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December 8, 2004

BY ELECTRONIC FILING

Marlene M. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notification of Oral Ex Parte, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* CC Docket 01-338 and WC Docket 04-313

Dear Ms. Dortch:

On December 7, 2004, the undersigned, on behalf of Fones4All Corporation ("Fones4All"), provided the attached materials to Commissioner Martin and Daniel Gonzalez, Senior Legal Advisor via electronic mail. In addition the undersigned spoke by telephone with Daniel Gonzalez regarding the need for the Commission to preserve UNE-P availability to allow carriers to provide service to Lifeline and Link Up eligible end users. In accordance with the Commission's rules, Fones4All is electronically filing the attached materials, along with this letter.

Respectfully submitted,

Ross A. Buntrock
Counsel to Fones4All Corporation

cc: Daniel Gonzalez (email)

Carr, Edilma

From: Buntrock, Ross
Sent: Tuesday, December 07, 2004 6:56 PM
To: 'kevin.martin@fcc.gov'
Cc: 'daniel.gonzalez@fcc.gov'
Subject: Fones4All Corp.--CC Docket 01-338; WC Docket 04-313
Importance: High

Please see the attached correspondence, provided on behalf of Fones4All Corporation.

Regards,

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December 7, 2004

VIA ELECTRONIC MAIL

Hon. Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: Ex Parte, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* CC Docket 01-338 and WC Docket 04-313: Follow-up from Nov. 29, 2004 Meeting With Fones4All Corporation

Dear Commissioner Martin:

On November 29, 2004 in meeting involving you, your Seniro Legal Advisor Daniel Gonzalez, the undersigned, and Bettina Cardona, President of Fones4All Corporation ("Fones4All"), Fones4All provided a written presentation which stated that "As Chairman Powell has recognized, even Bells agree that UNE-P should be available to serve residential consumers." Fones4All did not provide a citation for that statement in the written materials provided to you on November 29, but indicated that the source of that quote was a June 15, 2001 letter from Chairman Powell to Congressman Fred Upton, transmitting answers to the Majority Members' post-hearing questions in connection with the Chairman's March 29, 2001 appearance before the Subcommittee on Telecommunications and the Internet. A copy of the June 15, 2001 letter was made part of the subcommittee's hearing transcript, which is provided herewith in its entirety. Chairman Powell's June 15, 2001 letter appears on page 64 of the official transcript, and the quote cited by Fones4All appears on page 72 of the transcript. Please contact me at (202) 857-4479 if you have any questions regarding this transmittal. A copy of this letter and the attachment will be filed with the Commission for inclusion in the above referenced dockets.

Respectfully submitted,

/s/

Ross A. Buntrock

Attachment
cc: Daniel Gonzalez (electronic mail)

FCC CHAIRMAN MICHAEL K. POWELL: AGENDA AND PLANS FOR REFORM OF THE FCC

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

MARCH 29, 2001

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FCC CHAIRMAN MICHAEL K. POWELL: AGENDA AND PLANS FOR REFORM OF THE FCC

THURSDAY, MARCH 29, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS
AND THE INTERNET,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2123, Rayburn House Office Building, Hon. Fred Upton (chairman) presiding.

Members present: Representatives Upton, Barton, Stearns, Gillmor, Cox, Deal, Cubin, Shimkus, Wilson, Pickering, Fossella, Davis, Ehrlich, Terry, Tauzin (ex officio), Markey, Rush, Eshoo, Engel, Green, McCarthy, Luther, Stupak, DeGette, Harman, Boucher, Brown, Sawyer, and Dingell (ex officio).

Also present: Representatives Buyer and Walden.

Staff present: Howard Waltzman, majority counsel; Andy Levin, minority counsel; and Hollyn Kidd, legislative clerk.

Mr. UPTON. Good morning, everyone. Good morning, Mr. Chairmen—men, m-e-n. Good morning. What I would like to do is try to limit members' opening statements and, if they do so, we will give them a little extra time on the question time, if that works out. We will find out if it works or not.

Today, we are going to hear from Chairman Michael Powell. No stranger to this subcommittee, Chairman Powell has taken the reins of the Commission at the beginning of the 21st Century, and I believe it is very good news for our country.

This is an auspicious occasion, since our subcommittee is the very first congressional panel which will hear from Michael Powell in his capacity as Chairman.

Today, our Nation is facing an economic downturn. In part, it is Chairman Powell's leadership and vision that will help us get back on course. On Tuesday, the President was in my district speaking about his plan to get our economy back on-track, and he noted "In the final quarter of 2000, the American economy grew at a sluggish 1.1 percent pace. In that same quarter, there was no growth at all in new business investment."

Again last week, another major U.S. high-tech company announced that it will lay off 4,000 workers. This trend must change. And I think part of the formula will be reforming the FCC and lifting regulatory obstacles from the technology industry.

Mr. Chairman, this panel knows you are committed to the cause, and I can say this today, that is music to our ears. If the FCC is

going to keep pace with the speed-of-light advances of the Technology Age, it is going to have to dramatically retool itself. I have full faith and confidence in you, and I plan on giving you the time and resources you need to do the job and then assess where Congress may need to take the initiative to implement or perfect your plans.

Approving mergers more quickly and efficiently will indeed spur business. Working with industry to deploy high-speed data services will bring communities together, foster innovation and, most importantly, create jobs. The technology, telecommunications and mass media sectors need to be fully realized, not to mention the incredible benefits to the consumer and job creation which likely would accompany them.

We cannot afford to have an FCC which is mired in bureaucracy and lethargic decisionmaking or, as the case often has been, nondecisionmaking. Ultimately, I believe Congress may need to make perspective reforms permanent to hedge against future retreat.

Speaking last year, you stated this: "We at the FCC are saddled with an organizational structure that may not be adept at efficiently addressing certain developments in the market. We have limited resources, a legacy bias, and limited ability to keep pace with the technological changes and trends. Therefore, we must constantly and honestly ask ourselves whether a proposed rule can be crafted quickly and clearly enough to make a positive contribution to the market, for a really good rule adopted too late may as well not have been adopted at all."

Chairman Powell, I appreciate your acknowledgement of these issues, and I look forward to working with you on positive reforms. And as I look at my congressional district, I hear from business leaders about how the lack of broadband access is retarding growth in Southwest Michigan. I also have great concern about what is going to happen to my constituents if we flip the digital TV switch in 2006. What about spectrum management? Will my constituents have access to the less wire and satellite telecommunication services?

These are but a few issues which confront our Nation and my district. In large part, resolution of these weighty issues relies upon FCC decisionmaking, which makes reform of the FCC all the more essential.

Chairman Powell, we look forward to your testimony and perspective on FCC reform and the myriad which face this subcommittee and the country.

I yield to the ranking member of the subcommittee, my friend Ed Markey, from Massachusetts.

Mr. MARKEY. Thank you, Mr. Chairman, very much, and I want to commend you for holding this very important hearing, and I want to welcome the new Chairman of the Federal Communications Commission, Chairman Powell, to our committee.

Chairman Powell, people are constantly asking me to compare you to your father, and what I always tell them is you are just as smart as your father, but you have a lot more power to affect the world. And so, obviously, there are millions of people and thousands of companies, not only in the United States but all around the world, that hang on your every word and what the Federal

Communications Commission decides in just about every major area that affects the Internet and telecommunications and cable and satellite and on and on. So, we look forward to your hearing.

Before we launch into a discussion, however, of the Federal Communications Commission and its structure and the job which it performs, I think it is very important for us to note that the United States has the very best telecommunications system in the world. It is the envy of the world. It is, overall, the most competitive, it is the most diverse, it is the most innovative telecommunications marketplace on the face of the earth. And that fact is in no small measure due to the excellent work which the Federal Communications Commission and its excellent staff has done over the last generation in implementing the laws which have been passed by this subcommittee.

I think we need to keep in mind, as we look at the Agency today, that you have done a very good job. We just also recognize that many of the proceedings or tasks that some Members of Congress find unnecessary are considered vitally important by others, and that the Agency performs many of its tasks at the instigation of Congress or pursuant to direct statutes or a mandate.

I would also caution against pursuing a deregulatory agenda simply for the sake of championing reform or by recasting Commission substantive proceedings as reform measures. The Congress often asks the FCC to achieve certain public policy objectives. The goal is to fulfill those objectives which Congress asks the Agency to perform. The fact that the FCC also achieves these goals efficiently is an important result of a well-run agency, but efficiency itself is not the goal—creating the proper blueprint for the United States so that it continues to have the lead looking over its shoulder at Number 2 and 3 in the world is the objective.

So, I believe that there are certainly things that the Agency can do itself to streamline its operations, and I know, Chairman Powell, that you are looking at those things that the Agency can implement to ensure that it is more efficient, that it deals with the new issues that are constantly confronting the Agency, and I look forward to hearing from you so that we can help you to buildupon the reform ideas and actions that you have in your mind, building upon your predecessor's changes.

So, I look forward to hearing from you, and I thank you, Chairman Upton, for calling this very, very important hearing.

Mr. UPTON. Thank you.

Mr. Tauzin, chairman of the full committee.

Chairman TAUZIN. Thank you, Mr. Chairman. I realize you do want to limit opening statements today, but I think it is important that, as Chairman of the full committee, I spend a few moments welcoming the new Chairman of the Federal Communications Commission, Michael Powell. And I want to thank you, Mr. Powell, for joining us today and for sharing with us your vision of the new FCC under your stewardship.

I am reminded, by the way, of the Kennedy years, when the theme of that Administration was to "bring the best and the brightest to service of our country," and I think President Bush has done that in the selection he has made in terms of your appointment as Chairman of the Commission.

To the other members of the committee, I will remind you that Chairman Powell is extraordinarily well-qualified for this position. Not only does he bring extraordinary intelligence and foresight and vision to the job, but he has military command experience, and he has strong political skills we have seen before, and those are going to be very important as we go forward.

He has also watched how not to run the Commission for the last several years. It is my strong opinion that the Agency has been adrift, has drifted from its designated mission and has drifted from the law. And it is my profound hope that Chairman Powell will sail the FCC back into safe waters, and I have every confidence that he is going to be able to do that.

Chairman Powell, I of course look forward to working with you in your efforts to reform the FCC and to finish the deregulation begun by the 1996 Act that was so important a piece of legislation produced by this committee. I think under your leadership, the FCC will become an agency that fosters innovation again, and investment, rather than one that inhibits the deployment of new services, and that is good news.

I think it is becoming an agency that unleashes market forces rather than managing competition, and that is good news. And I think it is going to be an agency that shakes the competitive landscape free of regulation rather than facilitating the shakedown of companies on behalf of special interests, and that will be an important change.

In particular, Chairman Powell, I want to work with you to rationalize the structure of the FCC so that the type of service rather than the service-provider dictates the regulatory or deregulatory frame. We are, frankly, tired of watching disparate treatment of broadband services, disparity that has skewed the deployment of broadband services—and I think deprive many constituents, my own—of access to high-speed Internet services.

I realize that some of that disparity stems from the different way we treat C-LEX and I-LEX and cable companies and satellite companies and wireless companies in the law, but I intend to work with my colleagues and Mr. Dingell and Mr. Markey and Mr. Upton, to see to it that this committee tries to fix that.

Also, I want to work with you to streamline the approval process so that applications do not languish in bureaus for years on end, and I notice that you have already begun that process, and I thank you for that.

I want to work with you to end the merger review process in which companies are shaken down and prevented from having judicial recourse from outlandish Commission requirements of voluntary conditions on every approval.

Congressmen Burr and Pickering worked hard last year to put some reasonable restraints on the FCC merger review process. I intend to help them this year to enact a bill in this Congress.

Mr. Chairman, I am confident that we have before us a man with a real vision that is going to take the FCC into the 21st Century. I think he knows, like Mr. Markey has pointed out, that the high-tech sector is now driving this economy, both up and down, and that the FCC regulations or its deregulations are going to have a

profound effect on our economic viability both today and into the future.

I have got a great sense of optimism as Chairman Powell takes the reins of this important Agency, and I look forward to his describing the new vision to this important committee as we work together to help this economy continue to grow. Thank you, Mr. Chairman.

Mr. UPTON. Thank you, Mr. Chairman.

Recognize for an opening statement, my friend from the great State of Michigan, the ranking member of the full committee, Mr. Dingell.

Mr. DINGELL. Mr. Chairman, I thank you and, as you wisely observed, you and I do serve a great State. First of all, thank you. Second of all, welcome to the new Chairman of the FCC. Chairman Powell, we are delighted you are here today and we wish you great success in your undertaking.

I have expectations, and they are high, that you will impose a more disciplined approach to the management of the Agency's business. Specifically, I expect one that will require judicious use of the Agency's delegated authority, fair treatment of all Agency and industry participants and, above all, an abiding appreciation that the public interest is paramount.

The public interest standard is, of course, the guiding principle of all the Commission's activity. It is at the heart of FCC's grant of authority, and carries with it broad powers to regulate and to also forebear from regulation. The breadth of this power can be used to accomplish many worthy goals, but it can be just as easily been abused, as it has more recently in the past.

My hope is the new Chairman will avoid using this authority as a means to justify a particular agenda but, rather, to establish clear standards, objective guidelines that will govern the Commission's use of its broad authority.

In his prepared testimony, the Chairman has established a specific, four-pronged agenda for the Commission that appears to me to be right on the money. The FCC clearly needs a new vision that takes into account the rapid technological changes occurring with the industry. Convergence of technologies is more than just a cliche, it is real. It is here. And more than anything else, it is the key to breaking down traditional monopolies.

The FCC can try with all its might to regulate its way to a competitive marketplace, but it won't succeed until all the companies have the proper incentives to use these new technologies to compete freely in each other's markets.

The current regulatory approach is to treat companies based on the service which they provide, but on the technology they use to provide it. Clearly, this is an old-fashioned, unwise and unworkable approach.

This approach to regulation causes a fundamental disparity between companies competing to provide the same service. Left unresolved, it will result in less effective competition, less innovation, less investment, fewer choices for the American public, and poorer service.

The most obvious example of this regulatory disparity exists in the broadband market, but it is a growing problem for other serv-

ices as well. It makes, to me, no sense whatsoever for broadband services offered by a cable company to be regulated differently than broadband services offered by a telephone company, a wireless provider, or any other telecommunications company, and I will ask the Chairman about his views on this matter. The FCC must address this problem across-the-board, and the sooner, the better.

The Chairman should be commended for his commitment to improving management efficiency at the Agency. This has been one of the regrettable failures of the Agency. While none of these changes will happen overnight, I hope there will be a concerted, among everything else, to streamline Section 271 application processes. This area is particularly important to achieving a key Telecom Act objective sometime before the next millennium.

I would note that the Bell Company entry into long distance was designed to accomplish two distinct, but equally important, goals. One was to encourage more facilities-based long distance competition, the other was to facilitate and to stimulate facilities-based competition in the local market. In my view, these goals are flipsides of the same coin, and we have seen compelling evidence that they are inextricably linked. One only need check AT&T's Web site to see how Bell Company long distance entry has the effect of stimulating local competition.

I believe that it is more than coincidence that the only two places AT&T advertises the offering of local telephone service is in New York and Texas. These happen to be the first two States for which Bell Company entry into AT&T markets was permitted. I would also note that the rates for local service in these two States have dropped significantly.

The FCC process for approving these applications has been exceedingly slow—as a matter of fact, distressingly so—in part, due to an over-reliance on State commission and DOJ recommendations. I would note that we carefully put in the statute when we wrote it that these two agencies were to be consulted. We did not give them veto nor did we make them participants beyond consultation. The statute provides then that these get consultative roles, they are entitled to it, but in many cases State proceedings have been interminably long, some lasting 5 years or more. In my view, it is intolerable that consumers should be held hostage to the slow roll of the regulatory process, waiting years for the green light from Government, to get the benefits of greater choices and lower prices. I cannot explain why the State agencies have behaved this way, but it is, indeed, to me at least, a source of curiosity, and I would hope, Mr. Chairman, it would be a source of curiosity to you.

I would note that the Department of Justice has never been a friend of this legislation, has always sought extra special privileges in dealing with a telecommunications policy utilizing slow and inefficient antitrust mechanisms to address the business of your Commission. I hope you will take a hard look at their behavior, Mr. Chairman.

At the same time, Bell Companies must be held accountable for their obligations to comply with market opening provisions contained in the Act. You do have the enforcement tools in the Commission at your disposal, Mr. Chairman, to ensure compliance. These tools must be used in a fair and consistent manner to assure

that the anti-competitive consequences can be prevented. I would note, however, that these tools, according to the testimony of your predecessor, were rarely, if ever, used. I am delighted, Mr. Chairman, that you have committed to making enforcement of these and other FCC rules a top priority.

I want to thank you again, Mr. Chairman, for appearing here, and I look forward to hearing your testimony. Thank you, Mr. Chairman, for your kindness.

Mr. UPTON. I would note that all members', under unanimous consent—I would ask unanimous consent that all members have their full statements as part of the record and will again advise members that if they could limit their opening statements, or pass, it would be terrific.

Mr. Barton.

Mr. BARTON. Thank you, Mr. Chairman. I want to welcome Chairman Powell. I will put a formal statement in the record. It has been a pleasure to work with you in the past, as a Commissioner. It is going to be a pleasure as the Chairman. I have been surprised how many new friends I have gotten since I got back on this subcommittee. I am sure you have been surprised at how many new friends you have gotten since you became Chairman. What are friends for, right?

We look forward to working with you. And, Mr. Chairman, I would ask if I could submit some questions for the record, to Chairman Powell. I am going to have to leave to do some meetings on the energy situation. But welcome to the subcommittee, and we look forward to working with you.

Mr. UPTON. All members will be able to submit questions to the record.

Mr. Sawyer.

Mr. SAWYER. Thank you very much, Mr. Chairman. I join my colleagues in thanking you for this hearing, and Secretary Powell for taking part in this way.

Mr. POWELL. That is the other one.

Mr. SAWYER. Secretary Powell—thank you. Somebody had to do it, it might as well have been me. It probably won't be the last time today, either. It is kind of like Tom Sawyer jokes in that way.

I am going to submit a longer statement for the record. Let me simply observe, along with Mr. Markey, that your opportunity to change the world really is an extraordinary thing. I have watched over the last few years as the e-rate has worked, in effect, in our schools in ways that I think go far deeper and have far more lasting effect than we might ever have anticipated when we put it in place.

And so I just want to mention a continuing interest of mine to you, in that while we talk very much about increasing the number of hours in a day which children devote to education, perhaps even the number of days in a year, it seems to me that the unexplored dimension for doing what we did at the end of the last century—that is to say, elevating the skill levels of an entire Nation—the unexplored dimension is more deeply into life, so that an entire adult working population that is effectively illiterate today in terms of the kind of technology that has been promoted by e-rate represents an avenue for exploration that offers enormous promise, ont only

within those who provide the technology but across our entire population.

With that, I will yield back the balance of my time and hope to explore that question further.

Mr. UPTON. Recognize the vice chairman of the subcommittee, from Florida, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman, and let me congratulate you for having this hearing and, of course, welcome Chairman Michael Powell to our subcommittee. Chairman Powell, as the "good ship Michael Powell" starts off, there are going to be lots of storms here, and the fact that you have all these people here and are waiting out in the hallway would indicate there is a problem, and they will be looking to you for guidance.

When we passed the Telecom Act in 1996, we thought we would be a lot further along, I think, than we are in many areas. I will just give you sort of a litany of some of the problems that exist, you know them better than me, but these storms are out there, and when you come back year after year to our subcommittee, it is my hope that a lot of these will be solved. Some of these should have been solved under the previous Administration, and you have a unique opportunity now to break the Gordian knot on some of these problems: High definition television—within that area, interoperability, deployment, consumer demand, and must-carry; spectrum management—dealing with caps, the auctions, the budget, the commercial versus government; the FCC reform—this is something that you can initiate and not wait for Congress, we have harped upon this for years; third-generation wireless—European Union is overtaking us in the competition, there is no reason for that in this great country; rollout—dealing with a third generation; and competition—opening up the local line. Here we are, the year 2001, we don't have competition in the local line, and we want to ensure there is competition in the long distance, broadband, availability and access. These are just a few of the areas that are on your plate that we need some action and not every year just keep talking about them.

Many feel in this room that the problem has been that there is an efficient and regulatory morass at the FCC. So, under your leadership, we hope this will change. I trust you will with Congress to do away with these inefficient regulations—just for example, there are two clear examples of the Commission's rules on spectrum aggregation limits and broadcast ownership and cross-ownership limitations, areas in which I introduced legislation in the 106th Congress, and intend to do so again this year.

The FCC's recent decision to re-examine a spectrum aggregation limit is a step, I believe, in the right direction, and I would appreciate more insight into the Commission's actions.

I look forward to your ship as it leaves the harbor. I wish you well. Anytime this committee can help out, we will be here but, in the end, we will need your leadership and your ability and perseverance to break these regulatory problems. Thank you, Mr. Chairman.

Mr. UPTON. Thank you.

Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. I will put my total opening statement into the record, but I want to welcome Chairman Powell and, as I said before in visiting, it is good to see you. In our past dealings with the FCC, our committee and as an individual, we had difficulties. And I appreciate both the follow-through of your staff on two particular issues that were brought to your attention and your staff's attention just recently. So, I think we have a good working relationship for building on that. I share my colleagues' concern. The FCC and this committee have a lot of issues dealing with the transition to high-definition TV, the rollout of 3G services, reciprocal compensation, the continuation of addressing the digital divide, increased access to broadband services are just a few, and I know we will have that opportunity today, and I welcome you to the committee, and look forward to working with you. Thank you, Mr. Chairman.

Mr. UPTON. Thank you.

Mr. Gillmor.

Mr. GILLMOR. Thank you, Mr. Chairman. I am not generally a big fan of opening statements in subcommittee hearings because I think it is important we move as quickly as possible to our witnesses. I did today want to take just a moment, though, to both congratulate and to welcome Chairman Powell, and to especially convey my personal interest in the issue of reforming and reauthorizing the Federal Communications Commission.

I have been involved in this issue in one form or another since 1995, and our subcommittee has done some splendid work examining the structure of the FCC through the creation of informal task forces.

I am under no illusion about the difficulty of enacting legislation to reform the FCC, particularly if telecommunications policy issues are rolled into a larger bill, but I would like to indicate to Chairman Powell my deep interest in such an undertaking in this Congress. I know that the members look forward to hearing your views, and that all of us look forward to working with you in the weeks and months ahead. I yield back the balance of my time.

Mr. UPTON. Thank you.

Ms. Harman.

Ms. HARMAN. Thank you, Mr. Chairman. I appreciate the chance to speak for less than 1 minute to welcome a friend, Michael Powell, before us.

The issues that have been ticked off by many here affect real people, and that is just the point I would like to make in my 1 minute. I represent a district that in 1992 when I was first elected was properly called "the Aerospace Center of the Universe". Nine years later, it is "the Tech Coast". There are all sorts of new industry sectors—entertainment, green technology, biotechnology, dotcoms. There are new technologies—broadband Internet, videostreaming. There are new services—Web design, systems engineering.

And the task obviously is for the FCC to appreciate that human beings work there in these new industries, and to figure out ways—and I know Chairman Powell already says he intends to do this—to reinvent the FCC so that it can interact effectively with these new workplaces and the new employees of the new work-

places. This will be a hard job, and to invent a digital FCC will take someone with the skills of Chairman Powell.

Let me just conclude by saying that the Aspen Institute, a place I know well, picks a group of leaders called Crown Fellows. Michael Powell was a Crown Fellow recently. They made a good choice. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Deal.

Mr. DEAL. Mr. Chairman, in the hopes that I will impress this committee more with what I don't say than what I do say, I take your suggestion and yield back my time.

Mr. UPTON. Extra time for you.

Ms. McCarthy.

Ms. MCCARTHY. Thank you, Mr. Chairman, and I will be brief. Welcome, Chairman Powell. We are delighted that you are here, we look forward to working with you. I am particularly interested in hearing your views on the implementation of the Act and the enforcement of its provisions. I also would welcome your thoughts on some of the bumps in the road that we have experienced with regard to competitive local exchange carriers.

I have Birch Telecom in my district, and they have used the unbundled network element platform to provide local phone and broadband service. The ability to lease Southwestern Bell's switching facilities to serve residential and small business customers has enabled this 4-year-old company to thrive and consumers to save. So, I would like to know if you view the unbundled network element platform as a legitimate vehicle for providing competitive service to residential and small business customers.

Also, the Telecommunications Act codified the deregulation of national ownership caps in radio and, KXTR, the city's sole classical station, as a result of this, had to close, and the deregulation resulted in a great deal of consolidation in the industry. So I hope you will explain what the FCC is doing, or will do, to ensure a diversity of voices are being heard over broadcast airwaves because I understand throughout the country stations that are diverse, but obviously not as great a revenue producer as some of the stations now playing NSync and the Backstreet Boys music, are being done away with, and I really feel that is a loss to the community, and I welcome your thoughts on that, too.

Mr. Chairman, I will put my full remarks in the record, and I thank you for being here.

Mr. UPTON. Thank you.

Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman, I will just yield back my time.

Mr. UPTON. Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman. I will also enter my statement in the record, but I welcome Chairman Powell also. I have some concerns about the FCC proposal to reduce the amount of information companies are required to report on service quality with local phone service, and hope that you would address that and rethink that, and also stress the importance of e-rate, which has been an enormous success for communities in my State of Ohio and other States across the country, and my concerns about low-power FM and what that means to our community, and would like to em-

phasize that there are many of us on this committee that care deeply also about that. I yield back the balance of my time, and thank you for joining use.

Mr. UPTON. Mrs. Cubin.

Mrs. CUBIN. Mr. Chairman, I will save my conversation for later on, yield back.

Mr. UPTON. Mr. Engel.

Mr. ENGEL. Thank you, Mr. Chairman, and good morning, Chairman Powell. I want to congratulate you on your appointment and look forward to working with you on a range of important issues.

I would briefly like to take this opportunity to deal with one of the major issues facing my district, the digital divide. The fact is that many of the schools in New York and the Bronx, where I grew up and your dad grew up, are too old to be wired, do not have adequate funds to buy computers, and are too concerned with teaching children the basics in over-crowded schools that have leaking roofs and falling plaster. But in our world today, we must provide our students with access to not just computers and wordprocessors, but the Internet. These are skills obviously they will need to just get a job.

I am supporting efforts to quickly rollout broadband Internet access, to enable the young people of the Bronx and Westchester to benefit. I support legislation that provides a tax incentive to rollout broadband services to rural and low-income communities. I also support the chairman and ranking member's bill to alter regulations to make it easier to introduce broadband services. We all now know how vital it is for our students and our economy to close the digital divide.

I look forward to hearing your comments on this issue and to learn what the FCC plans to do to close the digital divide. Again, I welcome you. I think it was a marvelous choice to make you Chairman, and I look forward to working with you. Thank you.

Mr. UPTON. Thank you.

Mrs. Wilson.

Mrs. WILSON. Mr. Chairman, I will reserve my times for questions.

Mr. UPTON. Ms. DeGette.

Ms. DEGETTE. I will reserve my time also.

Mr. UPTON. Mr. Terry.

Mr. TERRY. Welcome. Yield.

Mr. UPTON. Wonderful.

Mr. Stupak, from the great State of Michigan.

Mr. STUPAK. Thank you, Mr. Chairman. I would just like to welcome Chairman Powell. I will be interested to see what you have to say about rural areas and how we get the new technology there and make sure we have competition in rural areas. So, I look forward to questions later.

Mr. UPTON. Mr. Cox.

Mr. COX. Thank you. I just want to thank Michael Powell for the time that he has already spent with members, talking to us about the future of the FCC and the future of the industries and the technologies and the information services that are the subject of your jurisdiction.

As Chairman Tauzin has pointed out before, that only goes off when you are not telling the truth.

Mr. UPTON. Yielding back?

Mr. COX. I particularly want to commend you for your early emphasis on examining the structure of the FCC and of our statutory framework for regulation. In light of changing technology and the convergence of existing technologies, the way that the FCC approaches this and has approached it as a result of congressional mandate during the 20th Century probably is not well-suited to the 21st Century. Cable isn't just cable anymore. Wireless isn't just wireless anymore. Telecos aren't just telecos anymore. Everybody is getting into everyone else's businesses in similar ways to what we have seen in financial services, and in similar ways we have to change regulation to meet that new reality.

There is something else going on, and that is destructive creativity in the very best sense. Congress and regulation and the State are usually enemies of that process because that is where buggywhip manufacturers go to stop progress, and we, all of us, in our offices are constantly met with firms who wish us to enact a law, or they perhaps will go to you so that you will enact a regulation, to make sure that their competitors don't take away their business.

We have to make sure that we resist that temptation, and restructuring the FCC, and presumably for those of us sitting on this side, restructuring the statutes in order to make sure that our regulatory system of the future achieves the great potential that we know the Internet and other video and voice communications have is really our main aim.

So, thank you for placing your emphasis early on on that precise topic, and I look forward to hearing your testimony and responses to members' questions on those very points. Thank you, Mr. Chairman.

Mr. UPTON. Thank you.

Mr. Pickering.

Mr. PICKERING. Mr. Chairman, thank you. I know that we have limited time before our vote. I just want to welcome Chairman Powell. I look forward to working with you on the important issues before you, from FCC reform to spectrum reform to advancing competition, addressing issues in rural areas. I do think you have a tremendous opportunity to have a great legacy as a reformer and someone who values the staff of the FCC, and we want to work with you to make sure that you have all the resources that you need to carry out your duties. And I also look forward to a new era of cooperation between the FCC and the Congress, and I think we can have a very productive relationship. Look forward to working with you.

Mr. UPTON. Mr. Davis.

Mr. DAVIS. Mr. Chairman, I want to commend you for giving us the opportunity today to listen to Chairman Powell discuss his vision for modernizing the FCC. For too long, I think, we have seen the FCC position itself more as an obstacle to the deployment of new technologies rather than an enabler for economic growth.

I know that you, too, Chairman Powell, share our concerns that the FCC re-examine its organization and mission in order to play an efficient and effective role in encouraging innovation.

Thanks for coming here today. I look forward to hearing your testimony and continuing to have a dialog with you on these issues.

Mr. UPTON. That concludes our opening statements. I would note that we have two votes on the House floor, this vote and another one. So we will reconvene as close to 11:10 as possible.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Thank you, Mr. Chairman, for holding this hearing and inviting Federal Communications Commission Chairman Michael Powell to be with us today. Welcome Chairman Powell. I appreciate this subcommittee being your first stop on Capitol Hill in your new position.

You've come to lead the FCC at a very exciting time. We've just celebrated the fifth anniversary of the 1996 Telecommunications Act.

I personally believe there were essentially two goals of the Act: more competition and less regulation.

Since it's implementation the Act has shown tremendous potential in advancing competition where competition didn't exist.

I represent an area of the country where we have yet to see real competition—five years after the passage of the Act.

Although Wyoming has 50 Competitive Local Exchange Carriers (CLECs) operating in the state, the average person living in Wyoming would be hard pressed to find an alternative to his or her existing telephone service.

I have several questions for you, Chairman Powell, regarding the second goal of the Act—deregulation or the lack thereof.

First, an observation. It seems to me that a regulatory agency must move with the speed of the industry it regulates. The FCC has historically moved as if it is regulating the pony express instead of high-speed communications networks.

When an emergency petition has been before the FCC for 14 months and has yet to be acted upon, that seems to negate the fact that it's an "emergency petition."

I'm concerned not only about the fact that the intent of the Act hasn't taken hold in rural America, but also that the regulators of the Act—in particular the FCC—doesn't give rural America a second thought. Chairman Powell, I'd like to know your thoughts on that.

Maybe the FCC has written off rural states like Wyoming. Maybe the Act wasn't intended for rural states. Maybe rural America should just resign itself to the fact that competition will never be realized.

Well, I don't believe any of that is true and I certainly don't believe that there isn't more that can be done regarding implementation of the Act to help spur competition and bring advanced telecommunications services to Wyoming and other rural states.

Chairman Powell, you've been around this business for quite a while.

You know that different segments of the telecommunications industry are stronger than others in providing services to different parts of the country.

In Wyoming, for example, we have 14 facilities based Incumbent Local Exchange Carriers with approximately 310,000 access lines.

Qwest CEO Joseph Nacchio has joked that he lived in an apartment building in New York with more access lines than that.

Nonetheless, the majority of those companies are small or mid-size carriers that make up the backbone of Wyoming's telecommunications infrastructure.

Chairman Powell, I was delighted to hear you mention in a speech a while back that "In the war to tear down the arcane regulatory walls that prevent firms from competing with other firms and from bringing customers the full benefits of a free market, I sometimes think of mid-size independents as our 'special forces.'"

I continue to quote, "The Special Forces, for those of you who aren't military buffs, are elite, highly-skilled forces adept at operating undetected behind enemy lines. The infamous Green Berets, a Special Forces unit, are small and nimble, allowing them to slip through the cracks, untethered by the logistical constraints faced by larger military forces."Mr. Chairman, I feel the same way. However, I don't believe your predecessor felt the way we do on this issue.

For too long, at the FCC, small and mid-size companies are subject to a "one-size-fits-all" regulatory scheme that effectively puts these "special forces" carriers on KP duty.

As you know, Chairman Powell, this Committee and the House have overwhelmingly supported and passed legislation in the form of H.R. 496 that brings regulatory sense back into the way in which the FCC treats small and mid-size carriers.

Many of the questions and comments I will have for you revolve around this singular issue. I'm sure you realize that these carriers are the only thing that stand between a rural telephone customer and silence at the other end of the telephone line.

Mr. Chairman, I wish to once again thank you for calling this hearing and look forward to hearing from FCC Chairman Powell.

[Brief recess.]

Mr. UPTON. Chairman Powell, I would note that there are a number of subcommittees and committees meeting today. Most of us—all of us—are on multiple subcommittees, some of us on multiple committees as well, so individuals will be coming in and out throughout the hearing. At this time, I would ask unanimous consent that all members' opening statements are made part of the record, as well as questions that they may submit for the record. Without objection, that is now the case.

Chairman Powell, welcome. Your statement is made part of the record in its entirety. The time is now yours.

STATEMENT OF HON. MICHAEL K. POWELL, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. POWELL. Thank you, Mr. Chairman and other distinguished members of the subcommittee. It is a great pleasure to be here. I have had the privilege of appearing before this subcommittee over the last few years in my capacity as a Commissioner of the Federal Communications Commission. I am particularly humbled and privileged, and some days daunted, to appear as its new Chairman. I feel privileged that the President of the United States felt enough confidence in me to designate me as such, and I am honored to have an opportunity to continue the very positive working relationship I have had with this subcommittee and Members of Congress generally. I really look forward to continuing that sound relationship. I think we will need it. I think that we are facing collectively, as a Government, a traumatic and important period in our history, in which communications, communications policy, will directly affect the future of our country.

If you think about it, the FCC is facing something, in this regard, that it has never faced before—that is, every segment of its portfolio is in some form of revolution, the most profound change the industry has ever faced. Whether it be competition and de-regulation in the context of the telephone system; whether it be the transition to digital television for television broadcasters; whether it be the deployment of cable modem services and interactive services in cable; or on and on and on. This is a daunting period for our industry and it is a daunting period for the Commission.

Suddenly, the Commission finds itself blown into a position in which its decisions have far-reaching impact, not only on the industry, but increasingly on the whole of the American national economy and that of the world. It is a profound responsibility.

And this new environment is not linear. It is one that will be marked by chaos and dynamism, and the FCC, in the context of re-

form, will need a new business plan, to address and interact with that world.

Mr. Chairman, I would ask that my full statement be included in the record. As you mentioned earlier, I would rather just speak with you about those challenges now.

The way I envision reform is that it is a comprehensive exercise of retooling and redirecting the activities of the Agency. I am working to build a plan that is built along principally along four dimensions.

The first is to ensure that the Commission has a very clear and substantive policy vision in which to guide its deliberations, with at least some predictability.

Second, a pointed emphasis on operations and management. An agency must be effective and responsive in Internet time.

Third, it is becoming critical that the Agency have independent technological expertise and economic expertise.

And, fourth, it is time to consider seriously organizational restructuring of the Commission, and I would like to say a little bit of something about each of these points before I yield to your questions.

Policy vision is not just the subject of Law Review articles, it is the way an institution stakes its flag and then drives and guides deliberations towards that flag. I believe a policy vision is sorely needed. As we mentioned many times earlier, I believe communication policy in the Government and the Commission finds itself between two worlds. The first world is one that has been relatively matured, the legacy networks and communications systems we are all accustomed with, the mature public switch telephone network, cable systems, the mass market delivery systems of television and cable and increasingly DBS, just to name a few. These systems are relatively well known to us. We understand their technology. We understand their cost characteristics. We understand what consumers want out of those services, and what the right prices are generally for those services. And in a sense, that world stands to our back, but we look ahead and see a cresting wave of a dramatically new communication system evolving as a consequence of revolutions in technology and economics.

We now see a world marked by broadband infrastructure using and deploying and experimenting with multiple new technological platforms. Today for example fiber optic-coaxial cable is used as a broadband infrastructure. There have been systematic improvements in public switch copper that allow it to provide high-speed service, the airwaves, delivered through space are all vying for the Internet future and a way to provide services in a more efficient way. These worlds and these systems are known much less to us. They are in their infancy. We are struggling with what are the cost characteristics of new technology that operates substantially different than twisted copper wire. We are still trying to understand what the products are and what it is consumers will actually want and, probably more importantly, be willing to pay for in the new future. This puts us at an extraordinary crossroads of both having the responsibility to carry out the will and the wishes of Congress to facilitate the deregulation and competition of the legacy world, as well as facing new and unforeseen and previously questions in

the context of the new world. What kind of policy is needed in the context of that position?

I hope to follow a policy that is built around the notion of incubation, innovation and investment, and I hope to be guided by several distinct guideposts. First, I think it is important to state at the outset that it should be our objective to facilitate the timely and efficient deployment of broadband infrastructure and promote a wide variety of technologies in that deployment, not embracing any one as a winner or loser, neither any technology or any particular industry.

I think we need to pursue the ubiquity and affordability of that infrastructure to all Americans, but to challenge ourselves to attempt to do so in creative ways and not simply assume the extension of the methods that worked miraculously in the context of the phone system.

Third, I think we need to be focused on at innovation and investment. These are objectives specifically identified in the Act, but often misunderstood or ignored in policy. If money will not flow to business plans, if regulatory uncertainty creates risks for capital investment, things will not be invented and they will not be deployed and we will not be talking about divides, we will be talking about only a glimmer of the bright future that we envision for ourselves. We are trying to understand those concepts better and facilitate policies around them.

Fourth, we need to harness competition and market forces to help drive these changes, and be humble enough to admit that we don't make the market in our image, or in a vision or a strawman that I develop, but the one that is developed between a healthy dialog between consumers and producers so that what is built and deployed maximizes their value, not the one that I might have envisioned, sitting in my office.

And it is just as important to also not to attempt to build an image in the like of any particular competitor. Increasingly, we find in a period of anxiety and innovation and change, that competitors are fearful too, and it is often the case that we are asked and compelled and pushed and cajoled to develop rules and regulation in order to stem the pace of those changes, protect regulatory advantage, and we must be reluctant to do that as well. We owe fairness to all, but allegiance to none.

Fifth, very critical in an era of convergence, we need to work to rationalize and harmonize regulations, to the extent the statute will permit, across technological lines. It has been historically true that we have regulated industries fundamentally premised on the technologies they use in deploying those services. As I have said often, it is as simple as this: If you use twisted copper wire, you are a Title 2 common carrier most of the time. If you use coaxial cable to deliver one-way video services, you are what we call a cable service provider and you live in the bucket of Title 6. And if you provide something called Internet or information services, you don't seem to be in anybody's bucket. We are lost to know what an AT&T is when it provides all of those services over a single infrastructure, demonstrating each and every one of those characteristics.

Increasingly, the regulatory challenge is a definitional challenge—what bucket do you belong in by virtue of your new and creative services, and is our attempt to label you in a legacy rearward-looking system distorting the efficient development of those new markets?

I also believe that deregulation means simply this: Validate the purpose of a rule in the modern context, or eliminate it. As simple as that. Resist intervention, regulatory intervention, absent the evidence of persistent trends that can be understood, or evidence of clear abuse.

And, finally, as I have heard mentioned a number of times in opening statements, enforcement becomes more critical than it has ever been in our period. It is simply a necessity, not an ideology. Historically, the Agency has operated by what I am fond of calling "by the grace of us" regulation. You want to do this, get my permission. You want to do that, I will have to give you my permission. That permission might take several months, but you still have to obtain it. And, interestingly enough, 98 percent of the time we give it. That is an inefficiency we can't afford. But I am also cognizant of the fact that if you are going to put less emphasis on up-front prophylactic regulations, you have to have a response to consumer harm and dangers of marketplace failure. I believe that response is enforcement.

I might give you a better benefit of the doubt, but when you cheat, I am going to hurt you and hurt you hard. And that is what enforcement means. And I think to do that seriously, we will need the help of Congress. I believe the enforcement tools made available to us are inadequate with billion-dollar industries. Our fines are trivial, they are the cost of doing business to many of these companies. The statute of limitations conspires to limit our ability to get someone before the clock runs out. If we are serious about enforcement, we will need to be serious about the tools to execute it.

A second dimension on which I have placed a great deal of emphasis, and to which many of you have alluded is operations and management. I don't want my legacy, if there is any such thing, to be about this rule or that rule. I want to leave an institution that has imbedded in it the efficiencies, the talent, and the abilities of an operation, a management team, that can take on any challenge, no matter what it might be. We intend to actively manage the Agency.

To my mind, indecision, inaction and avoidance are absolutely illegitimate Government policies. We have to reduce backlog, and we have to do everything in our power to ensure they don't reoccur. Our anxieties don't justify sitting on something indefinitely.

We are developing an annual strategic planning process in which we will integrate the natural cycle of the budget process and the performance of our institution, the performance of our individuals, such that our mission is tailored to the activities and our own measurement of performance, so that I can stand before you a year from now and proudly march off the metrics of how we are doing.

One of the first things I discovered is we do measure productivity. We do it differently in each and every bureau. That is no help to someone who is trying to make sure that it works across-

the-board, and we are trying to develop those uniform productivity measures.

Additionally, the Commission needs much work in the area of its own internal procedures to government its operation. Remarkably, the Commission has no set, agreed on procedures for voting or deliberation. It doesn't have internal processes for security of documentation. It is shocking to me at times what we don't have when we often reach loggerheads. Rules like that are not for when we agree, they are for when we disagree, and I am pushing and urging my colleagues to support efforts to build those kind of rules to increase our ability to operate. And we need to modernize our own IT infrastructure.

The third dimension is becoming perhaps the most critical. The Commission desperately has to have first-rate technological and economic expertise. It is becoming increasingly a challenge for the Commission to sit on the other side of tables with companies like America On Line and Steve Case, or Microsoft and Bill Gates, and have them provide us on-the-job tutorials at the same time we are trying to make decisions that affect their industries. Our capability has to be solid and independent, but we face a grave situation here.

We, in the last 4 or 5 years, have lost 20 percent of our engineering talent. In the next 4 years, we will have 40 percent of our engineers who will be eligible for retirement, and we are competing for them in the same type of labor pool as America OnLine, and Microsoft. And, by the way, up to now, we hire them at GS-5 and GS-7 entry levels. That is not going to work for much longer. It really doesn't work now.

But I am convinced that people come to work for the Government for reasons other than salary, and we have got to be prepared to provide them, for we will never match introductory income. So we have begun an Agency-wide program that we refer to as "Excellence in Engineering." There will be attempts to find greater personnel and pay flexibility. We find that members of the guild need to ensure that they continue to stay current with their profession. We have not done an adequate job of providing both the formal internal training so that an engineer continues to develop, or to provide and subsidize their participation in professional organizations and professional development opportunities outside the Commission. This is often the most principal reason cited by technical experts as to why they are not interested in a job at the Commission.

The Government, the FCC, owns a laboratory, where every piece of electronic equipment is usually type-tested. If you have a Palm Pilot or a RIM in your hand, if you turn it over, I assure you you will see our smiling logo facing you. Increasingly, though, that lab is backing up. It is facing challenges in being able to get equipment type-certified and out on the market. Much of that is due to the fact that the lab itself is in growing disrepair. Increasingly, with advanced technologies, we don't have the equipment that will even measure at the levels of some of the new equipment that we have seen. It is not unusual to understand that in the context of low-power FM, or ultra-wideband, or many of the areas that many of the members here have expressed interest in, that one of the contentious problems is over technical interference that we increasingly have a great deal of difficulty arbitrating because we don't

have an independent capability to test. This is something that also needs to be rectified.

And I make this point clear: An agency doing this kind of work has to drive technical fluency much deeper than its engineers. Every attorney and every professional, and I daresay, even every administrative support person needs to increasingly have basic fluency in technological concepts if we are to be relevant.

We have begin something we colloquially refer to as the "FCC University." We do have academics in-house that are able to develop curriculum and formalize training programs, and we have begun that. We are an Agency that has access to the world's finest technical talent. We may not be able to hire them, but we normally can convince them to hold seminars, courses and programs that would aid the development of our first-rate and professional staff, and we are working to do that.

The fourth and final dimension is the one that garners sometimes most of the attention. It is organizational restructuring. As I mentioned at the outset and as many of the members have mentioned, one of the challenges to operating efficiently is that both the statute and our rules are generally developed along technological lines. And so are we organized. We have a Cable Services Bureau for cable, and on and on and on.

We recognize that this problem creates some great inefficiencies that could be avoided, so we are undertaking a very systematic review of the Agency. It will be guided by three simple principles. We hope to develop an organization that is designed mostly along market lines, not technological ones. We hope for a flatter substantive bureau structure and, third, we hope to more carefully consolidate key support functions.

We will proceed first by doing a systematic review, which is underway, of all of our functions and services, to see what works and what doesn't. After that, we hope to produce a plan of reorganization that will include two phases: A Phase I that will be short-term change, and a Phase II that will be longer-term, more lasting change. These changes will be significant and they will require a great deal of buy-in support and interaction with the Congress, who will have a critical role in this—there will be areas that require legislative change and approval and it will require buy-in and understanding from the industry—our client, and the consumers—our client, and the employees themselves, who rightfully understand the anxieties of any reorganization and need to understand clearly the purposes of change and the reasons why they are initiated.

We hope to do much of this in realistic timeframes that are aggressive. I hope a year from now, or within the year, we have completed a substantial portion of this effort.

Finally, let me just conclude with this point. I can't predict the future, no one at the FCC can predict the future, and the tools of this new market economy are such that very few people anywhere are able to reasonably predict the future.

So, in many ways, the question of "what kind of organization you are" is best addressed as, how do you manage against uncertainty, a world that you don't know and can't predict? The lessons I take from that might be the way an Army does, or a basketball team

does. What you do is you recruit and assemble first-rate talent. You train them in all the fundamentals of tactics and strategy. You make sure they are disciplined and effective, and you make sure they are innovative and creative. And when you take the court, or you take the battlefield—no two battles or two games are the same—but if you are able to adapt and change and redirect and stay efficient, you will win more of those games than you lose, and it is that kind of organization I sincerely hope and intend to build at the Federal Communications Commission.

It is a pleasure to be with you, and I really look forward to your questions.

[The prepared statement of Hon. Michael K. Powell follows:]

PREPARED STATEMENT OF HON. MICHAEL K. POWELL, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Good morning, Mr. Chairman and other distinguished members of the House Subcommittee on Telecommunications and the Internet. Thank you for inviting me here to discuss the Federal Communications Commission's agenda for 2001 and the agency's reform effort.

I am honored and humbled to lead the Commission at this time of unbelievable change in the communications industry. I believe a critical part of my job is to be a leader and steward of the agency, and I take this responsibility very seriously. In order to serve the American public, the FCC, as an institution, must be efficient, effective, and responsive. The challenges of reaching these goals at the Commission are complicated by the sweeping, fast-paced changes that characterize the industries that we regulate. Indeed, the Commission is experiencing a challenge it has never faced: each industry segment in our portfolio is in the midst of revolution, and is attempting to adapt to the most fundamental changes in their history—for example, competition and deregulation in telephones, DTV transition in television, modem and interactive services in cable, wireless Internet and digital services, consumer accessible satellite service, broadband everywhere, and on and on. Moreover, the changes are blurring the lines that once separated these industry groupings. There are new markets, new competitors, and new regulatory challenges. The game has become three-dimensional chess, where each board is spinning.

These winds of profound and dynamic change, unleashed in part by the Telecommunications Act of 1996, have buffeted the Commission and blown it into a position where its decisions have far-reaching impact on the future of communications, not only in the United States but throughout the world. We have come a long way from an agency where the principal focus was the assignment of radio licenses, and its principal activity was conducting lengthy comparative hearings to assign those licenses. This new environment is no longer linear, but chaotic and dynamic. For this agency to fulfill its congressional charge, indeed to remain relevant at all, it must put together a new business model and build the type of team that can execute it effectively. That is what we intend to do.

FCC REFORM: THE NEW BUSINESS PLAN

I conceive of FCC reform as a comprehensive retooling and redirection of the Commission's entire mission. Our approach is to write and execute a new business plan built along four dimensions: (1) a clear substantive policy vision, consistent with the various communications statutes and rules, that guides our deliberations; (2) a pointed emphasis on management that builds a strong team, produces a cohesive and efficient operation, and leads to clear and timely decisions; (3) an extensive training and development program to ensure that we possess independent technical and economic expertise; and (4) organizational restructuring to align our institution with the realities of a dynamic and converging marketplace.

1. Substantive Vision

The industry, the capital markets, and the government find themselves navigating between the matured, legacy communications system and the nascent innovation-driven Internet space of the future. The legacy world to our back is a proud one. This nation built the finest voice communication system in the world, as well as top-notch mass media delivery systems in the form of radio, television, and cable. These systems have reached maturity though: that is, we understand the basic technology and architecture; we largely understand the cost characteristics; and, we un-

derstand what the consumer wants and what the product is. And, government regulation and policy had coalesced around these understandings, principally in the form of regulated monopoly and oligopoly.

We now are looking up at a cresting wave of change that we are much less sure of how to navigate. The digital broadband world is in its infancy, and its qualities and characteristics are much less clear. The new advanced architectures and technologies are just beginning to be understood and deployed, with no clear winning technology or industry. The cost characteristics may differ substantially from those of traditional networks to which we are accustomed. Broadband Internet products are still being developed and we all wait to see what service offerings consumers will and will not embrace. It is a world of dynamic and chaotic experimentation in which any prediction of how it turns out is foolhardy.

I believe government policy needs to migrate steadily toward the digital broadband future, but remain humble about what it does not understand and cannot predict. I submit that this digital broadband migration should be built around incubation, innovation and investment. At the Commission, our policy direction will focus on this migration and will have several directional guideposts:

- We will do everything we can to facilitate the timely and efficient deployment of broadband infrastructure. In doing so, we will endeavor to promote the growth of a wide variety of technologies that can compete with each other for the delivery of content and will strive not to favor—or uniquely burden—any particular one.
- We will pursue the worthy universal service goals of ubiquity and affordability as new networks are deployed, but will challenge ourselves to do so in creative ways.
- We will redirect our focus onto innovation and investment. The conditions for experimentation and change and the flow of money to support new ventures have often been misunderstood or neglected. If the infrastructure is never invented, is never deployed, or lacks economic viability we will not see even a glimmer of the bright future we envision.
- We will harness competition and market forces to drive efficient change and resist the temptation, as regulators, to meld markets in our image or the image of any particular industry player.
- We will rationalize and harmonize regulations across industry segments wherever we can and wherever the statute will allow.
- We will validate regulations that constrain market activity that are necessary to protect consumers, or we will eliminate them.
- We will be skeptical of regulatory intervention absent evidence of persistent trends or clear abuse, but we will be vigilant in monitoring the evolution of these nascent markets.
- We will shift from constantly expanding the bevy of permissive regulations to strong and effective enforcement of truly necessary ones. We will need Congress' help to put real teeth into our enforcement efforts.

2. Operations and Management

All the vision in the world is useless if you do not build and manage an institution that can execute it. We intend to actively manage the agency. Indecision and avoidance are not legitimate policies and, thus, we will strive to reduce backlogs and put systems in place that will prevent them from returning. Managers will be measured, in part, on this basis.

The Commission will develop an annual strategic planning process that will be integrated with the federal budget cycle and the review of our performance as an institution and as individuals. We are working to establish uniform measures of productivity across the agency to facilitate this activity.

The Commission is developing a set of internal procedures that will allow it to function more smoothly. These procedures will cover subjects such as Commission deliberation, voting procedures and internal document security.

The Commission should continue to modernize its information technology infrastructure to ensure productivity gains. We must strive to be a virtual agency—one in which someone in Connecticut is able to access us as easily and readily as someone on Connecticut Avenue. We are working to make this goal a reality through increased electronic access capability. We are engaged in a time-consuming and expensive project, but one that is critical to our ability to remain relevant in this new millennium. We must continue with due speed to use the advances of technology to our advantage.

We have 18 major information technology systems that incorporate electronic filing or offer public access to data. The industry can file most license requests, equipment authorizations, and comments electronically. Seventy-two percent of our serv-

ices have electronic filing capability, but I want to do better. We administered well over three million licenses last year, so it is critical that we are efficient in this area. It is also important that citizens all over America have the ability to contact us easily and from anywhere. Currently, they are able to do so electronically, by phone or the old fashioned way—by letter. Last year, we received well over one million inquiries from consumers. The public must be an active voice in the communications transformation, for they are the ultimate beneficiaries of the abundant choices resulting from full and fierce competition.

We are also overlaying this virtual agency concept to the benefit of FCC staff through an expansive telecommuting program, which is open to all eligible employees. Virtually 100 percent of the Commission's employees are eligible for the telecommuting program. Approximately 400 of our eligible employees, about 20 percent, have chosen to telecommute on either a regular or ad hoc basis. Fewer than one percent of those who wanted to telecommute have been turned down based on the Commission's criteria.

3. Technical and Economic Expertise

The communications revolution is being driven by advances in technology. The Commission must have a strong fluency in technology. We cannot depend on those we regulate for on-the-job tutorials while we make decisions. This situation is grave. Over the last six years, our engineering staff has decreased by more than 20 percent. Within the next four years, 40 percent of our engineering staff will be eligible to retire. Conversely, we are not replenishing the coffers at the other end by bringing in new employees. We, like other governmental departments and agencies, are competing for this talent in a tight labor market and are challenged to convince talent to enter government service. This has been most apparent trying to recruit entry level engineers at the GS-5 and GS-7 levels.

To address this situation the Commission is developing an agency-wide "Excellence in Engineering" program. We will examine creative ways to gain greater personnel and pay flexibility to attract technical talent. Increased salaried alone, however, will not do the trick, nor is it the sole motivator for anyone entering government service. We will look at ways to ensure technical workers are able to continue to develop in their field, through strong training and development programs and job rotation. Our laboratory facilities in Columbia, Maryland, need to be upgraded to provide engineers with the tools to engage in critical and challenging work. Improvement in this area will be difficult to achieve, but we consider it imperative to our efforts to improve our workforce.

It also is vital that we train our non-engineering staff in the areas of engineering and advanced technology. We already have begun to develop an FCC "university" of sorts using our own staff and guest lecturers, and taking advantage of various programs currently available through the government and local academic institutions. We can use this Washington, D.C. location to our advantage and tap into industry and academia. We can use local scholars and have them participate in an educational curriculum, to provide lectures, to provide classroom instruction, to provide counsel and advice. We need to take better advantage of our access to talent and knowledge.

I am putting similar emphasis on economics and market analysis. These tools are essential to our agency's mission. We have the opportunity to take advantage of both internal resources, visiting experts, and outside educational programs to help not only our economists improve their skills but to help all the FCC's employees understand better the impact of our rules on technological innovations, and competitive markets.

4. Restructuring

In addition to examining our systems and procedures, we need to look at the organizational structure of the agency. Communications policy has been written in carefully confined buckets premised on certain types of technology. The FCC's organizational structure largely mirrors that premise. But the convergence of technology tears down those traditional distinctions and makes it evermore difficult to apply those labels to modern communications providers. In the same way, it makes it more important than ever for us to examine whether those organizational buckets still hold water.

About a year ago, we began breaking down the technology-based divisions with the creation of the Enforcement Bureau and the Consumer Information Bureau. With those reorganizations, we created two bureaus aligned along functional responsibility. We created the Enforcement Bureau to improve the effectiveness of our enforcement activities in an increasingly competitive and converging market. We created the Consumer Information Bureau to enhance consumers' ability to obtain

quick, clear and consistent information about communications regulations and programs. These changes have proven to be quite beneficial. As the industry moves toward fuller competition, the missions of these bureaus become even more critical. For consumers to take full advantage of the choices that competition brings, it is important that they have access to information that allows them to make an informed choice. Their ability to easily and quickly convey to us instances where the markets are not providing useful information to consumers in a particular circumstance or with a particular business is our early warning system for market failure or malfeasance on the part of industry players. While the consolidation of these functions is almost complete, there are some additional functions that are transferable into or out of those two bureaus.

We have undertaken a structural reorganization project that builds on some of the initial efforts of my predecessor, Chairman William E. Kennard. Our efforts will be guided by a few key objectives: (1) a functional organization designed along market lines, rather than technical ones; (2) a flatter substantive bureau structure; and (3) greater consolidation of key support functions.

Our program will proceed in phases. We have begun by systematically taking account of the agency's activities and functions to see what is working well and what is not. From that review we will produce a Phase I, short term, restructuring plan and a Phase II, longer range plan. The Phase II plan will consider what wholesale change is necessary and whether it is timely to move away even more from technology-based buckets. The question has been asked whether the Commission should be aligned along functional lines—e.g., enforcement, consumer information, spectrum management, licensing and competition—given increased convergence in the industry. This question deserves to be asked and answered. But first, we must seek additional and substantial information, and be completely satisfied that it is the right thing to do, before we move to rearrange substantially the organizational structure of the agency.

My goal is to improve the agency on all these fronts. An informed decision, however, is better than one based merely on supposition. I intend to seek the opinions and thoughts from a wide range of participants as we proceed down the path of reform. First, I look forward to working closely with this Subcommittee and other Members of Congress and their staffs. Second, I intend to hold forums to allow those that do business before us let us know how we can improve our processes and procedures. Third, I want to hear from the Commission's employees. They often know best how we should change and what tools they need to do their jobs. I want to gather opinions and ideas, but be swift to make changes. It is our goal to fully complete many of these changes this year.

I will be turning to you for assistance. With regard to the organizational restructuring that is likely to be necessary, I hope you will concur in those changes. Most critically, I look to Congress to support the Commission's budgetary needs and objectives. Please keep in mind that we are largely a fee-based agency, where those who come before us pay for the services we render in the form of licensing and regulatory fees. We need to have the staff and other resources to provide those services efficiently, knowledgeably and decisively. Finally, I will look to this Subcommittee and Congress to help us expand our authority where necessary to bring about competition and to more effectively enforce our rules. For example, the authority given to us in Section 10 of the Communications Act to forbear from regulating when certain conditions are present has been quite helpful. I would like to be able to use that ability even more and would welcome the opportunity to work with you to explore whether that is feasible. Additionally, we need tougher penalties and longer statute of limitation periods if enforcement is to be more effective.

CONCLUSION

I cannot predict the future, nor can anyone else at the Commission. When faced with future challenges that are uncertain, the best approach is to build a first-class operation, with top talent, that is trained and disciplined enough to adapt quickly to new and changing situations. No army, for example, can know in advance what it will find when it engages on the battlefield. The fog and terror of war never afford the luxury of predictability. The key to success is to have a force that is well-trained in tactics, strategy and the weapons it will need. A force that is disciplined and able to adjust quickly and adapt to fluid conditions—threats and opportunities both will present themselves through the haze. I hope to build, along with my colleagues and the outstanding FCC staff, just such a unit—one well suited to an uncertain future.

Thank you. I would be happy to answer any questions this Subcommittee may have.

Mr. UPTON. Sounds like the winning attitude of the Wolverines over B.C.

Mr. MARKEY. Well, in basketball, Mr. Chairman, our players weren't tall enough. That is an important consideration.

Mr. UPTON. Again, Mr. Chairman, thank you for spending so much time with us this morning. We are going to have questions from members, 5-minute segments back and forth.

What are your views on the progress of the transition to digital TV and what we will be facing by 2006? It is pretty clear, I think, to all of us, that we are not going to reach the 85-percent goal by then. So, what do you think specifically we need to do to put the transition back on-track?

Mr. POWELL. I start with the premise that it depends on how we want to choose to measure success. Candidly, I believe that the expectations about how rapidly the deployment will occur are somewhat exaggerated.

It requires the coming together of multiple industry segments, some of which are competitors, in the context of cable or DBS delivery, content providers, broadcasting, and the consumer electronics industry.

And I also think that it requires a dramatic transition on the part of the people who matter most, which are consumers. And a rushed transition, in my mind, is one that runs the risk of pushing consumers before things are ready, dramatic changes in a service that they value at a very high level.

So, I always feel compelled to start out with, what do we believe we think is a reasonable timeframe for the transition. I have made no secret that I believe 2006 has always been an extremely optimistic assessment of 85-percent penetration. You would be hard-pressed historically to find any technology, no matter how "killer" in its application, that ever reached anything like those sorts of penetration numbers on that timeframe. I am bullish about DTV. I think it is a great service. I think consumers will embrace it, but I think it will take longer than we had imagined.

What can we do? The first thing we need to recognize is that most of the solutions are out with the industries and in the marketplace, and not in Government. On the margins, there are things we need to do and have done. The Commission has engaged in an effort to remove some of the ambiguities and questions associated with the deployment so that at least those aren't contributing to the risks and anxiety. For example, we took a position finally settling the debate over the transmission standard between 8VSB and COFDM. We made clear, which was less than it should have been, for reasons I don't understand, that there is a must-carry right for a digital signal at least in the final product, when that is the only signal you are providing.

We have taken a number of other steps that we hope would facilitate that, and we are constantly examining whether there will be more. There are tough questions that we believe are outside our legal authority that the Congress and this subcommittee may have to examine. I would cite as examples the possibility of multiplexing on a single channel on cable. It was our sincere belief that we did not have that flexibility in the way the statute was written. I will

tell you that many of us believe that it might be a viable way to provide service, but simply had to remain faithful to the statute.

Mr. UPTON. What are your thoughts on the future of 3G deployment in the U.S., specifically, if the Pentagon is unwilling to relocate from the 1755-1850 megahertz band and, second, is it prudent to auction the 1710-1755 megahertz band in the 2110-2165 megahertz band by September 1902, before we resolve whether mobile carriers can use the 1755-1850 megahertz band for 3G?

Mr. POWELL. I am one who is bullish about the prospects of 3G, which I hope mean advanced Internet-type services over wireless devices so that——

Mr. UPTON. I saw the arrow go up on CNN.

Mr. POWELL. Did they? What power.

I would like to emphasize there are two dimensions to this problem. One gets most of the attention, understandably, which is more spectrum, the ability to have a bigger highway if the highway is congested. But as we know, with highways, that is not the only dimension to the problem. One of them is the efficient use of spectrum.

The Commission has tried to emphasize the importance of continuing to incent the development of technology and handset solutions and network solutions to get more out of what exists. Spectrum will always have a certain scarce dimension to it, just as any economic good does, and there always should be two efforts—one, to provide more, but also to provide greater, efficient use of what we do have. And I think that will have to be, if we are realistic, part of the solution to 3G, particularly if, as you say, Mr. Chairman, that if DOD ultimately cannot, for national security reasons, yield, or is unable. Or we are unable to reform sufficient amount of spectrum, we will have to look for other solutions.

It is important to remember, it is a little bit of a zero-sum gain—what is given to one is taken from another—and those represent conflicting values that we will have to reconcile.

Mr. UPTON. As a quick follow-up, though, is it prudent to do some of that spectrum before we resolve it with DOD?

Mr. POWELL. This is an area where I would have to confess the Commission finds itself between a rock and a hard place, between statutory mandates. Through the budget process, we have been commanded to auction spectrum that will nonetheless remain encumbered through its auction.

From my perspective, I don't take a position as to whether that is good congressional policy, but it is the one that we are commanded to follow. We have tried to facilitate, as greatly as possible, incentives that would cause people to yield spectrum that is otherwise encumbered. We did so in the channel 60-69 spectrum proceeding. We are looking at ways in the channel 52 to 59 context. But, ultimately, we have a legal obligation to auction the spectrum which, upon dates that were specified in statute, which was clearly known to be encumbered.

So, I think it is a problem. It will affect the value of the spectrum at auction. It will affect its effective deployment in the future, and I think it is just a messy thing we will have to work through.

Mr. UPTON. Thank you. Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman, very much. Recently, Mr. Chairman, there was an important court decision addressing the horizontal ownership limits for cable systems. As you know, the FCC had, pursuant to the Cable Act, established a 30-percent limit. The court generally said two things of importance. First, it said they seem to be looking askance at diversity as an important criteria for establishing a particular cap. Second, the court indicated that the FCC had not provided sufficient detail to substantiate setting the cap where it did.

Now, in the aftermath of this decision, you announced that the Commission would suspend AT&T's obligation to sell certain systems in order to meet the requirements in the AT&T merger order from last year in order to review the court decision and gauge its relevance to the AT&T merger order.

Now, the AT&T merger order, perhaps in contrast to the general 30-percent cap, was the result of serious work by FCC staff and attorneys and represented the collective judgment of the Commission that concentration was a concern, that the cross-investments of AT&T—that is, TCI and Media One with Time Warner—could have negative consequences for competition. That order, as you know, was quite detailed, in fact, from the Commission.

Now, you have had a couple of weeks to think about that court case. What are your thoughts on that decision now, Mr. Chairman?

Mr. POWELL. Sure. There are two parts to it. The court case clearly is significant. I agree with you, the two bases on which the court made its decision, which are also inter-related, are: the court considered our belief that Congress' intent was both to facilitate diversity and competition and the concentration policy is in error. That is, in the opinion of the court, the statute's sole purpose was competitive considerations and concentration, and any limit we selected had to be premised on a competition analysis or one that considered concentration effects, and not one premised solely or substantially on diversity as a rationale.

I will state candidly, I don't particularly and did not when we promulgated these rules, agree with that interpretation of that congressional provision, but I am now presently bound by the interpretation afforded to it by the court.

So, any further justification which we will be required under the statute to now try to offer for a new rule will have to be, if faithful to the court, premised on concentration competitive concerns, which often lead to higher-number caps than the kind that could have been justified under diversity grants.

Mr. MARKEY. Let me follow up on that then, Mr. Chairman. Let me ask if you think that decision has any relevance to the 35-percent audience-reach cap that the broadcast industry is subject to?

Mr. POWELL. Sure. I think it has relevance, though I don't believe it is directly on point, which is part of the reason at the same time we issued the suspension you speak of, we also rejected a petition by a major broadcasting group to suspend the obligations of the 35-percent cap on the same basis.

My judgment was, the judgment of the majority, was that the 35-percent national broadcast ownership cap is specifically stated in the statute. The number is specifically stated in the statute. Now, while the statute does give the Commission discretion to modify

that provision in the context of its biennual review, we believe that at least at present the statutory basis, which was the key underpinning of the court's decision as to the cable rule, was different.

Mr. MARKEY. May I ask, what is your intention in terms of the AT&T case now? How are you going to proceed?

Mr. POWELL. Well, we are considering—I would like to emphasize, as you correctly noted, that it was a suspension of the condition, and not a limitation.

I believe, as did the majority, that suspension was very much warranted because while there was a different basis on which the condition was reached, the analysis just was not defensibly any different than the one we had just used to defend the rule and, in fact, specifically imported the rule as the basis of the number it selected and believed quite seriously that if we had failed to do so, a court would rightly say that that was being flaunted in the context of the mandate.

But we have an obligation to return to the question, which we are looking for a proper vehicle to do, to raise whether the AT&T condition is, in fact, itself in any way undermined by the court opinion.

Mr. MARKEY. Let me ask one final question, and that would be—I think you should be very careful, by the way, in this area because, without question, diversity is a proxy that ensures that there is competition in the marketplaces that took a long time for Congress and the regulators to break down.

There is a lot of railing that goes on, Mr. Chairman, about legacy regulations, and people, by definition, don't like the term. It doesn't sound good—legacy—it is the past whereas they are looking to do something toward the future. But as soon as the discussion of legacy regulations is joined with the subject of legacy subsidies, people start acting up because now you have to do away with unwarranted, historical subsidies that go, in large measure, to monopolists. And, of course, that makes the whole subject so much more complicated.

What I would like you to do, if you could, is just to tell me what you think we can do for new service, so that we can save it from legacy subsidy structure, and that is Internet Telephony. What recommendations would you make to us on what things can the FCC do to make sure that it is not saddled with this legacy subsidy system that makes it hard for newer entrants to get into the traditional telephony business.

Mr. POWELL. Sure. Of course, as you would expect, I am not prepared to commit to the exact regulatory treatment that should be afforded to IP telephony, but that said, at the outset, when I listed a number of the substantive principles that I thought were important when considering the future, one of them was the commitment to ubiquitous and affordable service. But I also say in the statement that we should look for creative ways to do that rather than assume or lightly advance the regime that works successfully in the context of the telephone system. I will expand on that briefly.

The key should be the first principles of universal service, which are ubiquity and affordability, and I think that as we get into that nascent world where the questions are less clear, we should be committed to that goal. We should be very rigorous in looking for

ways to ensure that don't come up with it necessarily the same kind of enormous subsidization or market intervention that in some ways is characteristic of the phone system.

One of the things that I think we should all be excited about is there are certain natural cost characteristic benefits in a lot of the new technologies that should give us cause for excitement that it will be deployed widely and it will be largely affordable.

Now, I expect that there will be market failures, and there will be parts of the country and populations to which this does not happen naturally, but I think the Government would be better served if it attempts to, in this iteration, be very pointed and focused about where it attempts to provide governmental assistance as opposed to assume it in a broadbrushed way.

Mr. MARKEY. Thank you very much.

Mr. UPTON. Thank you. Mr. Tauzin.

Chairman TAUZIN. Thank you, Mr. Chairman. Chairman Powell, I want to follow up on Mr. Markey's question about cable caps and also the national broadcast ownership caps. Am I to read from your testimony that you are really going to do biannual reviews at the Commission now?

Mr. POWELL. You bet.

Mr. UPTON. And in that biannual review, is there an opportunity under the law for the Commission to review the 35-percent national broadcast ownership cap, and to adjust it if you find it necessary?

Mr. POWELL. Yes, I would say it is more than an opportunity, it is a legal obligation. In many ways, if I recall correctly, in the biennual last year, I dissented in part because I believed that we had not been willing to fully tackle some of the ownership questions, not presupposing the outcome, but that we had really seriously evaluated their continuing validity. And I think that that is important and a legal obligation to do.

Chairman TAUZIN. In fact, in a world where there are increasingly more diverse sources of information and a great deal more competition, as you point out, isn't it the obligation of the FCC to continue to review these caps?

Mr. POWELL. I think so, and that is at least also my interpretation of what Congress had in mind by directing an institution to continually re-evaluate its structural ownership rules on a biennual basis. I interpret it to be the recognition that there will be changed circumstances particularly brought about by the objectives of competitive services and diverse services that the Congress had in mind in the 1996 Act.

Chairman TAUZIN. Yesterday, Mike Armstrong, of AT&T, wrote an Op-Ed piece in the Wall Street Journal, calling for breaking up Bells on a wholesale-retail basis. To my thinking, that would be an extraordinarily overly regulatory approach to addressing some of the service quality issues brought up by the C-LEX.

Do you think that this kind of a plan would be wise, or would it be a step backwards from the 1996 Act of pushing deregulation and open competition?

Mr. POWELL. Well, I think that at a minimum it would introduce yet another extraordinary period of disruption and uncertainty that would likely proceed for another multiple of years, just like the

wake of the 1996 Act produced a period of settlement and uncertainty through litigation and a lack of clarity about the terms and conditions of the provision, and there would be a cost to that.

I don't know whether I believe that the benefits would outweigh the costs, but I do think that we would find ourselves in another long period of confusion and anxiety that might further delay——

Chairman TAUZIN. Speaking of those periods, you also recently announced some changes in the rules governing Section 271 processes. Could you walk us through quickly the changes specifically? Would you describe how an RBOCs would now file multi-state applications for relief under 271?

Mr. POWELL. I think what you are referring to, isn't specifically our approach, but instead the ones that have been adopted principally by the Western States through a regional testing of operational support systems in an attempt to, in a more efficient way, reach consensus and uniformity so that those applications could be brought in some combination or package, and that the regulatory questions and operating systems questions would be the same in that context. And I think that we generally supported any effort that tries to harmonize, streamline and make more efficient the 271.

Chairman TAUZIN. Are there other reforms in 271 that you are contemplating? Let me be specific. One of my concerns with the 271 process from Day One has been that the Commission has consistently told State Commission-approved plans that they were deficient, but never laid down a clear explanation of what needed to be done to make them sufficient, and that the shell game of simply saying "No, you don't meet the standard today, come back later", without telling you what you really needed to do to meet the standard, has unfortunately created a lot of that confusion and delay in the 271 process. Do you agree with that, and do you plan any changes in the way the Commission will approach these applications?

Mr. POWELL. I agree with it for some years and a little less so in other years. I do believe that in the first couple of years of implementation that was a serious problem, but I think, in fairness to the Commission, there was a lot of its own misunderstanding and learning curve as to exactly the nuts and bolts of the systems and the complexities of the interactions, and it took us a good bit of time to understand in our own mind what precisely were the subjects of the focus. And so I do believe we have gotten better through a number of things, and I am very optimistic that we will be better in the coming years.

One thing that we recognize that we should do is to get out and get on the road and to be actively out there prior to the filing of applications to try to advise—we can't precommit to whether this will do it, but we can advise State Commissions, who particularly are often resource-constrained and expertise-constrained, to telling them the kinds of ways that they might want to pursue the matter and develop their application so that it has a higher probability of success.

In the first year I was at the Commission, we wrote a paper talking about the "collaborative" approach, an attempt to really be in

partnership so that we get a higher probability of succeeding. And I also think the companies need to bring them in.

We are constrained in that we have a 90-day window to make a decision. In many ways, the precedents we set are what guides the next one. And so I think we also get better, the more we see and the more we are able to have an opportunity to write about what we expect. We have only done that now in a handful of instances, and I think that this year there will probably be an increased opportunity for that.

Chairman TAUZIN. I think my time has expired. I simply want to piggyback on something former Chairman Dingell said about the operation of 271, and that is that it is our common observation that competition in the local market has really increased dramatically once 271s are approved, and that until that point I think there is a natural reluctance for competition because it makes the case for a 271 approval. And if that is true, if that observation is correct, obviously, improving, streamlining, expediting a system whereby State Commissions and RBOCs know precisely what needs to be done in order to achieve approval, will probably lead to the two things Mr. Dingell pointed to, which is more competition and lower prices for local telephone service, which was the game, after all, in 1996. And I share that observation by Mr. Dingell, as well as your own observation and his, it is time for us to functionally regard how we treat services delivered by different technologies. And I thank you—I almost wanted to applaud, Chairman Powell, after your statement. Thank you very much for being here today.

Mr. UPTON. Thank you, Mr. Tauzin. Mr. Sawyer.

Mr. SAWYER. Thank you, Mr. Chairman. All of us up here have listened to a lot of testimony over the course of our time in the Congress, and I just hope that my colleagues would agree with me, this has been an absolutely virtuoso performance. It was superb.

Mr. POWELL. Thank you.

Mr. SAWYER. If you carry out your goals with the clarity with which you have explained them, we are into a new era in terms of communications regulation.

Let me return to a topic that Mr. Markey touched on in the abstract, I would like to touch on a little more in the specific. You talked about you planned to pursue worthy universal service goals, of ubiquity and affordability as new networks are deployed, but the challenge is to do it in new and creative ways.

It seems to me that as telecommunications technologies merge, that there is a question of how the FCC administers the universal service charge becomes a question which is now, of course, just for voice and long distance.

If we took a look at Internet telephony or wireless, would it be your view that the universal service charge might expand into that, without regard to technology but rather with regard to the way in which the service is structured?

Mr. POWELL. I think I understand the question. It is probably the "$64 billion" question, literally. Part of the answer to that depends on a pretty fact-specific evaluation of whether IP telephony can fairly be evaluated and categorized as a "telecommunications service," as defined by Congress, such that the provisions that would be implicated by your question would be applied to them.

If the factual analysis were to suggest it was something else—for example, an "information service" or as many of the Internet services have been categorized—it would largely fall outside of at least the traditional application of those kinds of subsidy programs.

There is a limited amount of discretion the Commission has for extending service, but I think you still have a sort of touchy legal-versus-factual determination to see whether you can do that.

The point about creativity, IP telephony is potentially a great example. At present—and there are some big "ifs" and I am cognizant of them—but if you are on the Internet, you are talking about the ability to communicate right now by utilizing a piece of software that in many instances is free or relatively inexpensive, using the public Internet which nobody owns, to talk to your friend in New York City without any per-minute or service charges. Now, that is pretty ubiquitous and pretty affordable.

I think that my only challenge in these areas is to ensure that we find the exact problem we are attempting to cure before we talk about the extension of the traditional program to them. One of the reasons I tend to resist prematurely intervening in the context of IP telephony is because it is engaged in a wonderful period of innovation, and experimentation is being deployed wildly such that it was a critical issue in a major merger recently, and consumers are really reaping the benefit of its deployment.

Mr. SAWYER. In the few seconds that I have left, let me share with you my predisposition on this. I really believe that the Land Grant Colleges Act at the end of the 19th Century changed America in critical ways. It took the growth of a technology in terms of railroad transportation, and used it for the task of more broadly building that skill level that we needed as a Nation.

It seems to me that the genius of the E-rate is that it has the potential, wisely applied, to do many of those same kinds of things, not just for putting equipment into schools but for elevating the skill levels of an entire population, something that we are challenged to do in ways that we probably never imagined before.

So, with that, I will be revisiting the question with you, and thank you for your support.

Mr. UPTON. Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman. Chairman Powell, the FCC's January decision pertaining to the "carriage of digital television broadcast signals" has led many broadcasters and cable operators to visit my office on a number of occasions, and you and I talked about that.

My question is specifically focusing on the multi-cast, must-carry provision. What impact will the rule have on small, independent broadcasters, Christian broadcasters, Spanish language and emerging network broadcasters, who have strong concerns here about this rulemaking?

Mr. POWELL. The decision will probably have a disproportionate impact, but it will have the same impact it has on all broadcasters, which is it is going to limit at least one viable business opportunity to effectuate the transition at least with the Government right-to-access. It is important to emphasize that nothing we said precludes any broadcaster from reaching a negotiated carriage agreement for those kinds of services. It is only that we can't interpret the must-

carry statute to provide a Government-conferred, absolute right to that carriage because of the statute's use definitionally of the idea of a "principal" or, I should say, "primary" video signal.

Mr. STEARNS. But if the cable network shuts them down and says, "We will accept your high-definition signal, but we are not going to do the multi-casting", there is no negotiation. So, how can they negotiate?

Mr. POWELL. They might not be able to, and I think that if that is a critical desire for transition, that statutory change would be warranted. This was the area I was alluding to briefly. I sincerely believed our decision was one of those tough ones that we believe was just compelled by the only honest reading of the statute.

Mr. STEARNS. You are still going under taking comments, too, as I understand. You are still—I am not saying here you are going to revise it—but you are in the process of it?

Mr. POWELL. Well, I think you are referring to two things. There is a further notice, and there are two things potentially implicated there. One is the carriage of both—there is still a question about whether we would confer or interpret the statute to allow the carriage of both an analog and a digital signal simultaneously. That is different than the issue you are referring, that is teed up in the notice. Though we raised pretty significant constitutional concerns about dual carriage. The other issue is whether there is part of the statute that allows you to carry, in addition to your primary video signal, program-related material. The statute defines program-related material, but we provided another round of comment as to what that might include. And that also has an effect on what a broadcaster may be able to do over its must-carry signal in the vertical blanking role and other ways. It is a pretty narrow statutory provision, but we are seeking comment on whether there are ways to do more.

Mr. STEARNS. Let me follow up on Chairman Tauzin's question. I introduced legislation easing the duopoly rules and grandfathering of existing local marketing agreements and elimination of the one to a market rule. And the Commission's actions in this respect have been appreciated.

Shouldn't the next step be to perhaps eliminate or at least relax the national ownership caps on broadcasters as well as repeal the broadcast cable and broadcast newspaper cross-ownership rules? Yes or no, if possible.

Mr. POWELL. I can't do that. I think it is absolutely——

Mr. STEARNS. Maybe we could break it down.

Mr. POWELL. My effort is to always go back to my substantive points: validate or eliminate. The 35-percent national ownership rule, if I remember correctly, was promulgated in the 1970's with an entirely different media environment than the present environment, and should be validated, if it has any merit at all, in the current context. The biannual review will provide the vehicle for that.

The newspaper cross-ownership is similar. We already have directed that we will have an item to examine that question very shortly, in the next month or so.

Mr. STEARNS. So the repeal or relaxing of the broadcast cable and broadcast newspaper cross-ownership rules are to be decided, when?

Mr. POWELL. There will be a proceeding that initiates the examination of those rules in the next month or 2. It is being slated for May.

Mr. STEARNS. Let me talk about ownership caps in this respect. The Commission generally seems to set ownership cap-type rules well below the kind of threshold that might be expected if the affected industries were simply governed by the antitrust laws. In cases where you lack a clear direction from Congress as to where to set a cap, just give me an idea of the principles that you might use with respect to matters of ownership or concentration, maybe just some principles.

Mr. POWELL. Communication policy has always been infected with two principles, and they are not always consistent. One of the principles is competition or concentration concerns, the anti-competitive effects of concentration of market. That is also the historical gravamen of antitrust policy.

The trick here, is the notion of diversity of program voices that may or may not bear direct resemblance to concentration levels that are impermissible. The horizontal cable are a perfect example, that the 30 percent, in all likelihood, couldn't be justified as a national cap for purely competitive purposes. That number would probably, in all likelihood, be lower than what antitrust would suggest to the typical HHI kind of economic analysis would suggest.

Diversity is a harder thing to decide whether you believe this limit or that limit is too much or too little, and I think that is where the problem is most difficult to address. They are worthy policies, but very difficult to articulate and promulgate rules for because it is very easy to be subject to the accusation that, you know, why not this number, why not that number, and that is a very difficult thing to do.

It is also difficult because when it involves diversity, it usually means it involves media, which usually means you have to defend the rule against First Amendment scrutiny, which is higher than our rules would be defended in concentration context. So, the Time Warner case was hard, in part, because the court said "You have to pass constitutional scrutiny in defending the selections that you made". And so, the long and short of it, those are the objectives.

I am not the biggest fan of prophylactic caps generally just because I believe, as I learned in law school, rules tend to be almost always over-inclusive and under-inclusive at the same time. People you wish you got get away, people you don't want to get get caught. And I think a lot of times those judgments are very case- or fact-specific, and it is very difficult to pronounce that a level is too little or too much. But I think if they are warranted at all, they are probably more warranted if you are convinced by diversity concerns than they are usually by competition concerns, and it is many of the reasons why antitrust policy is a case-specific doctrine, it is not a prophylactic one.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. UPTON. Thank you. Ms. Harman.

Ms. HARMAN. Thank you, Mr. Chairman. I apologize for being slightly distracted, but I have just learned from Mr. Boucher that our colleague, Norman Sisisky, passed away this morning, which I find truly upsetting. He was a wonderful and decent man with

whom I served on the Armed Services and Intelligence committees for many years. Marvelous sense of humor. It reminds us all how fleeting life is.

Pulling myself back together a bit, I would like to join Mr. Sawyer in his comments about your testimony, Chairman Powell. I thought it was extraordinary. And if you bring those skills to reforming the FCC, the rest of the Federal Government should come next.

Let me associate myself particularly with your comments on enforcement and need to enforce the law. As one who threaded her way through the difficult votes on the Telecom Act of 1996, it is my personal bias that we should let that law work and we should enforce its provisions.

I would like to just ask you a few questions, first, to bring to your attention two disputes involving the Los Angeles region, and to hope that your Agency will intervene to resolve them short of litigation and rulemaking.

One involves something I just learned about, which is your approval for the construction of a new broadcast tower on Mt. Wilson, in Burbank, California. That broadcast tower is beginning to be built by Unavision, and it is extremely close to another broadcast tower which exists, that was built by ABC. And the issue is, how high will the Unavision tower go because, if it is too high, it will block the signal from the ABC tower. This should be a resolvable issue. People are talking to the Agency. I just wanted to be sure you personally knew about it, and hopefully there will be a satisfactory resolution soon. That is one.

The second one involves the allocation of emergency radio frequencies which are the lifeline of effective police and fire services. El Segundo, California, another city in my district, was part of something called the South Bay Regional Public Communications Authority, which owns a number of frequencies, some of which are unused. El Segundo is no longer part of this group, and would like to reclaim some of these frequencies it previously owned. I am, again, hopeful—I will be writing you about this—that your Agency will try to intervene, work this out short of some prolonged dispute that is avoidable and that will disrupt police-emergency services.

My question is on a different issue. We started out joking about basketball and football teams and so forth. One of the other things that local areas get incensed about is changes in zip codes and area codes for telephone numbers. And, of course, there is a dispute in Los Angeles about this.

There is an answer that could alleviate a lot of this regional tension that I hope you will consider as you move your Agency toward one that operates across technologies, and that answer is called "technology-based overlays". A bill passed in California, SB-1741, which requires California's public utilities to adopt technology-based overlays. And this legislation cannot be implemented without your approval, your Agency's approval.

What it would do is require that the new technologies—data lines, ATM machines, pay-point machines, and possibly pager and cellular phones—move to new area codes so that the businesses and homeowners wouldn't have to change theirs. This seems to me to be a logical idea. It would sure help neighbor-to-neighbor rela-

tions in the Los Angeles area and all over California, and probably in other States, and I would just like to know your view of this concept.

Mr. POWELL. Sure. The numbering issues are becoming quite serious. The explosion, the revolution, has created an extraordinary demand for unique identifiers to reach devices and new services, and that is leading to the big exhaustion of a numbering system that was principally designed around—this is one of those legacies—historically around the common-carriage system.

The Commission's prior rules were opposed to service-specific overlays principally because they evolved from the fear, once upon a time, that if you had them, they would benefit the monopoly incumbent, who would deny the availability of numbers to new innovative entrants. Oddly enough, now we almost have the reverse of that problem, as new technologies come into the market.

The Commission recently undertook a proceeding to re-examine and to look again at whether service-specific overlays make sense. And so I think we are at least convinced that it is an idea that requires pretty serious attention, and maybe the original rationales for the prohibition are no longer justified. And we have worked very well with California and other States trying to provide as much relief—we know how sensitive it is to consumers in States. We know how sensitive it is politically in States, and we have really been trying to increasingly do everything we can to give States the flexibility they need to better deal with that problem.

Ms. HARMAN. I thank you for that comment and just conclude on the point that California needs your attention to the three issues I mentioned, and you can be very helpful to us, and speaking for me, I am very excited about the fact that you are bringing to this job the enormous energy and vision that you obviously are bringing to it. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Deal.

Mr. DEAL. Thank you, Mr. Chairman. I want to thank you for being with us today, and one of the themes you will probably hear from many of us who represent rural areas is our concern about universal service. And I would like to revisit that just briefly with you.

I have recently introduced a bill that would remove the caps on the high-cost rural areas that have been imposed, I believe, since 1994 under FCC rule, and some would estimate that that has cost these high-service providers some $350 million over the course of that timeframe.

I would just like to ask briefly what your opinion is about the possibility of removing those caps to those service providers that are in those high-cost rural areas.

Mr. POWELL. Sure. The caps have a convoluted history as to what their purposes were, but there are actually two or three dimensions to which they go. The cost of the actual loop or line infrastructure which we call the high loop costs, is one example to which their caps run. There are also caps on sort of corporate general expenditures includes discretionary costs such as travel and lodging associated with the operation of the telephone company, and another one which I won't even pretend to remember.

So, I think that I don't know the answer to the question at present, other than this is ripe and teed up in the context of our rural access reform and rural high-cost proceeding that is presently underway and to which we hope to have final decision by May, so that changes can be implemented in the July 1 timeframe.

The rural task force that worked to develop a recommendation to the Commission has filed some proposals that include modifications of the cap in a way that the rural companies believe would be beneficial to them, and those are very much alive and on the table for examination.

The problem in my job always about subsidies is that they are not cost-free. That is, they do have a reverberating impact on other consumers who will have bill increases as a consequence. Removing the cap, we estimate, just on the high loop, is probably $198 million addition to the system. The corporate cap would be another $40 million addition to the system—not that they might not be justified, but that money comes from somewhere, and it comes from consumers who will then have line charges.

So, it is not always easy to reconcile, but I think we are committed to making sure that rural America, rural companies have the subsidy that is critical to continued provision of the service, and this is just where we get paid, or we don't, the big bucks to balance those.

Mr. DEAL. Well, we look forward to working with you on that. Let me change subjects just slightly with you, and that is DBS.

My district is one of those unique ones that borders four other States, and because of the current rules as to service provider areas, many of my constituents that are close to the borders are considered within the range only of television stations that are outside of our State and therefore DBS is not allowed to provide them as the local channels that they would prefer.

I would simply ask if you would look at that issue because it is certainly one that affects many of our constituents. They would prefer to have, for example, the television stations broadcast from Atlanta, Georgia, the capital of our State, rather than from Chattanooga, Tennessee on the western side of my area, or from Greenville, South Carolina on the eastern side.

It is a concern for those DBS subscribers in some of those rural areas, and I would look forward to working with you as we could try to solve that problem.

Mr. POWELL. Absolutely.

Mr. DEAL. Thank you. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. It has been a long morning, Mr. Chairman, but I have really two questions if I could do it in the 5 minutes. One of them is a local situation in Texas. NorthPoint Communications has had a pending application to offer digital television services and high-speed Internet access in direct competition with cable and DBS providers. I want to see more competition in cable and DBS, and we are talking both in terms of price and service, and innovative wireless technology developed in the State of Texas by NorthPoint technology could provide a real competitive boost to the marketplace, and their service, which would include 96 channels including local stations could be mar-

keted to consumers for just about $20 a month. Not only could they deploy it in Houston, but also in other television markets in the country.

I understand NorthPoint first came to the Commission in 1994, and that a license application has been pending for over 2 years. The Commission concluded NorthPoint's signal would not cause harmful interference, so I wonder why the licenses haven't been granted. I know you may not be familiar with this particular one, but if you could get back with us.

And do you believe the satellite broadcasters can meet their looming requirement to meet local communities, to provide local communities with a full set of local signals, and also whether it is NorthPoint's technology or someone else's technology, is there a solution to that particular problem?

Mr. POWELL. Yes. Actually, this is a perfect set of issues that highlight the problems of lack of harmony in different regimes. The NorthPoint service, which technically is a terrestrially delivered use of wireless technology but will be competing principally with direct broadcast satellite which is delivered by satellite are regulated, arguably, in two different ways, one is as a wireless terrestrial provider and one is as a satellite provider.

In the satellite provider context, for example, under the ORBIT statute, we are prohibited from auctioning spectrum, but in terrestrial wireless we are specifically required to auction spectrum. NorthPoint quite innovatively filed for a license in a satellite window, and it has an innovative and interesting and hopeful technology, but it has presented a number of challenges to the policy of reconciling a spectrum that is in the satellite window that has specific process of licensing and service rules that are very different from terrestrial and in which we work to eliminate mutual exclusivity by trying to balance interference concerns.

It has been too long. We are working hard on it. We recently have been directed by Congress to conduct independent tests to determine the interference issues. That has been somewhat challenging because not everyone is always happy with who you choose to do the testing, but that is underway and we are very hopeful that pretty shortly we will have an aggregation of the results and be able to proceed.

Mr. GREEN. Do you have any kind of timeframe?

Mr. POWELL. I can get that to you. I don't feel comfortable advancing one right now.

Mr. GREEN. Appreciate that. After reading your testimony, I get the feeling that you favor an industry solution to the HDTV transition. Do you believe we ought to wait for the industry to come together on the issue, no matter how long it takes?

Mr. POWELL. Well, not necessarily. It depends on what you believe to be an impediment of the condition. The Government, for the entire history of the transition, has been very involved in that process and, to the extent it continues to take responsibility for the transition, I suppose there are issues of Government focus. We have talked about must-carry regimes. If people are convinced that those are critical to transition, it is an issue that would require a governmental act, I suspect. Similarly, there are issues about copyright and intellectual property protections that are rights conferred

and granted by the Government. If that was a serious and continuing obstacle, one might not be prepared to wait forever for them to reach mutual agreement on those terms and conditions.

I would point out that most of those issues are outside the specific jurisdictional context of the Commission. But I suppose that my only caution is it sort of depends on which specific issue and whether it has a natural Government component. But there are a lot of issues here about finding a sweet-spot for consumers. I don't know what specifically to do about the development of high-definition creative content so that they have something to see when the TV turns on, or the natural product cycles associated with driving $3,000 sets down to levels that average Americans, can afford. Much of that takes product cycle time.

The average family in America owns three to four television sets. That is a lot of swapping to go on for an 85 percent of the population. So, usually my challenge is, let us identify specifically where the rubs are. Let us see which ones involve what institutions, and let us get those institutions focused on those problems.

Mr. GREEN. Thank you, Mr. Chairman, and one of the questions we will submit is an update on reciprocal compensation, and I know that is an issue our committee has dealt with, but also the FCC.

Chairman TAUZIN. Mr. Chairman.

Mr. UPTON. Mr. Tauzin.

Chairman TAUZIN. I have just had staff check out the announcement about Norm Sisisky, and the announcement is correct. Norm Sisisky passed away today. The information we have is that he was recovering very successfully from surgery yesterday, and the report we had was that he was expected to make a full and complete recovery, but obviously it didn't work out that way, and maybe we could all join in a moment of silence as we remember a dear friend and extraordinary servant of the American people, Norm Sisisky.

[Silence.]

Chairman TAUZIN. Thank you, Mr. Chairman.

Mr. UPTON. Thank you. Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman. Mr. Chairman, welcome. I think many of us, the Members of Congress, especially on this committee, if we ran for the Presidential office, would get the same type of results that Senator McCain did when someone said, "You wrote a letter to the FCC asking them to rule on an issue". All of us have probably written at least one letter to that, and so it is probably—I know that you, in your short amount of time, have really moved the Commission to get stuff out the door, and we would encourage you to continue. I think most people I deal with, who ask me to intervene or at least address the FCC, they just want some legal certainty—I think that is my buzzword of this Congress—legal certainty. Whether it is Superfund or whether it is small business liability protections, or actually results and decisions made by the FCC, we just need some legal certainty—win or lose, up or down—and then we can move on, and I would just throw that out as a comment.

I don't have any pamphlets for NorthPoint technology. Maybe my colleague, Gene Green, can give me some of the pamphlets, and I could add to his advertising, but I am a supporter of it——

Mr. GREEN. Mr. Chairman, would the gentleman yield? If you teach him how to shoot a basketball shot, I will share it with him.

Mr. SHIMKUS. That is right. We do work together on a lot of issues. But I do also want to echo and support from an issue which is small broadcast companies, particularly KHQA in Quincy, Illinois, and this whole direct satellite local into local. And many of us feel—and there is a letter that mentioned the rulemaking—the reality is, if—we see this as the only way to get local-to-local in the competitive markets in many of the unserved areas. And if rulemaking is delayed, we fear it could be years before this new service is deployed. In your estimation, timeframe, when do you think a decision could be rendered?

Mr. POWELL. Congressman, I am not sure I am clear on what specific rulemaking you are referring to.

Mr. SHIMKUS. Well, I guess, really, how quickly can you all make a determination of this NorthPoint with all the things you had mentioned, my colleague, Mr. Green from Texas, is a suitable transmitter of the digital signal that would be in the satellite spectrum. That is pretty good for someone who is still having trouble taking care of the vocabulary here.

Mr. POWELL. The only reason I am hesitant to say exactly the timeframe is because it requires the submission of the completed evaluation of the technical requirements from an independent tester that we were required by statute to undertake. I just am not sufficiently confident to know how much is involved there before I put my engineers in hell suggesting it will be next week.

Mr. SHIMKUS. And that is fine. Again, it just speaks to the whole legal certainty, not just from this company's ability but also the small local broadcasters who are in areas that they don't really see local-to-local going without—I mean, there are a lot of people waiting patiently.

Let me skip to another issue because of time. We passed our E-911 bill that initially was a lot of people have a piece of the action on, and Chairman Tauzin allowed me to carry it in the last cycle, and we are excited about it.

What is your perception of the status of the E-911 implementation, you know, throughout the whole industry, through the folks who are making the equipment, the handset and network solutions, and what about the Phase II requirements that kick in on the E-911, where do you think we stand on the implementation of that law?

Mr. POWELL. I think the Phase II requirements require a greater degree of granularity in identification and require handset identification technology. It is set for this fall, and we continue to believe that that date should be, and are hopeful that will be, met by the vast majority of providers.

That said, there are a lot of issues starting to creep in that are creating some churn and anxiety that are implicated by location-specific technology, not the least of which is growing concern about handset privacy and whether we are ensuring that location-specific challenges don't create the kinds of privacy quagmire that are associated with some forms of Internet services.

The other thing I am less concerned about, there is also a lot of churn in the industry as it changes and adapts standards in prepa-

ration for advanced services, and whether any of those things—I am not sure, but whether any of those network re-engineerings will have an impact, I think, is less clear. But the privacy issue may be one that the Congress would be concerned about in time.

Mr. SHIMKUS. I am glad you addressed that because that was a follow-up, what are the privacy concerns, we are hearing the same thing, and there has got to be a way, and technology can master a lot of the difficulties, or if there is an emergency and a person has access to turn it on—I mean, that addresses the privacy implication information.

Mr. POWELL. And that is where a lot of them are going. I just got back from the wireless show, and a lot of the solutions do have technology which are activated only when you dial 911 and are turned off, or the phone is defaulted to not ever—but the wireless industry also filed petitions with us recently to examine certain self-determined rules about privacy that we will consider in the context of this as well.

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

Mr. UPTON. Thank you. Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman. I apologize, I have been in and out between two different hearings here.

Mr. Chairman, as I said, I come from a very rural area, with a lot of different telephone companies, small telephone companies, and things like that. But the question I would like to get your thoughts on is local residential competition. It seems to be working in some States and not others. Maybe in the Midwest we might—at least I believe we may be a little better with competition in Michigan and Illinois and Pennsylvania, but what decisions that were made, or weren't made, where you don't see the same type of competition from State-to-State?

Mr. POWELL. I think there are a whole lot of explanations for it, but all driven by the same recognition, which is companies enter markets when there is a viable economic base-case to be made for entering those markets. And even when they believe there is a viable economic base-case, there is a limited amount of capital and resources so that they prioritize where they go first, even if they have an intention of going elsewhere or everywhere eventually. That is, it is not uncustomary that carriers enter markets where they get the largest economic return for their investment in the beginning, even if ultimately their plans will include, or should include or even if there are good economic cases for entering other markets, regrettably, that often is in many of the areas that you are talking about. And I think, in some ways, the capital crunches over the last year make that even more challenging in some regard.

The other thing I think that in all candor is a matter of policy, which is a tradeoff of some tension, is local rates are set by regulation. They are subsidized by Government policy. They do not naturally reflect—as we wouldn't want them to in some States, I suppose—don't naturally reflect the economic costs associated with them.

So, many carriers look at the economic case for entering a high-cost market and believe that the retail prices they will be able to offer will not be sufficient to recoup investment and to operate via-

bly because those rates are not only sometimes below-cost, but are also subsidized. So, in many ways, the companies look at the decision as a huge capital investment to compete for below-cost rates and hope the Government keeps subsidizing consumers, which comes up short to a lot of companies and a lot of markets. I think it is the tradeoff Congressman Markey was talking about, there is tension between a competitive model that is genuinely economic-based and universal service or Federal subsidies. And so I think that is part of our problem in America across-the-board, and I would say principally in the residential market. It is even more acute in a geographical, area like those that you represent.

Mr. STUPAK. Well, certainly, Michigan and Illinois were Bell Companies, and when you take a look at the Bell Companies, they will insist that their markets are open even to their competitors, but yet we haven't seen where there has been competition in each other's turf except where it has been required under a merger condition. Is it the policy, or shouldn't the FCC also consider whether the out-of-the-region Bells have entered into the local market when determining whether to permit 271 relief?

Mr. POWELL. I would submit that we are constrained in that regard as to the way Section 271 is written.

Mr. STUPAK. Constrained in what way?

Mr. POWELL. For example, the prerequisite to 271 is something referred to as "Track A" and "Track B." It is legally possible that someone could gain long distance entry without any local competitors, if you accept that Track A provides that someone could have what we call an S-gap, which is essentially a local tariff filing that suggests what the prices of interconnection would be. The statute contemplates that a company could satisfy that track, and nonetheless gain 271 relief.

Similarly, the second track, Track B, which requires an interconnecting carrier, only requires at a minimum one to technically satisfy the prerequisite for at least going through the examination. So, in many ways, there are many alternatives to the way you could grant long distance entry through local market opening measures. It could have been required there be a certain percentage of local competition before obtaining approval, a proposal which was rejected in the Congress.

So, we feel somewhat constrained about the degree to which we can import additional factors, particularly when the end of the checklist has a provision that states squarely the Commission shall not add in any way to the checklist.

So, we try our best, but I do believe, to be faithful to the statute we are limited in some of those.

Mr. STUPAK. One more, if I may, Mr. Chairman. The telecommunications industry, more than any other business, continues to be dominated by companies that pretty much all but enjoy impregnable monopolies in key markets. If the FCC steps back in certain cases, or in certain areas, won't State regulatory agencies be forced to then step in, leading to not less regulation, but rather more of a hodge-podge of regulations and different rules that will ultimately benefit no one, especially the consumers?

Mr. POWELL. I certainly don't submit that we are stepping back. I don't think the statute lets us step back. I think the statute care-

fully lays out respective roles for both State and Federal authorities. I think there is always a debate over the degree, and the extent to which the statute inures to a more intrusive approach and a less intrusive approach. But I do believe that we sometimes—well, I do believe that it is relatively cabinet within the statute language, and there is some variation and flexibility, but we wouldn't, even if we wanted to, be able to walk away from that level of involvement and, indeed, Section 271 specifically says the Commission is not permitted to forebear.

Mr. STUPAK. Thank you. Thank you, Mr. Chairman. Thank you, Chairman Powell.

Mr. UPTON. Mrs. Cubin.

Mrs. CUBIN. Thank you, Mr. Chairman, and thank you, Mr. Chairman. It is delightful, it is refreshing to hear your view of where the Commission can go, and I am sure that even the problems that we face with technical shortcomings and personnel can be solved when we work together to do that.

I am primarily interested, as you know, in rural issues. We just passed out of this committee and off the floor, H.R. 496, which helps to cut regulations on small and mid-size telephone companies. The FCC notified the CBO that when deregulatory efforts are made that it costs money, and in the case of H.R. 496, the FCC advised CBO that it will cost $3 million in the first year, $2 million in the second year, and then costs would be incurred thereafter. Why is that?

Mr. POWELL. I honestly don't know. I am not familiar with the assessment that you are speaking of. My only educated guess would be that some aspect of the relief would result in potentially greater universal service subsidy costs that have a net increase in cost to either other consumers or to the Government fund. Other than that, I am not so sure at all what those numbers refer to. I will check.

Mrs. CUBIN. Thank you. And, you know, I just have to laugh because Chairman Tauzin and I just exchanged a few comments a minute ago, and he said—I had remarked about how pleased I am with your presentation and the future, and he said, "There isn't anybody on this panel that can ask him a question he can't answer". So, I apologize for that.

I do want to get into some other rural issues. Rural carriers have indicated a willingness——

Mr. POWELL. Does it count if I answer late?

Mrs. CUBIN. That would make the Chairman exactly correct. The Chairman is always correct.

Rural carriers have indicated a willingness to make significant investments in the delivery of competitive rural exchange services in under-served areas, but rural carriers also have indicated to me that they have postponed new competitive projects because of the uncertainty and the delay in FCC decisionmaking issues surrounding changes for competitive carriers.

Under your chairmanship, when do you think we can expect a decision on the access charge issue?

Mr. POWELL. Our goal, because of the annual tariff cycle, is to be able to have these provisions voted and implemented in time for the July 1 start of the tariff filing change, which would, as a prac-

tical matter, really require the Commission to be finished by May or June.

Mrs. CUBIN. Thank you. Again, going back to dealing with the impact that regulation has on small and medium-size carriers, are there any other measures that you might have under consideration to expedite deployment of services in rural America, that can be weighed against the responsibility for filling out forms and the cost of regulation on small companies?

Mr. POWELL. Well, I believe that—and I wouldn't enumerate them now—but that the Commission has started to become quite aggressive about the streamlining of regulatory processes and procedures, and with particular attention to small and rural carriers, understanding the greater burden that they face as opposed to some of the major incumbent carriers, and we continue to do that. We think that those represent significant cost to their operations, but the challenge is that a lot of it is for naught if States don't engage in a similar concomitant effort because the real bulk of regulation, candidly, on local phone companies comes from State regulatory authority and State telecom statutes, and not the Federal component of their operation. I mean, if we walked away from all of them tomorrow, they would not be unregulated in any way, shape or form. And so I think it is important to make your concerns equally aware to the State authorities because I think that is where most of the most significant obligations come from.

Mrs. CUBIN. You are absolutely correct, and lots of times I think those folks like to punt the responsibility or the blame, if you will, to us. So, I absolutely agree with you on that.

One last question. The Rural Independent Competitive Alliance filed an emergency petition in February 2000 regarding the nonpayment of access charges. It is now 14 months later so, the word "emergency" becomes an oxymoron at this point. But can you give the status of that petition?

Mr. POWELL. The petition implicates the access charge regime with CLEX, and we have an item on just that subject that will be, we hope, in parentis with the reciprocal compensation item, both of which will be on the floor for voting this week. The reciprocal compensation item—I hope I am not lying—is on the floor, as we speak, for voting, and as my colleagues make their decisions, we will be finished.

Mrs. CUBIN. Thank you very much, Mr. Chairman, and you, Mr. Chairman.

Mr. UPTON. Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman, and to Chairman Powell, welcome back. I believe this is your maiden voyage here at the committee. I welcome you and congratulate you on your appointment by the President to this prestigious position, and I look forward to working with you, and I think that you are off to a great start today before our committee.

I have three questions and I am going to ask them and leave the rest of the time for you to answer.

I know that you have been very supportive of new broadband wireless technologies, particularly those that have the promise of being low-cost and therefore being widely available to consumers, to educators, to health care professionals, amongst others.

One such technology is ultra-wideband, which I think really holds great promise. Based on recent reports from the NTIA and some ultra-wideband technology, saying that some ultra-wideband technologies may interfere with GPS-based public safety services and while there are other UWB technologies that present less of a concern on this interference, I would like to know what your view on the potential of the technology is, and also how we can best bring its benefits to the marketplace. That is my first question.

And very quickly, on the E-rate, I think that the committee heard testimony very recently—I thought it was an excellent hearing—on the benefits. It was really quite a panel of people that came from different parts of the country to talk about how so much of this has reached out into the community. And I would like to know how you plan to build on the successes of that program.

My congressional district is the home to Silicon Valley, and no matter what community I go into, they are eager to build on what we have already put in place, so I would like to hear some of your ideas about that.

And, also, I had offered a bill on E-911, after making the determination of some of really the horror cases that had taken place in our country. And as a result of that legislation and my continuing to remind Commissioners and the previous Chairman about that, it was taken up at the FCC, and I know that you are in Phase II. Is there a Phase III? Do you think Phase II is on time? Do you think that it can come in under time, you know, the time that is set?

I think that there are still too many people in the country that are waiting for the full promise. In fact, I think that the promise was made and kept a long time ago. So, if you could comment on those questions. Again, thank you for being here, and I look forward to working with you on behalf of the magnificent people I represent, but in a broader sense that we, in this new century, move telecommunication and all that we are jointly responsible for to truly make it shine, make America shine, and you will be key in that.

Mr. POWELL. Thank you. I would be happy to address your questions in turn. Ultra-wideband technology, we think, is exciting and promising. It is a truly unique technology that is able to operate over the top of other radio frequencies, but therein lies also its challenge. There is an enormous amount of significant anxiety about the degree to which it interferes with other services, particularly some critical services like GPS, which even implicates some of the things you, too, are concerned about like the use of those GPS frequencies for navigation and public safety purposes.

So, it is one of those classic technical questions, which is that I don't think there is any lack of enthusiasm for the technology, it has to do with the nitty-gritties of the technical interference.

We presently have before us many technical studies that attempt to reconcile UWB interference both with GPS and, as you mentioned, with other services, and from very reputable sources. We are in the midst of digesting those studies and evaluating what our next steps might be. We would love to proceed expeditiously with the next step, which would likely be a Report and Order, unless—

which is an important caveat—as we finish sorting through data, we find reasons to be of significant concern.

I think your question about whether you could split from GPS concerns about other frequencies if they had different characteristics might be possible depending on what the data actually reveal, whether that proposition is correct. But we will keep you informed, and I think that we will probably be moving pretty soon on some of those questions.

The E-rate program, which is set out in congressional statute, has been, as measured, truly successful. The last time I saw statistics, some 95 percent of public schools in America had some form of Internet access, and we have reached close to the 63-67 percent range for actual individual classrooms across the country. Certainly, if that alone is the objective, it has been tremendously successful.

I consider the Commission principally the steward and administer of Congress' program, and we will continue to administer it effectively so that it continues to have those results.

I also think we have a duty and obligation to be its diligent watcher for abuse, which I think could endanger the program. I mean, like with any large program, you will customarily run into incidents of people making abusive use of it, and we have, on occasion, and have treated those intrusions seriously and significantly. And I think it will be important to do so if we hope to continue to protect its purpose and its validity in any real measure.

Ms. ESHOO. I hope you will be a champion and not just a steward. It is important as the steward is and enforcer is, I think a champion—nothing takes the place of a champ.

Mr. POWELL. Well, I don't know if I'm a champ, but I will do my best.

Ms. ESHOO. I am inviting you to.

Mr. POWELL. E-911, I think, similar to the question that came up earlier, I think that we continue to be optimistic about meeting Phase II. We will very soon start to have a more appreciable understanding of whether that is true, as we get closer and industry more thoroughly reveals where they are, where they aren't. But I think for the moment we are pretty hopeful and optimistic that we will substantially get there with some of the caveats I alluded to earlier, which is there may rise public policy questions around privacy and around other issues that may have to be balanced against that objective as well. But I think we can certainly expect that Americans will very soon start to see and appreciate the benefits of those wonderful hand-held devices actually coming to their aid in a time of need.

Ms. ESHOO. Thank you, Mr. Chairman.

Mr. UPTON. Mrs. Wilson.

Mrs. WILSON. Thank you, Mr. Chairman. I want to join my colleagues in saying that I thought your testimony was refreshing and I think it will make a big change. I have to say that I think it was particularly thoughtful for a former Army officer, so I was very impressed.

Mr. POWELL. We are not so bad.

Mrs. WILSON. A few questions on some things that I think are kind of important to New Mexicans as well as to the country. I

have been kind of watching local competition and thinking about why things work in some places and why they don't work in others. And I would be interested in your thoughts about why local residential competition seems to be working in a handful of States, like Michigan, Illinois, Pennsylvania, and what decisions were made there that weren't made in most other States?

Mr. POWELL. It is a very hard question mostly because there are certainly two regulatory environments that can affect that decision. In the context of, say, Michigan, of the regulatory environment and the telecommunications statutory environment in that jurisdiction may have a lot to do with the ease of entry or the regulatory cost. Or the rights of everything from rights-of-way, to whether you are able to dig up streets without opposition, to whether you are able to access incumbent networks at different prices. States have varying prices on which many services can be offered by a competing incumbent. Some States are more aggressive about that than others. And so there is a real difference in the regulatory and political environments in different locations.

There is also what I was alluding to before, real differences in the economic viability of certain models. Residential customers are always going to be the hardest, and the simple reason is their rates across the country, due to our historical commitment to universal service and the subsidization of local rates, are largely at or below cost in many parts of the country. And so an entrant who has to make major capital investments is often wary or last to offer a competitive alternative to compete for mostly high-volume, low-margin service. You have to have a whole lot of customers to make low-margin individual customers work for you economically. And when you are going up against an incumbent—and that is a lot of growth to achieve—it is either a slow process or, in some instances, probably difficult or impossible process. So, those are some of the reasons.

It is also why I think that we ought to be very thoughtful and creative about universal service going forward. Not because the goals are unassailable but because we should understand that if we can achieve ubiquity and affordability without similar intervention, or at least the same sort of thing, we might preserve more economic rationality in advanced services so that they stay competitive.

If $10 a month flat service can be achieved in a competitive market without subsidization, or you might achieve a $7 price with subsidization and below-cost aid, you might take the former as better maximizing the welfare of both those consumers, and consumers across the country, because people will be able to viably compete for those services.

There is an interesting example in the Internet Space National Research Council recently reported that 90 percent of Americans now have at least access to narrow-band Internet service, with 10 competing ISPs or more. There are some indirect benefits that ISPs have that could be called subsidies, but they have not yet received any direct subsidization, yet we have a very aggressive ISP competitive environment. For most of us, ISP service is an enormous deal as compared to the cost of even my local phone bill.

And so I am always cautious and careful about, yes, let us pursue the goals, but let us try to do it this time, as much as we can, by preserving competitive and economic rationality so we won't have to do this 30 years from now—arguing why local broadband competition didn't work in your State either.

Mrs. WILSON. Let me follow up on that, if I can, and you have said it a couple of times in answers to questions, and you also say it in your testimony, about the importance of ubiquity and affordability as principles in pursuing universal service, and that we should do that in creative ways.

Color outside the lines with me here a little bit. What are the creative ways that you are thinking about? Does that mean just no regulation? I mean, what does it mean?

Mr. POWELL. Not necessarily. I mean, I am still creating, so I don't have my Crayola with me.

Mrs. WILSON. You can borrow mine.

Mr. POWELL. I would say, we have very significant differences as we move to advance infrastructures in broadband than we did from the original phone experience. Broadband is going to be built on top of infrastructures that are largely already deployed. That is, telephone service reaches over 90 percent of homes in America, or 94 percent. Cable is even higher in its reach of homes in America. Those are the leading broadband infrastructures. We will not start from scratch in laying out those infrastructures, we will overlay on top of them to provide advance services. That provides a huge cost advantage.

So, you might look at policies designed to incent systematic upgrade, as opposed to the advancement of policies that were originally designed for the building from scratch and preservation of that model.

Technology also is our huge friend in this regard. As I think members from rural States have already realized, the challenge of the phone system was that it was a ground-based wire infrastructure that required enormous geographic sensitivity and demographic sensitivity. If you are in a rural area of Montana 600 miles apart, that is a lot of wire for a relatively few number of customers. But we are starting to see technological solutions that may be agnostic about some of those things, which is why I think that there is reason to be excited about satellite-delivered services, and we should, at a minimum, be looking for policies that incent the continued innovation deployment of those services as a universal service policy.

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Mrs. WILSON. Thank you. One final question, since I didn't use my opening statement time. You talked about the efficient use of spectrum, and that is very important in rural New Mexico, particularly the east side where places like the Lee County telephone system is in the mobile market for Dallas, Texas. They can't compete to get any part of that spectrum for their some very, very rural customers, but they can't get them to subdivide it either. And you can put a lot more in the bowl if the marbles that you are putting in are smaller, if you see what I mean.

Do you envision any kind of effort to yield on encumbered spectrum, or to kind of use-it-or-lose-it with respect to spectrum in different parts of the western geography?

Mr. POWELL. I don't know if I have examples specifically for the western geography, but we do have any number of policies and licensing requirements that are designed to ensure that you use—it-or-lose-it. We often have build-out benchmarks. We have payment obligations. We have other service rules that say, you know, if certain things don't happen by a certain time, other things will happen. For example, particularly in the satellite context, there is a whole series of buildout and construction milestones and, when they are not met, you have often forfeited your license so that we can auction it again.

The point you are making is one that we have started to realize is an absolutely critical one, which is the Government has to have a way to quickly recover and get back out the spectrum that gets encumbered or fails for a given reason. And it is one of the reasons the Commission is being quite aggressive about protecting its right to revoke rights to use spectrum when we believe that it is no longer being used productively and we can make better use of it. I think we are going to have to start looking at that a lot harder, or we are going to have to look at ways to create a very different kind of allocation scheme that provides free or floating flexibility so that uses can be adapted and changed easier than they are now.

Mrs. WILSON. Thank you, and thank you, Mr. Chairman, for your endurance.

Mr. POWELL. That is quite all right. That is the Army officer part.

Mr. UPTON. Mr. Rush.

Mr. RUSH. Thank you, Mr. Chairman.

Chairman Powell, first of all, I congratulate you on your recent appointment as Chairman of the FCC. I look forward to working with you on issues as relates to telecommunications during this tenure. And I am also pleased to hear that you envision a Federal Communications Commission that will operate in an efficient and expeditious manner and faithfully that it will implement the Telecommunications Act of 1996.

As you know, one of the issues that I am critically concerned about is the E-rate and, under the administration of your predecessor, this came under some pretty vicious attack by individuals both inside of the House of Representatives and outside of the

House of Representatives, and I have noted you have stated—well, let me just ask the question, if you would restate it here. You might have stated it in previous testimony. What is your position on the E-rate?

Mr. POWELL. Interestingly enough, my position as a regulator is to do exactly what Congress has instructed me to do with regard to it, and I intend to, and have always attempted to faithfully apply it as robustly as it is set out in the statute. And whether my view as a citizen is for it or against it, candidly, in my own mind, is absolutely irrelevant. Now, even that said, I will offer it partially.

I think there are enormous benefits of technology to our children and to our schools, and that is a legitimate focus of Government attention. We can debate honestly and above-board how much, how fast, which pieces and which parts, which I think we do and probably will continue to do. But I think the objective and the purpose is absolutely worthy. And I believe that my role as a Government official is not what my social view is about the legitimacy of that kind of activity versus another, rather it is to administer Section 254, which carefully instructs me. The program is in place, it is operating, it will continue to operate, and any debates or decisions about where it belongs or doesn't belong are way above my pay grade to which I don't really participate.

Mr. RUSH. You have made a lot of headlines recently in your comments referring to a "Mercedes divide" as opposed to a "digital divide". Can you explain, what is a Mercedes divide?

Mr. POWELL. I am glad someone asked this question finally. It gives me an opportunity to correct what I think is a widely held misperception of what I said and didn't say. If you will indulge me, it will take a second.

The first thing, in response to a question about the digital divide, you have to worry about when you are in my position is, "what do you mean by it?" The term is extraordinarily broad. It involves everything from notions of social justice to gaps in computer deployment to infrastructure to educational curriculum.

One of the first points I was making is that it involves many of those components, only a handful of them directly implicate my responsibilities, and I need to be careful about what you are referring to here.

The second point I was making is that we need to recognize that any new technology, any new product or service, in its infancy will tend to be adopted earlier by some communities than others. For example, it wouldn't be surprising to find that as we go through the digital TV transition that as we speak $3,000 television sets are only being purchased by people I would call "the Haves". They are also buying probably the more inferior product, but those early purchases help drive down the cost-of-service and increase the reliability of the sets so that as it becomes a mass market product it is actually cheaper and more reliable than it was at its early adoption.

My only caution was that many of the broadband and advanced technological products are in that early phase, and that "snapshotting" and telling me there is a gap or a divide isn't, in and of itself, in my opinion, an answer or even a basis on which

I need to understand what needs to be done because the gap itself is not particularly remarkable.

Now, that is not to express a lack of empathy or commitment to the objective. My view is to be rigorous about it, which is to say, "Don't tell me about gaps, but let us push through and specifically focus on what you are talking about, what are the problems. And then discuss whether there is an efficient solution to it, first, by market forces and, alternatively, by Government forces." I will be the first person to implement and execute a program that is carefully focused to market failure or an unacceptable level of lack of ubiquity and affordability, but my caution was that, in my experience with product service and economics, that the gap itself isn't a good basis on which to build a solution. You have to pierce through that and find out where the breakdowns are.

The regrettable comment about Mercedes—because I think it wrongly implies that I was suggesting luxury—was not that at all. My point merely was that many technologies, in their early period, were perceived as going to dramatically damage or create inequities, including the automobile at the turn of the century. And my point was that, over time, the automobile would be deployed in a manner such that the critical functionality of the automobile i.e., mobility is widely available to Americans. Not everyone will own the highest and best version of that product in a capital economy. I mean, there are people who drive the best models, and some of us will drive less expensive cars, but the functionality of transportation and the critical way that it reorders and helps our lives, is pretty widely available. And my only view was don't count markets out too early in their ability to incent ubiquitous and affordable deployment.

And, finally, I said there was a danger that worries me just as much as the digital divide, which is making sure it is built at all—that is, as the patent laws recognize, and other intellectual property and copyright laws recognize, a capitalist is not going to invest heavy in infrastructure, build and deploy services, if he believes the minute he does so he will be required to deploy immediately in a ubiquitous way that is not economically viable. And I said, I want to make sure that we are all not "Have-nots," so that we preserve enough of the incentives to invent and deploy so that these exciting products and services will actually come into the homes of Americans.

It really is important to note that most of us are "Have-nots" in broadband world. And we should absolutely be driving to closing any divides that persist. But I do think—it is back to my Crayola creative point—we should be very rigorous and focused on where our attention is needed as opposed to just kind of lingering around the idea of the gap.

Mr. RUSH. Do you agree that technology, information technology is changing so rapidly that if we waited for the markets necessary to correct the problems, that some people would just be so far behind that they would not be able to catch up because the technology changes so rapidly?

Mr. POWELL. Well, the technology does change rapidly, but speed and rapidity are also one of the reasons for being hopeful about what we all want to achieve. If you compare the deployment of nar-

row-band Internet first and broadband Internet second, it is one of the most remarkable paces of distribution in the history of any technology. I have looked at the figures on telephone, television, electricity, many of the services which are considered indispensable today, and none of them are even close to the pace of penetration that we are finding with narrow-band and broadband technology. Broadband in terms of advanced speeds really didn't even arrive until 1998. Six percent of the entire country today is subscribing to this service. If you look at phones, it took 27 years to reach 10 percent penetration, 70 years to reach 50 percent, and I could tell a similar story about television broadcasting. This is all not to pooh-pooh—and I really want to emphasize the criticality that these services may play in our lives—only to suggest that we are riding a tiger that is exhibiting a lot of extraordinary characteristics, one of which that I am hopeful about is that it is racing its way around the country.

Now, you are right, I don't deny the existence of gaps along economic conditions, and you will find some correlations in urban and rural areas, but, surprisingly, many of the inequities that are assumed aren't actually accurate. But if we identify incumbencies or breakdowns in its natural evolution, I would be the first there to execute a tailored solution to fixing that.

Mr. RUSH. Thank you, Mr. Chairman.

Mr. UPTON. Thank you.

Mr. Terry.

Mr. TERRY. Thank you, Chairman Upton. Chairman Powell, your statement focused on, I think, a philosophy of reform, where you talk about vision statements, structural reforms, enforcement type reforms. Can you present to us today how much of the elements of reform that you envision are a matter of legislation—and I mean it in both the positive and negative way—legislation that would be required to enable your vision of reforms, in current legislation, that perhaps blocks, prevents, or perhaps makes difficult some of the reforms where you allow apples to compete against apples, where the current regulation and laws are barriers to that, as opposed to other elements of reform that are strictly management or dollars?

Mr. POWELL. Yes.

Mr. TERRY. You have 5 minutes.

Mr. POWELL. I will need an hour for that. In the development of our approach, we will absolutely and specifically identify where that is the case. I can tell you that in almost each of those dimensions I outlined, there will probably be a legislative component. For example, if you talk about the enforcement, if we are serious about the ability to really make a difference to enforcement, then we need to look at our penalty regime penalties—our penalties are set by statute and probably haven't been revised since 1934. If you are talking about the statute of limitations, that is a statute that we couldn't modify without congressional action. There are probably other substantive policy areas where there is some dimension of internal reform, but there also are dimensions of legislative reform because things that are curtailed in the statute are implicated. All of it takes money, which only comes from the Congress. And the organizational changes and structures often have to, by law, be ap-

proved congressionally both through the appropriation process and other processes.

So, there is no way you are off the hook, I don't think——

Mr. TERRY. Don't want to be.

Mr. POWELL. [continuing] and we will try to, in working with you, carefully try to align the mutual objectives and, candidly, I will try to assume as much of the problem and responsibility as I can consistent with the statute, and if there are areas where that is not going to work but I think the goal is still worthy, I will have to come back to this subcommittee and the Congress.

Mr. TERRY. I think, for consumer sake, we need to reform especially structural regulatory aspects, so I will be glad to work with you in that respect.

One area the gentleman from Illinois, Mr. Shimkus, had brought up a point, obviously, differences of opinions amongst them, but one theme that is consistent is a backlog. As you said during your statement, if you want that, you need the approval, if you want this, you need the approval, but yet it is taking an extraordinarily long time and there is a backup. Is there an immediate plan that you have thought of or written to clear this backlog and to assure the finality? Is there a plan in place, and what is it?

Mr. POWELL. There is a plan and directive in place, one which was in place the minute we arrived. The backlog situations vary from bureau-to-bureau. The reasons vary from issue-to-issue. But I think my bureaus would back me up, that they have been pointedly and aggressively directed to attack the backlog and from very early on work on a plan of operations to eliminate them.

This issue became serious over a year ago, and I think many of the most heinous ones were eliminated, like the backlogs in the Wireless Telecommunication Bureau and others, and we have already begun to take actions on them. There were a substantial number of radio license transfer applications that had been sitting, many of which for 2 and 3 years, and we challenged ourselves that we either had a policy and a process for their disposition that was able to effectuate the purpose, or they were out of here. And I think we released 75 percent of them on the same day. We are rapidly working through the remainder consistent with our policy obligations. But one of my favorite phrases is, "inaction and avoidance are not legitimate government policies," I don't care what the original reason for hesitation was, and I take moral responsibility that if I can't figure out what to do, then you are done. I need a reasonable amount of time to figure out if I don't know what to do, but we really have to be guided by that fundamental principle, and we do have very strict management guidelines that we are working under and that are in place for backlog.

Mr. UPTON. Thank you, Mr. Terry. Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman. Welcome, Mr. Chairman. I note only four States have been approved so far for Section 271 entry. The Act is in place for 5 years. Is it possible, Mr. Chairman, that local markets in every other State are not open to competitors who choose to enter?

Mr. POWELL. I doubt that is possible. We certainly are prepared to receive 271 applications from any State, from any company that is prepared to make the case that its markets are open. As you are

well aware, we can act only when we are given an application, but I am excited at the prospects that we will see an increase in that this year.

Mr. DINGELL. I think your presence in the chair might have a useful impact on that set of events. However, is it possible, though, that companies choose not to enter, or have chosen not to enter up until now?

Mr. POWELL. Well, certainly.

Mr. DINGELL. Would that reason be the conditions that have been imposed by the Commission on entry, which go well beyond the authority of the Commission in connection with those matters, and is it possible that the companies chose not to enter because of the enormous profusion of paper that they had to submit to the Commission—in some instance, stacks this high from the floor—and the fact that it took so long and so much money for those events to come to ripeness? Is that a possibility, Mr. Chairman?

Mr. POWELL. I think it is fair to say it is possible that those things would have dissuaded decisions to apply for entry, sure.

Mr. DINGELL. It would have most assuredly dissuaded me. I am not going to ask you to tell me whether it would have dissuaded you, but you are a very sensible fellow, too, Mr. Chairman.

Is there something in the offing that the Commission could do to streamline the 271 process—for example, dealing more expeditiously with the application, addressing the questions that might be raised by the State Commissions, or that are raised by the Department of Justice, which have led to some rather prolonged and prolix discussions between those Agencies and the Commission and the applicants?

Mr. POWELL. Yes, I think there are certainly any number of things that could be done, one of which I will just put under the banner of "collaborative approach," which we were talking about earlier. That is prior to the filing of application we try to be available and be out in the States and with companies to make sure that they are preparing applications in a manner that would increase their probability of succeeding, but being careful not to commit to prejudge the merits of their submission, which we have started to do significantly more than we have in the past.

I do think that we are constrained by a 90-day clock, which means we need to have ranges of reasonableness in which we can't completely and totally de novo review certain specifics, but can start to review more carefully whether the fundamentals of the provision are provided for and that there is a range of reasonableness that if you are within we won't necessarily second-guess the absolute specifics of the representation.

And I also think, finally, there is always an issue of data timeliness, which has been a problem with the 90-day clock. Candidly, in my own view, I would have preferred a provision that would have allowed me to extend the 90 days by maybe——

Mr. DINGELL. I was about to ask is there something this committee could do, and perhaps, for the record, you could submit to us something that we could do on that matter. I don't want to make you do that at this particular time, Mr. Chairman.

I am curious about this situation. The law requires you to consult with the State agencies. The law requires you to consult with

the Department of Justice—and I emphasize the word "consult." I am curious, what broad, sweeping powers does this confer either on the Department of Justice or upon the State agencies? In your view, what does "consultation" mean? Your predecessor had the quaint idea that it afforded them the right to literally dictate terms to the Commission. I always thought that was a rather curious interpretation of the word "consultation."

Mr. POWELL. My view is that "consultation" means, principally, that those two institutions are afforded the opportunity to file in the proceeding and offer their learned recommendation as to the outcome. I would have to note, to be fair, that the Department of Justice and in their view, at least in statute, is supposed to be afforded substantial weight.

Mr. DINGELL. And I applaud that, but that doesn't give them the power to dictate or to prolong the process, does it?

Mr. POWELL. No, it certainly doesn't, and we have recently often taken directions contrary to their recommendation.

Mr. DINGELL. And I am delighted to hear that. I would hope that there is somebody here from the Department of Justice so that they can hear this more sensible interpretation of the statute, and it bodes, I would observe, Mr. Chairman, a great deal of good.

Now, I note that the statute makes it clear that the FCC has the responsibility to avoid mutual exclusivity in licensing and thereby avoid auctions when possible through the use of spectrum-sharing and other engineering methods. Am I correct in my interpretation of that matter?

Mr. POWELL. I believe so, under 309.

Mr. DINGELL. I would note, however, that Congress has expressed a preference for non-exclusive uses of the spectrum. I would not also that in many instances the FCC has taken an opposite course. It has actually sought to create mutual exclusivity so that applicants would be forced to go to auction. I feel this is an unwise thing. Do you have a comment that you would feel would be appropriate on this matter?

Mr. POWELL. Congressman, I am not sure of the specifics, but I certainly would, as a principle, say that it shouldn't be our business to create a situation that would command an auction if it wasn't otherwise presented.

Mr. DINGELL. Perhaps, Mr. Chairman, you would like to give us a comment on the matter after you have had a chance to review it in greater detail.

Mr. POWELL. Certainly.

Mr. DINGELL. I would note that mutual exclusivity in the use of the spectrum hardly confers confidence, on me at least, that the best and the highest use, and the wisest and the broadest use of the spectrum is being done under the leadership of the FCC. Am I correct or incorrect in that appreciation?

Mr. POWELL. I am not so sure I follow, can you state it again?

Mr. DINGELL. I will tell you, it was so involved that I am afraid I can't do it again. I think we will submit you a little letter on that and, if, Mr. Chairman, you would allow that to go in the record, I would appreciate it.

Mr. UPTON. We are going to allow all members to do that.

Mr. DINGELL. One further thought. I note that on two occasions, the FCC has proceeded to complete Section 271 applications, and in those 271 applications in Texas and New York—and our Chairman has commented on this matter—the result was that AT&T has moved to enter the long distance market—rather, to enter the local market, and that we now have increased competition both in long distance and in the local market, and the costs have fallen in both places. Am I correct in that appreciation, does there appear to be some connection between those events?

Mr. POWELL. I would think that there is a connection. The ability to respond competitively into your core service certainly is a very powerful incentive to own competing on that competitor's home turf. I think that was the fundamental congressional design, and I hope that the mutual competitive obligations would create incentives for each to be in each other's market. I don't think it is particularly surprising that the most prominent competitive entry are places where those competitors have either entered or are prepared to file for entry.

Mr. DINGELL. I am delighted to hear your comment, Mr. Chairman. I would like to address, in continuation of some earlier questions, the NorthPoint case. This is a matter now pending before the Commission, and I am going to respect your desire to comment or not comment, as the proprieties might dictate to you.

I would observe that if mutual exclusivity enters into this matter, would that be an important consideration for the Commission because, very truthfully, we need to be sure that interference testing is done and that all of these things take place, but that we also see that the matter moves speedily and that there is a need both to assure that we are not going to have a wave of new interference put into the spectrum, but at the same time we are not going to try to have exclusive use of the spectrum where none is required.

Now, again, Mr. Chairman, I am not trying to place you into a bad spot to comment on something that you feel you should not, but to the degree you can, would you give me your thoughts on this matter, please?

Mr. POWELL. Yes. I am limited in what I can say, but I would say that certainly mutual exclusivity is a very important component of what will happen next because, if it fairly is said that, as you have mentioned, that the situation creates one of mutual exclusivity, the statute compels auctioning of the spectrum as opposed to any other alternative. So we do have to be careful with respect to how that question comes out.

Mr. DINGELL. Mr. Chairman, just one more question—I thank you for your kindness to me. I would note that the statute does discourage mutual exclusivity. It says the Commission "shall seek to avoid" that, and I would assume that accompanied with that would also be an effort to ensure that there would be minimal interference. Am I correct in those interpretations?

Mr. POWELL. I believe you are, yes.

Mr. DINGELL. Mr. Chairman, you have been most gracious, thank you.

Mr. UPTON. Mr. Fossella.

Mr. FOSSELLA. Thank you, Mr. Chairman. Mr. Chairman, welcome. Congratulations and best of luck.

Following up on all the talk about reform—and I guess a better word would probably be "improvement"—how would you see—let us call it the "cultural change"—that would need to occur at the FCC, given since its creation and the basis for its creation was to regulate, for the most part, monopolies. Now we are in an environment—hopefully a more pro-competitive environment—to shift the focus overall—not to take anything away from the good, hard-working individuals at the FCC, but how do you shift that focus to one of a regulating monopoly approach to one of establishing parameters to allow competition to flourish along service and along—instead of the way the current law applies?

Mr. POWELL. I think that is a good question. Cultural change, in any organization, is a challenge. I would submit our challenge is similar to those being faced by many incumbent carriers who also find themselves dealing with the cultural challenges of becoming more entrepreneurial innovative, responsive, and effective. So, our challenge is similar.

I think it starts with leadership. It is what I am trying to do at a personal level, in those people in whom I entrust leadership responsibilities and in the personnel that we hire. I also think that you don't push cultural change on people, you demonstrate the rightness of the changes you are suggesting. And I think that our efforts at training and development and giving employees and professionals an opportunity to see the dimensions of their decisions, to have an opportunity to learn from what has been developed both in scholarship and out in the real world of companies and markets, that people will begin to see the impact of their decisions and have a better feel for and understanding what is different and what is not just the same.

I think it is a natural human impulse to go with what you know until you know something else. And I think that the whole emphasis on training, development, technology, interaction, and customer focus, all of those things are designed to lay out before our talented staff of employees (a) the impact of their decisions, and (b) the learning that can influence how they are made. And ultimately they will be willing to get with the program. I am also a person who understands some people, will never get with the program, and they will not continue to have those responsibilities if they can't.

Mr. FOSSELLA. Good luck on that front. Finally, you mentioned in your statement you will be shifting again the Agency focus from "permissive regulations to strong and effective enforcement of truly necessary ones". And you state that Congress' assistance in putting real teeth in your enforcement efforts is necessary. Could you elaborate on the point, and does the current law provide you with enough enforcement authority, in your opinion?

Mr. POWELL. Yes, I think we mentioned a couple of times, I think that we have a sufficient amount of authority that was used last year to create the Enforcement Bureau. I think that we have people in place, I think we have policies in place, but I do think that we probably will need a greater focus on what are the full range of tools we will need, and many of those tools, in my opinion, are going to have to be developed in conjunction with Congress. And I have already mentioned the need for reassessing the penalties

that we are able to impose. If you impose a $75,000 fine on a company that has net revenues in the millions and billions, that fine is just a cost of doing business. They will pay that, as opposed to actually be deterred of the activity.

I also believe that if you are believer in markets and you are a believer in less prophylactic regulation, you can't throw the public interest in the toilet for laissez-faire purposes. You have to be prepared to demonstrate that you are sincere that in allowing the additional flexibility in markets, that you will also try to act effectively and efficiently and swiftly to police them when the very rules that are in place are flaunted. And I think that that is absolutely critical to an integrated policy. And I would love to come back and talk to the subcommittee, formally or informally, about a more comprehensive program and what we might need to do it.

Mr. FOSSELLA. Thank you. I yield back. Best of luck.

Mr. UPTON. Thank you. As you know, we have votes on now. We are going to take a brief recess. Mr. Pickering has gone over to vote. He is going to come back. He is going to take the gavel. He will do his questions, and I will come back and probably close because we will have another vote after this one, in about 15 minutes. So, we will take about a 7-minute break before Mr. Pickering is back.

[Brief recess.]

Mr. UPTON. We will get started again, as we are expecting a vote in about 10 minutes. It could be a little bit less than that.

I would just note, before I yield to my friend and colleague, Mr. Pickering, that despite giving him about a 4- or 5-minute head start to the floor, the Big Ten beats the SEC again. So, with that, I yield to my friend from Mississippi, Mr. Pickering.

Mr. PICKERING. Mr. Chairman, thank you. We are looking for redemption for the SEC as well as all other things as we approach Easter, a time of renewal.

Mr. Chairman, speaking of renewal, I believe, under your leadership, the FCC will experience that, and I just have a few questions. I appreciate you being patient as we broke for a vote.

A number of things that are before you that are of interest to me—I know many of these questions have already been covered, so I will be as quick as possible. One in which I have an individual and particular interest is the FCC rulemaking process and implementation of the Children's Internet Protection Act that was a part of the Appropriation Bill last year.

Tell me, what is the status of that and the Commission's plans of implementation? Do you expect any delays? If so, why?

Mr. POWELL. I at present don't expect any delays. I think we are in the process of implementation. I regret that I don't have, as I sit here, specific timeframes for it. We would certainly be happy to get back with you on that, but I think that—they are handing me a note—April 20.

Mr. PICKERING. That will be when the rulemaking will be final and implementation will begin, April 20?

Mr. POWELL. Well, let us ask the note-hander.

Implementation by April 20.

Mr. PICKERING. Thank you very much. And may the record show that the FCC is meeting its statutory deadline in a very efficient and effective way.

As you also know, I have a merger bill that I introduced in the last Congress, and hope to do again this Congress, and I look forward to your comments and input as we go forward in that process. FCC reform is going to be important to this committee and to the Commission, and look forward to working with you on that.

I know others have mentioned 3G spectrum, and I know that you are between a rock and a hard place, between the choices that we have—or maybe it is better said that Congress is between a rock and a hard place in giving the policy direction as to where we go with 3G between the various options—but your technical counsel and advice and help will be greatly appreciated as we go forward in that debate.

Let me, finally, conclude with some questions about where we are now in telecommunications policy in the 1996 Act and your sense of what should or could be done to accomplish the objectives that we all wanted and tried to achieve in the 1996 Act.

As you know, it was with the intent of having full competition in every market, and the full convergence of voice/video/data services and applications. Five years after the Act, both sides would say that there is not enough competition in the local market. The other side would say that the 271 process for entry into long distance and other services has been too cumbersome or too long. But much of that battle over 5 years was in the regulatory process and then before the courts, and now that the FCC is poised to implement the Act and to see a number of 271s come in this year as more and more States see the competition coming, would you counsel or advise revisiting, revising, reforming the 1996 Act, or in this time of economic uncertainty, especially in the tech sector, is this the time to stay the course and to have the regulatory certainty and stability?

Mr. POWELL. I think my advice, such that it is worth anything, is that I think that any sort of wholesale rewriting, to my mind, is ill-advised unless you are very clear as to what it is you think you are going to replace it with.

The legal environment, which includes the statute and regulatory environment, are critical components of the stabilization of evolving markets, and we are as much a contributor to risk and capital risk as anybody else. And I believe that it has taken us a long time to get where we are, longer than any of us wanted. On the other hand, I think some of that might have been more fully anticipated—the legal challenges, uncertainty, ambiguity and all of the new things we learn in the marketplace as we go along—but for the most part we have become comfortable—we sort of know the rules of the game. And, yes, there are rough spots. There are things that were unanticipated, but I do believe that most of those things are things that can be worked on incrementally as opposed to the idea that we know what we would replace the 1996 statute with.

Personally I am one who chalks it as a success. I mean, I think it has unleashed more than we are prepared to credit it with, and I think that the success of what it undertook is measured much

more than, say, the 271 in-or-out question, the statute is much bigger and broader than that. And I think many of the incentives it introduced have had farther-reaching implications than simply that question.

So, certainly, it is the prerogative of Congress to want a different regime, but I would only advise that it would want to be awfully clear about what it was it was intending to replace it with. Otherwise, I think it is the same open, bizarre battle of trying to gain competitive advantage through law. It is very difficult to harness and control once you sort of open up the box again.

I think there probably will come a day when the technology just will not neatly fit within the context of the statute and the rules, and more wholesale changes will probably be made. I guess, in my own personal opinion, that day isn't today.

Mr. PICKERING. Let me just have one other follow-up question. Given the context of the market and the capital flows right now in the tech and telecom sector, and especially with the emerging competitors, would dramatic policy change possibly further destabilize and possibly harm emerging competition?

Mr. POWELL. You know, there is a little bit of a hypothetical in your question. I think that, again, if you focus on capital markets particularly, you would have to say it could. I think a big part of the focus would depend on how the capital markets viewed your decision to do so. They will handicap anything you do, and make judgments about who they think are the winners and losers and, depending on how they perceive it, you certainly could tip the balance, at least for the time being, in one favor or the other, or in ways that might have unintended consequences.

One of the things that is fascinating about the telecom policy is it has for so long been built around monopolies and oligopolies, many of which we sanctioned. When we introduce competition, we also need to advance our understanding of the things that go into the entry of markets, including capital flows and investments. Many of these things were not a paramount consideration when a monopoly could just slush it from one financial bucket to the other. Now it has very serious competitive consequences. And as so many members today have said, there is something worse than the wrong answer, it is no answer of uncertainty. And I think the time and process of establishing a completely new regulatory environment or completely new statute creates that kind of worry and ambiguity that you would want to very seriously address.

Mr. PICKERING. Thank you, Mr. Chairman, and I also want to thank you for earlier in the hearing saying that you plan to move forward with recip comp. I believe that is a needed action as well. Thank you for the new spirit that you bring to the Commission, and we look forward to working with you. Mr. Chairman, thank you.

Mr. UPTON. Thank you. Chairman Powell, I have talked to a couple of members on that last vote. We are all in agreement, bipartisan. I don't think we have had a more impressive—I know we haven't had a more impressive witness this year, and will probably not for sometime to come. We appreciate all the homework that you have done, your wonderful grasp of the issues, and certainly I look toward our cooperating in every which way to make sure that, in

fact, we move this country forward to eliminate barriers and ensure affordability and access for all Americans, working with the cutting edge technologies that we know are before us.

I do know that for those members who are not here now, a number of us would like to submit further questions. We will do that within a couple of days, and if you can respond in appropriate fashion at some point in the near future, that would be terrific. We look forward to working with you as we move ahead. Thank you very much.

We stand adjourned.

[Whereupon, at 2 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 15, 2001

The Honorable Fred Upton
Chairman
Subcommittee on Telecommunications
and the Internet
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton:

This letter transmits my written responses to the Majority Members' post-hearing questions in connection with my March 29, 2001 appearance before the Subcommittee on Telecommunications and the Internet.

Thank you for the opportunity to respond to the issues and concerns in which you and other members of the Subcommittee are interested.

Sincerely,

Michael K. Powell
Chairman

enclosure

cc: The Honorable W.J. ("Billy") Tauzin
The Honorable John D. Dingell
The Honorable Edward J. Markey

Post-Hearing Questions From The Majority Members
For Michael K. Powell, Chairman, Federal Communications Commission

Question for the Record Submitted by Representative Fred Upton

The public safety (PS) community, through the Public Safety Wireless Advisory Committee (PSWAC), previously prepared an analysis of their spectrum needs through the year 2010. The PSWAC Report concluded that 95 MHz of additional spectrum was needed in order for PS agencies to be able to implement broadband communications services. In 1997, the FCC, at the direction of Congress, allocated 24 MHz to PS in the 700 MHz band. The Commission is now considering how to allocate 50 MHz of spectrum at 4.9 GHz. The PS community requested that spectrum because it would enable them to take advantage of the technologies being developed at 5 GHz for the commercial services. Yet the Commission dismissed their request in its notice of proposed rulemaking. What can be done to accommodate their need for airwaves and communications technologies?

As you mentioned, at the direction of Congress, in 1998 the Commission designated 24 megahertz of spectrum in the 700 MHz band for exclusive public safety use. Specifically, the Commission designated the 764-776 MHz and 794-806 MHz bands for exclusive public safety use. In addition, the Commission has adopted rules to govern licensing and operations for public safety use in those bands. This designation of 24 megahertz of spectrum in the 700 MHz band for exclusive public safety use is the largest assignment ever made for public safety communications, approximately doubling the amount of spectrum available nationally for state and local public safety communications.

The band plan adopted for this public safety spectrum was specifically devised to accommodate a variety of operational modes (*e.g.*, voice, data, image/high speed data, and video) and was crafted to be flexible enough to allow deployment of the technologies of tomorrow. As recommended by some of the commenters in that proceeding, the band is divided into separate segments for narrowband and wideband communications. In addition, approximately 53 percent of the band is designated for general (*i.e.*, local, regional or state) use. The Commission recently adopted technical and operational rules to promote nationwide and regional interoperability in the public safety 700 MHz band, in an effort to speed development and deployment of public safety equipment and technology in that band.

In February 2000, the Commission initiated a rulemaking proposing to make the 4.9 GHz band, a government transfer band, available for commercial use. As you noted, members of the public safety community expressed interest in having this band, too, set aside for exclusive public safety use. In the 4.9 GHz Band Notice of Proposed Rulemaking ("NPRM"), the Commission tentatively concluded not to make such a designation, reasoning that the 24 megahertz of spectrum recently allocated for public safety use constituted a significant commitment of spectrum

that would serve public safety needs into the next century. The Commission specifically noted in the NPRM, however, that the 4.9 GHz band could be used for public safety purposes, consistent with the licensing plan ultimately adopted for the band, perhaps through agreements with commercial service providers or band managers.

Presently, the Commission is considering final licensing rules for the 4.9 GHz band, based on the record generated in response to the NPRM. In the record, members of the public safety community have again voiced their desire that some or all of this band be set aside for exclusive public safety use. Notwithstanding the tentative conclusion reached in the 4.9 GHz Band NPRM, we are continuing to evaluate how the public would best be served by allocating this spectrum.

In view of the many vital, life-saving services they perform, the Commission takes very seriously the spectrum needs of public safety agencies. For this reason, the Commission established the Public Safety National Coordination Committee (NCC), a Federal Advisory Committee intended to solicit input from the public safety community in the development of rules governing the 700 MHz band.

Additional Questions Submitted by Representative Tom Davis

(1) I understand you have stated that enforcement will be a hallmark of your chairmanship of the FCC. I have also been told that you believe the FCC may not have clear authority to enforce the market opening provisions of the Telecommunications Act of 1996. Can you explain this further?

The negotiation/arbitration system designed by Congress to open up the local telephone market lies at the heart of Congress's pro-competitive, deregulatory vision. Strong enforcement by the FCC and our state counterparts is essential to achieve the congressional goal of local competition. We at the FCC have been working hard to vigorously enforce the 1996 Act and will continue to do so. In my May 4, 2001 letter to various House and Senate leaders, I indicated that Congress could assist the FCC's enforcement efforts by, for example, increasing the statutory caps on monetary forfeitures and extending the statute of limitations on forfeiture proceedings.

Congress gave the FCC explicit enforcement authority over any "backsliding" by Bell Operating Companies granted authority under section 271 to enter the long distance market. With respect to section 251, Congress was not as explicit. Since 1996, the Commission has asserted authority to enforce the provisions of section 251. The BOCs challenged this assertion of authority and the 8th Circuit ruled in the BOCs' favor. The Supreme Court reversed, however, ruling that the issue of the scope of the Commission's authority to enforce section 251 was not ripe for review. In my May 4 letter I also indicated that Congress may want to clarify the Commission's jurisdictional and enforcement authority to better equip us to fulfill our enforcement mission.

(2) I'm very interested in the concerns that I have heard that despite the Act, there are still incentives for incumbents to discriminate in favor of themselves and against their competitors in providing access to their local facilities, especially the high-capacity loops used by competitors to provide high-speed data access. I understand that their service records are increasingly dismal in terms of meeting the provisioning dates to which they have committed in their tariffs and on documents known as firm order commitments. My understanding is that this situation affects not only CLECs, but any provider needing a local loop to get their services to customers.

Can you tell me what you think the FCC can do to improve this situation, and whether there would be increased incentives to perform poorly if permission to enter the interLATA data market were given?

As you acknowledge, the 1996 Act expressly requires that incumbents provide interconnection, network elements, services and other inputs to new entrants to enable those new entrants to compete effectively against the

incumbent. The Commission's rules and other actions implementing the Act have focused primarily on making the incumbent's provisioning of these inputs as efficient as possible. The Commission will have to remain vigilant with respect to these activities. In this regard, I have made strengthening our formal complaint, mediation and investigative activities a top priority, as these activities can ultimately serve as a deterrent to the types of activities that you mention.

As for the Commission's responsibility to review Bell Company applications to provide in-region, interLATA service, section 271 clearly contemplates that the effective provisioning that becomes the basis for approval of an application must be maintained. I believe that by being vigilant with respect to post-entry enforcement, and by maintaining the rigorous standard for approval outlined in our previous orders, the Commission can do much to deter Bell Companies from engaging in the poor performance you describe.

Additional Questions Submitted For The Record By Rep. Chip Pickering

1. Enormous delays exist in the FCC's process of reviewing new wireless equipment, oftentimes up to 3 months. What can be done to reduce these delays? Is it a process issue or a resource issue? What will it take to enable the FCC to offer a full review in 15 days? 30 days?

The Commission's Laboratory launched a major backlog reduction effort over the past year. The lab has reduced the backlog of pending applications from 700 to less than 250. At the same time, it has reduced the average speed of service from 55 days to 36 days. We are taking additional steps to further reduce this processing time such that all equipment authorization applications should be acted upon within 30 days. Examples of the types of activities underway include: hiring additional engineering staff, training existing staff, development of standardized test procedures, and expanding the scope of review by Telecommunications Certification Bodies (TCBs).

It would be extremely difficult to process equipment authorizations within 15 days. Fee payments not done electronically can take as long as 10-14 days. Applications should not be processed until the fee payment, which covers the cost of the authorization, can be verified. In addition, once an application has been filed, applicants can modify their application for up to five days. Under a 15-day scenario this would not be possible. A 15-day review cycle would also require a significant increase in dedicated processing staff, which could result in inefficient use of resources during periods with low numbers of applications.

It is my understanding that with some equipment and technologies, the FCC authorizes and utilizes Telecom Certification Bodies (TCBs) - basically private labs - to certify equipment. However, for wireless products, the TCBs are not yet fully authorized. What is the FCC's plan to get them authorized and certifying products so that the FCC is not a major obstacle to companies getting their innovative products in the marketplace?

TCBs were designated for the first time in June 2000. Although still in the early stages of developing and expanding the TCB program, TCBs already issue more than 60 percent of all equipment certifications. TCBs are not permitted to certify equipment for which no measurement procedure has been established. To date, no measurement procedure has been established for equipment that must demonstrate compliance with standards for RF safety. The Institute of Electrical and Electronics Engineers (IEEE) has been working to develop an industry measurement procedure for several years. However, it is not clear when this process will be completed. Accordingly, the FCC's OET will issue a measurement procedure for testing handheld products for compliance with the RF safety standards by the end of this month. OET will then arrange training on the new measurement procedure

for the TCBs. TCBs should be able to certify handheld products, such as cellular and PCS handsets, no later than October 1, 2001.

2. What action has the FCC taken to guarantee that Ka-band satellites will not be deployed prior to the ITU deadline so that the U.S. does not lose priority rights to these slots?

The International Bureau is working diligently to meet its commitment to issue licenses for geostationary-orbit (GSO) satellites in the second Ka-band processing round this summer. The licensing process is complicated by the fact that the number of CONUS locations requested (providing coverage of the contiguous United States) exceeds the number of locations available for assignment. Unlike the first-round by GSO applicants, which were able to reach an agreement regarding specific orbit assignments, the second-round orbital assignment GSO applicants could not agree to an orbit assignment plan. The staff is therefore working on an orbital assignment to create an appropriate balance between the requests of new entrants and those of applicants seeking to expand licensed first-round systems. To that end, the staff has developed an assignment approach that ensures all second-round GSO authorizations will be issued with ample time for the licensees to construct and launch their systems. For the majority of orbital locations, the ITU "bringing into use" date to protect the date priority of U.S. GSO ITU filings is June 2005. Because it generally takes two to three years to construct and launch a satellite, issuing licenses this summer will allow entities to meet the ITU dates without undue difficulty.

The International Bureau also plans to issue licenses for non-geostationary orbit (NGSO) Ka-band satellites in sufficient time for the licensees to meet the ITU dates applicable to these systems. Licensing the NGSO systems, however, is more difficult because we cannot accommodate all proposed systems in the available spectrum. Further, the NGSO applicants have been unable to reach a sharing agreement. Because the FCC does not have the authority to award licenses for global satellite systems, such as these, through a competitive bidding procedure, we will need to develop another selection mechanism through a notice and comment rulemaking proceeding. We plan to issue an NPRM later this year, with licenses to follow after a Report and Order is issued. Of course, if the NGSO applicants can reach an agreement that accommodates all proposed systems, we will be able to issue licenses sooner. NGSO systems, which are often comprised of twenty or more satellites, can meet the ITU "bringing into use" date by launching just a single satellite that operates on all frequency bands in the ITU filing. Consequently, we intend to issue licenses consistent with this process to allow NGSO licenses to meet the ITU dates for these systems.

3. Satellite services are inherently international. Frequencies are assigned at biennial world radio conferences, ITU regulations control the use of frequencies

and orbits, and satellite operators of various nationalities must coordinate and cooperate in using the frequency and orbit resources. Currently, the International Bureau administers and supervises this complex regulatory structure with considerable skill. I would not like to see their institutional knowledge and experience fragmented or jeopardized. How do you propose to maintain the core competence of this Bureau in any restructuring effort?

The Commission is reviewing its organizational structure to align our institution with the realities of a dynamic and converging marketplace and to ensure it is configured so as to allow us to best implement the mission of the agency. We are gathering information now on what changes are necessary to accomplish this goal. Any restructuring in the area of satellite services will be done to strengthen our core competency, recognizing the strong component of international licensing and policy in the satellite area.

4. How many residential customers in the U.S. are currently being served by competitive local service providers utilizing their own switch and individual analog voice lines? How many small business customers are currently being served by competitive local service providers utilizing their own switch and individual analog voice lines?

CLECs report to the FCC that they were providing about 6.7 million voice-grade local exchange service lines to residential and small business customers, considered as a single group, at the end of the year 2000. As defined by the Commission's data collection program, this group consists of customers that purchase fewer than four voice-grade lines from the reporting carrier. (The reported data do not distinguish between residential and small business lines.) We estimate that CLECs as a group supply their own switching for up to half of the total CLEC local exchange lines. If that percentage is applied to lines serving residential and small business customers, the estimated number of such lines utilizing CLEC switching would be approximately 3.4 million.

5. What do you believe is the local service entry vehicle that will bring competition in local service providers quickly to residential and small business consumers, especially those located in rural areas?

I do not believe that any one entry vehicle will bring competition to local service providers quickly, particularly in residential and small business markets located in rural areas. In some rural areas, depending on the topography, I believe that alternative technologies – such as satellite and wireless facilities – might be able to provide local telephone service in a more efficient and less-costly manner than traditional wireline facilities. In other areas, I believe that the unbundled network element platform (UNE-P) is an entry vehicle that can help bring local competition to residential and small business consumers.

Additional Questions Submitted by Congresswoman Karen McCarthy

1) In my home state of Missouri, Birch Telecom has used the unbundled network element platform (UNE-P) to provide local phone and broadband service. The ability to lease Southwestern Bell's switching facilities to serve residential and small business customers has allowed the company to grow since its creation four years ago. Does the FCC see the unbundled network element platform as a legitimate vehicle for providing competitive service to residential and small business customers? Could you please elaborate?

Yes. I believe that UNE-P is an entry vehicle that can help bring local competition to residential and small business consumers outside of our larger urban areas. As you may know, the issue of UNE-P availability is squarely before us in our reconsideration of our switching unbundling rules. This has proven to be a very difficult and contentious issue, but even most Bells agree that UNE-P should be available for serving residential customers everywhere. Carriers have also given us data showing that facilities-based competition to serve customers is much more prevalent in urban areas. With respect to small business customers, however, there is less agreement. Some carriers allege they will be impaired from serving small business customers if they do not have access to the UNE-P, while other carriers claim they are or can serve these customers using more of their own facilities.

2) Under the Commission's current rules, access to unbundled switching and thus UNE-P is severely limited in the top 50 major metropolitan markets and the FCC has before it proposals to eliminate access to unbundled switching entirely in those areas. Does the Commission have any data that suggest that new competitors will be able to continue to serve smaller and rural markets if they do not have access to the major markets to help spread the overhead and operating costs across a sufficiently larger customer and revenue base?

When deciding whether to require access to unbundled switching, we consider – as the Act requires – whether failure to provide the network element would impair the competitor's ability to provide service. One of the factors the Commission considers in its impairment analysis is ubiquity of service. That is, we evaluate whether a carrier needs access to the unbundled switch in order to serve all types of customers in a particular community, including residential and small business customers. Nevertheless, there is evidence in the record that some facilities-based CLECs can and do serve small customers without having access to unbundled switching or the UNE-P.

3) Why did the commission set the cut off for the availability of unbundled switching in the top 50 metropolitan markets at customers with three lines or fewer? The proponents of UNE-P have said they need UNE-P to serve the customers with individual analog voice lines that are not being served in any

significant numbers by competitors using their own switches. If this is the case, would it have not made more sense to set the cut off at a point closer to where it becomes economically feasible to serve a customer through a high-capacity digital facility?

The Commission arrived at the "three lines or fewer" cut off by reasoning that a three-line limit captured virtually all residential customers, and that business customers using fewer than four lines were more like residential customers than like large businesses. As you point out, some parties have asked us to set the limit higher, and many have advocated the break point between regular voice-grade lines and the high-capacity digital lines that carriers typically use to serve large businesses. These parties tell us that, as a rule, they can't compete for customers that don't take high-capacity lines because moving the lines one-by-one is prone to mistakes and even service outages. But other facilities-based providers report that, in many places, competition for small-business customers is actually quite brisk, such that they claim that wide availability of UNE-P will undermine the value of their investment in costly facilities. For example, one competitive LEC that doesn't use UNE-P, Allegiance, tells us that almost all their customers are small business customers that do not use high-capacity lines. Also, some of the Bells have given us data showing that, at least in some wire centers, they are losing many business customers to switch-based competitors. We have attempted to reconcile these arguments, while remaining cognizant of the Act's provision that we only require unbundling where competing carriers would be impaired without it.

4) It is my understanding that the service quality data reporting is essential to state public utility commissions in determining compliance with state and federal regulations. In Missouri, the State Public Service Commission used such data in evaluating Southwestern Bell's 271 application to provide long-distance service in the state. Is it true that the FCC is considering eliminating this reporting requirement for incumbent local exchange carriers? If so, could you please elaborate why the FCC is doing this? Wouldn't eliminating this requirement significantly hamper both the State Public Utility Commissioners' and the FCC's ability to enforce regulations?

I share your concern regarding telecommunications service quality, and I believe that we should, as a general matter, seek to preserve requirements that are essential to the FCC's activities in this area. That said, the Act requires the FCC to seek out and eliminate those requirements that are not essential and that are thus unnecessarily burdensome to firms competing in the marketplace.

Accordingly, the Commission started a proceeding this past November to revise the service quality reporting requirements in our mechanized database, known as ARMIS. The Notice recognized the importance of

working with the states to improve the service quality reporting. In fact, the states provided extremely useful input into the record.

I do not wish to prejudge the issues in this proceeding before the Common Carrier Bureau makes its recommendation. Of course, in making our decision we will consider the obligations we have under the Act to promote quality telecommunications services for consumers, as well as our obligations to eliminate unnecessary requirements and burdens on carriers.

5) In Kansas City, KXTR, the City's sole classical radio station, was forced off of the FM dial when a radio conglomerate purchased it. The Telecommunications Act codified the deregulation of national ownership caps in broadcast radio. This deregulation has resulted in a great deal of consolidation in the industry. Could you please explain what the FCC is doing to ensure a diversity of voices are being heard over broadcast airwaves?

Promoting diversity over the broadcast airwaves remains one of the most important goals of communications regulation. Diversity is, however, a difficult concept to define and to measure. Some have argued, for example, that we are more likely to achieve the kind of format diversity alluded to in the question when a single owner has multiple stations in a market and programs them to serve different audiences. Others contend that the Commission must have strict ownership rule to ensure diversity. Indeed, many of the Commission's broadcast ownership rules adopted 30 to 50 years ago were justified as a means to promote diversity. It has become increasingly more difficult, however, to defend ownership rules against judicial challenges by assuming that they promote diversity. As the courts have reminded us, when we assert diversity as a purpose of a rule, we must also defend the proposition that the rule actually furthers that objective. Thus, to ensure our ability to promote diversity in the regulatory context, we must follow the mandate of Section 202(h) of the Telecommunications Act of 1996 to conduct a biennial review of our rules, to see whether the continue to serve their intended purpose. We must seek a judicialy sustainable way to achieve the goal.

Questions for the Record Submitted by U.S. Rep. Ed Whitfield

1. Chairman Powell, what are the major rural issues currently before the Commission and what is the schedule for deciding these issues?

   The most important issue before us is consideration of the Multi-Association Group (MAG) proposal for access charge reform. With my fellow commissioners' cooperation, it is my intention to take action in this proceeding by the end of the year.

2. How does the Commission plan to improve the Commission's understanding of the unique challenges facing rural telecommunications carriers?

   During my time at the Commission, I have valued my dialogue with the rural telecom companies, and my office will continue to be accessible to the industry. Understanding the unique issues facing small carriers is an important part of my effort to improve staff understanding of technical and practical issues facing service providers. In fact, staff from the Common Carrier Bureau has arranged field trips and visits to meet with these carriers in their territories.

3. Why doesn't the Commission have quarterly rural roundtables? You could invite various segments of the industry to participate on a different selected theme each quarter.

   I would be happy to discuss a plan for such meetings with industry representatives.

4. Chairman Powell, I have many rural constituents. What actions is the Commission contemplating to ensure that rural areas continue to receive high quality and affordable telecommunications service?

   Our recent Order modifying the universal service support mechanism to provide additional support for rural carriers is the best example of the Commission's commitment to maintaining affordable, quality service throughout the country, including rural areas. As required by the Act, I will keep the principles of universal service in mind when considering the MAG plan and any other issues that might affect rural customers.

5. Mr. Chairman, there are many small telephone companies in my district. I am concerned that the introduction of artificially induced competition in these areas will damage these companies and may in fact make service worse for my constituents. Do you share these concerns? How can we proceed without harming the public?

I agree that we should be aware of policies that distort price signals and, as a result, have an effect on investment decisions of small telephone companies such as those in your district. At the same time, we need to recognize that satellite services and wireless services hold great promise for rural America. As competition evolves, we will carefully consider how our policies affect service to your constituents and others living in rural America.

6. I know that the rural companies have submitted a comprehensive industry plan dealing with access charge reform. Assuming the Commission takes action soon on the Rural Task Force recommendation, I expect that the Commission would limit its RTF order to Universal Service reform. This would ensure that access charge reform is addressed in one unified decision. This is important because access revenues are a major source of funds for these rural companies. I believe it is very important that the Commission get access reform right. Do you agree with this assessment?

Yes. I am aware that access revenues are a major source of funds for rural companies, and I agree that the Commission should address access reform for rural companies in one decision. As you may be aware, we issued our RTF order last month, and it was indeed limited to universal service reform.

Questions submitted By Representative Joe Barton

1. Several states (for instance, Texas, Pennsylvania, and New York) have established their own UNE-P policies. Will the FCC ensure that any action it may take in the future (1) does not adversely affect state-adopted UNE-P rules and (2) will permit state commissions to expand the availability of UNE-P based on their expert judgment?

   I can assure you that we recognize that the states have expertise regarding the pace and extent of competition in their states. Historically, we have structured our unbundling rules to act as a floor, not a ceiling, and our rules specifically incorporate a mechanism that allows for greater unbundling by the states.

2. Do you believe that in areas where CLECs have deployed switching facilities, small business customers are being served in any significant numbers unless they are large enough to be served through a high capacity digital line? Are residential customers receiving service from CLECs using their own switching facilities?

   The data that the FCC receive are inconclusive as to whether small businesses that do not use high-capacity lines are attracting competition outside the central business districts of the largest urban areas. Some competitive carriers tell us that it is uneconomical to serve small business customers unless they have access to UNE-P. But other competitive carriers, including Allegiance, tell us that almost all of their customers are small business customers that do not use high-capacity lines. The incumbent carriers have given us data suggesting that competition for small businesses is quite active in some wire centers, but hardly present in others.

   With respect to the residential market, many parties argue that competitive carriers need access to the incumbents' switches in order to compete for customers. (We do not collect specific data, however, on how many residential customers are receiving service from CLECs using their own switching facilities.) At least one carrier, Z-Tel, has a business strategy of serving almost exclusively residential customers using UNE-P. Some parties, however, tell us that a mass-market strategy is only viable if they can capture some small businesses as well as residential customers. We are carefully evaluating these arguments in the context of our pending UNE Remand reconsideration proceeding.

3. Mr. Chairman, as you know, there is a current dispute between parties over the interpretation of Reciprocal Compensation. What is your opinion of the how Reciprocal Compensation is being interpreted and how do you think it should be interpreted? If your interpretation is different than current practice, would you support a legislative effort or FCC administrative effort to rectify this disagreement?

The Commission recently adopted an Order responding to the remand from the D.C. Circuit regarding the application of the reciprocal compensation provisions of the Act to traffic delivered to Internet service providers (ISPs). In its Order, the Commission recognizes that the existing reciprocal compensation regime distorts the development of competitive markets by encouraging carriers to target customers, such as ISPs, with large volumes of incoming traffic in order to collect reciprocal compensation revenues. The Order addresses these distortions by limiting the amount of compensation that carriers can collect from other carriers for the delivery of ISP-bound traffic and beginning a transition toward greater cost recovery from end-users. At the same time, the Commission released a notice of proposed rulemaking that seeks comment on a new intercarrier compensation regime that will maximize efficiency and best serve consumers.

4. Mr. Chairman, are there alternate billing scenarios (rather than reciprocal compensation) that could be used to appease the affected parties? What is your opinion of a "bill and keep" billing practice?

In the notice of proposed rulemaking that we released recently on this topic, the Commission discusses the shortfalls of existing intercarrier compensation mechanisms, such as access charges and reciprocal compensation, and seeks comment on the relative merits of bill-and-keep. Bill-and-keep might be a more efficient form of intercarrier compensation and alleviate many of the distortions created by existing compensation regimes. I look forward to reviewing the record on this issue.

5. I would like to raise with you two issues affecting the financial health of the payphone industry in Texas and nationwide. As you may know, I sponsored Section 276 of the 1996 Telecommunications Act, which was intended to promote competition in the payphone industry. Last fall, I wrote your predecessor to urge the FCC to take expeditious action on two long-pending pay telephone matters: (1) payphone line rate requirements and (2) clarifying who is responsible for compensating payphone providers for "dial-around" calls, such as 1-800 calls, where consumers do not put any coins into the payphones. To date, no action has been taken on either matter. Mr. Chairman, can you share with me when you expect the Commission to act on these issues?

I share your concern. I am committed to reducing backlogs, and I intend to put systems in place that will help prevent matters from languishing at the Commission.

I am very pleased to report that the Commission released a decision, on April 5, 2001, resolving the matter of responsibility for dial-around or "coinless" payphone calls. Specifically, we revised our payphone rules to address the difficulty that payphone service providers face in obtaining compensation for

calls that involve a switch-based telecommunications reseller. Given the difficulty in determining which entity is responsible for compensating the payphone service provider for such calls (*i.e.*, the switch-based reseller or the interexchange carrier which routes calls to the switch-based reseller), our rules now require the first facilities-based interexchange carrier to which a local exchange carrier routes a compensable coinless payphone call to: (1) compensate the payphone service provider for completed calls at a mutually agreeable rate; (2) track or arrange for tracking of the call to determine whether it is completed and therefore compensable; and (3) provide to the payphone service provider a statement of the number of coinless calls it receives from each of that payphone service provider's payphones.

With regard to payphone line rate requirements, I expect the Commission to act on this matter in the near future. Once we have acted, our decision should establish guidelines for other states on how to fairly and accurately calculate the cost-based rates required by section 276.

Questions Submitted for the Record by Representative Steve Largent

1. Should Congress expand the availability of UNE-P as a means to enhance competitive local service providers' ability to serve residential and small business customers?

   UNE-P is important as an entry vehicle in that it allows carriers initially to expand and grow their customer base, and then migrate these customers to their own facilities as they are able to build out their networks. Accordingly, as competition matures, and more and more carriers deploy their own facilities, we expect to reach a point where UNE-P is no longer needed, at least in some areas, and to serve some customers. Most parties agree that competition for residential customers has not reached that point yet. With respect to competition in the small business market, the picture is less clear. I expect that UNE-P will continue to be available, except where the record shows that carriers are not impaired without it.

2. Does the FCC believe that small business customers throughout the country currently have adequate access to competitive local telecom services? If so, what is the basis for this belief?

   As you may know, the issue of whether the Commission should expand the availability of UNE-P to further stimulate competition in the small business market is currently pending before the Commission. The record in that proceeding shows that many small business customers do not yet have adequate access to competitive local services. But some parties, including some competitive carriers, tell us that there is active competition for a significant number of small business customers in some areas. Thus, we are faced with the challenge of drawing the line in a way that retains UNE-P where appropriate, but still gives meaning to the "impairment" requirement in the Act.

3. UNE-P based carriers target the residential and/or small business market exclusively. In the absence of UNE-P based entry, what does the Commission believe is the local service entry vehicle that will bring competitive choice in local service providers quickly to residential and small business consumers, especially those located geographically in suburbs and rural areas?

   UNE-P has been an important entry vehicle, especially for reaching residential customers in areas where competitive facilities have not yet been deployed. That said, it would be a mistake to view UNE-P as the only entry vehicle for serving the mass market in suburbs and rural areas. For example, the Communications Act contemplates resale as another mode of entry into the local markets. In addition, wireless and satellite providers are increasingly penetrating the mass market. It is my hope that residential and

small business users will soon have meaningful alternatives to the incumbent's wireline local service.

4. The UNE-P CLECs have collectively invested nearly $2 billion in telecommunications infrastructure since entering the local service market. If the Commission views investment by entrants in alternate facilities and functionalities as an important policy goal, shouldn't continued investment by UNE-P providers be encouraged?

   A number of prominent competitive carriers, such as McLeod, rely heavily on UNE-P to expand into new territory. This aspect of UNE-P is especially important now that the capital markets are looking for prudent and restrained business plans. On the other hand, some facilities-based CLECs have urged us not to expand UNE-P availability because doing so would undermine their incentive to invest in new facilities. As competitors deploy more and more switches and other facilities, the Act compels us to consider whether competitive carriers are impaired if they do not have access to UNE-P.

5. Under the Commission's current rules, access to unbundled switching is severely limited in the top 50 major metropolitan markets and the FCC has before it proposals to eliminate access to unbundled switching in those areas. Does the Commission have any data that suggests that new competitors will be able to continue to serve smaller and rural markets if they do not have access to the major markets to help spread overhead and operating costs across a sufficiently large customer and revenue base?

   When deciding whether to require access to unbundled switching, we consider – as the Act requires – whether failure to provide the network element would impair the competitor's ability to provide service. One of the factors the Commission considers in its impairment analysis is ubiquity of service. That is, we evaluate whether a carrier needs access to the unbundled switch in order to serve all types of customers in a particular community, including residential and small business customers. Nevertheless, there is evidence in the record that some facilities-based CLECs can and do serve small customers without having access to unbundled switching or the UNE-P.

6. As you look over the various functions and responsibilities of the FCC, where do you put international spectrum allocations and policy development?

   Spectrum management is a critical part of the mission of the agency. Any restructuring in this area will be done to strengthen our ability to carry out this important function.

7. The U.S. is the worldwide leader in communications satellite services and, because of that the FCC has enormous influence on the regulation of satellite

services far beyond the borders of the United States. How does the FCC use that influence to promote competition and market-driven regulation overseas? How will this influence be preserved and fostered in a restructured FCC?

The Commission seeks to promote open markets in foreign countries for the benefit of U.S. participants in the increasingly global satellite telecommunications marketplace. The Commission recognizes that satellite telecommunications networks and markets are not only domestic but global. U.S. consumers just as readily call overseas as coast-to-coast. The Commission recognizes that competition in each of these markets inures to the benefit of U.S. consumers. To this end, the Commission takes various steps to encourage both competition and transparent regulatory processes in foreign markets for the benefit of U.S. consumers. Implementation of the 1997 WTO Basic Telecom Agreement, for example, has helped enable U.S. carriers to provide global satellite telecommunications service and has demonstrated to other countries the benefits of moving away from monopoly services toward a competitive, open market. Similarly, FCC implementation of the ORBIT Act has encouraged the privatization of INTELSAT, an intergovernmental satellite organization, which on July 18, 2001 is slated to become a private company for the first time in its four decade history. In addition, on an ongoing basis, through bilateral meetings and technical assistance, the Commission seeks to encourage more competitive markets and open, transparent regulatory processes abroad. All of these efforts stimulate a more competitive satellite telecommunications services market.

We are very mindful of the Commission's role in satellite services and spectrum management both domestically and internationally. Our review of the current organizational structure and any proposed restructuring in this area will recognize the important role the Commission plays in the regulation of satellite services.

8. Spectrum allocations and the policies affecting those allocations seem to be intimately tied to international issues, how would you handle those issues in a reorganized FCC?

The spectrum management function of the Commission has both a domestic and international component. The Commission is mindful of the strong tie of international licensing and policy in the satellite area. Any restructuring would recognize the close nexus between satellite services and international issues.

9. Section 251(g) of the 1996 Act deals with nondiscriminatory equal access. It leaves the MFJ in place until the FCC acts with a new rule. In 1998 you indicated that the FCC would look into the issue of nondiscriminatory equal access but it has been three years and the FCC has taken no action. The rule in place prohibits

RBOCs from discriminating in favor of AT&T but nothing about discriminating among other carriers.

Why has the FCC not acted? What is it doing to prohibit discrimination among the RBOCs to other carriers today? Given the current state of the market, do you think it's timely to look into these issues?

I believe it is appropriate to think carefully about how the obligations of section 251(g) relate to the interconnection requirements of section 251. Specifically, the Commission should consider whether the goals underlying section 251(g) are achieved through the requirements we have already imposed pursuant to section 251. In thinking through these issues, the Commission should not lose sight of the fact that the ultimate goal of equal access and nondiscrimination requirements is to bring the benefits of competition to the public.

The Commission also stands poised to take appropriate enforcement action in the event it learns, either on its own or through a complaint proceeding, of discriminatory conduct on the part of the BOCs. We also rigorously evaluate section 271 applications to ensure that the BOCs have satisfied the requirements of the competitive checklist, and thereby opened their markets to competition, before they are permitted to provide in-region long distance service.

10. Is it the Commission's interpretation of the '96 Telecommunications Act that advanced data services were incorporated in Section 251 and Section 254?

The Commission has found that advanced services, such as xDSL-based services, are telecommunications services subject to the requirements of section 251 of the Act. These requirements include the obligation under section 251(c)(4) that incumbent LECs make their retail telecommunications services available for resale to competitive carriers at wholesale rates. The Commission also has found that section 251(c)(3) allows competitive carriers to utilize unbundled network elements obtained from incumbent LECs, such as local loops, for the provision of any telecommunications service, including advanced services. At the same time, however, the Commission has determined that, given the nascent nature of the advanced services market and the Act's goal to provide incentives for all carriers to invest and innovate, incumbent LECs should not generally be required to unbundle the underlying facilities used to provide advanced services. Finally, the Commission recently has initiated a rulemaking proceeding that seeks to examine the impact of next generation technologies deployed by incumbent LECs, such as SBC's Project Pronto, on the Commission's unbundling rules issued pursuant to section 251(c)(3).

Section 254 of the Act directs the Commission to base its policies for the preservation and advancement of universal service on several principles, including ensuring that access to advanced services is provided in all regions of the Nation. Section 254 acknowledges, however, that the definition of services supported by universal service should take into account advances in telecommunications and information technologies and services.
The Federal-State Joint Board on Universal Service is currently reviewing the definition of universal service and intends to make a recommendation to the Commission about whether modifications to the definition are warranted.

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