

FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2013

WEDNESDAY, MAY 9, 2012

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 3:48 p.m., in room SD-138, Dirksen Senate Office Building, Hon. Richard J. Durbin (chairman) presiding.

Present: Senators Durbin, Moran, and Lautenberg.

FEDERAL COMMUNICATIONS COMMISSION

STATEMENT OF JULIUS GENACHOWSKI, CHAIRMAN

OPENING STATEMENT OF SENATOR RICHARD J. DURBIN

Senator DURBIN. My apologies. What can I say? There is no excuse. I'm sorry. Let me just put my opening statement in the record.

Thanks to those for attending this hearing of the Appropriations Subcommittee on Financial Services and General Government. Thank you, Senator Moran. Thank you, Senator Lautenberg, and Chairman of the Federal Communications Commission (FCC), Julius Genachowski.

And, let me at this point, defer to Senator Moran. I'll put my opening statement in the record.

STATEMENT OF SENATOR JERRY MORAN

Senator MORAN. Mr. Chairman, I'll just have a brief opening statement. I want to do that because I requested that you have this hearing, and I appreciate your honoring my request.

This is the first time that the FCC Chairman has appeared before this subcommittee since 2002, and incredible advancements in technology and communications have occurred in the past decade. And I'm thankful to have this opportunity to explore some of those topics with the Chairman.

As we all know, our country faces many challenges, the greatest of which is we have a crippling debt. In my view, there are two steps to get our fiscal house in order, and the Congress must make some responsible decisions to rein in Government spending. And, of course, in the appropriations process, we have that opportunity.

But, second, we need to grow our economy, and because when more people are working, more revenue is generated. And one of

the best ways we can do that is to encourage entrepreneurship and certainly our Nation's communications policies are critical to creating a platform for that entrepreneurial innovation that grows the economy.

Economic growth is central to both addressing our debt and providing our children with a bright future. One of the fastest growing sectors of our economy is technology, and much of that growth is dependent upon advanced telecommunications infrastructure.

I recently met a former National Aeronautics and Space Administration (NASA) engineer, now in the technological world, who described the principles of getting a rocket to launch or an airplane to fly. And he described two forces—thrust and drag.

And we often spend lots of time in the Congress talking about thrust, how to make things happen, and spend more money, create programs. But, it's also important that we eliminate the drag, and our regulatory environment has a lot to do with how much drag that rocket or that airplane experiences.

So much of the focus of Government and the Congress is about generating thrust. I want to make sure that we're reducing all the drag that we can and our economy can grow and people can earn a living and our children can experience the American dream.

So I look forward to exploring a number of issues with the Chairman. I'm very interested in spectrum, and I appreciate you, Mr. Chairman, coming to my office and having a conversation about that, as well as a recent FCC order related to broadband deployment and the Universal Service Fund (USF).

And I have some concerns about the consequences of that order on particularly small and rural providers of broadband services.

So, Mr. Chairman, I thank you for the opportunity that we have to learn more about these topics.

Senator DURBIN. Thank you, Senator Moran. Senator Lautenberg, do you have an opening statement?

STATEMENT OF SENATOR FRANK R. LAUTENBERG

Senator LAUTENBERG. Yes, and I'll try to be short, Mr. Chairman.

I am pleased to see Chairman Genachowski here. He was in New Jersey a few weeks ago at a technology conference on apps making at one of our universities, and we learned something. That therein lies a major area of interest in innovation and that is with the "Apps".

And so we went through innovation, a cornerstone of our economic development, and I introduced new legislation that's going to invest in America's technology innovators.

The American Innovates Act will create a bank to provide capital for researchers and companies to turn their discovery into marketable products. But we will also make sure that our science and technology students get practical training in areas like business development.

And we think that this bill will help support and expand our Nation's innovation economy in which the FCC plays an important role. FCC also plays a vital part as one of the guardians of our democracy.

Increasingly, fewer and fewer companies control what Americans see and hear in the media, and one of those companies was re-

cently found to have misled the British Parliament in order to cover up its wrongdoing.

So it's never been more important to have a strong FCC acting in the public interest to make sure that broadcasters are held to high standards, are held accountable to their communities they are supposed to serve.

And as Chairman Genachowski knows, local service has been an ongoing problem in New Jersey, and I look forward to discussing this issue further. And, we also want to help provide access to communications technology and the opportunity that comes with it.

But it must be done efficiently. And I'm pleased to see the FCC moving the USF reforms. As the FCC updates the funds for the digital age, one of the agency's primary goals would be bringing relief to States like New Jersey where consumers contribute significantly more than we get back.

And I applaud FCC's work on this important issue. I look forward to seeing additional reforms. And, finally, after years of hard work, the Congress has authorized the FCC to devote resources and spectrum to the creation of a public safety network. The 9/11 terrorist attack demonstrated the need to provide our police, firefighters, and rescue personnel with dedicated lines of communication.

And I look forward to hearing more about FCC's progress in ensuring that our first responders are our first priority. So I thank Chairman Genachowski for being here, and I look forward to hearing his testimony.

Thanks, Mr. Chairman.

Senator DURBIN. Thank you, Senator Lautenberg.

Once again, Mr. Chairman, and all those in the audience, I apologize for my tardiness. Please proceed.

SUMMARY STATEMENT OF JULIUS GENACHOWSKI

Chairman GENACHOWSKI. Chairman Durbin, thank you, Ranking Member Moran, and Senator Lautenberg. I appreciate this opportunity to be the first FCC Chairman to appear before you since 2002.

I'm proud to say that few, if any, Federal agencies deliver a higher return on investment than the FCC. Spectrum auctions have raised more than \$50 billion for the U.S. Treasury in the past two decades.

And economists place the economic value created by FCC auctions as being about 10 times that number, about \$500 billion in economic value.

Shortly after FCC delivered its budget, the Congress authorized the Commission to create, develop, and conduct voluntary incentive auctions—a new market-based mechanism to repurpose underutilized spectrum for flexible use such as mobile broadband.

Incentive auctions are an opportunity to unleash vitally needed additional spectrum for mobile broadband and create tremendous value for American consumers while raising billions of dollars for deficit reduction.

It's a key part of the puzzle to unleashing the mobile broadband opportunity. And, it's a privilege for the FCC to be entrusted with

this responsibility which of course will require a great deal of work and effort by the agency.

Incentive auctions are unprecedented. The United States will be the first country in the world to conduct them. It will be a complex task affecting major parts of our economy and involving many challenging questions of economics and engineering.

FCC staff is hard at work planning for the challenges ahead. We recently announced steps to begin implementing the law which are outlined in my written statement.

Incentive auctions are part of our overall agenda to unleash the opportunities of modern communications technology, to benefit our economy, create jobs, bring opportunity to all Americans.

Just yesterday at the wireless industries annual conference I presented FCC's mobile action plan. This plan will help ensure that America maintains the position it has now regained as the global leader in mobile.

It includes incentive auctions, but recognizes that we must have an all-of-the-above strategy that includes removing barriers to spectrum use, harnessing emerging technologies like small cells and accelerating spectrum sharing between Government and commercial users.

On the latter, I was pleased to announce that we're moving ahead in partnership with National Telecommunications and Information Administration (NTIA) at the Commerce Department to test spectrum sharing between commercial and Government users in the 1755 to 1780 megahertz band, a band that's of particular interest to commercial carriers.

This work reflects FCC's focus on broadband communications, wired and wireless. In 2009, we developed America's first national broadband plan which identified key challenges and opportunities throughout the broadband ecosystem and proposed solutions to ensure that the United States lead the world in broadband access and innovation.

In fact, one of those proposed solutions was incentive auctions. We've been working hard on implementing the broadband plan. Together with my colleagues at FCC, we've made tremendous progress in the past 3 years taking many steps to unleash investment, innovation, and job creation.

These include freeing spectrum for both licensed and unlicensed use, modernizing and reforming major programs like the USF and removing barriers to broadband buildout. Indeed, investment, job creation and innovation are up across the broadband economy.

These metrics are up both when looking at the broadband applications and services and when looking at broadband providers and networks.

Our work is helping create jobs across the country, from workers constructing broadband infrastructure, to agents at new broadband enabled customer contact centers, to employees of small businesses using broadband to expand to new markets, to engineers and other innovators inventing the new digital future.

And, in the past 3 years, the United States has regained global leadership in mobile innovation. American-designed apps and services are being adopted faster than any other. Our mobile innovation economy has become the envy of the world.

We're also now ahead of the world in deploying 4G mobile broadbanded scale with 64 percent of the world's 4G LTE subscribers, the next generation of mobile broadband, here in the United States.

These next-generation networks are projected to add more than \$150 billion in gross domestic product growth over the next 4 years, creating an estimated 770,000 new American jobs.

The health of our broadband economy would be enhanced by closing broadband gaps. My written statement highlights FCC's progress addressing the broadband deployment and adoption gaps.

Public safety, as was mentioned, is a core mission of FCC, and the agency is working to harness the power of communications to make our communities safer.

As part of our longstanding role in helping ensure the security and reliability of our communications networks, an FCC-led panel recently issued a series of recommendations to address three critical threats to our cyber security: botnets; Internet route hijacking; and domain name fraud.

Internet service providers serving roughly 90 percent of all U.S. broadband subscribers will implement these proposals. FCC also provides value by protecting and empowering consumers.

For example, smart phone theft is on the rise and poses a real threat to consumers. Last month, together with the wireless industry and law enforcement from around the country, we announced the launch of a new database that will allow consumers and carriers to disable stolen smart phones, dramatically reducing their value on the black market.

We've also made progress tackling consumer issues like bill shock and cramming, which are highlighted in my written statement. At the FCC, we're committed to smart, responsible Government, and we have taken steps to modernize our programs and insure that they are efficient and fiscally responsible, saving billions of dollars.

In addition to our programmatic reforms, we've also reviewed the agency's rules and processes asking tough questions to make sure FCC is operating efficiently and effectively.

In connection with this review, we've already eliminated dozens of outdated rules and five unnecessary data collections. We've identified two dozen more data collections for elimination, and we've done everything I've listed and more with the lowest number of full-time employees (FTEs) in 10 years.

Maximizing the ability of 21st century communications technology to deliver value to the American people, and doing so in a smart and responsible way. That's FCC's record in the past 3 years, and that's our plan for the year ahead as reflected in our fiscal year 2013 request in budget.

To implement our responsibilities under the Communications Act, the budget requested a 2 percent more than the previous year level from about \$340 million to about \$347 million, essentially flat adjusting for inflation.

As in previous years, this amount will be derived entirely from fee collections. The budget reflects savings in several areas and includes a few new initiatives, primarily, technology investments de-

signed to save money, and public safety investments aimed at saving lives.

The budget also provides a flat number of FTEs, despite increasing workloads in many areas.

PREPARED STATEMENT

In conclusion, the wired and wireless broadband sectors are critically important to our economy and global competitiveness. I look forward to working with the subcommittee on implementing the new incentive auction law and unleashing the opportunities of communication technology for our economy and the American people.

Thank you.

[The statement follows:]

PREPARED STATEMENT OF JULIUS GENACHOWSKI

Chairman Durbin, Ranking Member Moran, and other members of the subcommittee, I appreciate this opportunity to appear before you on the Federal Communication Commission (FCC) fiscal year 2013 budget.

I'm proud to say that few, if any, Federal agencies deliver a higher return on investment than the FCC.

Spectrum auctions have raised more than \$50 billion for the U.S. Treasury in the past two decades, and economists regard the economic value created by FCC auctions as being about 10 times that number, or \$500 billion in value. FCC has conducted 80 auctions, granting more than 30,000 licenses. A few months ago, a group of 112 leading economists from across the ideological spectrum wrote, "The original simultaneous, multiple-round auction system implemented in 1994 was novel, but the FCC was able to implement the path-breaking auctions that were the basis for successful auctions around the world."

Shortly after FCC delivered its budget, the Congress authorized the Commission to create, develop, and conduct voluntary incentive auctions—a new market-based mechanism to repurpose spectrum for flexible use such as mobile broadband.

Incentive auctions are an opportunity to unleash vitally needed additional spectrum for mobile broadband and create tremendous value for American consumers, while raising billions of dollars for deficit reduction. It's a key part of the puzzle to unleashing the mobile broadband opportunity.

At FCC, we're focused on faithfully implementing this new legislation and maximizing the opportunities of the new law for our economy and all Americans.

It's a privilege for FCC to be entrusted with this responsibility, which of course will require a great deal of work and effort by FCC.

Incentive auctions are unprecedented. The United States will be the first country in the world to conduct them. It will be a multifaceted task affecting major parts of our economy, involving many challenging questions of economics and engineering.

FCC staff is analyzing the complex incentive auction law, assessing the challenges ahead, and last week we announced steps to begin implementing the law.

We will run a process that is open, inclusive, fact-based, and guided by economics and engineering. We have already formed an FCC incentive auctions task force that has brought in staff from across the Commission.

FCC's work will be assisted by world-leading experts, including some of the world's most distinguished auction-design experts.

The work of our task force and staff will feed into a robust public process, which will include webinars, workshops, public notices, and rulemaking proceedings.

In 2 days, FCC will take up its first policy action to put the law into effect—an order establishing a framework for broadcaster participation in a channel-sharing agreement with another station in conjunction with an incentive auction.

We are aiming for Notices of Proposed Rulemaking under the new law by the fall of this year.

Incentive auctions are part of our overall agenda to unleash the opportunities of modern communications technology to benefit our economy and all Americans.

We have focused the agency on broadband communications—wired and wireless. In 2009, we developed America's first National Broadband Plan, which identified key challenges and opportunities throughout the broadband ecosystem, and proposed solutions to ensure the United States leads the world in broadband infrastructure and innovation. In fact, one of those proposed solutions was incentive auctions.

Since the plan's release, we have been working on its implementation. Together with my colleagues at the FCC, we have made tremendous progress in the past 3 years, taking many steps to unleash investment, innovation, and job creation. These include freeing spectrum for both licensed and unlicensed use, modernizing and reforming major programs like the Universal Service Fund (USF), and removing barriers to broadband buildout.

And indeed, investment, job creation, and innovation are up across the broadband economy. These metrics are up both when looking at broadband applications and services, and when looking at broadband providers and networks.

In 2011, the U.S. information and communications technology sector grew three times faster than the overall economy. Broadband is helping create new jobs all across the country—and not just for engineers (although it's vitally important that we lead the world in engineering talent), but also for salespeople, construction workers, and small business owners increasingly using the Internet to boost sales and lower costs.

The apps economy, which barely existed in early 2009, has already created almost 500,000 new jobs, according to expert estimates.

And similar reports estimate that over the past several years wireless innovation and investment are responsible for more than 1.5 million new jobs.

In the past 3 years, the United States has regained global leadership in mobile innovation. American-designed apps and services are being adopted faster than any others. Our mobile innovation economy is the envy of the world.

We are also now ahead of the world in deploying 4G mobile broadband at scale—with 64 percent of the world's 4G LTE subscribers here in the United States and these next-generation networks are projected to add \$151 billion in GDP growth over the next 4 years, creating an estimated 770,000 new American jobs.

In 2011, overall investment in network infrastructure was up 24 percent from 2010, with broadband providers investing tens of billions of dollars in wired and wireless networks.

Internet start-ups attracted \$7 billion in venture capital in 2011, almost double the 2009 level and the most investment since 2001.

In today's hyperconnected, flat world, the success of American companies, as well as global prosperity, depends on a dynamic and open global Internet. And so we are working to preserve the Internet as a free-market globally, and oppose international proposals that could stifle Internet innovation. Working with our colleagues in government and stakeholders outside government, we are seeking to head off barriers to the global expansion of cloud computing, and encouraging free flows of data worldwide.

And we are working to oppose proposals from some countries that could undermine the longstanding multi-stakeholder governance model that has enabled the Internet to flourish as an open platform for communication, innovation, and economic growth.

If adopted, these proposals would be destructive to the future of the Internet, including the mobile Internet, and the U.S. Government has consistently and strongly opposed such proposals.

This is why at the Organisation for Economic Co-operation and Development last year, I worked with my colleagues in the U.S. Government and in other countries to respond to significant threats to Internet-driven growth by adopting a broadly supported communiqué that emphasized the need for continued support of the multi-stakeholder model which has fostered innovation and opportunity worldwide.

The health of our broadband economy would be enhanced by closing broadband gaps, and so the FCC has focused on bringing universal service into the broadband era.

Today, millions of rural Americans live in areas with no broadband infrastructure. Our plan, adopted unanimously in October, to modernize the USF will spur wired and wireless broadband buildout to hundreds of thousands of rural homes in the near term, and puts us on the path to universal broadband by the end of the decade—while keeping the fund on a budget. Together with my colleagues, we crafted a set of reforms that honor fiscal responsibility and help bring broadband to unserved Americans around the country, in every State.

In addition to the broadband deployment gap, we are making strides on the broadband adoption gap.

Nearly one-third of Americans—100 million people—haven't adopted broadband. The Connect to Compete Initiative enlists government, nonprofit, and private sector leaders to tackle the barriers to adoption—one of several public-private initiatives driven by the Commission to promote solutions to major challenges.

FCC's successful E-Rate program has already helped connect virtually every library and classroom in America, and in 2010 we adopted several important mod-

ernizations of the program, including removing barriers to wireless use, and removing barriers to schools opening their computer labs as hot spots for community Internet use when students aren't in school.

Public safety is a core mission of FCC, and the agency is working to harness the power of communications to make our communities safer.

We are working with multiple stakeholders to advance next-generation 9-1-1. And we accelerated the launch of Wireless Emergency Alerts that allows local, State, and Federal authorities to send targeted alerts to mobile devices of people who are in the vicinity of an emergency.

As the Nation's expert agency on communications networks and technology, the FCC has always had as a fundamental part of our mission the security and reliability of communications networks. In early 2011, I charged a panel of stakeholders from across the broadband ecosystem with developing practical, nonregulatory solutions to three critical threats to our cybersecurity:

- botnets;
- Internet route hijacking; and
- domain name fraud.

This past month, the team issued a series of recommendations to tackle these challenges in a meaningful way. Internet service providers serving nearly 90 percent of all U.S. broadband subscribers have agreed to implement these recommendations that will promote greater security in our communications networks.

Working with government, private-sector, and nonprofit partners, we also developed a Small Business Cyber Planner to help small businesses guard against cyber attacks, which are estimated to cost targeted small businesses an average of \$200,000 in damages.

FCC also provides value by protecting and empowering consumers.

Smartphone theft is on the rise, and poses a real threat to consumers. In Washington, DC, New York, and other major cities roughly 40 percent of all robberies now involve cell phones. Two weeks ago, together with the wireless industry and law enforcement from around the country, we announced the launch of a new database that will allow consumers and carriers to disable stolen smartphones and tablets dramatically reducing their value on the black market.

Working with wireless providers, we found a common-sense solution to bill shock, a problem that has cost millions of consumers tens, hundreds, and sometimes thousands of dollars in unexpected charges, and just last week we introduced a new online tool to help consumers track implementation of the commitments made by wireless carriers to provide usage alerts.

This coming Friday, FCC will consider an order to put an end to abusive, third-party charges on phone bills, what's commonly known as "cramming". Previously, FCC's Enforcement Bureau issued \$12 million in fines against four companies that had engaged in widespread cramming, part of a record-breaking year for our Enforcement Bureau, which logged \$67.2 million in monetary penalties and settlements on behalf of consumers in fiscal year 2011.

I want to highlight not only what FCC has accomplished, but how we conduct our work. FCC is committed to smart, responsible government, and we have taken significant steps to modernize our programs and ensure that they are efficient and fiscally responsible—saving billions of dollars.

Our work to modernize the USF and Intercarrier Compensation will not only spur broadband buildout, it also eliminates billions of dollars in hidden subsidies from consumers' phone bills.

Our work to reform the Lifeline program is expected to save up to \$2 billion over the next 3 years. Even before this order was adopted, we made changes that eliminated 270,000 duplicate subscriptions, saving \$35 million.

We reformed our Video Relay Service Program, which provides vital communications for people who are deaf or hard-of-hearing, saving \$250 million per year without reducing availability of service.

In addition to our programmatic changes, we have also reviewed FCC's rules and processes—asking tough questions to make sure the agency is operating efficiently and effectively.

In connection with this review, we've already eliminated more than 200 outdated rules and five unnecessary data collections. We have identified two dozen more data collections for elimination.

We estimate that internal reforms like consolidated information technology maintenance and new financial system have already saved the agency almost \$8 million.

And we've done everything I've listed and more with the lowest number of full-time employees (FTEs) in 10 years.

Maximizing the ability of 21st century communications technology to deliver value to the American people, and doing so in a smart and responsible way. That's the

FCC's record the past 3 years, and that's our plan for the year and years ahead, as reflected in our fiscal year 2013 fiscal year budget request.

To implement our responsibilities under the Communications Act, FCC's budget requests a 2-percent increase more than the previous year level, from \$339,844,000 to \$346,782,000. This proposal is essentially flat adjusting for inflation.

As in previous years, this amount will be derived entirely from fee collections. These funds will ensure the successful operation of FCC's core activities, including the strategic goals outlined in the Performance Plan submitted with FCC's budget.

The requested amount is based on internal cost savings applied to essential ongoing projects, and necessary adjustments to our baseline.

The budget includes a few new initiatives—primarily technology investments designed to save money, and public safety investments aimed at saving lives.

The budget also provides a flat number of FTEs, which represents the lowest number of FTEs in 10 years, despite increasing workloads in many areas. Last year, a senior Apple executive wrote FCC advocating for additional staffing for FCC's Office of Engineering and Technology (OET). This office certifies that wireless devices use spectrum efficiently and don't create harmful interference, among other things. The number of applications for certified devices has grown at an annual rate of nearly 12 percent each year—from 3,671 in 2001 to 13,645 in 2011—and the explosive growth of complex devices like smartphones has significantly increased demands on OET staff in recent years. Apple's executive wrote, "If OET can complete its work efficiently, companies building innovative devices can get those new products to customers quickly. But if applications for innovative devices are delayed because OET staff are overtaxed, consumers are the losers."

In conclusion, the wired and wireless broadband sectors are critically important to our economy and global competitiveness. I look forward to working with the subcommittee on implementing the new incentive auctions law, and unleashing the opportunities of communications technology for our economy and the American people.

Thank you.

Senator DURBIN. Thanks, Mr. Chairman. Senator Moran had requested this hearing. Let me yield my opening round of questions to him.

Senator MORAN. Mr. Chairman, thank you very much.

SPECTRUM CRUNCH

Let me start first with spectrum. You covered that in your written and oral testimony. But let me reiterate what I think is called out there, the crunch, the spectrum crunch. The demand is significant.

And my question, Mr. Chairman is, are there any proceedings or options FCC can consider to more quickly address the need of spectrum in the private marketplace?

Chairman GENACHOWSKI. It is a central focus of ours. It's why we push so hard for incentive auction legislation, and we've moved quickly to begin to implement it.

There are other proceedings we have opened now that will free up additional spectrum. We have a proceeding that would eliminate unnecessary regulations on certain satellite spectrum so that could be made available for terrestrial use. It's called the S-band.

We have other proceedings to open up new spectrum. I think one of the biggest opportunities is if we can move forward with Federal users of spectrum quickly to accelerate sharing between Federal users and commercial users.

And I'd be happy to talk further about any of those topics.

UNIVERSAL SERVICE REFORM

Senator MORAN. Let me then raise the topic of USF, and the recent order on it and the Intercarrier Compensation Reform.

We have the circumstance, Mr. Chairman, in my view, in which many companies have relied upon grant programs from the Rural Utility Services (RUS), from the stimulus funds, in which they have made significant investments in regard to deploying broadband in rural areas across the country.

In my view, the order now handicaps, significantly, the revenue necessary for them to repay those loans and grants. And you and I had a conversation about this in my office in which you indicated that the waiver process would be an option for those companies.

If they had the need, the waiver process would work in their benefit to see that they had the capacity to continue to deploy broadband, but also to pay for the loans and grants, to repay the loans and grants.

It seems to me, first of all, that the threshold for a waiver being granted is a very high threshold.

Because the words of the order say that, we permit any carrier negatively affected by USF reforms may file a petition for waiver that clearly demonstrates that good cause exists for exempting the carrier from some or all of those reforms, and that waiver is necessary and in the public interest to ensure that consumers in the area continue to receive voice services.

And that threshold about voice services, that would be a pretty high threshold, in my view, for a waiver to be granted. And so, I'm concerned that while you indicated that waivers would be an option, my guess is that's not a practical option for most companies.

Because voice is always, or almost always, going to be available. Am I missing something?

Chairman GENACHOWSKI. Well, a few points, Senator. One—

Senator MORAN. You're polite not to say I'm missing something.

Chairman GENACHOWSKI. Reforming the USF and intercarrier compensation was one of the hardest things that the agency has tackled. And we were able to do it on a bipartisan basis, and take a program that was wasting Government dollars, focus it on its central mission of getting broadband to people in rural America who are unserved.

Across the country, there are about 18 million people who live in areas that are unserved. In Kansas, I think the number is about 90,000. And we made the commitment as a Commission to do that by reducing inefficiencies, waste in the existing program, operating within a budget, and funding new service out of that.

It turns out that reining in Government spending, being serious about fiscal responsibility is hard work. We all know that. And we have the job now of implementing this in a way that's consistent with the three core principles we had when we put in place the order.

One was getting broadband to rural Americans who don't have it. And the second was fiscal responsibility. And the third was being cognizant of business realities of existing companies.

And there are existing companies that for whom this is challenging. And we have been and we will continue to work with them because we recognize that flash cuts don't make sense. That a waiver process is important. We have several waivers in front of us that we're considering.

We've already adopted some modifications to our rules. My instruction to our staff was let's listen very carefully when we hear concerns and respond to all of the ones that are appropriate.

Senator MORAN. Mr. Chairman, is a waiver available even though voice services continue to be received?

Chairman GENACHOWSKI. Well, the fundamental service that we thought was critical to preserve was voice service. And, certainly, anything that we did that would inadvertently shut off voice service to a local community is something that we wanted to make clear that's something that we will stop.

We do think that in order to accomplish our goals, get broadband to unserved Americans consistent with fiscal responsibility, it will require flexibility on our part to deal with real legitimate issues and address them.

Flexibility on the part of RUS in thinking about its loans. And, in my view, as long as we all focus together on these core objectives, getting broadband to people that don't have it, fiscal responsibility, and cognizance of business realities, we'll work through implementation and individual hard cases one by one, and we'll get them right.

Senator MORAN. I assume we'll have another round of questions.

But I would indicate that Commissioner McDowell stated on March 19 here in Washington, DC that if your company looks like it won't survive, there's a waiver process.

I still want to explore with you the threshold by which, what a company has to demonstrate, because I think there are serious issues here with the ability to continue to deploy broadband.

And, the other fiscal aspect of this is the ability for a company to continue to repay its loans to RUS or others. And I want to explore with you the relationship that you've developed with the Department of Agriculture and the RUS program.

So, thank you, Mr. Chairman.

Senator DURBIN. Senator Lautenberg.

LICENSE RENEWALS

Senator LAUTENBERG. Mr. Genachowski, I know that you are aware of the fact that News Corporation controls 27 local television stations in the United States.

And last week, I mentioned earlier, a British parliamentary committee found that News Corp. misled the committee in order to cover up the illegal activity.

And its chairman and CEO Robert Murdoch, is, ". . . not fit to run an international company."

Now, how do these findings affect your analysis of News Corp.'s license renewals in the United States?

Chairman GENACHOWSKI. Well, Senator, a couple of points, if I may.

As a general matter, it's not appropriate for me to comment on specific adjudications that might come before FCC. But here is how the law works, the Communications Act, and the FCC.

Licensees do have to meet certain qualifications to be licensees. Those qualifications include technical, financial qualifications, and character qualifications.

FCC has issued over the years policy statements and precedents that lay out what that entails. And, of course, if any issues arise, FCC has an obligation. We would take this very seriously. To look at the record, look at the facts, apply the precedent, apply the law.

Senator LAUTENBERG. So that doesn't pass without notice by FCC? The British response.

Chairman GENACHOWSKI. We're certainly aware of the serious issues that have been raised in the United Kingdom, the ongoing process that's going on there.

Senator LAUTENBERG. And the code by which FCC functions, it does say, measure of the character of the applicant though, is to be considered.

Chairman GENACHOWSKI. Character is one of the qualifications, and there are FCC policy statements that spell that out.

Senator LAUTENBERG. Okay. So I assume, therefore, I won't get your word, but I'll take the intent, of the position that FCC has to have, and that is, that character flaw, a character flaw, will be in consideration of any decisions that are made, affecting new or renewal—brand new or renewal applications for license.

Chairman GENACHOWSKI. FCC has serious responsibilities that it applies across the board consistent with our policy statements and our precedent.

UNIVERSAL SERVICE REFORM

Senator LAUTENBERG. New Jersey is a net contributor of close to \$200 million a year to the USF. As the USF has grown, the burden on New Jersey and other donor States has gotten bigger and bigger.

And I applaud the FCC for recognizing the need for the reform of the Fund. Now, will these reforms bring some balance to donor states like New Jersey?

Chairman GENACHOWSKI. Well, and thank you for that. The USF is comprised of a high cost fund that's focused on rural areas. The E-rate fund which is focused on schools and libraries across the country.

A lifeline fund which is focused on low-income Americans. One by one, we have been modernizing each of these programs for the broadband era, in each case, bringing accountability and fiscal responsibility to the programs and making sure that they tightly and effectively meet their mission.

There is a compact in this country. We need to make sure that everyone, wherever they live, has a chance to benefit from the opportunities of the communications revolution.

Whether it's someone in rural America. Someone in an urban center. Whether it's seniors or small business owners. And that's the challenge that we've taken up.

FUNDING FOR RESEARCH AND DEVELOPMENT

Senator LAUTENBERG. The too-often scientific breakthroughs sit on a shelf for the lack of investment. Last month, I introduced the American Innovation Fund which would provide funds for researchers to turn their discoveries into product.

And has the early stage investment affected the telecommunications industry?

Chairman GENACHOWSKI. The core idea behind new legislation, Senator, is something that's very, very important, and it's related to what Senator Moran said in his opening remarks.

Innovation and entrepreneurship is at the core of how we'll create jobs in the United States. How we will lead the world globally. We have a series of challenges to meet in order to sustain our leadership position.

Your legislation identifies one, which is, that we have in some cases research going on that is underfunded. In some cases research that's going on where some help is needed to commercialize a product that could be commercialized.

And so I certainly applaud the focus on entrepreneurs, innovation, and look forward to working with you on the legislation and on these issues.

Senator LAUTENBERG. And thank you.

Because the cry that we hear from many would be company developments, and that is, that lack of funding slows things down. And perhaps then even diverts them from ever taking place. And we shouldn't be in that condition.

PUBLIC SAFETY NETWORK

I'm proud that the Congress passed legislation to provide our first responders the spectrum and the resources needed to develop the public safety network.

Since the 9/11 Commission report revealed an enormous communication problem 8 years ago, we fought to get the job done. And now, we finally have it. And we look at the FCC, look to the FCC, to implement the network.

When can we expect our first responders to have the public safety network that they must have in order to function efficiently?

Chairman GENACHOWSKI. As soon as possible. The Congress' action in passing that provision was extremely important and something that we'd been calling on for quite some time.

And as you point out, the 9/11 Commission recommended it many years ago. The statute gives much of the responsibility to NTIA for implementation. FCC has responsibilities with respect to setting standards.

We've already begun working very closely with NTIA. There are some early deadlines in the statute that have already been met in terms of setting up boards and processes and proceedings.

It's extremely important, and I know that Assistant Secretary Strickling at NTIA and I are very committed to moving forward on the legislation and to getting our first responders what they need in terms of modern communications.

Senator LAUTENBERG. It's essential that we press on with that because we knew, we learned unfortunately the worst that could happen. And for that not to be corrected by this time seems awfully slow.

And so I look to you to make sure that we're moving at a faster pace.

LICENSE RENEWALS

Last, in November 2007, FCC held a hearing in Newark on the license renewal of WWOR, which is one of the Murdoch-owned stations.

New Jerseyans testified about the station's failure to cover New Jersey and events. Now, 4 years later, the station is still operating under an expired license. And there's evidence that its service to New Jersey has gotten even worse.

And I certainly don't think that it ought to take that long to make a decision about whether or not we ought to close this out. And I would ask when we might expect FCC to make a decision on the WWOR license renewal application?

Chairman GENACHOWSKI. Well, today, the staff is working on that as you know, and we talked about this. There's a complex history involving the station, and the issues of its particular obligations to provide service to New Jersey and moves the station facilities, et cetera.

And so it's complex in a number of different ways, but the staff is working on it, and there will be a decision as soon as possible.

Senator LAUTENBERG. Well, there are not many things that are easy to accomplish, and your structure of responsibilities. This one we ought to be able to get on with, and I look forward to hearing from you about where we stand with this.

Thank you. Thanks, Mr. Chairman.

PRIVACY

Senator DURBIN. Thank you very much, Senator Lautenberg.

I'd like to address a couple issues of privacy. About every other week when I log into iTunes, they tell me I need to have a new agreement with them. A lot of terms and conditions.

And I scroll through page after page after page until I get to the bottom where it says accept, decline, punch accept, go on about my business.

I'm worried that I may have signed off all of my rights to any royalties from music that I produce in the future. I'm not sure what I've done here.

So, tell me, is this your responsibility, to make sure that this kind of a thing is put in simple language and the most important parts of it are highlighted so consumers know what they're actually waiving or giving up in terms of privacy?

Chairman GENACHOWSKI. The Federal Trade Commission (FTC) has taken the lead on the kind of issue you're raising, but it is an issue that we've been engaged with and interested in as well.

One is, consumer protection with respect to communications providers, is part of our statutory mission, number one.

Number two, in addition to the kind of core confusion and privacy issues that you raise, another concern is that the more that people distrust the Internet, the slower broadband adoption will be, which then undermines the economic opportunities of broadband.

And so whether you look at this as just a basic privacy and rights issue, or whether you look at it as an economic issue, you get to the same place.

Senator DURBIN. So is FTC the cop on the beat here? Should they be deciding what should be highlighted, what's important for me to know if I'm about to sign off on something?

Chairman GENACHOWSKI. And they've been doing excellent work.

Senator DURBIN. This isn't your bailiwick?

Chairman GENACHOWSKI. Our statutory responsibility extends to the communications providers, and not to the applications.

Senator DURBIN. Let's talk about Google. They have quite an operation. One of the Fortune 500 companies. One of the top 20, I guess. And they invited me in several times to their headquarters in Chicago. Very impressive.

And in one of the visits I made several years ago talked about how they were mapping America. They literally had vehicles driving all over the streets of America and they were gathering images. They were deployed everywhere.

And they were gathering data and video and putting it into the Google map information and so forth. Turns out they were gathering even more. European and Canadian regulators found these Google vehicles were collecting and storing personal data from unencrypted home networks of private citizens without permission.

The New York Times described the data as personal email messages, instant messages, chat sessions, conversations between individuals, and Web addresses revealing sexual orientation that could be linked by Google to specific street addresses.

So they were collecting all of this as they were cruising. So FCC completed an investigation and came to the conclusion that Google had deliberately impeded and delayed the investigation. And you decided to impose a fine of \$25,000 on a company worth \$111 billion.

So I would say that is somewhere short of a tap on the wrist. And could you tell me if you thought that what they had done was not that serious. You concluded, I think, that they didn't violate the Wiretap Act.

It turns out a court in California reached the opposite conclusion. So how are you protecting our privacy with a \$25,000 fine for that kind of collection?

Chairman GENACHOWSKI. So there are two points. We launched an investigation because in this case there were concerns about using communications networks, Wi-Fi, to get access to personal, private information.

And we did have an obligation to determine whether or not that violated any of our rules and laws. That was the reason for the investigation.

The conclusion of our enforcement bureau and our general counsel's office was that as a legal matter, because it was unencrypted Wi-Fi that information was being obtained from, it wasn't a violation of the law as it was written.

And we suggested that the Congress look at that and that consumers look at that because everyone should encrypt their Wi-Fi. And so as a matter of that issue, the career staff found that it wasn't a violation of law, but encouraged congressional action.

The fine itself was for serious concerns that our staff had about the process itself. The investigation process itself. And the fine that

the bureau imposed was one that's consistent with precedent in this area for companies that act improperly during our process.

Clearly for the company, compared to its revenue and market cap, it's a small amount. On the other hand, the educational purposes that have been served by this, educating them and other companies, educating the Congress, educating consumers, certainly important benefits of the process that we ran.

Senator DURBIN. I guess what puzzles me, and maybe this really does come down to the Congress not doing its job as we're often reminded of that whenever we find fault with agencies and individuals, is the notion that my Internet activity out of my home, if it is not encrypted, is not protected.

And that virtually anyone can tap into it for any purpose, commercial or otherwise, with impunity. It appears if they had cooperated with your investigation, you might not have even fined them in this circumstance.

Now, this California court saw it quite differently, and said that they believe that it was at least analogous to a wiretap for them to be gathering this personal information about street addresses.

So your legal counsel kind of leaned the other way and said, no, you have no rights for privacy if you're not encrypted.

Can you tell me as a former Supreme Court clerk and such, I mean, is that the starting point on your investigation, that there is no protection if it is a close call?

Chairman GENACHOWSKI. Well, I have great confidence in our general counsel, the chief of our enforcement bureau, who are both very experienced lawyers, former prosecutors, who take this as they take all matters, very seriously.

So this was a serious effort, run by serious people, and I have complete confidence in their legal conclusions. I do look forward to working with the Congress on a way to address this because your central point no one can disagree with.

People should, the law should protect people even if they have unencrypted Wi-Fi.

Senator DURBIN. I find it hard to believe that encryption is the threshold, and how in the world would the average person know that or be able to protect themselves.

So, is it possible for you to share the legal memorandum that was the basis for your conclusion that this was not a violation of the Wiretap Act?

Chairman GENACHOWSKI. We will share whatever we can share. So I would be more than happy to provide you with whatever you would like and whatever you would need.

Senator DURBIN. I appreciate it. Let's take a look at it because I think it's something that if it requires change in the law, I'd like to consider that.

[The information follows:]

For more information please access <http://transition.fcc.gov/foia/Updated-Release-of-NAL.pdf>.

Senator DURBIN. Senator Moran.
Senator MORAN. Mr. Chairman, thank you.

UNIVERSAL SERVICE REFORM

A threshold seems to be the operative word. I want to go back to what we were talking about earlier, Mr. Chairman.

The order published on November 18 clearly states, and then I quoted what the criteria were for a waiver. And it seems to me that there's three components to that. The carrier must be first, negatively affected by the USF reforms.

I assume that's a standard that could be met. It clearly demonstrates that good cause exists for exempting the carrier from some or all of the reforms.

So, number two, there's good cause. And then number three is, that the waiver is necessary in the public interest to ensure that consumers continue to receive voice services. That's the one I want to again focus on.

Because it seems to me you could meet the first two, assuming that I am analyzing the words of your order correctly. A carrier could be negatively affected. It could show good cause.

But still, in most instances, provide voice services. Is that true?

Chairman GENACHOWSKI. Well, I'd want to go back and look at the language myself. I certainly understand that you're looking at it there. If I could, let me explain what we're trying to accomplish.

The kinds of steps that we think we need to take for fiscal responsibility, and emphasize again our openness to companies that have issues to come in and to continue to work with us on how to fine tune our reforms so that we can achieve our goals of serving unserved Americans and being fiscally responsible.

So one of the things that the program had supported, for example, there might be an area where USF subsidies, money that comes from consumers, Government programs, were subsidizing a telephone company in an area that was also being served by another unsubsidized company.

And the decision that we had to make is, can a Government program continue to support those kinds of subsidies? And we answered that unanimously at FCC, no.

And we have to back away from that kind of funding. We had a principle of no flash cuts, and we don't want to turn off anything in a day. But some of the examples that you might be getting at might fit into that bucket.

There are many different kinds of examples where it is simply impossible to justify under any theory of fiscal responsibility the Government supporting these.

And what we tried to do very thoughtfully was say, okay, we can't support these anymore. Let's wind this down in a way that recognizes that some of the companies have loans, some of the companies have made decisions based on certain assumptions.

We recognize that. Those are business realities, but we also have to recognize that these do have to change. We have said we have and we will continue to work with those companies to moderate the impact while we get as fast as possible broadband to the 18 million Americans who don't have it, the 90,000 people in Kansas who don't have it.

Senator MORAN. I don't think you've said anything that I disagree with, but that's the point I'm trying to get to when you tell me that you will work with those companies to get the right result.

My assumption is that you work with those companies through a waiver process, and I'm worried that the waiver process is at least worded in your order that nearly almost no company would qualify for a waiver because there will always be voice services.

We can continue this discussion as you would like. But your point about fiscal responsibility, and I'm certainly not arguing for anything other than that. I particularly agree with your sentiments that you expressed about competition when there's already service provided and one receives USF support and one doesn't.

There's many reasons in which the USF justifiably needed to be reformed, but I'm worried about the consequences. And, again, you tell me, no, I don't know what the words are. No flash.

Chairman GENACHOWSKI. Flash cuts.

Senator MORAN. Flash cuts.

But I'm worried about how a company who's trying to make investment decisions, borrow money, make decisions about whether to invest in additional plant and equipment, expand their business, is going to have the certainty that they're not going to have a flash cut.

Because there's a waiver process that prohibits, that allows them relief. You have, as I understand it, some petitions for reconsideration pending. I think some of those petitions at least are a request for change in that threshold related to waivers.

And, again, on fiscal responsibility, I want to go back to the USF, and its consequences, the alteration of the universal service funds, consequences on another Government agency, RUS, part of the Department of Agriculture.

And what I experienced in our State and we had the administration in many instances following passage of the Stimulus Act encouraging companies to invest in broadband. Again, a noble cause.

Many companies chose to finance that expansion of broadband, their investments, through grants and loan programs using the American Recovery and Reinvestment Act, as well as loans from the USDA's RUS.

RUS telecom portfolio has more than \$4 billion in loans. I don't know exactly what percentage of those loans are expected to be repaid by funds generated from the USF that may no longer be there because of your order.

And can you assure me, and I've had this conversation in an Appropriations subcommittee with Secretary Vilsack, and he indicates that he is working with FCC and others within the administration to make certain that we don't have a major default because of a decision by the FCC affecting the ability of a private company to repay another Federal agency—RUS.

Chairman GENACHOWSKI. And for that reason, from early in our process, we worked closely with RUS because we were aware that this would be an issue. And we both agree that both the FCC and RUS and potentially the Congress will have to show flexibility to solve this problem the right way.

The easy solution would be no change. And even in areas where we look at it from the fiscal responsibility perspective and say how

can we justify Government money going to that, well, it's too late to make any changes for many, many years.

That result would be unfair to the people who are paying into the fund. Similarly, a result that says, as a result of these rules, you have to end service tomorrow. That also would be unfair.

So flexibility from us, from RUS, there may be actions that will collectively need the Congress to take, will be important, so we can get the balance right between the legitimate concerns that businesses have, the legitimate concerns that consumers who live in those areas have, and the legitimate concerns that the consumers have who are putting money into the Fund that are funding things that are hard to justify.

And so I look forward to working together on that path through.

Senator MORAN. That flexibility, and again, I would point out, you said it may take flexibility on the Congress maybe to do something that RUS may need to do something, flexibility is required of FCC, and I still would be interested in knowing how that flexibility is going to be granted except through a waiver process.

And in regard to the waiver, if you are granted a waiver. If a company is granted a waiver, where does the money come from to compensate them to be able to, for example, repay the loan? Or the flexibility that you're saying will be there, or may be there, where does that flexibility come from as far as the revenue stream to allow them to repay the loan?

Chairman GENACHOWSKI. It's the right question. It comes from other companies who would use that money to build out broadband to people who don't have it. Because we're committed to a budget.

So getting this balance right, a company that really needs help, will get the help it needs, but that will slow down broadband to other parts of America, other parts of Kansas.

So this is the hard job that we have to make sure that we're turning the dial to the place where we're doing right by consumers wherever they live, right by businesses, whether they're in areas, you know, in this part of the State or that part of the State.

It's a hard challenge, and we'd be happy to take you through a deeper level of detail on it. And, you know, we'd made a suggestion in our national broadband plan that some of these hard issues could be softened by an appropriation for a one-time capital infusion into the USF that would allow us both to turn the dial down over here on spending that's hard to justify, while simultaneously turning the dial up faster over here to parts of Kansas and the rest of America that don't have service.

I continue to think that would be a good idea. I understand the various issues. In the absence of that, we'll work within a budget and we'll do the best we can.

Senator MORAN. Chairman Durbin, I think Chairman Genachowski has once again said the Congress could solve this problem.

Are there waiver requests pending?

Chairman GENACHOWSKI. Yes.

Senator MORAN. And by the numbers?

Chairman GENACHOWSKI. Single digits so far. We issued some clarifications in the last few weeks. It's certainly possible that we'll get more waiver requests in.

We've set aside staff to take the waiver requests seriously, and we understand——

Senator MORAN. How long would the process take to be granted a waiver, if one is justified?

Chairman GENACHOWSKI. We have a shot clock that we've imposed on ourselves. I don't remember the length so I don't want to get that wrong.

We found that in order for us to make a decision in the shot clock, it requires getting certain information from the companies. And so there's a little bit of a cat and mouse where in some cases we stopped the shot clock until we get the information we need.

Again, this is the blood and guts of trying to make this work, and meet these big objectives of broadband to unserved America, fiscal responsibility and recognizing business reality.

Senator MORAN. You're dealing with the macro and the micro.

Chairman GENACHOWSKI. Every day.

Senator MORAN. Mr. Chairman, thank you.

CRAMMING

Senator DURBIN. I'd like to talk to you about cramming. In the 1990s, this became a more serious problem on consumer phone bills.

When telephone companies open their billing up to third-party vendors who were selling satellite services and long distance services, many vendors took advantage of it to put fees on our phone bills that we'd never seen before.

And some people didn't question, just automatically paid it and found out later on that some of these things were not warranted at all.

The Senate Commerce Committee found third-party billing on wire line bills generated \$2 billion a year. Much of that was from cramming. The industry voluntarily worked to curb cramming, and FCC adopted Truth in Billing rules to improve disclosure.

Yet, third-party billing was not outlawed and continues to be a problem. Now the crammers are targeting wireless phones for obvious reasons. Cramming complaints on wireless bills as a percentage of total cramming complaints has increased from 16 percent in 2008 to 2010 and now up to 30 percent in 2011.

However, wireless billing is more complicated due to legitimate downloads for videos and apps. FCC approved a rulemaking requiring wire line phone companies to provide consumers a clear opt out of third-party billing.

And both Verizon and AT&T announced in March they would no longer permit unwanted billing by third-party vendors on wire line accounts, not wireless, wire line accounts.

So why did you choose the weaker opt-out provision rather than protecting the consumer with an opt in provision?

Chairman GENACHOWSKI. Well, there were some other things that we did as part of that order too. Cramming clearly is a serious issue, particularly on wire line based on the record that we had.

In addition to the clear opt out, we also required that phone companies separate out third-party billing charges so that it's easy for a consumer to determine whether a third-party charge on their bill was something they ordered or something that they didn't.

The record that we had before us, our conclusion was that if we did that, that would empower consumers, deter crammers. The other thing we'd been doing is increasing our enforcement efforts for crammers.

We issued fines totaling I believe \$11 million for crammers. And we continue to monitor this very closely because you're right. It's a very serious issue.

On wireless, the record that we had suggested that there may be a problem, but it wasn't clear. And so when we adopted the new rules for wire line, we launched a proceeding on wireless. We are gathering data. We made it very clear that if there's a problem, we will act in wireless as we did in wire line.

On the wire line side, we made it very clear that if the separate disclosures don't work in eliminating cramming, the next option is opt in.

Senator DURBIN. So what are you waiting for? The percentage of total cramming complaints has almost doubled in 3 years on wireless.

Chairman GENACHOWSKI. I'd have to, if I could, Sir, I'd have to get back to you on the data that we had before us when we did our proceeding. I don't recall what was in the record.

But it was clear to our staff that there is potentially an issue on wireless. We didn't have enough of a record nor to proceed with rules just then.

We didn't close the proceeding. We issued what in our parlance is a further notice of proposed rulemaking so that we can gather more information and put us in a position to act.

It's important for us to have the evidence we need. There's no point in us adopting rules that we'll lose in court. And again, I trust our staff on making sure that if the record is there and we can justify this kind of consumer protection action, we'll do it.

We've done it in many other areas.

Senator DURBIN. Well, and let me go back to the earlier point. Please make this intelligible to ordinary consumers so they know what they're getting into here. And that's why the opt out thing really leaves me cold.

I really think, an opt in, most people will say, why in the world would I do that? And they won't. And that's why the companies beg for the opt out because they think they can just kind of slide in there.

POSTING BROADCASTERS' PUBLIC INSPECTION FILES ONLINE

Let me, if I can, ask a question here. After Citizens United, we virtually have no rules when it comes to money being spent on campaigns. I lived through the McCain-Feingold era where we applauded ourselves for restricting soft money, taking it out of the process.

We're down to hard money, baby, and you report every buck of it, and we're going to have accountability. Then came Citizens United and said, none of this counts anymore.

And a Las Vegas casino magnate can dump \$15, \$20 million into a Presidential campaign for his favorite and nothing can stop him. I mean Citizens United has opened the gate wide.

I wish a couple Supreme Court justices had stood for office at some point in their life, maybe they would understand this issue a little more.

One of the last sources of information about what's happening is end user, and that relates to the broadcasters file, that they keep the records that they keep.

And, historically, I know because I used to walk into radio and TV stations, and they'd push a questionnaire in front of me, a consumer survey, community survey, which was being collected in the old, old days.

But I know that at most of these stations there is a written record that is kept that includes a lot of basic information. In part of that record that is available in written form is information on political advertising, the amount that's being spent on that.

It's physically available at the station, public comment, political files and so forth. Now, you recently approved a rule that takes this into the 21st century and says the entire file for all broadcasters has to be posted on the FCC's Web site in searchable format.

So no longer does it require a physical visit. You can pick up this information online. And it's searchable for the first time. It increases transparency on political ad buys. It educates the public on which candidates and groups are using the public's airtime.

And it is the public's airtime. This is important because of the rise in anonymous, large political donations through Super PACs and things like that. We have tried to pass a DISCLOSE Act here in the Congress so that the Super PAC folks would have to say, actually say on the ad, I paid for this, or I'm not a foreign national.

Things like that. But we can't get that through. That's considered radical thinking. So how do citizens access the political file now? Is there any information that will be newly available to the public under this rulemaking? And is the FCC considering the same requirement for cable and satellite providers?

Chairman GENACHOWSKI. So until we adopted this rule as you said, the information that the Congress required broadcasters to put in public files, was only available at a station. You had to physically go and you could get it that way.

As part of our general effort to move all of our filing requirements, disclosure requirements into the 21st century, we proposed and now we have in fact required that those political files and everything else in broadcasters' public files be placed on line.

That will go into effect in the first tranche over the next 6 months. In full, over the next 2 years. And then that information will be available to anyone who has access to the Internet.

Senator DURBIN. So has there been a complaint that you've got another Federal mandate here, imposing another expense on a private company, and it's a hardship that some stations won't be able to meet? Have you heard that?

Chairman GENACHOWSKI. We heard those complaints. We took them seriously. We went and did some investigation ourselves. We learned some interesting things.

Our staff went to one station, asked for the public file and it was said, okay, you know, if you wait and sit here for a while, we'll

bring it out to you. You can look at it here, but it's going to take some time.

And, eventually, the person came back and said to our staffer, you know what, here it is in a thumb drive, why don't you just take this.

And we concluded that the arguments about burden really weren't realistic. We're in an era where all of our licensees are increasingly doing everything with the FCC on an electronic basis.

They're submitting their applications, their modifications for engineering. Everything is online. The question for us is should this be the one thing that doesn't go online?

And we concluded that it just didn't make any sense.

Senator DURBIN. So what about the argument that somehow you are forcing disclosure of sensitive pricing data that otherwise would not be disclosed?

Chairman GENACHOWSKI. The data that will be disclosed is data that's already disclosed. It's available already to anyone in the market with an economic interest.

We found in our work that either other ad buyers are interested and they can get the information locally. It's very easy. In some cases, we learned that they did. Or they've concluded that it really doesn't affect the market. They don't need the information because of how ad deals ultimately get negotiated.

The Congress made the decision that this information, and it was explicit, that this information should be made public, including the rate. It was upheld by the Supreme Court explicitly over similar arguments about burden and about the negative effects of disclosure.

But in this case, the Supreme Court said, no, we reject the arguments. This is okay. And our action was completely consistent with the Congress' directive and with the Supreme Court upholding those provisions of the 2002 law.

Senator DURBIN. May I ask one last question if I can, and then I'll turn it over to Senator Moran for whatever he would like to ask.

BUDGET REQUEST FOR THE FEDERAL COMMUNICATIONS COMMISSION
INSPECTOR GENERAL

Let's discuss your inspector general's appropriation, the amount that's being requested. You're asking for an overall 2-percent plus increase for the FCC. But you've cut the inspector general's budget by about 10 percent.

Inspectors general around here are a little more popular since the General Services Administration mess, and why would you want to cut back on your inspector general's capacity?

Chairman GENACHOWSKI. I believe that those aren't the correct facts. Our practice has been, is and will be to pass through the inspector general's request for a budget and to support their budget.

The work of the inspector general is incredibly important. The independence of the inspector general is important. There may have been a mistake somewhere in the process.

Senator DURBIN. The fiscal year 2013 request is \$8.75 million for the inspector general. The fiscal year 2012 enacted level is \$9.75 million.

Chairman GENACHOWSKI. We will work on that with you, but I want to be very clear on this. Our policy is to pass through the inspector general's request and to support him.

Senator DURBIN. Thank you.

Senator MORAN. Mr. Chairman, thank you.

I think this should be able to conclude my questions of the Chairman. Thank you for your patience.

POSTING BROADCASTERS' PUBLIC INSPECTION FILES ONLINE

In regard to the political broadcasting issue that the chairman raised, I just want to ask one question. Does FCC envision going beyond what is currently included in the political file to require the collection of any additional information?

And what I heard you saying is that this is what the Congress authorized to be collected and retained. It's what the Supreme Court said was fine.

So, I assume the answer to that is, "No", but I wanted to make certain that I gave you the opportunity to say that.

Chairman GENACHOWSKI. I think you're right. The steps that we put in place simply said, we've already worked out what should be the disclosures. Let's move them from paper to online.

They're many people with many different views who think that disclosure should be done differently. That's a discussion that could be had including broadcasters who have proposed some ideas on how to modify the disclosures.

We'll be open to those suggestions, but the default is, what has been disclosed is what will continue to be disclosed.

Senator MORAN. Do you have the statutory authority? Are you able to do what you did because of the law you indicated the Congress has passed? Do you have the authority to collect more information?

Chairman GENACHOWSKI. I would presume that we do. There's a long history as part of—

Senator MORAN. I guess collect and disclose.

Chairman GENACHOWSKI. Collect and disclose. As part of broadcasters' public trustee obligations, which go back many, many decades, I would presume we have that authority.

There have been a few instances where the Congress said to FCC, whatever you do, make sure you do this, and this is one of those cases. But I think most people would agree that our authority with respect to information from spectrum licensees is pretty broad.

UNIVERSAL SERVICE REFORM

Senator MORAN. I want to just as a final, a couple of questions related to the regression model that the order outlined.

The order incorporated a regression model to evaluate when companies are perhaps not being as efficient with resources as possible. The regression model has raised concerns, I assume to you and certainly to me.

It was brought to my attention that FCC may have entered incorrect data into the regression analysis used to set the upper limits of high cost loop paid to incumbent rate of return, local exchange carriers.

This is an important aspect for future broadband investment. The other criticism that I've heard is that the outcomes will change, the regression model's outcomes will change from year to year as companies choose whether or not to make investments.

And the concern here is that companies may be fearful to invest because if they choose to but other companies don't, the regression model may return results that indicate the company is an outlier in the model and therefore not eligible for recovery of their investment.

Are either one of those concerns legitimate and something that you're attempting to address?

Chairman GENACHOWSKI. I'm not certain about the status of that back and forth with our staff. But, again, any issues like that that get raised, we have a professional staff that's been directed to take them very seriously.

The kinds of things we're trying to do, and the direction they've received from FCC, if I could be at a macro level for a minute, we want to distinguish instances like the following.

A company is receiving Federal funds who set up multiple subsidiaries with the same CEO at each subsidiary, paying themselves multiple times, using what in effect is taxpayer money. Well, we want to stop that.

We don't want to stop the perfectly honorable company in small town America that's doing the best it can under difficult circumstances to provide communications infrastructure in areas that have low population density.

And our charge, and not just mine, but FCC on a bipartisan basis to the staff, has been let's get this right. Let's distinguish those cases where we can't defend the outflow of money from the ones where they're legitimate businesses doing the right things.

Let's take these cases like what I mentioned before, where there's an overlap and phase them out in a reasonable way. Let's work with RUS to make sure that there's flexibility there on the loans as that's appropriate.

So these are all legitimate issues that you're raising, and I want you to know that we care about any negative effects that we have in places where we don't want to have negative effects.

And it's a hard job, and I'm just so proud of our staff for taking this seriously. The easier thing for us to do would have been to leave the program just the way it was, and not try to reform it, and not try to get broadband to people in rural America who don't have it, and not deal with these problems.

But we took on the challenge. I'm proud of FCC for having done it on a bipartisan, unanimous basis. I look forward to working with you on this, but I'd ask that if we can receive bipartisan support to keep on doing the hard work of reform and fiscal responsibility in meeting these goals, I think we can do great things for the country in moving this program forward.

Senator MORAN. Chairman Durbin, thank you very much for this hearing today and thank you for the opportunity I've had to visit, to question, to have a conversation with Chairman Genachowski.

Mr. Chairman, Chairman Genachowski, I don't think you volunteered to come to Kansas. But, Chairman, in the conversation that

you and I had, you indicated a willingness to accept an invitation. I would like to extend that again.

We'd love to have you come spend some time with folks in rural America, and in the interim, I would ask your commitment that your staff work with me and my staff, the subcommittee staff, as we try to sort out the questions that I've raised and some others, to give some additional information to those who are trying to make decisions about what to do next.

Chairman GENACHOWSKI. I would be happy to do that.

Senator MORAN. Thank you very much. Thank you.

Senator DURBIN. I would consider it an honor to come to Kansas and—

Senator MORAN. Chairman Durbin, I would invite you to come to Kansas, but—

Senator DURBIN. As long as it's Norfolk, Kansas.

Mr. Chairman, thank you for being here today. Thanks for your testimony. Senator Moran, thank you too.

Senator MORAN. Thank you.

ADDITIONAL COMMITTEE QUESTIONS

Senator DURBIN. We are going to keep the file open for a week, if there are any questions or comments to be added. You may get a question in the mail, please take it seriously.

[The following questions were not asked at the hearing, but were submitted to the Commission for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR JERRY MORAN

WAIVER

Question. In our previous discussions about Universal Service Fund (USF) reform, you have cited the "waiver process" as a remedy for companies who may experience severe financial challenges as a result of lost USF support. The order published on November 18 clearly states, "We permit any carrier negatively affected by the universal service reforms we take today to file a petition for waiver that clearly demonstrates that good cause exists for exempting the carrier from some or all of those refunds, and that waiver is necessary and in the public interest to ensure that consumers in the area continue to receive voice service." The threshold you have established for the waiver is related to a consumer's loss of access to voice service. This is an extremely low threshold of service to consumers particularly in the transition to a broadband world.

At the March 19 event here in Washington, Federal Communications Commission (FCC) Commissioner Robert McDowell stated, "If your company looks like it won't survive, there is a clear waiver process." Later the day, when questioned at an appropriations hearing, Commissioner McDowell said "We also looked at a waiver process that is very frugal . . . if indeed there is a carrier experiencing undue hardship because of the reform they can file a waiver with the FCC where they will have to open their books in a very detailed fashion so we know exactly what is going on with the money but they can get a waiver."

Can you explain to me how can we make certain waivers will be granted to those companies who might have to walk away from their current networks?

Answer. In reforming the USF, FCC unanimously agreed that, as a matter of fiscal responsibility and accountability, and to protect consumers and small businesses paying into the USF, a thorough, but fair waiver process was necessary for any company seeking a waiver. Any carrier facing reduced support as a result of FCC's universal service reforms may file a petition for waiver clearly demonstrating that good cause exists for exempting the carrier from some or all of those reforms, and that the waiver is necessary and in the public interest to ensure that consumers in the area continue to receive service.

Waivers will be granted where an eligible telecommunications carrier can demonstrate that, without additional universal service funding, its support would not be

“sufficient to achieve the purposes of section 254 of the Act.” In particular, a carrier seeking such a waiver must demonstrate that it needs additional support in order for its customers to continue receiving service in areas where there is no terrestrial alternative. Several weeks ago, I circulated a draft order to my colleagues to clarify that waivers can be granted to prevent loss of broadband service, not just loss of voice service.

A full discussion of FCC’s waiver process is available in the Connect America Fund order beginning at page 177 (available at <http://hraunfoss.fcc.gov/edocspublic/attachmatch/FCC-11-161A1.pdf>).

Question. Additionally, assume a waiver is granted. What rules will companies who are granted a waiver fall under?

Answer. The waiver process is structured to address the specific relief needed by the company and to grant tailored relief to address its needs. Otherwise, the generally applicable rules for the USF will apply. Careful, tailored relief is consistent with fiscal responsibility and accountability and to protect consumers and small businesses paying into the fund.

Question. Will there be increased reporting requirements?

Answer. That is a possible condition for granting a waiver. As FCC stated in the order, we intend to subject such requests to a fair and thorough review and will take appropriate measures to both ensure consumers do not lose service and protect public funds from waste, fraud, or abuse. This is consistent with our commitment to fiscal responsibility to consumers and businesses paying into the USF.

Question. Will companies receive more support to help fund their networks? If so, what money will be used to pay for companies who are granted waivers?

Answer. Any money used to grant a waiver will necessarily come from funds that could otherwise be used to support deployment of broadband to unserved areas. In the order, to address concerns about growth in the USF and to protect consumers and small businesses paying into the fund, we adopted an overall budget for the USF.

Question. Is it possible rural Americans could lose broadband service which is currently available to them today?

Answer. FCC’s framework will ensure that consumers who have access to broadband will continue to have access to broadband.

Question. What is the timeframe within which the FCC will respond to waiver requests from companies?

Answer. The Bureau is reviewing each petition individually and will make final decisions as expeditiously as possible. To expedite review of waivers, FCC delegated to the Wireline Competition and Wireless Telecommunications Bureaus the authority to approve or deny all or part of requests for waivers of phase-downs in support. We required that the Bureaus initiate the process for public comment within 45 days of receipt of a waiver petition.

REGRESSION MODEL

Question. That regression model outline in the USF/Intercarrier Compensation (ICC) reform order has raised concerns. It was brought to my attention that the FCC may have entered incorrect data into the quantile regression analysis used to set the upper limit of the high-cost loop paid to incumbent rate-of-return local exchange carriers. This is important for future broadband investment. Another criticism of the regression model is that the outcomes will change from year to year as companies choose whether or not to make investments. I have been told companies are fearful to invest because if they choose to and other companies do not, the regression model may return results that indicate the company is an outlier in the model and therefore will not be eligible for recovery of the investment.

Can you comment on the regression model and potential incorrect inputs and what the FCC is doing to address this issue?

Answer. FCC created a streamlined, expedited process to correct any problems. So far, the Wireline Competition Bureau has received two petitions to correct data, and both of the petitioners received responses within 2 weeks. FCC also launched a process to collect a full set of updated data from companies before benchmarks take full effect.

Question. How is FCC determining what caps for support should be in various areas?

Answer. The caps are based on comparing carriers to other similarly situated providers based on a range of criteria. For instance, the benchmarks take account of local conditions like population density, soil type, climate, as well as any recent investment by the company. In some cases, carriers spend almost three times as much per customer as smaller carriers right next door.

Question. How is FCC able to tell companies they should invest in serving their areas if the regression caps are changing year to year?

Answer. The reforms adopted by FCC will make support more predictable for carriers spending efficiently. In response to concerns about the timing of changes to the benchmarks, the Wireline Competition Bureau's order determined that the benchmarks should initially remain in effect until 2014. In the interim, FCC will consider whether benchmarks should subsequently be set for multiple years.

Question. How are you responding to companies who have asked about the regression model?

Answer. FCC has an open-door policy—Commission staff takes all meeting or call requests from companies to address any questions that come up, and has made all aspects of the regressions available for public inspection.

QUESTIONS SUBMITTED BY SENATOR MARK KIRK

Question. I strongly support the deployment of fixed and mobile broadband to increase economic development, productivity and America's global competitiveness. One analysis estimates the productivity gains from the deployment and use of wireless broadband will generate almost \$860 billion in additional GDP by 2016. Spectrum auctions and rural broadband development are key tools to accomplishing our ambitious goals and ensuring economic success. However, I am concerned about the administration's execution of these programs and have the following questions.

The administration recently announced its support for spectrum sharing in order to accelerate broadband development throughout the Nation.

Given that the National Telecommunications and Information Administration (NTIA) recently reported that moving Federal users off the Federal Exclusive Band airwaves will take more than a decade and cost \$18 billion, how does the Federal Communications Commission (FCC) intend to work with NTIA to ensure that the mutually beneficial short-term goal of spectrum sharing occurs, while at the same time balancing longer-term spectrum reallocation and incentive auction plans?

Answer. FCC's Mobile Action Plan employs an "all-of-the-above" approach to the spectrum crunch which includes more spectrum, but also more efficient use of spectrum and new ways to manage spectrum, both in the near-term and in the long-term. FCC is working now with NTIA and other stakeholders on near-term sharing and small cell opportunities in the 1755 MHz and 3.5 GHz bands. We are moving expeditiously forward with incentive auctions in a parallel process. We will continue to work with all stakeholders to meet the Nation's spectrum needs.

Question. How long will it take to complete the testing process with NTIA before spectrum sharing can be implemented?

Answer. I am hopeful that testing of sharing in the 1755 MHz band can be completed in a timeframe that would allow it to be paired with the 2155 MHz band for auction, as required by statute. FCC intends to initiate a 3.5 GHz rulemaking this year.

Question. How does FCC intend to handle the costs of Federal spectrum relocation?

Answer. FCC will follow the direction of the Congress, as set forth in the statute with respect to reimbursing relocation costs.

Question. What assurances does the FCC have from Government spectrum users that they will participate in spectrum sharing and that such sharing can be implemented in a timely manner?

Answer. FCC will continue to engage in discussions with NTIA and other Federal agencies, particularly the Department of Defense, to find solutions that meet commercial spectrum needs, while also enabling vital Government operations to continue.

Question. I have introduced legislation to establish a process nearly identical to the successful Base Realignment and Closure (BRAC) process to determine which Federal spectrum should be auctioned for sole or shared use by the private sector. I believe this is a key model for spectrum relocation because it forces the relocation process to move forward unless the Congress passes legislation to block it. What is the FCC's position on using a BRAC-like approach to addressing our spectrum crunch and providing the telecommunications industry with a certain path forward to reliably clear spectrum for wireless advancements?

Answer. This is an intriguing approach and I am interested in discussing all potential methods for identifying and deploying Federal spectrum. We should consider a broad range of solutions to the spectrum crunch and ensure that we have not left any concept off the table.

In the meantime, FCC has moved ahead to work with its counterparts to deploy Federal spectrum as soon as possible. The National Broadband Plan recommended a number of approaches to increase the availability of spectrum for commercial mobile and fixed wireless use, including working with NTIA to develop a roadmap to identify opportunities to make Federal spectrum available for exclusive, shared, licensed and/or unlicensed use. FCC continues to collaborate with NTIA on this approach and we will work with our Federal partners to develop plans for identifying and freeing up this valuable resource.

Question. I am concerned about the overlap in programmatic goals and implementation of the Universal Service Fund (USF) and the Department of Agriculture's (USDA) Rural Utility Service (RUS). Additionally, carriers use USF funds, that would otherwise have been used to build out broadband, to repay their RUS loans. What are the default criteria mechanisms in place that the FCC will use to enforce repayment of RUS loans?

Answer. RUS administers its loan program and has a better understanding of its default criteria. That said, as I mentioned at the hearing, we have worked closely with RUS throughout the USF reform process and our waiver criteria specifically consider debt, including RUS loans.

Question. How is the FCC working with USDA's RUS to ensure that taxpayer dollars are not diluted through duplicative projects that are also funded under USF?

Answer. RUS loans and USF support serve complementary purposes. USF provides ongoing support, while RUS provides low-cost loans. More generally, our USF reform was designed to ensure that USF support only goes where it's needed, and includes new accountability and safeguards for all USF spending.

Question. A recent study conducted by a Georgetown University researchers found that, based on the analysis of previous FCC auctions, the success of spectrum auctions depends greatly on whether or not conditions are placed on the auction. The study found that the full auction potential of broadcast spectrum with no conditions imposed could generate as much as \$91 billion in revenue, whereas the same auction which carries heavy conditions, such as net neutrality requirements. A free auction could raise 250 percent more funds than an unconditioned one.

What, if any, kinds of conditions will FCC place on the spectrum auctions authorized by Public Law 112-96? Will any restrictions be placed on participants?

Answer. FCC's incentive auctions team currently is preparing rulemaking notices for the incentive auction process. FCC will comply with all statutory requirements, and our process will be open, inclusive, fact-based, and guided by economics and engineering.

Question. How will FCC ensure that the value of the spectrum will be upheld throughout the auction process?

Answer. FCC has a long history of raising revenue through the auctions process, generating \$50 billion to the United States Treasury since 1993. Spectrum value goes beyond direct payments to the Treasury for spectrum licenses—spectrum deployment supports technological development, job creation and economic growth. FCC will consider these factors as well as all relevant statutory mandates as it initiates the incentive auctions process.

SUBCOMMITTEE RECESS

Senator DURBIN. This meeting stands in recess.

[Whereupon, at 4:55 p.m., Wednesday, May 9, the subcommittee was recessed, to reconvene subject to the call of the Chair.]