up. I yield back.

Mr. Latta. Thank you.

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The gentlelady's time has expired, and she yields back.

The gentleman from New Jersey is recognized for 5 minutes.

Mr. Lance. Thank you, Mr. Chairman.

Good morning to the panel.

Commissioner O'Rielly, I believe there is a good deal of room for criticism of the net-neutrality order. And I ask you what message you believe this sends internationally when our government asserts such authority over the Internet. Are you at all concerned that other nations, including some repressive regimes, could get the wrong idea about America's commitment to free speech and free expression online?

Mr. O'Rielly. Yes, sir. Thank you for the question.

I experienced this when I was in Barcelona recently, when we had an opportunity to talk to some of our European colleagues about what they were planning to do and what activities the United States signals were sending to their activities. And if you see what the European Union has done recently on the issue of net neutrality, it is different than what the United States has done and is actually a step back, I would say, from some of the extensive steps that we have taken and problematic steps that we have taken.

So I am troubled by what message it sends internationally, how far and how wide the United States has moved through the net-neutrality proceeding at the Commission. I think it is the wrong signal internationally. Thankfully, some of the other nations are looking

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at it a little differently, but it is very problematic going forward.

Mr. Lance. Thank you.

Mr. Pai, do you have an opinion on that?

Mr. Pai. I would agree with what my colleague said. And I also have had the opportunity to speak with counterparts from South Asia to South America who have expressed amazement that, having built the Internet economy that is the envy the world, the U.S. would put that at risk with a regulatory scheme that creates more uncertainty and impedes future broadband deployment.

Mr. Lance. Thank you.

Chairman Wheeler, you stated your intent to commence a rulemaking to promulgate rules, quote, to clarify the FCC's expanded privacy authority under the new Internet rules and that you would hope that this would be forthcoming this fall.

Could you please update us on that, given the timeframe?

Mr. Wheeler. We have missed fall, Mr. Lance. And --

Mr. Lance. Congress misses deadlines all the time, so --

Mr. Wheeler. And it is, I think, because of the significance of the issue. You know, we have long had responsibility for privacy issues. And how that maps over into the IP world is something that I hope we will be able to begin to surface in proposals early next year.

Mr. Lance. Thank you.

Are there other members -- Mr. Pai?

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Mr. Pai. Two aspects of that.

First, the agency's decision divested the Federal Trade Commission of jurisdiction, and they are the agency with longstanding expertise as well as statutory authority over this area.

In the meantime, unless and until the FCC, the five of us, promulgate rules, the binding guidance upon the agency was put out in an Enforcement Bureau advisory on May 20 of last year. And this is the core rule now that the private sector has to adhere to: "The Enforcement Bureau intends that broadband providers should employ effective privacy protections in line with their privacy policies and core tenets of basic privacy protections."

I have no idea what this means. Neither does the private sector. And the entire industry is at the mercy, from edge providers to ISPs, as to how the agency is going to proceed in this brave new world.

Mr. Lance. Yes, I tend to agree with that.

Would other members of the Commission like to comment?

Commissioner Rosenworcel?

Ms. Rosenworcel. Sure.

Privacy is a cherished principle, and it is also a complicated one in the digital age. So, going forward, we are going to have to provide more clarity. I respect that the Chairman wants to have a rulemaking on that. And I acknowledge, as Commissioner Pai said, that our existing guidance is insufficient to date.

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Mr. Lance. Uh-huh. Thank you.

Commissioner Clyburn?

Ms. Clyburn. One of the things that is uplifting and great about this is we have complementary jurisdiction with the FTC, and we work collaboratively. We meet on a monthly basis to make sure that consumers are protected. So our job, our collaborative, combined role is to ensure that there are no holes when it comes to protecting consumers.

And so we will work and we will get more clarity when something is before us. But, in terms of the jurisdiction under section 222, our role, as provided by you, is clear when it comes to privacy.

Mr. Lance. Commissioner O'Rielly?

Mr. O'Rielly. I have spent a great deal of time on the issue of privacy. I have to say, I find that the Commission's understanding of the issue is lacking and its expertise is low.

The FTC spent over the last two decades becoming an expert in this space and providing guidance and providing the structure, and we are going to waltz in there and provide quite a bit of damage, I think, going forward, notwithstanding the fact that it is a very important issue.

Mr. Lance. Thank you. I think we will continue to monitor this, and I thank you for your testimony.

Thank you, Mr. Chairman.

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Mr. Latta. Thank you.

The gentleman's time has expired, and he yields it back.

The chair now recognizes the gentleman from California for 5 minutes.

Mr. McNerney. I thank the chairman.

And I thank the Commissioners for giving us your wishlist this morning. I think it was an interesting list.

Mr. Chairman, would you update us a little bit on the Commission's efforts to address cybersecurity, specifically coordination with some of the other Federal agencies?

Mr. Wheeler. Yes, sir.

As a matter of fact, next week, I am meeting with a coordinating group of the heads of all of the independent agencies of the government -- Nuclear Regulatory Commission, FTC, FERC, the whole group -- where we are coordinating our policies.

And the approach that we have taken at the FCC is one of the models that is being talked about across all agencies, which is, how do you work with a multistakeholder group inside your industry to come up with processes that are both self-reviewing and self-enforcing, with the involvement of the agency, and how do we do that across the board?

You know, the financial industry has been very successful in doing that. We are successfully now underway on that, and we will be continuing to work with other agencies.

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Mr. McNerney. Are you a lead agency in regard to this issue?

Mr. Wheeler. I would hope so, sir.

Mr. McNerney. Do you think there is a potential that sort of a knee-jerk reaction to the tragic Paris attacks could actually make us less secure, specifically --

Mr. Wheeler. I am not sure what you mean by "a knee-jerk reaction."

Mr. McNerney. Well, I mean some policies that are designed to sound tough but actually cause problems, more problems than they were intended, specifically with cyber and maybe backdoor policies.

Mr. Wheeler. So, it is interesting. I was having a discussion with Ms. Matsui, who I see has left, before the hearing that -- one of the things that I have found my 2 years in this job is that the regulatory process, because it provides for so much diverse input from so many different parties, is a slow process. And so I think that that tends to mitigate the kind of knee jerk you are talking about.

And the fact that there wouldn't be lots of opinions heard, I think, is not a reality that exists, as the Administrative Procedure Act set out our procedures.

Mr. McNerney. Thank you.

Commissioner Clyburn, you mentioned the Mobility Fund hasn't really been implemented yet. Do you see a path forward to that?

Ms. Clyburn. Yes, I do. I have been working with our Wireless

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Bureau, and they assured me that we have a pathway to completion.

You and I have both experienced traveling down roads, traveling down State highways where we look at our phones, absolutely no bars, absolutely no coverage. At night, alone, it is not the most comfortable feeling.

And so we are looking at this, how do we ensure the safety in terms of travel, the opportunities, particularly in rural America, that they have comparable service. And I think we are on a pathway of doing that real soon.

Mr. McNerney. Thank you.

Commissioner Rosenworcel, you mentioned the Federal lands for broadband deployment. What is your vision for that?

Ms. Rosenworcel. Well, by some measures, one-third of our Nation's real estate is owned by the Federal Government. And they are some of the areas that have the sparsest deployment of communications services.

So the question is, what Federal facilities exist on those lands that we could use to support broadband deployment or antenna structures? And if we could identify what facilities we have, we would be in a position to expedite deployment in rural America and lower the cost of deployment while we are at it.

Mr. McNerney. So the initial phase, then, would be just to identify existing facilities.



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Ms. Rosenworcel. I think it would be important for us to identify existing facilities. I also think it would be important for us to develop a master contract with the GSA so that the private sector that is interested in deployment would have a single contract they could use. And I also think we should consider shot clocks, which would reduce the amount of time that the Federal Government had to respond to those requests for deployment.

Mr. McNerney. Okay. Thank you.

Mr. O'Rielly, you mentioned that Federal Government user fees are needed. Would you expand on that a little bit?

Mr. O'Rielly. So it is a suggestion I said. My colleague and I have had a good, healthy discussion over the years regarding in terms of incentives that may provide. I also think you need to provide a mechanism to force Federal users to relinquish spectrum, and I think that one way to do that is impose a spectrum fee.

So we put the opportunity cost to the spectrum for the Federal Government users on an annual basis, and, therefore, they have an incentive to decrease how much they use.

Mr. McNerney. Thank you.

I was certainly interested in the comment on high-frequency spectrum, but we will have to put that one off.

Thank you, Mr. Chairman. I yield back.

Mr. Latta. Thank you very much.

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The gentleman's time has expired, and he yields back.

The chair now recognizes for 5 minutes the gentleman from Texas.

Mr. Olson. I thank the chair.

And welcome to our friends from the FCC.

I am going to talk about privacy and the Enforcement Bureau this afternoon. I want to ask about what I call a what-the-heck moment I had back home.

About 2 weeks ago, Chairman Wheeler, you were on the Charlie Rose show, and you shared that in the next several months the FCC would address privacy of the networks. You stated, and this is a quote, "We need a voice in the collection of information about us," end quote. Those 10 words set off an onslaught of what-the-heck questions from back home.

So, Commissioner O'Rielly, I may be mistaken here, but doesn't the FTC have jurisdiction over the privacy of the networks, not the FCC? Are you concerned about the takeover, mission creep of the FCC getting involved in the FTC's business?

Mr. O'Rielly. So, as the result of our net-neutrality decision, we now have an issue regarding the privacy of networks, broadband networks, and the treatment of them under, as my colleagues highlighted, section 222.

I am extremely concerned about that and have highlighted that for a considerable amount of time and what it can mean for two different

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regulatory agencies to have oversight over similar information and that providers that operate on both sides of the equation will be stuck with two different regulators fighting over each other. The MOU is an attempt to try and say that we are going to cooperate, but the different treatment of the same data is going to be problematic, in my opinion.

I have also highlighted why I think that our expertise on the subject matter is pretty dormant and lacking compared to the FTC.

Mr. Olson. Mr. Pai, your comments, sir? Same issue.

Mr. Pai. I would agree with Commissioner O'Rielly on that.

And I think it is also critical to remember that our authority, as granted by Congress, is extremely limited. Under section 222, telecommunications carriers, backed up by the FCC's rules, have a duty to protect customer proprietary network information. That is a very narrow category of information, such things as your telephone number or what service you subscribe to. It is not the vast array of information that people think about when they think about privacy.

And so I worry, as well as Commissioner O'Rielly has suggested, that the agency's newfound zeal to enforce these privacy mandates may bleed over to edge providers. If you like something on Facebook, is that, sort of, a consumer piece of information that consumers would expect to be private? It may well be, in which case the FCC would have the incentive and ability to get into that space.

Mr. Olson. I share those concerns.

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Any comments, gentlemen, about this MOU that came out yesterday between the FTC and FCC? Any comments about that?

Mr. Pai. I agree with what Commissioner O'Rielly has said, both in terms of process, the fact that all of us found out about it yesterday, and in terms of substance, that the MOU wouldn't have been necessary if we had each stayed within our lanes and let the FTC handle what it is statutorily empowered to do. And if we focused on building out broadband to a lot of these areas as opposed to regulating the network heavily, this entire MOU would have been obviated.

Mr. O'Rielly. Can I highlight -- there is one sentence or at least one clause in here that just highlights the exact problem I have indicated. You know, it says, "... including FCC's authority over activities engaged in by common carriers and by non-common carriers for and in connection with common-carrier services."

The scope of that is extremely broad. "By non-common carriers for and in connection with common-carrier services." There is no limiting principle on that concept. I think that is very problematic.

Mr. Olson. Again, what the heck?

And then about the Enforcement Bureau, the rise of the Enforcement Bureau, the current head was quoted last April in the National Journal as saying this: "Generally speaking, I have found that most companies want to do the right thing. And when it's clear that something is impermissible, they generally don't do it," end quote. He said, "When

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it's clear, they generally don't do it." But then he said: I'm almost always working in a gray area.

"Clear" to me means black and white. "Gray" is gray, nebulous. That gray area has earned him the title from the National Journal of "the FCC's \$365 million man." Back home, again, people say, what the heck?

So my question for you, Mr. O'Rielly and Mr. Pai, is: How does fines totaling \$365 million help consumers, promote innovation and investment? How come they should have that role instead of Congress?

Mr. Pai. That is a good question, Congressman. I suppose those companies should be grateful to the extent that the agency was generous. In the Ortel case, for example, it said that the FCC had the authority to fine those companies \$9 billion, but, out of the goodness of its heart, it was only going to fine them \$5 million. But I think, in a lot of cases, it is simply a number drawn out of thin air.

And, you know, in this regard, I tend to be old-fashioned. I think, before you enforce a rule, you have to have a rule. If you are going to pick a number, it should have some grounding in objective fact and, you know, precedent. That is just not the way the enforcement operation works anymore.

Mr. O'Rielly. Can I comment on top of that? And I highlighted this in my testimony. If you see some of the citations that we issued against First National Bank and Lyft, we didn't provide them any kind

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of notice that they were even coming. They didn't even know what was happening.

You know, so the idea that you referenced, where they are working with the carriers and trying to make sure that they do the right thing, these carriers -- these weren't carriers; these are non-carriers -- had no idea what was coming their way, and there was no communication from the Commission.

So I agree with my colleague's just point. These numbers are picked out of the air. We are not going to see \$365 million. It is great for a press release, but it is not going to actually develop.

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RPTR MAAR

EDTR HOFSTAD

[12:15 p.m.]

Mr. Olson. And that is very frightening for the market.

One final question. You guys are --

Mr. Wheeler. Could I --

Mr. Olson. I only have a little time here. Sorry, Commissioner Wheeler, but I have one last question.

You all are in charge of the bureau, the Enforcement Bureau. Let's play like you are grade school teachers, you give them grades. What grade would you give them, A through F?

Mr. Wheeler. A.

Mr. Olson. A.

Ms. Clyburn?

Ms. Clyburn. A.

Mr. Olson. Ms. Rosenworcel?

Ms. Rosenworcel. A.

Mr. Olson. Mr. Pai?

Mr. Pai. Not passing.

Mr. Olson. Mr. O'Rielly?

Mr. O'Rielly. A fine individual but a D-minus.

Mr. Olson. D-minus.

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Thank you much. I yield back.

Mr. Wheeler. Let me say that we worked with the attorney general of Texas on that \$353 million settlement. It was billions of dollars that were crammed onto the bills of millions of subscribers across the country. And of that \$353 million, some went back to the State of Texas, as the AG insisted, and to other States. But \$267 million went back into the pockets of consumers who had been bilked because they were charged for things they did not buy.

That is rational enforcement. That is the kind of job I think that all consumers expect us to be doing. Millions of people, billions of dollars, done in conjunction with all 50 State AGs.

Mr. Olson. I hear you, but --

Mr. Latta. The gentleman's time has expired.

Mr. Olson. -- pay this money right now. Yes. Again, we don't have that. You guys should not have that weapon. You should be working with our governors, our attorney generals. That is my interest.

Mr. Latta. Thank you.

The gentleman's time has expired, and he yields back.

The chair now recognizes the gentlelady from Colorado for 5 minutes.

Ms. DeGette. Thank you, Mr. Chairman.

Well, Chairman Wheeler, I wanted to ask you, with respect to these



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recent enforcement efforts, the recent ones, what is your view of the FCC's authority vis-à-vis your ability to take these efforts?

Mr. Wheeler. So I think we have -- thank you. I think we have the responsibility and the authority as granted in the act.

And the interesting thing, what we are hearing here is, so we have 19 notices of apparent liability this year. The average annual notice of apparent liabilities by the last Republican administration of the FCC was an average of 215 a year.

Ms. DeGette. Thank you.

Now, yesterday, the FTC and the FCC announced a memorandum of understanding for continued cooperation on consumer protection. And this MOU mentioned that the agencies are going to engage in joint enforcement actions. So are there some specific areas where you think that consumer protection is particularly at risk and where this cooperation is going to be especially beneficial?

Mr. Wheeler. Thank you.

The other thing that is key to know about that MOU is that it replaced the previous MOU. This is not some unique relationship.

Ms. DeGette. Right. It didn't just come up out of thing air.

Mr. Wheeler. And so what we have always tried to do is to say, okay, what are the lanes, and where do we cooperate? Because our authorities abut with these other. And I think we have an excellent working relationship with the FTC, and we were able to codify it in

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this MOU.

Ms. DeGette. And are there some specific areas in which you think you can cooperate that will be beneficial?

Mr. Wheeler. So, for instance, on the issue of the cramming that was discussed a moment ago, the \$353 million fine, we have worked with the FTC on that. It is clear that the FTC has authority over the non-common-carrier --

Ms. DeGette. I only have 5 minutes.

Mr. Wheeler. -- activity of common carriers.

Ms. DeGette. Are there other areas that you think --

Mr. Wheeler. FTC has authority over the --

Ms. DeGette. Cramming. Are there other areas you are going to focus on?

Mr. Wheeler. Yes.

Ms. DeGette. What are they?

Mr. Wheeler. So, for instance, they have authority over non-common-carrier activities of common carriers.

Ms. DeGette. Okay.

Now, there are 14 months left in the Obama administration, and, obviously, the Commission has a lot of pending actions and rules. One thing I think the Commission should focus on completing is any further actions on the Satellite TV Extension and Localism Act reauthorization that this subcommittee authored last Congress.

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In that act, Congress directed the Commission to prepare a report on downloadable security capabilities for pay-TV content. Now, what I understand is that a technical advisory group has completed its report, and some stakeholders are seeking a rulemaking that would require changes to the set-top boxes used in cable, IPTV, and satellite TV providers. This is something Mr. Doyle was talking about a little bit.

One of the main issues we hear about from consumers over and over again is that customer service can be complicated to navigate and also onerous. And so a lot of us feel like we need to protect consumers, while at the same time giving providers and content creators the flexibility they need to adapt to changing business models.

So I am wondering if the Commission has considered, if leased set-top boxes are responsible for their own customer service, that could cause a lot of confusion.

Mr. Wheeler. So, thank you, Congresswoman.

The comment period on the recommendations of the DSTAC report ended last week. I don't know if this was an issue that was raised in the comments. I would suspect so. And we have not fully worked through those comments.

Ms. DeGette. Well, once you do, I would appreciate it if you would supplement your testimony so that we could get an answer to that.

[The information follows:]

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Ms. DeGette. Now, I, lastly, want to touch on the special access issue. Many competitive telephone providers use the physical infrastructure of incumbent carriers to provide telecom services to businesses through an arrangement called "special access."

The FCC has been considering updating the special access rules for decades, as some of us on this committee know, and it has recently completed an extensive data-gathering process to inform changes to the rules.

I am wondering, Chairman Wheeler, if, now that the Commission has undertaken such a significant effort, will this be a priority for the FCC during the remainder of this administration?

Mr. Wheeler. Yes, ma'am.

Ms. DeGette. Thanks.

I yield back.

Mr. Latta. Thank you.

The gentlelady yields back.

And the chair now recognizes the gentleman from Kansas for 5 minutes.

Mr. Pompeo. Thank you, Mr. Chairman.

We have heard from four Commissioners today, Mr. Wheeler, that they are getting late information, incomplete information with respect to Enforcement Bureau practices.

Your explanation implied somehow that they were untrustworthy or

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incapable of handling the sensitive information. I think that is counterfactual. I think they, all four, are cable people, highly capable of handling that information. And I also think it is inconsistent with how this Commission ought to operate.

And so I would certainly urge you to change that practice and would urge this committee to do all that we can to make sure that you do.

Mr. Wheeler. Well, I would hope that I was not giving an impression that they are untrustworthy. As Commissioner Clyburn said, they are briefed every 2 weeks by the Enforcement Bureau as to --

Mr. Pompeo. Thank you. I don't have much time. It was certainly the implication that I heard from you. Perhaps I got it wrong.

I want to talk about competition in the cybersecurity world. I spend a fair amount of time on this in my role on the Intelligence Committee and here on this subcommittee.

Not too long ago, you were talking about network providers, Mr. Wheeler, and you talked about a common set of standards for cybersecurity.

Mr. Wheeler. Yes, sir.

Mr. Pompeo. My judgment is that would make it easier for hackers. If you had a common set of standards, it is easier to attack.

These businesses, these network providers, are in the business of providing secure, reliable connectivity. That is how they operate

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their business, how they make money.

Why is it you think you can develop a set of standards that would be superior to what AT&T or Sprint or Verizon or any of the others might be able to accomplish in the world of cybersecurity?

Mr. Wheeler. We didn't develop them. They developed them. What we did was provide a coordinating body. This was a multistakeholder process where everybody sat down and put together the best heads and said, what are the kind of processes that we all need to make sure that we have in place, and how do we monitor those processes so that we know, are they being done, A, and, B, as you just suggested, the hackers are always working ways around, and how do we keep up with that.

Mr. Pompeo. Right. It makes no sense to me for a common set of standards to be a regulatory tool that the FCC issues. It just makes it simple.

Mr. Wheeler. We have not issued them, sir. It is not a regulatory tool.

Mr. Pompeo. Great. I am glad that you have now committed to not doing that today.

Mr. Wheeler. No, let me --

Mr. Pompeo. I appreciate that.

Mr. Wheeler. We have a process that was developed in conjunction with -- it is not developed as a rule, okay? It is flexible. It is

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designed to be flexible --

Mr. Pompeo. Great.

Mr. Wheeler. -- for the very reasons you are talking about.

Mr. Pompeo. I am thrilled.

You talk about competition all the time. The IP transition is supposed to make sure we have the most updated technology. And yet the Commission, when it decided to impose requirements that carriers provide IP-based wholesale replacement services to competitors, the fiber facilities, that you said you required, quote, "reasonably comparable to those of legacy services."

Why would you create what appears to me to be a real disincentive for deploying new facilities and new services?

Mr. Wheeler. Thank you, sir.

Because of the fact that you don't want a situation where regulation is encouraging the people who are currently using competitive facilities to not be able to have equivalents.

So if I am selling a service to you and it is based on copper and suddenly the carrier decides, I am taking the copper out or shutting it down, I need to be able to continue to provide a service to you. And so, if that migrates over into fiber and IP, I ought to still be able to have a relationship with that carrier so that I can continue to provide the service to you.

Mr. Pompeo. Commissioner Pai, do you agree with that analysis



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in terms of the disincentive it creates for build-out?

Mr. Pai. I don't, Congressman.

And I think you put your finger right on the concern. The notion that the government should force one company to stay in a business that it doesn't want to be in for the benefit of another company is the very definition of intrusive government intervention.

Instead, we should recognize that the marketplace is much more competitive, that cable companies are deploying metro Ethernet, that wireless is increasingly an alternative, and get out of this business of, you know, sort of, Depression-era regulation of a marketplace that simply isn't the way it was back in the 1930s.

Mr. Pompeo. You actually made the case more articulately than I did. Thank you.

Mr. Wheeler. But nobody is saying that you should stay in a business you don't want to be in. What the rule says is that you can't shut somebody off without offering them the same kind of service in your new technology.

Mr. O'Rielly. Well, and the rule also states, Congressman, that you can't change your services without our permission, which we will never give you.

Mr. Wheeler. Which was been the rule forever.

Mr. Pompeo. Right.

Mr. Wheeler. That is in 214.

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Mr. Pompeo. Would you agree we should that rule?

Mr. Wheeler. Section 214 --

Mr. Pompeo. But, no, I am asking -- no, I understand the history.

Mr. Wheeler. Section 214 --

Mr. Pompeo. So it has not only been there a long time, but you like it.

Mr. Wheeler. Section 214 has been the bedrock of telecommunications policy for the last 80 years.

Mr. Pompeo. Chairman Wheeler, have you read the reports, Reuters reports, about WCRW and its connection to control by Chinese entities?

Mr. Wheeler. Yes, sir.

Mr. Pompeo. Tell me what the FCC is doing about that and what your position is with respect to that particular station that is airing pro-Chinese communications here in the United States.

Mr. Wheeler. We have an investigation going on to find out, with the representations that have been made along the way as they filed for increases in power and other kinds of things. We learned about it through the Reuters report, just as you did.

Mr. Pompeo. Great. And so I assume, because there is an investigation going on, there is nothing more you will share with me this morning. Is that correct?

Mr. Wheeler. Thank you, sir.

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Mr. Pompeo. Great. Thank you.

I yield back the balance of my time.

Mr. Latta. The gentleman yields back.

And the chair now recognizes the gentleman from Kentucky for 5 minutes.

Mr. Yarmuth. Thank you very much, Mr. Chairman.

Thanks to all the Commissioners for their testimony and appearance.

A couple years ago, I was in a middle school in my district, which is Louisville, Kentucky. And it is a school that is not atypical in an urban setting. Ninety-five percent of the kids were on free and reduced lunch. And I asked the principal what percentage of her students she would estimate had access to the Internet at home. She said probably 10 percent. And, you know, that breaks your heart because you know those kids are lost, particularly if they are already in middle school.

So what we have been trying to do in Louisville is -- broadband, expanded broadband is great. Wireless technology is great. But there are families who can't afford \$10 a month for whom broadband means nothing because they don't have a computer, whose only access might be through the phone, and so forth.

So we have been trying to do a local initiative to try and just create in some neighborhoods public WiFi, free WiFi, so kids could at

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least be able to have it, whether they have a tablet or a phone. And AT&T and others have been very helpful in trying to accomplish that.

So I would just throw that out as -- I know some of you are sensitive to this. But as you consider expanded access, that is a critical consideration.

Secondly, earlier this year, I introduced the Keep Our Campaigns Honest Act, which would require the FCC to use its existing authority to require disclosure of those who are funding campaign spots.

We just concluded a campaign in Kentucky in which the vast majority of all the ads run for both gubernatorial candidates were run by outside groups. Nobody knows who they were. Nobody still knows who they were. I would say that my constituents' reaction was that, if there were a lot of Styrofoam bricks available, they would have bought as many as they could have afforded. The outrage was palpable.

So, once again, I would request that the Commission consider that. We are going into a campaign that has already started with anonymous ads. And this is something that I think is a high priority for Americans, and it is certainly for, I think, the benefit of democracy that people know who they are being influenced by.

I know Chairman Walden has a problem with the KOCH Act, as we call it, because he says it would require too many donors to be listed. But I think the Commission could do something; say, anybody who funded more than 25 percent of the ads, so, at the most, you would have four people

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identified in the ad. But, again, I think this is critical, and I would urge you to proceed on that.

And, finally, a question that I have to ask because the person I live with would not welcome me back unless I did. And I am new to this subcommittee and relatively new to the committee, so I may have missed something, but where does the implementation of the requirement on volume of ads in television shows stand? Because, anecdotally, it seems that it has not been implemented very extensively.

I would throw it open to anybody. Chairman?

Mr. Wheeler. So, first of all, I understand the reporting-to-a-higher-authority challenge that you face.

And, you know, the interesting thing that is going on, I can't answer specifically -- and I will get something for the record for you -- but the interesting thing that we are now seeing is that there is actually a decrease in the number of ads on most of the major networks right now, as they are feeling the pressure from online competition and people not wanting to sit through ads.

And that is the marketplace operating, and that is an encouraging thing. I am not sure what an agency's role should be in saying there should be this many ads, but --

Mr. Yarmuth. No, I am not talking about the frequency, the number of ads. I am talking about the sound volume.

Mr. Wheeler. Oh, the sound. Oh.

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Mr. Yarmuth. The sound volume.

Mr. Wheeler. Yes, Commissioner Clyburn has just passed me a note saying --

Mr. Yarmuth. Thank you.

Ms. Eshoo. Would you yield just for 2 seconds?

Mr. Yarmuth. Sure. I yield.

Ms. Eshoo. It is going to be on my tombstone as the only thing that people in the country know me for. But thanks for asking about it.

Mr. Yarmuth. And I actually notice that there are some commercials, actually, where the volume drops. And I don't know whether that is intentional, somebody trying to get people to pay more attention or not. But I am just curious as to where the enforcement mechanism is or whether it is being enforced.

Mr. Wheeler. I would be happy to get back to you on that.

[The information follows:]

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Mr. Yarmuth. Thank you very much, Mr. Chairman. I yield back.

Mr. Latta. Thank you.

The gentleman yields back the remainder of his time.

And the chair now recognizes the gentleman from southeastern Ohio for 5 minutes.

Mr. Johnson. Thank you, Mr. Chairman.

And I thank our panel members for being with us today.

Chairman Wheeler, as you know, we had concerns about your proposal to relocate the 200 servers from your headquarters to West Virginia. We sent you letters to that effect. Those concerns were not with the purpose of the move but the disruption that it would cause to operations and the risk of data loss.

We have had a number of open inquiries and investigations on the FCC, and we are still waiting on some of those documents to be produced.

So, according to the materials that you provided in response to our letters, you were permitted, at your request, to reprogram \$8.5 million for this effort. How much did the move actually cost? Did it cost \$8.5 million?

Mr. Wheeler. I don't know that off the top of my head.

Mr. Johnson. You don't know the answer for that? So you don't know whether it was more? Less?

Mr. Wheeler. I can get you --

Mr. Johnson. Can you get me that, please?

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Do you have a plan for where you plan to move -- if it didn't cost the \$8.5 million, do you have a plan for where you intend to put the surplus that you asked for?

Mr. Wheeler. I don't know that it exists.

Mr. Johnson. Okay. So you will get that back for the record?

Mr. Wheeler. Yes.

Mr. Johnson. All right.

[The information follows:]

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Mr. Johnson. Well, suffice it to say the move didn't go as smoothly as we were told it would. You ran into problems with cabling that were attributed to the contractor. And the move took an additional 3 days, according to senior FCC management.

According to at least one press report, employees were told to stay at home when the problems were encountered, and you were unable to get all the systems back up and running in the time that you allotted. Is that true?

Mr. Wheeler. Yes, sir.

Mr. Johnson. Okay.

According to another report, a senior FCC manager stated, "We could have always asked for more time up front, possibly padded our schedules. Instead, we chose to be ambitious in our timelines because that is what a startup mentality culture does."

So the way I read that statement is, rather than appreciate the impact of taking the agency off line on other organizations, agencies, regulated entities, and the public, a decision was made to go for the sound bite. Am I reading that wrong?

Mr. Wheeler. Yes, sir.

Mr. Johnson. Okay.

Well, then, didn't the FCC have the final say on the plans for the move? How did you allow this to happen?

Mr. Wheeler. No, I think that this was a question of what is a

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logical way of doing it --

Mr. Johnson. I am an IT guy, Chairman Wheeler, and I have been doing implementations for a long time, and any planning up front includes planning for things like this.

Mr. Wheeler. I am an IT guy, too. I agree.

Mr. Johnson. Did you guys have that in your consideration?

Mr. Wheeler. Yes, sir. And we built in, and it was wrong.

Mr. Johnson. Okay. Good. So you acknowledge that that was a failure.

Mr. Wheeler. But I must say --

Mr. Johnson. Good.

Mr. Wheeler. -- I think that our staff is fabulous --

Mr. Johnson. Let me move on. Let me move on, Mr. Chairman.

Does the FCC have in place a policy on the approval and the use of social media and Web 2.0 -- for example, using Twitter and YouTube? Such a policy would seek to insulate the FCC from cyber threats and social engineering, would it not?

Mr. Wheeler. I am sorry, do we have --

Mr. Johnson. Do you have a policy on the approval and the use of social media and Web 2.0, like Twitter and YouTube?

Mr. Wheeler. On our --

Mr. Johnson. On your employees.

Mr. Wheeler. Yes, we have a policy.

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Mr. Johnson. You do.

Does the FCC have general guidelines for use of these technologies for FCC employees in their official capacities, in their responsibilities of FCC employees?

Mr. Wheeler. I believe so, that it said use it in your official capacity.

Mr. Johnson. You say you believe so. You do, or you don't?

Mr. Wheeler. No, I believe so. And I believe that the counsel is to use it appropriately in your official capacity.

Mr. Johnson. Do these guidelines extend to the use of these technologies for FCC employees in their unofficial capacity?

Mr. Wheeler. This is a question of the use of FCC facilities for unofficial activities --

Mr. Johnson. In their unofficial capacity --

Mr. Wheeler. Yes, sir.

Mr. Johnson. -- are there guidelines on how FCC employees should be using those kinds of technologies?

Mr. Wheeler. Yes, sir.

Mr. Johnson. Can you describe to us what those policies are?

Mr. Wheeler. You are supposed to have -- you are using this for official purposes. I believe that there have been actions taken against some employees who didn't. I believe that there have been Office of Inspector General inspections in some situations and that

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people have lost their jobs.

Mr. Johnson. Okay.

Well, are you familiar with the several videos posted online memorializing the server move? Have you seen some of those videos?

Mr. Wheeler. No, sir, I haven't seen those.

Mr. Johnson. Well, in these videos, the Commission revealed several pieces of non-public information, including the names and license plates of some FCC employees, the types of servers the FCC is using to store important and sensitive data, and many pictures of the specific setup the FCC has at its new data center.

You know, Chairman Wheeler, it is a little hard for me, as an IT professional, to take seriously the FCC as an agency that wants to be a privacy and cybersecurity regulator when it sacrificed important cyber information, employee privacy, at the alter of good PR.

Commissioner Pai, were you aware these videos were being posted?

Mr. Pai. I was not, Congresswoman.

Mr. Johnson. Commissioner Clyburn, were you aware that the videos were being posted?

Ms. Clyburn. I was not.

Mr. Johnson. Commissioner Rosenworcel?

Ms. Rosenworcel. No.

Mr. Johnson. No?

Commissioner O'Rielly?

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Mr. O'Rielly. No, sir.

Mr. Johnson. Okay.

Mr. Wheeler. I was not either, sir.

Mr. Johnson. You were not either? Okay.

Chairman Wheeler, our colleagues on the Committee on Appropriations are currently working on final provisions to fund our government agencies. Among the issues that they are tackling as part of that process is putting into law a ban on the FCC's use of its authority to regulate rates for broadband Internet access service, consistent with your consistent statements to Congress that FCC won't regulate, rate-regulate broadband.

It is my understanding that Appropriations staff asked the FCC to provide technical assistance in drafting this provision and that the FCC refused to provide Congress with the benefit of your expertise. It is completely inappropriate for an agency of the government to refuse to engage in the provision of its expertise to the Congress.

When will you remedy this situation? And can you assure that it will not happen again? Are you guys going to provide that information to the Appropriations staff or not?

Mr. Wheeler. I was unaware of that situation, Congressman. I do think that it is unnecessary to put those kind of riders on the Appropriations --

Mr. Johnson. But that is not your call. That is not your call.

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That is Congress' request. Are you going to provide the information?

Mr. Wheeler. I was unaware of the situation --

Mr. Johnson. And are you going to provide the information?

Mr. Wheeler. -- it is not hard to figure out how to draft it.

Yes, sir.

Mr. Johnson. Okay. All right.

Mr. Chairman, my time has expired.

Mr. Latta. Thank you very much.

The gentleman's time has expired.

And the chair now recognizes the gentlelady from New York for 5 minutes.

Oh, I am sorry. I didn't see Mr. Butterfield come back in.

Mr. Butterfield. Thank you, Mr. Chairman.

Mr. Latta. The gentleman is recognized for 5 minutes.

I am sorry.

Mr. Butterfield. Thank you, Mr. Chairman.

Let me first direct my question to you, Chairman Wheeler. As I understand it, the congressionally mandated Downloadable Security Technology Advisory Committee report provides no assurances that, under the AllVid approach, unlike an apps approach, congressionally mandated protections like privacy and emergency alerts would be honored.

Now, tell me, how does that serve the public interest?

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Mr. Wheeler. I am not sure I understand the question, that this is --

Mr. Butterfield. Maybe I am reading it incorrectly. Let me try it again.

As I understand it, the congressionally mandated Downloadable Security Technology Advisory Committee report --

Mr. Wheeler. Right.

Mr. Butterfield. -- provides no assurances that, under an AllVid approach, congressionally mandated protections like privacy and emergency alerts would be honored. Does that serve the public interest?

Mr. Wheeler. So, thank you, Congressman.

Mr. Butterfield. Yes.

Mr. Wheeler. AllVid was a half-a-dozen-years-ago kind of approach. I know people like to characterize what is going on as the resurgence of AllVid.

What we did was to have a report that dealt with the security issues involved in fulfilling our section 629 responsibilities. And the comments on that just closed last week.

Mr. Butterfield. Okay.

Mr. Wheeler. I am unaware, having not been through the comments yet or seen a briefing on the comments, of the kind of issues that you have raised having been raised in the comments, but I will certainly

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look for them.

Mr. Butterfield. And if this approach does not honor licensing terms that are negotiated between programmers and MVPDs, how would that affect the diversity of programming available to consumers?

Mr. Wheeler. So, as I said to Ms. Blackburn, one of the reasons that you had the security discussion to begin with was the protection of copyrights so that the kind of situation you talk about wouldn't happen.

Mr. Butterfield. Does that also give online video distributors a competitive advantage over traditional distributors, as OVDs would not be overburdened by the rules? Does it give a competitive advantage to the traditional distributors?

Mr. Wheeler. I think we want to make sure -- the question is -- so there are online over-the-top services coming through on the Internet part of the cable that comes into your house. The question then becomes, on the cable part of the cable, if you will, what is the impact of the set-top box?

And the important thing -- because I know this committee is very interested in making sure that there is no thwarting of innovation through regulation. And we share that, as well. One of the questions that I hope was addressed -- and I look forward to the comments -- is what is the impact of the set-top box on thwarting the kind of opportunities for consumers that I think you were just talking about.



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Mr. Butterfield. All right.

Let's go to Lifeline modernization. Lifeline modernization appears to be on good track, but the question still remains, how do we create a wireless broadband solution under the current rate of \$9.95?

Mr. Wheeler. So, yes, it is on track. And, thanks to Commissioner Clyburn for the work that she has been doing, Commissioner Rosenworcel and her calling us out constantly on the homework gap, we are going to address those problems.

And I think that if you look at the kind of capacity that can be bought at that kind of price, that what we want to do is give people the opportunity to do that and to exercise their own choices along the way, as well.

Mr. Butterfield. Can you speak to how you intend to promote competition among Lifeline providers at this price?

Mr. Wheeler. Consumers should have choices.

Mr. Butterfield. Finally, how will the FCC ensure that voice-only still remains a service offering for eligible low-income consumers?

Mr. Wheeler. It is important.

Mr. Butterfield. All right. The next question would take longer than 40 seconds, so I am going to stop right there and yield back.

Mr. Latta. Thank you very much.

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The gentleman yields back the balance of his time.

And the chair now recognizes the gentleman from Illinois for 5 minutes.

Mr. Kinzinger. Thank you, Mr. Chairman.

And thank you all for being here today and having a good time with us. We appreciate it.

Mr. Chairman, before I get started with my questions, I am going to ask unanimous consent to include in the record a letter from the Illinois Chamber of Commerce on the need for a regulatory approach at the FCC that fosters investment and innovation in the deployment of technology.

Mr. Latta. So ordered.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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Mr. Kinzinger. Chairman Wheeler, I understand that the FCC has established a broadcast reimbursement deadline of 39 months after the auction. If the Commission plans to repack up to 1,100 local TV stations, there is a reasonable question about whether that 39-month deadline is technically feasible with so few tower crews, structural consultants, a lack of antenna manufacturing capacity, among other things.

Even if we assume that all of those issues are resolved, there is still the outstanding issue of whether or not the relocation fund will be sufficient to pay for moving all of the broadcasters. You have responded to some of those concerns, stating that you have no reason to believe that the \$1.75 billion broadcaster relocation will be insufficient to cover their relocation costs.

That leaves a secondary question of, what if the fund isn't sufficient to pay for the moving of all broadcasters? Again, your Commission stated that you believe the fund will be sufficient, but if it is not, the FCC has the authority to develop a prioritization scheme for reimbursement claims. What would this scheme entail?

Mr. Wheeler. So, obviously, it is a hypothetical at this point in time --

Mr. Kinzinger. Right.

Mr. Wheeler. -- and you would want to know what the realities of the situation are. The \$1.75 billion is a number that set by the

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committee, and we will adhere to that. There is --

Mr. Kinzinger. Well, no, I understand. I have limited time, so let -- but if it is not sufficient. So you said you would prioritize.

Now, are you saying that you would provide funding over the \$1.75 billion? Or would you be pulling from one broadcaster to pay another? I mean, how is that going to work?

Mr. Wheeler. So we are limited to \$1.75 billion. One of the challenges of the whole auction is it is an auction, and you don't know what the result is going to be.

Mr. Kinzinger. Yeah.

Mr. Wheeler. And so we could sit here and hypothesize --

Mr. Kinzinger. But we need to hypothesize, to an extent, because --

Mr. Wheeler. I am sorry, what?

Mr. Kinzinger. I said, to an extent, we need to hypothesize, because we have to plan, we have to understand so we are not surprised.

Mr. Wheeler. And what that means is you have to be ready to be able to deal with the issue should it arise.

Mr. Kinzinger. Yeah.

Mr. Wheeler. And that includes maybe coming back to Congress and saying hey, you know, there were some judgment calls here that didn't work out. And so, you know, that may be --

Mr. Kinzinger. But you see it -- like, potentially on the table

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would be prioritizing broadcasters or maybe pulling from one --

Mr. Wheeler. So, actually, I think that the broadcasters -- I don't want to get in the situation where you are picking and choosing.

Mr. Kinzinger. Yeah.

Mr. Wheeler. That is not the job of this agency.

Mr. Kinzinger. No.

Mr. Wheeler. I do want to be in a situation of adhering to the law, which says 1.75.

Mr. Kinzinger. Okay.

Mr. Wheeler. And if that means we have to come back and say to the committee, hey, it didn't work and here are the facts -- but I haven't got those facts to give you now.

Mr. Kinzinger. Okay.

For the whole panel, let's assume for a moment that the 39-month deadline for relocating broadcasters can't be met. And I know you assume it can. Let's assume for a moment it can't. Would you allow broadcasters to be forced off the air at that point?

Mr. Wheeler. No.

Mr. Kinzinger. I guess we will start with Mr. O'Rielly.

Mr. O'Rielly. No, sir.

Mr. Pai. No.

Ms. Rosenworcel. No.

Ms. Clyburn. Absolutely not.

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Mr. Wheeler. No. And the interesting thing is we have a 6-month extension that is provided for now. And the other thing that is fascinating to us is that, when the NAB participated in this, they told us they would only need 30 months.

Mr. Kinzinger. Okay.

Mr. Wheeler. And, you know, we are all learning as this process goes on.

Mr. Kinzinger. Yeah.

And not to skip back to the relocation fund, but one of the things I want to make sure, though, is, you know, one of the possibilities is not, you know, forcing broadcasters to then shoulder the cost of it if it is above \$1.75 billion, right?

Mr. Wheeler. This is clearly no one's goal.

Mr. Kinzinger. Okay. Well, that is good. It is not anybody's goal; I just want to make sure it is not really there as an option.

Mr. Wheeler. I understand, Congressman.

Mr. Kinzinger. Commissioner O'Rielly, in a welcome sign of the kind of collaboration that we expect but seldom see on the Commission, you and Commissioner Clyburn both issued a joint statement of support for the public notice recently issued to remind USF recipients of expenditures that should not be supported by the universal service.

Your joint statement went further and stated concerns with certain other expenses not related to the provision of service, such

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as for artwork and cafeterias, that may be permitted under certain readings of the rules. You both called on the Commission to initiate a proceeding to address these issues in the coming months.

Commissioner O'Rielly, what would be the benefits of such a proceeding?

Mr. O'Rielly. So the vast number of rural carriers do a wonderful job in serving and completely don't do some of these practices. But we have found that some providers have been doing a very interesting reading of our rules. We do not believe that the scarce universal service funding should go to things like artwork within the building of the provider or building a cafeteria for their employees. So we want the dollars to be spent on building out networks and providing service to consumers.

Mr. Kinzinger. And, basically, everybody on the panel would agree, I think, this?

Mr. Wheeler. Yes.

Mr. Kinzinger. All right.

Mr. Chairman, hopefully that is --

Mr. Latta. Thank you very much.

Mr. Kinzinger. -- that is good input. And I will I yield back.

Mr. Latta. The gentleman's time has expired.

And, also, the chair has heard that we might have votes around 1:05 to 1:20. So if we can keep our questions at 5 minutes, I would

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appreciate it.

And the gentleman from Vermont is recognized for 5 minutes.

Mr. Welch. Thank you very much. Sorry for my absence.

First of all, I want to thank the Commission for the tremendous work that you do. There are very hard, contentious issues. In the hope that we have on this committee -- Bob Latta and I, of course, started the Rural Working Group -- and I know the hope on your Commission is that you would find ways to work together in a contentious time.

But let me ask, Commissioner Pai, you had indicated your problem with the enforcement process now, and I heard you loud and clear. I just thought I would ask Mr. Wheeler, if you would have a -- I would give you an opportunity to respond to that.

Because I assume all of you hope, against hope at times, that you can get a bipartisan votes. That eludes us on this panel more than we would like. It eludes you on your Commission more than you would like.

But, Mr. Wheeler, I would like you to at least have an opportunity to respond to Commissioner Pai.

Mr. Wheeler. Well, thank you. And, as I said, you know, we have been following the processes that have been in place for the Commission for years and years and years. There are actually fewer notices of apparent liability that have been issued than when Commissioner Pai was in the General Counsel's Office. So there have been some changes



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in that regard.

We want to make sure the Commissioners continue to get briefed on a regular basis, as they always have. And we want to recognize that there are certain things that are law enforcement activities and certain things that are policy activities.

Mr. Welch. Uh-huh. All right. Thank you.

And, Commissioner Rosenworcel, I want to thank you.

Commissioner Rosenworcel came up to Vermont. People were impressed. You might want to have her in Indiana.

But you were talking about the homework gap. And that is, in fact, a big deal. What kind of progress are you making, and what can we do to be helpful?

Ms. Rosenworcel. Thank you. I appreciate the question. And I appreciated the opportunity to head home to New England, too.

I think the homework gap is the cruelest part of our new digital divide, but it is within our power to bridge it and fix it. We can update a low-income program known as Lifeline to make sure it supports broadband. We should focus in a laser-like way on households that have children who are in school. And we should also promote the availability of more unlicensed spectrum and WiFi.

Those things will all make a difference, as will more public- and private-sector partnerships to help bring computers and broadband to students who are in school.

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Mr. Welch. Okay.

And you also spoke in the beginning about "dig once."

I wonder, Mr. Pai and Mr. O'Rielly, that seems to me to be such a practical way to try to avoid cost and have the money spent really, Mr. O'Rielly, in the way you were suggesting, where other moneys were not properly spent.

Is that something we can make progress on? Ms. Eshoo has been a leader on this. But I will start with you, Mr. Pai, and then you, Mr. O'Rielly.

Mr. Pai. Thanks for the question, Congressman.

I think, absolutely, there is bipartisan agreement here, as there is on this panel, on "dig once" and other policies like it. As I pointed out in my testimony, I think the six pieces of legislation that you have introduced and/or are considering are terrific.

And I have seen that for myself. Just last week, I was in Hammond, Louisiana, stringing fiber along mud in the Bayou, and I heard firsthand how difficult it is to navigate around some of these regulatory obstacles.

Mr. Welch. Well, Mr. Chairman, I hope we can really do that.

Mr. O'Rielly?

Mr. O'Rielly. Yes, I support the legislation, but I think it may require Congress to -- we can't do it ourselves -- require congressional action, and we support that.

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Mr. Welch. Okay. So you are really recommending to this panel that we do everything we can to do something sensible to save money and expand access.

Mr. O'Rielly. Absolutely. And there is a number of build-out ideas my colleagues and I have had, and we think those would be very hopeful.

Mr. Welch. All right.

Mr. Chairman, I move the bill. We can get away with it. We are here.

Mr. Latta. Is the gentleman yielding back there?

Mr. Welch. I am not yielding. I still have another minute.

Mr. Latta. Okay.

Mr. Welch. Mr. Wheeler, on the broadband speed, you know, there are two standards out there now, 10/1 versus 25/3. So that conflict is a conflict, and I am wondering if you can address that.

Mr. Wheeler. Thank you, Congressman.

Yes, 25 down and 3 megabits up is what we call table stakes, and it is available today to about 80 percent of the population. The problem is it is not available to 20 percent of the population, and how do we get there.

So, first, you have to have universal service reform that makes sure that money is being spent to expand broadband. And then, secondly, you have to recognize that this is a growing process, that

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the most expensive part of building broadband is laying the fiber. After that, it is all electronics, and the cost actually declines.

So how do we get broadband, good broadband, but not what we would like to see across the board, out first? And that is what we are saying. So we will support 10/1 as a minimum. But a lot of people are building more. I was at the NTCA convention and met a gentleman from North Dakota who said that he serves 14,000 square miles, has 4,000 subscribers, and he has fiber to the home.

Mr. Welch. That is great.

I see my time is up, but I just want to at least thank -- I can't ask my question -- Commissioner Clyburn, who also came to Vermont and gave an outstanding presentation to all our utility folks.

So thank you very much, Commissioner.

Mr. Latta. Thank you.

The gentleman's time has expired.

The chair now recognizes the gentleman from Missouri for 5 minutes.

Mr. Long. Thank you, Mr. Chairman.

Chairman Wheeler, I am going to channel my inner Chairman Dingell here and ask for a yes-or-no answer to a simple question.

Isn't regulating broadband providers, but not anybody else, going to create confusion or even a false sense of security among consumers that whatever rules apply to broadband providers will apply to whoever

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sees their information on the Internet, yes or no?

Mr. Wheeler. I am sorry, I didn't understand what you were saying at the end. Whoever sees --

Mr. Long. Shouldn't consumers have the same protection on privacy issues, shouldn't they assume that they have the same protection, whether they are going over a line or whether they are using a third party? Shouldn't the protections be the same?

Mr. Wheeler. There should be uniform expectation of privacy, yes, sir.

Mr. Long. Okay.

Even if you can't or just don't want to impose privacy obligations on other entities, what steps should other agencies or Congress take to ensure that consumers' information is protected in a uniform manner on the Internet?

Mr. Wheeler. Well, as you say, we have said that we will not regulate edge providers. And the FTC has moved with its own set of guidelines. The administration has its white paper. And I expect that what we do will be operating within those same kind of concepts so that there is some parity along the way.

Mr. Long. Regulating the edge providers differently.

Mr. Wheeler. No, we will not be regulating the edge providers differently.

Mr. Long. You won't.

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Mr. Wheeler. We will not.

Mr. Long. Okay.

Commissioner Pai, do you want to weigh in on this?

Mr. Pai. Congressman, I think this is essentially the problem, is that if consumers are to have a uniform expectation of privacy, then it would seem to follow from that that everybody in the broadband ecosystem, from your Internet service provider all the way to the edge provider, should face the same regulations.

Mr. Long. Right. I mean, to me, that makes common sense, and that is what I am trying to get to.

Commissioner O'Rielly, do you have any comment on that?

Mr. O'Rielly. I agree with my colleague's point. I imagine that when this item is done we are going to have different regimes for different types of -- based on the provider used or a third-party provider. And that is going to be problematic for consumers.

Mr. Long. Okay.

Chairman Wheeler, in STELA, this committee requested that the GAO, Government Accountability Office, study the impact of any phaseout of the compulsory copyright licenses for cable and satellite on the related provisions in the communications law. The GAO is currently conducting that study and has yet to report back to Congress on its findings.

I have concerns with the FCC moving ahead and repealing

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exclusivity rules which are interrelated with these licenses before GAO has reported back to this committee and has made any predetermination as to the appropriate public policy decision. Is it necessary that the FCC phase out these rules now, which seems premature?

Mr. Wheeler. Thank you, Congressman.

STELA also required the Commission to begin a proceeding on retransmission consent negotiations. Exclusivity is an issue that factors into that. I think that is the appropriate place to address it.

Mr. Long. Okay.

I will stay with you, Chairman Wheeler. I have a little time here left, I think.

As you know, the committee has been very active in working to find ways to get more spectrum into the commercial marketplace to fuel the growing need for broadband. We have taken a series of legislative steps to make that happen, but the FCC plays a crucial role here also.

One area where we can make quick progress is commercializing the spectrum of 1675 to 1680 megahertz. This spectrum has been the subject of a 3-year-old proceeding at the FCC, and both Congress and the administration have offered budget language encouraging its use for the wireless broadband by 2017. So how and when will the FCC complete these proceedings?

Mr. Wheeler. For 16 gig? We are looking --

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Mr. Long. Yeah.

Mr. Wheeler. We are looking at all of the above-3-gig spectrum.

I believe that we will --

Mr. Long. 1675 to 1680 megahertz is what I am --

Mr. Wheeler. Megahertz?

Mr. Long. Yeah. Not gig, megahertz.

Mr. Wheeler. Sorry. I thought you were talking about the upper band.

I can't answer that question specifically, sir, and give you a time. I will be happy to get back to you.

Mr. Long. Yeah, I would love for you to get back to my staff on that.

And, as you know, this committee has been very active in working to find ways to get more spectrum into the commercial marketplace to fuel the growing need for broadband. We have taken a series of legislative steps to make that happen. But, you know, like I say, you all play a crucial role. So if you could check that out and get back to me, I would really appreciate that.

Mr. Wheeler. We certainly agree with the importance of doing that.

Mr. Long. I yield back.

Mr. Latta. Thank you.

The gentleman yields back.



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And, also, the members see that they have just called our first votes, with about 13:49 left.

And the chair now recognizes the gentlelady from New York.

Ms. Clarke. Thank you, Mr. Chairman. And I thank our ranking member, Ms. Eshoo. And I would like to thank our Commissioners for their appearance and responses today.

Like many of you, I am encouraged, actually excited, about the recent signing of the bipartisan budget agreement, which included provisions of the Spectrum Pipeline Act of 2015 that is based on a draft that my office introduced. And I look forward to the FCC fulfilling the goals of this act and identifying and repurposing wireless spectrum from Federal to commercial uses.

More spectrum can only translate into more opportunities for our Nation's citizens, particularly those from historically underserved communities where wireless broadband is often the only gateway to opportunities.

On this point, I have a question related to increasing engagement for seasoned and aspiring entrepreneurs and businesses of color in the upcoming spectrum auction and beyond. But, prior to that, I would just like to say to Commissioner Clyburn, congratulations on the reform of the inmate calling services. This will help to mitigate a lot of the hardship millions of families across our Nation have faced in dealing with that service.

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But I would like to ask, do you see the FCC's revamped designated-entity rules as sufficient enough to create opportunities for minority spectrum ownership? And what can the FCC do to enhance and incentivize secondary market transactions that have the potential to drive more diversity in minority ownership of commercial wireless spectrum?

I was directing that to you, Commissioner Clyburn.

Ms. Clyburn. Okay. Thank you very much. I appreciate it.

A number of things that we have done in the past year and a half or so, I think, will stimulate the marketplace and the ecosystem.

We repealed the attributable material relationship rule and the former defaulter rule because we recognize that, while well-intentioned, they were keeping businesses, particularly diverse businesses, out of the market.

We also adopted a rural bidding credit, which will give more incentive to those in those particular areas, which is a twofer. It would, you know, stimulate more deployment in those particular areas, and it would allow for more opportunities in a smaller footprint.

We also are looking at small-business incentives, bidding credits, that, again, would stimulate that type of investment and opportunities.

And, of course, we are always looking for ways to stimulate secondary-market transactions. Again, a smaller footprint, in some

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cases, and a more laser-beam focus.

And so we are looking at and continuing conversations with those who have great ideas to really do what we can to diversify the ecosystem for businesses of all sizes and businessowners from all backgrounds.

Ms. Clarke. Thank you. That is encouraging. We want to definitely stay focused on that. There have been some substantial losses, particularly in black communities, over the years, and we would like to see opportunities particularly for young, more inspired businessowners and entrepreneurs to really gain a foothold in this market.

Shifting gears a bit, the FCC appears to have been focused on expanding online video platforms, but there still appears to be challenges in getting the content directly to the consumer, as evidenced in the current AllVid debate.

So I want to drill down just a little bit and ask Chairman Wheeler: The proposal made by the AllVid proponents in your DSTAC proceedings requires a new box just to get the MVPD content to the new retail device. Instead of getting rid of boxes, AllVid requires an additional box. And I think you have heard colleagues commenting on this this morning.

This is a concern on two fronts for consumers, increased box costs and increased energy costs, in addition to no guarantee of consumer protection. This seems out of step with today's marketplace.

Aren't these increased costs and diminished consumer protections

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a concern for the FCC, as well?

Mr. Wheeler. Thank you, Congresswoman.

There has been a lot of talk today about AllVid, which is a half-dozen years old and apparently somebody has wanted to resurrect.

We have just finished a comment period on the DSTAC requirement that was in STELA. It was finished last week. The making of conclusions from that is premature.

We believe that section 629 says to us that we have the responsibility to assure that there is competitive choice in terms of navigation devices. DSTAC had several approaches as to how to do that. The decision about where you go from there is one that we have not yet made because the comments just closed last week.

Ms. Clarke. Well, let me just say this. I think it is clear that we need to monitor this very closely. Because there is no doubt, if two devices are needed, there is going to be an increase in energy costs. There is no doubt about that.

Mr. Wheeler. It is also possible there could be no devices needed and there would be a reduction in cost. I mean, that is the interesting thing that we have to --

Mr. Latta. And I am sorry to have to cut the Chairman off. We have --

Ms. Clarke. Yes. No problem. I yield back, Mr. Chairman.

Mr. Latta. -- about 7 minutes left on the roll here.

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And the chair now recognizes the gentleman from New York for 5 minutes.

Mr. Collins. Thank you, Mr. Chairman. I guess we will see if I can be a little bit brief.

Mr. Wheeler, at the end of July, in this hearing room, I asked you about pirate radio. I am a New Yorker. That is a big issue certainly down State, even though I am from the Buffalo area. And I did send you a letter signed by the entire New York delegation --

Mr. Wheeler. Yes, sir.

Mr. Collins. -- and most of the New Jersey delegation, including Ranking Member Pallone.

But, since then, I have continued to be disappointed. There have only been, as I understand it, five or six fines issued related to pirate radio. And it is such a small number, it is certainly the feeling within the industry that that has done nothing to address the serious issue, that we consider a serious issue, of the multiple pirate radio operators that continue to operate in the New York metropolitan area.

So, you know, my contention is, you know, to be very direct, that you have paid this lip service and, frankly, little more than lip service. You know, you decimated the Enforcement Bureau. You have closed offices and eliminated field engineers in an effort you call consolidation. But I can tell you, coming from the business sector, and I do understand consolidation, you need results to go with it, and,

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in this case, there have been few to no results.

So my staff called your Enforcement Bureau and said, "Can you give us an update on what is going on with pirate radio and the enforcement efforts?" -- directly to your Enforcement Bureau. I don't know if you will be surprised to hear this. Their comment was, "We are not handling that. You will have to call Mr. Wheeler's personal office to find out what is being done on pirate radio."

My perspective? That is an embarrassing runaround, disrespectful to my office for sure, that your Enforcement Bureau says, "We are not doing anything."

Mr. Wheeler. I agree with you, sir.

Mr. Collins. So I would like you and would ask you to get back to us --

Mr. Wheeler. Yes, sir.

Mr. Collins. -- in particular to my staff, who came off of that phone call and you can imagine the comments that they made about what we consider continue to be lip service to pirate radio. And if nothing else, if that is all it is, tell us that is all it is. But I would very much appreciate not having to wait months to get a response on this, because I found that unbelievable, frankly.

Mr. Wheeler. So do I.

Mr. Collins. Well, good. So I will look --

Mr. Wheeler. Because the reality is, as I said in my statement,

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Congressman, you know, there have been 280 enforcement actions that we have taken in the last 2 years under my chairmanship. And we have a joint task force that we are working with the NAB on this.

And I suggested in my testimony that there were also some additional steps that Congress could take to help us deal with the landlords, because they are the ones who are facilitating this. And the pirate radio folks, you shut them down, they thumb their nose at you, and they go someplace else.

Mr. Collins. No, we understand that piece. But we were quite frustrated by the --

Mr. Wheeler. I would be, too.

Mr. Collins. -- very direct response --

Mr. Wheeler. I would be, too.

Mr. Collins. So we will just jointly dig to the bottom.

Mr. Wheeler. We will fix that.

Mr. Collins. Now, the other thing -- and, you know, I reach out to the industry and ask them, you know, to help me with some questions. I am sitting here at the bottom of the dais, and, usually, by the time, 30 other questions are asked. And I will tell you, what came back from me asking them to ask you was really a frustration they see right now in the investment side, actions that are a wet blanket and really having a negative impact on investments.

But they also pointed out, from their perspective -- and I don't

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know whether this is a rhetorical comment or asking a question, but -- what they see from the FCC as selective enforcement on the TTY issue, spectrum set-asides for companies who are not participating in the auctions, and onerous regulations extended to new technologies like streaming video that do nothing but discourage investments.

Mr. Wheeler. Thank you for asking. Let me see if I can tick them off real fast.

Mr. Collins. All right.

Mr. Wheeler. TTY. It is really interesting. AT&T asked for a waiver. We granted them the waiver. We called them and said, "We are going to grant you the waiver."

They followed the next day with a letter saying, "Why haven't you granted us the waiver? And, by the way, what about our competitors on this?"

We went back to them, and we said, "Would you file a complaint so we can see if it is appropriate to take enforcement?"

Mr. Collins. I am about to run out of time.

Mr. Wheeler. They didn't want us to do that.

And, secondly, on over-the-top, we have started a rulemaking on that. The purpose of rulemakings is to learn. We learned the vast number of things that are developing very rapidly. And we have not moved forward on that notice of proposed rulemaking. And I don't see, until the situation changes, that we would.



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And I forget your third.

Mr. Collins. That is okay. My time has expired.

Mr. Latta. The gentleman's time has expired.

Mr. Collins. And I do look forward to catching up with you on the enforcement piece. Thank you.

Mr. Latta. The chair now recognizes the gentleman from Illinois for 5 minutes.

Mr. Rush. I want to thank you, Mr. Chairman.

And I also want to commend the Commission and Commissioner Clyburn, in particular, for the capping on the predatory phone rates for our inmates across the country.

But I wanted to ask the Commission in general, I want to raise a question and raise an issue that is affecting my city, Chicago, other urban areas all across the Nation, and this is on the issue of urban violence.

There have been 2,587 shootings and 435 murders in Chicago so far this year -- more than L.A. and New York City combined. And it is well-known that these gang leaders who are primarily perpetrating this violence, that they are using social media to advance their agendas and their conflicts.

Knowing that the FCC has limited jurisdiction over Facebook, Twitter, and Instagram, is there anything within the realm of public safety that the FCC can use to help address and curtail this violence?

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Can and will the FCC add its important voice, its stature, to this dynamic discussion?

Mr. Wheeler. Mr. Rush, the situation that you describe is, as you say, tragic. It is not dissimilar to what Mr. Barton raised a moment ago with regard to terrorist threats and terrorists using social media.

We do not have jurisdiction over Facebook and all the other edge providers. We do not intend to assert jurisdiction over them. And I don't believe that they are -- as legitimate as your concern is, I don't believe that we have the jurisdiction to do the kind of thing that you suggest.

Mr. Rush. That means that you don't think that the FCC could weigh in on this in any way?

Mr. Wheeler. I am happy to use the bully pulpit. I am happy to talk to Mark Zuckerberg and others to raise this issue and to say, hey, this is important kinds of thing, we need to be in this together. But we don't have regulatory authority.

Mr. Rush. I am not seeking regulatory.

Mr. Wheeler. Okay.

Mr. Rush. I would grant you that I don't believe that you have jurisdiction. But I think that there is a bully pulpit, that you and others may be able to address this issue. I am not trying -- I don't want to --

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Mr. Wheeler. I will call Mark Zuckerberg this afternoon to raise the issue that you have raised and the issue that Mr. Barton has raised. And I am sure that he is concerned about it, as well, and he will have some thoughts.

Mr. Rush. Thank you.

Ms. Clyburn. Right quickly, sir. Good to see you. And thank you for the acknowledgement.

One thing that we are acting on and working with law enforcement and other authorities are stolen phones, as people are still using throwaway phones and burner phones or whatever you want to call them to commit crimes. We are continuing to work -- our Consumer and Government Affairs Bureau is working with our sister agencies and then, like I said, law enforcement authorities and mayors across this Nation to address that issue. So where we can, we will.

Mr. Rush. Thank you.

Does any other Commissioner have anything to offer?

Mr. Pai. Congressman, this doesn't directly relate to social media, but one of the things that I was disturbed to find when I visited a maximum-security prison in Georgia recently was that the use of contraband cell phones is having a direct and severe effect on people outside of prisons. I heard about family members, witnesses, and others, crime victims, who, because of the use of contraband cell phones in prison, have faced threats, including to their very lives.

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And I think that is something where the agency, a couple of years ago, teed up a number of different ideas. And I think it would be appropriate for the agency to come to closure on that to help protect some of these people, disproportionately minority, who are getting, some killed or robbed or otherwise threatened by use of this technology.

Mr. Rush. Thank you, Mr. Chairman. I yield back.

Mr. Latta. Thank you very much.

The gentleman yields back.

Just to let everyone know, we are about 18 minutes into this vote, with about 230 that haven't voted.

And the chair recognizes the gentleman from Florida.

Mr. Bilirakis. Thank you, Mr. Chairman. I will be as brief as I possibility can.

Thank you for the Commissioners' testimony today. I really appreciate it so much.

Chairman Wheeler, as part of the Enforcement Bureau's ongoing work, it is my understanding that there has been a letter of inquiry, or LOI, seeking information from a hotel chain on all of the properties from a -- again, its name, the name of the hotel chain -- including franchises, over which it may not have any legal authority.

To your knowledge, does the Enforcement Bureau have any reason to believe there are violations of the Commission's rules at these facilities? That is the first question.

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Mr. Wheeler. Thank you, Congressman.

Typically, an LOI, a letter of inquiry, is sent when there is a belief that this is and they are seeking information to find out whether that belief is factual.

Mr. Bilirakis. Based on the size of the request -- again, all the properties -- the cost to the hotel and loss of productivity and wages would seem to be quite high, I am sure you will agree, given the technical nature of the request, without any notion that this fishing expedition will bear fruit for consumers.

Isn't this exactly the kind of thing that a cost basis analysis would prevent from being unnecessarily imposed on, again, American job creators? Would you agree with that?

Mr. Wheeler. Thank you.

There have been multiple actions that we have brought against hotel chains because what they have been doing is jamming the signals of people like you and me in order --

Mr. Bilirakis. You are sure of that? You are certain of that?

Mr. Wheeler. I am certain we have brought these actions and that is what was going on and that what has happened is that they have been forcing people to buy services from them instead of using the licensed services that we have authorized. And section 333 of the act says that we have a responsibility to protect the licensed services that we authorize. And --

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Mr. Bilirakis. And it specifically states that in the act --

Mr. Wheeler. Yes, sir.

Mr. Bilirakis. -- with regard to WiFi. Is that correct?

Mr. Wheeler. It is an appropriate service of the agency.

And so I am unfamiliar with exactly the specifics that you are talking about here, but if there is a letter of inquiry that was sent out, I would imagine that there have been some indications of difficulties and WiFi access being blocked in contravention of the law.

Mr. Bilirakis. You are assuming that. Okay. Thank you.

Commissioner Pai, there has been some renewed attention to the TCPA this summer. The FCC recently passed a package of declaratory orders, but I fear they didn't impose real reforms to actually stop unwanted calls or help on this. And maybe it would cause unnecessary litigation.

A statement from the Chairman about telephone townhalls had been quickly corrected after our last oversight hearing, within a few hours, I understand. I have a different question this time for this hearing.

We talked about apps for customer relationship management and whether a smartphone is or can be an autodialer under the FCC's majority's interpretation. There are many small businesses in America, in my district as well, that rely on smartphones to run their businesses.

I have a few questions. Yes-or-no answers would be greatly

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appreciated.

Mr. Pai. Sure.

Mr. Bilirakis. If a small-business owner has a smartphone and uses one of those apps, has that person violated the TCPA, in your opinion?

Mr. Pai. Yes, according to the majority.

Mr. Bilirakis. Could that person be subject to FCC enforcement action even for a misdial?

Mr. Pai. Yes.

Mr. Bilirakis. Unbelievable.

Would that person be subject to the private right of action provided under the TCPA?

Mr. Pai. Yes.

Mr. Bilirakis. Okay.

Commissioner Rosenworcel, is this a result that you support?

Ms. Rosenworcel. Well, let me be clear. I don't like robocalls, and I think most people are not fond of them. So I think we should take any and all actions we can to prevent them, because those unwanted calls are not something that people are all that eager to receive.

Mr. Bilirakis. However, we are not accomplishing our goal --

Ms. Rosenworcel. No, but let me speak to you exactly to what you were talking about with autodialers.

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The Telephone Consumer Protection Act was passed in 1991. In 1991, an autodialer was a big, bulky piece of equipment. One of our challenges today is that we have to still use that law when we have software that can accomplish what that hardware did decades ago.

And so I think the struggle that the agency has is trying to figure out how to manage with a statute that didn't contemplate the digital world we live in today.

Mr. Bilirakis. Okay. Let me ask you again. Do you --

Mr. Latta. I am sorry. The --

Mr. Bilirakis. Okay. Yeah, we have to go.

Mr. Latta. -- gentleman's time has expired.

Mr. Bilirakis. All right. I am going to submit something for the record.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*



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Mr. Bilirakis. Thank you, Mr. Chairman.

Mr. Latta. Thank you very much.

And the chair recognizes the ranking member.

Ms. Eshoo. Thank you, Mr. Chairman.

Just very quickly, two things.

Thank you to all of the Commissioners. I have some more questions. I will put them in writing.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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Ms. Eshoo. Commissioner Clyburn, I didn't get to say earlier, thank you for your work on Lifeline. Thank you. It is really helping to make a difference.

And to Commissioners O'Rielly and Pai, I hope that I didn't hear you siding with people that rip off consumers. Any outfit that is going to place charges on a consumer's bill and bilk them, I don't think that is the place where anybody wants to stand. Now, maybe you have some other issues with the enforcement part of the agency. But that is not only the wrong side, it is the wrong side of history.

Mr. Chairman, I would like to ask for a point of clarification on the introduction of multimedia during our hearings. Earlier in our hearing today, one of our colleagues introduced a video as part of her line of questioning without asking for objection. As you know, when letters or other written materials are entered into our record, we first have to ask for unanimous consent.

The Democrats on the committee had previously sent a letter to our Republican colleagues asking them, when video or other multimedia evidence is introduced, that we first check with our colleagues on the other side. Now, she may not have known that that request should have been made.

And I think, you know, for regular order here, no side ever wants to be surprised. So I ask --

Mr. Latta. If I could --

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Ms. Eshoo. But let me just ask the parliamentarian the following --

Mr. Latta. Well, just if I could, to the ranking member, because of the interest of time and we are going to miss the vote, if we could ask our staffs to work together on your question.

Ms. Eshoo. Yeah, but let me put my question --

Mr. Latta. Okay.

Ms. Eshoo. -- out there so it is a part of the record.

It is a parliamentary inquiry, and it is the following: Can you provide some clarification as to whether video and multimedia evidence will be treated the same as written materials as a matter of this subcommittee's process?

And we will await the --

Mr. Latta. We will work with our staff.

Ms. Eshoo. Yes. Not the staff, the parliamentarian.

Mr. Latta. Okay. Thank you.

Ms. Eshoo. Thank you, Mr. Chairman.

Mr. Latta. And if I could real quickly just, again, thank the Commission for being with us today. On behalf of the chairman of the subcommittee and also the ranking, we thank you for your time.

And, without any other questions coming before us, we stand adjourned.

Ms. Eshoo. Thank you.

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[Whereupon, at 1:25 p.m., the subcommittee was adjourned.]