



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 1, 2010

The Honorable of Henry A. Waxman
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Waxman:

Attached please find my responses to the additional post-hearing questions from my appearance before the Committee on March 25, 2010. Please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in dark ink, appearing to be "J. Genachowski", is written over the typed name. The signature is stylized with a large, sweeping initial "J" and a long horizontal stroke.

Julius Genachowski

**Responses of Chairman Julius Genachowski to Questions for the Record
Oversight Hearing of the Federal Communications Commission:
The National Broadband Plan (March 25, 2010)**

**QUESTIONS FOR THE RECORD
THE HONORABLE ANNA G. ESHOO**

1. AWS-3 Spectrum Deployment

The Commission and its staff have demonstrated a sense of urgency in drafting this Report. I'm convinced, based on the testimony presented here, that the Commission recognizes the need for speed. But I continue to have some concerns, especially when it comes to spurring competition with new and innovative uses of the spectrum. Too many entrenched interests seem to be able to stop new ideas from taking root through delaying tactics that keep spectrum concentrated in the hands of larger carriers.

The Commission has to work together in an expeditious fashion to deploy already available spectrum. If we're going to see that 100 megabits reach 100 million homes the FCC has to begin to complete rulemakings faster so that we see immediate action. I am disappointed that the Advanced Wireless Spectrum (3) was not recommended for immediate deployment – that's a proceeding that was teed up years ago. Businesses can't be expected to participate in a hackneyed process that leaves them wondering and losing money for years.

Also, I have heard that the Department of Defense's (DOD) 1755-1780 MHz spectrum band that the National Broadband Plan is considering pairing with AWS-3 is currently jam packed with vital systems including drones for air strikes in Afghanistan and Pakistan and border security here at home, and that the systems in that band cost over \$100 billion and cannot be relocated until 2030. Could you comment on this matter?

RESPONSE: The National Broadband Plan ("Plan") recommends that NTIA, in consultation with the FCC, conduct an analysis, to be completed by October 1, 2010, of the possibility of reallocating a portion of the 1755–1850 MHz band to pair with the AWS-3 band. This effort is already under way with our colleagues at NTIA. As suggested by the plan, NTIA and FCC staff involved in these consultations are considering various possibilities for reallocating spectrum to meet the needs of the wireless market's explosive growth. This includes, but is not limited to, the 1755-1780 MHz band.

Almost ten years have passed since spectrum managers last examined the possibility of reallocating additional spectrum from the 1.7 GHz band, so a fresh look is appropriate. Obviously the wireless marketplace and mobile technologies have undergone significant changes in the last decade. For example, in 2000-2001, DoD assumed that all non-Federal operations would involve IMT-2000 or 3G technology, which may no longer be the case. Carriers are now contemplating deployment of 4G technologies, including LTE and WiMAX. Also, during the last review, the process for reimbursing Federal users was unclear. Now, the Commercial Spectrum Enhancement Act passed in 2004 provides certainty to Federal users--and I understand that Congress may also consider additional improvements to that process.

In summary, the Plan recommends that over the next months we analyze the possibility of obtaining additional spectrum to pair with AWS-3. I completely agree with you that it is important for the Commission to resolve proceedings as expeditiously as possible, and I note that the Plan sets a deadline of October 1, 2010 to complete the analysis of this pairing alternative. The Plan recommends that if there is a strong possibility of reallocating federal spectrum to pair with the AWS-3 band, the FCC, in consultation with NTIA, should immediately commence reallocation proceedings for the combined band. The Plan goes on to recommend that if pairing is not a strong possibility, the Commission should proceed promptly to adopt rules in 2010 and auction the AWS-3 spectrum on a stand-alone basis in 2011.

2. Since there is no evidence or data in the National Broadband Plan supporting this possible pairing, did anyone at the Commission contact DOD officials to get the real picture on reallocating DOD's spectrum during the preparation of the National Broadband Plan?

If so, please make available to me and my colleagues the data from the DoD or the Administration suggesting the possibility of reallocating federal spectrum to pair with the AWS-3 band.

RESPONSE: It has been almost 10 years since NTIA and the FCC have formally evaluated the possibility of non-Federal use of spectrum within the 1755-1850 MHz frequency band. NTIA has agreed to take a fresh look at this possibility, commenting that "the Administration supports exploring both commercial and government spectrum available for reallocation." FCC staff members have been participating in an interagency process with NTIA and other Federal agencies regarding potential non-Federal use of spectrum in a number of bands, including the 1755-1850 MHz frequency range.

3. I want to know what you will do individually to move us forward. If you don't find paired spectrum by the October deadline outlined in the report, will you actually auction the spectrum and put it in use as soon as possible?

RESPONSE: Yes. One of the things that the Plan did was set a deadline for analysis of this pairing alternative. The Plan also recommends that if the pairing is not possible, the Commission should immediately proceed to adopt rules, and auction the AWS-3 spectrum. Recently, the FCC released an Action Agenda that indicates that the Commission will, by October 1, 2010, conclude a process with NTIA to determine whether a portion of the 1.7 GHz band currently used for federal government purposes can be paired with 20 MHz of spectrum in the AWS-3 band. The Plan Action Agenda also indicates that if, at the end of the inquiry, there is not a strong possibility of reallocating federal spectrum, the Commission plans to adopt final rules in the fourth quarter of calendar year 2010 to auction the AWS-3 spectrum on a stand-alone basis in the second quarter of calendar year 2011.

4. With this in mind, I did not see any immediate, specific recommended actions in the Plan that would have the FCC create new broadband competition through the use of spectrum. What

specific actions will you be taking in the short term, say in the next 3 months, that will provide spectrum so we can help create new entrants to the broadband market?

RESPONSE: The Plan laid out several recommended actions to create broadband competition through the use of spectrum. Specifically, the Plan recommends that the FCC make 500 megahertz newly available for broadband use within the next 10 years, of which 300 megahertz between 225 MHz and 3.7 GHz should be made newly available for mobile use within five years. In addition, the Plan suggests that the Commission should free up new, contiguous spectrum for unlicensed use, which could provide additional opportunities for competitive entry and ongoing innovation in mobile services and technologies. The Commission's Bureaus and Offices have already begun executing the strategy laid out in the Plan. The Broadband Action Agenda, announced on April 8, 2010, explains the purpose and timing of more than 60 rulemakings and other notice-and-comment proceedings the Plan recommends for FCC action. See <http://www.broadband.gov/plan/broadband-action-agenda.html>. For example, by the end of this quarter, the Commission plans to address an Order to enable robust mobile broadband use of 20 MHz of spectrum in the 2.3 GHz Wireless Communications Service (WCS) band.

5. Next Generation 911

I was pleased to see a specific reference to funding for Next Generation 911. As you know, I joined with my colleague, John Shimkus, the Co-Chair of the E911 Caucus, to offer bipartisan, bicameral legislation to renew grants for 9-1-1 call center technology, and to move that technology into the next developmental phase. Have you had the opportunity to review the legislation and could you give me your opinion about the need for H.R. 4829?

RESPONSE: I have reviewed H.R. 4829, as well as the companion Senate bill, S. 3115. The legislation is consistent with our recommendations in the National Broadband Plan (NBP) and would advance the vision for the rapid and efficient deployment of and migration to Next Generation 911. Consistent with our recommendations in the NBP, the legislation reauthorizes the 911 grant program that was created in 2004 by the ENHANCE 911 Act, and reauthorizes the 911 Implementation Coordination Office (ICO) as well. In particular, there is a significant need for those provisions that would authorize grants for Enhanced 911 and Next Generation 911 implementation, condition receipt of grants on use of 911 funds only for their intended purposes, and address 911 caller location issues with respect to operators of multi-line telephone systems (MLTS). I also appreciate that the legislation includes training in 911 services, because I recognize that training is of national importance. The need for these provisions can be measured in the lives that Enhanced 911 and Next Generation 911 services will save, the injuries they will prevent, and the property they will protect. I look forward to working with you and your colleagues in implementing all of the NG 911-related recommendations contained in the NBP and ensuring that NG 911 is available throughout the nation.

6. Special Access

I was glad to see that the Plan includes several references to making sure that special access rates are just and reasonable. As we all know, these circuits provide critical connections for wireless services – including backhaul for wireless providers to small businesses using

ATM's, to the largest retail chains placing orders with their vendors. I have LONG advocated that the Commission look into the pricing and competition of special access services and I'm glad to see that it is a priority. Are you confident that you have the legal authority to move ahead?

RESPONSE: Yes. Special access service is a common carrier telecommunications service subject to statutory requirements under Title II of the Communications Act. *See Special Access Rates for Price Cap Carriers NPRM*, 20 FCC Rcd 1994 (2005) (describing the history of the Commission's rate regulation of interstate access services, including special access service). For example, section 201 of the Act requires common carriers to provide their services at just and reasonable rates. See 47 U.S.C. § 201(b). Section 202(b) prohibits carriers from engaging in unjust or unreasonable discrimination in their charges or practices. See 47 U.S.C. § 202(a). Moreover, the Commission has the authority to prescribe just and reasonable special access rates. See 47 U.S.C. § 205. These provisions provide the Commission with ample legal authority to ensure just and reasonable rates in the provision of special access services.

On November 5, 2009, the Commission issued a public notice seeking comment on an appropriate analytical framework to resolve issues raised in the pending *Special Access Notice of Proposed Rulemaking*. This proceeding seeks to determine whether the Commission's rules are working to ensure that rates, terms, and conditions for special access services, which serve business locations and cell towers, are just and reasonable, as required by law. The Commission's staff is presently analyzing the extensive comments it has received in response to that public notice. Further, the National Broadband Plan makes certain recommendations regarding special access services to promote broadband deployment, competition, and investment. In this regard, the Plan recommends that the Commission comprehensively review its regulations and develop an effective policy framework for taking expedited action to ensure the widespread availability of inputs for broadband services, including the inputs provided by special access services.

As part of its recently announced broadband action agenda for implementing the National Broadband Plan's recommendations, the Commission will hold a staff workshop late in the second quarter or early third quarter to discuss the analytical framework it should use to assess the effectiveness of the existing special access rules. In late third quarter or early fourth quarter, the Commission plans to propose such a framework and identify associated data collection requirements, if necessary – critical steps toward ensuring that rates, terms, and conditions for special access services are just and reasonable, as required by law.

7. Affordability

The National Broadband Plan doesn't provide specifics on how to achieve bringing more broadband connectivity to low income and rural homes in this country, other than through use of the Universal Service Fund. Will the FCC work more closely with HUD to expand this needed technology?

RESPONSE: The plan includes a number of recommendations aimed at increasing connectivity to low income and rural homes. Some, such as expanding low income

Universal Service support to broadband, will be lead by the FCC. When implementing recommendations within its jurisdiction, the FCC, where appropriate, will seek input from HUD and other federal agencies who serve large groups of non-adopters such as the Department of Agriculture or the Department of Education.

The plan also addresses affordability as part of other, broader recommendations to increase adoption and the FCC may not have a role in implementing some of those recommendations. For example, the National Broadband Plan recommended that NTIA explore public-private partnerships (PPPs) to stimulate broadband adoption in non-adopting communities, and noted that HUD residents are an especially vulnerable group. NTIA recently awarded a \$28.5 million sustainable adoption grant, which will be supplemented by \$23 million matching funds by a consortium of private companies, to collaborate with 159 affordable housing units across the country, subsidize connections for 27,000 housing units. The FCC is also aware of a round two BTOP application that proposes to work more closely with HUD to institute similar, multi-pronged adoption programs targeting as many as 250,000 low income households. The FCC will not have a formal operational role in any particular PPPs that may develop as part of BTOP, but the FCC will continue to explore innovative approaches to coordinate with other government actors like HUD, NTIA and the Department of Agriculture while also leveraging efforts by other stakeholders from the private and non-profit sectors.

8. I'm concerned that low income homes will get hooked up, but the residents will be unable to maintain monthly payments. Once low income and rural households do acquire broadband technology, what can be done to assure that the monthly service charge is kept to a minimum so that the service may be maintained?

RESPONSE: The National Broadband Plan recommends that universal service low-income programs (Lifeline and Link Up) be expanded to include broadband service. Currently, Lifeline discounts offset eligible low-income consumers' recurring, monthly telephone charges, while Link Up discounts reduce eligible low-income consumers' one-time telephone connection/installation charges. If both Lifeline and Link Up discounts are expanded to apply to service packages that include broadband, as the Plan recommends, eligible low-income consumers would be eligible for discounts on both recurring monthly charges and installation charges for broadband service. Specifically, the Plan recommends that: (1) the FCC and states should require eligible telecommunications carriers (ETCs) to permit Lifeline customers to apply Lifeline discounts to any service or package that includes basic voice telephone service; (2) the FCC should integrate the expanded Lifeline and Link Up programs with other state and local e-government efforts; and (3) the FCC should facilitate pilot programs that will produce actionable information to implement the most efficient and effective long-term broadband support mechanism.

9. Competition Questions

The National Broadband Plan observes that there is not a coherent and effective framework governing the Commission's wholesale competition regulations, including wireless roaming policies. Indeed, the FCC's current wireless roaming rule expressly permits the nation's largest wireless carriers to discriminate or exclude large geographic areas altogether in providing wholesale roaming services to their competitors. As the Plan notes, such conduct

undermines longstanding competition policy objectives by limiting the ability of smaller carriers to gain access to the necessary inputs to compete. How do you intend to address this important wholesale competition issue in the context of wireless roaming services?

RESPONSE: In April, the Commission modified the 2007 roaming rule and eliminated the home roaming exclusion.¹ Under the revised roaming rule, upon a reasonable request, CMRS carriers are obligated to provide voice, text messaging, and push-to-talk roaming to any technologically compatible, facilities-based CMRS carrier on reasonable and not unreasonably discriminatory terms and conditions. This new framework for roaming will encourage carriers of all sizes to reach reasonable roaming agreements for any area, while also encouraging these carriers to continue investing in the coverage and capacity of their networks. Elimination of the home market roaming exclusion will increase consumers' access to seamless nationwide mobile services, wherever and whenever they choose, and will promote investment, innovation, and competition in mobile wireless services.

10. The National Broadband Plan acknowledges the importance of data roaming to entry and competition for mobile broadband services. But the FCC's present voice roaming rule contains an "in-market" exclusion that expressly permits carriers to deny roaming service to their competitors' customers in large portions of their licensed territories. This exclusion, if replicated in the data roaming context, would appear to severely undercut the Commission's stated goal in the Plan of achieving "wide, seamless and competitive coverage." How does the Commission intend to address this problem?

RESPONSE: As discussed above in response to question #9, with respect to voice and related services, the Commission eliminated the home roaming exclusion. With respect to data roaming and consistent with the National Broadband Plan, the FCC sought additional comment on whether to extend automatic roaming obligations to mobile data services. The Commission committed to resolve the data roaming issue in an expedited manner. As I have said before, there are few areas in communications that present greater promise for our country than mobile – in terms of driving our economy and delivering broad opportunity for all Americans – and our goal must be for America to lead the world in mobile. To promote this goal, we must ensure that American consumers have access to competitive broadband data communications services whenever they want and wherever they are, while also ensuring that the United States has the fastest and most extensive mobile networks in the world.

11. Public Television – Broadcast Spectrum Issue

As you know, public television stations are very different from commercial television stations with respect to their funding, their programming, their mission and the efficient manner in which they use spectrum to serve the public interest. Public television stations also have been confronting extraordinary fiscal challenges during the past 18 months. As the Commission looks ahead to rulemakings announced in the National Broadband Plan to

¹ See *Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, WT Docket No. 05-265, FCC 10-59 (rel. Apr. 21, 2010).

reclaim 120 MHz of spectrum from broadcasters, can you give us assurances that public television stations will be protected from involuntary reallocations of spectrum?

RESPONSE: Yes, the rules for broadcast spectrum reallocation that I will support will provide for a voluntary program for public television stations, as well as commercial stations. Our initial estimates of how much spectrum per market we'll need to repurpose do not distinguish between commercial and non-commercial television spectrum.

We do distinguish, however, between how to allocate the proceeds resulting from any contributions of commercial and non-commercial station spectrum. In Recommendation 15.6 of the National Broadband Plan, we suggest that Congress consider allowing 100% of the proceeds from the sale of spectrum contributed by non-commercial television stations to endow a trust fund for the production, distribution and archiving of digital public media. We also recommended that these proceeds should be distributed so that a significant portion goes to public media in the communities from which the spectrum was contributed.

Our expectation is that this voluntary program will achieve all our goals.

12. Would you elaborate on the sequencing of the rulemakings for reclaiming the broadcast spectrum and the creation of incentive auctions in the National Broadband Plan? As you know, only the Congress can authorize the creation of incentive spectrum auctions in which the contributors of spectrum could receive some of the proceeds. I am particularly interested in the proposal for the creation of a digital media trust fund to be created from the proceeds of incentive auctions of spectrum contributed by public television stations. If Congress does not authorize such incentive auctions, will these other rulemakings go forward in any event?

RESPONSE: In Recommendation 15.6 of the National Broadband Plan, we suggest that Congress consider allowing 100% of the proceeds from the sale of spectrum contributed by non-commercial television stations to endow a trust fund for the production, distribution and archiving of digital public media. We would look to Congress to determine an appropriate trustee and uses of trust income and disbursements, but envision that trust fund proceeds would be supplemental to current Congressional appropriations for public broadcasting.

I have asked my staff to focus our next television spectrum rulemaking on rule changes necessary to allow stations to share a 6-megahertz channel. We believe channel-sharing introduces a new and meaningful option of which broadcasters could avail themselves independent of Congress granting us incentive auction authority.

QUESTIONS FOR THE RECORD

THE HONORABLE CLIFF STEARNS

1. Does the broadband plan lay out any cost-benefit analyses? How many dollars should we spend for each additional broadband subscriber we create and each additional megabit-per-second we provide? \$1,000? \$10,000? \$100,000? Will you commit to providing these sort of cost-benefit analysis before adopting any item in the plan?

RESPONSE: The Commission created the National Broadband Plan in response to direction from Congress, in the ARRA, to “seek to ensure that all people of the United States have access to broadband capability....” The Plan presents analyses of where broadband infrastructure is available, where there are availability gaps, and the cost to fill those gaps. The methodology and model underlying these analyses are explained in detail in a staff technical paper titled “The Broadband Availability Gap” released by the FCC’s broadband team on April 21, 2010. This paper describes in detail the methodology and model employed to estimate areas of the U.S where broadband service is not likely to be available in the next several years, and estimates the cost of bringing broadband to these unserved areas.

Costs of bringing broadband to a particular unserved home will vary greatly depending on geography and technology, making it difficult to provide a single figure per home or Mbps.

We recognize that the solution to filling broadband availability gaps will not be the same for all homes and that part of that solution involves finding the most cost-effective means to make broadband available. The Commission is committed to continuing with its open, transparent, data driven processes as it works to implement recommendations contained in the National Broadband Plan. This process will include rigorous analysis of data in the records developed to consider Plan recommendations, prior to adoption of any recommendations.

2. The broadband plan proposes expanding the E-rate program, but the GAO found in 1998, 1999, 2005, and 2009 that the FCC has not developed adequate performance goals and measures for the E-rate program, despite GAO’s repeated requests. If we cannot tell how effective and efficient past E-rate spending has been, how can we be assured expansion will be done properly or is even a good idea in the first place? Will you commit to submitting E-rate performance measures and goals to GAO and to us for approval before anyone considers expanding the program?

RESPONSE: During its 11-year existence, the E-rate program has helped thousands of schools and libraries improve their technological capabilities. When the Commission first adopted a structure for the E-rate program, the Commission identified goals for the program and established priorities accordingly. As the Commission noted in its *Universal Service First Report and Order*, the E-rate program was intended to ensure that eligible schools and libraries have affordable access to modern telecommunications and information services that would enable them to provide educational services to all parts of the nation. While the Commission did not set a target for achievement at that time, the program has been

successful in getting schools and libraries connected to the Internet. The National Center for Education Statistics found nearly 100 percent of public schools in the United States had Internet access, and 97 percent of these schools used broadband connections to access the Internet. The National Broadband Plan seeks to further ensure that the E-rate program helps students and communities across the nation continue to have access to essential broadband connections.

Given the pace at which society and technology move today, it is important to conduct periodic reviews of the Commission's goals to examine whether those goals remain valid or if adjustments are necessary. The Commission has taken the initial actions necessary to conduct this evaluation as part of its ongoing comprehensive review proceeding. Additionally, the Commission recently requested comment on establishing new goals, both short-term and long-term, for the E-rate program. This proceeding is still pending. Once the Commission has considered the comments and developed new goals, it will revise its policies as necessary to achieve them.

3. The broadband plan recommends providing more spectrum for unlicensed use. A 2008 paper by the FCC's Office of Strategic Planning and Policy Analysis indicates that the most efficient way to allocate spectrum for unlicensed use would be to do so by auction. If the sum of the bids of those seeking unlicensed use exceeds the bid of the highest bidder seeking licensed use, the spectrum would go to the unlicensed use. This would not only ensure the spectrum is allocated efficiently, it could raise substantial revenue. Will you commit to seeking comment on the use of auctions in any proceeding regarding potential distribution of additional unlicensed spectrum?

RESPONSE: The use of market-based techniques in the context of unlicensed spectrum is certainly an idea I would support exploring.

4. Some questions were raised at the hearing that spectrum that might otherwise be paired with the AWS-III spectrum for commercial mobile broadband use may be needed for use with military drones. But didn't a Department of Defense report released to the public in 2009 indicate that most current and future high-capacity spectrum used domestically and abroad for drone flights over about 150 km is on frequencies far from the spectrum that could be paired with the AWS-III spectrum? Won't they mainly use the X-Band from 8 to 12 MHz, the Ku-Band from 11.5 to 14.5 GHz, and the Ka Band from 26.5 to 40 GHz for mission critical operations? Aren't there also line-of-sight and other issues for most non-satellite spectrum under 3 GHz that limits its use for most drone missions? And if, other than for testing, the drones are mainly used overseas, will there really be much of an interference issue with commercial use here?

RESPONSE: The 2009 report you reference, which I believe is titled, "United States Air Force Unmanned Aircraft Systems Flight Plan 2009-2047," appears to support your suggestion that certain Department of Defense drone systems currently use, or will likely use in the future, X Band and Ka Band frequencies. These frequencies are far removed from spectrum currently being considered in the interagency process for pairing with the AWS-3 spectrum, minimizing any interference concerns.

The 2009 report may not address all relevant Department of Defense systems comprehensively; our colleagues at NTIA would be in a better position to do so. It is possible, however, that even if spectrum identified through the interagency process for potential pairing with AWS-3 spectrum were used for data links from drones to a satellite system, or for similarly sensitive DoD operations, there may be mitigation techniques that can be employed to reduce the potential for interference between the systems.

QUESTIONS FOR THE RECORD
THE HONORABLE FRED UPTON

1. I appreciated your comment at the hearing that the FCC would make sure that any changes in the Wireless Communications System rules do not result in interference to satellite radio consumers. My understanding, however, is that the FCC engineering staff is proposing rules that will allow for at least some interference with satellite radio. What specific actions will the Commission take to ensure that level of interference is not unacceptable to consumers?

RESPONSE: The rules the FCC engineering staff is recommending are designed to prevent harmful interference to the satellite radio service and quickly remedy interference if it should occur. The proposed rules would permit the wireless communications service (WCS) to offer mobile voice, video and data services. Sirius-XM believes that WCS mobile devices transmitting continuous video from a vehicle will cause harmful interference to satellite radio reception in nearby vehicles. While much of the debate has focused on whether usage cases such as video conferencing from vehicles or video uploads of movies are likely, lost in this discussion is the fact that the engineering staff does not believe harmful interference will occur for these cases, however frequent or infrequent they may be.

The WCS Coalition conducted a demonstration in Ashton, Virginia last summer using an actual device transmitting multiple types of signals from inside a vehicle, including video, while other vehicles equipped with Sirius-XM radios drove or parked next to one another. The demonstration was open to the public and was also witnessed by about a dozen FCC engineering staff. No harmful interference occurred. The technical parameters in use at that demonstration and the results of that demonstration, along with all of the other information submitted by parties, informed the proposed rules publicized by the FCC's engineering staff in a recent Public Notice. Our decision on this matter will be further guided by the information and arguments submitted in response to those very specific proposed rules.

QUESTIONS FOR THE RECORD
THE HONORABLE JON SHADEGG

1. The National Broadband plan mentions special access circuits and analyzing competition in the middle mile – do you anticipate going forward with a request for data soon so we can address this issue?

RESPONSE: On November 5, 2009, the Commission issued a public notice seeking comment on an appropriate analytical framework to resolve issues raised in the pending *Special Access Notice of Proposed Rulemaking*. This proceeding seeks to determine whether the Commission's rules are working to ensure that rates, terms, and conditions for special access services, which serve business locations and cell towers, are just and reasonable, as required by law. The Commission's staff is presently analyzing the extensive comments it has received in response to that public notice. Further, the National Broadband Plan makes certain recommendations regarding special access services to promote broadband deployment, competition, and investment. In this regard, the Plan recommends that the Commission comprehensively review its regulations and develop an effective policy framework for taking expedited action to ensure the widespread availability of inputs for broadband services, including the inputs provided by special access services. As part of its recently announced broadband action agenda for implementing the National Broadband Plan's recommendations, the Commission will hold a staff workshop late in the second quarter or early third quarter to discuss the analytical framework it should use to assess the effectiveness of the existing special access rules. In late third quarter or early fourth quarter, the Commission plans to propose such a framework and identify associated data collection requirements, if necessary – critical steps toward ensuring that rates, terms, and conditions for special access services are just and reasonable, as required by law.

QUESTIONS FOR THE RECORD

THE HONORABLE STEVE BUYER

1. Broadband providers have invested hundreds of billions of dollars in recent years to build and improve their infrastructure and creating jobs at a time when the job market has been in trouble. The broadband industry is projecting to invest additional billion of dollars in the coming year – again providing an engine of economic growth. As one of the few industries of strength and investment, past decisions at the FCC to not saddle the Internet with heavy regulation clearly demonstrate that a less regulatory environment is working. Why are you proposing that the FCC now pivot away from these policies and impose 19th-century common carrier monopoly regulation on a 21st century competitive industry, disrupting the virtuous cycle that currently exists? If it's not broken, why fix it?

RESPONSE: Promoting continued investment and job creation, both in the core broadband networks and through Internet-based services and applications that ride on such networks, is a key priority for the FCC and a key focus of the National Broadband Plan. The private sector is the key to investment and job creation, but government policy can help facilitate those outcomes, including through recommendations of the National Broadband Plan to spur broadband deployment and adoption, such as USF reform. Telecommunications policy must take account of current market and technological realities.

After the National Broadband Plan was released, the United States Court of Appeals for the District of Columbia Circuit released its decision in *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010). The *Comcast* decision casts serious doubt on whether the legal framework the Commission chose for broadband Internet services nearly a decade ago is adequate to achieve these core broadband policies, which prior Commissions thought they had legal authority to implement. To address this challenge, the Commission adopted a Notice of Inquiry at its June 17 Open Meeting to initiate a public discussion on how the Commission should proceed in light of *Comcast*. The Notice seeks comment on all options, and invites any ideas for how the Commission should proceed, including: maintaining the current “information service” classification of services such as cable modem and DSL Internet access; classifying broadband Internet connectivity service as a “telecommunications service” to which all the requirements of Title II of the Communications Act would apply; and the “third way” – similar to the highly successful approach that has been used for cell phone services since 1993 – under which the Commission would identify the Internet connectivity service that is offered as part of wired broadband Internet service as a telecommunications service and forbear from applying all provisions of Title II other than the small number that are needed to implement fundamental universal service, competition and market entry, and consumer protection policies. I am enclosing a copy of the Notice for your information. I look forward to working with Commission staff to review the comments the Notice will generate.

I welcome the process that Chairmen Rockefeller, Waxman, Kerry, and Boucher have announced to develop proposals updating the Communications Act. A limited update of the Communications Act could lock in an effective broadband framework to promote investment and innovation, foster competition, and empower consumers. I have committed all available

Commission resources to assisting Congress in its consideration of how to improve and clarify our communications laws. Meanwhile, in view of the court decision, and as the Congressional Chairs have requested, the Commission has an obligation to move forward with the public proceeding initiated by our Notice, which is complementary to Congress's own efforts.

2. Recommendation 4.7 implies that the FCC should mandate the unbundling of fiber. Why? It is my understanding from previous testimony by the FCC that this issue was settled. Such a recommendation makes no sense because fiber deployment has gone up dramatically in recent years since the FCC confirmed that it was not subject to unbundling in the Triennial Review Order of 2003, which deregulated some of those components. Can you explain the legal basis on which the FCC could undertake to reverse itself on this matter? What findings/analysis would be required? What decisions would need to be reversed?

RESPONSE: Recommendation 4.7 refers to several petitions before the Commission, including one regarding access to local fiber facilities, and recommends "act[ing] on these proceedings within the context of rigorous analytic frameworks" that "appropriately balance the benefits of competitive entry with incentives for carriers to invest in their networks."

The Commission derives its legal authority to regulate aspects of wireline networks and services from several statutory provisions, including sections 201, 202, 251, and 271 of the Communications Act. The Commission has from time to time reviewed its implementation of these sections and may choose to modify its rules, if warranted, after a review of the legal, factual, and rational basis for the rules, and after conducting an open and transparent proceeding in which all parties have a fair opportunity to respond. The Commission has not proposed any changes, therefore I cannot speculate as to which prior rulings, if any, might be affected.

3. Do you think that there would be the same level of fiber deployment today if the FCC had not decided in 2003 to end the mandatory unbundling of such facilities?

RESPONSE: It is difficult for me to speculate as to exactly what would have happened if different regulatory decisions had been made years ago. Nevertheless, we expressly recognized in the Plan that the Commission's wholesale competition rules should "appropriately balance the benefits of competitive entry with incentives for carriers to invest in their networks."

4. If the FCC is going to revisit its decision not to require unbundling of packet and fiber facilities, a decision that I think would severely damage broadband investment, do you believe that packet/fiber unbundling should apply only to ILECs, or to cable operators as well? I'm not arguing for more regulation – but I am trying to get a sense for whether you will commit not to disadvantage one technology, business model, or competitor in future rulemakings.

RESPONSE: The Commission plans to engage in a comprehensive review of its wholesale competition regulations to "establish coherent sets of conditions under which such rules

should be applied.” The Commission will, in the course of its review, evaluate the legal and policy constraints affecting to whom and how such rules would apply.

5. For years I have been an advocate of encouraging and providing incentives for companies to take risks by developing and investing their own infrastructure. The NBP appears to take a step back on many fronts, including special access. Evidence shows that plenty of competition exists and prices have decreased – showing the market is working. Rolling back pricing flexibility – thereby lowering rates through further regulation – would only encourage less competition and less innovation. Why does this FCC leadership insist on providing less competition to the marketplace?

RESPONSE: The recently released National Broadband Plan recognizes the importance of competition in achieving the goals for broadband deployment and maximizing its benefits and applications for all Americans. The Plan makes certain recommendations regarding special access services to promote broadband deployment, competition, and investment. In this regard, the Plan recommends that the Commission comprehensively review its regulations and develop an effective policy framework for taking expedited action to ensure the widespread availability of inputs for broadband services, including the inputs provided by special access services. As the Plan notes, the Commission has already taken steps with regard to special access services. On November 5, 2009, the Commission issued a public notice seeking comment on an appropriate analytical framework to resolve issues raised in the pending *Special Access Notice of Proposed Rulemaking*. This proceeding seeks to determine whether the Commission’s rules are working to ensure that rates, terms, and conditions for special access services, which serve business locations and cell towers, are just and reasonable, as required by law. The Commission’s staff is presently analyzing the extensive comments it has received in response to that public notice. Further, as part of its recently announced broadband action agenda for implementing the National Broadband Plan’s recommendations, the Commission will hold a staff workshop late in the second quarter or early third quarter to discuss the analytical framework it should use to assess the effectiveness of the existing special access rules. In late third quarter or early fourth quarter, the Commission plans to propose such a framework and identify associated data collection requirements, if necessary – critical steps toward ensuring that rates, terms, and conditions for special access services are just and reasonable, as required by law.

6. The telecommunications industry has been a significant leader in America’s economic engine in both times of economic strength and times of challenge. Why does the NBP open the door to reclassifying broadband back to the old monopoly era phone service which will stifle investment and growth of the industry and innovation?

RESPONSE: Section 17.3 of the National Broadband Plan (at page 337) discusses the legal framework for the FCC’s implementation of the Plan. Section 17.3 notes that commenters in the National Broadband Plan proceeding suggested two alternative approaches for FCC implementation of the Plan, assuming that Congress does not amend the Communications Act. First, commenters suggested that the Commission could rely on its ancillary authority under Title I of the Act to promulgate most of the rules relating to broadband that the Plan recommends. The Plan acknowledges that while some commenters believe Title I ancillary

authority, coupled with specific grants of authority in other provisions in the Act, provides the Commission with ample authority to implement the Plan, others expressed doubts about the adequacy of Title I authority to support FCC efforts to advance broadband goals.

Second, commenters in the Plan proceeding suggested that the Commission could classify broadband services as telecommunications services and implement certain plan recommendations under its Title II authority. These commenters believe that such an approach would provide a sounder legal basis for implementing recommendations in the Plan, such as establishing direct support for rural broadband. Commenters also noted that classifying a broadband service as a telecommunications service would not require the Commission to apply all provisions in Title II to the service. Rather, the Commission could exercise its forbearance authority under section 10 of the Act to narrowly tailor its use of Title II to advance policies including those described in the Plan. The Plan acknowledges that other commenters oppose applying Title II to broadband services, contending that Title II is an ill-fitting legal framework for broadband services. Section 17.3 concludes with the following statement: "The FCC will consider these and related questions as it moves forward to implement the plan."

As I mentioned in response to question number 1, after the National Broadband Plan was released, the D.C. Circuit released its decision in *Comcast*, which casts serious doubt on whether the legal framework the Commission chose for broadband Internet services nearly a decade ago is adequate to achieve core broadband policies, which prior Commissions thought they had legal authority to implement. To the extent *Comcast* casts doubt on the Commission's ability to address recommendations in the National Broadband Plan, the record generated in response to the Notice of Inquiry adopted on June 17 will help the Commission determine how to proceed.

7. Many people, including Commissioner Clyburn, have raised concerns that the FCC's plan to reallocate broadcast spectrum to wireless broadband could have a disproportionately negative impact on minority and female-owned stations. Drafters of the broadband plan admit that "the reallocation mechanisms could impact the number and diversity of 'voices' in a community or market" and recommend simply that the FCC "study" this potential impact. Do you think that the purported benefits of more expansive wireless broadband outweigh the benefits of a diversified local media?

RESPONSE: Our proposal around channel-sharing by broadcasters that want to participate in the auction and still broadcast their primary stream is intended to *maximize* the number of "voices" in a community while simultaneously repurposing spectrum. We are just now beginning to study the potential impacts on women and minority-owned stations, as we seek to balance (1) making the revenue sharing opportunity equally available to *anyone* who volunteers to participate with (2) maintaining programming that serves local and minority community interests, and will share those results with you.

8. The National Broadband Plan recommends that Congress grant the FCC and NTIA authority to impose spectrum fees on spectrum not licensed for flexible use. The Plan quotes the Government Accountability Office, which says that “these fees mimic the functions of the market.” In your view, do spectrum fees “mimic the market,” or is this a manipulation of the market by the government and a way to force certain licensees off the band? Please explain your views.

RESPONSE: The National Broadband Plan calls on Congress to grant the FCC and NTIA authority to impose spectrum fees, but only on spectrum that is not licensed for exclusive flexible use. This is a recommendation that has bipartisan support and has been suggested in the past by Presidents of both parties. In my view, spectrum fees can serve some of the same effects that a well-functioning market produces by compelling spectrum users to recognize the value to society of the spectrum that they use.

9. How do the FCC’s reallocation mechanisms affect low-power TV stations and translators? In many western TV markets, as many as 30 percent of over-the-air viewers rely on TV translators or boosters for their service. Would a broadcast “repack” negatively impact these viewers? Why or why not?

RESPONSE: We plan to conduct an open and transparent process to determine how best to provide access to the current TV broadcast spectrum for wireless broadband services. I announced that we plan to conduct an Engineering Forum in the near future and we are planning to initiate a Notice of Proposed Rule Making in the third quarter of this year. It is premature to speculate how the Commission might ultimately go about making the spectrum available. I recognize the importance of low-power TV stations and translators to communities throughout the nation. I assure you that any potential impact on low-power TV stations and translators will be fully considered in this process.

10. Verizon CEO Ivan Seidenberg recently said that he “does not buy into the idea” that broadcast spectrum should be reallocated for wireless broadband and that “technology will tend to solve” any possible spectrum shortage. This seems to contradict the National Broadband Plan findings that a spectrum shortage is inevitable. Is it possible, in your view, that advances in wireless technology can keep pace with demand and that more spectrum may not be the primary answer?

RESPONSE: I believe that that the biggest threat to the future of mobile services in America is the looming spectrum crisis. On our current trajectory, the demand for spectrum for mobile Internet access will outstrip the supply. During our open broadband process, over one hundred companies – technology, telecom, electronics and others, representing many billions of dollars of ongoing investment and millions of American jobs – submitted a formal filing stating, “Our nation’s ability to lead the world in innovation and technology is threatened by the lack of sufficient spectrum for wireless broadband applications and services.” The National Broadband Plan lays out a well-balanced plan designed to be a win-win-win for broadcasters, mobile Internet providers, and the American people.

11. It is important to ensure our first responders have an uninterrupted safety network. First responders currently work with broadcasters who utilize their spectrum to deliver emergency messages and information to their local communities. The NBP outlines the taking of spectrum from some entities, like broadcasters, when there has not yet been a complete inventory of spectrum allocation, as posed in H.R. 3125, the Radio Spectrum Inventory Act. Why is the NBP getting ahead of the game by allocating spectrum when we don't have a clear understanding of what exactly there is to allocate?

RESPONSE: A spectrum inventory is a very useful activity that will enable better spectrum policies across all of the spectrum bands. We have already undertaken an extensive review of commercial uses of the spectrum, and as a result have identified some allocations that can be opened to new uses. In light of our mandate to manage spectrum efficiently, we should take action in areas that we already know have great potential to bear fruit. The process of freeing up additional spectrum will take several years. If we wait to start that process until a spectrum inventory is complete, we will push back the date when we can alleviate the spectrum crunch. Laying this technical and regulatory groundwork now will pay off whenever an inventory is implemented in the future.

QUESTIONS FOR THE RECORD

THE HONORABLE MIKE ROGERS

1. A group of cable and satellite companies recently weighed in with Congress and the FCC complaining about the so-called retransmission consent process. Congress established retransmission consent as a free market negotiation between distributors and broadcasters.

These distributors are asking for the government to meddle in these negotiations with broadcasters.

It is concerning for me to hear appeals for the Federal government to intervene and affect potential progress at the negotiation table. Government intervention can make it much more difficult for private parties to determine the fair-market value of the property in question.

- a. Do you share my concern about the unintended consequences of the government even considering intervention in the marketplace?
- b. Do you believe you that the Communications Act grants the Commission the authority to intervene in these private negotiations?

RESPONSE: I agree that the market is the preferred means to establish retransmission consent arrangements between broadcasters and MVPS, and in the vast majority of negotiations, the parties are able to reach an agreement without a service disruption. However, I do have concerns about processes that cause needless disruption to viewers when commercial entities fail to reach a deal. As you may know, the Commission recently solicited public comment to a Petition for Rulemaking filed by a group of 14 entities, including small, medium, and large cable companies, as well as satellite operators and public interest organizations, that asked the Commission to amend our retransmission consent rules. We will evaluate the record developed, including providing careful consideration of the consequences of government intervention in the marketplace.

While the Communications Act contemplates that the terms of retransmission consent should be resolved by agreement between private companies, the Act does provide for a formal role by the Commission in resolution of a retransmission consent dispute upon the filing of a complaint by either party. Even when the parties do not bring a formal complaint to the Commission, if Commission staff becomes aware that negotiations are reaching a standstill, staff may reach out to the parties to request status updates and encourage retransmission consent extensions so that subscribers are not subject to a loss of programming.

2. As we all know, broadband is central to our economic recovery and we are grateful to have the benefit of a plan to guide us. While the Plan recognizes the strides we have made in deploying broadband to Americans, it also discusses areas that the Commission believes is impeding that deployment. In particular, the broadband plan discusses the special access market.

- a. Would you please discuss your vision on the way forward with the special access market?
- b. When discussing the wire line competition recommendations in Chapter 4 of the National Broadband plan, did you have in mind any specific type of customer?
- c. Does Chapter 4 of the National Broadband plan impose any restrictions or limitations as to the class of customer for which these services would be made available?

RESPONSE: On November 5, 2009, the Commission issued a public notice seeking comment on an appropriate analytical framework to resolve issues raised in the pending *Special Access Notice of Proposed Rulemaking*. This proceeding seeks to determine whether the Commission's rules are working to ensure that rates, terms, and conditions for special access services, which serve business locations and cell towers, are just and reasonable, as required by law. The Commission's staff is presently analyzing the extensive comments it has received in response to that public notice. Further, the National Broadband Plan makes certain recommendations regarding special access services to promote broadband deployment, competition, and investment. In this regard, the Plan recommends that the Commission comprehensively review its regulations and develop an effective policy framework for taking expedited action to ensure the widespread availability of inputs for broadband services, including the inputs provided by special access services. As part of its recently announced broadband action agenda for implementing the National Broadband Plan's recommendations, the Commission will hold a staff workshop late in the second quarter or early third quarter to discuss the analytical framework it should use to assess the effectiveness of the existing special access rules. In late third quarter or early fourth quarter, the Commission plans to propose such a framework and identify associated data collection requirements, if necessary – critical steps toward ensuring that rates, terms, and conditions for special access services are just and reasonable, as required by law.

Chapter 4 of the National Broadband Plan references all kinds of customers, including those in the residential, small business, enterprise, wholesale, and mobile markets. The National Broadband Plan does not impose any restrictions or limitations as to the class of customer.

QUESTIONS FOR THE RECORD

THE HONORABLE MARSHA BLACKBURN

1. I note in your testimony that this is a plan that is in beta form and that it should change in light of new developments. As you may know, the core copyright industries contributed close to one-quarter of the real growth achieved by the U.S. economy as a whole in 2006-07. How do we ensure both robust broadband deployment and the protection of the intellectual property of those copyright industries which contribute greatly to our growth of our economy?

RESPONSE: The National Broadband Plan recognizes (at page 58) that “[t]he Internet must be a safe, trusted platform for the lawful distribution of content.” The Plan acknowledges (at page 17) that digital piracy is an ongoing problem, but notes that technologies designed to prevent piracy, such as content fingerprinting, show promise. The Plan also highlights industry-led initiatives to develop guidelines for dealing with piracy. I am optimistic that continuing advances in technology, development of industry guidelines, and enforcement of copyright laws can curb piracy without stifling innovation or overburdening lawful uses of copyrighted works.

2. The National Broadband Plan notes that, “piracy is still present in the broadband ecosystem.” But the Plan also recommends that Congress take legislative action to “encourage copyright holders to grant educational digital rights of use, without prejudicing their other rights.” As you know, this is a very complicated area of intellectual property law that clearly falls outside the jurisdiction of the FCC. Are there other recommendations in the FCC Plan could impact U.S. Copyright Policy? Also, can you give me your assurances that the FCC will not make any recommendations for modification to U.S. copyright law without the involvement of the two expert agencies that have primary jurisdiction over copyright issues, namely the PTO and Copyright Office?

RESPONSE: The National Broadband Plan includes three recommendations that address copyright issues. Recommendation 11.4 suggests that Congress should consider taking legislative action to encourage copyright holders to grant educational digital rights of use, without prejudicing their other rights. Recommendation 15.7 suggests that Congress should consider amending the Copyright Act to provide for copyright exemptions to public broadcasting organizations for online broadcast and distribution of public media. Recommendation 15.9 suggests that Congress should consider amending the Copyright Act to enable public and broadcast media to more easily contribute their archival content to a digital national archive and grant reasonable noncommercial downstream usage rights for this content to the American people. I assure you that I will consult with PTO and the Copyright Office before recommending modifications to copyright laws

3. Did the FCC analyze the impact of broadband expansion on copyright piracy in other countries, like South Korea, and other than noting that ““piracy is still present in the broadband ecosystem,” does the Plan have any recommendations for making sure that broadband expansion does not increase the amount of piracy of US copyrighted works?

RESPONSE: The FCC team that prepared the National Broadband Plan did not analyze the impact of broadband expansion on copyright piracy in other countries. The Plan recognizes that illegal distribution of copyright-protected content over the Internet is an ongoing problem, but does not specifically recommend methods for limiting piracy of copyrighted works.