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FEDERAL COMMUNICATIONS COMMISSION OVERSIGHT HEARING

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

MAY 26, 1999

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ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

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CONTENTS

	Page
Hearing held May 26, 1999	1
Statement of Senator Brownback	78
Prepared Statement	81
Statement of Senator Cleland	103
Statement of Senator Dorgan	89
Statement of Senator Hollings	76
Statement of Senator Hutchison	84
Statement of Senator Lott	71
Prepared Statement	72
Statement of Senator McCain	1
Prepared Statement	2
Statement of Senator Rockefeller	86
Statement of Senator Stevens	91
Statement of Senator Wyden	82

WITNESSES

Furchtgott-Roth, Hon. Harold W., Commissioner, Federal Communications Commission	42
Prepared statement with attachments	44
Kennard, Hon. William E., Chairman, Federal Communications Commission	3
Prepared statement	5
Ness, Hon. Susan, Commissioner, Federal Communications Commission	32
Prepared statement with attachment	33
Powell, Hon. Michael K., Commissioner, Federal Communications Commission	59
Prepared statement	62
Tristani, Hon. Gloria, Commissioner, Federal Communications Commission	38
Prepared statement	40

APPENDIX

Burns, Hon. Conrad, U.S. Senator from Montana, prepared statement	111
A New federal Communications Commission for the 21st Century, prepared statement with Appendices	17
Gorton, Hon. Slade, U.S. Senator from Washington, prepared statement	112
Responses to written questions submitted by Hon. Sam Brownback to:	
William E. Kennard	120
Susan Ness	126
Michael K. Powell	130
Harold W. Furchtgott-Roth	134
Gloria Tristani	123
Responses to written questions submitted by Hon. Conrad Burns to:	
William E. Kennard	112
Susan Ness	124
Michael K. Powell	129
Harold W. Furchtgott-Roth	133
Gloria Tristani	122
Responses to written questions submitted by Hon. Trent Lott to:	
William E. Kennard	116
Susan Ness	123
Michael K. Powell	126
Harold W. Furchtgott-Roth	131
Gloria Tristani	121

Page

Responses to written questions submitted by Hon. Olympia J. Snowe to:
William E. Kennard 120
Susan Ness 126
Michael K. Powell 131
Harold W. Furchtgott-Roth 134
Gloria Tristani 123
Nghiem, David, President & CEO, USA Wireless, Inc., letter dated May 24, 1999, to Hon. John McCain, Chairman 135

FEDERAL COMMUNICATIONS COMMISSION OVERSIGHT HEARING

WEDNESDAY, MAY 26, 1999

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 2:04 p.m. in room SR–253, Russell Senate Office Building, Hon. John McCain, chairman of the Committee, presiding.

Staff members assigned to this hearing: Lauren Belvin, Republican senior counsel; Paula Ford, Democratic senior counsel; and Al Mottur, Democratic counsel.

OPENING STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

The CHAIRMAN. Good morning.

For the first time since 1990, the Commerce Committee meets today to oversee and reauthorize the activities of the Federal Communications Commission. I would like to welcome as witnesses the five members of the FCC: Chairman William Kennard and Commissioners Susan Ness, Gloria Tristani, Michael Powell and Harold Furchtgott-Roth and thank them for their attendance today.

I know the Members of the Committee have many questions to ask and concerns to express, so I will keep these initial comments quite brief.

Last year Robert Novak called the Federal Communications Commission "the second most powerful bureaucratic entity after the Federal Reserve Board," and he is right. The FCC is responsible for implementing Congressional policy in regulating the telecommunications industry, which accounts for over one-sixth of our country's gross national product and is the fastest growing sector of our country's economy.

Obviously, the FCC's actions have much to do with the success that telecommunications companies have in the marketplace and as prime movers in our overall economic growth. As big an impact as the FCC's actions have on the industry and on the economy, however, it is the impact of the FCC's actions on the consumer that should be our focus today. The five individuals before us play a crucial role in determining the availability and affordability of the wired and wireless voice, video, and data services that are indispensable to everyday life here and around the world.

For this reason, these five individuals' perspective and their judgment are matters of preeminent concern to this Committee and

to the Congress. Their perspectives and their judgment is what we will examine today.

As my questions will no doubt indicate, I find much that I disagree with vigorously. In my view, a majority of this Commission places too little confidence in competition and way too much in regulation. It tends to ignore the demands of making orderly, efficient and fair decisions on the matters before it, preferring to pursue issues that are within neither their expertise nor their jurisdiction. It has shown a distressing tendency towards inconsistent and ad hoc decisionmaking and toward picking and choosing which parts of the law it will choose to follow.

In other words, in my view a majority of this Commission has shown itself all too susceptible to unpredictable actions, delayed decisions, flawed reasoning, and apparent inability or unwillingness to follow the law. As surely as these problems affect the big industries the FCC regulates, they harm individual consumers even more.

Ted Turner has an excellent philosophy on decisionmaking that should apply to the FCC: Lead, follow, or get out of the way. To the extent the Committee finds that the Commission is unable to lead or unwilling to follow, it is our responsibility to make sure it gets out of the way.

I welcome the witnesses. Mr. Kennard, Chairman Kennard, we will begin with you, and we will have the other five—the other four Commissioners after you. Please proceed.

[The prepared statement of Senator McCain follows:]

PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

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STATEMENT OF HON. WILLIAM E. KENNARD, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. KENNARD. Thank you very much, Mr. Chairman. I appreciate the opportunity to appear before you today. I have submitted my written testimony for the record and I ask that it be submitted in full.

I wanted to just point out a couple of opening remarks. First of all, we meet at an extraordinary time. It is a time, as you point out, filled with promise and unlimited potential. Technology that was once found only in our science fiction can now be found in our desktops, our cars, our pockets. Traditional industry boundaries are rapidly disappearing and the communications world is converging.

Already we are seeing glimpses of a future in which phone lines will deliver movies, cable lines will carry phone calls, and the air waves will carry both.

Now, some have said that Congress got it wrong in 1996 by not foreseeing all of the convergence that is happening and not anticipating the medium that undergirds it, the Internet. Examining the data, however, I believe the opposite is the case. I think that Congress got it right in the 1996 Telecom Act. By placing competition at the foundation of our communications policy, the members of this committee and of this Congress set the stage for the explosive growth of the Internet, the digital economy, and the entire communications industry.

I believe you drafted the blueprint that allowed thousands of entrepreneurs from across the country to build a communications industry for the twenty-first century. I also believe that the technical advances unleashed by these competitive forces are what is fueling our current economic boom, the longest peacetime expansion of our economy in history.

As Federal Reserve Chairman Alan Greenspan noted earlier this month, the revolution in how we process and send information has made American businesses more efficient and responsive to consumer demand, increased productivity without inflation, and contributed to a surge in competitive trade. To use Chairman Greenspan's words, "The United States is now an oasis of prosperity."

I believe that the spring at the center of that oasis is the communications sector of our economy. Over the past 3 years alone, revenues in the communications sector have grown by $140 billion, climbing to a revenue level of $500 billion in 1998. With these profits, business has expanded and over 200,000 jobs have been created over the past 5 years.

Looking at specific industries, the growth picture is even clearer. In the wireless industry, capital investment has more than tripled since 1993 for a cumulative total of $50 billion. Now almost 70 million Americans have a mobile phone and over the past 5 years

40,000 Americans have gone to work in new jobs that wireless companies have created.

We have also seen a lot of robust competition in the long distance marketplace. By the end of 1997 there were over 600 long distance providers competing for customers. We have seen interstate long distance calls drop dramatically, as well as international calls. In fact, almost 30 billion more minutes in long distance international calls were made from 1996 to 1997.

In the local phone sector, this newly-born competition marketplace is growing. In the first quarter of 1999 alone, almost a million CLEC access lines were installed and, although still in its infancy, the competitive local exchange industry is now a sizable telecommunications force. There are now 20 publicly-traded CLEC's with a total market capitalization of $33 billion, compared to 6 CLEC's with a market cap of $1.3 billion prior to the passage of the 1996 Act.

It is clear that competition in the marketplace is flourishing and we are seeing tremendous growth, and this has not been at the expense of the incumbents. On average, RBOC and GTE share price was up 45 percent in 1998.

I am happy to report that over the past 18 months the FCC has been focused on its core mission. We have taken definitive steps to make sure that this growth continues by hastening the transition to a competitive telecommunications marketplace and making sure that we do so in a way that remains true to the intent of the Act, which is to open markets to competition.

In the wireless industry, the FCC eliminated the original duopoly structure, we pumped more spectrum into the marketplace, making the PCS industry possible. Today Americans are using more wireless services than ever before and they are making those phone calls at costs 40 percent today than it did 3 years ago.

In the multi-channel video marketplace, we have made it easier for home satellite companies to compete with cable by allowing them to take steps to increase their capacity and deliver more services to consumers. We set a timetable for making sure that consumers can buy settop boxes from anyone willing to sell them, not just their cable company, and we cleared the way for people to affix antennas and satellite dishes on their homes and apartments.

To promote local phone competition, we have opened the local loops, we have made it easier for competitors to get into the incumbents' central offices, and we established rules on spectrum compatibility so that many competitors can use the network to send voice and data.

The competition unleashed in these traditional sectors also brings us closer to another goal of the Act, the deployment of advanced broadband services to the American people. By making large blocks of spectrum available, by allowing companies to use them for any technically feasible service, and by giving newcomers access to the essential elements of incumbent phone networks, the FCC is setting the stage for a robust competitive marketplace within and among sectors of the communications industry.

With convergence has also come consolidation within and between industry groups. I fully understand that in a competitive world many businesses want to take advantage of efficiencies and

economies of scale and acquire properties that complement their core businesses, and a big part of that interest is making sure that competition in telecommunications from local service to broadband is not stifled. It is this principle that guides me in assessing mergers before the Commission.

In drafting the Telecom Act, Congress reached back to values as old as America itself. One of these was choice, the belief that, given an array of options, individuals can best decide what is best for them. Another was equality of opportunity, that every American, no matter where they live in our vast country, should have a chance to live up to their full promise. That is why, in addition to fostering competition, we have worked to bring the Internet into our Nation's schools and libraries, we have worked to craft universal service that is fair and enduring, to ensure that basic as well as advanced telecommunications reach families in rural America from farms and small towns to Indian reservations.

Finally, as old industry boundaries fade away, the FCC itself must change. Simply put, the top-down regulatory model for the FCC is as out of date for the twenty-first century as the rotary phone. We need a new FCC and to that end the FCC is preparing a report outlining what we foresee the Commission doing as competition takes root and flourishes. Last week we held the first of a series of three public forums to get input from a number of stakeholders on how the agency can be reengineered to better serve the American public in the coming century.

Mr. Chairman, I feel very honored to be entrusted with the task of remaking the FCC for the twenty-first century, and I know that the FCC staff, my fellow Commissioners, and the entire agency are ready for the challenge, and I look forward to working with you, with your continued guidance, to promote competition, foster continued growth in new technology, and bring these opportunities to all Americans.

Thank you.

[The prepared statement of Chairman Kennard follows:]

PREPARED STATEMENT OF HON. WILLIAM E. KENNARD, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to review with you today the FCC's performance during the last eighteen months and how we have fulfilled our statutory obligations. Much of our work over the last eighteen months has continued to focus on implementing and enforcing the Telecommunications Act of 1996. Because so much of that Act was focused on promoting competition in local telecommunications services, encouraging deployment of advanced services, and deregulating where possible, I will focus my remarks today on these subjects.

OVERVIEW

I am pleased to report that the Act is working: competition is growing in a wide range of telecommunications markets—we see increased competition among long distance providers and consumers are beginning to have competitive choices for many local telecommunications services for the first time. The competitive deployment of advanced broadband services is spreading rapidly, and we are removing large amounts of historical regulation, particularly through the biennial review process and the forbearance authority granted in the Act.

Today, we see tantalizing glimpses of this competitive. deregulated future. Many markets, such as wireless and long distance markets are quite competitive and many—but not all—of the fundamental prerequisites for fully competitive, deregulated local telecommunications markets are now in place as the result of Congres-

sional mandates in the Act, and the rapid implementation of the Act by the FCC and our colleagues in the State Public Utility Commissions.

This is not to say that fully competitive markets are inevitable and that we can now declare victory and simply walk away. Vigorous enforcement of the fundamental prerequisites for competitive markets and active, intelligent dispute resolution will remain necessary for some years to come, particularly if we are to avoid the kind of lengthy antitrust litigation that plagued the development of long distance competition. Indeed, today we are at that very delicate "tipping point": with just a little more time—and probably a lot more effort—we'll be "over the top" and competition will gain a firm foothold. But if we are unable or unwilling to make this effort, the momentum toward competitive markets will slow, the balance will tip the other way and just as inevitably send us back to 1996 and even 1990.

The coming year promises to hold breakthroughs in many telecommunications markets. The market-opening process in the Act has worked in tandem with the incentives and protections of Section 271 of the Act. I am encouraged by the progress being made by some of the Bell Operating Companies toward meeting the checklist requirements of Section 271. I look forward to the day that I can join my fellow Commissioners in granting a meritorious application for entry into interLATA telecommunications markets and seeing that decision withstand judicial scrutiny in the D.C. Circuit.

I also anticipate substantial developments in the coming year with respect to the rapid deployment of advanced telecommunications services, including increased deployment in rural areas. In particular, broadband services delivered over DSL or cable modems should increase dramatically in residential markets throughout the country. Wireless competition also will continue to grow, and it is not unreasonable to begin looking to the day where wireless telephony services will be viewed by some consumers as a substitute for wireline services. We should also see increased progress towards open markets internationally, and it should be a good year for the development of exciting new satellite services.

In sum, we are on the right track. Our implementation of the Congressional framework is working and we will have competitive, deregulated telecommunications markets in all sectors of the industry, and in all parts of the country, if we stay on course. It will take diligence and hard work by the FCC and our partners in the State Public Utility Commissions before fully competitive local markets are the norm, but I know that the dedicated women and men at the FCC and the State Commissions are ready and willing to undertake this hard work. I hope that all the members of the Commerce Committee, the Senate and the entire Congress will support us in this effort.

GOOD NEWS: THE TELECOMMUNICATIONS SECTOR IS THRIVING

By every measure, the telecommunications industry is thriving. One-fourth of our country's recent economic growth has come from the information technology sector. Since the passage of the Telecommunications Act, revenues of the communications sector of our economy have grown by over $140 billion. For 1998, it is estimated that the communications sector of our economy will have revenues in excess of $500 billion dollars. The market values of most companies in the telecommunications sector have increased substantially, indicating that Wall Street anticipates that the overall growth from competition will exceed lost market shares. In other words, telecommunications is like a rapidly enlarging pie that is big enough for many new participants; it is not a "zero sum" game.

This growth has not happened by accident. It is the direct result of sound Congressional policies that have been implemented and enforced by the FCC and the states. The old regulatory structure guaranteed that telecommunications markets would display the attributes of monopoly—lack of choice, consumer dissatisfaction, delays in deploying new services, excessive regulation, and slow growth. As we replace this structure with a framework for competitive, deregulated markets and begin to change attitudes through vigorous enforcement of the new framework, we are experiencing a blossoming in telecommunications that touches the lives of almost every American. Now, a growing number of American families across this nation have a choice of a vast array of high-tech communications services, and those services offer far greater capabilities, with far greater quality, and often at lower prices.

This growth comes not only from established providers but, since the passage of the Act, we can now clearly see benefits flowing from the new competitors that are emerging as a result of the implementation of the Act by the FCC and the states. As barriers to entry have been removed and the fundamental rights that are necessary for competitive provision of telecommunications have been established, new

firms have been showing up all over the country to take advantage of the pent-up demand for choices, new services, and lower prices. For example, the revenues of new local service providers more than doubled in 1997, and they increased substantially again in 1998. And this growth has meant new jobs for thousands of Americans.

In the wireless industry, Congress and the FCC have created the conditions for substantial growth. The FCC has auctioned off large amounts of spectrum, making it possible for new firms to enter markets, and we have worked hard to address some of the fundamental conditions for vigorous competition, such as interconnection. As a result, annual capital investment more than tripled between 1993 and 1998, with more than $50 billion of cumulative investment through 1998. Similarly, the wireless industry generated almost three times as many jobs last year as in 1993. The industry did all this while the cost of service to the consumer dropped. A wireless telephone is no longer a luxury for the privileged. Instead, with the advances in cellular service, the advent of PCS and digital services, and most importantly, increased competition—choices of providers offering comparable service—mobile telephones are now a common communications tool for over seventy million people.

Together with Congress and the Executive Branch, we have also promoted open entry and pro-competitive polices throughout the world, ranging from FCC policies to reduce international settlement rates to the adoption of the landmark World Trade Organization (WTO) agreement on telecommunications services. Together with the growth in our domestic markets, these policies will help ensure that companies such as AT&T, BellSouth, MCI Worldcom, Ameritech, Sprint, SBC, Bell Atlantic and US West have the opportunity to stay among the top twenty telecommunications companies, by revenue, worldwide. Similarly, GE Americom, Hughes, Loral and PanAmSat are among the top twenty satellite service providers, by revenue, worldwide. And US satellite manufacturers such as Hughes, Lockheed Martin, Loral, Motorola and Orbital Sciences maintain a strong lead in contracting and subcontracting satellite systems worldwide.

I can't finish a summary of the sector without mentioning the Internet. It goes without saying that the Internet is booming, creating new jobs, new and better means of education and commerce. The Internet is a testament to a wise regulatory policy: don't regulate unless there is a clearly demonstrable need to do so. The FCC established a "hands off" policy three decades ago as evidenced by the original Computer Inquiry, and I can assure you that the FCC will not regulate Internet services. In fact, I believe that the unregulated, highly competitive Internet is a useful model for the more traditional telecommunications sectors. Of course, the basic legal prerequisites for competitive markets such as property rights and laws governing contractual relations should be enforced by the appropriate authorities.

These are just a few examples of how the wise policies adopted by Congress and implemented by the FCC and the states have produced a telecommunications economy that is thriving, and are doing so in an increasingly competitive environment.

STATUS OF COMPETITION

Let me take a few minutes to give you an idea of how competition is evolving, starting with markets for long distance telecommunications services. There are now over 600 long distance providers offering services, some on their own facilities, some entirely by resale and still others by a combination of owned facilities and resale. The vibrant competition between these firms has given customers a wide range of choices of providers and services, which has made an appreciable difference on the prices most consumers pay for long distance services. Long distance prices have steadily dropped over the past few years. The average cost of domestic interstate long distance dropped from 11.8 cents per minute to 10.3 cents per minute from 1996 to 1997. At the same time, the average rate per minute for an international call dropped from $0.70 in 1996 to $0.64 in 1997. Consumers have responded to these rate reductions by increasing their use of these services. Interstate and international calling increased to 500 billion minutes in 1998.

The wireless industry is surging. Everything that is supposed to be up is up, everything that is supposed to be down is down. Subscribership is up, jobs are up, investment is up, consumer bills are down, and the wait for a license is down. What is important to remember is that this surge of the wireless industry followed the elimination of the original duopoly structure and the introduction of competition by making more spectrum available to more players. In other words, Congressional and FCC policies to foster competition have worked for consumers' benefit and we expect that our local competition policies will bring similar benefits to wireline services.

The international market is also flourishing. With the adoption and implementation of the WTO Agreement countries representing 90% of the $600 billion global market for basic telecommunications have pledged to open their markets to international competition. We have been successful in our negotiation of bi-lateral agreements with other governments to permit provision of satellite service in their countries, such as Mexico and Argentina. We are also seeing substantial progress with international settlement rates as a result of the WTO Agreement and FCC decisions such as the International Settlement Rate ("Benchmarks") Order recently affirmed by the D.C. Circuit.

Domestically, local competition is still nascent, but it is making significant strides. The revenues of local service competitors in 1998 were about $4 billion. It is estimated that new local competitors now provide, over their own networks or by reselling incumbent company lines and unbundled loops, service to between four and five million telephone lines to customers—between two to three percent of the nation's total telephone lines.

Local competitors are taking an increasing share of nationwide local service revenues. Local competition is broadening: new competitors are reselling incumbent company lines in almost every state—and about 40% of the incumbent lines they resell are connected to residences; new facilities-based competitors are active in almost every state. Local competitors continue to attract investment capital and deploy their networks. Industry sources report that 20 publicly-traded competitive local exchange carriers (CLECs) have a total market capitalization of $33 billion—compared to six such companies with $1.3 billion of total market capitalization prior to the 1996 Act. And these new competitors are working faster and working smarter. They continue to build fiber optic-based networks at a faster rate than incumbents.

ADVANCED SERVICES/BROADBAND DEPLOYMENT

I would like to speak briefly about the progress in the last three years in the area of "advanced telecommunications capability," or "broadband" as it is popularly known.

What is broadband? It is two-way communications of voice, data and images via any technology and, most importantly, at vastly higher speeds than most consumers have ever had in their homes. In practical terms, broadband will make it possible to change web pages as fast as you can flip through the pages of a book; will make possible two-way video conferencing in the home so that family members can see each other instead of just talking; and can make possible the downloading of feature length movies in minutes.

Broadband can also greatly increase the possibilities of distance learning and medical treatment at home; and its potential for persons with disabilities—for increased communications via sign language or speech reading with the advantage of facial expressions and other nuances, and the possibility of text-based Internet pages converted into braille—is enormous.

Section 706 of the 1996 Act, of course, directs the Commission to encourage the deployment of broadband to all Americans on a reasonable and timely basis. We released a Report in January on our nation's progress towards that goal.

Our Report is just a snapshot taken a few seconds after the starting gun of a very long race—we and the runners in that race have a long way to go. In our Report, we concluded that advanced telecommunications capabilities are being rolled out in this country at a rate that outpaces the rollout of previous breakthrough products and services in the communications field. So, by this objective measure, we are ahead of the curve. On a subjective level, however, I am impatient. I want the Internet to go faster and farther for all Americans, and I am particularly concerned about deployment in rural areas and inner cities. We must ensure that a geometric increase in the deployment of advanced services is not accompanied by a geometric increase in the urban-rural disparity.

At this early stage, the signs are encouraging. We see two things, in particular.

First, since the 1996 Act, there has been an enormous amount of activity in the broadband area. Investment in broadband facilities has been tens of billions of dollars—large sums even by the standards of this business. In what is usually the most difficult part of this business to enter— the so-called "last mile" to the home—many companies are building last miles, or giving serious study to the idea

• Local exchange carriers, both incumbent and competitive, are deploying new technology that has reinvigorated the ubiquitous and simple copper telephone loops into effective and low-cost broadband connections for residential consumers as well as businesses.

• Cable television companies are adding two-way broadband capabilities to their networks which are inherently focused on residential consumers, including rural and non-urban areas.

• Electrical power utilities, wireless cable companies, mobile and fixed radio companies, and many satellite companies are building or planning broadband systems—some with revolutionary new technologies—to serve residential consumers.

Second, in terms of residential subscribers who are paying for the service, today broadband is on par with, or ahead of, the telephone, black-and-white and color television, and cellular service at the same stage in their deployment. And according to the cable and telephone companies, by the end of this year they will be offering broadband to millions of residences.

As mentioned above, we at the FCC are committed to the greatest vigilance in ensuring that broadband services are deployed as rapidly as possible in rural areas that have been historically bypassed by competition and technological advances. In this regard, I am pleased to note that broadband services are being offered to residential consumers in a number of small towns and rural areas, which indicates that rural areas do not present intractable problems for broadband deployment. Rural areas may be targeted especially by satellite companies, which already have the highest proportion of their customers for Direct Broadcast Satellite television services in rural areas. I would also like to thank those Senators who joined with Senators Daschle and Dorgan in their letter to me last week. They have made recommendations that hold promise for rural America, and I look forward to working with them.

The success of broadband so far is the result of many longstanding FCC policies. For example, the FCC has sought to facilitate new competition in all phases of the telecommunications business, enforcing unbundling requirements so that newcomers have fair access to elements of the incumbent networks, and allocating large blocks of spectrum in ways that make them useable for any technically feasible service.

Because this is the very early stage in broadband's deployment, the nature of consumer demand is very unclear. Certainly, at present, it seems that many companies are entering broadband and offering it at consumer-friendly prices, and residential consumers are starting to find out about broadband. The market seems to be working and the best role for government is to observe, monitor and enforce our longstanding policies of promoting competition and providing the spectrum and access rights that are the building blocks for a competitive market.

TELECOMMUNICATIONS MERGERS AND ACQUISITIONS: RECONSOLIDATION OR FOUNDATION FOR THE FUTURE?

A strong effort to firmly establish competition in local markets and your support of this goal is all the more necessary since the telecommunications industry is experiencing a wave of mergers and acquisitions. As this Committee is aware, smaller companies are "bulking up" by merging with each other, and major "name brand" telecommunications companies are also merging with one another as well as acquiring smaller companies.

This activity could portend a reconsolidation of the telecommunications industry that prevents competition, to the public's detriment, or it could establish a strong foundation for aggressive competition and innovation that greatly benefits the public.

With the stakes so high, when formerly monopolized markets are being opened to competition, it is essential that we do as much as we can to prevent anything that will retard the development of competition. This means lowering entry barriers, ensuring efficient interconnection of facilities, and encouraging the development and deployment of new technologies. This also means that the Commission needs to be particularly careful in evaluating mergers during this time of change and uncertainty, because a merger, once consummated, cannot easily be broken up. You can't unscramble an egg.

"Good" mergers can spur competition by creating merged entities that can compete more aggressively and that can more quickly move into previously monopolized markets. If this competition develops, it will make it possible to substantially deregulate the local exchange markets, just as strong competition justified the substantial deregulation of the long distance and wireless markets. Similarly, a vertical merger between two firms that do not appear to be likely significant competitors in each other's markets may generate public benefits without imposing anticompetitive costs.

But "bad" mergers are likely to slow the development of competition. Among the anticompetitive harms arising from a "bad" merger are: eliminating firms that would have entered markets; raising barriers to entry; discouraging investment; in-

creasing the ability of the merged entity to engage In anticompetitive conduct; and making it more difficult for the Commission and State Public Utility Commissions to monitor and implement procompetitive policies. What makes evaluation of telecommunications mergers so difficult is that regulatory barriers to entry have, until recently, prevented many of these companies from competing with each other. Accordingly, it is not enough to simply consider whether existing rivalry between the firms would suffer, which is the focus of most traditional antitrust merger analysis. Rather, one must consider whether, but for the merger, the companies would have entered each other's markets and spurred the development of competition in formerly monopolized markets.

In this time of great change and uncertainty, the FCC needs to be particularly vigilant to prevent any developments, including mergers, to slow the development of competition. That is why the FCC and, in some cases, State Public Utility Commissions, need to apply their unique knowledge, expertise and judgment in reviewing proposed mergers and acquisitions.

In essence, there are three points to be asked regarding mergers:

Do we want a cartel or competition? The Department of Justice typically evaluates competition that currently exists and, under existing antitrust precedent, it faces obstacles to challenging mergers between companies that do not currently compete. In contrast, the FCC is charged with creating the conditions for competition called for by the 1996 Act.

Second, a merger, left un-reviewed by FCC, could violate the Communications Act. The FCC must enforce the telecommunications laws and ensure compliance with the Communications Act.

Finally, we always use the same standard—the public interest test. Moreover, we always use an open and transparent process that is fully consistent with the Administrative Procedure Act. All interested parties, including the applicants and members of the public. must have the opportunity to participate and be heard. The FCC also must respond to the concerns raised in the record and explain its decision in writing in its order, which may be reviewed by the appellate courts.

BARRIERS TO COMPETITION REMAIN

Some of the most crucial prerequisites for local competition take a considerable period of time to put in place, even under the best of circumstances. Unfortunately, but not surprisingly, the availability of some of the most important prerequisites have been delayed, sometimes through litigation, sometimes through the intransigence of parties that are threatened by competition, and sometimes through the sheer scale and complexity of the task.

This latter factor—the sheer complexity of the task—cannot be ignored: the development of local exchange competition is simply an order of magnitude more complicated, more labor-intensive and more capital-intensive than was the development of long distance competition.

While the industry players actually have to do the work, regulators can play a critical role by getting the players together, insisting that a solution be found, setting standards and deadlines, and resolving implementation disputes. For example, by facilitating the development of the technical solution and establishing a clear implementation schedule for Local Number Portability, the FCC played a catalytic role in eliminating one complex technical barrier to competition.

Although some amount of litigation is inevitable, the Supreme Court's recent reaffirmation of the FCC's fundamental responsibility to implement the Act has removed considerable uncertainty that may have been slowing the development of local competition. Another major barrier to local competition will fall as soon as the FCC is able to complete the determination later this year of what network elements should be unbundled—in accordance with the Supreme Court's remand.

To keep markets open and the competitive momentum going, the FCC will act as the liaison between the incumbent LECs and the CLECs to minimize disputes and avoid lengthy proceedings and litigation. Where the FCC's intervention cannot quickly resolve interconnection problems informally, we are using our "rocket docket" to adjudicate these disagreements quickly, and to keep the market functioning smoothly.

UNIVERSAL SERVICE AND ACCESS CHARGE REFORM

Another area that has direct implications for the state of competition in the local market is our system of universal service subsidies and our interrelated access charge system. The Commission is currently engaged in a monumental undertaking which is known as universal service reform. The efforts Congress undertook to make universal service a part of the Telecommunications Act of 1996 were Herculean. We

are working to ensure that our reformation of the universal service mechanisms embrace the vision you had when you passed legislation codifying universal service. In fact, tomorrow the Commission will take yet another step toward the reforms we need to make in order to accomplish the goals you established.

As we move forward with universal service reform, we must be vigilant to balance caution and ambition. Our goal, like yours, is to ensure we satisfy the Telecommunications Act's clear policy of ensuring the availability of affordable phone service to consumers in all regions of the nation. Overzealousness or inaction could undermine this very clear policy goal. As you know, the FCC adopted a forward looking cost model last fall. Tomorrow I will recommend that my colleagues adopt an order and a further notice on the Federal State Joint Board recommendations and a further notice on the elements or "inputs" to be used within the model. I will urge my fellow commissioners to adopt many of the recommendations of the Federal State Joint Board, and put out for comment those recommendations that require further discussion among interested parties. I will also recommend that we look for comment on the actual inputs we will use in the cost model in order to implement the new universal service mechanism that is specific, predictable and sufficient. We are working diligently to adopt a final mechanism for the non-rural companies in September, for implementation in January 2000.

Recognizing that access to technology is essential for future jobs and an important step necessary to close the digital divide. I have also consistently advocated the Congressionally-created universal service support for service to classrooms and libraries—the so-called E-rate. Under my tenure, the Commission finalized implementation of the E-rate and prioritized assistance so that the most needy would receive the biggest benefit. Moreover, the Commission ensured that strong program controls were in place. According to one study, 87% of Americans support the e-rate. This past year, 32,000 school districts, schools, and libraries from across the nation submitted applications for E-rate funding. At tomorrow's Commission meeting, I will be recommending that we fully-fund the E-rate program so that we can meet this demand and continue the work we've done this past year. With this funding, we'll be able to connect one-third of public schools throughout rural America. We look forward to working with you as we bring your vision of a reformed universal service mechanism to fruition.

CONSUMER INITIATIVES

Throughout my tenure, I have sought to stress the importance of promoting competition while making sure it is not at the expense of consumers. Towards this end, we have taken a number of steps to ensure that consumers receive the benefits of the communications revolution.

• We have adopted Truth in Billing rules, to ensure that phone bills are clear and easy to read and that no service charges are "crammed" onto the bills of consumers who didn't order or understand. These new rules require that bills be clear and understandable; new charges be highlighted; all charges have clear explanations about what they are and who to contact if there is a problem; and the bills state clearly which charges, if not paid, will result in termination of service.

• We now offer on the FCC's own website a "Parents, Kids, and Communications Page." This site gives parents easy-to-understand information on some of the tools available to them when their children navigate the Internet and other media. We have included information on a whole range of filtering software, information on how to block 1–900 calls, information on how to get a cable 'lock-box' to block out certain channels, and an explanation of the TV ratings system and the V-chip.

• The FCC recently adopted tough new rules to take the profit out of slamming altogether. In 1998, the Commission also assessed or proposed more than $15 million in fines for "slamming" violations and now is consistently proposing slamming fines of over $1 million. Unfortunately, once again litigation is inhibiting our ability to enforce these new rules. In addition, for the first time ever, we revoked a carrier's license to provide interstate services because of slamming abuses. We also brokered and endorsed industry-developed guidelines to stop "cramming" that have significantly reduced the number of cramming complaints and issued rules to protect consumer privacy concerning the use and disclosure of personal information to marketers.

• At our Commission Agenda meeting just two weeks ago, we adopted rules that will improve the ability of cellular phone users to complete wireless 911 calls. This will improve the security and safety of analog cellular users, especially in rural and suburban areas. The Commission approved three mechanisms for use by the cellular industry, any of which will result in more wireless 911 calls being completed than occurs today. We also took steps to improve consumer choice and foster competition

regarding the commercial availability of navigation devices (e.g. cable television set-top boxes).

• We recently ordered long distance carriers to publicly post their rates on the Internet, in an easy-to-understand, clear format, permitting millions of Americans on-line to find out easily about long-distance rates. Newspapers and consumer groups will be able to make this information available to those not yet on-line. This action will make it easier for consumers to obtain information to help select the long distance plan that best suits their individual needs, once underlying litigation about our decision to require detariffing is resolved.

• We also are taking steps to ensure that the fifty-four million people with disabilities are not left out of the communications revolution. We have also strengthened closed captioning rules so that persons who are deaf or hard-of-hearing will have access to more programs on television; proposed new rules for telecommunications relay services and proposed to require the provision of speech-to-speech relay service; advocated that industry provide solutions to the problem of compatibility between digital wireless phones and TTYs; proposed rules to make telecommunications services and equipment accessible to persons with disabilities; and are also working with the Architectural and Transportation Barriers Compliance Board to propose rules on accessibility requirements for federal agencies when they use or purchase electronic and information technology.

A NEW FCC FOR THE TWENTY-FIRST CENTURY

l am submitting as part of my testimony today a report entitled "A New Federal Communications Commission for the Twenty-First Century." The Report describes the communications marketplace—past, present, and future—and the implications of those changes for the FCC's structure and regulatory framework. It is part of a continuing process of self-assessment that the Commission has been engaging in to transform itself to meet the challenges of an information-age economy and an ever-changing communications industry. This process of dramatic evolution at the FCC is required by the changes wrought in the Telecommunications Act of 1996, and it is consistent with the approach taken in the Act. The Act was evolutionary instead of revolutionary: rather than discarding the old regulatory framework at once, which would have been highly disruptive and fraught with uncertainty, Congress created a new "pro-competitive, de-regulatory policy framework" while explicitly preserving the existing regulatory framework and directing the FCC to forbear from the old regulations as competition developed. Nonetheless, the pace and magnitude of change set in motion by the 1996 Act is truly breathtaking.

My vision for a "New FCC" is a bold one—the FCC should change dramatically over the next five years. The FCC must undergo truly significant change to match the rapid evolution in markets set in motion by the 1996 Act. In a world of fully competitive communications markets, the FCC should focus only on those core functions that are not normally addressed by market forces. These core functions should revolve around: (i) universal service, consumer protection and information; (ii) enforcement and promotion of pro-competition goals domestically and worldwide: and (iii) spectrum management.

The steps we are taking to transition to this model include: (1) *Restructuring:* We are consolidating currently dispersed enforcement functions into an Enforcement Bureau, and currently dispersed public information functions into an Information Bureau. The consolidation of these two key functions will improve efficiency and enhance the delivery of these services to the general public and to industry. (2) *Streamlining and Automation:* We are investing in new technology to create a "paperless FCC" by processing applications and licenses faster, cheaper, and in a more consumer friendly way through electronic filing and universal licensing. (3) *Deregulation:* We are completing 32 deregulation proceedings covering hundreds of rules as a result of our 1998 Biennial Review of regulations, and intend for the 2000 Biennial Review to produce even more deregulatory actions. (4) *Strategic Plan:* We are conducting three public forums with industry, consumer groups, state and local governments, and academic experts to solicit input on what the FCC's role should be in the Twenty-First Century, how we should be structured, and how we can work more efficiently and effectively to deliver services to the public. We have also established an e-mail site, "newfcc@fcc.gov" to receive additional input from the public on the above questions. The result of this effort will be a draft Strategic Plan covering a five-year period which we will submit to Congress in July 1999 for its review, and on which we will seek additional public comment.

CONCLUSION

We have come a long way towards a more competitive market place in communications, but we have much more work to do. The transition from monopoly regulation to open markets, from today's technologies to tomorrow's breakthroughs, is not yet complete. For the coming year our agenda is clear: promote competition, foster new technologies, protect consumers, and ensure that all Americans have access to the communications revolution.

These will be the goals that guide us as we implement the Supreme Court's instructions on UNEs, as we continue opening local phone markets, as we work to make communications available to all Americans, as we review the mergers now before the Commission as well as those we may receive.

The agenda for this year continues on the foundation laid last year: competition, community, common sense. We have a lot of work to do, and we have the will to do it well.

• We will promote competition in all sectors of the marketplace. We will reform access charges, and ensure that proposed mergers are pro-competitive and benefit consumers.

• We will continue to deregulate as competition develops, eliminating any unnecessary regulatory burdens, reducing reporting requirements, streamlining rules and our own internal functions.

• We will continue to protect consumers from unscrupulous competitors, and give customers the information they need to make wise choices in a robust and competitive marketplace. We will continue our policy of "zero tolerance" for those competitors who would rather cheat than compete.

• We will work to ensure that the Act's provisions on RBOC entry into the long distance marketplace are implemented in a manner that promotes competition and consumer welfare and is fair to all of the parties.

• We will ensure broad access to communications services and technologies for all Americans, no matter where they live. We will complete universal service reforms, continue oversight of the schools and libraries and rural health care universal service programs, encourage accessibility of emergency information via closed-captioning and video description, and ensure that the 54 million Americans with disabilities can use and have access to the communications network.

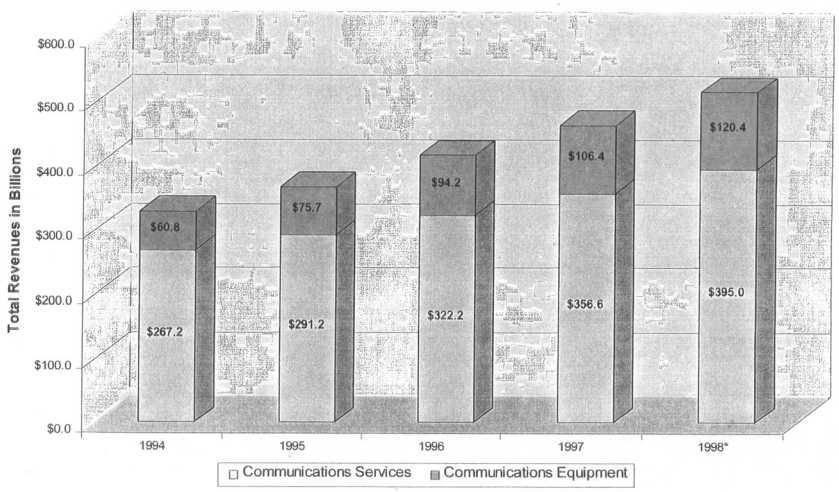
• We will foster innovation, working to ensure that America remains the world's leader in innovation. We will continue to promote the development and deployment of high speed Internet access, promote compatibility of digital video technologies with existing equipment and services, and promote competitive alternatives to cable and broadcast TV.

• Finally, we will advance these concepts worldwide, serving as an example and advocate of telecommunications competition worldwide. We will work to encourage the development of international standards for global interconnectivity, work to promote the fair use of spectrum through the WRC 2000, work on the worldwide adoption of the WTO Agreement for Basic Telecommunications, and aggressively enforce the FCC's International Settlement Rate ("Benchmark") Order to reduce rates for international calls. We will continue to assist other nations in establishing conditions for deregulation, competition, and increased private investment in their telecommunications infrastructure so that they too, can share in the promise of the Information Age, and become our trading partners.

This is an important and dynamic time in the history of telecommunications policy. I look forward to continuing to work with this Committee and other members of Congress so that the decisions we make today ensure that all Americans—irrespective of where they live, their race, their age, or their special needs—can share in the promise of the Information Age.

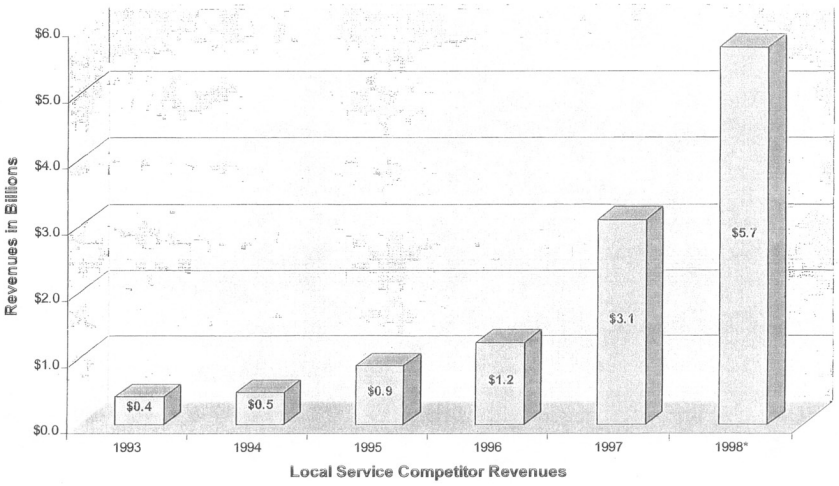
Thank You. I look forward to answering any questions you may have.

Communications Sector of the U.S. Economy



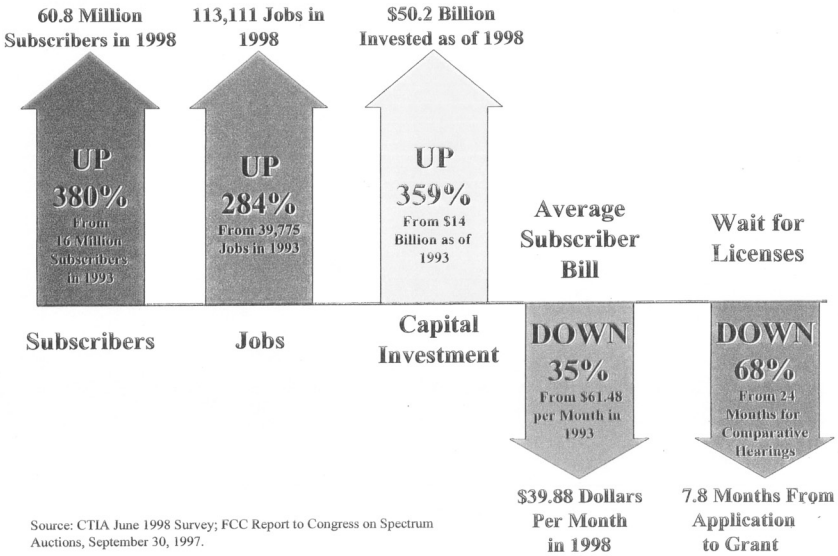
* 1998 figures are estimates from the the 1998 Multimedia Telecom Market Review and from IAD.
Sources: Census Bureau, Statistical Abstract of the U.S. and Annual Survey of Communications Services; 1998 Multimedia Telecom Market Review

Revenues of New Local Service Competitors



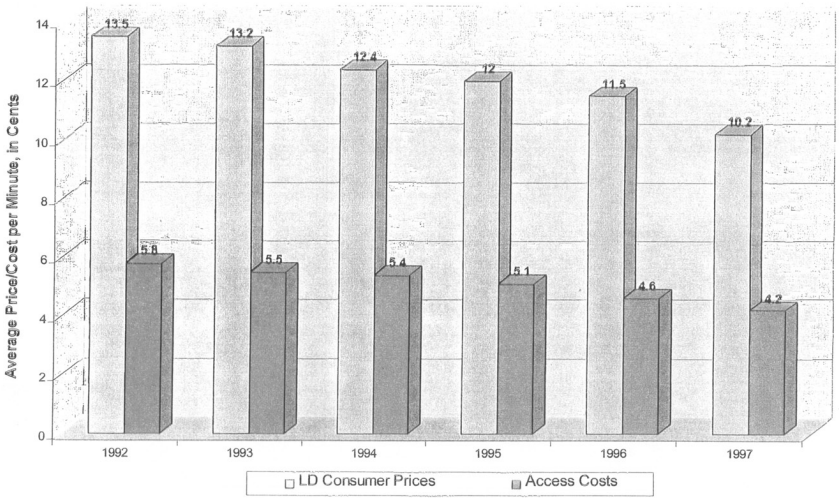
* 1998 figure is an ALTS estimate.
Source: IAD, Local Competition Report. Local service competitors refer those identifying themselves as CAPs and/or CLECs on their TRS Worksheets submitted to the FCC.

Charting the Growth in the Mobile Telephone Industry 1993 - 1998



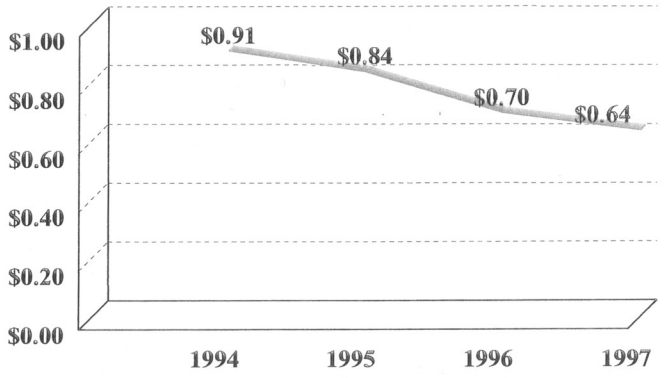
Source: CTIA June 1998 Survey; FCC Report to Congress on Spectrum Auctions, September 30, 1997.

LD Consumer Prices and Access Costs are Falling*



* As measured in average cents per conversation minute. LD consumer prices are based on all interstate and international calls. Access costs include all interstate and international access costs paid by IXCs to the LECs.
Source: IAD, Telecommunications Industry Revenue Report. Prices shown are per conversation minute. Year-end 1998 data is not avail.

Average Rate per Minute* for an International Call 1994-1997



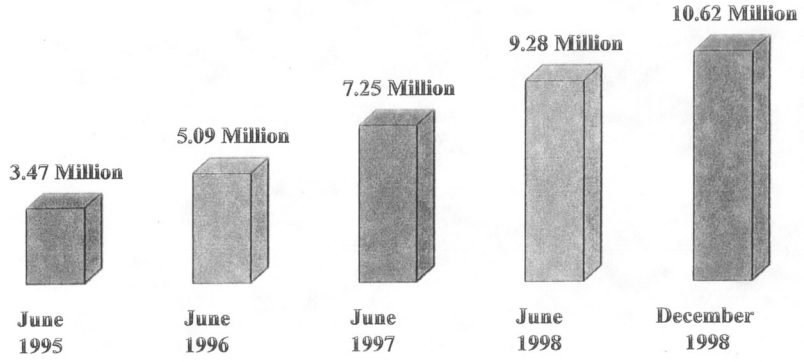
*** Consumers can obtain even lower per minute rates under some rate plans**

Source: FCC Section 43.61 data (excluding reorigination and country direct and beyond). Full-year 1998 data is not yet available.

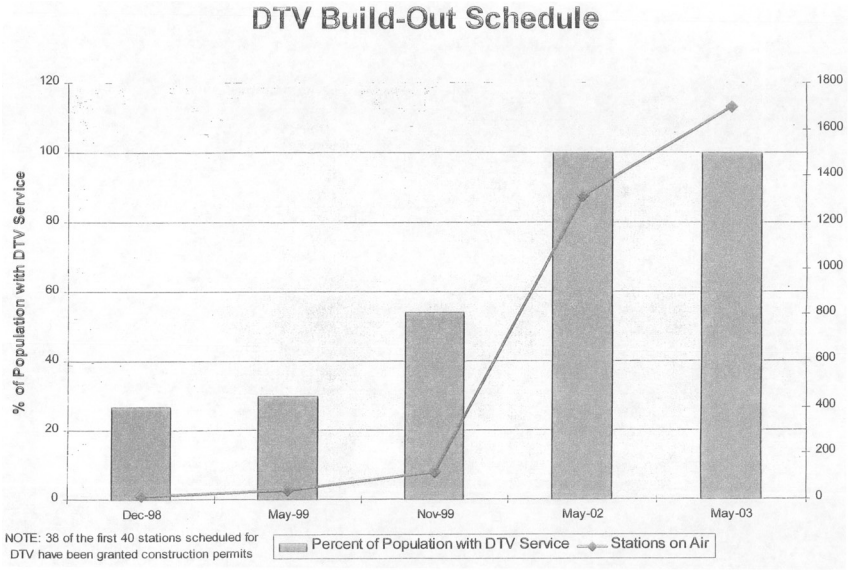
DTH/DBS/C-Band GROWTH

From June, 1995 to December, 1998 satellite home subscribers grew 206% and now exceed 10.5 million

(# of Subscribers)



Source: DBS Investor



A New Federal Communications Commission for The 21st Century

I. THE FEDERAL COMMUNICATIONS COMMISSION AND THE CHANGING COMMUNICATIONS MARKETPLACE

A. Introduction

Congress enacted the Communications Act of 1934 to provide for the widest dissemination of communications services to the public. Section 1 of the Communications Act states that the purpose of the Act is to "make available * * * to all the people of the United States, without discrimination * * * a rapid, efficient, Nationwide, and world-wide wire and radio communication service * * * at reasonable charges."

This goal remains vibrant today. What has changed since 1934 is the means to gel to this goal. With the passage of the Telecommunications Act of 1996 (Telecom Act), Congress recognized that competition should be the organizing principle of our communications law and policy and should replace micromanagement and monopoly regulation. The wisdom of this approach has been proven in the long distance, wireless, and customer premises equipment markets, where competition took hold and flourished, and consumers receive the benefit of lower prices, greater choices, and better service.

The imperative to make the transition to fully competitive communications markets to promote the widest deployment of communications services is more important today than ever before. In 1934, electronic communications for most Americans meant AM radio and a telephone, and sending the occasional Western Union telegram. Today, it means AM and FM radio, broadcast and cable TV, wireline and wireless telephones, faxes, pagers, satellite technology, and the Internet—services and technologies that are central to our daily lives. Communications technology is increasingly defining how Americans individually, and collectively as a nation, will be competitive into the next century. It is increasingly defining the potential of every American child. So the goal of bringing communications services quickly to all Americans, without discrimination, at reasonable charges, continues to be of paramount importance. Competition is the best way to achieve this goal, while continuing to preserve and protect universal service and consumer protection goals.

To accomplish this goal, our vision for the future of communications must be a bold one. We must expect that in five years, there can be fully competitive domestic communications markets with minimal or no regulation, including total deregulation of all rate regulation in competitive telephone services. In such a vibrant, competitive communications marketplace, the Federal Communications Commission (FCC) would focus only on those core functions that cannot be accomplished by nor-

mal market forces. We believe those core functions would revolve around universal service, consumer protection and information; enforcement and promotion of procompetition goals domestically and internationally; and spectrum management. As a result, the traditional boundaries separating the FCC's current operating bureaus should no longer be relevant. In five years, the FCC should be dramatically changed.

We are working to transition the FCC to that model—based on core functions in a competitive communications market—now. We are writing the blueprint for it, beginning with this report describing the steps we are already taking. After receiving input from our key stakeholders, we plan to develop this report into a five-year Strategic Plan which will outline precisely our objectives and timetable year by year for achieving our restructuring, streamlining, and deregulatory objectives. We must work with Congress, state and local governments, industry, consumer groups, and others to ensure that we are on the right track, and that we have the right tools to achieve our vision of a fully competitive communications marketplace.

B. The State of the Industry

In the Telecom Act, Congress directed the FCC to play a key role in creating and implementing fair rules for this new era of competition. Over the course of the past three years, the FCC has worked closely with Congress, the states, industry, and consumers on numerous proceedings to fulfill the mandates of the Telecom Act.

By many accounts, the Telecom Act is working. Many of the fundamental] prerequisites for a fully competitive communications industry are now in place, competitive deployment of advanced broadband services is underway, and the stage is set for continued deregulation as competition expands.

Furthermore, by many measures, the communications industry is thriving. Since the passage of the Telecom Act, revenues of the communications sector of our economy have grown by over $100 billion. This growth comes not only from established providers, but also from new competitors, spurred by the market-opening provisions of the Telecom Act. (See Appendix A, Charts 1 and 2) This growth has meant new jobs for thousands of Americans.

In the wireless industry, capital investment has more than tripled since 1993, with more than $50 billion of cumulative investment through 1998. Mobile phones are now a common tool for over 60 million people every day, and the wireless industry has generated almost three times as many jobs as in 1993. (See Appendix A, Chart 3)

Consumers are beginning to benefit from the thriving communications sector through price reductions not only of wireless calls, but also of long distance and international calls. (See Appendix A, Charts 4 and 5) Consumers are also beginning to enjoy more video entertainment choices through direct broadcast satellites, which are becoming viable alternatives to cable. We are also at the dawn of digital TV, which offers exciting new benefits for consumers in terms of higher quality pictures and sound and innovative services. (See Appendix A, Charts 6 and 7) As we enter this digital age, broadcast TV and radio is still healthy, ubiquitous, and providing free, local news, entertainment, and information to millions of Americans across the country,

Beyond the traditional communications industries, the Internet has truly revolutionized all of our lives. According to a recent study, at least 38% of American adults (79.4 million) already are online and another 18.8 million are expected to go online in the next year. In 1998, 26% of retailers had a website, over three times the number in 1996, and it is estimated that they generated over $10 billion in sales. Online sales for 1999 are projected to be anywhere from $12 to $18 billion.

Communications markets are also becoming increasingly globalized as the Telecom Act's procompetitive policies are being emulated around the world. Other countries are modeling their new telecommunications authorities after the FCC. As other countries open their communications markets and increase their productivity, new services and business opportunities are created for U.S. consumers and companies, as well as for consumers and companies worldwide.

C. Communications in the 21st Century

Even more change is expected in the telecommunications marketplace of tomorrow. In the new millennium, millions of consumers and businesses will be able to choose from a range of services and technologies vastly different from those available today. Packet-switched networks, running on advanced fiber optics and using open Internet Protocols to support seamless interconnection to transport immense amounts of information, will be ubiquitous. Millions of homes and businesses will be linked to this "network of networks" through "always on" broadband connections. Outside the wired confines of the home or office, "third generation" wireless tech-

nologies will provide high-speed access wherever a consumer may be. Satellite technology will increase the ability to transfer data and voice around the world and into every home.

Electronic commerce will play an even more central role in the economy of the 21st Century. Americans in the next century will be connected throughout the day and evening, relying on advanced technologies not only to communicate with others, but also as a vital tool for performing daily tasks (such as shopping or banking), for interacting with government and other institutions (such as voting, tax filing, health, and education), and for entertainment (such as video, audio, and interactive games).

In the marketplace of tomorrow, it is expected that traditional industry structures will cease to exist. The "local exchange" and "long distance" telephone markets will no longer be distinct industry segments. Video and audio programming will be delivered by many different transmission media. In a world of "always on" broadband telecommunications, narrow-band applications—such as our everyday phone calls—will represent just a tiny fraction of daily traffic. Cable operators, satellite companies, and even broadcast television stations will compete with today's phone companies in the race to provide consumers a vast array of communications services. In addition, telephone and utility companies may be offering video and audio programming on a wide-scale basis. As cross-industry mergers, joint ventures, and promotional agreements are formed to meet users' demand. the traditional distinctions between these industry segments will blur and erode.

D. Impact of Industry Convergence

Convergence across communications industries is already taking place, and is likely to accelerate as competition develops further. Thus, in addition to refocusing our resources on our core functions for a world of fully competitive communications markets, the FCC must also assess, with the help of Congress and others, how to streamline and consolidate our policymaking functions for a future where convergence has blurred traditional regulatory definitions and jurisdictional boundaries.

The issues involved in thinking about convergence and consolidation are complex. Prior to the Telecom Act, the core of the Communications Act was actually three separate statutes: it incorporated portions of the 1887 Interstate Commerce Act (governing telephony), the 1927 Federal Radio Act (governing broadcasting), and the 1984 Cable Communications Policy Act (governing cable television). Telephony is regulated one way, cable a second, terrestrial broadcast a third, satellite broadcast a fourth. As the historical, technological, and market boundaries distinguishing these industries blur, the statutory differences make less and less sense. Maintaining them will likely result in inefficient rules that stifle promising innovation and increase opportunities for regulatory arbitrage.

Some argue for developing regulatory principles that cut across traditional industry boundaries. For example, the policies of interconnection, equal access, and open architecture have served consumers well in the wireline context, a traditionally regulated industry. Similarly, concepts of connectivity, interoperability, and openness are the lifeblood of the Internet, an unregulated industry. While these similar principles appear to cut across these different media, it is unclear whether and how the government should be involved, if at all, in applying these principles in a world where competition will largely replace regulation.

At the very least, as competition develops across what had been distinct industries, we should level the regulatory playing field by leveling regulation down to the least burdensome level necessary to protect the public interest. Our guiding principle should be to presume that new entrants and competitors should not be subjected to legacy regulation. This is not to say that different media, with different technologies, must be regulated identically. Rather, we need to make sure that the rules for different forms of media delivery, while respecting differences in technology, reflect a coherent and sensible overall approach. To the extent we cannot do that within the confines of the existing statute, we need to work with Congress and others to reform the statute.

II. THE 21ST CENTURY: A NEW ROLE FOR THE FCC

A. The Transition Period

As history has shown, markets that have been highly monopolistic do not naturally become competitive. Strong incumbents still retain significant power in their traditional markets and have significant financial incentives to delay the arrival of competition. Strong and enforceable rules are needed initially so that new entrants have a chance to compete. At the same time, historical subsidy mechanisms for tele-

communications services must be reformed to eliminate arbitrage opportunities by both incumbents and new entrants.

The technologies needed for the telecommunications marketplace of the future are still evolving, and developing them fully requires significant time and investment. Moreover, there is no guarantee that market forces will dictate that these new technologies will be universally deployed. The massive fixed-cost investments required in some industries will mean that new technologies initially will be targeted primarily at businesses and higher-income households. Even as deployment expands, the economics of these new networks may favor heavy users over lighter users, and in some areas of the country deployment may lag behind.

At the same time, consumer preferences will not change overnight. The expansion of communications choices is already leading to greater consumer confusion. Especially in a world of robust competition, consumers will need clear and accurate information about their choices, guarantees of basic privacy, and swift action if any company cheats rather than competes for their business.

While the opportunities for the United States and the world of a global village are enormous, they can only be realized if other countries follow our lead in fostering competition in national and world markets. People all over the world benefit as more countries enter the Information Age and become trading partners. Thus, as we continue on our own course of bringing competition to former domestic monopoly markets, we must also continue to promote open and competitive markets worldwide.

In sum, although the long-term future of the telecommunications marketplace looks bright, the length and difficulty of the transition to that future is far from certain. To achieve the goal of fully competitive communications markets in five years, we must continue to work to ensure that all consumers have a choice of local telephone carriers and broadband service providers, and that companies are effectively deterred from unscrupulous behavior. We must also continue to promote competition between different media, promote the transition to digital technology, and continue to ensure that all Americans have a wide and robust variety of entertainment and information sources.

B. The FCC's Role During the Transition to Competition

During the transition to fully competitive communications markets, the FCC, working in conjunction with the states, Congress, other federal agencies, industry, and consumer groups, has six critical goals, all derived from the Communications Act and other applicable statutes:

Promote Competition: Goal number one is to promote competition throughout the communications industry, particularly in the area of local telephony. The benefits of competition are well documented in many communications sectors—long distance, wireless, customer-premises equipment, and information services. The benefits of local telephone competition are accruing at this time to large and small companies, but not, for the most part, to residential consumers. We must work to ensure that all communications markets are open, so that all consumers can enjoy the benefits of competition.

To meet this goal, we must continue our efforts to clarify the provisions of the Telecom Act relating to interconnection and unbundled network elements, work with the Bell Operating Companies (BOCs), their competitors, states and consumer groups on meeting the requirements of the statute related to BOC entry into the long distance market, reform access charges, and, as required by Sections 214 and 310(d) of the Communications Act and section 7 of the Clayton Act, continue to review mergers of telecommunications companies that raise significant public interest issues related to competition and consumers.

In the mass media area, we must continue the pro-competitive deployment of new technologies, such as digital television and direct broadcast satellites, and the maintenance of robust competition in the marketplace of ideas. To meet these goals, we must continue rapid deployment of new technologies and services and regular oversight of the structure of local markets to ensure multiple voices, all the while updating our rules to keep pace with the ever-changing mass media marketplace.

Deregulate: Our second goal is to deregulate as competition develops. Consumers ultimately pay the cost of unnecessary regulation, and we are committed to aggressively eliminating unnecessarily regulatory burdens or delays. We want to eliminate reporting and accounting requirements that no longer are necessary to serve the public interest. Also, where competition is thriving, we intend to increase flexibility in the pricing of access services. We have already deregulated the domestic, long distance market as a result of increased competition, and we stand ready to do so for other communications markets as competition develops. We have also streamlined our rules and privatized some of the functions involved in the certification of

telephones and other equipment. We are currently streamlining and automating our processes to issue licenses faster, resolve complaints quicker, and be more responsive to competitors and consumers in the marketplace.

Protect Consumers: Our third goal is to empower consumers with the information they need to make wise choices in a robust and competitive marketplace, and to protect them from unscrupulous competitors. Consumer bills must be truthful, clear, and understandable. We will have "zero tolerance" for perpetrators of consumer fraud such as slamming and cramming. We will make it easier for consumers to file complaints by phone or over the Internet, and reduce by 50 percent the time needed to process complaints. Further, we will remain vigilant in protecting consumer privacy. We will also continue to carry out our statutory mandates aimed at protecting the welfare of children, such as the laws governing obscene and indecent programming.

Bring Communications Services and Technology to Every American: Our fourth goal is to ensure that all Americans—no matter where they live, what they look like, what their age, or what special needs they have—should have access to new technologies created by the communications revolution. Toward this end, we must complete universal service reform to ensure that communications services in high-cost areas of the nation are both available and affordable. We must also ensure that our support mechanisms and other tools to achieve universal service are compatible and consistent with competition. We must evaluate—and if necessary, improve—our support mechanisms for low-income consumers, and in particular Native Americans, whose telephone penetration rates are some of the lowest in the country. We must make certain that the support mechanisms for schools, libraries, and rural health care providers operate efficiently and effectively. We must make sure that the 54 million Americans with disabilities have access to communications networks, new technologies and services, and news and entertainment programming.

Foster Innovation: Our fifth goal is to foster innovation. We will promote the development and deployment of high-speed Internet connections to all Americans. That means clearing regulatory hurdles so that innovation—and new markets—can flourish. We must continue to promote the compatibility of digital video technologies with existing equipment and services. Further, we will continue to encourage the more efficient use of the radio spectrum so that new and expanding uses can be accommodated within this limited resource. More generally, we will continue to promote competitive alternatives in all communications markets.

Advance Competitive Goals Worldwide: Our sixth goal is to advance global competition in communications markets. The pro-competitive regulatory framework Congress set forth in the Telecom Act is being emulated around the world through the World Trade Organization Agreement. We will continue to assist other nations in establishing conditions for deregulation, competition, and increased private investment in their communications infrastructure so that they can share in the promise of the Information Age and become our trading partners. We must continue to intensify competition at home and create growth opportunities for U.S. companies abroad. We will continue to promote fair spectrum use by all countries.

C. The FCC's Core Functions in a Competitive Environment

As we accomplish our transition goals, we set the stage for a competitive environment in which communications markets look and function like other competitive industries. At that point, the FCC must refocus our efforts on those functions that are appropriate for an age of competition and convergence. In particular, we must refocus our efforts from managing monopolies to addressing issues that will not be solved by normal market forces. In a competitive environment, the FCC's core functions would focus on:

Universal Service, Consumer Protection and Information. The FCC will continue to have a critical responsibility, as dictated by our governing statutes, to support and promote universal service and other public interest policies. The shared aspirations and values of the American people are not entirely met by market forces. Equal access to opportunity as well as to the public sphere are quintessential American values upon which the communications sector will have an increasingly large impact. We will be expected to continue to monitor the competitive landscape on behalf of the public interest and implement important policies such as universal service in ways compatible with competition.

In addition, as communications markets become more competitive and take on attributes of other competitive markets, the need for increased information to consumers and strong consumer protection will increase. We must work to ensure that Americans are provided with clear information so that they can make sense of new technologies and services and choose the ones best for them. We must also continue to monitor the marketplace for illegal or questionable market practices.

Enforcement and Promotion of Pro-Competition Communications Goals Domestically and Worldwide. As markets become more competitive, the focus of industry regulation will shift from protecting buyers of monopoly services to resolving disputes among competitors, whether over interconnection terms and conditions, program access, equipment compatibility, or technical interference. In the fast-paced world of competition, we must be able to respond swiftly and effectively to such disputes to ensure that companies do not take advantage of other companies or consumers.

The FCC is a model for other countries of a transparent and independent government body establishing and enforcing fair, pro-competitive rules. This model is critical for continuing to foster fair competition domestically as well as to open markets in other countries, to the benefit of U.S. consumers and firms and consumers and firms worldwide. There always will be government-to-government relations and the need to coordinate among nations as communications systems become increasingly global. As other nations continue to move from government-owned monopolies to competitive, privately-owned communications firms, they will increasingly look to the FCC's experience for guidance.

Spectrum Management. The need for setting ground rules for how people use the radio spectrum will not disappear. We need to make sure adequate spectrum exists to accommodate the rapid growth in existing services as well as new applications of this national and international resource. Even with new technologies such as software-defined radios and ultra-wideband microwave transmission, concerns about interference will continue (and perhaps grow) and the need for defining licensees and other users' rights will continue to be a critical function of the government. We will thus continue to conduct auctions of available spectrum to speed introduction of new services. In order to protect the safety of life and property, we must also continue to consider public safety needs as new spectrum-consuming technologies and techniques are deployed.

D. Coordination with State and Local Governments and other Federal Agencies

In order to fulfill our vision of a fully competitive communications marketplace in five years, we need a national, pro-competitive, pro-consumer communications policy, supplemented by state and local government involvement aimed at achieving the same goal. The Telecom Act set the groundwork for this goal, and the Commission is fulfilling its role of establishing the rules for opening communications markets across the country, in partnership with state regulators. The Commission must continue to work with state and local governments to promote competition and protect consumers. Toward this end, we have instituted a Local and State Government Advisory Committee to share information and views on many critical communications issues.

The importance of working and coordinating our efforts in the communications arena with other federal agencies will also continue. We work particularly closely with the Federal Trade Commission on consumer and enforcement issues, and with the Department of Justice on competition issues. We also work with other federal agencies on public safety, disability, Y2K, reliability, and spectrum issues, just to name a few. We see our role vis-a-vis other federal agencies as cooperative and reinforcing, where appropriate.

III. THE 21ST CENTURY: A NEW STRUCTURE FOR THE FCC

A. The FCC's Evolving Structure

The FCC must change its structure to match the fast-paced world of competition and to meet our evolving goals and functions, as derived from our authorizing statutes. Our transition goals must be accomplished with minimal regulation or no regulation where appropriate in a competitive marketplace. Moreover, a restructured and streamlined FCC must be in place once full competition arrives, so that we can focus on providing consumers information and protection, enforcing competition laws, and spectrum management.

In sum, we must be structured to react quickly to market developments, to work more efficiently in a competitive environment, and to focus on bottom-line results for consumers. As competition increases, we must place greater reliance on marketplace solutions, rather than the traditional regulation of entry, exit, and prices; and on surgical intervention rather than complex rules in the case of marketplace failure. We must encourage private sector solutions and cooperation where appropriate. But we also must quickly and effectively take necessary enforcement action to prevent abuses by communications companies who would rather cheat than compete for consumers. Ultimately, throughout the agency, we must be structured to render de-

cisions quickly, predictably, and without imposing unnecessary costs on industry or consumers.

B. Current Restructuring Efforts

The FCC is currently structured along the technology lines of wire, wireless satellite, broadcast, and cable communications. As the lines between these industries merge and blur as a result of technological convergence and the removal of artificial barriers to entry, the FCC needs to reorganize itself in a way that recognizes these changes and prepares for the future. A reorganization of the agency, over time, along functional rather than technology lines will put the FCC in a better position to carry out its core responsibilities more productively and efficiently.

As the first step in this process, in October 1998, Chairman Kennard announced plans to consolidate currently dispersed enforcement functions into a new Enforcement Bureau and currently dispersed public information functions into a Public Information Bureau. The consolidation of these two key functions that are now spread across the agency will improve efficiency and enhance the delivery of these services to the general public and to industry. The consolidation of these functions will also encourage and foster cooperation between the two new bureaus, other bureaus and offices, and state and local governments and law enforcement agencies. The end result will be improvements in performance of both these functions through an improved outreach program, a better educated communications consumer, and a more efficient, coherent enforcement program.

The new Enforcement Bureau will replace the current Compliance and Information Bureau and, likewise, the new Public Information Bureau will include the current Office of Public Affairs, except for a small separate Office of Communications that will be responsible for interacting with the news media and for managing the agency's Internet website.

The Commission is also investing in new technology to process applications, licenses. and consumer complaints faster, cheaper, and in a more consumer friendly way through electronic filing and universal licensing. Our goal is to move to a "paperless FCC" that will result in improved service to the public. Examples of these efforts include universal licensing, streamlined application processes, revised and simplified licensing forms, blanket authorizations, authorization for unlicensed services, and electronic filing of license applications and certifications.

1. Enforcement Bureau

Since the Telecom Act was passed, telephone-related complaints have increased by almost 100%. In 1996, the Common Carrier Bureau received over 28,000 complaints; in 1998, that number increased to over 53,000 complaints. With the increase in competition, we expect even more complaints to be filed as consumers grapple with changes in both service options and providers. While we have been implementing streamlined, electronic processes to address this burgeoning workload, we have also determined that the consolidation of many widely dispersed enforcement functions into an Enforcement Bureau is an important step toward a more forward-looking FCC organizational structure that will emphasize the importance of effective enforcement of the Communications Act.

The Commission currently has four organizational units dedicated principally or significantly to enforcement—the Compliance and Information Bureau, the Mass Media Bureau Enforcement Division, the Common Carrier Bureau Enforcement Division and the Wireless Telecommunications Bureau Enforcement and Consumer Information Division. Consolidating most enforcement responsibilities of these organizations into a unified Enforcement Bureau will result in more effective and efficient enforcement. The Enforcement Bureau will coordinate enforcement priorities and efforts in a way that best uses limited Commission resources to ensure compliance with the important responsibilities assigned to the FCC by Congress.

The consolidation of various FCC enforcement functions also responds to the fact that the need for effective enforcement of the Communications Act and related requirements is becoming even more important as competition and deregulation increase. As communications markets become increasingly competitive, the pace of deregulation will intensify. Those statutory and rule provisions that remain in an increasingly competitive, deregulatory environment will be those that Congress and the Commission have determined remain of central importance to furthering key statutory goals—e.g., providing a structure for competition to flourish, assisting customers and users of communications services in being able to benefit from competitive communications services, ensuring that spectrum is used in an efficient manner that does not create harmful interference, and promoting public safety.

As unnecessary regulation is eliminated and the demands of the marketplace increase, the Commission must focus its resources on effective and swift enforcement of the statutory and regulatory requirements that remain. The consolidation of our enforcement activities will allow us to do just that in a streamlined, centralized, and more effective way.

2. Public Information Bureau

Consumer inquiries at the Commission have increased dramatically since 1996. In 1998, we received over 460,000 phone calls to telephone service representatives, and over 600,000 calls to our automated response system. There were on average over 266,000 hits on the FCC's web site a day, totalling over 97 million in 1998 (up over 400% from 21 million in 1996). We expect these numbers to increase as more consumers seek information regarding the ever growing array of services and providers in the communications marketplace.

Currently, consumer inquiries are handled by several different offices and bureaus throughout the Commission and the methods used to handle these inquiries vary widely. While each office has a small contingent of staff handling inquiries, they have had varying degrees of success in meeting the ever increasing volume. Although the Commission established a National Call Center in June 1996, current processes still require a great number of consumers seeking information to contact other offices and bureaus directly to get their questions answered.

The creation of the Public Information Bureau allows the Commission to better serve the public by establishing a single source organization as a "one-stop" shop or "FCC General Store" for handling all inquiries and the general expression of views to the Commission, thereby better meeting the public's information needs. Merging resources of the Office of Public Affairs, which includes public service and inquiry staffs and the Commission's public reference files, with the FCC Call Center will provide a streamlined, more efficient, and consolidated information source for the public. Consumers would only have to contact one source, whether by telephone (1–888–CALLFCC) or by E-mail or the Internet (FCCINFO@FCC.GOV). The Public Information Bureau also plans to establish one source for mailing inquiries to the FCC (for example, P.O. FCC). The Public Information Bureau will also be responsible for facilitating resolution of informal consumer complaints, thereby strengthening the mission of the new Bureau to address most individual consumer needs in one place.

The creation of the Public Information Bureau will encourage more public participation in the work of the Commission. The staff of the Public Information Bureau will conduct consumer forums across the country to inform and solicit feedback from consumers about the Commission's policies, goals, and objectives. This feedback will be shared with other bureaus to help ensure that Commission rules are fair, effective, and sensible, and that they support competition while responding to consumer concerns. The Public Information Bureau also plans to share its databases with state and local governments as appropriate, to coordinate our respective abilities to respond to consumer complaints and track and address industry abuses.

The creation of the Public Information Bureau supports the Commission's efforts to foster a pro-competitive, deregulatory, and pro-consumer approach to communications services. The staff of the Public Information Bureau will provide consumers with information so that consumers can make informed decisions regarding their communications needs. The staff of the Public Information Bureau will also work with other bureaus to issue consumer alerts and public service announcements to give consumers information about their rights and information to protect themselves from unscrupulous individuals and firms. Finally, the Public Information Bureau will provide easy public access to FCC information as well as a convenient way for the public to make its views known, thus supporting the Commission's efforts to assist communities across America in dealing with complex communications issues and to provide opportunities for a wide range of voices to be expressed publicly.

3. Streamling and Automating the FCC Licensing Process

The Commission's "authorization of service" activities cover the licensing and authorization through certification, and unlicensed approval, of radio stations and devices, telecommunications equipment and radio operators, as well as the authorization of common carrier and other services and facilities. The Commission has already begun automating and reengineering our authorization of service processes across the agency by reengineering and integrating our licensing databases and through the implementation of electronic filing.

The Universal Licensing System (ULS) project is fundamentally changing the way the Commission receives and processes wireless applications. ULS will combine all

licensing and spectrum auctions systems into a single, integrated system. It collapses 40 forms into four; allows licensees to modify online only those portions of the license that need to be modified without resubmitting a new application; and advises filers when they have filled out an application improperly by providing immediate electronic notification of the error. During the month of February 1999, 75% of receipts (916 applications) filed under the currently implemented portions of ULS were processed in one day.

Universal licensing is an example of how we are working to change the relationship between the Commission, spectrum licensees, and the public by increasing the accessibility of information and speeding the licensing process, and thus competitive entry, dramatically. Universal licensing is becoming the model for automated licensing for the entire agency.

In the Wireless Telecommunications Bureau, electronic filing has been fully implemented throughout the Land Mobile Radio services, antenna registration, and amateur radio filings. More than 50% of the Wireless Telecommunications Bureau's filings are now accomplished electronically. Significant service improvements are evidenced by the fact that 99% of Amateur Radio service filings are now processed in less than five days, with most electronically filed applications being granted overnight. The Wireless Bureau also has an initiative to transfer the knowledge used by license examiners in manually reviewing applications to computer programs so that applications can be received, processed, and licenses granted in even less time.

The Mass Media Bureau is implementing a similar electronic filing initiative. In October, the FCC issued rules that substantially revise the application process in 15 key areas, including sales and license renewals, in order to effectuate mandatory electronic filing for broadcasters. When fully implemented, the new electronic filing system will reduce the resources required to process authorizations, accelerate the grant of authorizations, and improve public access to information about broadcast licensees.

The Common Carrier Bureau has also implemented electronic filing of tariffs and associated documents via the Internet. The Electronic Tariff Filing System enables interested parties to access and download documents over the Internet, and to file petitions to reject, or suspend and investigate tariff filings electronically. Since July 1, 1998, over 10,000 electronic tariff filings have been received. replacing approximately 750,000 pages of information.

The results of all these streamlining efforts include a more economical use of FCC personnel resources, improvement in processing times, the ability of our customers to file via the Internet or through other electronic filing mechanisms, and the ability to provide our customers with immediate status reports on their applications as well as real time access to on-line documents. It is estimated that our move toward a "paperless FCC" will save the public approximately 700,000 hours of paperwork in this fiscal year alone.

4. Budget and Workforce Impact

In anticipation of the expected increased efficiencies our restructuring plans and other streamlining and automation improvements will produce, the FCC is confronting the issue of how it should look and operate in FY 2000 and beyond. We expect that our re-engineering and restructuring efforts will yield increased efficiencies and streamlining opportunities, particularly in the area of authorization of service, due to automation and regulatory changes. However, these efforts will also result in the potential displacement of staff in certain locations and a need to retrain and reassign other staff.

Buyout authority is a tool that will enhance the Commission's ability to alter the skills mix of its workforce to carry out its changing mission more effectively. Targeted buyouts for staff would facilitate our restructuring efforts in a cost-effective manner. The Commission has requested buyout authority in its budget request for FY 2000.

The Commission is dedicated to keeping staff informed and involved in our restructuring and streamlining efforts, and to minimizing workplace disruption that may result from these efforts through staff retraining, reassignment, and other methods. It is critical, as we consider ways to restructure and streamline Commission operations, that we continue to recognize and respect the hard work of our employees, many of whom have been with the Commission for many years. Change is always difficult, and it is imperative that our staff understands and supports the necessary changes that are taking place—and will continue to take place—at the Commission. Accordingly, we are working closely with the National Treasury Employees Union (NTEU) to ensure that staff is involved in all these issues and that their views are incorporated into the Commission's planning process.

5. Restructuring Process and Timeline

Planning for the Public Information Bureau began in late November 1998 and for the Enforcement Bureau in mid-December 1998. A Task Force comprised of both managers and staff from relevant Bureaus and Offices, as well as NTEU representatives, has been meeting regularly since early January to consider such issues as the appropriate functions of each of the Bureaus and their organization. Efforts have also been made on an informal basis both inside and outside the Commission to ensure that a wide range of ideas are considered during the planning process. A proposed reorganization plan should be formally submitted to the Commission for its consideration in Spring, 1999. Upon approval by the Commission, it will be formally submitted to the NTEU and appropriate congressional committees.

C. Restructuring to Reflect Industry Convergence

As the traditional lines dividing communications industries blur and eventually erode, the traditional ways of regulating or monitoring these industries will also have to change. The FCC must think about the complex issues resulting from converging communications markets from both a policy and structural perspective. How the FCC should be structured to address issues arising from a more competitive, converged communications marketplace is inextricably tied up with the policy choices that will be made on how to address the blurring of regulatory distinctions.

From a structural perspective, as noted in our FY2000 budget submitted to Congress, there are a number of steps we are committed to take. We will continue to evaluate whether certain regulations are no longer necessary in the public interest and should be repealed or modified as required by Section 11 of the Communications Act. We will continue to use our forbearance authority where appropriate. We will continue our efforts to reduce reporting requirements and eliminate unnecessary rules, and to level regulation to the least burdensome possible, consistent with the public interest. In addition, in our FY 2000 budget, we have committed to reviewing our cable services and mass media functions.

We recognize that much additional analysis is needed to consider the impact of industry convergence on the FCC's policies and rules and on our structure. We will continue to meet with Congress, our state regulatory partners, industry, consumer groups, and others to solicit input and feedback on our restructuring, streamlining and policy initiatives and the impact of industry convergence.

IV. SUBSTANTIVE DEREGULATION EFFORTS

As telecommunications markets become more competitive, we must eliminate regulatory requirements that are no longer useful. We are already engaged in an ongoing process of reviewing our entire regulatory framework to see which rules should be eliminated or streamlined.

A. FCC Biennial Review of Regulations

In November 1997, the Commission initiated a review of the Commission's regulations, as required by Section 11 of the Telecom Act. Beginning in 1998 and in every even-numbered year thereafter, the FCC must conduct a review of its regulations regarding the provision of telecommunications service and the Commission's broadcast ownership rules. The Telecom Act charges the Commission with determining whether, because of increased competition, any regulation no longer serves the public interest.

Chairman Kennard announced in November 1997 that the Commission's 1998 Biennial Review would be even broader than mandated by the Telecom Act. In addition, at the Chairman's direction, the Commission accelerated the Congressionally-mandated biennial review requirement by beginning in 1997 rather than in 1998. As part of the 1998 Biennial Review, each of the operating bureaus, together with the Office of General Counsel, hosted a series of public forums and participated in practice group sessions with the Federal Communications Bar Association to solicit informal input from the public. The Commission also hosted a web site on the biennial review and asked for additional suggestions via e-mail.

After input from the public, the Commission initiated 32 separate biennial review rulemaking proceedings, covering multiple rule parts, aimed at deregulating or streamlining Commission regulations. The Commission devoted substantial attention and resources to the biennial review. Roughly two-thirds of the proceedings involved common carrier deregulation or streamlining. The Commission also instituted a broad review of its broadcast ownership rules. To date, the Commission has adopted orders in seventeen of the 1998 biennial review proceedings, with others to be forthcoming. (See Appendix B)

From the outset, the focus of the Biennial Review has been on regulating in a common sense manner and relying on competition as much as possible. The Chairman and the other Commissioners have worked together to make the biennial review a meaningful force for deregulation and streamlining. The 1998 review was the Commission's first biennial review, and was being conducted while the Commission was still in the process of implementing the Telecom Act. The Chairman and the Commission intend to build on the 1998 review so that the 2000 review and future reviews will produce even more deregulatory actions.

B. Continued FCC Deregulation Efforts

As we move toward our goal of fully competitive communications markets, our efforts to streamline and eliminate unnecessary rules must be increased and expanded. Accordingly, the 2000 Biennial Review will be a top priority for the Commission.

As we did with the 1998 review, we plan to start the 2000 review early, by putting a team in place in 1999 to work with the Commissioners and the Bureaus and Offices on planning and structuring the review. We will also continue to keep our review broad in focus. The team would evaluate the success of the 1998 review and consider whether changes are necessary for the 2000 review. The team would also consider whether any changes are needed in the methodology we have used to review our regulations. The team would again solicit input and recommendations from state regulators, industry, consumer groups, and others, to ensure that the 2000 review is a major force for deregulation.

In short, we will be guided by one principle: the elimination of rules that impede competition and innovation and do not promote consumer welfare.

V. STRATEGIC PLANNING EFFORTS

A. Background

The Government Performance and Results Act of 1993 (Results Act) provides a useful framework for a federal agency to develop a strategic plan. The Results Act recommends including as part of such a plan: a comprehensive mission statement; a description of the general goals the agency wants to achieve and how they will be achieved; a discussion of the means, strategies and resources required to achieve our goals; a discussion of the external factors that could affect achievement of our goals; and a discussion of the consultations that took place with customers and stakeholders in the development of the plan.

The Results Act also recommends that an agency establish measurable objectives and a timeline to achieve the goals specified in the strategic plan. The agency would consult with Congress and solicit input from its customers and stakeholders. The purpose of the Results Act is to bring private sector management techniques to public sector programs.

B. FCC Implementation of the Results Act

When the Results Act was passed, the FCC was already hard at work implementing similar management initiatives. In 1993, we began the work of reinventing ourselves, streamlining and restructuring the agency to meet the challenges of the Information Age. In the process we created the Wireless Telecommunications and the International Bureaus. In 1995, we issued a report—"Creating a Federal Communications Commission for the Information Age"—that included numerous recommendations for administrative and legislative changes, many of which were subsequently adopted.

Each of our bureaus and offices developed their own mission statement, identified their customers and surveyed them on their needs. Benchmark customer service standards were established for each of their policy and rulemaking, authorization of service, enforcement and public information service activities. These standards were published on their websites and customers were periodically surveyed to determine whether their service goals were being met.

We also volunteered to participate in Results Act implementation pilot projects, naming the Wireless Telecommunications Bureau's Land Mobile radio and the Office of Engineering and Technology's Equipment Authorization activities as the agency's two participants. We organized a Steering Committee with an ambitious schedule for completing the requirements of the Results Act.

C. Impact of the Telecom Act

Enactment of the Telecom Act in February 1996 had a profound impact on the FCC. Pursuant to the Telecom Act, the FCC was required to initiate numerous rulemakings, many with statutorily mandated and expedited notice and comment period. The impact of implementing the Telecom Act affected every aspect of the

FCC—its resource allocations, its schedule for rulemakings, and its very organizational structure—for more than two years.

Enactment of the Telecom Act also changed the scope and level of our Results Act planning effort. We had to reformulate our mission and performance goals in light of the Telecom Act. We decided for the first three years after passage of the Telecom Act to marry the major goal of the Act—to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of telecommunications technologies"—with the FCC's four major budget activities of policy and rulemaking, authorization of service, compliance, and public information services.

This approach worked well during the major period that the FCC was implementing the Telecom Act. Under this approach, however, the performance goals for each of the individual Bureaus remained a somewhat disconnected patchwork of objectives reflecting a collection of individual Bureaus' efforts to implement the Telecom Act. Since passage of the Telecom Act, with the traditional distinctions between over-the-air broadcasting, cable, wireless, wireline and satellite becoming less distinct, it is becoming clear that the FCC must conceive a new approach to our mission and our structure.

D. New FCC Strategic Plan

The FCC has determined that we need a new regulatory model and a new Strategic Plan that will serve as the Commission's blueprint as we enter the 21st Century. We need a new Strategic Plan to point the way to where we want to be and the means and resources by which we will get there.

We are generally structuring our Strategic Plan based on our future core functions: universal service, consumer protection and information; enforcement and promotion of pro-competition communications goals domestically and internationally; and spectrum management. Our strategic planning efforts are thus tied into the restructuring and streamlining efforts that are already on-going. In addition, as noted above, we must take a hard look at how to organize ourselves for the New Media age. The convergence of technologies and industries require that we examine and change our stovepipe bureau structure, and we plan to address those issues in our Strategic Plan as well.

Key senior managers will be responsible for developing the strategic objectives and performance goals for the Strategic Plan. As our work on restructuring proceeds, we will convene strategic objective planning sessions to develop a planning document for each of our core activities. We will also develop a schedule, based on fiscal years, on how we will achieve our objectives.

The Strategic Plan will represent the cooperative work of the entire FCC, reflecting input from the Commissioners, Bureau management, agency staff, and others affected by or interested in the FCC's activities. In developing our Strategic Plan, we have already started to seek input from a wide variety of FCC stakeholders and intend to intensify our efforts in the next few months. These include other Commissioners, Commission staff, Members of Congress and their staff, the Office of Management and Budget (OMB), industry groups, consumer groups, academia and others. Suggestions will be gathered on both the draft Strategic Plan and on the steps to implement it—including deregulatory actions, restructuring and realignment of FCC functions and management. In addition, we plan to incorporate comments on this document, "A New FCC for the 21st Century," into the draft Strategic Plan.

Our draft Strategic Plan, along with any implementation proposals, will be made public and we will actively solicit comment. We will issue a Public Notice encouraging the public to comment on our draft plan, which will be displayed on our Internet Home Page by July 1999. We will hold a series of meetings with interested groups to gain their insight into how we can better serve the public interest. We will make particular efforts to discuss the draft plan with Congress, the states, industry, and with consumers and small companies affected by our work. We plan to submit a more final plan to Congress and OMB in September 1999.

VII. CONCLUSION

Just as the communications industry and other sectors of our economy are constantly adapting to change and competition, so must the FCC. A new century and new economy demand a new FCC. We must plan for the future, while continuing to work on the challenges we face today to promote competition, foster innovation, and help bring the benefits of the 21st century to all Americans. We look forward to working with Congress, industry, consumers, state and local governments, and others on a critical assessment of what the "New FCC" should look like, and how we can get there.

EXECUTIVE SUMMARY—A NEW FEDERAL COMMUNICATIONS COMMISSION FOR THE 21ST CENTURY

We are standing at the threshold of a new century, a century that promises to be as revolutionary in the technology that affects our daily lives and the future of our country as the inventions and innovations that so profoundly shaped the past 100 years. Just as the internal combustion engine, the telephone, and the railroad brought about our country's transformation from an agricultural to an industrial society, the microchip, fiber-optic cables, digital technology, and satellites are fueling our transition from an industrial to an information-age society. As the marketplace changes, so must the Federal Communications Commission (FCC). The top-down regulatory model of the Industrial Age is as out of place in this new economy as the rotary telephone. As competition and convergence develop, the FCC must streamline its operations and continue to eliminate regulatory burdens. Technology is no longer a barrier, but old ways of thinking are.

Enclosed is a Report entitled "A New Federal Communications Commission for the 21st Century." This report is part of a continuing process of self-assessment that the Commission has been engaging in to transform itself to meet the challenges of an information-age economy and an ever-changing communications industry. The Report describes the communications marketplace—past, present, and future—and the implications of those changes for the FCC's structure and regulatory framework.

My vision for a "New FCC" is a bold one—in five years, the FCC should be dramatically changed. In a world of fully competitive comrnunications markets, the FCC should focus only on those core functions that are not normally addressed by market forces. These core functions would revolve around: (i) universal service, consumer protection and information; (ii) enforcement and promotion of pro-competition goals domestically and worldwide; and (iii) spectrum management.

The steps we are taking to transition to this model include: (1) *Restructuring:* We are consolidating currently dispersed enforcement functions into an Enforcement Bureau, and currently dispersed public information functions into a Public Information Bureau. The consolidation of these two key functions will improve efficiency and enhance the delivery of these services to the general public and to industry. (2) *Streamlining and Automation:* We are investing in new technology to create a "paperless FCC" by processing applications, licenses, and consumer complaints faster, cheaper, and in a more consumer-friendly way through electronic filing and universal licensing. (3) *Deregulation:* We are completing 32 deregulation proceedings covering multiple rule parts as a result of our 1998 Biennial Review of regulations, and intend for the 2000 Biennial Review to produce even more deregulatory actions. (4) *Strategic Plan:* We are preparing a five-year Strategic Plan that will outline our timetable for restructuring and streamlining FCC functions and management. As part of this process, we will work with Congress, state and local governments, industry, consumer groups, and others on a critical assessment of what the "New FCC" should look like and how we should get there.

FCC 1999 PROPOSED RESTRUCTURING AND STREAMLINING TIMETABLE*

March: Submit House Reauthorization Testimony/Initial Report to Congress

April/May: Conduct preliminary meetings and discussions with Congress and other Stakeholders on Strategic Plan

May 20, June 2 & 11: Conduct Public Forums with Industry, Consumers, State and Local Government Representatives, and Academics and Organizational Experts

May 26: Submit Senate Oversight Testimony

June: Transmit Current Restructuring Plan to Commissioners (Enforcement Bureau and Public Information Bureau)

July: Transmit Current Restructuring Plan to Congress and National Treasury Employees Union; Transmit Draft Strategic Plan to Congress, OMB, and Stakeholders; Organize 2000 Biennial Review Team

September: Transmit Final Strategic Plan to Congress, OMB, and Stakeholders

October: Establish Enforcement Bureau and Public Information Bureau

November: Begin Outreach on 2000 Biennial Review

FY 2000: Begin Implementing Five-Year Strategic Plan

*Note: Many of these dates are subject to change and may need Commission or Congressional approval.

APPENDIX B.—1998 BIENNIAL REGULATORY REVIEW

I. PROCEEDINGS INITIATED—COMPLETED/ORDERS ISSUED

Telecommunications Providers (Common Carriers)

Streamline and consolidate rules governing application procedures for wireless services to facilitate introduction of electronic filing via the Universal Licensing System. *1998 Biennial Regulatory Review—Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services,* WT Dkt No. 98–20, *NPRM,* FCC 98–25 (rel. March 19, 1998), *R&O,* FCC 98–234 (rel. Oct. 21, 1998).

Streamline the equipment authorization program by implementing the recent mutual recognition agreement with Europe and providing for private equipment certification. *1998 Biennial Regulatory Review—Amendment of Parts 2, 25 and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements,* GEN Dkt No. 98–68, *NPRM,* FCC 98–92 (rel. May 18, 1998), *R&O,* FCC 98–338 (rel. Dec. 23, 1998).

Eliminate rules concerning the provision of telegraph and telephone franks. *1998 Biennial Regulatory Review—Elimination of Part 41 Telegraph and Telephone Franks,* CC Dkt No. 98–119, *NPRM,* FCC 98–152 (rel. July 21, 1998), *R&O,* FCC 98–344 (rel. Feb. 3, 1999).

In addition to addressing issues remanded by the Ninth Circuit, reexamine the nonstructural safeguards regime governing the provision of enhanced services by the Bell Operating Companies (BOCs) and consider elimination of requirement that BOCs file Comparably Efficient Interconnection (CEI) plans. *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements,* CC Dkt Nos. 95–20 and 98–10. *FNPRM,* FCC 98–8 (rel. Jan. 30, 1998), *R&O,* FCC 99–36 (rel. Mar. 10, 1999).

Provide for a blanket section 214 authorization for international service to destinations where the carrier has no affiliate; eliminate prior review of pro forma transfers of control and assignments of international section 214 authorizations; streamline and simplify rules applicable to international service authorizations and submarine cable landing licenses. *1998 Biennial Regulatory Review—Review of International Common Carrier Regulations,* IB Dkt No. 98–118, *NPRM,* FCC 98–149 (rel. July 14, 1998), *R&O,* FCC 99–51 (rel. Mar. 23, 1999)

Removal or reduction of, or forbearance from enforcing, regulatory burdens on carriers filing for technology testing authorization. *1998 Biennial Regulatory Review—Testinq New Technology,* CC Dkt No. 98–94, *NOI,* FCC 98–118 (rel. June 11, 1998), *Policy Statement,* FCC 99–53 (rel. Apr. 2, 1999).

Deregulate or streamline policies governing settlement of accounts for exchange of telephone traffic between U.S. and foreign carriers. *1998 Biennial Regulatory Review—Reform of the International Settlements Policy and Associated Filing Requirements,* IB Dkt No. 98–148, *NPRM,* FCC 98–190 (rel. Aug. 6, 1998), *R&O,* FCC 99–73 (rel. May 6, 1999).

Modify accounting rules to reduce burdens on carriers. *1998 Biennial Regulatory Review—Review of Accounting and Cost Allocation Requirements,* CC Dkt No. 98–81, *NPRM,* FCC 98–108 (rel. June 17, 1998), *R&O,* FCC 99–106 (adopted May 18, 1999).

Eliminate duplicative or unnecessary common carrier reporting requirements. *1998 Biennial Regulatory Review—Review of ARMIS Reporting Requirements,* CC Dkt No. 98–117, *NPRM,* FCC 98–147 (rel. July 17, 1998), *R&O,* FCC 99–107 (adopted May 18, 1999).

Other

Amend cable and broadcast annual employment report due dates to streamline and simplify filing. *1998 Biennial Regulatory Review—Amendment of Sections 73.3612 and 76.77 of the Commission's Rules Concerning Filing Dates for the Commission's Equal Employment Opportunity Annual Employment Reports, MO&O,* FCC 98–39 (rel. Mar. 16, 1998).

Streamline broadcast filing and licensing procedures. *1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules and Processes,* MM Dkt No. 98–43, *NPRM,* FCC 98–57 (rel. Apr. 3, 1998), *R&O,* FCC 98–281 (rel. Nov. 25, 1998).

Provide for electronic filing for assignment and change of radio and TV call signs. *1998 Biennial Regulatory Review—Amendment of Part 73 and Part 74 Relating to Call Sign Assignments for Broadcast Stations,* MM Dkt No. 98–98, *NPRM,* FCC 98–130 (rel. June 30, 1998), *R&O,* FCC 98–324 (rel. Dec. 16, 1998).

Simplify and unify Part 76 cable pleading and complaint process rules. *1998 Biennial Regulatory Review—Part 76—Cable Television Service Pleading and Complaint Rules,* CS Dkt No. 98–54, *NPRM,* FCC 98–68 (rel. Apr. 22, 1998), *R&O,* FCC 98–348 (rel. Jan. 8, 1999).

Streamline the Gettysburg reference facilities so that electronic filing and electronic access can substitute for the current method of written filings/access. *1998 Biennial Regulatory Review—Amendment of Part 0 of the Commission's Rules to Close the Wireless Telecommunications Bureau's Gettysburg Reference Facility,* WT Dkt No. 98–160, *NPRM,* FCC 98–217 (rel. Sept. 18, 1998), *R&O,* FCC 99–45 (rel. Mar. 11, 1999).

Streamline and consolidate public file requirements applicable to cable television systems. *1998 Biennial Regulatory Review—Streamlining of Cable Television Services Part 76 Public File and Notice Requirements,* CS Dkt No. 98–132, *NPRM,* FCC 98–159 (rel. July 20, 1998), *R&O,* FCC 99–12 (rel. Mar. 26, 1999).

Streamline AM/FM radio technical rules and policies. *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules,* MM Dkt No. 98–93, *NPRM,* FCC 98–117 (rel. June 15, 1998), *First R&O,* FCC 99–55 (rel. Mar. 30, 1999).

Modify or eliminate Form 325, annual cable television system report. *1998 Biennial Regulatory Review—"Annual Report of Cable Television System." Form 325, Filed Pursuant to Section 76.403 of the Commission's Rules,* CS Dkt No. 98–61, *NPRM,* FCC 98–79 (rel. Apr. 30, 1998), *R&O,* FCC 99–13 (rel. Mar. 31, 1999).

II. PROCEEDINGS INITIATED—PENDING

Telecommunications Providers (Common Carriers)

Deregulate radio frequency (RF) lighting requirements to foster the development of new, more energy efficient RF lighting technologies. *1998 Biennial Regulatory Review—Amendment of Part 18 of the Commission's Rules to Update Regulations for RF Lighting Devices,* ET Dkt No. 98–42, *NPRM,* FCC 98–53 (rel. Apr. 9, 1998).

In *NPRM* portion, considering forbearance from additional requirements regarding telephone operator services applicable to commercial mobile radio service providers (CMRS) and, more generally, forbearance from other statutory and regulatory provisions applicable to CMRS providers. *Personal Communications Industry Association's Broadband Personal Communications Services Alliances' Petition for Forbearance For Broadband Personal Communications Services; 1998 Biennial Regulatory Review—Elimination or Streamlining of Unnecessary and Obsolete CMRS Regulations: Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers,* WT Dkt No. 98–100, *NPRM,* FCC 98–134 (rel. July 2, 1998).

Privatize the administration of international accounting settlements in the maritime mobile and maritime satellite radio services. *1998 Biennial Regulatory Review—Review of Accounts Settlement in the Maritime Mobile and Maritime Mobile-Satellite Radio Services and Withdrawal of the Commission as an Accounting Authority in the Maritime Mobile and the Maritime Mobile-Satellite Radio Services Except for Distress and Safety Communications,* IB Dkt No. 98–96, *NPRM,* FCC 98–123 (rel. July 17, 1998).

Simplify Part 61 tariff and price cap rules. *1998 Biennial Regulatory Review—Part 61 of the Commission's Rules and Related Tariffing Requirements,* CC Dkt No. 98–131, *NPRM,* FCC 98–164 (rel. July 24, 1998).

Modify Part 68 rules that limit the power levels at which any device attached to the network can operate to allow use of 56 Kbps modems. *1998 Biennial Regulatory Review—Modifications to Signal Power Limitations Contained in Part 68 of the Commission's Rules,* CC Dkt No. 98–163, *NPRM,* FCC 98–221 (rel. Sept. 16, 1998).

Streamline and rationalize information and payment collection from contributors to Telecommunications Relay Service, North American Numbering Plan Administration, Universal Service, and Local Number Portability Administration funds. *1998 Biennial Regulatory Review—Commission Proposes to Streamline Reporting Requirements for Telecommunications Carriers,* CC Dkt No. 98–171, *NPRM,* FCC 98–233 (rel. Sept. 25, 1998).

Modify or eliminate Part 64 restrictions on bundling of telecommunications service with customer premises equipment. *1998 Biennial Regulatory Review—Policy and Rules Concerning the Interstate, Interexchange Marketplace/implementation of Section 254(g) of the Communications Act of 1934, as Amended/Review of the Cus-*

tomer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets. CC Dkt Nos. 98–183 and 96–61, *NPRM,* FCC 98–258 (rel. Oct. 9, 1998).

Eliminate or streamline various rules prescribing depreciation rates for common carriers. *1998 Biennial Regulatory Review—Review of Depreciation Requirements for Incumbent Local Exchange Carriers,* CC Dkt No. 98–137, *NPRM,* FCC 98–170 (rel. Oct. 14, 1998).

Repeal Part 62 rules regarding interlocking directorates among carriers. *1998 Biennial Regulatory Review—Repeal of Part 62 of the Commission's Rules,* CC Dkt No. 98–195, *NPRM,* FCC 98–294 (rel. Nov. 17, 1998).

Seek comment on various deregulatory proposals of SBC Communications, Inc. not already subject to other biennial review proceedings. *1998 Biennial Regulatory Review—Petition for Section 11 Biennial Review filed by SBC Communications, Inc., Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell,* CC Dkt No. 98–177, *NPRM,* FCC 98–238 (rel. Nov. 24, 1998).

Consider modifications or alternatives to the 45 MHz CMRS spectrum cap and other CMRS aggregation limits and cross-ownership rules. *1998 Biennial Regulatory Review—Review of CMRS Spectrum Cap and Other CMRS Aggregation Limits and Cross-Ownership Rules,* WT Dkt No. 98–205, *NPRM,* FCC 98–308 (rel. Dec. 18, 1998).

Broadcast Ownership

Conduct broad inquiry into broadcast ownership rules not the subject of other pending proceedings. *1998 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* MM Dkt No. 98–35, *NOI,* FCC 98–37 (rel. Mar. 13, 1998).

Other

Review current Part 15 and Part 18 power line conducted emissions limits and consider whether the limits may be relaxed to reduce the cost of compliance for a wide variety of electronic equipment. *1998 Biennial Regulatory Review—Conducted Emissions Limits Below 30 MHz for Equipment Regulated Under Parts 15 and 18 of the Commission's Rules,* ET Dkt No. 98–80, *NOI,* FCC 98–102 (rel. June 8, 1998).

Streamline application of Part 97 amateur service rules. *1998 Biennial Regulatory Review—Amendment of Part 97 of the Commission's Amateur Service Rules,* WT Dkt No. 98–143, *NPRM,* FCC 98–1831 (rel. Aug. 10, 1998).

Streamline Part 90 private land mobile services rules. *1998 Biennial Regulatory Review—47 C.F.R. Part 90—Private Land Mobile Radio Services,* WT Dkt No. 98–182, *NPRM,* FCC 98–251 (rel. Oct. 20, 1998).

The CHAIRMAN. Welcome. Thank you, Mr. Kennard.

Ms. Ness, Commissioner Ness.

STATEMENT OF HON. SUSAN NESS, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Ms. NESS. Thank you, Mr. Chairman. Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you today. I welcome the dialogue between the Commission and our authorizing committee. You have entrusted us with significant responsibilities. We are accountable to you as the elected officials of the people for our performance.

I want you to know that my colleagues and I have done our best to carry out the statutory obligations under the Telecommunications Act of 1996 and other laws. These are tough issues and complex times and I welcome the challenges ahead.

We are likely to hear a number of criticisms today. I expect I will agree with some and respectfully disagree with others. But I again look forward to working with you, hearing your criticisms, your views, your thoughts, and taking that into account as we work on these very difficult issues.

It is truly an exceptional time in the evolution of communications and information markets. There is good news and there is unfin-

ished business. We are beginning to reap the harvest of the seeds that have been planted in years past and starting to see the promise of seeds planted more recently. The prices for some long distance services are at an all-time low. The same is true for international calling rates and for wireless services as well. Meanwhile, DBS has climbed past the 10 million subscriber mark. Some 75 commercial and noncommercial television stations have begun digital broadcasting, and changes are under way in what have traditionally been monopoly sectors of the business, cable and telephone services.

Most notably, incumbent telephone companies and cable operators are both spurring each other to deploy broadband services at a rapid rate. Satellite and wireless companies are not far behind. Competitive carriers have raised vast amounts of capital and are expanding their coverages from large businesses to smaller businesses and in some limited instances residential consumers. The Internet, which we do not regulate and have no intention of regulating, is still growing at an astounding rate.

Our challenge is to keep this progress moving forward and to ensure that no sector of our society is left behind. Universal service has been a cornerstone of our telecommunications policy for decades and it remains so today. We therefore need to make sure that all Americans can enjoy the benefits that have resulted from new technology and competition, and in particular we need to ensure that rural Americans and those with limited incomes and our children continue to have affordable access.

High quality telephone services are available today throughout the Nation at affordable prices. But we need to make sure that as more competition and a deregulated market develop, access to these services remains affordable and that advanced technology is deployed on a timely basis.

So there is plenty of unfinished work. We welcome your guidance on the decisions that lie ahead. But we should take some pride in the very considerable benefits that are resulting already from decisions that you and we have made that bring us where we are today.

Thank you very much, Mr. Chairman.

[The prepared statement of Commissioner Ness follows:]

PREPARED STATEMENT OF HON. SUSAN NESS, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman and Members of the Committee, I appreciate the opportunity to appear before you today.

I welcome a dialogue between the Commission and our authorizing Committee. In particular, I am pleased to review with you our performance over the past 18 months and our efforts to fulfill our statutory obligations under the Telecommunications Act of 1996 and other laws. I also welcome your guidance on the issues that are pending before us, on our efforts to promote competition, deregulation, and universal service, and on how we can best meet the challenges ahead.

This interaction between the Commission and our Oversight Committee is especially valuable now, during a period of monumental change. The telecommunications and information industries are undergoing a transition of epic proportions. Digitization and Internet technology are splintering the regulatory structures of the past. Convergence is presenting an abundance of new opportunities—and challenges—as voice, data, audio and video are delivered over a host of new technologies. Ten years ago, data represented less than five percent of all telecommunications traffic. Today, data is surpassing voice traffic and in the near future will represent the lion's share of traffic on our nation's telecommunications network. The

Internet is moving at an astonishing clip to become integrated into the daily life of consumers, in ways that will profoundly change commerce in the 21st Century.

Demand for bandwidth is burgeoning, and a variety of players, embracing different technologies, are racing to be the provider of choice. Telephone companies are rolling out digital subscriber line services, and cable companies are offering cable modems, each spurring the other to deploy broadband faster and more extensively. Meanwhile, fixed and mobile wireless, satellites and even broadcast stations, are investing to expand consumer choices. The potential for consumer benefits is enormous, but the challenge for traditional regulatory paradigms is also substantial.

MANAGING THE TRANSITION

The changes that are underway are attributable as much to technology as to law and regulation. They are also a product of the availability of capital, management skill, and entrepreneurship. But law is still a critical part of the equation. The right legal framework can stimulate investment, risk-taking, and competition; the wrong framework can delay and distort marketplace activity.

Recognizing an historic opportunity, and desiring to spur increased competition and innovation, Congress passed the Telecommunications Act of 1996. The full consequences of that law and of the FCC's efforts to implement it can be measured only over a longer sweep of time than three years. And any given individual's assessment, at any point in time, will necessarily find both strengths and weaknesses in the various judgments that have been made. Still, I believe that the law generally is working successfully, especially now that most of the judicial challenges have been resolved. The nature and velocity of the marketplace developments that are now underway are unprecedented, and I believe that the vast majority of consumers will reap substantial benefits. Further, these benefits will increase as remaining market-opening difficulties are overcome, and competition expands its reach.

Congress has established clear goals, and the means to get there. The overarching goal is "to accelerate rapidly private sector deployment of advanced telecommunications and information technologies to all Americans . . ." The primary tool is competition, which to varying degrees requires both regulation (see, e.g., 47 U.S.C. § 251(c) (obligations of incumbent local exchange carriers) and deregulation (see, e.g., 47 U.S.C. § 160) (forbearance)).

Thanks to decisions that predate the Telecommunications Act, we are already well along in the development of fully competitive and unregulated markets for long distance service, information services, customer-premises equipment, and wireless services. In these areas, choice is abundant, innovation is rampant, and prices are declining. Much of this progress has occurred fairly recently.

Consider: just three years ago most residential consumers paid 20 or 25 cents a minute for a long distance call. Today, 10-cent-a-minute (or even lower) rate plans are widely available, and special offers abound, such as all-you can-talk pricing for weekends and free calls on Monday nights. (To be sure, not all consumers are reaping the benefits of lower prices. Some low-volume long distance consumers have been bombarded with additional charges and fees that exceed the savings in per-minute rates, which should be explored.)

In commercial mobile radio service, the benefits of competition have been even more dramatic. A few years ago, a wireless call commonly cost 50 to 75 cents a minute, and customers paid hefty roaming fees. But when the first PCS providers challenged the cellular incumbents, rates plummeted 25 percent. They dropped even further as the 4th, 5th, or even 6th operators joined the fray. And now we have "one-rate" pricing, where consumers are offered big "buckets" of minutes that equate to as low as 10 cents a minute—and often with regional or national calling and no roaming fees. Now, it is often cheaper to make an intrastate toll call by wireless phone than over the wired telephone system.

Similarly, many international call prices have plunged as countries implement their World Trade Organization market-opening commitments, and as the FCC enforces its accounting rate policies. Virtually everyone who makes a significant volume of international calls has seen a significant drop in rates.

Competition has been more elusive in the video and local telephone markets, but even here there are signs of progress. With more than 10 million subscribers, DBS is becoming a more credible competitor to cable, and competitive local exchange carriers are making inroads against incumbent local exchange carriers in business markets and in a small, but growing number of residential markets as well.

In these markets, the challenge is to manage a successful transition from regulated monopoly to unregulated competition as we maintain our commitment to universal service.

This transition is complicated. New services and technologies are surfacing that do not fit neatly into discrete regulatory structures. This leads both to creative tensions, and to certain anomalies.

We need to remember that the development of full competition takes time. Just as we saw in the long distance market, and more recently with wireless services, there is often a gestation period of multiple years between the time when key steps are taken to promote competition and when robust competition actually emerges. This is particularly true when unnecessary litigation prolongs uncertainty, and deters investment.

As we seek to accelerate the transition to competition, we need to be willing to trust the market to work, as we did when we denied state petitions to retain price regulation of commercial mobile radio services. But we also need to be careful not to undermine basic tenets of the Telecommunications Act. Sometimes, when we hear pleas to restrict or eliminate a particular requirement, the provision in question is one that Congress carefully chose as a tool to enable competition (see, e.g., 47 U.S.C. §§ 251(c)(obligations of incumbent local exchange carriers) 271 (Bell entry into long distance), 628 (program access)). It may even be a provision that Congress specifically told us not to use our forbearance authority to circumvent (47 U.S.C. § 160(d) (referencing §§ 251(c) and 271)).

We also need to think with greater care about the layers of regulation that can flow from different levels of government. An incumbent or a new entrant may need to deal not only with the requirements of the Communications Act and the FCC, but also with state and local laws and regulations. Each layer of government has its own responsibilities, and its own legitimacy, but where possible we need to strive for cooperation, consistency and efficiency, to advance the national goals of competition, universal service, and deregulation.

We have made considerable progress working with our state and local government colleagues in a renewed spirit of cooperation. Our partnership with the state commissioners, in particular, is vastly stronger than it was when I joined the Commission in 1994. Our local and state government advisory committee has also made significant progress by identifying practical solutions to thorny issues such as wireless antenna siting.

GUIDING PRINCIPLES

As we move forward with our implementation of the Telecommunications Act, and with an evolution in the philosophy and structure of the FCC, I am guided by certain principles:

First and foremost, of course, I take my direction from the law. It is not my place to second-guess the judgments of Congress, or to be selective in deciding which provisions of the law will be enforced.

The law, however, leaves us a measure of discretion, and in exercising that discretion our principal goal should be to foster competition whenever and wherever possible. And as competition advances, regulation can and should retreat. Thus, we must more boldly rely on marketplace solutions, rather than the traditional regulation of entry, exit, and prices; and on surgical intervention rather than complex rules in the case of marketplace failure. The forbearance authority which you gave us is an excellent tool, sunset provisions are another, as is the biennial review process.

Another principle is that we should minimize regulatory risk. Capital formation is hampered when rule changes are pending or are uncertain. Rules and decisions should be as clear and as consistent as possible. Decisions—whether in resolving rulemakings or complaints or simply in processing routine applications—need to be prompt and predictable. Enforcement should be swift and certain, so that regulatory delay is not a strategy of choice, a hindrance to market entry or an impediment to protecting consumers against inappropriate conduct by service providers.

In addition, government often serves best by focusing a spotlight on problems and prodding parties to work together to design solutions. Sometimes government can be a useful catalyst for private sector solutions that serve better than regulatory prescription to resolve competing needs and speed the introduction of new technologies.

Another basic tenet is that consumer interests should be paramount. It is the public, not any particular competitor or group of competitors, that we must serve. The Commission should not try to pick winners or losers, either individually or by industry sector. Nor should we be tempted by short-term "fixes" that impede long-term objectives.

Finally, we should continually review our progress. It is important to evaluate, regularly and periodically, what is working and what is not—especially in such a

rapidly changing environment—and then take steps to fix it. I do not advocate another major rewrite of the Communications Act at this time, for such a reopening of the statute would reintroduce uncertainty and deter investment.

With this as backdrop, I want to elaborate on Commission activity over the past 18 months in five areas.

Digital Television

Effectuating a successful transition to digital television for the benefit of consumers is an important Commission goal. Notwithstanding the growth of other media delivery systems, such as cable, DBS and the Internet, free, over-the-air television remains unparalleled in its pervasiveness and influence. Local broadcasters have been given the opportunity to participate in the digital revolution that is affecting every other segment of the communications and information industries. By the same token, consumers should have the opportunity to enjoy the numerous benefits—HDTV, multi-channel standard definition TV, and a host of ancillary and supplemental services—that DTV broadcasting can bring.

The transition to digital is no simple matter, and no one should expect an overnight success. While I am encouraged by the progress that has been made to date, much remains to be done.

The good news is that 75 stations are already on the air, which is ahead of the FCC-prescribed implementation schedule. But many problems—both technical and regulatory— remain which are hindering a successful transition for industry and for consumers. We still need a greater quantity of innovative programming that will attract DTV viewers, and more affordable DTV receivers to attract more DTV programming (the "chicken-and-the-egg problem"). We need the industry to resolve its knotty digital copyright issues so that compelling programming can be shown. We need better compatibility between digital cable service and DTV receivers. And we need even greater accommodation between cable operators and television broadcasters.

My strong preference is for market-driven solutions to these problems, whenever possible. The Commission's role is primarily to highlight obstacles, facilitate dialogue among the stakeholders, and to guide, prod, shepherd, cajole, jawbone, and otherwise stimulate the development of solutions. Regulation is the tool of last resort, and any prescriptive (or proscriptive) intervention should be carefully thought through and proportionate to the circumstances.

Universal Service

Another high priority is universal service. Again there is good news, and again there is much unfinished business.

The Telecommunications Act of 1996 strengthened our nation's commitment to an inclusive vision in which communications services are available to all Americans. The new law reaffirmed long-standing policies of assisting low-income consumers, and those in high-cost areas, in obtaining access to high-quality, affordable telephone service. The new law also extended the concept of universal service by providing for targeted assistance to elementary and secondary schools, libraries, and rural health care providers. I am deeply committed to all of our universal service goals.

The good news here is that the low-income support mechanism has been maintained and expanded, that consumers in high-cost areas are continuing to obtain high-quality services at affordable rates, and that we have launched the schools and libraries and rural health care support mechanisms. Each of these elements of universal service is important; all of them, collectively, will help to build stronger communities, a stronger economy, and a brighter future for our nation.

The high-cost issues are extraordinarily complex and require special care. The Telecommunications Act is clear that we should not disrupt the ability of rural telephone companies—some 1300 strong—to serve their communities. We have followed that guidance and largely left rural telcos "off the table" for purposes of pending proceedings. In addition, the Federal-State Joint Board on Universal Service has appointed a Rural Task Force that is studying these issues. But as you know, we are proceeding with caution, consistent with your guidance.

Even with the larger telephone companies, where more of the subsidies that keep rural rates affordable are implicit and therefore potentially vulnerable to erosion by competition, we are moving ahead with care. The risk of introducing unintended consequences is great. The challenge is to reform high-cost support mechanisms in a way that ensures that consumers will continue to have access to affordable, quality telecommunications services while being economically efficient, compatible with competition, and fair to both high-cost and low-cost states.

We want to avoid unnecessary complexity or artificiality. We want to target support to the areas where costs are truly high. We want to avoid treading on the toes of state regulators, who (in the case of the larger telephone companies) are the ones that manage most of the implicit subsidies that keep rural phone rates affordable today. We want to avoid locking in legacy systems or hindering the emergence of new technologies and new competition. We want to avoid creating both the reality and the appearance of rate increases.

And candidly, it is not clear how best to effectuate all of these goals simultaneously. Provided that consumers in high cost areas are continuing to enjoy access to telecommunications services at affordable and reasonably comparable rates, we can and should incrementally make explicit the implicit subsidies between carriers.

Obviously, high cost mechanisms will continue to require a great deal of time and effort within the Commission, working closely with the Joint Board. But in the meantime, it is important for you to know that we are not reducing the support that is currently provided by the interstate jurisdiction; indeed, we are actively exploring ways to target additional federal support where it is needed. Further, the Joint Board has found that preexisting sources of implicit subsidy are not at this time being eroded. It helps a great deal that communications is a declining cost business and that demand for communications services is soaring, so despite some inroads made by competitors, the incumbents are continuing to grow and prosper.

Broadband Deployment

I am personally committed to enabling all Americans to benefit in the communications revolution. As advanced services are rolled out, I want to ensure that rural America is included.

Broadband services are more than just a means of enabling people to communicate more productively. They may provide the means by which to stem the tide of migration from the farms to the cities. They may enable entrepreneurs to remain in rural areas and develop prosperous businesses, boosting local economies. To this end, it is important that existing wireline carriers, cable companies, and new wireless and satellite ventures alike have the opportunity to bring new services, new choices, and new life to rural communities.

We are still at an early stage in the rollout of broadband services, but early indications are that investment and innovation are strong, and that rural areas are not being neglected. We will, of course, keep a close eye as events continue to unfold.

International Issues

Over the past eighteen months, the FCC has played a major role in expanding access to global communications at affordable rates. We have achieved some real successes in our efforts to drive international accounting rates closer to costs (and in winning a major judicial victory on this issue), and in opening global markets to competition under the WTO framework. Many countries have emulated the U.S. model by establishing independent regulators patterned after the FCC.

Unfinished work includes continued enforcement of our accounting rate policies as we press for an acceptable multilateral resolution of this issue. We must also continue to be proactive with our trading partners to achieve full WTO compliance where U.S. companies are encountering market-access difficulties. And we must deploy the resources necessary both to complete WRC 2000 preparation process and to engage in meaningful and frequent negotiations with our trading partners sufficiently in advance of the Conference on the full range of spectrum issues that will be addressed. I am encouraged that regional bodies charged with developing spectrum management policies are opening up their processes. More regular bilateral discussions with our trading partners on spectrum management issues could serve to facilitate cooperative and timely resolutions of many of these issues.

Spectrum Management

Surging demand for commercial use of the finite spectrum resource, both internationally and in the U.S., coupled with the technical complexities inherent in sharing spectrum, are propelling us to take a fresh look at our spectrum management policies. As global communications systems and terrestrial wireless networks proliferate, they often are competing for use of the same spectrum. Where feasible, there may be value in harmonizing spectrum allocation and assignment policies with our trading partners, particularly to implement global systems.

As the demand for spectrum grows, the supply of useable spectrum shrinks. Consequently, we need to review our spectrum management policies to ensure that they provide incentives for private sector development of efficient spectrum use technologies. I am intrigued by the discussion at our recent *en banc* on spectrum management of software-defined radios as one way to increase both flexibility and efficiency of use.

"REINVENTING" THE FCC

As the marketplace changes, so too must the FCC. The Commission must continue to evaluate ways in which we can be more efficient and responsive. A process to do that is currently underway, and a dialogue with our authorizing Committees is obviously vital to the decisions that must be made.

Two months ago, Chairman Kennard released his draft report, "A New Federal Communications Commission for the 21st Century." This report provides an excellent starting point for any discussion of FCC organization and mission. The Chairman has also sought public discussion by arranging three forums (the first of which was held on May 20). Each of my colleagues has proffered thoughtful suggestions for streamlining and improving FCC performance.

In the meantime, we must not permit ourselves to be diverted from the matters at hand. We do have unfinished business, and many market participants need to have timely resolution of issues that are pending before us. In this context, I am most grateful for the recent statements of the Majority Leader that "Congress should start empowering the FCC rather than criticizing its individual decisions" and of my colleague, Commissioner Michael Powell, who accurately observed, "The agency cannot right its ship if stakeholders spend most of their time rocking the boat."

CONCLUSION

Consumers are already reaping many benefits from competition fostered by past decisions of Congress and the FCC. The Telecommunications Act and its implementation by the FCC and the state commissions are expanding the realm of competition, and expanding the potential for consumer benefits. Yet the pace of change in communications markets is still accelerating, and care must be taken to ensure that national goals remain in focus.

The FCC's main challenges during this historic transition are to know when to intervene and when not; to use creatively and judiciously the wide assortment of tools available as we move from monopoly to competition; and, at all times, to keep the interest of consumers paramount. Only then will we be fulfilling Congress' vision of competition and deregulation for the benefit of all Americans.

Thank you very much for inviting me to testify before you today. I am happy to answer your questions.

The CHAIRMAN. Thank you very much.

Commissioner Tristani.

STATEMENT OF HON. GLORIA TRISTANI, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Ms. TRISTANI. Thank you, Mr. Chairman. You caught me a little bit unawares. Not our usual order of speaking here.

I am delighted to be here to discuss the role of the FCC as we continue to work toward the goals set forth in the Telecommunications Act of 1996 and in the Communications Act. First and foremost in my mind is universal service. We are working to ensure that universal service support does not erode as competition develops. I believe the Commission will take important steps at tomorrow's agenda meeting to resolve key issues relating to high-cost support for non-rural carriers.

Both at the Commission and as a member of the Federal-State Joint Board on Universal Service, I have been pleased to observe the increasingly cooperative relationship between Federal and State commissioners in fulfilling Congress' goals for universal service reform.

Second, I would like to express my continuing support for the E-rate program. I plan to cast my vote at tomorrow's agenda meeting to fully fund the E-rate program at $2.25 billion for the upcoming school year. I appreciate the support that many in Congress have expressed for the program, which I believe is a crucial step

toward improving education in this country and preparing the United States to compete in the new global economy.

Another way in which we can provide all Americans access to telecommunications is to fully and meaningfully implement section 255's mandate that telecommunications services be accessible to and usable by individuals with disabilities if readily achievable. In fulfilling this requirement, we must recognize that telecommunications plays a foundational role in our society. The ability to use telecommunications is now a prerequisite for many jobs, making access to such services vital to those 54 million Americans with disabilities.

Our commitment to access should be ongoing. Future rulemakings should routinely examine the effect of the proposed action on people with disabilities.

Another of my priorities is effective implementation of our enhanced 911 rules for wireless providers. In our mobile society, wireless phones play a vital public safety role. We recently adopted new requirements for improved 911 call completion and I am eager to proceed with resolution of remaining implementation issues.

An area of increasing importance to all Americans is broadband deployment. Access to broadband capacity is critical for our citizens to compete in the information economy of the twenty-first century. This year we issued our first section 706 report, which was guardedly optimistic about the state of broadband deployment while recognizing that it is still too early in the process to declare victory.

Indeed, with respect to rural and other hard to serve areas, I remain more guarded than optimistic. I am not yet convinced that these Americans will have access to advanced services on a reasonable and timely basis. I look forward to working with Members of Congress to ensure that rural consumers will not be left behind as advanced services become a marketplace reality in many other areas of the country.

On the broadcast side, one of the things that we have been working on to broaden opportunities for all Americans are new equal employment opportunity rules. There are those who question whether we can craft new EEO rules that will withstand judicial review. I do not doubt that any rules we adopt will be challenged in court and I have no illusions that some will not argue that even the most modest EEO rules require the strictest judicial scrutiny.

But if the burden of proof is high, so are the stakes. I believe we must make every effort to develop a meaningful EEO program that can and will be sustained.

Although much of the Commission's work addresses the broad structure of the telecommunications industry, the actions I have drawn the most satisfaction from are those that directly improve the daily lives of average Americans. That is why I strongly supported the rules that we adopted last December to combat slamming, and I am profoundly disappointed that the D.C. Circuit Court stayed a significant portion of those rules last week just as they were about to become effective.

In the wake of the stay, I continue to support the Commission's aggressive enforcement efforts against slammers, which I hope and expect will reduce the frequency with which consumers are slammed until we have new rules in place.

Another consumer issue which I have been intensely interested in is the V-chip. This is the year that the V-chip will become a reality. I was honored to have been appointed by Chairman Kennard to head an FCC task force to ensure that the impending rollout of the V-chip is a success. I commend you, Mr. Chairman, and other Members of this Committee for your early and vigorous leadership on this issue.

Again, I thank you for the opportunity to be here. I have a longer statement that I would appreciate being included in the record, and I look forward to answering any questions you may have.

[The prepared statement of Commissioner Tristani follows:]

PREPARED STATEMENT OF HON. GLORIA TRISTANI, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Good morning Mr. Chairman and Members of the Committee. I am pleased to be here today to discuss the role of the FCC as we continue to work toward the goal set forth in the Telecommunications Act of 1996 of opening telecommunications markets to competition for the benefit of all Americans. I'm also pleased to report that we have made some progress in the past year. I wanted to update the Committee on some things we have accomplished and where we might go from here.

First and foremost is universal service. In rural states like my home state of New Mexico, universal service permits average Americans to have phone service who otherwise would not be able to afford it. Right now, we are working to ensure that universal service support does not erode as competition develops. I believe the Commission will take important steps at tomorrow's Agenda meeting to resolve key issues relating to high-cost support for non-rural carriers. The Commission not only will address the recommendations that the Federal-State Joint Board on Universal Service submitted for its consideration last November but also will take additional steps toward implementing the economic model that will ultimately be used to determine support amounts. Both at the Commission and as a member of the Joint Board, I have been pleased to observe the increasingly cooperative relationship between federal and state commissioners in fulfilling Congress' goals for universal service reform.

One aspect of universal service that is particularly important to me is connecting unserved areas. In enacting Section 254, Congress told us not only to "preserve" but to "advance" universal service. I see no more worthy means of advancing universal service than to devise creative solutions to problem of unserved areas. In many of these areas, customers remain unserved because the alternative is to pay the local phone company thousands of dollars to have a line extended to their home. This is unacceptable. I believe the federal government, in the interest of advancing universal service, must take a more active role in connecting all Americans.

I would note that many unserved areas are on Indian lands, and that Indians are among the poorest groups of Americans. Chairman Kennard has recognized this problem, and I commend his leadership on this issue. Earlier this year, the Chairman and I held a field hearing in New Mexico where we took testimony and visited Indian reservations to learn firsthand about the causes of this problem and some possible solutions. Subsequently, Commissioner Ness and Commissioner Furchtgott-Roth joined Chairman Kennard for similar field hearings in Arizona. Those hearings marked the beginning of a real commitment in the area of telecommunications to better fulfill the federal government's trust obligation with respect to Indians living on reservations.

In addition, I would like to express my continuing support for the e-rate program. I plan to cast my vote at tomorrow's Agenda meeting to fully fund the e-rate program at $2.25 billion for the upcoming school year. I appreciate the support that many in Congress have expressed for our implementation of this program, which I believe is a crucial step toward improving education in this country and preparing the United States to compete in the new global economy. The goals of the program are sound and I am convinced that the e-rate funds that have recently been committed to schools and libraries around the country will generate enormous social and economic benefits for the nation in the years ahead.

Another way in which we can provide all Americans access to telecommunications is to fully and meaningfully implement Section 255's mandate that telecommunications services be "accessible to and usable by individuals with disabilities, if readily achievable." In implementing this requirement, we must recognize not only that

the telecommunications sector is one of the largest and fastest growing in our economy, but also that it plays a crucial foundational role in our society. The ability to use telecommunications is now a prerequisite for many jobs, making access to such services vital to those 54 million Americans with disabilities. While I look forward to completing our Section 255 rulemaking soon, we must not stop there. Our commitment to access should be ongoing. Future rulemakings should routinely examine the effect of the proposed action on people with disabilities.

Another of my priorities is effective implementation of our enhanced 911 rules for wireless providers. In our mobile society, wireless phones play a vital public safety role. We recently adopted new requirements for improved 911 call completion, and I am eager to proceed with resolution of remaining implementation issues such as technology choice, cost-recovery and liability limitations. I also applaud the initiatives pending in Congress on liability and designating 911 as a national emergency number.

An area of increasing importance to all Americans is broadband deployment. Access to broadband capacity will be a crucial tool for our citizens to compete in the information economy of the 21st century. In Section 706 of the 1996 Act, Congress directed the Commission to monitor the roll-out of advanced telecommunications capability, and, if necessary, take steps to ensure that all Americans have access to such capability on a reasonable and timely basis. This year, we issued our first Section 706 Report, which was guardedly optimistic about the state of broadband deployment while recognizing that it is still too early in the process to declare victory. Indeed, with respect to rural and other hard-to-serve areas, I remain more guarded than optimistic. I am not yet convinced that these Americans will have access to advanced services on a reasonable and timely basis. This is an area I will continue to pursue aggressively, consistent with Congress' intent. Indeed, in the past week we received a letter from ten Senators setting forth several specific and thoughtful suggestions on how we could encourage the deployment of advanced services to rural areas. I look forward to working with members of Congress to ensure that rural consumers will not be left behind as advanced telecommunications services become a marketplace reality in many areas of the country.

I believe there are two ways to accelerate the rollout of advanced services. The first is to ensure that competitors have access to the basic building blocks of advanced services that are controlled by incumbent LECs. That includes things like conditioned local loops and collocation space. Competitors can then combine those inputs with their own advanced services equipment to offer high speed connections to end users. The Commission recently strengthened its collocation rules and in the near future the Commission will, I hope, formally reinstate the requirement that conditioned loops be made available to competitors.

The second way to spur advanced services is to make sure we're not overregulating the provision of those services by incumbent LECs. I recognize that there may be markets where, unlike the market for basic local telephone service, incumbents do not have a hundred-year head start. We need to think carefully before applying rules that may be ill-suited for such emerging markets. If we proceed thoughtfully in this area, I am optimistic that the FCC's policies will provide the right incentives for both new entrants and incumbents to furnish the bandwidth that millions of consumers are asking for.

On the broadcast side, one of the things that we have been working on to broaden opportunities for all Americans are new rules on Equal Employment Opportunity. As the Committee is aware, this past year a panel of the U.S. Court of Appeals for the District of Columbia Circuit struck down the outreach portions of our previous EEO rules because it believed (wrongly, I think) that our rules effectively required hiring decisions based on race. We are working on new rules that will address the court's concerns while ensuring that all segments of the community have the opportunity to participate in, own, and see themselves reflected in, the media that has such a pervasive impact on our nation's cultural and political life.

There are those who question whether we can craft new EEO rules that will withstand judicial review. I do not doubt that any rules we adopt will be challenged in court, and I have no illusions that some will argue that even the most modest EEO rules require the strictest judicial scrutiny. But if the burden of proof is high, so are the stakes. I believe we must make every effort to develop a meaningful EEO program that can and will be sustained.

Although much of the Commission's work addresses the broad structure of the telecommunications industry, the actions I've drawn the most satisfaction from are those that directly improve the daily lives of average Americans. That is why I strongly supported the rules we adopted last December to combat slamming. I am profoundly disappointed that the D.C. Circuit stayed a significant portion of those rules last week, just as they were about to become effective. In the wake of the stay,

I continue to support the Commission's aggressive enforcement efforts against slammers, which I hope and expect will reduce the frequency with which consumers are slammed until we have new rules in place.

Another consumer issue in which I've been intensely interested is the V-chip. This is the year that the V-chip will finally become a reality in the lives of average Americans. By July 1, half of the new television models with screens thirteen inches or larger must have a V-chip installed. By January 1, 2000, all such sets must have a V-chip. This will empower parents to protect their children from material that they deem unsuitable for their children. I commend you, Mr. Chairman, and other members of this Committee for your early and vigorous leadership on this issue.

I was honored to have been appointed by Chairman Kennard to head an FCC Task Force to ensure that the impending roll-out of the V-chip is a success. One of the most important objectives of the Task Force is to ensure that all parts of the blocking system are in place and working, so that a parent who buys a TV set can be assured that the blocking function will work. We also will be working with various industry, consumer and other groups to educate parents about the V-chip and how it can be used in their daily lives.

Once again, I appreciate the opportunity to testify before you today.

The CHAIRMAN. Thank you very much.

Commissioner Furchtgott-Roth.

STATEMENT OF HON. HAROLD W. FURCHTGOTT-ROTH, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. FURCHTGOTT-ROTH. Thank you, Mr. Chairman, members of the committee. I am deeply humbled and honored to appear before you today. I cannot think of this room without thinking of the 1996 Act and the importance of the Commission following the law as it is written.

Four years ago I sat in this room, probably sat around this very table, as a House staffer, perhaps a little wet behind the ears, negotiating language on the Telecommunications Act for the House. The staff debates on language were intense and lengthy. We on the House side championed competition plain and simple. I believed then and I believe now that the greatest friend of the consumer is not a complicated Federal program that takes an army of Washington lawyers to decipher. The greatest friend of the consumer today is a new competitor offering better services and lower prices, and then tomorrow an even better friend comes along offering yet better services and even lower prices.

I argued on behalf of the House that competition needed to be complete, that barriers to entry needed to be removed, and that competition needed to be unencumbered by complex regulation.

The Senate side also championed competition, but with grave concerns about the future of telecommunications in rural America, and that is how the 1996 Act came to be. It is about competition. It is also about some special considerations for rural America.

Competition has come about because the law now allows it, because consumers demand it, and technology will not be stopped. Competition has not come about because we have fancy computer cost models. In competitive markets prices are set by supply and demand, not by computer models.

The Commission has made enormous progress in many areas in the past year, including E–911 services, access for the disabled, and several deregulatory efforts. I commend Chairman Kennard for his many successes.

We have not made as much progress, however, in one area and that is securing a permanent solution to universal service, and I

would like to spend a few moments on that topic. Rural America has been protected as a vestige of preexisting programs, not because we have done anything new or novel at the Commission.

Today at the FCC—today the FCC looks at rural high- cost universal service support and some look at it through the lens of a very complicated computer cost model. Over the last decade the economies of the Soviet Union and communist regimes around the world have crumbled. They have collapsed in part because their governments tried to set all prices centrally. To most Americans and believers in free markets, centralized pricing was doomed to failure.

But at the Commission we are told that they had perhaps the right concept, only the wrong computer model. To these observers of economic regulation, the Soviet Union might have been saved if only Bill Gates or Steven Jobs had been born in Russia.

It takes more than a week to run the FCC's high-cost model. I suspect that the Soviet pricing models of the late 1980's could run faster. As an economist who has worked much of my career with economic cost models, I have little confidence in the results of models that take more than a few hours, that take even an hour to run, much less hundreds of hours.

The FCC model spews out one set of numbers one month, a substantially different set of numbers the next month. I do not have any confidence that I know where high-cost money would come from or go to if we fully implemented the cost model today, and I would certainly not know where the money would flow when the model changes next month, the month after, 6 months from now, or 10 years from now.

This model is being proposed just for large carriers. Who knows what mechanism will be applied to small rural carriers if we ever manage to get to them, certainly not in this century.

Today we hear concerns that perhaps OMB and CBO will start applying going-forward rules, pay as you go rules, on universal service. So we do not really know what will happen to universal service in the future.

Computer models that can change at whim will change at whim. Is there anyone on this Committee who can say that he or she knows where and how much Federal high-cost support would go to his or her State? Has anyone been briefed on this topic by the Commission? Is there anyone who would like to explain this situation to a constituent? Keep in mind, the answer for large carriers is contained in a computer cost model that takes more than 100 hours to run, and the answer for small carriers—well, we will get to that later.

The problem for the FCC is not that we do not have the right computer cost model. We simply are headed in the wrong direction on rural high-cost support—wrong priorities, wrong concepts. The statute neither mentions nor contemplates any form of cost model for universal service, but the Commission has decided that these extremely cumbersome models must be used to distribute high-cost universal service funds, regardless of how long it takes for the Commission to try to finalize them.

It is with great disappointment that I must conclude that in my opinion the Commission has made very little progress on these uni-

versal service issues in the last year. I discussed these in my testimony last year to this Committee. Once again, it appears that the Commission is poised to proceed with only one aspect of universal service at the same time that it delays higher priorities.

Thank you, Mr. Chairman and members of the committee. I look forward to guidance from this committee on how the Commission should proceed.

[The prepared statement of Commissioner Furchtgott-Roth follows:]

PREPARED STATEMENT OF HON. HAROLD W. FURCHTGOTT-ROTH, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

INTRODUCTION

Mr. Chairman, Senators, I am honored today to appear before this Committee.

The Commission has enormous responsibilities under the Communications Act. You see before you five Commissioners who have worked hard and always with the best of intentions of implementing the Act. We have, from time to time, disagreed on specific Commission decisions, but we have also made great progress in many areas including, to name just a few: implementation of Section 255 for access to telecommunications service for persons with disabilities, E911 services, enforcement of anti-piracy regulations, and the initial implementation of Section 11 on regulatory reform.

Perhaps no single issue has received more attention than universal service, one of the cornerstones of the Telecommunications Act of 1996, embodied in Section 254 of the Act. To date, the Commission has not fully implemented all parts of this section. On previous occasions, I have raised several concerns about this fractured implementation and about the Commission's promulgation of rules that appear to be inconsistent with the statute. As for the Commission's implementation of universal service, however, I must regretfully inform the Committee that the Commission has made little progress in the last year. Another year goes by, and the result is another billion dollars for the e-rate program and another deferral for the high-cost program. Next year at this time, the Commission may well be here explaining why it must raise the e-rate tax again and why the cost models are almost ready and can be implemented if we can just extend the high-cost deadline by another six months.

As I stated on several occasions last year: priorities matter.[1] I remain convinced that rural, high-cost universal service is not just one of many objectives of Section 254; it should be the highest priority. The federal government has had universal service programs for rural, high-cost areas and for low-income Americans for many years. Section 254 embodied these ideals and set forth goals that emphasize rural, high-cost support as well as low-income support and other objectives.

UNIVERSAL SERVICE

Almost one year ago, June 10, 1998, the Commission appeared before the Subcommittee on Communications of this Committee. At that time, the Commission's implementation of Section 254 and universal service was a prominent issue. And at that time I expressed my view that, in addition to numerous legal errors, the Commission had failed to implement Section 254 of the Telecommunications Act in a manner that reflected the priorities of Congress in general or of this Committee in particular.

It is with great disappointment that I must inform you that, in my opinion, the Commission has made very little progress on these universal service issues in the last year. Indeed, almost all of the issues that I raised in my testimony of one year ago are still relevant today. While I have attached last year's testimony for your convenience, I would like to take a moment and review some of the issues I raised at that time and their current relevance.[2]

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[1] See, e.g., Dissenting Statement of Commissioner Harold Furchtgott-Roth Regarding the Report to Congress in Response to Senate Bill 1768 and Conference Report on H.R. 3579, rel. May 8, 1998.

[2] Testimony of Harold W. Furchtgott-Roth, before the Subcommittee on Communications of the Senate Committee on Commerce, science, and Transportation, June 10, 1998 (Attachment I).

COMMERCE COMMITTEE PRIORITIES LEFT UNATTENDED

Last year, I voiced my concern with this agency's responsiveness to Congressional intent in its implementation of Section 254. I noted that the Senate Commerce Committee had particular concerns that rural America not be left behind.

> The views of what was affectionately known as the Senate Commerce Committee Farm Team were unmistakable: Section 254 on universal service was of the People, by the People, and for the People of high-cost, rural America. There were, to be sure, other important components of universal service: low-income, telemedicine, and schools and libraries. But these other elements were dwarfed in both the language and the intent of Section 254.

Indeed, at this time last year, Congressional leaders sent the Commission a letter reiterating that "our nation's core universal service program—i.e., support for high-cost and rural America—goes unattended by the Commission." At the time of the hearing, however, the Commission was already intending to delay the January 1, 1999 implantation of high-cost Issues.

In contrast, I also noted that, while perhaps not fully vetted, quick answers had been found for other components of universal service—namely the schools and libraries program. The Commission has repeatedly proceeded with some universal service programs while at the same time delaying higher priority issues.

Once again, it now appears that the Commission is poised to proceed with only one aspect of universal service and at the same time delay higher priorities.

Last year, I concluded that rural, high-cost issues should not be deferred while other aspects of universal service move forward.

> Rurals high-cost universal service issues should not be resolved and implemented in some dim and distant future after all other universal service issues have been resolved; rural, high-cost universal service issues should be resolved and implemented first. Rural, high-cost universal service should not be viewed as the residual after enormous amounts for other federal universal service obligations have been promised; rural, high-cost universal service should receive the lion's share of any increase in the federal universal service fund.

While I recall the Commission providing numerous assurances that high-cost would not get left behind, here we are one year later and where is the Commission? Again seeking to raise the schools and libraries program by another billion dollars. And what about high-cost? The Commission is about to announce the second extension of time in the last year until at least January 1, 2000 for large-carrier high-cost implementation.

And what about small company high-cost support? It will be addressed in some dim and distant future. It would appear to be the Commission's lowest priority.

HIGH-COST UNIVERSAL SERVICE AND COMPLICATED COST MODELS

Nor do I believe that the Commission is converging on a solution to the high-cost universal service issues. While the Commission has continued to move forward with some of its universal service projects, it has ignored other statutory mandates.

Almost one year ago, the Chairman and ranking members of the Senate and House Commerce Committees demanded that the FCC' "suspend further collection of funding for its schools and libraries program, and proceed with a rulemaking that implements all universal service programs in a manner that reflects the priorities established by Congress in the Telecommunications Act of 1996."[3] But the Commission continues to proceed with selected universal service programs, while at the same time delaying these higher priority issues.

And what could be the reason that the Commission has failed to act on high-cost universal service issues? I believe it is, at least in part, because the Commission has decided to use extremely complicated, complex, economic, computer, cost models. The statute neither mentions nor contemplates any form of cost model for universal service, but the Commission has decided that these extremely cumbersome models should be used to distribute high-cost universal service funds. How complicated are these models? It takes more than 180 computer hours to run the cost model program from start to finish. As an economist who has worked with economic models for much of my professional career, I have little confidence in the results of models that take hours to run—much less hundred of hours.

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[3] See, e.g., Letter from The Honorable John McCain, Chairman, Senate Committee on Commerce; The Honorable Ernest F. Hollings, Ranking Minority Member, Senate Committee on Commerce; The Honorable Tom Bliley, Chairman, House Committee on Commerce; The Honorable John D. Dingell, Ranking Minority Member, House Committee on Commerce; to The Honorable William Kennard, Chairman, Federal Communications Commission, June 4, 1998.

Moreover, I have concerns about the results that could be produced by this model. Thus, I provide some illustrative results from model runs, by both wire center and study area, as attachments.[4]

UNIVERSAL SERVICE SHOULD NOT BURDEN CONSUMERS

One year ago I also voiced my concern that rates for many Americans would soon rise, ironically, all in the name of universal service. Once again, "the Commission may soon vote to increase rates to support funds for certain universal service programs."

I continue to oppose using such access charge reductions to fund the e-rate program. The American consumer, not federal bureaucrats, should choose how to spend any reductions in access charges. Moreover, even if access charges are reduced, not all of the e-rate contributors benefit from such reductions. For example, there will be no offsetting reduction in access charges whatsoever for wireless customers who will simply have to pay higher rates. Similarly, there is no assurance that the consumers who benefit from access charge reductions will be the same consumers who wll bear the new universal service burden. For example, business consumers could disproportionaelty benefit from the access charge reduction while residential consumers pay for new universal service fees.

In addition, unlike last year, there may not be any offsetting reductions in access charges for any consumers. Last Friday, the D.C. Circuit reversed and remanded the Commission's 1997 decision regarding the decrease in access charges that is scheduled to take place on July 1, 1999. Under the Court's Order, the Commission must reconsider those reductions or at lease provide further explanation before the scheduled reductions can occur.

Some at the Commission had argued that this scheduled decrease in access charges would offset the increase in the schools and libraries program that the Chairman has been urging. But the Court has delayed these reductions. Even if the Commission seeks to stay the Court's opinion while it reconsiders the productivity factor, it is unlikely that the Commission will be able to guarantee what reductions will take place prior to the Commission's vote this Thursday to increase the schools and libraries contribution.

Thus, on Thursday, the net result to consumers will be an increase of $1 billion dollars in e-rate fees without a corresponding decrease in long distance charges.

UNIVERSAL SERVICE SHOULD BENEFIT RURAL AMERICA

The rural, high-cost universal service program was not just one of many objectives of Section 254 of the Telecommunications Act; it was its highest priority. There are other goals of Section 254, but it is difficult to read Section 254 in its entirety and understand how a federal universal service fund program could have as its primary emphasis anything other than rural support. It is hard to dispute that the universal service section of the Telecommunications Act of 1996 was primarily intended to aid rural America.

With that goal in mind, let us examine what has taken place over the last year. Federal universal service support has nearly doubled in size since passage of the Act. But amazingly, most of that growth has not benefited rural states. Instead, growth of universal service has been for other programs that largely flow to other areas of the country. Indeed, the schools and libraries program estimates that rural schools have received only 22% of that programs dollars committed in the first year.[5] For the Committee's convenience, I have attached a state-by-state breakdown of the schools and libraries program receipts.[6]

TELECOMMUNICATIONS MERGER REVIEW

The Commission has pending before it numerous license transfers, of which a select few have been singled out by the Commission for stricter scrutiny. I testified regarding the concerns that I have with the process the Commission has established

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[4] See Attachments II and III. The Joint Board recommended that the Commission use a cost-based benchmark with a range of 115% to 150% of the national weighted average. Second Recommended Decision, 13 FCC Rcd at 24761. The Joint Board also considered establishing a state's responsibility based on a percentage of intrastate telecommunications revenues somewhere between 3% and 6%. Second Recommended Decision, 13 FCC Rcd at 24762. For illustrative purposes, my attachments assume a benchmark of approximately 135% and roughly a 6% contribution.

[5] See National Rural/Urban Statistical Analysis (as of 2/27/99) found on the Schools and Libraries Division Website.

[6] See Attachment IV.

for this purpose yesterday before the Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary of he House of Representatives. I have attached a copy of that testimony for the convenience of this Committee.[7]

ATTACHMENT I

PREPARED STATEMENT OF HAROLD W. FURCHTGOTT-ROTH, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION, AT A HEARING BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS OF THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION, JUNE 10, 1998

Mr. Chairman, Senators. I am honored today to appear before this Committee.

Less than seven months ago, I was a nominee before this Committee; today I am a Commissioner of the Federal Communications Commission. I thank you for that honor and privilege.

The Commission has enormous responsibilities under the Communications Act. You see before you five Commissioners who have worked hard and always with the best of intentions of implementing the Act. We have, from time to time, disagreed on specific Commission decisions. But I believe that we share a commitment to implementing the Act faithfully as written, to implement all of its parts and not just a selective few, and not to go beyond the letter of Act.

COMMISSION SUCCESSES

Under Chairman Kennard's brief tenure, we have made great progress in many areas including, to name just a few: implementation of the World Trade Organization agreement, the transition to digital television, the implementation of Section 255 for access to telecommunications service for persons with disabilities, E911 services, enforcement of anti-piracy and anti-slamming regulations, and the initial implementation of Section 11 on regulatory reform.

This list is not exhaustive. Nor have these issues been easy. But we have worked together as a Commission, resolved to find the best answer under the law and in the consumer interest. Perhaps we have issues resolved better than others. I am confident that the Commission has the openness to improve our decisions and regulations when better answers are found.

For all of the accomplishments of the past six months, much remains to be done at the Commission. It is a busy place. We have numerous petitions from companies and private parties to take specific actions. We have countless complaints and comments from the public on specific issues.

UNIVERSAL SERVICE

Perhaps no single issue has received more attention than universal service, one of the cornerstones of the Telecommunications Act of 1996, embodied in Section 254 of the Act. The implementation of Section 254 has not been easy for the Commission. A great deal of effort by many well-intentioned people have been absorbed by the implementation of Section 254. Sadly, we appear to be far away from final implementation.

One of the difficulties of implementation has been the language of Section 254 itself. It is demanding and exacting in many respects. The language of the Section is narrow in many areas; in those areas, the Commission has little flexibility in interpretation. The Commission can and must implement all aspects of universal service, including discounts to schools and libraries for telecommunications services as provided by statute.

To date, the Commission has not fully implemented all parts of this section. I raised several concerns about this fractured implementation and about the Commission's promulgation of rules that appear to be inconsistent with the statute in some of my recent comments on Commission reports to Congress regarding universal service.[1]

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[7] See Attachment V.

[1] Dissenting Statement of Commissioner Harold Furchtgott-Roth Regarding the Federal-State Joint Board Report to Congress, rel. April 10, 1998; Dissenting Statement of Commissioner Harold Furchtgott-Roth Regarding the Report to Congress in Response to Senate Bill 1768 and Conference Report on H.R. 3579, rel. May 8, 1998.

COMMERCE COMMITTEE PRIORITIES

Another difficulty in the implementation of Section 254 has been the Commission's responsiveness to Congressional intent. It is in the realm of priorities, of Congressional intent, that I particularly seek guidance from this Committee.

Nearly three years ago, I sat in this room for endless hours, and days, and weeks, and months as a Congressional staffer during the Conference on the Telecommunications Act of 1996. I learned a lot in conference, not just about the specific details of the law, but also about the Senate, about this Committee, about how it works, and about its priorities.

As a House staffer, I had instructions to make sure that the law was good for consumers: lower prices, more innovation, greater choice through competition. The Senate Commerce Committee, however, had additional concerns, and in particular concerns that rural America not be left behind.

The views of what was affectionately known as the Senate Commerce Committee Farm Team were unmistakable: Section 254 on universal service was of the People, by the People, and for the People of high-cost, rural America. There were, to be sure, other important components of universal service: low-income, telemedicine, and schools and libraries. But these other elements were dwarfed in both the language and the intent of Section 254.

It seems that time and time again, the importance of high-cost, rural America to this Congress and this Committee is reinforced. Just last week Congressional leaders sent me a letter stating: "our nation's core universal service program—i.e. support for high-cost and rural America—goes unattended by the Commission."

PRIORITIES MATTER

As I stated only a month ago in this Commission's last report to Congress: priorities matter.[2] I remain convinced that rural, high-cost universal service is not just one of many objectives of Section 254; it should be the highest priority. The federal government has had universal service programs for rural, high-cost areas and for low-income Americans for many years. Section 254 embodied these ideals and set forth goals that emphasize rural, high-cost support as well as low-income support and other objectives.

I was very disturbed that, at yesterday's *en banc* meeting, the Commission suggested referring some aspects of the high-cost program back to the joint board, precipitating a need to miss the January 1, 1999 implementation date, while at the same time advocating full steam ahead on other new universal service programs. Make no mistake: the Commission is not converging on a solution to the high-cost universal service issue, and we should not rush to judgment to find a quick solution to a complicated problem just because promises about timing have been made to an important constituency. I fully support referral to the States who alone may be in a position to find the best answers to the high-cost issues.

Yet quick, although perhaps not fully vetted, answers have been found for other components of universal service. Indeed, despite repeated Congressional requests to suspend further collections and "proceed with a rulemaking that implements all universal service programs in a manner that reflects the priorities established by Congress . . .," the Commission seems poised to proceed with some universal service programs while at the same time delaying higher priority issues.

Rural, high-cost universal service issues should not be resolved and implemented in some dim and distant future after all other universal service issues have been resolved; rural, high-cost universal service issues should be resolved and implemented first. Rural, high-cost universal service should not be viewed as the residual after enormous amounts for other federal universal service obligations have been promised; rural, high-cost universal service should receive the lion's share of any increase in the federal universal service fund.

UNIVERSAL SERVICE SHOULD NOT BURDEN CONSUMERS

I am also concerned that rates for many Americans may soon rise, ironically, all in the name of universal service. The Commission may soon vote to increase rates to support funds for certain universal service programs. To be sure, there will be some offsetting reductions in access charges for some consumers, but not for all. And there will be no offsetting reduction in access charges whatsoever for wireless customers who will simply have to pay higher rates. I am willing to defend rate in-

[2] Dissenting Statement of Commissioner Harold Furchtgott-Roth Regarding the Report to Congress in Response to Senate Bill 1768 and Conference Report on H.R. 3579, rel. May 8, 1998.

creases that are necessary to meet statutory requirements and Congressional priorities; I am not willing to defend rate increases that are necessary for neither.

A FUTURE FOR UNIVERSAL SERVICE

Universal service is a difficult issue. That is precisely why Congress placed it in statute rather than continuing to rely on chance outcomes of regulations. I am committed to having the Commission follow the Communications Act as it is written. I believe that, if faithfully followed, Section 254 can meet all of its goals of universal service for all Americans. If we do not follow the statutory language, we are hopelessly lost. It is a difficult challenge, but one which this Commission is capable of meeting.

I am sure that I speak for all of us in saying that we look forward to guidance from this Committee.

ATTACHMENT II

Distribution of Support (using current inputs and wire center averages)

Benchmark 135% In Millions of Dollars

STATE	CURRENT EXPLICIT SUPPORT*	COST MODEL SUPPORT	COST MODEL SUPPORT W/ HOLD HARMLESS FOR EXPLICIT SUPPORT
AL	$11	$158	$158
AR	$4	$37	$37
AZ	$2	$0	$2
CA	$6	$0	$6
CO	$3	$0	$3
CT	$0	$0	$0
DC	$0	$0	$0
DE	$0	$0	$0
FL	$0	$0	$0
GA	$3	$1	$3
HI	$0	$0	$0
IA	$0	$0	$0
ID	$0	$17	$17
IL	$0	$0	$0
IN	$0	$48	$48
KS	$0	$12	$12
KY	$2	$119	$119
LA	$0	$52	$52
MA	$0	$0	$0
MD	$0	$0	$0
ME	$0	$40	$40
MI	$1	$14	$14
MN	$0	$57	$57
MO	$9	$119	$119
MS	$7	$169	$169
MT	$2	$19	$19
NC	$9	$96	$96
ND	$0	$7	$7
NE	$0	$40	$40
NH	$0	$13	$13
NJ	$0	$0	$0
NM	$5	$9	$9
NV	$0	$3	$3
NY	$0	$0	$0
OH	$0	$47	$47
OK	$0	$56	$56
OR	$0	$1	$1
PA	$0	$0	$0
RI	$0	$0	$0
SC	$6	$28	$28
SD	$0	$11	$11
TN	$0	$64	$64
TX	$6	$132	$132
UT	$0	$0	$0
VA	$1	$139	$139
VT	$1	$26	$26
WA	$0	$0	$0
WI	$0	$56	$56
WV	$2	$81	$81
WY	$4	$17	$17
TOTAL	$83	$1,690	$1,703
	$0	$0	$0
AK	$0	$0	$0
PR	$136	$0	$135
TOTAL	$220	$1,690	$1,840

*The model is not run for Alaska and Puerto Rico because customer location data for those jurisdictions is not available.

ATTACHMENT III

Distribution of Support (using current inputs and study area averages)

Benchmark 135% In Millions of Dollars

STATE	CURRENT EXPLICIT SUPPORT	COST MODEL SUPPORT	COST MODEL SUPPORT W/ HOLD HARMLESS FOR EXPLICIT SUPPORT
AL	$11	$58	$58
AR	$4	$0	$4
AZ	$2	$0	$2
CA	$6	$0	$6
CO	$3	$0	$3
CT	$0	$0	$0
DC	$0	$0	$0
DE	$0	$0	$0
FL	$0	$0	$0
GA	$3	$0	$3
HI	$0	$0	$0
IA	$0	$0	$0
ID	$0	$0	$0
IL	$0	$0	$0
IN	$0	$0	$0
KS	$0	$0	$0
KY	$2	$8	$8
LA	$0	$0	$0
MA	$0	$0	$0
MD	$0	$0	$0
ME	$0	$0	$0
MI	$1	$0	$1
MN	$0	$0	$0
MO	$9	$24	$24
MS	$7	$130	$130
MT	$2	$3	$3
NC	$9	$20	$20
ND	$0	$0	$0
NE	$0	$0	$0
NH	$0	$0	$0
NJ	$0	$0	$0
NM	$5	$0	$5
NV	$0	$0	$0
NY	$0	$0	$0
OH	$0	$0	$0
OK	$0	$0	$0
OR	$0	$0	$0
PA	$0	$0	$0
RI	$0	$0	$0
SC	$6	$0	$6
SD	$0	$0	$0
TN	$0	$0	$0
TX	$6	$0	$6
UT	$0	$0	$0
VA	$1	$2	$2
VT	$1	$8	$8
WA	$0	$0	$0
WI	$0	$32	$32
WV	$2	$44	$44
WY	$4	$12	$12
TOTAL	$83	$342	$377
	$0	$0	$0
AK	$0	$0	$0
PR	$136	$0	$136
TOTAL	$220	$342	$513

*The model is not run for Alaska and Puerto Rico because customer location data for those jurisdictions is not available.

ATTACHMENT IV

Reference - Funding Commitments 1998 Funding Year

State by State Data - Total Dollars and Applications

New data format! Click here to download cumulative 1998 funding commitment data by state/territory available in a delimited text format. This data is cumulative through Wave 10, the final wave. Click here to return to national summary data.

State	$ Amount	% of $ Amount	# of Funded Applications	% of Funded Applications
AK	$11,932,992.58	0.72%	78	0.30%
AL	$45,769,470.99	2.76%	481	1.87%
AR	$13,154,643.52	0.79%	381	1.48%
AS	$3,557,348.10	0.21%	1	0.00%
AZ	$35,608,098.55	2.15%	271	1.05%
CA	$206,391,757.29	12.43%	1662	6.45%
CO	$13,945,827.03	0.84%	318	1.23%
CT	$23,778,196.36	1.43%	383	1.49%
DC	$4,866,571.30	0.29%	21	0.08%
DE	$1,006,045.70	0.06%	70	0.27%
FL	$48,003,718.99	2.89%	555	2.15%
GA	$77,786,315.87	4.69%	356	1.38%
HI	$4,974,590.09	0.30%	333	1.29%
IA	$7,266,755.15	0.44%	835	3.24%
ID	$4,542,270.99	0.27%	174	0.67%
IL	$78,887,519.99	4.75%	1379	5.35%
IN	$18,304,745.93	1.10%	699	2.71%
KS	$10,181,488.23	0.61%	474	1.84%
KY	$50,167,390.09	3.02%	306	1.19%
LA	$39,005,354.98	2.35%	486	1.88%
MA	$29,001,101.46	1.75%	633	2.45%
MD	$11,486,773.49	0.69%	298	1.16%
ME	$2,923,471.63	0.18%	193	0.75%
MI	$56,927,837.75	3.43%	1467	5.69%
MN	$24,551,883.83	1.48%	463	1.80%
MO	$23,641,930.13	1.42%	549	2.13%
MS	$24,691,838.83	1.49%	344	1.33%
MT	$3,622,895.02	0.22%	240	0.93%
NC	$25,504,323.54	1.54%	462	1.79%
ND	$2,408,800.40	0.15%	207	0.80%
NE	$4,865,343.20	0.29%	467	1.81%
NH	$1,583,922.28	0.10%	171	0.66%
NJ	$61,387,902.07	3.70%	806	3.13%

NM	$18,865,472.13	1.14%	175	0.68%
NV	$5,312,870.49	0.32%	64	0.25%
NY	$164,546,935.89	9.91%	1872	7.26%
OH	$57,272,501.29	3.45%	995	3.86%
OK	$32,648,986.93	1.97%	702	2.72%
OR	$9,377,406.30	0.56%	355	1.38%
PA	$49,659,748.96	2.99%	1511	5.86%
PR	$47,646,855.08	2.87%	22	0.09%
RI	$6,009,681.71	0.36%	96	0.37%
SC	$25,041,848.84	1.51%	264	1.02%
SD	$2,799,130.09	0.17%	229	0.89%
TN	$27,098,296.97	1.63%	316	1.23%
TX	$128,767,624.83	7.76%	1048	4.06%
UT	$6,156,622.50	0.37%	128	0.50%
VA	$24,997,720.78	1.51%	441	1.71%
VI	$2,153,443.53	0.13%	3	0.01%
VT	$2,027,333.55	0.12%	221	0.86%
WA	$29,903,483.48	1.80%	570	2.21%
WI	$37,455,756.57	2.26%	734	2.85%
WV	$9,319,829.21	0.56%	397	1.54%
WY	$1,218,192.24	0.07%	79	0.31%
	$1,660,008,866.73	**100.00%**	**25,785**	**100.00%**

ATTACHMENT V

TESTIMONY OF HAROLD W. FURCHTGOTT-ROTH, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION, BEFORE THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW OVERSIGHT HEARING, MAY 25, 1999

NOVEL PROCEDURES IN FCC LICENSE TRANSFER PROCEEDINGS

Thank you for the opportunity to appear before your distinguished Subcommittee on Commercial and Administrative Law. The topic for today's hearing is "Novel Procedures in FCC License Transfer Proceedings."

At the outset, I would like to emphasize that debates about process are not trivial debates. To the contrary, regularity and fairness of process are central to a governmental system based on the rule of law. As the law recognizes in many different areas, the denial of a procedural right can result in the abridgment of a substantive right. Not the least of these areas is administrative law, the jurisdiction of this Subcommittee. The Administrative Procedure Act (APA) is grounded in the notions that fair processes result in better regulations, and that participatory processes result in regulations that people can accept, even if they disagree with them. Indeed, procedural fairness is so fundamental a principle in our legal system that the Framers expressly guaranteed it in the Constitution. See U.S. Const. Amdmt. V ("No person shall . . . be deprived of life, liberty, or property, without due process of law. . . .").

It is no secret that I have been, and remain, deeply concerned about the novel procedures currently being employed by the FCC in license transfer proceedings. My concerns arise out of the legal problems with the processes and standards—or more precisely, the lack thereof—that the Commission uses to evaluate applications for the transfer of licenses. The aggregate effect of these problems, described in detail below, is to create an administrative scheme that undermines the principles of fundamental fairness and procedural due process, the hallmarks of the APA.

The FCC Lacks "Merger" Review Authority Under the Communications Act

As a threshold matter, I would like to correct a common misperception about the scope of the Commission's authority when reviewing license transactions involving merging parties. Contrary to its frequent assertions, the Commission does not possess statutory authority under the Communications Act to review, writ large, the mergers or acquisitions of communications companies. Rather, that Act charges the Commission with a much narrower task: review of the proposed transfer of radio station licenses from one party to another and review of the proposed transfer of interstate operational authorizations for common carriers. Nothing in the Communications Act speaks of jurisdiction to approve or disapprove the mergers that may occasion a transferor's desire to pass licenses on to a transferee.[1] Under that Act, the Commission is, at most, required to determine whether the transfer of licenses serves the public interest, convenience and necessity.[2]

To be sure, the transfer of radio licenses and common carrier authorizations is an important part of any merger. But it is simply not the same thing. A merger is a much larger and more complicated set of events than the transfer of FCC permits. It includes, to name but a few things, the passage of legal title for many assets other than radio licenses, corporate restructuring, stock swaps or purchases, and the consolidation of corporate headquarters and personnel.

Clearly, then, asking whether the particularized transaction of a license transfer would serve the public interest, convenience, and necessity entails a significantly more limited focus than contemplating the industry-wide effects of a merger between the transferee and transferor. For instance, in considering the transfer of licenses, one might ask whether there is any reason to think that the proposed transferee would not put the relevant spectrum to efficient use or comply with applicable Commission regulations; one would not, by contrast, consider how the combination of the two companies might affect other competitors in the industry. One might also consider the benefits of the transfer, but not of the merger generally. And one might consider the transferee's proposed use and disposition of the actual licenses, but one would not venture into an examination of services provided by the transferee that do not even involve the use of those licenses, as the Commission often does.

By using the license transfer provisions of the Communications Act to assert jurisdiction over the entire merger of two companies that happen to be the transferee and transferor of licenses, the Commission greatly expands its organic authority. Certainly, in the context of a merger, license transfers occur as a result of the merger, but the Commission should not use this causative fact to bootstrap itself into jurisdiction over the merger. If control of licenses were to be transferred "as a result of" a licensee's bankruptcy, would the Commission assert jurisdiction to review the legal propriety of the declaration of bankruptcy? That would be preposterous, as that is a job for a bankruptcy court. Review of the merger of two communications companies which, just like the bankruptcy in my hypothetical, is an underlying cause of the transfer in question, is a job for the Department of Justice. Expanding our review of license transfers to a review of the event that precipitates the

[1] 47 U.S.C. section 310(d) provides: "No . . . station license . . . shall be transferred . . . to any person except upon application to Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby," i.e., by the license transfer. Section 214(a) states: "No carrier shall undertake the construction of a new line or of an extension of any line, or shall acquire or operate any lines, or extension thereof, or shall engage in transmission over or by means of such additional or extended lines, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line." Notably, section 214(a) contains no "public interest" language at n1}

[2] The Commission does possess authority under the Clayton Act, which prohibits combinations in restraint of trade, to review mergers per se. See 15 U.S.C. section 21 (granting FCC authority to enforce Clayton Act where applicable to common carriers engaged in wire or radio communication or radio transmission of energy). That power is rarely invoked by the commission, however. If the Commission intends to exercise authority over mergers and acquisitions as such, it ought to do so pursuant to the Clayton Act, not the licensing provisions of the Communications Act.

transfers— whether that event is a merger a bankruptcy, or any other event that might lead a licensee to cede control of a license—is off the statutory mark.

Despite the Commission's effort to exercise power over "mergers" under sections 914 and 310 of the Communications Act, it must be remembered that, in the end, the Commission can only refuse to permit the transfer of the relevant licenses. While such action would no doubt threaten consummation of a proposed merger, the Commission cannot—despite its threats to do so in licensing orders [3]—directly forbid the stockholders of one company from selling their shares to the other.

Put simply, the scope of FCC review ought to accord with the scope of our remedies: that is, it ought to be limited to considering (i) whether the public would suffer harm if radio licenses are transferred from Party A to Party B3, and (ii) whether the public convenience and necessity would be served by allowing Party A to convey authorizations to operate carrier lines to Party B. The fact that most orders involving mergers do not even identify the radio licenses or section 214 authorizations at issue or discuss the consequences of their conveyance, but instead move directly to a discussion of the merger, reflects how far the Commission has strayed from the provisions of the Act.

The exercise of power not authorized in the Communications Act is not just an independent strong: it also creates a violation of the Administrative Procedure Act. As the members of this Subcommittee well know, the APA requires a reviewing court to "hold unlawful and set aside agency action" that is "in excess of statutory jurisdiction, authority, or limitations." 5 U.S.C. section 706(2)(C). This critical provision of the APA provides enforcement of the statutory limits on agency action and recourse for their transgression. Should the Commission ever purport to prohibit a "merger"—as opposed to the simple transfer of licenses—I believe that action would violate this linchpin of the APA.

Moreover, if the Commission stuck closely to its statutory authority, the adverse affects of the procedural practices that you have asked me to testify about today, while still legally problematic, would be greatly mitigated as a practical matter.

Potentially Arbitrary Review: Choice of Transfers for Full-Scale Review, Procedures to be Employed, and Substantive Standards To Be Applied

Beyond the threshold question of statutory authority to regulate mergers, I have grave concerns about the process employed in FCC merger reviews, the subject of today's hearings. The Commission annually approves tens of thousands of license transfers without any scrutiny or comment, while others receive minimal review, and a few are subjected to intense regulatory scrutiny. For example, mergers of companies like Mobil and Exxon involve the transfer of a substantial number of radio licenses, many of the same kind of licenses as those at issue in other high-profile proceedings, such as AT&T/TCI, and yet we take no Commission level action on those transfer applications. I do not advocate extensive review of all license transfer applications, but mean only to illustrate that we apply highly disparate levels of review to applications that arise under identical statutory provisions.

Unfortunately, there is no established Commission standard for distinguishing between the license transfers that trigger extensive analysis by the full Commission and those that do not. Nor do any of the Commission's orders in "merger" reviews elucidate the standard. Unfortunately, the orders tend to conclusorily assert that some mergers warrant heavy review and others do not.[4] This is not a very helpful explanation. Regulated entities and even their often sophisticated counsel are left to wonder: Is the question whether the merging firms are large, successful corporations? (That is one of the obvious differences between the mergers that receive heavy attention from the Commission and those that do not.) Does the level of review depend on the type of services offered by the merging companies, i.e. a telephone/cable merger (such as AT&T/TCI) gets one sort of review, while a telephone/telephone merger (such as SBC/Ameritech) gets another? In short, merging parties have no clear notice as to the threshold showing for determining the scale of FCC license transfer review.

If the answer is, as some have suggested, that the Commission reviews extensively only a subclass of license transfer applications—those occasioned by mergers with the potential to affect the telecommunications industry—that response is incomplete. Whatever the soundness of this theory for distinguishing among transfer

[3] See, e.g, In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, AT&T Corp., Transferee, CS Docket No. 98–178 (released Feb. 18, 1999), at para. 112 (purporting to prohibit the applicants from "consummat[ing] the merger").

[4] See, e.g, Applications for Consent to the Transfer of Control, supra n. 3, at para. 16 (stating, without elaboration, that "the face of some merger applications may reveal that the merger could not frustrate or undermine our policies").

applications, it is not written anywhere, whether in agency rules, regulations, policy statements, or even internal agency guidelines. While the Communications Act does allow the Commission to make reasonable classifications of applications, see 47 U.S.C. section 309(g), the Commission has in no way done so, much less in a way that puts the public on notice as to what those classifications are. Agency decisions regarding which license transfers to review, even as among license transfers occasioned by mergers, are entirely *ad hoc* and thus run a high risk of being made arbitrarily.

Nor does the Commission have any established procedures for the handling of applications for license transfers. Any particular application on any particular day could be: adopted at a Commission meeting; voted by the Commission on circulation; processed with or without a formal hearing; processed with or without so-called "public fora": handled with or without additional private "talks" between the companies, interested parties, Commission staff, and individual, especially interested members of the Commission; granted with or without conditions; finalized after 90 days or 90 weeks, etc. The list goes on almost indefinitely.

Section 1.1 of the Practice and Procedure subpart of the Commission's rules, entitled "Proceedings before the Commission." does nothing to remedy the open-ended nature of Commission processes. It states that "[t]he Commission may on its own motion or petition of any interested party hold such proceedings as it may deem necessary from time to time" and "[p]rocedures to be followed by the Commission shall . . . be such as in the opinion of the Commission will best serve the purposes of such proceedings." 47 C.F.R. section 1.1. This rule, written by the Commission, establishes only that the Commission can do essentially whatever it wants. There is nothing constraining or useful about this section.

Moreover, this rule—the only general one about procedures on the Commission's books—is routinely flouted. Section 1.1. allows "the Commission" to decide on appropriate procedures. Under the Communications Act, "the Commission" is defined as being "composed of five Commissioners appointed by the President, by and with the advice of the Senate, one of whom the President shall designate as chairman." 47 U.S.C. section 4(a). During my tenure, however, important procedural issues have not been decided upon by the full Commission, as section 1.1. requires; rather the Chairman seems to believe that he can set procedural rules on his own. This is contrary, however, to the little that section 1.1 actually does require—namely, full Commission action.

The extraordinary process to which SBC and Ameritech are now being subjected—which includes "discussions" between the companies and Common Carrier Bureau staff unauthorized by the full Commission, with Chairman-set "ground rules" that are wholly unenforceable and thus subject to change at his personal whim—is illustrative of what happens when there are no limits on Commission discretion with respect to procedures.[5]

Since there are no rules governing procedures (I do not think section 1.1 can fairly be said to be a rule of anything except unfettered discretion), the Commission (or even just the Chairman?) is free to change the procedural rules of the road from transaction to transaction, and even in the midst of a single transaction. Individual companies can be dragged through long and expensive proceedings, with full-fledged Commission action, while others have their applications promptly granted by the staff, with no rationale for the grossly disparate treatment—except for perhaps the cynical one that the Commission is favoring certain industries or companies. And individual companies can be subjected to this unprecedented processes at the direction, apparently, of the Chairman himself, without consultation or agreement by the full Commission. This is simply not the right way to run a licensing agency or to deal with the licensees who pay the regulatory fees that fund this agency.

Finally, if the Commission did establish a threshold test for determining which license transfer applications should receive strict scrutiny, and what kinds of process it should utilize, the Commission would still need to set out the substantive tests for the differing scrutiny levels. As a general matter, our decisional precedents provide little concrete guidance on the substantive standard for approval of Title II or Title III license transfers: the proposition that a merger is in the "public interest" if it is not anti-competitive (or if it is also pro-competitive) is too generalized to be of any real help. Moreover, there is clearly a different "public interest" test being applied, sub silentio, in different cases under the same statutory provisions usually sections 310 and 214. The cases that undergo extensive inquiry exhaustively discuss

[5]I express, of course, no view on the merits of this application. My exclusive focus here is on the process that employed to evaluate it. Accordingly, nothing in my testimony should be taken as reflective of any opinion on the question whether SBC and Ameritech are in compliance with Commission rules.

all kinds of service areas and issues ancillary to the use of the actual radio licenses, and the decisions that are granted at the Bureau level are relatively perfunctory in their public interest analysis. We should, after identifying the threshold test for license transfers that warrant thorough inquiry, articulate clearer substantive criteria to guide the Commission's inquiry.

The long and short of it is this: regulated entities have little basis for knowing, *ex ante,* how their applications will be treated, either procedurally or substantively. The license transfer process at the Commission is lacking in any transparent, fixed and meaningful standards. A person—even a well-trained lawyer—who wished to prepare for this process could find scant guidance in public sources of law, such as the Code of Federal Regulations or the Commission's adjudicatory orders. Rather, one would have to be trained in the unwritten ways of this Commission to know what to expect, and those expectations unfortunately would have little relation to federal administrative law.

While obviously troublesome on an intuitive level, such a license transfer process suffers from at least four particular flaws under the APA. First, the wholly *ad hoc* nature of this process makes it all too easy for decisionmakers to discriminate among industries and even companies—in other words, to engage in arbitrary and capricious review. Protecting against such decisionsmaking is, of course, a core function of the Administrative Procedure Act. See 5 U.S.C. section 706(2)(A) (reviewing court must "'aside agency action . . . found to be arbitrary [and] capricious").

Second, and relatedly, by failing to state clearly the principles that it uses to judge license transfers, the Commission decreases the viability of meaningful judicial review. The net result is to undermine the statutory right of aggrieved parties to judicial review. See id. section 702 ("A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."). That right of review is an interested party's primary defense against arbitrary agency decisions.

Third, the nonascertainable nature of the license transfer process means that interested parties have no fair notice as to the regulatory constraints on their conduct. Notice of what the law requires—i.e., which behavior is prohibited and which is permissible—is a bedrock element of fairness in our legal system, derivative of the Due Process Clause. No person should be penalized for violating a rule that is either so vague as to give no clear indication of the prescribed conduct, or entirely unpublished and thus unavailable to the public, residing only in the minds of regulators. The notice and comment procedures of the APA are designed to safeguard against lack of fair notice. They require notification, and an opportunity to participate in the making, of the standards that govern interested parties. See id section 553(b)-(c). Indeed. the whole rulemaking system of the APA is based on the assumption that governing standards will be published and public before they go into effect, allowing regulated parties a certain amount of time to conform their conduct to the new federal standards. See id section 553(d) ("The required publication or service of a substantive rule shall be made not less than 30 days before its effective date. . . .").

Finally, as Senator McCain recently pointed out in a letter to Chairman Kennard to concerning the pending SBC/Ameritech applications, the unpredictability of the Commission's procedures cast a pall on the Commission's impartiality. Specifically, when the Commission subjects parties to a novel, extended, and unwieldy process to which it has not subjected similarly situated applicants, a reasonable person might think that the decisionmakers possessed a bias—a bias manifesting itself in the especially high and numerous procedural hoops through which the decisionmakers were forcing the companies to jump. Unfortunately, the manipulation of procedural rules can be a cover for discrimination on the merits. The appearance of partiality created by the use of such highly unusual procedures contravenes the core principle of the APA (again based on the constitutional concerns of procedural due process) that decisionmakers be neutral. See 2 Davis & Pierce, Administrative Law Treatise at page 67 (3d ed. 1994) ("Due process requires a neutral, or unbiased, adjudicatory decisionmaker. Scholars and judges consistently characterize provision of a neutral decisionmaker as one of the three or four core requirements of a system of fair adjudicatory decisionmaking.").

To quote Senator McCain:

> A proceeding of . . . importance and potential consequences must be attended, not only with every element of fairness, but with the very appearance of complete fairness. That is the only way its conduct will meet the basic requirement of due process. *Amos Treat and Co., Inc* v. *SEC,* 306 F.2d 260 (D.C.Cir. 1962). The Commission's objectivity and impartiality are unavoidably opened to challenge by the adoption of procedures from which a disinterested observer may conclude that it has in some measure adjudged the facts as well as the law a

case in advance of fully hearing it. See e.g., *Gilligan, Will & Co.* v. *SEC,* 267 F.2d 461 (D.C.Cir. 1959).

Letter from Sen. John McCain to Chairman William E. Kennard, May 12, 1999.

For the above reasons, it seems to me that the Commission's lack of guidelines regarding the process and substance of license transfer proceedings is in serious tension with the principles that undergird the APA.

Potential Constitutional Problems With A Boundless "Public Interest" Test

The statutory test to be applied to license transfers is, of course, the "public interest" standard. As noted above, the Commission has failed to place any outer limits whatsoever on this concept, freely reinterpreting the standard in each new case. Not only does the Commission's lack of clear guidelines with respect to standards governing license applications present issues of arbitrary decisionmaking and of fair notice, as discussed above, it may also create constitutional issues with respect to the non-delegation doctrine.

This month, the United States Court of Appeals for the D.C. Circuit ruled in *American Trucking Ass'n* v. *EPA,* 1999 WL300618 (May 14, 1999) that the EPA's failure to adopt "intelligible principles" for implementing its statutory mandate to regulate air pollution effected an unconstitutional delegation of legislative power. The Court explained that "[w]here . . . statutory language and an existing agency interpretation involve an unconstitutional delegation of power, but an interpretation without the constitutional weakness is or may be available, our response is not to strike down the statute but to give the agency an opportunity to extract a determinate standard on its town." Id at *6. According to this case and its precedential forebears, see *International Union, UAW* v. *OSHA,* 938 F.2d 1310 (D.C. Cir. 1991), this agency has a constitutional duty to choose interpretations of statutory language that avoid, rather than create, non-delegation doctrine problems.

I believe that the FCC has not satisfied its obligation under American Trucking to adopt "determinate, binding standards," 1999 WL 300618 at *6, in order to channel its discretion under the "public interest" provisions. Putting aside the question of the breadth of the statutory standard itself, the Commission has not articulated any clear principles about what that standard means in the context of merger review; how it applies to different entities; and what justifies a departure from standard practice, to name just a few of the major outposts on the license transfer trail. In short, there are no self-defined limits—at either end of the spectrum—on the Commission's consideration of whether to grant or deny a license transfer when mergers are involved, or otherwise. To my mind, this is arguably the kind of "free-wheeling authority [that] might well violate the nondelegation doctrine." *International Union, UAW* v. *OSHA.* 938 F.3d at 371.

I have always thought that it was incumbent on the Commission to fashion some guidelines to place limits on its discretion as a matter of simple fairness. Under American Trucking and International Union, it would appear that the Commission also has a constitutional duty to do so. This duty it has not even attempted to carry out.

"Conditional" Approval of License Transfer Applications

Finally, I express some general apprehension about the "conditioning" of grants for license transfer applications and section 214 authorizations. I think it is entirely appropriate, under the Commission's organic statute, for the Commission to condition license transfer and line extension applications on compliance with existing FCC rules or statutory provisions. See 47 U.S.C. section 303(r) ("Commission shall . . . prescribe such . . . conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act"); id. section 214(c) (Commission "may attach to the issuance of [214] certificate such terms and conditions as in its judgment the public convenience and necessity may require").

All too often, however, this Commission places conditions on license transfers that have no basis in the text of the Communications Act. That is, the Commission requires companies to do certain things—things that it could not for lack of statutory authority require outright in a rulemaking—as a *quo* for the *quid* of receiving a license. Again this represents a transgression of the Commission's statutory limits and thus a violation of the APA. See 5 U.S.C. section 706(2)(C). It could also constitute an evasion of the notice and comment provisions of the APA, if the Commission (assuming it follows its own decisional precedent) uses its licensing orders to create standards that logically apply industry-wide, See id section 553.

I am also concerned about situations in which this agency becomes an enforcer of the rules and regulations of other governmental agencies. We have no jurisdiction to enforce rules not promulgated under the Communications Act see id. section 303(r) (referring to conditions needed to "carry out the provisions of this Act"), and

we cannot and should not do the enforcement work of others. This is not to say that we should not take official notice, in the course of making licensing decisions, of findings by another agency that an applicant has violated a regulation in its bailiwick. We should certainly consider such findings in determining whether to grant or deny a license application. But we should not condition such a decision on compliance with another agency's regulation, thus putting ourselves in the position of potential enforcer of non-FCC rules should the transferee fail to conform to that regulation. For instance, if the Department of Justice enters into an antitrust agreement with a party, we have no business attempting to enforce the obligations created thereunder in our licensing orders.

I am doubly concerned about conditional FCC approval when the rule at issue is not just that of another agency, but when that agency has made no formal, final, and material findings of a violation. That is, I do not think we should take official notice of alleged violations, including manners under investigation or in litigation, or of informal concerns that an agency is not yet ready or willing to pursue through their own established procedures. When we give formal weight to anything short of formal, final findings by other agencies, we create a situation that is rife with incentives for inter-agency gaming of the system, e.g., registering an objection with an agency about a matter that the complaining agency is not prepared to pursue itself, and requires the Commission to do extensive reviews in areas where it simply has no experience or authority.

In sum, at the intersection of two areas—non-FCC rules and no final determination of a violation by a responsible entity—our authority to impose conditions on a license or 214 authorization transfer is at its weakest. Where non-FCC rules are at issue but there is a final, record finding of a material infraction thereof, there is a middle ground: we should take notice of that fact in deciding upon the application but not condition approval upon compliance. Finally, where extant FCC rules are involved, our power to condition a proposed transfer upon compliance with those rules and to enforce compliance, if necessary, is at its apex. We should never, however, impose conditions that have no basis in the text of the Communications Act, thus using our license transfer authority to impose new substantive obligations that Congress never contemplated.

CONCLUSION

For the reasons discussed above, I believe that the Commission's failure to establish, pursuant to notice and comment, public and intelligible principles to channel the exercise of authority delegated by Congress raises serious questions under the APA and the Constitution. In particular, the use of extraordinary processes in individual, high-profile cases threatens to undermine both the procedural and substantive rights of regulated entities. I further believe that the Commission's practice of attaching "conditions" to license transfers that lack a basis in the Communications Act or extant Commission rules, or that purport to enforce the judgments of other federal agencies, is also legally troublesome.

As an "independent" agency, composed of unelected officials who have no direct accountability to the American public, I believe that we should proceed with heightened reserve when exercising discretionary functions If we so proceeded, we could better stay within the bounds of our statutory authority, mitigate the potential for arbitrary decisionmaking, safeguard the rights of judicial review, provide regulated entities with fair notice of the procedural and substantive rules governing their applications, avoid the appearance of impartiality, and steer clear of the non-delegation doctrine. In short, we could better serve the rule of law.

The CHAIRMAN. Commissioner Powell.

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

Mr. POWELL. Thank you. Good afternoon, Mr. Chairman and members of the committee. It is always a pleasure to appear before you.

I certainly have much to applaud as a result of this Commission's efforts over the last year and share in my colleagues' assessments of some of those. But in your letter of invitation you specifically asked that we consider some of the more central and specific statutory mandates in the statute and address our progress with regard to them. And so I have chosen to direct my remarks to those things

that remain yet undone and still lay before us, that are nonetheless critical to the implementation of the vision that is codified and articulated in the 1996 Act.

I would first direct my comments to the question of universal service, which has already been raised. It, of course, would be unfair to suggest that the Commission has not spent time on universal service. The hours have been endless. However, I believe we have deferred for a bit too long the most difficult and complex issues that would better rationalize universal service in a manner that might actually facilitate competition and bring its benefits to rural and high-cost customers, such as access reform and pricing flexibility.

While competitive developments continue to put pressure on high-cost subscribers and rates, competitors are first pursuing business and low-cost customers to the exclusion of other customers. Concurrently, the Government does continue to increase rate pressures through actions that demand more and more money from the system. The result is that competition does languish and the distorted aspects of universal service are partially to blame.

I firmly believe that if we do not confront those problems and turn them around, rates may stay low but the levy of subsidy fees on consumers could skyrocket and the benefits of competition be lost. This would be a profound failure to meet the goals of the Act.

Let me also briefly say something about section 271 applications. I do continue to appreciate the complaints of Bell Operating Companies and others about the heavy burdens imposed by our interpretations of the competitive checklist and the failure of our procedures to provide timely and complete guidance on how to satisfy those burdens, and I appreciate these concerns.

But I would be remiss if I also did not point out that Congress provided us only one vehicle by which we can address and tackle complex issues related to interLATA relief and that is in the adjudicatory context of a filed 271 application. To listen to the noise and the complaints, one would believe we rejected 20 to 30 applications. We have rejected five and have not seen one in almost a year. We have to have the opportunity to succeed in order to remedy or address many of the questions that have been raised in that context.

I believe our more collaborative process, however, has permitted continued dialogue with the companies to gain a better understanding of what is expected. Some companies have faithfully participated fully in this process and, though perhaps not completely satisfied, have added immeasurably to the effort.

But I think the development you should pay most attention to is the fact that many State commissions have adopted collaborative processes in their States. Such efforts seem likely to produce a number of strong presentations on the 271 front later this year, and in that context the FCC will have another meaningful opportunity to advance Congress's section 271 objectives of promoting competition in both local and long distance telephone markets.

The topic of the day is advanced services. Convergence, digitalization, the rise of IP-based networks, and strategic mergers are dramatically changing what we now loosely call the industry. As a result, all competitors in these fiercely contested markets will at-

tempt to bend the regulatory and governmental process to their own commercial will. But as Senator McCain noted, our duty is to the public and our first instinct must be to stay committed to competition as the vehicle for disciplining anti-competitive behavior and the engine for driving innovation and as the tool for maximizing consumer welfare.

I still believe that regulation must be the exception in this incredibly fast-paced technology-driven environment. The regulators' heartfelt rush to lend a helping hand at the first sign of anxiety has proven, to my mind, so often to be more disruptive and counterproductive than the converse. I believe that anyone advocating the extension or intrusion of regulation into such a vibrant market bears a heavy burden of proving that the public is the one that will be harmed absent doing so.

Proffered arguments should be eyed skeptically and critically. Before regulating in new areas, such as advanced services, we should first attempt to make sure we have unshackled the full flurry and potential of all competitors.

Next, a word about regulatory forbearance. I believe one of the most valuable tools that Congress trusted us with was section 10 and its forbearance authority under the Communications Act. I have had some dissatisfaction with the Commission's use of this vehicle, but generally with the standard that we apply in our analysis more than the outcomes, which seems to place the entire burden of forbearance on the moving party.

I believe Congress expected the Commission to accept more full responsibility for demonstrating a continued need for regulation in the presence of a healthy competitive market or where forbearance would promote competition. Indeed, I believe the Commission ought to employ a burden-shifting device in forbearance cases. We should also undertake substantive and factual examination of the rule and its effects to determine if the purposes truly must be achieved through regulation instead of market forces.

Finally, or second to last, a word about mergers. I have kept an open mind, but I have come to doubt whether the marginal value of full-blown merger review by the Federal Communications Commission is justified by its costs in time and resources. Moreover, with all due respect to our hardworking staff, I really do not believe we possess enough personnel schooled in the complexities of antitrust and competitive economics to do the job well consistently.

The antitrust authorities do. I believe that there is some room to preserve a complementary role for the Federal Communications in the review of mergers, but limiting it to its areas of expertise. The FCC certainly could consider the merger's impact on certain communications policies, such as media diversity and universal service, but the Commission would defer to the antitrust authority's competitive analysis.

Finally, I share the concern that the Commission has not yet fully examined its broadcast ownership rules, as directed by the Act. Congress realized that many of the assumptions underlying these rules were formed decades ago when the media landscape was quite different. For my part, I have serious doubt that these rules could be defended on the same bases and justifications given when they were first adopted.

Nonetheless, I believe that continued anxiety about the effects of greater liberalization of the rules on diversity of ownership, voices, and programming is the single greatest impediment to reaching a consensus and moving this proceeding forward. I urge this Committee to take up the ownership diversity question and contribute to developing a sustainable consensus so that we might move forward on ownership rules, and I applaud Chairman McCain's stated commitment to exploring ownership diversity and his willingness to possibly lead a legislative effort that promotes our cherished national commitment to meaningful opportunity in our most robust and critical industry.

I stand ready to assist the Committee and Congress in formulating a sound, principle-based diversity initiative that will allow us to move forward.

I thank you for your attention and look forward to your questions.

[The prepared statement of Commissioner Powell follows:]

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

INTRODUCTION

Mr. Chairman, distinguished members of the Senate Committee on Commerce, Science and Transportation, good morning.

Thank you for inviting my colleagues and I here today for this important oversight hearing. I am pleased to offer my views on the Commission's efforts to fulfill the specific statutory responsibilities delegated to it by Congress, which I believe should be our first and highest priorities. I will focus my remarks on our progress with respect to a few of the most important mandates of the 1996 Telecommunications Act. They are:

- Section 254's Universal Service Provisions
- Section 271 Applications for RBOC entry into Long Distance
- Section 706 and Advanced Services
- Section 10's Regulatory Forbearance Mandate

I will also briefly address the Commission's merger review efforts, its continued delay in re-examining the broadcast ownership rules and the question of restructuring the agency.

UNIVERSAL SERVICE

Perhaps, the most celebrated aspect of the monopoly phone system that existed before the 1996 Act was the degree to which it fostered ubiquitous and affordable phone service. In moving away from state-sanctioned monopoly to a competitive model, Congress was careful to ensure that "universal service" be "preserved and advanced." In other words (chosen by Congress), Commission policies should promote access to telecommunications and information services that are "reasonably comparable" to those available in urban areas at "reasonably comparable" rates.

Yet, Congress also well understood that if the benefits of competition were to be realized, the subsidy mechanisms of universal service would have to change. Closed monopolies could no longer be allowed to subsidize high cost or residential customers implicitly through higher rates on low volume and business customers. The reason was simple: new competitors would not enter high cost markets, where the incumbent alone could subsidize its rates and would instead enter business and low cost markets where the margins were much higher. Such a condition would deny residential rural and high cost customers the promised rewards of competition. To address this distortion, Congress commanded that universal service mechanisms be "specific," "predictable" and "explicit." By having the subsidy known and portable, competing carriers would have an incentive to compete for high cost customers, too, because they could win the subsidy along with the customer.

In addition to the exercise of making implicit subsidies explicit, Congress required a number of other measures that would necessarily add costs to serving customers. Some were mechanisms designed to facilitate competition and its hoped-for benefits, such as local number portability, and levying the universal service contribution on a broader class of customers, such as wireless carriers. The Schools and Libraries

program, though its purpose is worthy, required substantial increases in money to fund the program, with no direct benefit to competition.

Congress tasked the Commission, thus, to develop a universal service system that was "explicit" and that would produce a "sufficient" amount of money to "preserve and advance" "reasonably comparable" rates and access to both rural and urban customers. Congress understood the importance of doing this quickly, for it set relatively tight implementation requirements on the agency.

Regrettably, I must report that the core of Congress' mandate in this regard has not yet been achieved. While most would agree that the remnants of the implicit system continue to provide "reasonably comparable" rates to our citizens, the competitive distortions of the implicit system remain, leaving little doubt why CLECs have chosen to enter high volume, low cost business markets (where the rates are inflated relative to costs) rather than residential markets.

I am disturbed by this failing. It would be unfair to suggest that the Commission has not spent time on universal service—the hours are endless. However, I believe we have continued to set aside or bump the difficult and complex issues that would rationalize universal service in a manner that might actually facilitate competition and its benefits to rural and high cost customers, such as access reform and pricing flexibility. Yet, at the same time, we have given high priority to other programs, such as schools, libraries, and rural health care, that require substantial new funds. We dole out these funds much as Congress might distribute the benefits of a new federal program. Talk about access charge reform and cost reductions and rationalization is too often thrown out, not as part of a sound economic public policy exercise, but as a political offset to controversial spending programs.

There is a grave danger here. Competitive pressures that were unleashed by the Act and the Commission continue to put pressures on high cost subscribers and rates. Competitors, despite their protestations to the contrary, continue to pursue business and low cost customers to the exclusion of other customers. And, the government continues to increase rate pressures through actions that demand more and more money from the system. (Proposed increases in the schools and libraries program and some proposals for high cost assistance to intrastate common line costs require literally billions of dollars of new money.)

The result is that competition languishes, and the distorted, as yet un-reformed universal service system is partially to blame. If this situation is not turned around, I fear that rates may stay low, but the levy of subsidy fees on customers could sky rocket and the benefits of competition could be lost. It will not be long before policymakers openly suggest greater rate regulation to keep these pressures (that they helped create) in check. This would be a profound failure to meet the goals of the Act.

SECTION 271 APPLICATIONS

Another central provision of the Act, is section 271, which was designed as the vehicle by which a BOC would win authorization to enter interLATA markets, while opening their local market to competition. No one seems particularly satisfied with the progress on this front, except perhaps those competitors that benefit from BOCs being barred from lucrative long distance and interLATA data markets.

I continue to appreciate the complaints of the BOCs about the heavy burdens imposed by our interpretation of the checklist, as well as the failure of our procedures to provide timely and complete guidance on how to satisfy these burdens. Some of these complaints have merit, but some of them are merely strategic. I cannot, for example, give too much credence to a BOC that complains mightily about our 271 approach, yet has never filed a section 271 application with the Commission.

This Commission has only one viable vehicle for concretely and definitely addressing section 271 policy questions and that is in the context of a duly-filed application. Congress determined that such a proceeding would be adjudicatory in nature and that we would have only 90 days in which to issue a decision. The only way we really have to address the concerns raised by some companies is to get a viable application before us. Yet, we have not received a 271 application of any sort since July 1998. In fact, the noise level might lead one to believe we have rejected 20 or 30 applications, not just five. The only way for the Commission to successfully implement Congress' will is if the process is given a chance.

That said, I believe that much progress has been made in terms of developing and providing general guidance on section 271 issues. As I, and others, urged, the Commission adopted a collaborative process that permitted continued dialogue with companies to gain a better understanding of what was expected. Some companies have faithfully participated in that process, and though not completely satisfied, have added immeasurably to the effort. Perhaps, more importantly, state commissions

have adopted collaborative processes in their states. Working extensively in this manner with the companies has been extremely productive. Indeed, their good efforts will likely lead to a number of strong presentations to the FCC later this year. In that context, the FCC will have another meaningful opportunity to advance the Congress' section 271 objectives of promoting competition in both the local and long distance telephone markets.

ADVANCED SERVICES

Recognizing the advent of great technological achievement in communications, Congress minted section 706, which charged the Commission with encouraging the deployment of advanced services by removing regulatory barriers to such deployment. Our initial set of proposals to implement Section 706 from the 1996 Act are still pending, though our preliminary reports indicate that broadband deployment while progressing, is lagging behind innovative applications that depend upon it, and consumers' demand for those services. This is, in part, due to the heretofore unseen pace of innovation and change. We have watched a technological eternity go by since Congress passed the Telecom Act in 1996. Convergence, digitalization, the rise of IP-based networks, and strategic mergers have all metamorphosed what we now loosely call "the industry." The potential benefits that lay on the horizon for consumers have grown exponentially from the simple vision of choice in basic telephone service. So, too, have the risks that we may stay so focused on local residential voice markets, or short-sighted priorities, that we fail to unleash the power of competition for advanced services, as section 706 contemplates.

I believe that the FCC and Congress must work diligently, if not urgently, to understand the developments in this area. All competitors in this fiercely contested market will attempt to bend the regulatory and governmental process to their own commercial will. But our duty is to the public. Our first instinct, therefore, must be to stay committed to markets and competition, rather than regulation, as the vehicle for disciplining anticompetitive behavior, as the engine for driving innovation, and as the tool for maximizing consumer welfare. It is the only system ever devised that has proven up to the task of giving consumers what they want, allowing private firms to prosper and spurring innovation, especially at a time of rampant change. Our historical commitment to this system has fostered a nation where entrepreneurship and private enterprise thrives.

Regulation from our "Commanding Heights" has its time and place, but it must be the exception in this incredibly fast-paced, technology-driven environment. The regulators' rush to lend a helping hand at the first sign of anxiety has proven, so often, to be more disruptive and counter-productive than the converse. I am of the view that anyone advocating the extension or intrusion of regulation into such a vibrant market bears a heavy burden of proving that the public, as opposed to firms with a particular business plan, will likely be harmed, absent doing so. Proffered arguments should be eyed skeptically and critically. Speculation of future anticompetitive behavior should be viewed with suspicion, especially in nascent markets where supposed would-be monopolists in fact lack market power. We must have enough courage to test and cross-examine rhetorical appeals. "Digital divide," "light touch," etc., are great sound bites, but are they truly meritorious arguments, or just clever window dressing for new regulation or purely short-term political or economic self-interests?

Before regulating in new areas such as advanced services (including the pursuit of social objectives), we should first attempt to unshackle the full flurry of all potential competitors. I do believe, for example, that potentially important gladiators in the broadband battle are the LECs, who have yet to fully join the data-driven fight due to government regulations targeted at a different set of issues. But, they are not the only ones. Electric utilities hold a lot of promise. Wireless carriers do not intend to sit out this battle. Satellite providers are charging headlong into the fray. One need only read the daily headlines reporting the latest strategic partnerships. A positive, un-regulatory, national policy for advanced services (as embodied in Section 706 and other statutory provisions, if implemented correctly) will push to get these forces into the battle and save us the consequence of a futile regulatory, industrial policy.

REGULATORY FORBEARANCE

Speaking of un-regulating, an important tool that I believe has been underutilized so far is the FCC's forbearance authority under Section 10 of the Communications Act. I have criticized some of our recent decisions in which the Commission declined to forbear from our rules or certain statutory provisions. The merits of those forbearance petitions have been less my concern, for reasonable minds can

differ. My dissatisfaction has been generally with the standard we apply and our analysis, which seems to place the entire burden of forbearance on the moving party. I believe Congress expected the Commission to accept more responsibility for demonstrating a continued need for regulation in the presence of a healthy, competitive market or where forbearance would promote competition.

Indeed, I believe the Commission ought to employ a burden-shifting device in forbearance cases. In operation, once a petitioner demonstrates that the market in which it operates is competitive (i.e., no competitive firm or entity enjoys market power, price trends are checked or downward, innovation is occurring) the burden would shift to the FCC and the opponents of forbearance to demonstrate why regulation is still necessary. And, in making that judgment, the Commission should not be able to simply rest on the grounds that the rule served a public purpose and petitioners have failed to prove that purpose is no longer worthy. The question should be whether the rule at issue is in fact superior to competition for serving that purpose.

We should undertake a substantive and factual examination of the rule and its effects to determine if its purpose truly must be achieved through regulation instead of market forces. This approach presumes that healthy competition will normally maximize consumer welfare better than any regulation would, a presumption that we all must embrace to even get out of the starting block. Where competition has not quite "arrived" to a market, we need to develop a greater faith that the deregulation embodied in Section 10 can serve to promote competition in most instances. We need to carefully analyze and understand what other mechanisms (competition, other types of less burdensome regulation, other regulatory bodies such as the States) make a certain regulation unnecessary so that we can chip away the layer upon layer of regulatory requirements as we transition to a competitive marketplace.

MERGERS

The debate over the value of FCC merger review in addition to review by one of the antitrust agencies is well-worn. Clearly, as the keepers of the Communications Act and its policies, the FCC has some unique expertise that it can bring to telecommunications merger review that probably advances the public interest. Our review, however, is not generally limited to those areas in which we can claim primary expertise. Very often, we undertake a classic antitrust analysis, applying the same principles, precedents and guidelines as those employed by the antitrust authorities and rarely, if ever, does it produce different results.

Such reviews can be quite burdensome on the parties and time consuming. For example, the FCC often requires voluminous filings that are duplicative of those made to the Department of Justice or the Federal Trade Commission. They often must incur the expense of outside counsel to prove their case to both agencies. I have come to doubt whether the marginal value of full-blown merger review by the Commission is justified by its cost in time and resources. Moreover, with all due respect to our hard working staff, we do not really possess enough personnel schooled in antitrust and competitive economics to do the job well consistently. The antitrust authorities do. I believe that there is room to preserve a more limited, complementary role for the FCC in the review of mergers, while limiting its involvement to its areas of expertise.

If the Commission engaged in a simultaneous review with the antitrust authorities, this could improve efficiency. Under such a scheme, the parties would be required to file most documents only once and to one agency. The Commission would weigh in on issues such as whether the merger would violate an express provision of the Communications Act, or would otherwise undermine the congressional scheme. Furthermore, the FCC would consider the merger's impact on other communications policies such as media diversity and universal service that are not appropriately considered by antitrust authorities. But the Commission would defer to the antitrust authority's competitive analysis.

BROADCAST OWNERSHIP

Section 202 of the 1996 Telecom Act directed the FCC to make a number of specific changes to its broadcast ownership rules. Where the Act gave specific direction, the Commission has changed its rules as directed. Section 202 also more generally directed the Commission to "conduct a rulemaking proceeding to determine whether to retain, modify, or eliminate its imitations on the number of television stations that a person or entity may own, operate, or control, or have a cognizable interest in, within the same television market." This is the so-called "TV-Duopoly" rule.

While technically the Commission is in compliance with the statute, since it initiated a rulemaking in November 1996, there is reason to be concerned about its slow progress. The Commission has a backlog of cases that it has been unable to resolve, pending the rulemaking's completion. The lack of closure is impeding business operations and complicating business planning.

Another provision of Section 202, the biennial review provision, directs the Commission to "review its rules adopted pursuant to the section and all of its ownership rules biennially as part of its regulatory reform under section 11 [of the Communications Act]." The Commission issued a Notice of Inquiry in March 1998, yet nothing further has been done on this matter.

I share the concern that the Commission has not fully examined its broadcast ownership rules as directed in the 1996 Telecom Act. Congress realized that many of the assumptions underlying these rules were formed decades ago, when the media landscape was quite different. For my part, I have serious doubt that these rules can be defended on the basis of the justifications given when they were adopted. These rules rest on antiquated moorings devised at a time when the broadcast industry looked very different than it does today. They deserve rigorous examination. Such examination should take into account the full competitive environment in which broadcasting operates—we should look at the impact of competition from cable, satellite and Internet services, for example.

The Commission does need to assess the dynamic changes in technology and media markets to determine what limited rules are necessary to promote our public objectives, and sections 11 and 202 afford us the opportunity.

Part of the difficulty of reaching consensus on new ownership rules, is that they are infected with myriad goals and objectives that may not always be reconcilable. The competitive benefits of looser rules, may undermine (to some) our diversity goals. Indeed, I believe that continued anxiety about the effects of greater liberalization of ownership rules on diversity of ownership, voices and programming is the single greatest impediment to reaching a consensus on these structural rules.

The Commission has struggled to develop a clear consensus on acceptable diversity principles that not only promote the public good, but that can withstand strict judicial scrutiny. This struggle, as much as anything, has contributed to the lack of progress on these rules.

For this reason, I urge this Committee to take up the ownership diversity question and contribute to developing a sustainable consensus, so that we might move forward on ownership rules. I applaud Chairman McCain's stated commitment to exploring ownership diversity and his willingness to lead a legislative effort that promotes our cherished national commitment to meaningful opportunity in our most robust and critical industry. I stand ready to assist the Committee and Congress in formulating a sound, principle-based diversity initiative that will allow us to move forward.

FCC REAUTHORIZATION

With all of the crucial substantive tasks on our plate, we must still be able to step back and take a look at this agency and assess its structure and operation so that we can do the highest quality job that this Congress commands. I support Chairman Kennard's effort to develop a strategic plan for restructuring and streamlining FCC functions and management. I am hopeful that we will be able to move forward quickly under this plan to make needed changes. In my testimony at a House reauthorization hearing in March (which is attached), I offered some specific suggestions for consideration during the FCC reauthorization process.

Specifically, I believe that before beginning any exercise to fix or restructure the Agency, I think it prudent to first consider what we think is broken or is not working particularly well at the FCC. I would submit five areas for exploration: (1) the need to more clearly define the Commission's annual priorities and focus; (2) the need to operate efficiently enough to meet the demands of an innovation-driven market; (3) how to structure the Agency to better align with market trends and demands; (4) whether to continue the administration of functions that are largely duplicated elsewhere in government; and (5) the breadth of the Commission's quasi-legislative authority. I explore these issues more fully in my attached testimony before the House Subcommittee.

CONCLUSION

Let me close by saying that I look forward to continuing to work with members of this Committee, other members of Congress, and with my colleagues on the many challenges that await us in implementing our statutory mandates. Thank you for your attention and I look forward to your questions.

ATTACHMENT

PREPARED STATEMENT OF HON. MICHAEL K. POWELL, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION, BEFORE THE SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE AND CONSUMER PROTECTION OF THE HOUSE COMMITTEE ON COMMERCE, MARCH 17, 1999

Good morning, Mr. Chairman and other distinguished members of the House Subcommittee on Telecommunications, Trade and Consumer Protection. Thank you for inviting me here to assist you as the Subcommittee deliberates the statutory reauthorization of the Federal Communications Commission (FCC).

Initially, let me state that I support Chairman Kennard's effort to develop a strategic plan for restructuring and streamlining FCC functions and management. I am hopeful that we will be able to move forward quickly under this plan to make needed changes. In my testimony however, as the Subcommittee's invitation letter suggests, I will attempt to provide some specific suggestions for consideration during your deliberation on FCC reauthorization.

Before beginning any exercise to fix (or to use Chairman Tauzin's phrase "remission") the Agency, I think it prudent to first consider what we think is broken or is not working particularly well at the FCC. I would submit five areas for exploration: (1) the need to more clearly define the Commission's annual priorities and focus; (2) the need to operate efficiently enough to meet the demands of an innovation driven market; (3) how to structure the Agency to better align with market trends and demands; (4) whether to continue the administration of functions that are largely duplicated elsewhere in government: and (5) the breadth of the Commission's quasi-legislative authority.

I. THE COMMISSION NEEDS TO MORE CLEARLY DEFINE ITS ANNUAL PRIORITIES

I believe that the key to any well-run organization is the enumeration of a clearly understood and widely communicated set of priorities. A common complaint I often hear is that outside parties have no solid sense of the Commission's priorities or direction. The Chairman often does share his view of the coming year in speeches, press releases and in daily conversation, as do other Commissioners, but there is no structured process by which the Commission formally develops and publicly reports its priorities.

One way to address this problem would be the development of an annual, full Commission statement of priorities. Congress could require the Commission to set out a list of its priorities in the annual report it currently files pursuant to section 4(k) of the Communications Act of 1934. 47 U.S.C. § 154(k) (West 1998). Such a compilation of priorities would help focus the work of the Commission and create greater regulatory certainty.

II. THE FCC IS NOT EFFICIENT ENOUGH TO MEET THE DEMANDS OF ITS CUSTOMERS

The extent and pace of change in the telecommunications industry is mind-boggling. It is driven by exponential advancements in microprocessing power, digitalization, Internet protocol-based network models and bandwidth. As Royce Holland, Chairman and Chief Executive Officer of Allegiance Telecom, Inc. recently remarked, "The pace of change in the industry is like Moore's Law on Viagra." Market opportunities in this environment are lucrative but fleeting. As in the days of old, however, the Agency still labors endlessly for many months and even years on policy issues and ultimately implements its judgments in the form of newly-minted rules and regulations. The relevancy of the new rules fades rapidly with time. Some are out right obsolete the very moment they are passed. In this environment, the FCC must become a dramatically more efficient place. A decision that comes too late, might as well not have been made at all.

A. Deregulation

The most obvious way to improve efficiency at the Agency is to have fewer rules to administer. This highlights the importance of deregulation where the cost of a rule is not justified by its benefits. There are a number of vehicles Congress has provided for deregulating and I believe that they must be employed with greater rigor than they have to date. Congress wisely commanded the FCC to conduct a biennial review of its regulations and to shed those that it determines are no longer necessary. While we have made some progress in this area, I believe we can be much more aggressive.

A second vehicle that I believe has been under-utilized is our forbearance authority under Section 10 of the Communications Act. 47 U.S.C. § 160 (West 1998). I have criticized many of our recent decisions in which the Commission declined to forbear

from our rules. The merits of those forbearance petitions have been less my concern, for reasonable minds can differ. My dissatisfaction is with the standard we apply and our analysis, which seems to place the entire burden of forbearance on the moving party. I believe Congress expected the Commission to accept more responsibility for demonstrating a continued need for regulation in the presence of a healthy, competitive market. Indeed, I believe the Commission ought to employ a burden-shifting device similar to that employed in civil rights cases.

In operation, once a petitioner demonstrates that the market in which it operates is competitive (i.e., no competitive firm or entity enjoys market power, price trends are checked or downward, innovation is occurring) the burden would shift to the FCC to demonstrate why regulation is still necessary. And, in making that judgment, the Commission should not be able to simply rest on the grounds that the rule served a public purpose and petitioners have failed to prove that purpose is no longer worthy. The question should be whether the rule at issue is in fact superior to competition for serving that purpose. We should have to undertake a substantive and factual examination of the rule and its effects to determine if its purpose truly must be achieved through regulation instead of market forces. This approach presumes that healthy competition will normally maximize consumer welfare. Congress could explicitly adopt such a burden-shifting approach to forbearance.

B. Shift To Enforcement

A second way for the Commission to become more efficient is by shifting away from pre-approval, "by-the-grace of us" regulation and toward enforcement. Telecommunications regulation has traditionally developed along the lines of the broadcast model. That is, parties need advance approval for initial operation, changes and deployment of new innovations. This has become a real impediment to timely decisions. A regime in which there are more presumptions of good faith on the part of competitors, backed up with strong enforcement by the Agency, would greatly enhance our efficiency.

In this regard, I applaud the Chairman's initiative to assemble under one bureau the Commission's enforcement functions. Similarly, the initiative to create an expedited complaint resolution process, dubbed "the rocket docket," is a positive step in this direction. The shift to enforcement, however, needs to be more than a consolidated bureau. It needs to be a shift in thinking as well. The FCC, as a whole, must become more comfortable with enforcement as a means of regulation and must address our speculative fears about deregulation through enforcement, rather than let those fears paralyze our willingness to deregulate.

C. Need For Better Internal Process

The Commission structure is inherently inefficient. Because it is a deliberative body with independent Commissioners who each have a vote, it is very difficult to keep things moving along at a pace demanded by the market. In contrast, organizations that are more hierarchical generally have better success with moving more quickly. Nonetheless, for the Commission to keep pace, it needs the benefit of management professionals dedicated to managing our agenda and keeping our substantive items on track.

I would urge the Congress to consider creating a professional management directorate to accomplish this purpose. There are examples of similar activities in other government institutions. The court system has long employed a clerk's office that keeps the caseload moving, rather than leave this responsibility to the sitting Judges. Similarly, many divisions of the Department of Justice (such as the Antitrust Division) have a Directorate of Operations, headed by a substantive professional who helps keep the pipeline to the decision-makers flowing. These functions at the FCC are presently managed by the Chairman's personal office.

III. THE FCC IS NOT ALIGNED STRUCTURALLY WITH MARKET TRENDS

It is regularly observed that the Commission is organized around industry segments that increasingly are less relevant as convergence strains and eliminates their unique technical distinctions. Many commentators have urged that Congress consider consolidating bureaus along competitive lines. I agree that it would be useful to consider such structural changes, though I believe there are limits to how much can be gained by such an effort.

The balkanized structure of the Commission makes it difficult to re-deploy employees to address urgent tasks. Attorneys currently analyzing policy issues for the Mass Media Bureau, for example, cannot easily be moved to work on issues in other bureaus, even though the subject area may be similar. Thus, even though there is a need for attorneys in the Cable Services Bureau, separation of these bureaus prevents ready reassignment of personnel. Within larger bureaus, the Commission

would have the opportunity to maximize its use of employees. It could, for example, cross-train the workforce through rotations and training. In this way, the Commission could maximize employee flexibility and enhance its ability to reallocate resources to match priorities.

Though I do not take a strong position on any particular proposal, I would recommend considering consolidation in a few areas. The first would be the formation of a multi-channel competition bureau. Such a bureau would administer our rules with regard to what are currently the mass media, cable television and direct broadcast satellite (DBS) industries. Regulation of each of these mediums presently rests in a separate bureau. A single leadership structure overseeing these fields would allow for greater harmonization of rules and decisions in furtherance of a merged and increasingly competitive industry segment. With the elimination of some cable rate regulation at the end of this month, and increased attention being given to the inter-relationship between broadcast and DBS, the time may be ripe for considering such a proposal.

A second area worthy of some thought is complete or partial consolidation of the Common Carrier and Wireless Telecommunications bureaus. There has been a great deal of discussion about wireless technologies competing with and serving as a substitute for traditional wireline service. Indeed, some have suggested that over time most voice communications will be carried by wireless carriers, while the wireline infrastructure will be used more for data. These trends may argue for a single bureau dedicated to these currently separate industries.

I do note, however, that there is a limit to the value of this functional realignment. Because the statute is organized along industry lines our rules necessarily do as well and functional consolidation may be more form than substance. Additionally many industries support industry organization because they enjoy having a "champion" to tussle over policy.

IV. ADMINISTRATION OF DUPLICATIVE FUNCTIONS

A fifth area on which Congress may choose to focus is where Commission authority overlaps with that of other government agencies. Because communications is so fundamental to virtually all human activity, there is almost always some connection to FCC authority (no matter how tangential). Yet, the core expertise of the FCC should truly be considered in assigning to it, rather than some other agency, a central role on a given issue. While such governmental overlaps may be desirable, they at least should be complementary (or supplementary) rather than simply duplicative. A few suggested areas of inquiry are outlined below.

A. Merger Review

The debate over the value of FCC merger review in addition to review by one of the antitrust agencies is well-worn. Clearly, as the keepers of the Communications Act and its policies, the FCC has some unique expertise that it can bring to telecommunications merger review that probably advances the public interest.

Our review, however, is not generally limited to those areas in which we can claim primary expertise. Very often, we undertake a classic antitrust analysis, applying the same principles, precedents and guidelines as those employed by the antitrust authorities and rarely does it produce different results. Such reviews can be quite burdensome on the parties. For example, the FCC often requires voluminous filings that are duplicative of those made to the Department of Justice or the Federal Trade Commission. They often must incur the expense of outside counsel to prove their case to both agencies. I have come to doubt whether the marginal value of full blown merger review by the Commission is justified by its cost in time and resources. Moreover, with all due respect to our hard working staff, we do not really possess enough personnel schooled in antitrust and competitive economics to do the job well consistently. The antitrust authorities do.

I believe that there is room to preserve a complementary role for the FCC in the review of mergers, while limiting it to its areas of expertise. Perhaps, consideration of the legislation recently introduced by Senators DeWine and Kohl would be a good place to start

The Commission engaging in simultaneous review with the antitrust authorities could improve efficiency. Under such a scheme, the parties would be required to file most documents only once and to one agency. The Commission would consider issues such as whether the merger would violate an express provision of the Act, or would otherwise undermine the congressional scheme. Furthermore, it would consider the merger's impact on other communications policies such as media diversity and universal service that are not appropriately considered by antitrust authorities. But the Commission would defer (either substantially or completely) to the antitrust authority's competitive analysis.

B. Consumer Affairs

An important function of any branch of government is to safeguard consumers. Undoubtedly, because of our regulatory authority over certain industries and our intimate understanding of the industry, we are uniquely positioned to administer certain consumer affairs. Nonetheless, there are other agencies that have similar authority and some judgment might be made as to which is best positioned to administer certain issues. For example, the FCC has occasionally jumped into issues that relate to advertising under its public interest authority. The Federal Trade Commission, however, has specific authority in these areas. The same is true of other issues such as consumer fraud (e.g., "cramming" and "slamming.") Congress should evaluate the benefits of such overlapping jurisdiction.I77C. Equal Employment Opportunity

I personally support narrowly-tailored Equal Employment Opportunity (EEO) rules. The Commission has administered its own EEO program in certain industries for some time. Yet, in most other industries there is not an EEO authority separate from the Equal Employment Opportunity Commission and the federal, state and local civil rights authorities. I believe that there is some advantage to having the FCC involved because of its unique relationship with certain industries particularly those that operate pursuant to a government-conferred license. However, I would be remiss if I did not point out there is some overlap that should be examined to ensure that the respective roles are complementary and not duplicative. By eliminating duplication, such an examination, in my view, would bolster support for the government's role in promoting opportunity in communications.

D. Political Rules

Finally, I would point out that the FCC has historically administered a number of rules that are designed to affect the quality of elections. These rules are focused on the obligations of the licensee and not the candidates, but they undoubtedly are intended to shape the quality and tenor of elections. Greater involvement in this area would require a more comprehensive understanding of campaigns and existing election laws than I believe this Agency possesses. Furthermore, any extension of such authority should be weighed against the role of the Federal Election Commission. I am uncomfortable, personally, as an un-elected regulator initiating policies and rules that affect the electoral process without specific congressional direction to do so.

V. THE BREADTH OF THE FCC'S QUASI-LEGISLATIVE AUTHORITY

A phenomenal amount of time is consumed in this industry in fights over the FCC's jurisdiction. One major source of this ongoing battle is the tension between the statutory regime that reigned under the 1927 and 1934 Acts and that predominantly adopted by Congress in the 1996 Act. The former's hallmark is that it conferred sweeping authority in the Commission to act to ensure "the public interest, convenience and necessity." The 1996 Act, however, attempted to craft, in many respects, a detailed blueprint for the industry and the Agency. In many places, it provides highly detailed statutory provisions and instructions. There is a real tension between these two regimes, elements of which are scattered throughout the Act.

The venerable public interest standard has much to commend it. It provides a great deal of flexibility and punctuates a consumer focus. However, this standard does allow the Agency to self-initiate a broad range of government action without specific statutory direction. That is, it serves as a basis for quasi-legislative action by the Commission.

The quasi-legislative authority of the Commission has its merits, but if read too broadly, it serves to invite industry, consumer groups and special interest to seek both redress and advantage from the Agency, rather than Congress. This can lead to the Agency initiating action that Congress subsequently disapproves of, or believes conflicts with a more specific mandate in the statute.

I am not suggesting elimination of the public interest standard. I do believe, however, that Congress might consider certain limiting principles with respect to its employment as a jurisdictional basis in certain areas.

VI. CONCLUSION

I would like to conclude with one caution. As long as the 1996 Act is the basis for telecommunications law, Congress would be ill-advised to hollow or unduly wound the Commission. There are undoubtedly areas in which we tinker where we should not. There are certainly ways to improve our processes and our decisions. But, even controlling for all that, the FCC will remain a very important institution

for dealing with the telecommunications sector and its transition to competition and its transformation in response to innovation.

Congress has the power to cut employees and even Commissioners if it chooses. But if not done carefully, rather than harm the Agency the industry and consumers will be harmed. It is the industry that will still have to come to the Commission to get its licenses approved or have a section 271 application approved. It will still be states and local schools that have to file for universal service. Consumers will still need somewhere to have their complaints acted upon. Such redress will not be enhanced by a diminished Agency.

I look forward to continuing to work with Members of Congress and with my colleagues on the many challenges, and tremendous opportunities, that await us in implementing the 1996 Act. I trust that, by working collaboratively and by having faith in free markets, we will bring the benefits of competition, choice, and service to American consumers.

Thank you for your attention.

The CHAIRMAN. Thank you, and I thank all the Commissioners.

I note that the majority leader is here. With the agreement of the other members of the Committee, if you would like to go ahead, please proceed.

STATEMENT OF HON. TRENT LOTT, U.S. SENATOR FROM MISSISSIPPI

Senator LOTT. Thank you, Mr. Chairman. I appreciate you doing that because I do need to get back to the floor. But this committee has a lot of very important jurisdiction, but I do not believe any area is more important or more exciting right now than the one we are hearing about today from these Commissioners.

So I want to thank you, Mr. Chairman, for having the hearing in this first step of reauthorizing the Federal Communications Commission. I want to recognize and thank Chairman Kennard and all the Commissioners for your dedicated service and your work. I know that we gave you a monumental task with the bill we passed just 3 years ago, and I know that it has taken time and will continue to take time to fully carry it out. But I think you have been working diligently at that and I want to express my appreciation to all the Commission.

What is happening in the telecommunications area is one of the most exciting that I have seen. Watching what is happening, it is kind of like dog years. You know, ordinarily something that would take 7 years is happening in 1 year, and it is going to continue that way.

But since it is such a dynamic field and because the technologies are converging like never before, it makes your job even more important and our oversight responsibility even more important.

I know there are areas of concern, like the section 271, but I think the problems do not mean that this section is not working. It means it will still take time and we will have to work on that to come up with the right solution.

I basically just want to urge you to work with us in making sure that the FCC is as responsive, efficient, and effective as it possibly can be. The American consumer deserves an FCC with a structure and mission which enables our telecommunications market to continue to prosper, and we need to work together through some of the problems.

I want to thank Commissioner Powell for his last comments. I think clearly there are some things we can do to help with that diversity, and it is such a vibrant field and we want to support that.

I thank Senator McCain for his leadership in that particular area. But basically I just wanted to be here because I appreciate the work you are doing. I wanted to hear your comments and, even though I may have to leave, I look forward to hearing your responses to questions I am sure you will receive from the committee.

Thank you, Mr. Chairman.

[The prepared statement of Senator Lott follows:]

PREPARED STATEMENT OF HON. TRENT LOTT, U.S. SENATOR FROM MISSISSIPPI

Thank you Chairman McCain for holding this hearing. This is the first step in reauthorizing the Federal Communications Commission.

I also want to recognize and thank Chairman Kennard and all of the Commissioners for their dedication and service. I know we gave you a monumental task with the bill that we passed, the 1996 Telecommunications Act, and I appreciate the challenges you face.

America is experiencing its greatest explosion in telecommunications history, certainly that I've ever seen. It's like dog years, where 1 year in the telecommunications world equals 7 years in other sectors.

Telecommunications represents a significant portion of America's economic growth, providing thousands of jobs & billions of investment dollars.

Both Congress and the FCC have a duty—and an opportunity—to examine and guide this dynamic area of industry.

Today, technologies are converging like never before. A telephone company is no longer just a telephone company. This is the '96 Act at work.

Congress made its mark on this new world 3 years ago, a short 3 years ago, and it in effect spurred this new world.

I believe the Act is working. What was a dream to Congress, entrepreneurs and industry leaders have made reality. I firmly believe the Act's goals of local competition and consumer choices will be fulfilled and America will be better off.

Nobody here or in the Congress wants to turn back the hand of time. New technologies, new companies and new choices are coming our way, and we need to keep the momentum going, the lines of communication open, and the investment flowing.

I know there is concern about the absence of a Section 271 approval for an incumbent phone company, but this doesn't mean the Section is not working. We all knew it would take time. There have been roadblocks, but I'm encouraged and confident that progress will be made. We need to work together through some of the problems.

Having said that, all of the mergers and acquisitions and convergence taking place not only affect the lives of Americans, but will also require changes in how government approaches this new competitive market to ensure that it thrives.

During this transition period, it will be important for Congress to make sure that the FCC is properly structured. That it has the right tools to foster and further the ongoing evolution. I like Chairman Kennard's analogy that old regulatory models are like the old black rotary phones—it rings true.

The FCC must indeed change as it works on many priority items—from universal service and access charge reform to merger reviews, enforcement efforts and dealing with the surge of spectrum demand.

There are a variety of ideas on both sides of the aisle and in both Houses of Congress about how the FCC should be revamped to deal with today's new market conditions. I will take a look at these proposals and, as Congress moves forward, I will also personally solicit input from the FCC Commissioners.

America's fast-paced telecommunications market demands an FCC that is responsive, efficient and effective. More importantly, the American consumer deserves an FCC with a structure and mission which enables our telecommunications market to continue to prosper.

I'm confident Congress will do the right thing for the FCC & for America.

The CHAIRMAN. Thank you, Senator Lott.

Senator Hollings, would you like to make an opening statement before I ask questions?

Senator HOLLINGS. No, thank you. I will wait my turn. Thank you.

The CHAIRMAN. Mr. Kennard, all of us have a lot of questions. I will be brief.

When you say and the other Commissioners say that the Act is working well, let me point out consumers are now paying more than $3 billion each year on their telephone bills in the form of PIXI's, universal service connectivity charges, and number portability charges. The long distance price index has gone up 8 percent during the last several years. The intrastate long distance price index has gone up 10 percent. And although the FCC has reduced interstate access charges by over $2.5 billion, the Bureau of Labor Statistics price index for long distance service has stayed at the same level.

Long distance carriers like ATT and MCI have begun having to charge their customers a minimum monthly fee for the first time. Of course, the pro-competitive multi-channel video policies and its stringent rate regulation rules have boosted cable rates 24 percent since 1996.

That does not look to me like the Act and the implementation of it has been a great success.

Mr. Kennard, in a speech recently you stated, on May 17, you stated:

> The public interest standard requires the FCC to review mergers so the Commission can perform its unique duty to articulate to the American public what are the benefits of this merger to average Americans.

However, in a separate speech 2 days later, Assistant Attorney General Joel Klein, who heads the Justice Department merger review team, said that:

> Most people—apparently including the FCC—do not realize everything we do in antitrust is consumer-driven. We are a unique Federal agency. Our interest is to protect what the economists call consumer welfare, and there is one simple truth that animates everything we do, and that is competition. The more people chasing after the consumer to serve him or her, the better to get lower prices, to get new innovations, to create new opportunities. The more of that juice that goes through the system, the better.

I think Mr. Klein articulated pretty well what reviews are supposed to do, and they seem to be exactly the same consumer benefits that you say the FCC pursues when the FCC reviews mergers under the "public interest standard." If that is true, what does separate FCC reviews of proposed mergers add to the process other than needless cost and delay?

I will be glad to listen to all of the Commissioners' points on that, starting with you, Chairman Kennard.

Mr. KENNARD. Certainly. I appreciate the opportunity to answer that question, Mr. Chairman. First of all, there is a lot of confusion about the respective roles of the FCC and the Department of Justice Antitrust Division these days. First of all, the FCC does not conduct an antitrust review of mergers that is cloaked in public interest rhetoric. It is a very different analysis. There is a different burden of proof, it is a different statutory requirement that we have to look at.

The CHAIRMAN. What statutory requirement is that? I am sorry to interrupt.

Mr. KENNARD. The Antitrust Division is charged with enforcing the antitrust laws, the Clayton Act, the Sherman Act. The FCC, as you know, is charged with ensuring that mergers serve the public interest. Traditionally, the FCC in making that analysis has deter-

mined whether a particular merger has been demonstrated to serve the public interest by furthering the goals of the Communications Act.

Now, one need only look at recent mergers to see how this different standard plays out in practice. In the Bell Atlantic-Nynex merger, for example, the Antitrust Division looked at that merger. They found that it did not lessen competition, as is their requirement under the antitrust laws. The FCC's analysis was different. The FCC looked to see whether that merger would enhance the pro-competitive goals of the Communications Act and ended up imposing some conditions, some market-opening conditions, on that merger which the Justice Department would not have imposed because their function is not to regulate. They are a law enforcement organization that enforces the antitrust laws.

So there is—I am concerned that there seems to be a common misunderstanding that we have overlapping jurisdictions and are duplicating the effort of DOJ. That is not the case, Mr. Chairman.

The CHAIRMAN. Ms. Ness.

Ms. NESS. The FCC and the DOJ do have to some extent overlapping responsibilities, but also they are complementary. As Chairman Kennard elaborated, the standard that is imposed for the Department of Justice is a different standard under the Clayton Act. If we were to exercise our Clayton Act jurisdiction, which we generally decline to do—we would be conducting a very similar review of the mergers, looking at whether or not there is a diminution of competition.

But as Chairman Kennard noted, our review is looking at whether or not a merger is in the public interest. The review is conducted in a public proceeding. It is reviewable by a court. Should the Department of Justice in its limited review as to whether or not there is a diminution of competition decide not to proceed, there is no judicial review. That is the end of the matter.

Our review, as we have noted in our past decisions, looks at whether or not the merger serves the public interest, and particularly with respect to market-opening issues. That is what we did in a number of cases, for example the MCI-WorldCom merger, where four of us determined that it was, in fact, in the public interest; in Bell Atlantic-Nynex, where we did determine as a Commission that had the merger as proposed gone forward we would have denied the merger as not being in the public interest, but with the conditions imposed the balance had shifted and it was indeed in the public interest.

These are important benefits for the American consumer.

The CHAIRMAN. Commissioner Tristani.

Ms. TRISTANI. Mr. Chairman, I would agree with what my colleagues Chairman Kennard and Commissioner Ness have said. I would also add that another difference in the reviews is that the burden of proof is quite different. In the Commission review, the proponents of the merger have to demonstrate, they carry the burden that the merger is in the public interest.

The CHAIRMAN. Yes, right.

Ms. TRISTANI. That is in the law, Mr. Chairman, and we are following the law as written.

The CHAIRMAN. Thank you.

Commissioner Furchtgott-Roth.

Mr. FURCHTGOTT-ROTH. Thank you, Mr. Chairman. I would concur with my colleagues to the extent of saying that the FCC and the Department of Justice do not have overlapping jurisdiction except to the limited degree that we have shared jurisdiction of the Clayton Act.

I must respectfully disagree with my colleagues in the interpretation of our statutory authority under the Communications Act to review mergers. I believe if one does a word search of the Communications Act one will not find references to mergers or acquisitions. Our review is entirely under section 310 of license transfers and section 214 of licenses to operate. These are much narrower license transfers and those are the only points at which there is a public interest review.

I had the—well, I was starting to say the pleasure; I do not know if it is pleasure or not, but I certainly testified on this very topic yesterday before the House Judiciary Subcommittee on Administrative Procedures. I have attached my testimony on that matter, and I guess I do not believe that you will find in the Communications Act a specific statutory authority for the Commission to review mergers.

The CHAIRMAN. Commissioner Powell.

Mr. POWELL. Thank you, Senator.

I would have to concede that one can articulate that there are different standards than those employed under the Sherman Antitrust Act, but that does not really mean the analysis is different. As someone who has been in the Antitrust Division, I can tell you that, while I think that things like the MCI-WorldCom review were done correctly, they are awful similar and nearly identical to the same sort of review we would have conducted at the Antitrust Division.

Our FCC staff employs and makes great use of the Antitrust Division horizontal merger guidelines, which guide and construct our analysis. The consideration of anticompetitive effects, horizontal and vertical, are virtually identical.

As a matter of theory, there is a reservoir of additional authority one could lay claim to at the Commission. The question is whether it is ever employed in a way meaningfully enough to justify the costs of the additional impositions and time of the review. I have become skeptical about that. We could have a debate about whether you want the Commission doing that or not, but I think that the value that it is adding, at least as I have seen it demonstrated, is not that significant from the review that is already conducted.

Second, I think that one would have to concede that the public interest standard is awful wide-open and many of the standards and the principles that the others have articulated are a matter of Congressional—I mean, Commission construct. That is, over the years the Commission has interpreted that mandate in placing burdens of proof, has interpreted that mandate in a way that sets out the conditions and principles.

We certainly have had Commission precedent that could be used to justify actions the Commission has taken that have been approved in court. But at the end of the day it is a fairly wide-open

mandate that the Commission has had and a great deal of discretion in constructing it the way it chose.

Third, I would say that, with respect to conditions and market opening, I do not dispute that if there is an appropriate role for the Commission one could justify a different role for us in that regard. But I have to tell you I am skeptical of that in the sense that it is a form of industrial policy in which you have confidence that the five of us are capable of looking out into markets and making somewhat personal and subjective judgments about what will advance the public good in that regard, and I just have less confidence in at least my ability to do that well consistently as others might.

So that is my view of it.

The CHAIRMAN. Mr. Kennard, do you know any other industry that is subject to multiple reviews?

Mr. KENNARD. None immediately come to mind. I would have to think that through and get back to you on that.

The CHAIRMAN. Thank you.

Senator HOLLINGS. You have got the election industry. You have got to go through a Republican primary before you get to the general election. [Laughter.]

The CHAIRMAN. There is a lot of money in that one.

Senator HOLLINGS. Yes.

The CHAIRMAN. Senator Hollings.

STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR FROM SOUTH CAROLINA

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

I commend the Commission for sticking by its guns on 271. There is not any question that that is the kidney ailment that communications competition has at the moment. We need to pass that kidney stone and get the Bell companies to comply with the checklist and enter the competition. That is what they all begged, and I was there all 4 years that we worked on it, and, oh, they wanted to compete, compete, compete. And all they have done is combine, combine, and combine.

I pick up my USA Today and the president of Bell South made last year $54.9 million. I ran for the wrong job. I think I could have gotten the votes to chair Bell South and I might do that yet.

But the truth of the matter is that they are squatting right on their monopoly. Now, the task for us in order to get fair competition is to open them up in a studied, compassionate, considerate way, namely considerate of the best telecommunications that any country has ever had. So we did not want to get in and barrel in and mess up. So we asked them and over the year's period their attorneys wrote that checklist. There is nothing wrong with it.

Now, we had the USWest's chairman up before this Committee recently. He had never applied. He complained and said that there was so much bureaucracy over there and you folks had misinterpreted the checklist and added onto it and enlarged it and everything else of that kind, that there was not any chance for compliance. He has, while he has not applied to you folks, applied to various state commissions and he has been turned down. And the whole time he was begging for some kind of relief in order to serve

the rural areas, he was selling off his rural facilities as fast as he could. So there is quite an act going on.

Mr. Kennard, can we not just go ahead and have a drop-dead date by, say, January 1, 2001, and they have to comply with the checklist or thereafter in any State where they have not complied get a $50,000 a day fine? They have had 3½ years and they have got all the lines in, what we are talking on and everything else, is 98 percent controlled by Bell Atlantic. We are in their region, and that is the monopoly that has held up the real dynamism of the Telecommunications Act of 1996.

Mr. KENNARD. Well, Senator, the goal of section 271, as you know, is to require the Bell companies to open their markets to competitors before they can get into long distance. I think that that created an incentive structure that is working. I think, unfortunately——

Senator HOLLINGS. You think it is working?

Mr. KENNARD. I think the incentive structure is working. We saw a lot of foot-dragging initially. A lot of companies decided as soon as that Act was passed that they would go into denial and they would rather litigate and oppose it, as opposed to comply.

It was only earlier this year that the U.S. Supreme Court reaffirmed the FCC's authority to enforce many of the market-opening rules that were passed under that statute. I think that some of the Bell companies are now coming to the table and recognizing that there is a lot of work to do to open up these markets, and I think that that process has to continue, because if we were to establish just a drop-dead date that these markets would automatically be thrown open I fear that——

Senator HOLLINGS. They would go right on down to the wire. After you gave them a year and a half more, they still would not comply and sit there and wait like some of them are on Y2K. I mean, they have had 30 years to comply with Y2K and they are still waiting on special laws and special consideration.

If General Motors came up and said, "On January 1, I am going to have a new model but it is going to have some glitches in it, and what I want to do is talk to anybody that gets a glitch and let us argue with them and, by the way, do away with 200 years of State law," you would look at them and laugh. I mean, come on. But that is what we have got going on.

Specifically in communications, we have waited, 3½ years, and you say it is working. Now, I understand Bell Atlantic might start in New York later this year, but that is the only movement I see. I try to keep a running survey here of what is going on and I do not see any incentive.

Rather than 12 percent guaranteed, they are making 24 and 30 percent. It is wonderful. So if I was running the business and there was not any requirement to comply, I think I would continue making the 24 to 30 percent, and paying the lawyers. When you say it goes up 8 percent, and the distinguished Chairman cited an 8 percent increase, it could have gone up 18 percent. That is market fores, market forces, deregulation.

But go ahead. Can we not do that? Therein is the E-rate. We contemplated you not raising taxes—it is a good thing you do not run for office.

Mr. KENNARD. It is a good thing, Senator.

Senator HOLLINGS. You have got in the morning paper that that is what we intended. Not at all. They had a 40-percent access charge, cushion, pork, whatever you want to call it, that the long distance companies had to pay, but once they got into the competition that would relieve that 40 percent some and we could deal that around to get into the schools.

But now you are going to raise taxes. You seem to move right quickly there, not on access charges, not on universal service, but on something that was not intended.

Mr. KENNARD. Well, Senator, let me assure you that we are moving on all those fronts. When I said that we implemented that provision the way its authors intended, I meant the people who actually wrote the provision, Senator Rockefeller, Senator Kerry, and Senator Snowe. I have had conversations with and talked to them about what their intent was.

Senator HOLLINGS. Well, I was also sponsoring that and I was in the conference, and I can tell you what the intent was. That is exactly what we had in mind all the time. I do not believe I have ever heard Senator Rockefeller say we are going to raise taxes and raise the prices in order to comply with the E-rate. We knew that the money was there.

Let me ask one last question if you do not mind, Mr. Chairman. I understand Commissioner Powell is more or less a defense Commissioner. Now, with these complaints going to the bureau and going to the staff, can we not make another one a complaint Commissioner so we can facilitate and accelerate? He is doing a good job with defending as a Commissioner. Why do you not get—Ms. Ness is smiling; she looks like she is volunteering for the job. [Laughter.]

Senator HOLLINGS. Get up on the staff so we can get some of these things moving.

Mr. KENNARD. Well, that is a good suggestion, Senator. I think Commissioner Ness would make a fine enforcement czar at the FCC. But we do have plans under way to create an enforcement bureau.

I share your concern. I think that the whole enforcement culture at the FCC needs to change. We need to be much more proactive. We need to devote more resources to enforcement, because now that we have written these rules on competition it is important that they be enforced. We are in the process of creating a bureau to do that. It will be given new resources, and we hope to re-invigorate the whole enforcement philosophy at the agency.

Senator HOLLINGS. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Brownback.

STATEMENT OF HON. SAM BROWNBACK, U.S. SENATOR FROM KANSAS

Senator BROWNBACK. Thank you very much, Mr. Chairman, and thanks for holding the hearing and thank you to the Commissioners for coming.

I want to pick up on something a couple of Commissioners cited to, and that was on the universal service and the support for the universal service. It strikes me that the high-cost portion of uni-

versal service we should have had completed by the statutory deadline of May 8, 1997. We are 2 years later and we still do not have this in place. I do not think the Congress thought we would be taking this amount of time to get that in place.

This is particularly important to rural States like mine, like are represented by a number of the people here on the dais, and it is not in place. It seems like you are putting other things out there and you are not dealing with the tough one that could put upward price pressure on rural residents in phone service.

This is a very important issue to a number of us. So I would like to specifically ask each of you: The Commission has committed to adopting a hold-harmless principle to explicit Federal universal service support, meaning that no State shall receive less explicit support after the FCC completes the high-cost proceedings than that State currently receives. Now, a substantial portion of Federal access charges currently represent implicit Federal support for universal service.

I would like to ask each of the Commissioners the following: Are you willing to commit to this Committee right now that, as you unanimously agreed to do so in the so-called Stevens report, you will apply the hold-harmless principle to all of the current implicit support that exists in access charges? Would you be willing to commit to that now so we can start making some pricing in rural States as to what sort of support and help and what sort of charges our rural resident customers are going to have?

Mr. KENNARD. I would be happy to address your question, Senator I would like to go to the earlier comments about universal service. First of all, let me assure you that the Commission is devoting a lot of resources to universal service. It is a top priority of the Commission since I arrived there as chairman and it will continue to be.

I assure you that, as you point out, these are tough questions. I think it was H.L. Mencken who said that there is—for every complex problem there is a simple solution and it is almost always wrong. Since I have been chairman, a lot of people have come to my office and they have offered quick fixes for universal service. You know, just throw money here or throw money there and it will be fine.

What we are working on is a permanent, enduring, sustainable solution to universal service. That is why we are working so hard on these cost models, to make sure that we have a platform to put universal service on a steady footing as we move into the next century.

Now, all that being said, in the meantime we have also assured that we have held the States harmless. Support has been flowing. It will continue to flow. In fact, over the past 3 years since the Act was passed we have spent far more on universal service than any E-rate program by many multiples, and that will continue to be the case.

Now to your specific question: I will absolutely commit to a hold-harmless. I have said this repeatedly in my public statements and speeches.

Senator BROWNBACK. On explicit and implicit charges?

Mr. KENNARD. Well, we are—certainly on the explicit fund. We will adopt tomorrow an order, hopefully, which will invoke a hold-harmless provision for all of universal service, so that those high-cost States will not be subject to risk as we proceed to a more permanent solution.

But I also say this. I have been encouraged by efforts among the industry in recent months to address this implicit subsidy problem in universal service support. I was encouraged just hearing this week, in fact, that the industry seems to be coalescing around some solutions that they are going to present to us that I am very encouraged and looking forward to see.

Senator BROWNBACK. Chairman Ness—Commissioner Ness.

Ms. NESS. Senator, we are very committed to ensuring that universal service is available at affordable rates that are reasonably comparable, both urban and rural. Indeed that has been one of the things I have been most concerned about in my tenure on the Commission.

Senator BROWNBACK. Could I just really cut to the chase on this, because my time is going to run out. Will you support hold-harmless on explicit and implicit costs on universal service support?

Ms. NESS. I am committed to ensuring that we have reasonably affordable rates that are comparable. I cannot say that I would hold harmless on implicit subsidies because I do not know that anybody can tell you specifically what the implicit costs are. It depends on how much you want to fund, and that is why you have to look at what is reasonably comparable and affordable and to ensure that it remains so as competition comes into the marketplace. That is what we are certainly committed to doing, to have a system that addresses that and addresses it in a meaningful way.

Senator BROWNBACK. Commissioner Tristani.

Ms. TRISTANI. Like Commissioner Ness, I am committed to the hold-harmless principle, but not ready to say all the way until we know more. I would like, and because I know you are short on time, but I am very committed to universal service reform and if it is taking time it is because we want to make sure it is done correctly and right.

Senator BROWNBACK. Commissioner Furchtgott-Roth.

Mr. FURCHTGOTT-ROTH. Senator, I believe I am on the record as supporting hold-harmless in both explicit and implicit to the extent that current programs would be on an ongoing basis, some of which are scheduled to be reduced.

I cannot help but note, Senator, if I may, H.L. Mencken may have said that it takes some sort of complex solution to a complex problem, but I am a firm believer that it is better to be approximately right than exactly wrong. I am absolutely, absolutely convinced that the computer models that the Commission is working on are going to give us exactly the wrong answer, and it is going to take hundreds of hours to get there.

Senator BROWNBACK. What I have seen thus far is that way.

Commissioner Powell.

Mr. POWELL. Senator, I think that there is absolutely room for hold-harmless in the context of explicit. I think implicit is very difficult to commit to you because the proceeding has not gone far enough for us to understand responsibly what is nested in that hor-

net's nest that we call implicit subsidies. I certainly would like to know a lot more about it before I would commit publicly to a particular mechanism that might prove distorting in itself.

Senator BROWNBACK. Chairman Kennard, I would note that you testified June 10, 1998, before this Committee that: "I will not allow Federal support for rural America to be reduced." I would suggest that includes both explicit and implicit within this.

Nobody passed this Act thinking that we were going to raise rural rates. So I really would push you to say we are not going to raise rural rates, and that covers both explicit and implicit.

Thank you, Mr. Chairman.

[The prepared statement of Senator Brownback follows:]

PREPARED STATEMENT OF HON. SAM BROWNBACK, U.S. SENATOR FROM KANSAS

Mr. Chairman, thank you for holding this important hearing today. This committee's oversight responsibility for the FCC is arguably the Commerce Committee's most important function.

Well, here we go again. More than two years after the date that the FCC was statutorily required to finish all rules related to Universal Service Reform, we are being told that a final decision on the rules is being delayed once again from July until September, with implementation not occurring until the year 2000. It astounds me that, the day before the FCC is set to vote on the second year of funding of the E-rate program, the FCC is pushing back the reform of the high-cost portion of Universal Service even further into the future in clear violation of the Telecommunications Act.

And this is occurring despite assurances from the Commission to the contrary. On June 10, 1998, the last time all five FCC Commissioners appeared before this Committee, Chairman Kennard stated "I think I can comfortably speak for all of my colleagues here in saying that we all are committed to reforming Universal Service and doing it in a way that is consistent with the statute, and doing it on a timetable that is expeditious." Last July, Chairman Kennard stated that "[B]y the end of April 1999, I expect the Commission to have calculated the appropriate revenue benchmark, and to have acted on the recommendations of the Joint Board." He also stated that "I am confident that this schedule will allow non-rural LECS to take the further steps necessary to ensure that the transition to the new high cost mechanism is completed by July 1, 1999."

Well, that was almost a year ago, and we are still at least more than six months away from achieving the reform of the high-cost portion of Universal Service. And in addition to the length of this process being beyond the statutory pale, I have no confidence that this process will produce a system that accurately reflects the cost of providing phone service in rural areas and that does not put upward pressure on rural residential phone rates.

The Commission has spent almost as much time as I have been in the Senate trying to come up with a forward-looking cost model that accurately reflects the sunk costs associated with building the Copper Phone network that serves almost 100% of this Nation. I can think of nothing more contradictory than assessing the costs of building and maintaining an actual network using futuristic, hypothetical assumptions about such costs.

Nothing has confirmed my suspicions about the use of a model than the process undertaken by the Commission to adopt one. The algorithms and the inputs have produced wildly variant results, none of which to date seem to even approach reality. In addition, if the costs are evaluated on a study-area rather than a wire-center basis, the model will grossly understate the cost of providing service to certain wire centers, which would force many of the large telephone companies serving those areas to continue to cross-subsidize among consumers throughout a State.

I must also take exception with the Commission's plan to adopt principles on Thursday espoused by the Joint board. Two months ago, seventeen of my colleagues and I sent a letter to the Commission expressing our concerns about several of the Joint Board's recommendations. We have yet to receive a written response. I am disappointed that the Commission has chosen to move ahead on adopting the principles embraced by the Joint Board before addressing our concerns.

Mr. Chairman, the high-cost portion of Universal Service Reform should have been completed by the statutory deadline of May 8, 1997. I am extremely disappointed with the manner in which the Commission has handled the high-cost pro-

ceeding, and I do not believe that the Congress in general, and this Committee in particular, has been properly consulted, nor has its advice been properly heeded.

Congress did not pass the Telecommunications Act of 1996 to increase rural residential phone rates. The manner in which the Commission handles the high-cost portion of Universal Service Reform will have a direct impact on rural residential rates. The Commission has an obligation to prevent such rate increases and, as a result, not to reduce the current level of explicit *and* implicit universal service support. I hope that we have the opportunity to address these important issues, as well as other issues affecting the Telecommunications Industry, during this hearing.

Senator HOLLINGS [presiding]. The Chairman said Senator Wyden is next.

STATEMENT OF HON. RON WYDEN,
U.S. SENATOR FROM OREGON

Senator WYDEN. Thank you very much, Senator Hollings.

I would like to pick up first on this issue of merger policy raised by Chairman McCain. I happen to believe that consumers are getting shellacked by some of these big mergers while we have got three agencies—the FCC, the FTC, and Justice—sort of tossing the ball back and forth. Now, I want to see us deal with private markets through private means on these major issues, like getting advanced telecommunications services to rural areas and high speed Internet access.

But I think we are going to need some merger accountability with these three agencies, and I would like to hear first your thoughts on how we get it, and not just have three agencies tossing the ball back and forth. Mr. Powell, I know you have had some thoughts on it.

Mr. POWELL. It is a good question. Just to correct one misconception, it is either the FTC or the Antitrust Division. They never review the same merger.

Senator WYDEN. I understand that, but potentially three. We have three agencies that are in this debate.

Mr. POWELL. Agreed. I do not know that I would accept the premise that the ball is tossed. Each of them do conduct their full-blown merger reviews to the best of their judgments and they may not have reached conclusions that I would agree with or you would agree with, but they nonetheless are executing the conditions and laws that they are empowered to. I am not so sure we defer or have passed off, one way or the other, the responsibilities.

I do think that you raise a very, very important question about the effectiveness of antitrust regimes as tested by the new developments in this kind of high tech, innovation-driven economy. I think the issues that are being pursued at the Antitrust Division in the context of Microsoft and other cases are teeing up whether we as a Nation believe that those are viable vehicles for that. I suspect if they are not that the Congress will have a need or a responsibility to reevaluate the underlying regimes that we tender if they are not happy with the results that are produced.

I also continue, just as one trained in antitrust a bit, that I do not always accept just on its face that big equals bad. I also think that there have been some extraordinary benefits that have accrued the consumers as a result of some consolidations. But I would not be so naive as to suggest that I think that anyone should

be able to combine who wants to and as long as they are making money it is good for the economy.

Senator WYDEN. No one I know is suggesting that big is always bad. It is just that when we hear so often from some of the big players in communications that they do not have the money for communications services in rural areas and then we hear about a big merger, it seems to me we ought to at least have a sensible policy to ensure some accountability.

As I see it, we do have three agencies in this debate and we have got a lot of folks falling between the cracks. For those of us who want to see private markets work, it seems to me that government has got to get its act together on merger policy and it ought to do it sooner rather than later.

Mr. Kennard, I want to ask you about one question that I am going to raise when we mark up the telecommunications—excuse me, the Communications Act reauthorization. I have felt for a long time that negative politics is doing more to disgust and alienate citizens from the political process than just about anything else. These TV commercials where people paint their opponent as sinister and unsavory and often unshaven kind of sorts just turn people off.

I think there is something we can do about it and I want to ask your opinion. Under the Act, broadcasters are required to sell commercial air time to candidates for Federal office at the lowest available price. It is known as the lowest unit broadcast rate. I have introduced legislation that would say that to take advantage of this subsidy the candidate, if they are going to say things about their opponent, should do it themselves. They should be personally accountable. They could say anything they wanted in their campaign, but in order to get the subsidy that is offered under the Act that we are reauthorizing they would have to actually make the comments about their opponent themselves, a sort of stand by your ad kind of policy, rather than just have some anonymous announcer do it.

What would be your reaction to that?

Mr. KENNARD. Well, I think it is a very interesting proposal. I certainly share your concern and the concerns of Chairman McCain that we can do a lot better in this country in reforming our campaign finance laws. One of the things I learned early on in this job, though, is that reforming those laws is certainly the prerogative of the U.S. Congress.

So I would certainly endorse your efforts in this area and would look forward to helping in any way I can.

Senator WYDEN. I would be interested if any of the other Commissioners have an opinion on it. There is a First Amendment right to free speech, but I do not know of any constitutional right to discounted time in the media. I think that this may well be a way that we could jump-start this campaign finance reform effort and do it in a way that responds to what I think most alienates people from the political process, and that is negative ads.

Do any of you other Commissioners want to add a comment to it?

[No response.]

Senator WYDEN. All right. We appreciate your endorsement, Mr. Chairman. We look forward to working with you.

Thank you, Mr. Chairman.

The CHAIRMAN [presiding]. Senator Wyden, only the yellow light is on. It is the first time in the history of your participation in this committee. [Laughter.]

Senator Hutchison.

STATEMENT OF HON. KAY BAILEY HUTCHISON, U.S. SENATOR FROM TEXAS

Senator HUTCHISON. Thank you, Mr. Chairman.

I want to go back to the E-rate issue because I think that is the key part of our oversight responsibility here. I am still getting angry letters and phone calls from constituents about how this program was implemented: the increased phone bills with no appreciable enhancement in service.

Now I am understanding that you are going to nearly double the amount that you have been spending on the universal access, nearly a billion dollar increase from this year, all of which leaves still unresolved Congress' mandate to have better universal service issues and support for the rural and high-cost programs to be fairly distributed. These funds will be raised by boosting subsidies paid by local, long distance, and wireless phone companies, and of course they are yet to decide how much they are going to pass to consumers, but you can bet that their altruism will have limits.

I want to say that some of the estimates are that these charges could be as much as 20 percent of a phone bill. I do not doubt that there is a benefit to wiring our classrooms and libraries today. It is clear that we must afford our children throughout our country the opportunity to become computer proficient. But to require captive consumers to pay the full cost does not pass the fairness test.

If it is our goal to make computer and Internet access an educational goal, it should be viewed as an education issue, not as a telecommunications entitlement paid for by taxes crafted by the FCC. At the very least, I do not think these fees should be increased until we have had a chance to look at how the money that has been assessed so far has been spent and what are the benefits, whether there are better alternatives, and if you have looked into better alternatives than just reaching into the customers' pocketbook for this program.

For instance, what private sector incentives could be created to expand Internet access for schools? What about States' educational responsibilities? It is my understanding that you are now going into capital expenditures that could be more of the State responsibility.

What would happen if there were no Federal program? Many commentators have said that markets themselves will bring about more affordable products and services, making subsidies unnecessary. Has that been also discussed?

My question is, it seems like you are taxing first and providing service requirements later, and I want to know if you are going beyond your authority, which I think you are, but what is your opinion of that, and if you have looked at other avenues to pay for these

costs instead of letting the customer that is captive pay them completely?

Thank you.

Mr. KENNARD. Thank you, Senator. First of all to your point about telephone rates, the average American in this country is paying less on their phone bill today than 2 years ago. Those figures are documented in my written statement. They differ somewhat with the figures that I heard from Senator McCain and I am very interested in studying the figures that he presented today.

But from everything that we have gathered, phone bills are going down. Interstate long distance bills are plummeting. For the most part, local phone bills are remaining steady, thanks to the vigilance of our colleagues at the State commissions.

In the interstate jurisdiction, we have decreased the costs of long distance companies by over $3 billion in the last 2 years. The E-rate is very affordable, given that scenario. I do not know where you got the 20 percent figure. It differs somewhat from the figures that we have. We believe that the worst case scenario is that a consumer in America today would pay on average no more than 33 cents for the E-rate program, which is quite affordable, particularly given the public benefits.

You talked about private sector initiatives. There are some wonderful private sector initiatives out there. We have seen Net Days spring up around the country. There are wonderful programs, and we have seen some good participation by the private sector. But it is my view that we cannot rely on those alone, because if we do a lot of kids are going to fall through the safety net.

One of the great things about the E-rate program is that the money is targeted to our poorest schools, our most rural schools. Of the $1.7 billion spent last year, 80 percent of that money went to the poorest schools in America, kids who are struggling just to be able to buy a school lunch. Thanks to this program, now many of those kids have technology in their classrooms.

So my belief is that the program works, that it is efficient and affordable, and it is consistent with the law.

Senator HUTCHISON. Well, Mr. Chairman, I would just say that if we lower the rates and increase taxes—and if you look at the State taxes and the various other Federal taxes that are on a phone bill, if we continue to increase those I think the benefits that are coming from deregulation or more competition are going to be diminished.

I also believe that a stealth tax that cannot really be pinned on anyone is always the easiest kind of tax to put forward, but it nevertheless is a tax. I think we have got to be fair and I think there needs to be a real sound study about what of these responsibilities are Federal and what should be borne by telephone consumers and what are State responsibilities. If you are going to have lower prices, should not that benefit actually be given to the consumers?

So I just, I am very concerned about the creeping taxes, and people have noticed it. I see that number of taxes on my phone bill increase it seems like every month. That is an exaggeration, I am sure, but I certainly have seen a number of increases in both Federal and State taxes that are beginning to encroach on the "savings" from deregulation.

Would any of the other Commissioners wish to respond to the impending increase of the tax that appears to be in the offing? Mr. Furchtgott-Roth?

Mr. FURCHTGOTT-ROTH. Senator, one of the issues that you raise is our legal authority. I think the Commission does have legal authority for telecommunications services and even advanced telecommunications services. Those represent, I believe, a minority of the funds that have been committed. The majority of the funds are for capital equipment, which I think is difficult to read into the statute.

I testified on this matter before the House Ways and Means Committee last year.

Senator HUTCHISON. Well, I would just say that I think in the past where you have had pennies on a phone bill take up the slack for rural service it is something that we have all agreed is a good thing. But I think that we are going another step with the E-rate and I am not sure that it is a fair allocation of responsibility on the consumer and that it is a fair allocation of the money when it comes from the Federal level as opposed to the State level.

Yes, Ms. Ness.

Ms. NESS. Senator, I would add that these are discounts for services. That means that the schools and the libraries have to contribute based on their ability to do so towards the cost of the service.

In addition, this goes to libraries, which have benefited the entire community. In many rural areas the library is the place where the community gathers, and this has provided an enormous benefit to those jurisdictions. It has provided an enormous benefit to be able to have distance learning. Where schools have not been able to provide courses for their students, now they can do so by aggregating the students together through distance learning.

Each school must provide a technology plan in order to be able to get funding for the service. Those are approved by the States. The States are very engaged in determining whether or not this is for an academic purpose.

We have tried to instill competition into the marketplace, again by having discounts, by putting the bids up on the Internet, so that many players can compete to provide the lowest cost to provide those services.

Senator HUTCHISON. I do not disagree—my time is up. I do not disagree that it is a worthy cause. I just would ask the two questions to be considered by the FCC: Is it a fair burden for the telephone consumer to pay the full cost; and have you looked at other ways to provide this service that does not fall just on the consumer?

But my time is up. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Rockefeller.

STATEMENT OF HON. JOHN D. ROCKEFELLER IV, U.S. SENATOR FROM WEST VIRGINIA

Senator ROCKEFELLER. Thank you, Mr. Chairman.

I do not have a lot of questions. I think it is important—and Commissioner Kennard knows this; I have often said this to him—I think he has one of the three most interesting jobs in Wash-

ington, and I think the Commissioners have one of the three most difficult jobs in Washington, because we passed the Telecommunications Act in 1996. Of course as soon as we passed the Telecommunications Act there was the assumption that it was going to start working by 3 p.m. the next day, and there was this little matter of cost models, which are incredibly important for actually determining how universal service is going to work in the future, and you want to get it right and that takes time.

There is the small and incidental factor that a whole lot of local companies or RBOC's sued. That does not exactly speed up your timetables insofar as I am aware. GTE still is, but a number of the others have dropped out. They have stopped suing, and I think that could be helpful.

But I frankly am impressed by the progress that you have made on a whole series of fronts, and I think that the E-rate obviously is one subject and something I feel very strongly about. But on the other hand, I think you are also moving carefully and deliberately toward developing the right kinds of policies that reach out to all Americans, and that is a very hard thing to do.

It has been raised by some that the universal service concept, which predates Social Security in fact, is a tax. Of course it is not a tax. It is simply an obligation. It is like, as I have said often in this committee room before, West Virginia has no oceans that I am aware of within its borders, but we do pay taxes for the Coast Guard, and that is because it is in the national interest. West Virginia is not a big State, but our interstates are four lanes like they are in Pennsylvania and Ohio. They are not two lanes based upon the size of the State.

So in other words, we have an obligation in this country. The concept of universal service is actually very well named because that is what it is, is to make sure that all children, starting with the poorest, and that all areas, whether it is broadband or technology or whatever it is, that they are eventually going to get a fair and comparable service at the same rates that everybody else gets. That is what universal is all about.

So I have never really understood that universal service is a tax. And particularly I have never understood it—and maybe, Chairman Kennard, you could repeat once again what you said before—that it is going up. In fact, it is going down, as you indicated, because of the local access charges. I think that is terribly important to repeat and to repeat and to repeat until people really do hear it, that the cost of all of this is going down for Americans, not up but down, and that is because of the local access charge.

Could you explain that? Then I have one more question.

Mr. KENNARD. Certainly. The FCC through a series of actions over the last few years has consistently reduced the access charges, the charges that the long distance companies pay to connect and terminate calls on the local network. Over the past couple of years those charges have decreased by about $3 billion, of course far in excess of the amount of the E-rate.

But even putting that aside, this is a declining cost industry. Costs are continuing to go down for carriers. So again, this is a very affordable program. Worst case scenario, it is about the cost of a postage stamp a month for the average American. I believe

that is a small price to pay in order to ensure that our next generation of kids have access to the technology they need to compete in a global information age economy.

Senator ROCKEFELLER. You indicated in your statement that the telecommunications industry has grown by about $140 billion, and I forget what timetable you put on it, but it is exponential. I think very shortly or perhaps right now, if you take the health care industry and the telecommunications industry and combine them you have one quarter of the entire gross domestic product. I mean, it is a gigantic industry, growing faster and faster and faster.

Does this not have some consequence upon a telecommunications company being able to do right, therefore, by something called universal service?

Mr. KENNARD. I absolutely agree, and I think that that includes not only the E-rate program but all of universal service. One of the reasons why we have a telecommunications system in America which is the envy of the rest of the world is because of universal service. It has worked and it has worked well in our country.

It is going to work better, because as the economy expands—and actually about a quarter of our economic expansion is attributed to communications and information about a half trillion dollars in revenue a year and growing. As that pie expands, as people find more efficient ways to provide service to rural America, universal service will thrive and be even more affordable as we move into the next century.

Senator ROCKEFELLER. Let me just say one more thing. We were here last year battling and battling and battling, and it was not a particularly pleasant hearing. But one of the things that I thought was very good that came out of that hearing was that feelings and thoughts were put out on the table.

Chairman McCain, I think very rightly, called for a GAO study and a report, in other words, on what was going on and if there was waste, fraud or abuse, and what about asbestos and all kinds of other things. The results were very clear and the answers were very clear, and it seems to me that we cleared up a lot of the problems that were confronting us as Commerce Committee Members last year because they were put to bed not so much by us, but by third party observers with real neutrality and credentials, for example the GAO.

Therefore, I think there has been a lot of progress. My feeling about the FCC Commissioners, all five of you, is that I do not know how you put up with the pressure that is on you. I do not know how you master the details for what it is you have to do. I do not know how you construct your economic models. But it seems to me that your direction is forward and proper and strong, and essentially that the deal that was made in the Telecommunications Deregulation Act was that, yes, we will do deregulation and yes, you are going to do right by universal service to provide certain services to all Americans at comparable prices, is in fact now beginning to work.

I thank the—

Senator DORGAN. Thank me. [Laughter.]

Senator ROCKEFELLER [presiding]. Senator Dorgan.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. I am the only one left to thank. The Chairman is on his way back. We have a vote occurring. But let me ask my questions and then I will go vote, and I am sure he will return by the time I am ready to leave.

Let me just in shorthand try to get to this point that the Senator from Texas was making. She was making the point that there was an increased tax somewhere. In fact, as I see it you have moved for access charge reductions that actually exceed the additional charges that occur, explicit charges on bills. So there is no new net imposed charge here.

To the extent that those who received access charge reductions are, and should be, moving those cost reductions through to the customers and to the extent that others are then increasing a charge to the customers. The net effect should be not a new tax at all, but in fact probably a slightly lower telecommunications bill. Is that accurate, Mr. Kennard?

Mr. KENNARD. Yes, it is.

Senator DORGAN. I just want to make that point, because some people just take one piece and say, "Gee, look at this piece." But you cannot look at just that piece. You have got to look at the access charge reductions that you enforced.

Let me just talk for a couple minutes about two things—No. 1, advanced telecommunications services. Before I do that, let me say that the issue of universal service is critically important to me. Senator Brownback and others made the point, those of us in rural America must rely on you to make the right choices and the right decisions. Some wrong decisions were made in many instances by the board that preceded you. You have done some U-turns, for which I am most appreciative.

Four of the five of you are fairly new to this board. You inherited a huge set of responsibilities. I am not one who is critical. I think you have a tough job. I want to help you through that to get to the right choices on universal service.

I am especially concerned about broadband and advanced telecommunications services. You have put out an interim report saying you by and large think things are going fine. I would say that I think unless there is some intervention, unless you connect advanced telecommunications services buildout to universal service, we will have a Nation of haves and have-nots with respect to broadband capabilities and advanced services.

Can I ask whoever would like to respond to that, because a group of us have just written you a letter about that expressing our concern and expressing our hope to work with you to make sure the right thing happens with advanced services buildout.

Mr. KENNARD. Certainly. First of all, Senator, let me thank you for your guidance and your leadership on all of the universal service issues. You have really been a great help to the Commission, as evidenced by your recent letter that you sent us along with Senator Daschle and other Members of the Committee. You have provided us with some very good suggestions on how we can ensure that rural America enjoys the advanced services we want all America to have.

When we issued the report to Congress under section 706 which deals with advanced services, I did not mean to suggest that everything is going swimmingly. What I meant to suggest when I voted for that report is that it is a little too early to tell. We have seen in some rural communities some of the rural telcos in particular have been rolling out advanced services at a good clip and some very small communities in America are enjoying them. Others are not.

But we are very early on in this very nascent advanced services rollout and it is a little too soon to say it is a failure. It is certainly too soon to say that it is a success. We will monitor it closely. We will certainly adopt many of the recommendations that you have proffered in your letter, and I hope that moving forward this problem will not be a problem that we are concerned about.

Senator DORGAN. Does anyone else wish to respond to that? Yes, Commissioner Ness.

Ms. NESS. If I may add to the Chairman's statement, you mention in your letter as well the opportunities that might be available to us from satellite and wireless telecommunications to provide broadband services to rural areas. These are particularly attractive, given the cost structures of those industries. So we are doing what we can to ensure that all avenues, that all competitive carriers, can provide access, and in particular focusing on the specific needs of rural areas. That is an area of concern.

I particularly am interested in ensuring that rural areas have access to broadband because this is a great boost to the rural economy. This provides the opportunity for people to remain in their communities, to provide robust services, to provide for new industries. I see this as a great opportunity. I think it is an achievable opportunity, but, as the Chairman said, it is at the very beginning stages of the development of broadband. But we would like to do what we can to ensure that there are no impediments, and specifically focusing on the needs of rural areas.

Senator DORGAN. I have other things to query, but I am told there are only 2 minutes on the vote and I am aging. So I am going to have to move quickly.

One very brief question.

Senator STEVENS [presiding]. You are what?

Senator DORGAN. I am aging, so I do not get to the floor quite as fast as I used to to make these votes.

I will be quick. Commissioner Kennard, I sent you a note. A constituent of mine complained saying that they were driving down the road one day with a young son or daughter in the car and they heard language on broadcast radio they thought was inappropriate. I have had the same experience as a parent. So I wrote you a note asking, what are the standards these days? I guess, what are the words you cannot say on radio, is probably a better way of asking.

Mr. KENNARD. I am not sure it would be appropriate for me to say that here. Senator, I would be happy to meet with you privately and talk about that.

Senator DORGAN. I am not sure I am prepared to—I am not sure I am prepared to hear it. But I do not mean to ask it in an amusing way.

I think a lot of people are concerned, what are the standards, how are they set, how are they enforced. Because I cannot miss this vote, let me leave it at that, but just having raised it on behalf of some constituents, and perhaps—I note Mr. Furchtgott-Roth is nodding as well. It is an issue of some importance and a difficult one.

Thank you very much.

Mr. Chairman, thank you very much.

The CHAIRMAN [presiding]. Thank you very much, Senator Dorgan.

Senator Stevens.

STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Senator STEVENS. Commissioner Ness, what you said about having new industries is a dream that I had for the rural areas of Alaska, to become involved in a lot of things because of the universal service requirements of the Act. But just let me read to you all section 254[a][2]. I am sure you are familiar with it, so everyone will be reminded:

> The Commission shall initiate a single proceeding to implement the recommendations from the joint board required by paragraph 1 and shall complete such proceeding within 15 months after the date of the enactment of the Telecommunications Act of 1996. The rules established by such proceeding shall include a definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for implementation. Thereafter, the Commission shall complete any proceeding to implement subsequent recommendations from any joint board on universal service within 1 year after receiving such recommendations.

Now, have you all complied with that law?

Mr. KENNARD. I believe we have, Senator. We timely initiated a proceeding in May 1997. We convened a Joint Board in order to make specific recommendations to the Commission. That Joint Board under the leadership of Commissioner Ness has come up with a number of very excellent recommendations, a number of which we will be considering at the Commission meeting tomorrow.

The CHAIRMAN. You had a single proceeding and you completed it within 15 months?

Mr. KENNARD. No, clearly not all aspects of that proceeding were set forth, were completed. But we did set—we did complete a specific timetable for implementation, which is also the language.

Senator STEVENS. But you implemented schools and libraries and the concept of the E-rate just overnight. You have done that part of the other section, which I think you have not quite complied with it either, and that is the provisions of [h][1][B][i] with regard to the carriers having an option to offset the obligation of contributions to universal service or reimburse for utilizing the mechanism.

But I do not see where you have complied with the law, and the trouble is that it just seems to me that pet political projects have preceded and gone forward and you have not complied with the basic concept that brought about the enactment of the 1996 Act. It would not have been enacted without the universal service. Everybody knows that. It is still dangling out there, and I am very fearful that we are now in Alaska going to enter the twenty-first cen-

tury still having a portion of the nineteenth century in terms of our communications concepts if you do not finish your job.

How are we going to be assured that rural America is going to have the support and the high-cost areas are going to have the support unless you complete that proceeding that we urged you to have, a single proceeding reaching the conclusion and protecting universal service? Now, when are you going to do that?

Mr. KENNARD. Senator, I certainly understand your impatience and sense of urgency about this. I share it. But we have, I think properly, resisted the urge to come up with a simple solution to universal service that just will not work. In the meantime we have ensured that funding for all rural areas, including the State of Alaska, is secure.

It would be foolhardy for us to adopt some sort of a flash cut and try to restructure a program like universal service that is so important to the Nation and going to be even more important into the next century by adopting some sort of a simple solution that will not work. That is why we have convened the Joint Board, worked very closely with our State colleagues, convened a Rural Task Force, because we want to make sure that when we get an ultimate solution it is going to be one that is sustainable and that will work.

Senator STEVENS. Well, your predecessor had the theory, I believe it is correct to say, that access charge reductions would pay for the schools and libraries. Now, that has obviously not happened. Would you not agree with that?

Mr. KENNARD. Not exactly, Senator, because clearly there have been access reductions that far exceed the amount of the E-rate program. The question is have the long distance carriers passed those savings through to those consumers? Well, we know consumers are enjoying lower long distance rates, so they are enjoying lower rates.

But we also know that some long distance carriers chose to put line items on their bill. That does not mean that bills are going up. All that means is that consumers are seeing charges for universal service that did not appear before.

Senator STEVENS. Well, I was the one that asked the GAO to look into the action of your predecessor in creating three corporations which were entirely outside of the province of the FCC, and that was abandoned. But now it seems to me that what we have done is, what the Commission has done, is concentrated exclusively almost on the concept of the schools and libraries. I do not deny that that was a goal, but there was no time frame on that, but you did it within a year.

But you did not do what we asked you to do within 15 months. Now, it does seem to me that we are getting to the point now where many people in the rural areas are fearful that we are going to lose universal service and the support that is needed, because now you are proceeding again to get another increase, but that increase is going to be dedicated to more schools and libraries.

Let me tell you about one contract awarded in my State. That contract was awarded at a cost of $630,000 over the lowest bid, over the lowest bid. When we inquired, they said cost was not a factor. As a matter of fact, the statement was: Cost, especially costs that are subsidized by 90 percent, should not be the sole or even

primary factor in the consideration of what we are doing in the schools and libraries.

Now, can you justify that statement to me when it is coming out of the universal service fund?

Mr. KENNARD. I am not familiar with the facts of that case. I do know, Senator, that the program was designed carefully to make sure that we would give deference to the State procurement process, so that the FCC would not become a procurement agency for these funds.

We also ensured that, in order to ensure that the money is spent efficiently, that the money be put out for competitive bid based on a technology plan approved by a third party, and with the understanding that the lowest bid is not necessarily going to create the best technology for the schools. So the fact that the lowest bid was not selected does not mean that anything was necessarily wrong.

Senator STEVENS. My time has expired. Let me just make one comment if I can.

A visually impaired constituent of mine wrote to me that he is concerned because he gets directory assistance charges every time he needs a number because he cannot read the phone book. What have you done about that?

Mr. KENNARD. I certainly share your concern about this. In fact, when I heard you were concerned about this I asked my staff to provide you a report on how we can solve this problem. I hope you have had an opportunity to receive that. But in any event, we are certainly working closely with you and your staff to address that issue.

Senator STEVENS. Well, I think it is a universal, not just my staff and Alaska. That is a problem for all unsighted people.

Mr. KENNARD. Oh, of course.

Senator STEVENS. My father was blind, so I am very interested in that subject.

Thank you very much.

The CHAIRMAN. In the interest of—Senator Stevens, perhaps the other Commissioners would like to comment. You raised a very important issue and, with the indulgence of my colleagues, I would like to allow the other Commissioners to comment on your questions that you have asked, beginning with you, Commissioner Ness. Do you have any additional comments to make concerning the line of questions that Senator Stevens has just inaugurated?

Ms. NESS. Senator Stevens has focused in on the importance of Universal Service and the importance of completing our Universal Service proceeding in a timely fashion. And I share your frustration, Senator. It has been one of the more complex issues that we have had to grapple with. We want to ensure that the dollars that go into Universal Service are applied judiciously, and that high-cost areas continue to have affordable, sufficient and reasonably comparable rates. I believe we are doing so as we speak.

There has not been a reduction in the level of funding that has gone into Universal Service for high-cost areas. We are working closely with the States to come up with a regime that will continue to ensure that it is affordable. Most of the implicit subsidies that take place within the telecommunications system are at the State level. So we want to make sure that funds are targeted to the high-

cost areas. Where feasible, using access charge reform, which we are hoping to complete this fall, we will directly target those amounts, identify them, and make them explicit.

These are difficult issues. We do not want to waste the funding, but we do want to make sure that high cost areas continue to receive adequate funding. And we will do that.

Senator STEVENS. My assistant, Ms. Rhodes, tells me that the Universal Service Fund remains at 1.7, but the high-cost fund is going up to 2.25 tomorrow. I mean the Schools and Libraries Fund is going up to 2.25.

Ms. NESS. The $1.7 billion, that is for the rural carriers. What we have done is to continue to provide for the rural carriers separately. They are not subject to access——

Senator STEVENS. It is a flat rate, but you are going up in the others. You are going up on the newest program before you have assured Universal Service.

Ms. NESS. There is no reduction of funding for the high-cost areas. Particularly, the small rural carriers are doing very well. Their funding sources are continuing. Indeed, they are prospering. At least as far as our information goes, there is no reduction in either funding or revenues for small carriers.

What we did not want to do was precipitate a regime that would be inappropriate for the smaller carriers. We want to make sure that any regime that we apply to them works. We recognize that they have very different cost structures, very different needs. We want to make sure that they are sustainable. That is why we have said we are not going to touch them for quite some time, and there will not be anything done unless and until we are assured that it will work for the rural carriers.

So that is the reason why we have not proceeded as aggressively as you would like, as I would like. But we are trying to put together a regime that is sustainable.

The CHAIRMAN. Or in compliance with the law.

It is not a matter of "like," Commissioner Ness, it is a matter of compliance with the law that Senator Stevens and I are trying to get at here.

Commissioner Tristani.

Ms. TRISTANI. Mr. Chairman, as my colleagues have stated, this is an extraordinarily difficult proceeding, the high-cost proceeding. And as I stated earlier, I do want to make sure we get it right.

I come from a State that has high-cost areas. I come from New Mexico. It has a lot of rural carriers. It has a lot of the carriers that we will not be addressing until later. I would not proceed to fully support the E–Rate if I had any kind of misgiving that it would imperil in any way the high-cost funding or the levels of funding that they are receiving.

The CHAIRMAN. Mr. Furchtgott-Roth.

Mr. FURCHTGOTT-ROTH. Thank you, Mr. Chairman and Senator Stevens.

Approximately a year ago, I sent a letter to the Schools and Libraries Corporation, with a set of questions. One of those questions, Senator Stevens, was: How much of the funding for schools and libraries is going to fund programs that were not the low-cost bid? How much is going to support programs that were the low-cost bid?

I received a response, to my dismay, that they have no information on this question, which is precisely the question you just asked, about a specific case in Alaska. Simply told, we do not know. No one knows. Because no one has wanted to find out.

We also have a situation, Senator, where we are proceeding with doubling the size of a program. We have received, it is true, $2.25 billion, approximately, in demand. I have asked the question: To which States have we received this demand? I have gotten back the answer: We do not know.

We are funding a program; we cannot even tabulate where the demand is going. And I am extraordinarily interested to discover today the statistic that, at most, this will cost consumers 33 cents a most.

Now, I am just a poor boy from South Carolina, but let me tell you a little bit of arithmetic that I learned, which is there are about 100 million households in America. Every billion dollars is $10 per household per year; $2.25 billion is over $20 per household per year. Now, 33 cents a month—if we can fund schools and libraries for 33 cents a month per household, I think we ought to fund the entire Federal budget through this program, because that is the most amazing piece of accounting I have ever heard. It is great. [Laughter.]

Senator STEVENS. As the chairman of the appropriations committee, I would like to find that economist. [Laughter.]

Senator STEVENS. That leads me to comment, and I am glad you will let me continue. You all are funding demands. We prioritize demands and fund those we can afford. You are not doing that at all. I have heard tales about one school that was completely rewired, totally rewired, in order that it could be hooked up to the E-Rate. That was not what was in that law at all. You are supposed to make available the services to them and the local school district should have rewired the building. We would have done that, in handling the budget.

If we provide Federal funds, the States and local people must match something. But this is a free ride. The trouble is we are going downhill now, and it is picking up momentum, and it is taking so much money out of this fund that we think it will kill the Universal Service Fund before we are through. You are taxing the users and you are allocating the money that is coming in without any idea of prioritizing the demand that is coming to you.

Now, I do not know who is running that School Foundation, or Corporation, or whatever you want to call it. But we did not create it. I understand you are going to try to federalize this system now, to the point that you are legislating tomorrow. I am going to watch that very carefully. I have watched the GAO to watch it very carefully. I do not want to see you again assume authority that you do not have.

Mr. Chairman, this is something that we must control. I support the concept of these schools and libraries and health facilities being hooked up. But when you go in and pay costs that the local district and local school area should pay in order to justify the services available under the Telecommunications Act, I think it is a waste of money of the users, of the ratepayers, of the system.

The CHAIRMAN. Well, as you know, Senator Stevens, an empire was set up once before that the GAO declared illegal, which we are paying people $250,000 a year to serve on some board that was created. So I would argue that it certainly does bear watching.

Mr. Furchtgott-Roth, are you finished with your statement?

Mr. FURCHTGOTT-ROTH. Yes, sir.

The CHAIRMAN. Commissioner Powell.

Mr. POWELL. Senator, first of all, to give just a direct answer to Senator Stevens' question. From my interpretation, no, I do not think we met that stated statutory requirement. I do not think that we conducted a single proceeding, and we certainly did not finish it in 15 months.

The CHAIRMAN. You say you have not conducted a single proceeding?

Mr. POWELL. We have conducted proceedings, but I would suggest that, as I interpret the law, I do not think we did what it envisioned.

What I would say is I would focus also intensely on that first phrase, "a single proceeding." I will describe to Congress an understanding of how critical I think that was. Universal Service is a complex—everyone has alluded to it—a complex, comprehensive, very difficult to manage program, with a whole lot of money sloshing around into it. There are many difficult judgments and tradeoffs and complexities in allocating and making determinations as to how it should be collected and distributed.

I think that if this program does not work out well, part of the blame will be a number of single, separated proceedings that make separate and distinct judgments that are difficult to sort of calibrate at the end of the day. There is an incongruence between how much progress there has been in the S&L and the other accounts. I will not be one of those who contribute to what the explanations of those are, and I certainly support the program. But what worries me is Congress did something, first and foremost, in the 1996 Act, in which it said: "Preserve and advance, but make sure you do the things that will facilitate competition—competition for your constituents as well as those in the city of New York."

The part of that exercise that is most critical lays in front of us and not behind us. I am always astonished when people say: "Where is competition?" I do not find it to be that complex where it is. We continue to have distortions in the system that we have yet to correct. Until we do, I think it continues to be naive to suggest that the grandest part of the Act will be achieved in a manner that preserves and protects the concerns that you have.

The complexity of doing it at bites of the apple and not comprehensively, I think, are part of what makes it cacophonous and virtually impossible at some level to do. Each stage is a little more money. Another billion for schools and libraries. When we do high-cost, there will be more money. Then we will get to the parts that I think are most critical—access reform. At what point will political will—our will or citizens' will to bear the price of rationalization expire?

I hope it does not expire before we get to the part that I believe is absolutely essential to any of the other goals of the Act being achieved. I think that is the central criticism I have.

The CHAIRMAN. What needs to be done?

Mr. POWELL. What needs to be done, we are on track to do, though it is late in coming. I think the central, most important proceeding in this whole exercise is an integrated high-cost access reform regime. The high-cost part, in order to guarantee the concerns that Senator Stevens raises, and the access reform part because the incentives are distorted.

I also want to make sure that the citizens of Alaska get a competitive, fighting chance. I know that will not happen unless we rationalize the cost relationships among consumers in this regard. It has to be done very soon. We have publicly stated we are going to commit to doing it by September. I only hope to God we do. But we are going to get to a point where a lot of what we had hoped for will not be achievable if we do not.

I cannot go back and change the course that brought us here, though.

Senator STEVENS. Thank you. I am glad you are where you are, because I certainly agree with you. But my greatest worry is that by the time we get this decision, the bulk of the service will be provided by people who do not contribute to the fund at all.

Thank you.

The CHAIRMAN. Senator Stevens, there is nothing anyone likes better than the sound of their own voice. On May 1, 1997, Senator Burns and I wrote a letter to the FCC:

> We have previously cautioned you that any attempt by the Commission to implement one portion of Universal Service funding without coherently and comprehensively implementing all parts of it will not be economically rational. It will unavoidably discriminate against some companies and subscribers and will therefore fail to comply with the clear and unmistakable terms of the statute.

That was a letter sent to Commissioner Hundt. I guess it shows the utility of sending letters in this business.

Chairman Kennard, if you did have some response, I think it would be fair to let you make that.

Mr. KENNARD. Yes, I appreciate that, Mr. Chairman.

First of all, I would like to introduce a note of optimism into this discussion. Because I think that we are—as I sat here and listened to the discussion, I was thinking, what would we be talking about today if the Commission had decided to rush ahead with Universal Service, discarding the cost models, rushing past our State colleagues who were very, very concerned about ensuring that they had input into this process, if we had literally blown them off, not convened a Joint Board, not done the things that are necessary in order to form a national consensus around these important issues of Universal Service and access reform.

We would be having a different discussion, but I think it would be every bit as difficult and negative. Because we would have rushed into a Universal Service access reform plan before we were ready to do it. We would have tried to come up with simple, easy solutions, which would have been time bombs in the future. None of us would be sitting here today, if we had done the alternative, with any degree of confidence that we had put Universal Service on a firm footing for the next century.

So, I am not here to apologize for the fact that we have tried to move cautiously and in a way that develops a comprehensive

record, reached out to a lot of people in the industry and in the States, in order to do what I think is most prudent in order to solve this problem. In the meantime, I think it is really important to note that the companies that are receiving Universal Service support are doing very, very well today in this country. Their rates or return are higher than they have ever been. They are continuing to provide Universal Service subsidy support to consumers in rural areas. The Lifeline Program is healthy and it is better than it has ever been.

So, yes, we have not come up with a consolidated solution on access charge and Universal Service reform. We will. We are on track to do it. We are doing it in a way that will, in my view, build a broad consensus for an ultimate solution we can all be proud of.

The CHAIRMAN. Senator Breaux.

Senator BREAUX. I want to make sure the Chairman has finished his line of questioning. I do not want to step on your toes at this critical point in our legislative process. I do not have much in there; I want to keep what I got, just a little bit. [Laughter.]

Senator STEVENS. This all started back when we started a rate integration resolution in the seventies, to require the integration of Alaska and Hawaii into the overall interstate rate pool. Literally, everything started flowing from that. But I have a deep and abiding involvement here, and I do thank you for your courtesy.

Senator BREAUX. Thank you.

I am going to change the subject for just a moment. I guess, Mr. Chairman, maybe I will direct this to you, and anybody else can chime in. I want to talk about advanced telecommunications capability data transmission in particular. I remember when we were debating the 1995–96 Act that we did not get into a lot of discussion on the regulation or deregulation of data transmission—for instance, advanced capability communication ability. We did have a section 706, which you all are very familiar with, that was in the statute. That said we should be encouraging the deployment of advanced telecommunications capability. We said that the Commission shall make some inquiries to basically determine whether the advanced telecommunications capability is being deployed in a reasonable and timely fashion and, if not, take immediate steps to try and encourage it.

It seems to me that in the process of making some of those determinations in the section 706 proceedings that the question of whether there is a monopoly out there in data transmission or not was considered by the Commission. It seems that what you all have said in this area is that you believe—and I am quoting now from the proceedings—that it is premature to conclude that there will not be competition in the consumer market for broadband. The preconditions for monopoly appear absent. Today, no competitors have a large, embedded base of paying residential consumers, and the record does not indicate that a consumer market is inherently a natural monopoly.

Now, the question that I need some discussion on: If we conclude that data transmission, for instance, is not in a monopolistic situation in this country, it would seem to me that in the absence of specific authority to regulate cross-boundary transmission of data is not present in the Act. Therefore, my question, I guess, Mr. Chair-

man, is this: Is it free and open to provide data services across borders now, across the LATA's? If it is not, that would infer to me that it is being regulated. If in fact it is being regulated, what is the authority? I find none in the statute.

I know that we do not take the position that if it is not prohibited, then we regulate it. You have to have some authority to regulate something, I think, before we regulate it. But just do not regulate something if there is no authority to do so in the absence of a monopoly, which apparently has been concluded by the Commission. So, you understand what I am trying to get to. Can you comment on that?

Mr. KENNARD. Yes, I believe I understand the question. I think you have to parse carefully what the Commission determined in that 706 order. You have to make a distinction between the services, the advanced services, themselves and the facilities over which they are provided. Clearly, advanced services today in America are being provided over, for the most part, essential facilities that are still controlled by providers who have monopoly power, the last mile into the home. That is still a monopoly service—only one provider, only one wire into the home, providing advanced services, at least on the telco side.

So the Commission has been careful, I believe, in its orders——

Senator BREAUX. Just on that point, how does that statement jibe, if you will, with the statement that the record does not indicate that the consumer market is inherently a natural monopoly? Is that not contradictory to what you just said?

Mr. KENNARD. Well, today, in advanced services, it is a very nascent market. There are less than a million DSL subscribers, less than a million cable modem subscribers in the country. Nobody has a monopoly in the provision of those services. But people do have a monopoly in the facilities over which they are provided. That is the distinction that I am trying to draw. So we certainly have authority to control access to that essential facility, that copper wire.

We have not regulated the service itself. I think that we have been careful to say very clearly that we are not interested in regulating the provision of the service, but only at the whole level, the way people access the essential facility to provide it.

Senator BREAUX. Well, can the RBOC's provide data across the LATA's or not?

Mr. KENNARD. No. Except in very narrow circumstances.

Senator BREAUX. What is the authority in the Act that prohibits them from doing that? I do not think we discussed this in the Act, to tell you the truth. We talked about voice transmissions. The only thing I can find that we did on advanced communication capability data transmission is to tell the FCC to take a look at it.

Mr. KENNARD. The FCC did take a look at the issue you raised, whether we could, in effect, give broad-scale inter-LATA relief to RBOC's for data alone. Almost a year ago, in August of last year, the Commission determined unanimously that the statute did not give us authority to, in effect, deregulate the provision of inter-LATA advanced services. And that was based on our best reading of section 271 of the Act.

Senator BREAUX. Well, it would seem to me that you did not have authority to deregulate it, but you never had the authority to regu-

late it in the first place. Do the judicial decisions regulate data transmission?

Mr. KENNARD. Well, in many cases—I would say in virtually all cases—these are offered on an integrated basis. Now, we have proposed a pathway for the Regional Bell Operating Companies to provide these services, essentially in a deregulated fashion, if they are willing to put those data services in a separate subsidiary. Then they could, and should be, deregulated. But as long as they want to offer it on an integrated basis, they are subject to section 271 of the Act.

Senator BREAUX. My concern is I do not know how we proceed to deregulate something without the authority to regulate it in the first place. You talk about we have not deregulated, but I do not know where the authority to regulate it comes from in the first place. It seems to me that the court decision did not talk about data transmission, and nothing in the Act talks about deregulating it or regulating it. I just do not know how we have the authority to say you cannot do that, because we never addressed that issue.

Mr. KENNARD. Well, we looked at the Act when this question arose, and it was fairly clear to us that the definition of telecom services under the Act encompasses both voice and data. Absent an explicit congressional directive to the contrary, we have to enforce the Act as it is written.

Senator BREAUX. What else does it include that we did not spell out? Are there a whole bunch of other services out there that probably can be lumped into that, too, that we never talked about?

Mr. KENNARD. I do not think it is a long list, but I would be happy to talk to you about that at some point.

Senator BREAUX. Any other commissioners have anything to add to my question?

[No response.]

Senator BREAUX. Everybody is in agreement with the Chairman on that?

[No response.]

Senator BREAUX. I take it by your absence of saying something is regulated, we can assume the answer is yes?

Mr. FURCHTGOTT-ROTH. Senator, if I may just simply confess my ignorance. I am not quite sure I follow the question.

Senator BREAUX. Maybe it is the ignorance of the questioner.

Mr. FURCHTGOTT-ROTH. No, no, no. It is a complicated question. But I think the Chairman did raise a good point, that section 271 addresses telecom services, and we are sort of bound by the language of the Act.

Senator BREAUX. OK.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Snowe.

Senator SNOWE. Thank you, Mr. Chairman.

I want to welcome the chairman and the members of the Commission.

First, I would like to ask a question that has had a particular impact in my State, and perhaps other States as well. It is the issue of the area code. I think, as you know, Mr. Chairman, and members of the Commission, that the State's Public Utilities Commission has asked to have delegation authority to undertake the

determination on how to use the existing area code as opposed to dividing up the State and having another area code. As you know, they have been ordered to do so, although we did understand today that the North American Numbering Plan Administrator has pushed off the date from July 1999 to the year 2001.

But, nevertheless, I think that it is important for the State's Public Utilities Commission to be able to have the ability and the authority to administer their own plan with respect to the area code. I think it is totally unnecessary to divide the State up into another area code. It is a rural State. The fact is, they still have enough under the existing area code that represents five times Maine's population. So I think it is unnecessary in terms of the economic costs, the social implications, to require a new area code in the State of Maine.

When could the State's PUC expect a decision from the Commission with respect to having this additional authority?

Mr. KENNARD. We have received a petition from the State of Maine. In actuality, before the petition was filed, I met with the chairman of the Maine Public Utility Commission, Tom Welsh, who, by the way, is an extraordinarily talented man. You are lucky to have him. We discussed how we could give the State more flexibility to address this issue. I anticipate that that decision will come out in a matter of probably a couple of months.

Now, in the meantime, at tomorrow's meeting of the full Commission, we intend to address this problem. The fundamental problem is, as a country, we are running out of numbers. We will hopefully address this problem at tomorrow's meeting by coming up with new ways to allocate numbers so that we can conserve them.

Senator SNOWE. Are other States facing a similar problem? I think it is important for States to have the flexibility, because it does have an impact. I think on smaller States most especially, because of the cost to small businesses and also the social impact. I think that Maine's PUC certainly has demonstrated that it would fulfill its obligations in developing a conservation plan. But also I think there is the ability to continue to use the existing area code without imposing this whole new system and another area code in the State.

Mr. KENNARD. We are seeing this problem crop up in States around the country. My own personal view on this, and I have conveyed it to my colleagues in the States, is that these matters are intensely local. They tend to be intensely emotional. We at the Federal level should be delegating as much authority to the local State commissions to deal with this, because they are more familiar with the issues locally than we are, provided that none of the solutions frustrate our Federal goals of administering our Act and promoting competition. And we will continue to do that.

Senator SNOWE. Have other States made similar requests?

Mr. KENNARD. Yes. We have had discussions and requests from the State of Pennsylvania. I think California has a request in. It is a problem in a number of States.

Senator SNOWE. Well, I would urge the Commission to consider the flexibility involved. I would hope that that would be possible.

On the other issue of the E-rate, and I know it has already been mentioned—first of all, I want to commend you, Mr. Chairman, for

urging full funding of the E-Rate. I hope the full Commission—I know you will be considering that issue tomorrow—will support it. I always find it a little bit amazing and somewhat ironic that the E-Rate is challenged, given the global economy that we live in today, that 6 out of 10 jobs require technological proficiency, and even more so in the future.

I think about last year's overwhelming support in Congress for an increase in the number of H–1B visas that would be made available to bring high-tech workers into this country because there are 190,000 jobs that are not able to be filled by companies across the country because we do not have the skills necessary in our workers for technology. So I cannot think of anything more important than ensuring that our school systems and libraries all across the country have access to the Internet, that they are wired, that individual classrooms are wired.

Only 51 percent of individual classrooms in public schools are actually connected to the Internet in this high-tech age. And so I see the need ever more. As I go through schools in my State and as I was visiting with a technical college in Maine recently, I can only tell you one thing—it is learning the skills that are necessary to fill the jobs that are going to be out there.

In fact, we had a hearing yesterday on the small business committee, talking about the number of unfilled jobs because the workers do not have the technology skills. So I see the E-Rate as becoming increasingly important to the future of this country and to the future of the workforce.

Mr. Kennard, can you tell us, from your perspective—and any members of the Commission—about the impact that the E-Rate has had from what you can see, in terms of the applications?

Mr. KENNARD. It has been tremendously positive. I know that not only from the statistics that I have seen, but also anecdotally. I have visited many schools in the country—inner-city schools rural schools—where literally you see kids' lives changed by their ability to get access to technology. I have seen this happen.

In the year that this program has been in effect, we have been able to improve the lives of about 38 million children, 80,000 schools and libraries around the country, and wired over 600,000 classrooms. Those are very tangible benefits. And those benefits will pay dividends for years and years to come in our country. So I agree with you.

Senator SNOWE. Is it true that 65 percent of rural schools and libraries that applied for E-Rate funding for this year are in the 70-percent discount level? In other words, that is demonstrating a tremendous need?

Mr. KENNARD. I cannot confirm that percentage, Senator, but I do know that one of the reasons why full funding is important is to reach the large proportion of rural schools that tend to be in that 70-percent band.

Senator SNOWE. So the $2.25 billion is not only necessary to meet the existing demand for the program, but also the long-term needs of our Nation?

Mr. KENNARD. Absolutely.

Senator SNOWE. How many applications can we expect for this coming year?

Mr. KENNARD. Well, we have received this year about 30,000 applications, requesting $2.4 billion in funding. We do not fund to demand. I wanted to just correct the record on that. There is a cap of $2.25 billion. So this year, even at full funding, we will have to turn away a lot of applicants and a lot of schools.

Senator SNOWE. What kinds of requests are they making?

Mr. KENNARD. Requests for a range of services; primarily the ability to wire the classrooms to the Internet. That is the particular need of the poorest schools. Internet access. Basic telecommunications services. All manner of E-mail applications.

Senator SNOWE. I would hope that the full funding is provided. I see it as a tremendous need in this country. Technological illiteracy is having an impact on companies in filling their positions. We need that. When you think about Internet access among lower-income, high-minority schools, it is even worse. Only 39 percent of the classrooms in low-income schools have this access, and only 37 percent of classrooms with minority populations of 50 percent or more.

So I would hope that we could get support for the full funding, and recognize that wiring classrooms and making sure that our classrooms have the necessary technology to meet the needs of the future—not only for themselves personally and professionally, but for this country.

So I thank you for your leadership on this issue.

Mr. KENNARD. Thank you.

Senator SNOWE. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cleland.

STATEMENT OF HON. MAX CLELAND, U.S. SENATOR FROM GEORGIA

Senator CLELAND. Thank you, Mr. Chairman.

I just want to echo the wonderful sentiments and statement of Senator Snowe. I want to thank Senator Snowe and Senator Rockefeller and the leadership of this Committee for putting together such an innovative program. I was not here on the Committee when the 1996 Telecommunications Act was passed—thank God. [Laughter.]

Senator CLELAND. But I do get the opportunity to interpret what in the world happened. I will say to you that I think this is one of the most far-reaching aspects of it. I say that, and applaud you, Mr. Chairman, for pressing on in your effort to have the education rate, the E-Rate, funded, so that our libraries and schools throughout our country can be connected. I was speaking to a young, bright software developer who has become a billionaire, as so many of these Internet and cybernet companies have become very wealthy. And he said, the worst thing you can do is to be out of the Net. If you are out of the Net, you are out of business in many ways, and you are out of the education business certainly.

In my State, Mr. Chairman and members of the Commission, this E-Rate alone has meant some $77 million to schools and libraries in my State. They are in the Net, and we thank you for that.

As a matter of fact, I have sent a letter to every school superintendent in my State, emphasizing the importance of being part

of the new global cybernetics economy and taking advantage of the E-Rate opportunity.

Well, thank you for that.

I would just like to say that I have BellSouth based in Georgia. I like it. It is a wonderful company. I think it is going to be a leader in terms of fulfilling the intent of the 1996 Telecommunications Act. As a matter of fact, BellSouth is applying to the Georgia Public Service Commission, and has an application there underway, with a third party review. If they get approved by the PSC in Georgia in September or October, I think they might be the first Regional Bell Operating Company to get State permission, and they will be coming then to the FCC for your concurrence, so they can participate as the Act envisioned.

So I am proud of BellSouth and its efforts to comply with the law and be a leader and step forward. They are doing that at this moment in Georgia. You can be looking forward to an application coming to the FCC from BellSouth. It does look like they will have good results with the Georgia Public Service Commission, dated sometime in September or October. I just commend that application to you for prompt acceptance, because I think it will help set a tone for the Regional Bell Operating Companies that we need set very badly.

I would say to you also that I am concerned about the fast pace of, shall we say, mergers. There are so many things happening in the world of telecommunications today that are fast paced, it is almost difficult for regulators and government officials and legislation to keep up with it, to keep apace of what is fair and just. But I noticed that SBC and Ameritech are currently waiting for a decision on their proposed merger.

I just wonder where the FCC really comes in this whole merger business. I am new to the Committee. I know the antitrust people in Justice have a role. But educate just a little bit about your understanding maybe, Mr. Chairman, and any members of the Commission that want to chime in. Where do you see yourself in this fast-paced, fast-moving merger, buyout, long-lines, AT&T connecting up with cable, and others connecting up with other operations? It is a fast-paced business. Where do you all fit in, in commenting or making an observation about how this impacts on the world of telecommunications and competition particularly?

Mr. KENNARD. Well, Senator, we try to look at these issues through the eyes of the consumer, because we are pledged to protect the public interest. The best way to do that is to do all of our decisions through the prism of the public. So what I try to do in my decisionmaking is to determine how best to serve the public, consumers.

In the context of mergers, our review is quite different from the review of the Department of Justice and the Federal Trade Commission. We, alone among those agencies, have an obligation, given to us by statute, to make sure that the public interest is served in those decisions. That is why we have ensured that—and I feel very strongly about this—that when we make these decisions involving large mergers, that will affect the structure of this industry for years to come, that we ensure public participation.

So we have reached out to States Attorneys General and consumer groups and labor unions and competitors, although they are always there anyway, to make sure that their voices are heard in these debates. Because if we close our eyes or close our ears to the issues that they are going to raise, I do not see how we can advance the public interest.

Senator CLELAND. Thank you very much.

Does your staff or do you all have to file or want to file an amicus curiae brief, or friend of the court brief, with the Justice Department, and say, "We have looked at it from the consumer point of view and we think that this merger here might create an unfair advantage, a monopoly, and be unfair competition." Do you all wade into those kind of issues? Do you file those kind of briefs with the Department of Justice?

Mr. KENNARD. We typically do not. The Department of Justice does not have—it is not an Administrative Procedures Act agency, so it does not have the same open public processes that we do. Typically it goes the other way. The Justice Department will comment in our proceedings occasionally. But we do coordinate with them. We endeavor to ease the regulatory burdens on parties that have to get approvals from both the Justice Department and the FCC.

Senator CLELAND. Mr. Chairman, may I have one more question? I know my time is up.

The CHAIRMAN. Yes.

Senator CLELAND. In 1985, the Fairness Doctrine, unfortunately in my opinion, was eliminated in terms of political campaigns and issues discussed on the public airwaves. Senator Wyden pointed out that the status of American campaigning today is atrocious at best. I just wondered if there is any sympathy among the Commission for bringing the Fairness Doctrine back in order to establish some kind of more level playing field for discussion of political issues today and political campaigns?

Mr. KENNARD. Well, I would just note on that subject that there are two rules that are related to the Fairness Doctrine that are still in force at the FCC—the Personal Attack Rule and the Political Editorializing Rule—that are being subject to court challenge right now. But we do not have a pending docket on the Fairness Doctrine today, no.

Senator CLELAND. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. Kennard, of those referenced in an earlier question, those 1 million subscribers to advanced broadband services, do not over 700,000 of them subscribe to cable?

Mr. KENNARD. The last figure that I looked at——

The CHAIRMAN. Roughly.

Mr. KENNARD [continuing]. Roughly—about 700,000 cable modem subscribers and about half a million DSL subscribers.

The CHAIRMAN. Is not cable a local monopoly?

Mr. KENNARD. It is. Certainly, in most parts of the country it has a monopoly on the provision of those services, yes, cable services.

The CHAIRMAN. Well, why should not cable be forced to open its monopoly facilities for data like the telecos have to for voice?

Mr. KENNARD. It is a tough question, Senator, and one that we have been doing a lot of thinking on recently at the FCC. A lot of people came to the agency, first, I guess, in the context of the 706 report, and then, later, in the context of the AT&T–TCI merger, and urged those of us at the Commission to require that the cable plant be opened.

Speaking for myself, my view is that that marketplace is still in its infancy and one that really no one presented a credible proposal on how the FCC should get involved. At the end of the day, I decided that we should closely monitor the deployment of these services, but that ultimately our goal should be to encourage multiple broadband pipes into the home as opposed to trying to regulate up, as I call it—put cable on the same regulatory platform as the telecos. Because as I know you know, the goal of our law is to introduce competition and deregulate as quickly as we can.

The CHAIRMAN. Well, as I understand the facts, the competition is not there. There are two controllers now of broadband access, one of whom is AT&T and the other is the cable industry. I would be very interested in how we can get that competition in there.

I would like to talk about forbearance for a minute. How many forbearance petitions has the FCC granted since the 1996 Telecommunications Act was passed?

Mr. KENNARD. Of the forbearance petitions that have been filed, if memory serves, we have received nine petitions, and granted, either in whole or in part, six of those. I should say, we have received 23, we have considered 9—taken them to decision, that is.

The CHAIRMAN. On the 14-point checklist, you wrote, on May 10, you disagreed with an assessment that we made that there was actually more than 14 points on the checklist. What is your specific numerical answer to the following question: If a Regional Bell Operating Company were to apply for section 271 authorization tomorrow, how many individual requirements would that company have to satisfy?

Mr. KENNARD. Well, the statute establishes a 14-point checklist. The number of requirements on the checklist will not change unless you decide to change the law. Now, the way the checklist works is the FCC determines whether a Regional Bell Operating Company has complied with various requirements of the Commission, which are incorporated, by reference, in the checklist. So there are a number of requirements that have to be met.

The checklist itself, Mr. Chairman, incorporates, by reference, compliance with a number of FCC rules that are adopted, for the most part, under sections 251 and 252. So I have never made a specific count. The requirements vary from company to company, depending on their unique circumstances.

The CHAIRMAN. Would any of the other commissioners like to comment on those previous two questions concerning broadband access and the checklist?

Commissioner Ness.

Ms. NESS. Is your question with respect to broadband access, the question that Senator Breaux raised earlier?

The CHAIRMAN. No. Concerning the fact that cable controls a significant—go ahead.

Ms. NESS. On the cable access issue, we believe that it is still in a nascent stage, that the cable infrastructure and cable regulation came up through a very different regime than did the common carrier regime. We are monitoring the situation. I care very much about openness. I care very much about access. I care very much about interoperability. Nor have we concluded at this time that there is no jurisdiction. But I do believe that the competitive factors are in play right now and that no action is needed at this time.

The CHAIRMAN. Commissioner Tristani, do you have any comment?

Ms. TRISTANI. I would agree with Commissioner Ness on that.

The CHAIRMAN. Commissioner Furchtgott-Roth——

Mr. FURCHTGOTT-ROTH. Mr. Chairman——

The CHAIRMAN. Both questions, the checklist as well as the broadband access.

Ms. TRISTANI. On the checklist, I agree with Commissioner Kennard.

I wanted to add something on the opening up of the cable. Cable is where broadband is really being deployed at a rapid rate. My concerns, aside from some jurisdictional ones because I am not sure whether we have got the right framework, are that if we start regulating when the market seems to be working very well we might stifle the little bit of broadband deployment that is going on.

Mr. FURCHTGOTT-ROTH. Mr. Chairman, on your first question about unbundling of cable, in my review of the statute I find absolutely no basis for the Commission to make that requirement of cable operators. I have a longstanding position that the Commission should stay clearly and narrowly within the law as it is written, and I find no basis for us to impose that requirement on cable operators.

On your second question, about the 14-point checklist, I think that the Commission must review each application in the context of the statute as it is written. I have addressed this issue in more detail in the second Bell South Louisiana application, which you may find of interest.

The CHAIRMAN. Yes.

Ms. NESS. If I may respond to your second question, on the checklist. I believe that we have appropriately interpreted the statute. It does refer back to 251 and 252 and we have applied those sections appropriately and have been so far upheld by the courts in our interpretation of 271.

The CHAIRMAN. Well, of course the congressional interpretation of the law was that within a year to a year and a half everybody would be competing with everybody else. That was the expectation. Now we are nearly 4 years later and that obviously has not happened, so something went awry between the time the legislation was deliberated on and passed and what has happened since.

Commissioner Powell.

Mr. POWELL. Senator, on the cable access question, I think you actually put your finger on the most difficult part of the public policy question over time, which will be: Is there justification for treating them different? But I would defend the proposition that, because of their legacies and the way they come to us, they do have differences that are difficult to resolve.

I would also submit that, my sound bite for this is that it is like an algebraic equation that still has too many variables to solve. It is easy to talk about the potential importance of doing something like that or doing it, but as I dig into this deeper and deeper there are an intense number of unknowns, even technically, about how the service works or whether it will work.

I would submit, by the way, that I am far from convinced that it has already arrived and is the successful, essential facility for broadband, as some suggest it is. Indeed, many companies that have deployed these bundled cable offerings have had catastrophic failings. Others have been more successful.

I also guess I believe that I think that the thorniness of the interconnection regime in the phone context should be avoided, if possible, at all costs. I think it is expensive, it does not work all that well. I see in the marketplace competitors fighting aggressively to find alternatives to that cable possibility and driving innovation in order to produce a world in which there may be two, three, four, or five other alternatives to the home, and I think that there is energy there and we should be a little bit careful in too prematurely stifling those possibilities.

Turning to the question of the checklist, clearly there are 14 points. That said, there are a lot of subtleties that require other considerations, as my colleagues have outlined. But I cannot emphasize enough that I have some of the same concerns about the proliferation of items, but feel quite frustrated that I cannot have the vehicle to address some of them in the absence of a duly constituted presented application.

Since July of last year, we have not had such an opportunity. They will say rightly that they are not comfortable with what all the requirements are. But the truth be told, a lot of the problems are what it takes to satisfy and get the approval of the State commissions, which we have had not that much direct involvement in.

The CHAIRMAN. Thank you. Our vote has started and I want Senator Rockefeller to be able to ask his questions and we do not want to keep you to go back and forth.

I already talked to Chairman Kennard over the phone about a statement that was made by one of his senior staff people on an important decision on the Ameritech—SBC merger. I pointed out that there was $4 billion in market capitalization that was lost as a result of his statement. Whether or not a penny was lost, we constitute you Commissioners to make these decisions, not the staff people.

My staff do not make decisions for me, nor do they voice what my decision will be. It is unacceptable, it is unacceptable for a person who is a staff person, who is unaccountable to Congress, as you are, to make statements that disturb markets and distort a process that you are supposed to be going through and making the final decision on.

I am very disturbed about it. A lot of us are very disturbed about it, because we vest and place responsibility in you to make those decisions, not staffers who we have no control over and has no accountability to us.

We may disagree on decisions and we may disagree on policies, but at least there is an accountability and there is a dialogue. I do

not even know who this guy was, but it is not acceptable and it is a practice that should cease immediately, as my letter indicated that it should. The accountability rests on the Commissioners, who are confirmed—are nominated by the President of the United States and confirmed in their positions by the Senate of the United States. We take that responsibility very seriously.

Senator Rockefeller.

Senator ROCKEFELLER [presiding]. Thank you, Mr. Chairman

I guess this will be the last statement or question. Just looking at the question of the E-rate, it strikes me that this has been really an all-inclusive process. It has not been entirely a happy one, but it has been a very good one. I think that both Senator Stevens and Senator McCain have played a very large part in it.

I really go back to the debate we had in this Committee and then the debate that we had on the floor. It was a bipartisan deal that was struck on the E-rate on the floor.

It was retained in the conference committee. In the law there are three separate designations of classrooms. In the conference report there were two more, three more.

So again, it came about from the very beginning as a bipartisan vote and a bipartisan effort. But then it went on from that, because it then went to the joint board. The joint board was not the Federal Communications Commission, but the joint board was a special thing and that involved the States. I can remember making phone calls to various people that I never heard of in States that I had heard of. But it was a very inclusive process.

They made—they contributed to setting what the funding for the E-rate level might be. Then the FCC came back and there was the Stevens report in 1998 and the FCC responded to that and made a number of adjustments because of that. In fact, you restructured the administration in some ways, Chairman Kennard, of that. You set new funding priorities.

They are very carefully laid out—telecommunications, Internet access, only internal connections to get to the classrooms. The things that are not allowed, are allowed, and those that are allowed are very clearly delineated. Poorer schools first, which you have talked about.

Then Chairman McCain, I think, made an enormous contribution when he called for the GAO report when there were questions being raised about that, the whole schools and libraries effort. Then you responded in fact to all of the GAO requirements and suggestions, so that in turn responded to the Chairman of the Commerce Committee.

So I look at the E-rate and I look at my State and I look at the 60 percent of jobs in this country that require computing skills and the 22 percent that have it. I look at the 82 percent, whatever it is, 80-plus percent of the American people, that want the E-rate, that think it is a really good thing. I try to contemplate the future of my State and my country without the E-rate, and I shudder with fear. The E-rate in a sense is probably the principal vehicle to allow us to be competitive in the world that confronts us.

So I think all in all this has been a pretty good process. It has not been without controversy. Nothing involving the FCC is without controversy. As you say, you are sued on everything, and if you

are not sued then somebody puts litigation up against somebody else and you are blocked from doing things. But I think it has been a fairly inclusive process.

I would just end on this note, that I remember back a couple of years ago there was a lot of controversy when California, Silicon Valley, imported 50,000 French IT workers. There was a huge hullaballoo across the country and in this body: Why could we not get our own? Well, the reason we could not get our own is we did not have them. I think the figures on California 2 or 3 years ago was, only 15 percent of their classrooms were wired up, and it struck me there just might be a connection between those two things.

So the E-rate I think is an enormously positive factor for our country, perhaps one of the most fundamentally important things for our country to do. It has been a participatory, bipartisan process from the beginning, not without some controversy, but what of importance is without controversy.

So now, for the first time as Chairman of the Commerce Committee——[Laughter.]

Senator ROCKEFELLER [continuing]. I want to thank the Commissioners, not just for being here for 3 hours today, but for having really I think the hardest jobs in Washington. Also, as I have told Chairman Kennard, if I were his age, yours would be the job I would want.

Hearing adjourned.

[Whereupon, at 4:49 p.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Thank you, Mr. Chairman. As we move into an era where human thought can be transmitted across the globe at the speed of light, it becomes increasingly important that regulatory hurdles not impede the dramatic potential of new technologies.

Unfortunately, the Commission has consistently failed to act on issues critical to the future of this country's information infrastructure, even when it has been clearly told to do so by Congress. As the author of Section 706 of the Telecommunications Act, I am particularly concerned at the Commission's incredible decision that broadband deployment throughout the country is "reasonable and timely." Section 706 directs the FCC to engage in deregulatory action to make these technologies available to "all Americans." Simple common sense dictates that the current level of broadband deployment in U.S. households—less than two percent—does not equal "all Americans." I will not allow Montana and rural America to be left behind in this critical area because of bureaucratic inaction.

Universal service has been another prime example of the Commission's continuing inaction on a crucial matter. The Committee has been assured time and again that comprehensive universal service reform would be completed in rapid order. First it was delayed from May of 1997 until January 1999, in order to focus on the erate program. Then came a further delay until July 1999. I was assured at that time, as were several other members of the Committee, that this additional time would allow for universal service to be completed in the right way. Now we hear that an additional delay might take place and that no action will occur until September 1999. I have to say that, frankly, the timeline of the universal service order is beginning to resemble that of the construction schedule of the Denver International Airport.

While it has not acted on universal service, the Commission has instead decided to dramatically expand the erate program by $1 billion a year. The fact of the matter is that it is impossible to get something for nothing. If the cost of the erate is raised $1 billion, that cost will be borne directly by consumers.

I want to make it clear, however, that I have always supported the goal of connecting all of our schools to the Internet, as well as the provision of advanced telecommunications services to rural health care centers. I just felt that it was wrong to fund these programs on the backs of American consumers. It is with this in mind that Chairman Tauzin and I have proposed using one-third of an outdated 3% excise tax on telephones to fund the schools and libraries and rural health care programs. Currently, none of the money collected by the tax goes to fund telephone service for Americans.

This proposal is a win/win solution. It's a win for consumers, since it would eliminate the need for new charges on telephone service. It's a win for taxpayers, who would see billions of dollars in current taxes eliminated. It's a win for our schools, libraries and rural health care centers, who would see their programs fully funded without threatening universal service.

I would now like to turn my attention to the obvious need for structural reform at the Commission. The current structure of the FCC has impeded rather than fostered the movement toward deregulation. In previous oversight hearings, I have expressed my concern that significant overlap exists between the Bureaus, particularly in the case of mass media regulation. In addition, the volume of new FCC rules and regulations has increased tremendously, as has the sheer volume of court appeals. Clearly more must be done to foster the move towards deregulation and open markets. We must streamline the Commission's structure to create a regulatory framework that encourages innovative technologies and consumer choice.

I look forward to the testimony of the witnesses on these issues that are so vital to our nation's future

Thank you, Mr. Chairman.

PREPARED STATEMENT OF HON. SLADE GORTON, U.S. SENATOR FROM WASHINGTON

I look forward to hearing from the FCC Commissioners. Your jobs are among the most fascinating imaginable. The evolution of communications technology within the last few years has been extraordinary, and promises to revolutionize not only how we communicate, but how we transact business, how we assess taxes, how we reconcile conflicting domestic and international laws for mediums that know no boundaries, to revolutionize, in essence, the way we live.

While your jobs are fascinating, I wouldn't want them. The challenges you face are daunting. My limited exposure to some of the contentious issues facing you has increased my respect and compassion for you all.

On the subject of Universal Service in particular, I appreciate how hard your task is. But I agree with Commissioner Furchtgott-Roth that the schools and libraries fund appears to have received far more attention and promotion from the Commission than the much more critical issue of how to reform the enormous subsidy system for rural and high cost areas to ensure competition while guaranteeing affordable service. In part because the Commission is set to vote tomorrow on increasing significantly the size of the schools and libraries fund, however, I would like to address three issues regarding that program.

The first is the size of the e-rate program. I understand that you will vote tomorrow on a proposal to expand the size of the fund to $2.25 billion per year. Those who advocate a larger fund assert that the requests from schools and libraries for grants and subsidies exceed the current fund. One would hope so—who wouldn't ask for "free" money? The problem, of course, is that the money is not "free." The schools and libraries program is paid for by every telephone user in the country, and the tax now shows up on everyone's bill.

Before the current e-rate program was adopted by the FCC, the Commission told us that the new subsidy program would not cost anyone anything,. This curious assertion, cloaked in a Rube Goldberg-like explanation of access charge reductions and increased usage rates, was eagerly accepted by many. But it proved to be untrue. Now, we are again told by the Commission that the fund can be significantly increased at no cost to anyone because customers' increased payments to the schools and libraries fund would be offset by lower long distance charges. The long distance charge reduction, the FCC says, will come from lower access charges, that is, payments from long distance companies to local companies. Doesn't this mean that the local companies, if they don't pass the charges on to consumers, end up paying for the increase in the schools and libraries fund? I would like each of the Commissioners to explain why the fund can be increased at no cost to *anyone*.

My reservations about the size of the schools and libraries funds and who really will pay for it do not prevent me from wanting to ensure that Washington state gets its fair share of the existing pie, and that my state's policies are not undermined by the federal government. The other two issues regarding the schools and libraries fund are peculiar to Washington state, and are ones about which I have written to each of the Commissioners on a number of occasions.

Before the FCC adopted regulations implementing the schools and libraries program, Washington state had adopted its own programs to facilitate deployment of advanced and low-cost telecommunications services to schools. Unfortunately, the FCC's rules undermined the Washington state efforts in two ways, both of which are the subject of petitions to the FCC that I fully support. The first problem is that Washington state intended to include private colleges in its advanced services network, but the FCC rules would cut subsidies for all schools that are part of the network if private colleges are included. The second problem is that telecommunications services that are provided to schools directly by Washington state, as opposed to being provided by carriers, are not eligible for subsidies. This effectively penalizes Washington state for having taken the initiative in providing access to telecommunications services for all students—my constituents in Washington state pay into the federal program, but, because of the current FCC rules, don't get their fair share of the benefits. I strongly encourage you to grant the Washington state petitions on these issues.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CONRAD BURNS TO WILLIAM E. KENNARD

Question 1. Chairman Kennard, Senator McCain and I have sent you letters recently regarding the pending broadcast ownership proceeding involving duopoly, LMAs, and one-to-a-market. As you know, in those letters we were very clear that the intent of the 1996 Act was to liberalize these rules. Can you tell me what the status of the proceeding is and when you plan to act?

Response. On August 5, 1999, the Commission concluded its attribution, local TV ownership, and national TV ownership proceedings by adopting new rules. The rules we adopted reflect a careful balancing of our goals of protecting diversity, localism, and competition with the need to update the ownership rules to reflect changes in the telecommunications marketplace.

We relaxed both our TV duopoly and our radio-television cross-ownership rules. With respect to the TV duopoly rule, we will allow common ownership of TV stations in separate DMAs regardless of contour overlap. We will also allow common ownership of two television stations in the same DMA if there is no Grade B overlap between the two stations or if, after the merger, eight full-power television stations (including both commercial and noncommercial stations) remain in the DMA, and at least one of the two merging television stations is not among the top four-ranked stations in the DMA. We have also established standards for waiver of the TV duopoly rule, involving failed, failing, or unbuilt stations.

With respect to the radio-television cross-ownership rule (previously referred to as the one-to-a-market rule), the new rule would allow common ownership of up to two television stations and six radio stations (or one television and seven radio stations if the TV duopoly rule could also be met) in the same market if twenty voices will remain in the market post-merger, up to two television stations and four radio stations if ten voices will remain in the market, and up to two television stations and one radio station in any market. We provide for waiver of the rule with respect to radio stations if the transaction involves a failed station. Voices include TV and radio stations, as well as newspapers and cable.

The new rules attribute TV LMAs where they involve time brokerage of another television station in the same market for more than 15% of the brokered station's broadcast hours per week. TV LMAs entered into before November 5, 1996, the date of adoption of the Further Notice of Proposed Rule Making in the local ownership proceeding, will be grandfathered until the 2004 biennial review proceeding, at which time their status will be assessed. TV LMAs entered into on or after November 5, 1996 will not be grandfathered, but will be given two years to come into compliance with the new rules or terminate. Thus, all existing LMAs will be afforded some relief. We estimate that about 60% of existing LMAs meet the new going forward TV duopoly rules and will therefore be able to be converted into permanent duopolies.

Question 2. In your estimation, what data speeds constitute broadband access? Can you be specific vith reward to both upstream and downstream speeds?

Response. In the Commission's Report on the deployment of broadband capability to all Americans, released on February 2, 1999 the Commission defined "advanced telecommunications capability" or broadband. (The Report is FCC 99-5 in Docket CC No. 98-146 and is available on the Commission's web page at http://www. fcc.gov/Bureaus/Common__Carrier/Reports/fcc99005.txt.)

In a Section beginning at paragraph 20, the Report defined broadband:

> "as having the capability of supporting, in both the provider-to-consumer (downstream) and the consumer-to-provider (upstream) directions, a speed (in technical terms, 'bandwidth') in excess of 200 kilobits per second (kbps) in the last mile. . . . We have initially chosen 200 kbps because it is enough to provide the most popular forms of broadband—to change web pages as fast as one can flip through the pages of a book and to transmit full-motion video." [Footnote omitted.]

The Report also recognized that:

> "as technologies evolve, the concept of broadband will evolve with it: we may consider today's 'broadband' to be narrowband when tomorrow's technologies are deployed and consumer demand for higher bandwidth appears on a large scale. For example, we may find in future reports that evolution in technologies, retail offerings, and demand among consumers have raised the minimum speed for broadband from 200 kbps to, for example, a certain number of megabits per second (Mbps)." [Footnote omitted.]

Question 3. Mr. Chairman and Commissioners, I know that implementation of E911 location technology has been a high priority of yours and I want to commend you for your efforts and the establishment of the October 1, 2001 implementation deadline. E911 location technology will enable our emergency service providers to save lives and it is imperative that we ensure that technology [is] available to the public as soon as possible. Can you comment on any recent progress made at the Commission in this critical area?

Response. The Commission has been active in a number of areas related to implementation of wireless Enhanced 911 (E911) services. At the outset, we would like to assure you that the Commission remains fully committed to moving forward on

these critical issues expeditiously, consistent with the Commission's mission of protecting the public safety through the use of wire and radio communications. A brief summary of recent progress on these matters follows:

PHASE II WIRELESS E911 ALI REQUIREMENTS

The Commission's rules governing wireless enhanced 911 (E911) services currently require that covered wireless carriers provide automatic location information (ALI) as part of E911 service beginning October 1, 2001, provided that two conditions have been met. First, the local Public Safety Answering Point (PSAP) must have requested ALI from the carriers and must be ready to use ALI, and, second, there must be a cost recovery mechanism in place by which carriers can recover the costs of implementing ALI. At the time the original rules were adopted in 1996, the Commission and parties to the proceeding expected that ALI would be implemented by upgrading wireless carriers' networks, which would allow the carriers to provide ALI for all wireless E911 calls. Noting promising new developments in handset-based location technologies, the Commission is now considering issues related to the possible use of handset-based ALI technologies.

Over the course of the past several months, the Commission has sought and received informed views and specific proposals on issues relating to the provision of ALI from many interested parties, including ALI technology manufacturers, wireless carriers, and network and handset manufacturers, as well as representatives of the public safety community. For instance, Commission staff held a public Technology Roundtable in late June with all these groups represented. The Roundtable revealed, among other things, that further development work needs to be completed on all the competing ALI technologies. This is not surprising in light of the variety of technical protocols used by wireless carriers. It also has become apparent that public safety representatives are not, at this point, of one mind on these important but difficult public safety issues, such as the timetable for deployment of both handset and network-based solutions, accuracy standards, and penetration levels. As the Commission considers the various arguments of the commenters, it will remain mindful of the importance of the wireless E911 rules to public safety and the need to avoid delaying the provision of ALI on wireless E911 service. The Commission's overriding goal is to have ALI available on as many wireless E911 calls as quickly as possible.

The Commission is actively considering these wireless E911 issues and expects to act soon. The Commission hopes that its actions will bring additional certainty regarding the ALI requirements for E911 so that wireless carriers will begin deploying ALI technologies expeditiously.

STRONGEST SIGNAL—SECOND REPORT AND ORDER

One of the important issues in the Commission's 1996 E911 Second Notice of Proposed Rulemaking concerned proposals to help improve the transmission of 911 calls, specifically in geographic locations where a wireless caller attempts to make a 911 call but the wireless system to which the caller subscribes has a blank spot—an area where the system's radio signal is weak or non-existent. To help address this problem, the Commission adopted rules in December 1997 which, among other things, required that cellular carriers complete all 911 calls, not just those of their subscribers. In addition, in May 1999, the Commission adopted rules to improve call completion rates. The Commission approved three call completion methods, any of which will result in the completion of more wireless 911 calls than occurred previously. The actions taken by the Commission are expected to improve the security and safety of analog cellular users, especially in rural and suburban areas.

WIRELESS E911 REPORT ON PHASE I

In response to a recent Commission Public Notice, industry and public safety organizations filed a report on August 9, 1999, on issues relating to the implementation of Phase I wireless E911 services. The Commission's Phase I E911 rules require covered wireless carriers to provide enhanced 911 capabilities, including the provision of callback and location information to Public Safety Answering Points (PSAPs), according to a phased-in approach. The report to the Commission addressed the issues of cost recovery mechanisms and choice of transmission technologies. The Wireless Telecommunications Bureau has invited public comment on the report and the Commission expects to take action on these issues this fall.

Question 4. The FCC was required by the 1996 Telecommunications Act to complete its reformation of the federal universal service support system, replacing implicit subsidies with explicit subsidies, by May 8, 1997. It is now over two years past that deadline—and over three years since passage of the Act—and the Commission

still has not completed such action. In fact, it has missed even its own, self-imposed deadline of January 1999 and is possibly in danger of missing its July 1999 deadline. When will the reform of universal service finally be completed?

Response. The Commission plans to release an order defining final model inputs and support methodology variables for the reformed universal service system for large carriers (those not meeting the statute's definition of a "rural telephone company") this fall, for implementation on January 1, 2000. As the Fifth Circuit Court of Appeals recently affirmed, the 1996 Act requires the Commission to adopt, by May 8, 1997, a definition of the services supported by universal service mechanisms, and a specific timeline for implementation. The Commission did so on that date. The implementation timeline that the Commission adopted establishes separate schedules for reforming universal service for rural telephone companies and for non-rural carriers.

The Commission determined that non-rural carriers should make the transition to a support mechanism based on forward-looking costs. The Commission has established January 1, 2000, as the date for this transition, and is on schedule to have a forward-looking mechanism in place at that time. The Commission and its staff have worked extremely hard over the last three years to ensure that the process for selecting and completing a forward-looking model is as open as possible. We have received thousands of pages of comments from industry representatives, state commissions, and other stakeholders, and held numerous public forums, en banc hearings, and provided other opportunities for public input. This process has allowed us to develop a forward-looking cost model that is vastly more accurate than the industry-proposed models first submitted to us in 1996. The most recent result of this process was our release, in May 1999, of orders defining proposed cost model variables and establishing the outlines of a support methodology, based on the Joint Board's November 1998 recommendations. We intend to release final orders this fall establishing implementation details so that the revised mechanism for non-rural carriers will be in place on January 1, 2000.

Although larger-scale reforms of high-cost support mechanisms are contemplated for non-rural carriers beginning on January 1, 2000, the Commission also made significant changes to the existing support mechanisms that were effective on January 1, 1998. The existing support amounts were removed from interstate access charges and now flow through an explicit support mechanism, consistent with the statutory mandate. The support amounts available from the existing mechanism were also made portable, so that they are available to competitors that win customers from the incumbent.

The Federal-State Joint Board on Universal Service also appointed a Rural Task Force to study what universal service reforms are necessary for rural telephone companies. The Rural Task Force is to submit a report with recommendations to the Joint Board by September 2000. The Joint Board will then make its recommendations to the Commission, based on the Rural Task Force's report. The Commission intends to act expeditiously to implement the Joint Board's recommendations as soon as we receive them, but no earlier than January 1, 2001.

Also, as a part of its elforts to extend the full range of modern telecommunications services to all Americans, the Commission recently adopted a Notice of Proposed Rule Making seeking comment on how to promote universal service in unserved and underserved areas, including tribal lands and other insular areas. Consistent with the 1996 Act's goal of ensuring that consumers in all regions of the nation should have access to telecommunications and information services at affordable rates, the Commission has taken steps to address impediments to deployment and subscribership in unserved and underserved areas of the Nation. In the Notice, the Commission invites comment on a range of possible modifications to its high-cost, low-income and rural health care support mechanisms that are designed to promote deployment and subscribership in these areas. The Commission is committed to ensuring that consumers have access to and can afford the services supported by federal universal service mechanisms.

Question 5. NARUC has proposed FCC-state commission cooperation on Section 706, promoting access to advanced technologies. What is your reaction?

Response. I endorse the idea of FCC-state cooperation under Section 706 and have already begun a long-term and mutually fruitful cooperative process with the states. Indeed, Section 706(a) envisions such cooperation when it says "The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment. . . ."

We are currently in discussions about how to best accomplish our mutual goals.

Question 6. How do you see the FCC-state commission relationship developing over the comings months and years?

Response. I see this relationship developing fully and productively over the coming months and years. Of course, at this initial stage, it is impossible to foresee all future developments. At this time, there appears to be much room for the Commission and states to explore various cooperative avenues. These may include: developing "best practices" to speed the deployment of broadband by encouraging private investment; deregulating, in ways that will give companies that are now regulated incentives to deploy broadband; encouraging new entry, especially by public utilities and the deployers of new wireless "last miles"; granting access to "essential facilities" for broadband; learning about the precise nature of consumer demand for broadband; and exploring creative ways to assure the broadband is deployed in areas that the market will not serve, including funding in appropriate circumstances.

Question 7. What is the status of the Rural Task Force, which will be making recommendations concerning universal service for rural telecom providers?

Response. Because of the important service that rural telephone companies provide to many of the highest-cost customers in the country, and because of the unique cost structures of these small companies, the Commission took early steps to ensure that the universal service reform process would not threaten rural companies. In order to ensure that rural companies were not harmed by the transition to high cost support mechanisms based on forward-looking costs, or by the uncertainty associated with such a transition, the Commission declared very early in the universal service proceeding that there would be no reduction in the support available for serving customers in rural carriers' serving areas. As noted above in response to Senator Burns' Question #3, on September 17, 1997, the Federal-State Joint Board on Universal Service created a Rural Task Force to study what universal service reforms are necessary for rural telephone companies. The Rural Task Force is due to submit a report with recommendations to the Joint Board by September 2000. The Joint Board will then make its recommendations to the Commission, based on the Rural Task Force's report. The Commission intends to act expeditiously to implement the Joint Board's recommendations as soon as we receive them, but no earlier than January 1, 2001.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TRENT LOTT TO WILLIAM E. KENNARD

Question 1. Last December the FCC issued an order to address unauthorized changes of carrier selection, more commonly known as slamming. This order contained a complex set of rules for providing credits to consumers who have been victimized by slamming and for compensating a slammed customer's original carrier. Recognizing the complexity of this issue, your order also invited industry to put forward alternative proposals for addressing slamming that would still achieve the Commission's goals. In March, a coalition of long distance providers, after working closely with the Commission staff, presented the Commission with a proposal for an industry-funded neutral third-party administrator that would remove much of the complexity for industry and consumers alike. My understanding is that this concept has support from many parties, including the National Association of Attorneys General, and that some groups—among them the larger consumer interest groups—believe that the industry plan is a superior approach to fight slamming. To me, an industry solution that in fact simplifies the process, makes the consumer whole and takes the profit out of slamming makes more sense than imposing a set of government regulations that may not be workable in practice.

Last week the Commission's own slamming rules were stayed by the court indefinitely. A legislative remedy will take a long time to work its way through the Hill, if it does at all, and it will take some time to craft the rules to implement such legislation. The industry proposal, which is still before the Commission, seems to me to be the most rapid way to bring relief to consumers. Is the Commission giving the industry proposal serious consideration? How quickly can we expect the Commission to act on this proposal?

Response. Because of the potential advantages of utilizing an industry-funded neutral third-party administrator to address slamming, the Commission has studied seriously this proposal with input from industry, the states, and consumer interest groups. During the course of evaluation, the Commission has been made aware of opposition to the proposal from the National Association of State Utility Regulators (NARUC) and a number of large consumer groups. Indeed, NARUC has offered alternative suggestions to the Commission for the administration of our slamming regulations, which would involve state participation. Certain members of the U.S. Senate also have expressed reservations about the effectiveness of an industry-fund-

ed slamming proposal, raising bias concerns. At the same time, the Commission has evidence that slamming complaints appeared to be declining prior to the effective date (since stayed by the court) of the Commission's new rules relating to consumer liability. This downward trend in complaints suggests that the impending rules governing consumer liability would have the desired effect of curtailing slamming. Therefore, the Commission is moving quickly to resolve the MCI petition proposing a third party administrator to handle slamming complaints and to resolve the outstanding issues raised by various parties in petitions for reconsideration as well as to consider the proposals submitted by NARUC and various states. Once these outstanding issues have been addressed, the Commission can return to the Court of Appeals to request a lift of the stay of the Commission's slamming rules and obtain the desired relief for consumers.

Question 2. Many people believe that there are billions of dollars in excess earnings in local company access charges (that is, earnings above what is needed for any legitimate subsidy of local service). The FCC has an extensive record on this issue pending before it. Yet access reform may be further delayed. When does the FCC plan to act on access reform, and is there anything that the FCC can do, effective this July, to give the American people a downpayment on the reductions that are due them?

Response. The Commission's price cap regulation system significantly reduces access charges on an annual basis, without limiting the level of local exchange carriers' (LECs') earnings. This encourages LECs to become more efficient and reduce their costs. The LECs' most recent tariff filing, effective this past July, reduced per-minute annual access charges by approximately $1.5 billion compared to the previous year's rate levels. There will be another significant reduction next July. FCC-mandated access reductions have triggered decreases in per-minute long distance rates charged by long distance carriers.

Beyond the operation of the price cap formula, the FCC's current policy allows competition to encourage additional reductions in interstate access charges. For example, the Commission's recently-adopted Access Charge Reform Fifth Report and Order gives the nation's largest LECs progressively greater flexibility in setting interstate access rates as competition develops, gradually replacing regulation with competition as the primary means of setting prices.

In addition to this market-based approach to access reform, the Commission is continuing to examine possible changes to interstate access rate structure to ensure that it better replicates the operation of a competitive market. In the Access Charge Reform Fifth Report and Order, the FCC invited parties to comment on proposed revisions to the rate structure for local switching charges, which would further reduce interstate access rates. The FCC also will continue to monitor the interstate access market carefully and may consider a more prescriptive approach to access charge reform, if necessary.

Question 3. The FCC recently released its report of audits of certain incumbent local company records that indicate a significant amount of equipment is unaccounted for. If you couple that with reports that access charges are, and have been, significantly above cost, what steps is the FCC taking to address these specific concerns?

Response. The Commission has issued a Notice of Inquiry seeking public comment on issues related to the auditors' findings. Specifically, due to the discrepancies between the auditors findings and the statements made by the companies, we found it necessary to seek public comment and review of the audit documents to help us assess what further action the Commission should take. This public review is now taking place. Public comments are due September 13, 1999; replies are due 30 days thereafter.

The companies have raised concerns about the audit methodology including the procedures and practices of the auditors. After reviewing comments, if we determine that proceeding with an enforcement action is appropriate, we would then assess the rate impact of the auditors' findings. Such an assessment may result in some further reduction in the access charges paid by long distance carriers.

In addition, as described above, FCC-mandated reductions in access charges have triggered reductions in per-inute rates long distance companies charge to their customers. For example, effective this past July, the FCC reduced the local telephone companies per-minute annual access charges by approximately $1.5 billion compared to the previous year's rate levels. AT&T and MCI have recently recognized that the FCC's efforts to reduce the access charges that long distance companies pay to the local telephone companies have made possible the recent per-minute long distance rate reductions. Access rates should continue to fall.

Question 4. I understand that the Commission has opened a proceeding to implement the spectrum provisions of the 1997 Balanced Budget Act. When Congress ex-

panded the FCC's authority to use auctions in the 1997 Balanced Budget Act, we specifically provided that certain private radio services are exempt from auctions because licensees in these radio services use their radio systems to protect the safety of life, health or property. It was further noted in the Conference Committee Report that these exempt services include private, internal radio systems used by utilities, pipelines, state and local government agencies, emergency road services, and others. However, I understand that aside from state and local government agencies and tow truck operators, the Commission has not proposed in this proceeding to exempt utilities, pipelines, railroads, or any of the other radio services identified in the Conference Report. Could you please confirm whether it is the Commission's intent to follow Congress' directions, as explained in the Conference Report, or whether the agency is proposing to unilaterally narrow the exemption language?

Response. The Commission recently adopted a Notice of Proposed Rule Making ("Notice"), WT Docket No. 99-87, FCC 99-52 (released March 25, 1999) to seek comment on the revisions to its auction authority made by the Balanced Budget Act of 1997. The Notice seeks comment on the scope of the Balanced Budget Act's exemption from competitive biding for public safety radio services and the regulatory provisions that could be established to ensure that frequencies assigned without auctions meet the statutory requirements for exemption. The Commission intends to implement that statutory exemption in a manner that reflects Congress' intent, as explained in the Conference Report.

The Notice specifically acknowledges that certain non-governmental entities are eligible for licensing in auction-exempt public safety radio services. The Notice highlights the Conference Report language stating that the exemption is broader than the definition of "public safety services" included in Section 337(f)(1) of the Communications Act, and includes private internal radio services used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments. Based on the express statutory language and legislative history of the public safety radio services exemption, the Commission tentatively concluded that certain spectrum already allocated to the Public Safety Radio Pool, or which the Commission has previously set aside for public safety uses, should be included in the definition of "public safety radio services." However, these tentative conclusions are not meant to preclude the Commission from including other private internal radio services within that definition, and the Notice specifically seeks comment on the other private radio services or frequency bands within services that should be designated as "public safety radio services."

It is because the Commission recognizes that various types of entities other than state and local governments are eligible for licensing in public safety radio services that it seeks comment on whether it should establish criteria to ensure that public safety radio services spectrum licensed without auction to non-government entities is used to protect the safety of life, health, or property and not made commercially available to the public, as mandated in Section 309(j)(2)(A). Similarly, because the Commission recognizes that various entities in addition to state and local governments are eligible to use auction-exempt public safety radio service frequencies, it seeks comment in the Notice on whether it should establish categories or frequency pools for the various types of users and allocate specific frequencies within the public safety radio services to each category or pool. The creation of new frequency pools would be consistent with a proposal submitted by UTC, the American Petroleum Institute, and the Association of American Railroads, and on which the Notice also seeks comment.

Question 5. Despite Congress' direction that the FCC use engineering solutions, frequency coordination, and other means to avoid application conflicts and hence the need for auctions, I understand that as part of this same proceeding the FCC is proposing to change its licensing rules for private radio services so that such application conflicts are likely.

Congress would like to know why the FCC is trying to create application conflicts and thereby force private radio users into competing at auction, instead of following Congress' direction in the Act that auctions are to be used only where such conflicts cannot be avoided.

Response. The Commission's Notice of Proposed Rule Making in WT Docket No. 99-87 also seeks comment on how the Balanced Budget Act's revisions to its auction authority affect the categories of services that previously were determined to be nonauctionable by the Commission. In considering how to implement its expanded auction authority, the Commission is mindful of the emphasis Congress placed on its obligation in the public interest, under Section 309(j)(6)(E), to continue to use engineering solutions and other means to avoid mutual exclusivity among applicants for initial licenses. In the NPRM, the Commission notes that the Balanced Budget Act has not altered the criteria in Section 309(j)(3) that the Commission is required

to use to determine that a particular licensing scheme is in the public interest. The Commission has previously interpreted Section 309(j)(6)(E) to impose an obligation to avoid mutual exclusivity in defining licensing schemes for commercial services only when it would further the public interest goals of Section 309(j)(3). Accordingly, in the Notice, the Commission seeks comment on how it should apply the public interest factors in Section 309(j)(3) in establishing licensing schemes or methodologies for both new and existing, commercial and private services under the Balanced Budget Act. Specifically, the Commission notes that the Balanced Budget Act expressly incorporated the Section 309(j)(6)(E) obligations in the Section 309(j)(1) general grant of auction authority. The NPRM seeks comment on whether that express reference changes the scope or content of that obligation, or the prior interpretation of Section 309(j)(6)(E), in light of the public interest factors in Section 309(j)(3).

The services deemed nonauctionable under the authority provided by the 1993 Budget Act were largely private and noncommercial radio services. In the Notice, the Commission does not propose changes to the licensing rules for specific private radio services, but rather seeks comment on the basic statutory framework that should be applied to the Commission's determinations of which wireless services are potentially auctionable and what processes should be used in licensing new and existing services. The Notice also seeks comment on the licensing schemes that might be used for private services and considers whether auctions are an appropriate tool for managing the efficient assignment of this spectrum. No conclusions have been reached about the approach we will take. The Commission's goal is to gather a record in light of the changed statute and evalual;e whether our licensing processes should change, if at all, in the interests of sound spectrum management. For example, with respect to Private Land Mobile Radio Services frequencies below 470 MHz that are licensed on a shared basis, the Commission specifically asks whether the Commission should retain the current licensing scheme in light of the extensive modifications the Commission has already made to its regulatory framework to maximize spectrum efficiency in these bands through engineering solutions. Additionally, the Commission seeks comment on whether it should establish a new class of licensee for private radio services called a Band Manager. As considered in the Notice, the Band Manager would apply for a private radio license, with mutually exclusive applications subject to resolution through competitive bidding, and sublicense portions of its license to specific eligible users through private contractual arrangements. The record in this docket closes on September 16, 1999.

Question 6. I understand the FCC has proposed to auction licenses in the 900 MHz band for "multiple address systems," that are used by utilities, pipelines, and railroads to remotely monitor and control their utility or rail networks. An allocation of one megahertz of bandwidth for MAS was made more than 10 years ago, but because of Commission inaction and now a new rulemaking to force auctions on these channels, no licenses have been granted on these channels. Congress is also disturbed to hear that the agency may delay this matter even further because of its proceeding to implement the auction provisions of the 1997 Budget Act. Could you please provide Congress with a timetable for completing action in the multiple address system docket, and explain why utilities, pipelines, and railroads, which are exempt from auctions, must wait any longer to begin using these much-needed channels?

Response. There are three spectrum bands allocated for Multiple Address System (MAS) use: 932/941 MHz, 928/959 MHz, and 928/952/956 MHz. The 932/941 MHz band was allocated for both Federal Government and non-Government point-to-multipoint use in 1989. In 1992, the Commission opened filing windows regarding applications for these frequencies. In response to these filing windows, the Commission received over 50,000 applications, most of which proposed to provide commercial (subscriber-based) service and were mutually exclusive with at least one other application. The other bands have been available since the early 1980s and are heavily used in many major metropolitan areas. The 928/959 MHz band is used primarily for control of wide-area paging systems. The 928/952/956 MHz band is used primarily for private, internal systems, especially by the power, petroleum, and security industries. In February 1997, the Commission proposed to license the first two bands by geographic area and resolve mutually exclusive initial applications by competitive bidding, because the Communications Act then provided that mutually exclusive applications to provide subscriber-based services were auctionable. It also proposed to allocate the 928/952/956 MHz band exclusively for private, internal svstems.

Before that rule making proceeding was completed, the Balanced Budget Act of 1997 was enacted. Among other things, the Balanced Budget Act eliminated the Commission's authority to use lotteries to select among mutually exclusive applications for initial licenses. Accordingly, the 50,000 pending applications for the 932/

941 MHz band were dismissed. The Balanced Budget Act also required the Commission to award all mutually exclusive licenses, with certain exceptions, by using competitive bidding procedures. One of those exceptions is for "public safety radio services," which, as you point out, includes radio services used by utilities, pipelines, and railroads. Because the Balanced Budget Act altered the criteria for determining whether or not applications for a particular service or class of frequencies are subject to competitive bidding, and the fact that the three MAS bands are available to both "public safety" and non-public safety entities, the Cornmission in July 1999 released a Further Notice of Proposed Rule Making to build a sufficient record to decide, *inter alia,* whether the 928/952/956 MHz band comes within that exception. Comment was sought on such issues as the current level of representation of "public safety radio services" in the band, whether the band should be allocated for such services only, and, if so, whether the frequencies should be licensed geographically or site-by-site. The deadlines for comments and reply comments are September 17 and October 18, respectively. We intend to resolve these issues, and implement appropriate licensing procedures for MAS spectrum, in an efficient and expeditious manner following the close of the public comment period.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. SAM BROWNBACK TO WILLIAM E. KENNARD

Question. For several years, the Commission has been working on an economic model to calculate the cost of providing universal telephone service to rural, insular, and other high-cost areas. The model and the inputs used in the model have gone through many changes. The Commission has already violated its statutory obligation to finish the universal service proceeding by May 8, 1997. If no model, including the inputs used in the model, is actually being used by the Commission one year from now to determine the cost of universal service support to non-rural telecommunications carriers, what should the Commission do? Should it scrap the use of a model completely?

Response. The Commission is currently on schedule to implement a revised high-cost support mechanism for non-rural carriers based on forvvard-looking costs, as estimated by a cost model, on January 1, 2000. As I noted above in response to Senator Burns' Question #3, as the Fifth Circuit Court of Appeals recently affirmed, the 1996 Act requires the Commission to adopt, by May 8, 1997, a definition of the services supported by universal service mechanisms, and a specific timeline for implementation. The Commission did so on that date. The Commission took significant steps towards timely implementation of revised support mechanisms for non-rural carriers by adopting the fixed algorithms and assumptions for the model in October 1998, and by adopting proposed input values and the framework for a support methodology in May 1999. We plan to release orders this fall establishing final model input values and the details of the support methodology so that the revised mechanism can be in place on January 1, 2000.

Given the enormous progress that we have made thus far towards implementing a new methodology based on forward-looking costs for non-rural carriers, we have every confidence that we will have a forward-looking mechanism in place on January 1, 2000. If some unforeseen circumstance should prevent this, however, we believe the Commission should consider alternatives to forward-looking cost models at that time if such alternatives would permit more expeditious implementation of high-cost support that is consistent with section 254.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. OLYMPIA J. SNOWE TO WILLIAM E. KENNARD

Question. It is my understanding that WMTW, Channel 8 in Maine, has an application pending before the Commission to construct a digital TV tower in Baldwin, Maine. As with most tower construction proposals, this one has not been without controversy, and I know that letters were received by the FCC that strongly opposed the WMTW application. While I take no position on the application itself—neither supporting nor opposing it—and am seeking no special treatment for the application in terms of its processing, I have received inquiries from constituents on this matter and the timing of the FCC decision.

Accordingly, what is the status of this application, and how soon should the citizens of Baldwin and WMTW expect a final decision from the Commission?

Response. Station WMTW-TV, Portland, Maine, has filed an application to construct a new broadcast tower in Baldwin, Maine. The Commission has received numerous objections to the proposed construction, primarily opposing zoning approval

and location of the tower. While I cannot discuss the merits of the objections, I can say that the Commission generally defers to the decision of appropriate local governmental bodies with respect to the location of broadcast towers. It is the Commission's belief that zoning questions should be left to local authorities who are more familiar with such matters and who possess the particular expertise required to rule on these questions. We note that Station WMTW-TV has obtained local zoning approval for the tower site. Further, the staff has completed its review of the application and finds that the proposal meets all of the interference requirements of the Commission's rule. However, the proposed tower relocation would result in coverage losses to some existing areas, meaning that some residents could lose the broadcast signal. Therefore, on August 19, 1999, staff of the Mass Media Bureau wrote the station to request it provide the FCC certain information with respect to the loss areas. As soon as this information is submitted by the applicant and reviewed by the staff, the processing of the pending application will be completed promptly. Also, I would like to assure you that all information in the record, including your constituents' comments, will be considered in reaching a final decision in this matter.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TRENT LOTT TO GLORIA TRISTANI

Question 1. Last December the FCC issued an order to address unauthorized changes of carrier selection, more commonly known as slamming. This order contained a complex set of rules for providing credits to consumers who have been victimized by slamming and for compensating a slammed customer's original carrier. Recognizing the complexity of this issue, your order also invited industry to put forward alternative proposals for addressing slamming that would still achieve the Commission's goals. In March, a coalition of long distance providers, after working closely with the Commission staff, presented the Commission with a proposal for an industry-funded neutral third-party administrator that would remove much of the complexity for industry and consumers alike. My understanding is that this concept has support from many parties, including the National Association of Attorneys General, and that some groups—among them the larger consumer interest groups—believe that the industry plan is a superior approach to fight slamming. To me, an industry solution that in fact simplifies the process, makes the consumer whole and takes the profit out of slamming makes more sense than imposing a set of government regulations that may not be workable in practice.

Last week the Commission's own slamming rules were stayed by the court indefinitely. A legislative remedy will take a long time to work its way through the Hill, if it does at all, and it will take some time to craft the rules to implement such legislation. The industry proposal, which is still before the Commission, seems to me to be the most rapid way to bring relief to consumers. Is the Commission giving the industry proposal serious consideration? How quickly can we expect the Commission to act on this proposal?

Response. I concur with Chairman Kennard's response to this question.

Question 2. Many people believe that there are billions of dollars in excess earnings in local company access charges (that is, earnings above what is needed for any legitimate subsidy of local service). The FCC has an extensive record on this issue pending before it. Yet access reform may be further delayed. When does the FCC plan to act on access reform, and is there anything that the FCC can do, effective this July, to give the American people a downpayment on the reductions that are due them?

Response. I concur with Chairman Kennard's response to this question.

Question 3. The FCC recently released its report of audits of certain incumbent local company records that indicate a significant amount of equipment is unaccounted for. If you couple that with reports that access charges are, and have been, significantly above cost, what steps is the FCC taking to address these specific concerns?

Response. I am particularly concerned by the results of the audit reports and implications of misstated regulatory accounts on other parties, including consumers, purchasers of access service, state commissions, and competitors. As I stated when we released the reports, I encourage the Commission to move swiftly toward initiating any enforcement action that may be necessary.

Question 4. I understand that the Commission has opened a proceeding to implement the spectrum provisions of the 1997 Balanced Budget Act. When Congress expanded the FCC's authority to use auctions in the 1997 Balanced Budget Act, we specifically provided that certain private radio services are exempt from auctions because licensees in these radio services use their radio systems to protect the safety

of life, health or property. It was further noted in the Conference Committee Report that these exempt services include private, internal radio systems used by utilities, pipelines, state and local government agencies, emergency road services, and others. However, I understand that aside from state and local government agencies and tow truck operators, the Commission has not proposed in this proceeding to exempt utilities, pipelines, railroads, or any of the other radio services identified in the Conference Report. Could you please confirm whether it is the Commission's intent to follow Congress' directions, as explained in the Conference Report, or whether the agency is proposing to unilaterally narrow the exemption language?

Response. I concur with Chairman Kennard's response to this question.

Question 5. Despite Congress' direction that the FCC use engineering solutions, frequency coordination, and other means to avoid application conflicts and hence the need for auctions, I understand that as part of this same proceeding the FCC is proposing to change its licensing rules for private radio services so that such application conflicts are likely.

Congress would like to know why the FCC is trying to create application conflicts and thereby force private radio users into competing at auction, instead of following Congress' direction in the Act that auctions are to be used only where such conflicts cannot be avoided.

Response. I concur with Chairman Kennard's response to this question.

Question 6. I understand the FCC has proposed to auction licenses in the 900 MHz band for "multiple address systems," that are used by utilities, pipelines, and railroads to remotely monitor and control their utility or rail networks. An allocation of one megahertz of bandwidth for MAS was made more than 10 years ago, but because of Commission inaction and now a new rulemaking to force auctions on these channels, no licenses have been granted on these channels. Congress is also disturbed to hear that the agency may delay this matter even further because of its proceeding to implement the auction provisions of the 1997 Budget Act. Could you please provide Congress with a timetable for completing action in the multiple address system docket, and explain why utilities, pipelines, and railroads, which are exempt from auctions, must wait any longer to begin using these much-needed channels?

Response. I concur with Chairman Kennard's response to this question.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CONRAD BURNS TO GLORIA TRISTANI

Question 1. In your estimation, what data speeds constitute broadband access? Can you be specific vith reward to both upstream and downstream speeds?

Response. I concur with Chairman Kennard's response to this question.

Question 2. Mr. Chairman and Commissioners, I know that implementation of E911 location technology has been a high priority of yours and I want to commend you for your efforts and the establishment of the October 1, 2001 implementation deadline. E911 location technology will enable our emergency service providers to save lives and it is imperative that we ensure that technology [is] available to the public as soon as possible. Can you comment on any recent progress made at the Commission in this critical area?

Response. I concur with Chairman Kennard's response to this question.

Question 3. The FCC was required by the 1996 Telecommunications Act to complete its reformation of the federal universal service support system, replacing implicit subsidies with explicit subsidies, by May 8, 1997. It is now over two years past that deadline—and over three years since passage of the Act—and the Commission still has not completed such action. In fact, it has missed even its own, self-imposed deadline of January 1999 and is possibly in danger of missing its July 1999 deadline. When will the reform of universal service finally be completed?

Response. I concur with Chairman Kennard's response to this question.

Question 4. NARUC has proposed FCC-state commission cooperation on Section 706, promoting access to advanced technologies. What is your reaction?

Response. I am excited by NARUC's recent proposal that the FCC establish a Federal-State Joint Conference to speed deployment of advanced services to underserved areas under Section 706 of the Act. In particular, I believe that such a Joint Conference could prove invaluable in collecting data on advanced services deployment and coordinating initiatives by various government and private groups. I am likewise interested in exploring the proposal that the Conference could select certain communities for special attention by naming them "706 zones."

Question 5. How do you see the FCC-state commission relationship developing over the comings months and years?

Response. I concur with Chairman Kennard's response to this question. Moreover, as a former state commissioner, I am particularly sensitive to the need for the Commission to understand state perspectives and experiences in formulating national telecommunications policy.

Question 6. What is the status of the Rural Task Force, which will be making recommendations concerning universal service for rural telecom providers?

Response. I concur with Chairman Kennard's response to this question.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. SAM BROWNBACK TO GLORIA TRISTANI

Question. For several years, the Commission has been working on an economic model to calculate the cost of providing universal telephone service to rural, insular, and other high-cost areas. The model and the inputs used in the model have gone through many changes. The Commission has already violated its statutory obligation to finish the universal service proceeding by May 8, 1997. If no model, including the inputs used in the model, is actually being used by the Commission one year from now to determine the cost of universal service support to non-rural telecommunications carriers, what should the Commission do? Should it scrap the use of a model completely?

Response. I concur with Chairman Kennard's response to this question.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. OLYMPIA J. SNOWE TO GLORIA TRISTANI

Question. It is my understanding that WMTW, Channel 8 in Maine, has an application pending before the Commission to construct a digital TV tower in Baldwin, Maine. As with most tower construction proposals, this one has not been without controversy, and I know that letters were received by the FCC that strongly opposed the WMTW application. While I take no position on the application itself—neither supporting nor opposing it—and am seeking no special treatment for the application in terms of its processing, I have received inquiries from constituents on this matter and the timing of the FCC decision.

Accordingly, what is the status of this application, and how soon should the citizens of Baldwin and WMTW expect a final decision from the Commission?

Response. I concur with Chairman Kennard's response to this question.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TRENT LOTT TO SUSAN NESS

Question 1. Last December the FCC issued an order to address unauthorized changes of carrier selection, more commonly known as slamming. This order contained a complex set of rules for providing credits to consumers who have been victimized by slamming and for compensating a slammed customer's original carrier. Recognizing the complexity of this issue, your order also invited industry to put forward alternative proposals for addressing slamming that would still achieve the Commission's goals. In March, a coalition of long distance providers, after working closely with the Commission staff, presented the Commission with a proposal for an industry-funded neutral third-party administrator that would remove much of the complexity for industry and consumers alike. My understanding is that this concept has support from many parties, including the National Association of Attorneys General, and that some groups—among them the larger consumer interest groups—believe that the industry plan is a superior approach to fight slamming. To me, an industry solution that in fact simplifies the process, makes the consumer whole and takes the profit out of slamming makes more sense than imposing a set of government regulations that may not be workable in practice.

Last week the Commission's own slamming rules were stayed by the court indefinitely. A legislative remedy will take a long time to work its way through the Hill, if it does at all, and it will take some time to craft the rules to implement such legislation. The industry proposal, which is still before the Commission, seems to me to be the most rapid way to bring relief to consumers. Is the Commission giving the industry proposal serious consideration? How quickly can we expect the Commission to act on this proposal?

Response. I concur with the Chairman's answer. For consumers, slamming is a pernicious act, for which prompt and fair resolution is essential. To be workable,

any process we adopt must have the support of consumers, the industry, and the states.

Question 2. Many people believe that there are billions of dollars in excess earnings in local company access charges (that is, earnings above what is needed for any legitimate subsidy of local service). The FCC has an extensive record on this issue pending before it. Yet access reform may be further delayed. When does the FCC plan to act on access reform, and is there anything that the FCC can do, effective this July, to give the American people a downpayment on the reductions that are due them?

Response. I agree with the Chairman and continue to be a strong proponent of access reform.

Question 3. The FCC recently released its report of audits of certain incumbent local company records that indicate a significant amount of equipment is unaccounted for. If you couple that with reports that access charges are, and have been, significantly above cost, what steps is the FCC taking to address these specific concerns?

Response. I concur with the Chairman's answer.

Question 4. I understand that the Commission has opened a proceeding to implement the spectrum provisions of the 1997 Balanced Budget Act. When Congress expanded the FCC's authority to use auctions in the 1997 Balanced Budget Act, we specifically provided that certain private radio services are exempt from auctions because licensees in these radio services use their radio systems to protect the safety of life, health or property. It was further noted in the Conference Committee Report that these exempt services include private, internal radio systems used by utilities, pipelines, state and local government agencies, emergency road services, and others. However, I understand that aside from state and local government agencies and tow truck operators, the Commission has not proposed in this proceeding to exempt utilities, pipelines, railroads, or any of the other radio services identified in the Conference Report. Could you please confirm whether it is the Commission's intent to follow Congress' directions, as explained in the Conference Report, or whether the agency is proposing to unilaterally narrow the exemption language?

Response. I concur with the Chairman's answer. Private radio is an important component of our spectrum management policy.

Question 5. Despite Congress' direction that the FCC use engineering solutions, frequency coordination, and other means to avoid application conflicts and hence the need for auctions, I understand that as part of this same proceeding the FCC is proposing to change its licensing rules for private radio services so that such application conflicts are likely.

Congress would like to know why the FCC is trying to create application conflicts and thereby force private radio users into competing at auction, instead of following Congress' direction in the Act that auctions are to be used only where such conflicts cannot be avoided.

Response. I concur with the Chairman's answer.

Question 6. I understand the FCC has proposed to auction licenses in the 900 MHz band for "multiple address systems," that are used by utilities, pipelines, and railroads to remotely monitor and control their utility or rail networks. An allocation of one megahertz of bandwidth for MAS was made more than 10 years ago, but because of Commission inaction and now a new rulemaking to force auctions on these channels, no licenses have been granted on these channels. Congress is also disturbed to hear that the agency may delay this matter even further because of its proceeding to implement the auction provisions of the 1997 Budget Act. Could you please provide Congress with a timetable for completing action in the multiple address system docket, and explain why utilities, pipelines, and railroads, which are exempt from auctions, must wait any longer to begin using these much-needed channels?

Response. I concur with the Chairman's answer. In addition, I would support concurrent Commission action on the MAS Further Notice and the Balanced Budget Act Notice, if this will expedite the licensing of MAS spectrum.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CONRAD BURNS TO SUSAN NESS

Question 1. In your estimation, what data speeds constitute broadband access? Can you be specific with regard to both upstream and downstream speeds?

Response. I agree with the Chairman and support our conclusion in the 706 Report last February that 200 kilobits per second in both directions was sufficient to provide the most popular broadband services. In the future greater speed may be

needed to make creative use of color, graphics, and streaming video—all of which require fast bitstreams. When we issued our 706 report, I underscored the need for broadband to be available not only in our cities, but across rural America, and pledged to work to eliminate any barriers to competition that might arise as this nascent industry develops. As I noted last February, I plan to monitor closely developments in rural deployment of broadband capability.

Question 2. Mr. Chairman and Commissioners, I know that implementation of E911 location technology has been a high priority of yours and I want to commend you for your efforts and the establishment of the October 1, 2001 implementation deadline. E911 location technology will enable our emergency service provides to save lives and it is imperative that we ensure that technology [is] available to the public as soon as possible. Can you comment on any recent progress made at the Commission in this critical area?

Response. The Chairman's answer provided a comprehensive summary of the Commission's implementation of E911 services, and I fully support the Commission's efforts to continue the implementation of E911 Phase I and II as well as Congressional legislation mandating a nationwide 911 emergency numbering scheme.

I would only add that the rules adopted in the Commission's E911 Second Notice of Proposed Rulemaking to address the "blank spot" problem apply to cellular licensees providing analog service. These new rules will improve the transmission of 911 calls for users of analog mobile phones, or digital mobile phones with an analog mode in geographic areas with a blank spot in a licensee's cellular coverage. Some mobile phones, however, are digital only. For digital only mobile phones, currently there is no solution to the "blank spot" problem. As the mobile phone market migrates away from analog to digital services, this will represent an increasingly significant public safety gap in 911 coverage for digital only mobile phones unless a solution can be found.

Question 3. The FCC was required by the 1996 Telecommunications Act to complete its reformation of the federal universal service support system, replacing implicit subsidies with explicit subsidies, by May 8, 1997. It is now over two years past that deadline—and over three years since passage of the Act—and the Commission still has not completed such action. In fact, it has missed even its own, self-imposed deadline of January 1999 and is possibly in danger of missing its July 1999 deadline. When will the reform of universal service finally be completed?

Response. I concur with the Chairman's response. I also share your frustration regarding the time it has taken to complete universal service reform. As Chair of the Universal Service Joint Board, I have spent many hours working through complex issues with my counterparts on the state public utility commissions, as well as with my colleagues at the FCC to achieve a workable solution. Universal service reforms must be sustainable and any mechanism we adopt must have achieved a level of accuracy, predictability, and openness that garners widespread acceptance. I believe that we are on the right track.

While I would have preferred to have completed this process early, one result of the lag in the development of local competition is that implicit subsidies have not eroded as rapidly as feared, and the revenues and cash flows of carriers that serve rural areas remain healthy.

Question 4. NARUC has proposed FCC-state commission cooperation on Section 706, promoting access to advanced technologies. What is your reaction?

Response. I agree with the Chairman. FCC-state cooperation is essential in facilitating access to advanced technologies. States have valuable insights regarding their service areas and obstacles involved. I look forward to continuing to work with our state colleagues to find creative solutions to deployment of advanced services in the rural areas of the country.

Question 5. How do you see the FCC-state commission relationship developing over the coming months and years?

Response. I agree with the Chairman's answer. We have worked hard to develop a productive relationship with the states to better serve the American public. In deed, the roots of many of our best ideas can be traced back to best practices adopted by the states. As competition evolves, the need for monopoly regulation recedes. We are working closely with the states, for example, to coordinate reporting requirements to remove unnecessarily cumbersome or duplicative rules. As a member of the NARUC Communications Committee, I welcome the opportunity to explore other areas for further coordination.

Question 6. What is the status of the Rural Task Force, which will be making recommendations concerning universal service for rural telecom providers?

Response. I concur with the Chairman's response. I was very impressed with the members of the Rural Task Force when I met with them recently to discuss their progress on universal service issues for rural carriers. We need to ensure that rural

telephone companies—some 1300 strong—continue to be able to serve their communities. Their issues are unique and require special consideration. I look forward to receiving the Task Force recommendations.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. SAM BROWNBACK TO SUSAN NESS

Question. For several years, the Commission has been working on an economic model to calculate the cost of providing universal telephone service to rural, insular and other high-cost areas. The model and the inputs used in the model have gone through many changes. The Commission has already violated its statutory obligation to finish the universal service proceeding by May 8, 1997. If no model, including the inputs used in the model, is actually being used by the Commission one year from now to determine the cost of universal service support to non-rural telecommunications carriers, what should the Commission do? Should it scrap the use of a model completely?

Response. I concur with the Chairman's answer and also express my optimism that the forward-looking cost model will be a valuable tool. If, however, the model fails to achieve widespread acceptance for providing an accurate prediction of relative cost, I am open to other alternatives.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. OLYMPIA J. SNOWE TO SUSAN NESS

Question. It is my understanding that WMTW, Channel 8 in Maine, has an application pending before the Commission to construct a digital TV tower in Baldwin, Maine. As with most tower construction proposals, this one has not been without controversy, and I know that letters were received by the FCC that strongly opposed the WMTW application. While I take no position on the application itself—neither supporting nor opposing it—and am seeking no special treatment for the application in terms of its processing, I have received inquiries from constituents on this matter and the timing of the FCC decision.

Accordingly, what is the status of this application, and how soon should the citizens of Baldwin and WMTW expect a final decision from the Commission?

Response. I concur with the Chairman's answer.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TRENT LOTT TO MICHAEL K. POWELL

Question 1. Last December the FCC issued an order to address unauthorized changes of carrier selection. More commonly known as slamming. This order contained a complex set of rules for providing credits to consumers who have been victimized by slamming and for compensating a slammed consumer's original carrier. Recognizing the complexity of this issue, your order also invited industry to put forward alternative proposals for addressing slamming that would still achieve the Commission's goals. In March, a coalition of long distance providers, after working closely with the Commission staff, presented the Commission with a proposal for an industry-funded neutral third-party administrator that would remove much of the complexity for industry and consumers alike. My understanding is that this concept has support from many parties, including the National Association of Attorneys General, and that some groups—among them the larger consumer interest groups—believe that the industry plan is a superior approach to fight slamming. To me, an industry solution that in fact simplifies the process, makes the consumer whole and takes the profit out of slamming makes more sense than imposing a set of government regulations that may not be workable in practice.

Last week the Commission's own slamming rules were stayed by the court indefinitely. A legislative remedy will take a long time to work its way through the Hill, if it does at all, and it will take some time to craft the rules to implement such legislation. The industry proposal, which is still before the Commission, seems to me to be the most rapid way to bring relief to consumers. Is the Commission giving the industry proposal serious consideration? How quickly can we expect the Commission to act on this proposal?

Response. I generally subscribe to the views expressed in Chairman Kennard's response to this question to the extent he welcomes the industry proposal and commits the Commission to moving quickly to resolve these issues. I think there are potential advantages to consumers of utilizing an industry-funded neutral third-

party administrator. We must weigh these advantages against the concerns of some state commissions, members of Congress and others who oppose the proposal. I hope the Commission can conclude its review of this proposal in the fall, assuming continued industry cooperation and an ongoing dialogue with interested parties.

As I have stated on other occasions, I firmly support the Commission taking steps, pursuant to Section 258 of the 1996 Act, to establish policies and rules designed to combat unauthorized changes of consumers' long distance carriers ("slamming"). The Act mandates that we turn the ship of federal telecommunications regulation smartly in the direction of competitive markets, and away from the traditional central planning model. It is critical to the functioning of competitive markets that consumers make effective choices in the marketplace, as these choices tell self-interested firms what to sell, how much and where. Slamming robs consumers of choices they have made, and thus I am more than pleased to support its prevention and vigorous prosecution.

Question 2. Many people believe that there are billions of dollars in excess earnings in local company access charges (that is, earnings above what is needed for any legitimate subsidy of local service). The FCC has an extensive record on this issue pending before it. Yet access reform may be further delayed. When does the FCC plan to act on access reform, and is there anything that the FCC can do, effectively this July, to give the American people a down payment on the reductions that are due them?

Response. I believe there is an urgent need to complete our work to reform access charges. I hope the Commission can make additional headway in our ongoing access reform efforts over the next 3-6 months. As the Chairman's response indicates, the most recent access tariff filings by local exchange carriers ("LECs") in July 1999 would substantially reduce annual access charges, and there is likely to be another reduction next July. Nothing necessarily compels inter-exchange carriers to pass these savings onto consumers, but I would expect that competitive market forces in the long-distance market will result in substantial consumer savings (as the recent news of long-distance price wars demonstrate).

The Commission's reform of access charges is closely tied to our task of reforming universal service subsidies to make them more explicit and portable. Universal service reform will encourage new entrants to compete more vigorously for many consumers by undermining the advantage incumbent LECs have traditionally enjoyed by virtue of their exclusive access to implicit universal service subsidies. Similarly, access charge reform will create incentives for economically efficient entry by competing exchange access providers by enabling these charges to more properly reflect the manner in which access costs are incurred. Thus, costs that increase the longer one is on the phone might properly be recovered through per-minute pricing. Moreover, costs that remain about the same, regardless of how many calls one makes, or how long any one call is, should be recovered by flat charges. These charges would be dictated by market forces, not regulatory intervention.

As the Commission has noted, however, the artificially high per-minute long distance rates that result from implicit access charge subsidies flowing from high volume to low volume consumers have distorted competitive entry. Competitors realized that high volume consumers and businesses were paying rates well above cost and thus seized on the opportunity to serve them, and thereby maximize profits. Conversely, competitors have been slow to embrace low volume residential customers under the old system, because these firms are less likely to be able to recoup the costs of serving those customers, relative to high volume customers. High per-minute long distance rates also have discouraged all consumers from using this valuable service.

Access charge reform seeks to correct these problems by ensuring that flat costs are recovered through flat fees and per-minute costs through per-minute fees. Thus, such reform is necessary to promote competition because it removes policies that have tended to make some customers, particularly low volume customers, unattractive prospects for new entrants. The Commission's current policy is to allow competitive forces, rather than additional regulation, to determine the extent of any additional reductions to interstate access charges. We are, however, considering other approaches. Without these reforms, all consumers. including low volume consumers, would be much less likely to receive the benefits of competition. Thus, I am personally committed to pushing forward with access reform as expeditiously as the enormous complexity of this issue allows.

Question 3. The FCC recently released its report of audits of certain incumbent local company records that indicate a significant amount of equipment is unaccounted for. If you couple that with reports that access charges are, and have been, significantly above cost, what steps is the FCC taking to address these specific concerns?

Response. I refer to Chairman Kennard's report on the status of our access charge reform and Continuing Property Record ("CPR") Audit proceedings. The Commission has initiated an Inquiry into the CPR Audit Reports wherein we will gather and analyze information concerning the validity and implications of the Reports. At present, we are seeking public comment and review of various documents to help us evaluate differences between the auditors' findings and statements by the companies audited, and to help us determine what further action, if any, the Commission should take. As for the cost of exchange access, it is my understanding that this is an issue staff is considering as part of our ongoing access reform proceeding.

I fully agree that the information contained in the Audit Reports should have been released in some manner, primarily to ensure its factual accuracy, methodological validity and to determine whether, if the Reports' conclusions are valid, there has been a detrimental impact on ratepayers. Such an impact, if proven, would be serious, and I would willingly support addressing that impact right now were I persuaded that we have enough information to prove it. As our initiation of the Inquiry into the Audit Reports suggests, however, we simply do not have enough information to endorse fully and take action on the Reports' conclusions at this time. Specifically, the intention to start a future proceeding reflects the fact that we lack sufficient confidence in the Reports to proceed to enforcement without first subjecting their facts and analysis to public scrutiny. I fully recognize the potential for at least some adverse impact on consumers if such scrutiny indicates that the Audit Reports' conclusions are appropriate. Moreover, I do not doubt the integrity of our Common Carrier Bureau auditors' work or even necessarily the validity of their preliminary analyses and conclusions. I am simply unprepared to take action on these analyses and conclusions before they are tested in the fire of vigorous debate by other interested parties. Thus, I look forward to working with my colleagues to develop and analyze the record in the Inquiry as expeditiously as possible. Likewise, in the access charge reform proceeding, I look forward to considering, with the help of interested parties, whether access charges are above cost and what remedial actions might be necessary.

Question 4. I understand that the Commission has opened a proceeding to implement the spectrum provisions of the 1997 Balanced Budget Act. When Congress expanded the FCC's authority to use auctions in the 1997 Balanced Budget Act, we specifically provided that certain private radio services are exempt from auctions because licensees in these radio services use their radio systems to protect the safety of life, health or property. It was further noted in the Conference Committee Report that these exempt services include private, internal radio systems used by utilities, pipelines, state and local government agencies, emergency road services, and others. However, I understand that aside from state and local government agencies and tow truck operators, the Commission has not proposed in this proceeding to exempt utilities, pipelines, railroads, or any of the other radio services identified in the Conference Report. Could you please confirm whether it is the Commission's intent to follow Congress' directions, as explained in the Conference Report, or whether the agency is proposing to unilaterally narrow the exemption language?

Response. I generally subscribe to the response to this question provided by Chairman Kennard. Although auctions have proven to be a superior licensing tool, Congress and the Commission have recognized that it may not be a suitable mechanism for all radio services, especially those used in connection with public safety. I would add also that the congressional intent behind the auction exemption for "critical infrastructure" and other public safety services is clear. There is no intent on my part to narrow this exemption language or to impose irrational regulatory requirements that micromanage the non-commercial use of frequencies licensed, pursuant to law, by means other than auctions.

Question 5. Despite Congress' direction that the FCC use engineering solutions, frequency coordination, and other means to avoid application conflicts and hence the need for auctions, I understand that as part of this same proceeding the FCC is proposing to change its licensing rules for private radio services so that such application conflicts are likely. Congress would like to know why the FCC is trying to create application conflicts and thereby force private radio users into competing at auction, instead of following Congress' direction in the Act that auctions are to be used only where such conflicts cannot be avoided.

Response. I generally agree with the response to this question provided by Chairman Kennard. I believe that we should evaluate our licensing schemes on a regular basis to see if they continue to make sense. In WT Docket No. 99-87, I firmly believe we have begun this process for private radio services in a neutral fashion, without prejudging questions of mutual exclusivity and auctionability. Before getting to these questions, we must (and I believe we will) faithfully analyze the current process to determine, as Section 309(j)(6)(E) requires, whether it is in the "public inter-

est to continue" to employ techniques that avoid mutual exclusivity. In sum, if it is broken, we should fix it; if it is working fine in the public interest, we should "continue" its use.

Question 6. I understand the FCC has proposed to auction licenses in the 900 MHz band for "multiple address systems," that are used by utilities, pipelines, and railroads to remotely monitor and control their utility or rail networks. An allocation of one megahertz of bandwidth for MAS was made more than 10 years ago, but because of Commission inaction and now a new rulemaking to force auctions on these channels, no licenses have been granted on these channels. Congress is also disturbed to hear that the agency may delay this matter even further because of it proceeding to implement the auction provisions of the 1997 Budget Act. Could you please provide Congress with a timetable for completing action in the multiple address system docket, and explain why utilities, pipelines, and railroads, which are exempt from auctions, must wait any longer to begin using these much-needed channels?

Response. I concur generally with the response of Chairman Kennard. I agree that licensing rules for both commercial and public safety use of the MAS bands has been delayed for much too long. Once the comment cycle is closed in the current ongoing proceeding, I will urge my colleagues to expedite final action and licensing of these frequencies.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CONRAD BURNS TO MICHAEL K. POWELL

Question 1. In your estimation, what data speeds constitute broadband access? Can you be specific with regard to both upstream and downstream speeds?

Response. I generally agree with Chairman Kennard to the extent he reiterates, in his response to this question, the Commission's estimates in our February 2, 1999 Report to Congress of what data speeds constitute broadband access. I should emphasize, however, that such estimates are not static, but rather will evolve as the capabilities and primary uses of technology developed over time.

Question 2. Mr. Chairman and Commissioners, I know that implementation of E911 location technology has been a high priority of yours and I want to commend you for your efforts and the establishment of the October 1, 2001 implementation deadline. E911 location technology will enable our emergency service providers to save lives and it is imperative that we ensure that technology available to the public as soon as possible. Can you comment on any recent progress made at the Commission in this critical area?

Response. I generally subscribe to the Chairman's response to this question and I hope that you find helpful the brief report on recent progress in this area. Personally, I believe we have no higher calling than that of facilitating and promoting the public's safety. Wireless E911 is a very important component of this objective and I believe it should be implemented by carriers at the earliest practicable date. Lives are at stake. I am committed to resolving all outstanding issues before the Commission on an expedited basis so that the industry is provided certainty and timely deployment may continue.

Question 3. The FCC was required by the 1996 Telecommunications Act to complete its reformation of the federal universal service support system, replacing implicit subsidies with explicit subsidies, May 8, 1997. It is now over two years past that deadline—and over three years since passage of the Act—and the Commission has still not completed such action. In fact, it has missed even its own, self-imposed deadline of January 1999 and is possibly in danger of missing its July 1999 deadline. When will the reform of universal service finally be completed?

Response. I share many of your concerns regarding delays in completion of our reforms in this important area. It is my understanding and my fervent hope that this fall the Commission will address, with respect to non-rural telephone companies, the universal service issues you have identified.

On numerous occasions, I have made clear my support for the universal service programs that it is this Commission's duty to implement under the Telecommunications Act of 1996. The Act requires that the services designated for universal service support be "available at just, reasonable and affordable rates" in "all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas." 47 U.S.C. §§ 254(b)(1), 254(b)(3). I wholeheartedly endorse the overall goal of the statute, and I know that the public interest will be well-served if we remain faithful to the intent of these and other provisions in implementing universal service programs.

One of the fundamental objectives of universal service reform for non-rural carriers is that we make traditional implicit subsidies explicit and portable. This will encourage new entrants to compete more vigorously for many consumers by undermining the advantage incumbent LECs have traditionally enjoyed by virtue of their exclusive access to implicit universal service subsidies. Thus, universal service reform is critical to the development of competition in addition to the provision of supported services at reasonable and affordable rates. As such, I agree that universal service reform should be completed as quickly as practicable.

Question 4. NARUC has proposed FCC-state commission cooperation on Section 706, promoting access to advanced technologies. What is your reaction?

Response. I concur in Chairman Kennard's response to this question to the extent that he underscores his commitment to working cooperatively with state commissions on issues for which the two jurisdictions have important roles to play. The need for such cooperation is especially critical in areas, such as the promotion of advanced services, that depend heavily on interconnection arrangements. Because of their central role in reviewing, arbitrating and approving such arrangements generally, state commissions may have valuable perspectives and expertise on how best to promote the development of advanced services. To this, the Commission can bring additional, valuable expertise as well as a national perspective and consistency. The combination of these resources can, I believe, promote advanced services deployment. Thus, I foresee continued cooperation between the Commission and state commissions in the advanced services context

Question 5. How do you see that FCC-state commission relationship developing over the coming months and years?

Response. This relationship must continue to develop and to develop in its current positive direction. In addition to issues related to advanced services, as noted in the above response, we must have a greater cooperative effort in all areas of shared and common jurisdiction. The recent Fifth Circuit remand of the Universal Service funding issues emphasizes the need for the Commission to cooperate and negotiate with state regulatory authorities, instead of dictating our desired outcome.

Question 6. What is the status of the Rural Task Force, which will be making recommendations concerning universal service for rural telecom providers?

Response. It is my understanding that the status of our universal service reform efforts for rural companies is as Chairman Kennard describes in his response to this question. Upon receiving the Rural Task Force's report next fall regarding which reforms may be necessary for rural telephone companies, it is my understanding that the Commission will act on those recommendations quickly, so as to implement any necessary reforms by January 1, 2001.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. SAM BROWNBACK TO MICHAEL K. POWELL

Question. For several years, the Commission has been working on an economic model to calculate the cost of providing universal telephone service to rural, insular, and other high-cost areas. The model and the inputs used in the model have gone through many changes. The Commission has already violated its statutory obligation to finish the universal service proceeding by May 8, 1997. How much longer are you prepared to wait before the Commission implements a model? If no model, including the inputs used in the model, is actually being used by the Commission one year from now to determine the cost of universal service support to non-rural telecommunications carriers, what should the Commission do? Should it scrap the use of a model completely?

Response. Chairman Kennard's description of the status of the technical development of our universal service cost model generally comports with my understanding. As I have stated on other occasions, one of the most daunting challenges of our universal service reforms for non-rural carriers is making traditional implicit subsidies explicit and portable. The model could provide one option to assist us in tackling this challenge by helping us to introduce some notion of cost into what traditionally has been a non-cost-based rate structure. Introducing some notion of cost, in turn, holds out the prospect of making these rate structures more consistent with competitive markets and deregulation. Thus, I think it remains a worthy objective to capitalize on the enormous time and resources that our staff, the industry and state commissions have invested in developing the model. At the same time, I share many of your concerns regarding delays in completion of our reforms in this important area. Universal service reform, along with access reform, is critical to achievement of the Act's goals of promoting competition, deregulation and innovation. Thus, I remain open to any method of making rate structures more compatible with competi-

tive markets that can help us achieve these goals effectively and in a manner that promotes competition in both the short and long terms.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. OLYMPIA J. SNOWE TO MICHAEL K. POWELL

Question. It is my understanding that WMTW Channel 8 in Maine has an application pending before the Commission to construct a digital TV tower in Baldwin, Maine. As with most tower construction proposals, this one has not been without controversy, and I know that letters were received by the FCC that strongly opposed the WMTW application. While I take no position on the application itself—neither supporting nor opposing it—and am seeking no special treatment for the application in terms of its proceeding, I have received inquiries from constituents on this matter and the timing of the FCC decision.

Accordingly, what is the status of this application, and how soon should the citizens of Baldwin and WMTW expect a final decision from the Commission?

Response. The Commission's staff is actively considering the application pending for WMTW-Channel 8 (Baldwin, Maine). As noted in the Chairman's response, the staff has asked the applicant for additional information on what, if any, coverage losses may exist as a result of the tower's location. This information is required to be filed to facilitate the modification application process. As soon as this information is submitted, the Commission staff will complete processing of the application in a timely manner.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TRENT LOTT TO HAROLD W. FURCHTGOTT-ROTH

Question 1. Last December the FCC issued an order to address unauthorized changes of carrier selection, more commonly known as slamming. This order contained a complex set of rules for providing credits to consumers who have been victimized by slamming and for compensating a slammed consumer's original carrier. Recognizing the complexity of this issue, your order also invited industry to put forward alternative proposals for addressing slamming that would still achieve the Commission's goals. In March, a coalition of long distance providers, after working closely with the Commission staff, presented the Commission with a proposal for an industry-funded neutral third-party administrator that would remove much of the complexity for industry and consumers alike. My understanding is that this concept has support from many parties, including the National Association of Attorneys General, and that some groups—among them the larger consumer interest groups—believe that the industry plan is a superior approach to fight slamming. To me, an industry solution that in fact simplifies the process, makes the consumer whole and takes the profit out of slamming makes more sense than imposing a set of government regulations that may not be workable in practice.

Last week the Commission's own slamming rules were stayed by the court indefinitely. A legislative remedy will take a long time to work its way through the Hill, if it does at all, and it will take some time to craft the rules to implement such legislation. The industry proposal, which is still before the Commission, seems to me to be the most rapid way to bring relief to consumers. Is the Commission giving the industry proposal serious consideration? How quickly can we expect the Commission to act on this proposal?

Response. I believe that everyone at the Commission shares the same goal—significantly reducing and eventually eliminating slamming. In that regard, I have expressed my firm support for the Commission, pursuant to section 258 of the 1996 Act, to enact rules and regulations designed to eliminate these unauthorized changes. I share your concern, however, that the rules adopted by the Commission last December were overly complex, and as I expressed at that time, inconsistent with the safeguards and incentives established in the Act. Specifically, I believe that the consumer absolution scheme created in that order would lessen the incentives of the party most able to take appropriate action to combat slamming—i.e the authorized carrier—and may also inadvertently lead to an increase in fraudulent claims of slamming. Given these reservations, I am prepared to give serious consideration to any proposal that is more consistent with section 258. With respect to specific timing, I defer to the Chairman.

Question 2. Many people believe that there are billions of dollars in excess earnings in local company access charges (that is, earnings above what is needed for any legitimate subsidy of local service). The FCC has an extensive record on this issue pending before it. Yet access reform may be further delayed. When.does the FCC

plan to act on access reform, and is there anything the FCC can do, effective this July, to give the American people a downpayment on the reductions that are due them?

Response. I remain committed to acting on any proceeding designed to eliminate implicit subsidies in access charges, which I believe have a disruptive effect on competition. I agree that, when access charges are reduced, the American consumer, not federal bureaucrats, should choose how to spend those reductions. Unfortunately, the Commission denied consumers the full benefit of the most recent access charge reductions in July. By choosing to increase the e-rate tax by $1 billion, the Commission intercepted the benefit of the July reductions in access charges, and applied them to its excessive schools and libraries program. I will continue to support responsible access charge reform and Commission action that ensures that the American consumers are the ultimate beneficiaries of this reform.

Question 3. The FCC recently released its report of audits of certain incumbent local company records that indicate a significant amount of equipment is unaccounted for. If you couple that with reports that access charges are, and have been, significantly above cost, what steps is the FCC taking to address these specific concerns?

Response. I have asked my staff to keep me abreast of proposals related to these concerns.

Question 4. I understand that the Commission has opened a proceeding to implement the spectrum provisions of the 1997 Balanced Budget Act. When Congress expanded the FCC's authority to use auctions in the 1997 Balanced Budget Act, we specifically provided that certain private radio services are exempt from auctions because licensees in these radio services use their radio systems to protect the safety of life, health or property. It was further noted in the Conference Committee Report that these exempt services include private, internal radio systems used by utilities, pipelines, state and local government agencies, emergency road services. and others. However, I understand that aside from state and local government agencies and tow truck operators, the Commission has not proposed in this proceeding to exempt utilities, pipelines, railroads, or any of the other radio services identified in the Conference Report. Could you please confirm whether it is the Commission's intent to follow Congress' directions, as explained in the Conference Report, or whether the agency is proposing to unilaterally narrow the exemption language?

Response. As the Commission studies comments we have received in response to the Notice with an eye toward crafting final rules, I believe the entire Commission shares the belief that we should here, as in all proceedings, act in a manner consistent with Congressional intent.

Question 5. Despite Congress' direction that the FCC use engineering solutions, frequency coordination, and other means to avoid application conflicts and hence the need for auctions, I understand that as part of this same proceeding the FCC is proposing to change its licensing rules for private radio services so that such application conflicts are likely. Congress would like to know why the FCC is trying to create application conflicts and thereby force private radio users into competing at auction, instead of following Congress' direction in the Act that auctions are to be used only where such conflicts cannot be avoided.

Response. The Commission's Notice specifically noted that the Balanced Budget Act requires the Commission to use engineering solutions and other techniques to avoid mutual exclusivity, consistent with the public interest. As we move forward in this proceeding, I can assure you that we will be vigilant in ensuring that we remain faithful to the statute.

Question 6. I understand the FCC has proposed to auction licenses in the 900 MHz band for "multiple address systems," that are used by utilities, pipelines, and railroads to remotely monitor and control their utility or rail networks. An allocation of one megahertz of bandwidth for MAS was made more than 10 years ago, but because of Commission inaction and now a new rulemaking to force auctions on these channels, no licenses have been granted on these channels. Congress is also disturbed to hear that the agency may delay this matter even further because of its proceeding to implement the auction provisions of the 1997 Budget Act. Could you please provide Congress with a timetable for completing action in the multiple address system docket, and explain why utilities, pipelines, and railroads, which are exempt from auctions, must wait any longer to begin using these much-needed channels?

Response. I understand that the Commission is committed to resolving the matters raised in the MAS proceeding in an expeditious manner after close of the comment period in this proceeding early this fall. As the Commission builds a record in this proceeding to deal with a host of difficult issues raised by the fact that the MAS bands are allocated for both "public safety" and "non-public safety" services,

we will of course remain mindful of the fact that public safety exception applies to utilities, pipelines and railroads. We will endeavor to issue rules quickly so that these industries can begin using these critical channels.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CONRAD BURNS TO HAROLD W. FURCHTGOTT-ROTH

Question 1. In your estimation, what data speeds constitute broadband access? Can you be specific with regard to both upstream and downstream speeds?

Response. I refer to the statements of the Commission in its Report on the deployment of broadband capability to all Americans, released on February 2, 1999. I recognize that, as technologies evolve, this determination may, after proper notice and comment from the public, need to change as well.

Question 2. Mr. Chairman and Commissioners, I know that implementation of E911 location technology has been a high priority of yours and I want to commend you for your efforts and the establishment of the October 1, 2001 implementation deadline. E911 location technology will enable our emergency service providers to save lives and it is imperative that we ensure that technology available to the public as soon as possible. Can you comment on any recent progress made at the Commission in this critical area.

Response. The Chairman's response to this question lists the efforts we have made this year in the area of E911 implementation. I would simply add that the Commission is poised to take action this month on our E911 Phase 2 rules, which specify requirements for covered carriers providing automatic location information to public safety agencies. I remain committed, as I have said in the past, to making sure that our rules ensure that the benefits of this life saving technology reach all Americans as quickly as possible.

Question 3. The FCC was required by the 1996 Telecommunications Act to complete its reformation of the federal universal service support system, replacing implicit subsidies with explicit subsidies, by May 8, 1997. It is now over two years past that deadline—and over three years since passage of the Act—and the Commission still has not completed such action. In fact, it has missed even its own, self-imposed deadline of January l999 and is possibly in danger of missing its July 1999 deadline. When will the reform of universal service finally be completed?

Response. I share your concern that reformation of the federal universal service support system has not yet been completed. I am concerned that the Commission has distorted the priorities of section 254 of the Act. I remain committed to acting on this measure once it is presented to the full Commission.

Question 4. NARUC has proposed FCC-state commission cooperation on Section 706, promoting access to advanced technologies. What is your reaction?

Response. I fervently support and encourage the participation of the States in all regulatory matters, including matters regarding Section 706. With respect to the proposed establishment of a Joint Conference under Section 410 (b) of the Communications Act, I will support Commission action to the extent that it is consistent with the terms of section 410.

Question 5. How do you see the FCC-state commission relationship developing over the coming months and years?

Response. I encourage the Commission to consult early and often with the States in regulatory matters of common interest. Over the past several years, I have learned much from State commissioners. I believe that governmental decisions should be made, consistent with the law, at the levels of government closest to the people. I value my many friends at State Commissions, and I look forward to working with them in the future.

Question 6. What is the status of the Rural Task Force, which will be making recommendations concerning universal service for rural telecom providers?

Response. As stated by Chairman Kennard, the Federal-State Joint Board on Universal Service created a Rural Task Force on September 17, 1997 to study what universal service reforms are necessary for rural telephone companies, and is due to submit a report with recommendations to the Joint Board by September 2000. The Joint Board will then make its recommendations to the Commission, based on the Rural Task Force's report.

Anecdotally, I have heard that the Rural Task Force has been encouraged by Commission staff to address how to apply the FCC's cost model for universal service in rural America, particularly small carriers. The FCC's cost model is ill-suited for the purposes of universal service for either large carriers or small. I trust that the Rural Task Force will reflect the concerns of rural America and not be bullied into advising the Commission on an ill-considered agenda. I believe that universal serv-

ice for small carriers should be the Commission's first priority in implementing section 254 of the Act. I am deeply troubled by the present plan of delaying action on this priority until January 1, 2001.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. SAM BROWNBACK TO HAROLD W. FURCHTGOTT-ROTH

Question. For several years, the Commission has been working on an economic model to calculate the cost of providing universal telephone service to rural, insular, and other high-cost areas. The model and the inputs used in the model have gone through many changes. The Commission has already violated its statutory obligation to finish the universal service proceeding by May 8, 1997. How much longer are you prepared to wait before the Commission implements a model? If no model, including the inputs used in the model, is actually being used by the Commission one year from now to determine the cost of universal service support to non-rural telecommunications carriers, what should the Commission do? Should it scrap the use of the model completely?

Response. I have previously voiced my concern with this agency's responsiveness to Congressional intent in its implementation of Section 254. Rural, high-cost universal service is not just one of many objectives of Section 254; it should be the highest priority. I believe the delay in high-cost implementation has been caused, at least in part, by the Commission's decision to use extremely complicated, complex, economic, computer, cost models. The statute neither mentions nor contemplates any form of cost model for universal service, but the Commission has decided that these extremely cumbersome models should be used to distribute high-cost universal service funds. I support scrapping the use of the model immediately.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. OLYMPIA J. SNOWE TO HAROLD W. FURCHTGOTT-ROTH

Question. It is my understanding that WMTW Channel 8 in Maine has an application pending before the commission to construct a digital TV tower in Baldwin, Maine. As with most tower construction proposals, this one has not been without controversy, and I know that letters were received by the FCC that strongly opposed the WMTW application. While I take no position on the application itself-- neither supporting nor opposing it—and am seeking no special treatment for the application in terms of its processing, I have received inquiries from constituents on this matter and the timing of the FCC decision.

Accordingly, what is the status of this application, and how soon should the citizens of Baldwin and WMTW expect a final decision from the Commission?

Response. According to the Mass Media Bureau, the commission received objections to the proposed construction of WMTW's new tower. These objections are based primarily on zoning and tower location concerns. While I cannot discuss the merits of this particular application, it is true that the Commission's traditional policy—and one with which I agree—is generally to defer to the decisions of local governmental bodies with respect to tower siting. I understand, however, that WMTW has indeed obtained local zoning approval for the proposed construction, and that the Bureau has concluded its initial review. Apparently, the Bureau has sought further information from the station regarding possible signal coverage losses caused by the proposal. I hope that the Bureau will move quickly to resolve this application once that information is received. I will certainly do all that I can to see to it that this matter is handled, as all matters should be, expeditiously. Please do not hesitate to contact me if you have further questions about the status of this application.

USA WIRELESS, INC.,
Houston, TX, May 24, 1999.

Hon. JOHN MCCAIN, *Chairman,*
Committee on Commerce, Science, and Transportation,
U.S. Senate,
Washington, DC

DEAR SENATOR MCCAIN: Thank you for giving us the opportunity to present our concerns to your committee for the FCC's oversight hearing. USA Wireless, Inc., a telecommunications company, has previously contacted your office regarding our difficulty in receiving effective responses to questions on cellular-phone radiation safety issues and cellular-phone interference issues. We feel that the FCC has not re-

sponded to our specific questions; therefore, we suggest that an action must be taken to define the FCC's responsibilities to the telecommunications industry and to the public.

USA Wireless feels that the FCC staff, specifically the Office of Engineering and Technology (OET), have not taken our concerns seriously or addressed our questions with objectivity and professionalism. Questions regarding the cellular phone's interference measurement procedures and standards—a topic for which the FCC is solely responsible—have not been responded to directly. Since the FCC is the regulating and responsible party for interference issues, we do not understand why they have failed to provide straight answers to our questions. USA Wireless has also not received straight answers to questions and concerns regarding the FCC's adopted cellular-phone radiation safety guidelines. The FCC has simply referred us to the government health agencies, such as the FDA and EPA, who recommended or commented on the proposed guidelines before the FCC adopted the guidelines. Although the FCC only adopted the radiation safety guidelines, does that mean that the FCC can divorce themselves of responsibility from questions that arise concerning the guidelines? We contacted the health agencies, however, they referred us back to the FCC, which placed us in an endless loop that never supplied definite answers. Whom is responsible for health issues related to cellular phone radiation? Whose responsibility is it to protect the public? The ineffective manner in which the FCC has handled these issues have made us question the goals and responsibilities of the FCC. Overall, their responses were surprising due to their lack of detail and explanations. Even more surprising, was the response by OET to your office on January 19, 1999, which withheld information and did not give a clear picture of the issues presented by USA Wireless to the FCC.

As a telecommunications company, we expect the FCC to respond to our concerns and further investigate the issues we presented. We feel that the consequences and implications of not responding to our company are too negative. How would the public respond in knowing that USA Wireless, a telecommunications company, provided information to the FCC that was disregarded and not given an adequate explanation? Since responsibility for radiation safety issues is easily passed from one agency to another, we would like to focus specifically on the interference issues since there is no question that they are the FCC's responsibility. Since the FCC's major concern is with interference, they should respond to these issues and make sure that we understand the interference requirements and measurement procedures for the cellular phone. We feel that they have been ineffective in their responses, which could have serious implications in the public's and industry's opinion. We do not understand why the FCC would choose not to respond, if sharing information could lead to a solution. After all, we questioned the FCC with the goal of helping them arrive to a resolution that would satisfy both the public and the industry.

Since our initial contacts with the FCC, we have encouraged the FCC to work with the industry towards making cellular phones safer and much more efficient. We are now suggesting for the FCC to take adequate responsibility for interference issues and to define their responsibilities in radiation safety issues. We feel we have asked reasonable questions and have provided enough information for us to receive an equally as reasonable and professional response. Despite our disappointment in the FCC's responses, we feel that the industry and the government owe the public clear answers and practical solutions. We still feel that if the industry and government agencies work together, the resolution would benefit the industry and, more importantly, the public. Recently, USA Wireless sent your office a video tape containing two live television interviews that explain the goals and philosophy of our company. We feel that the information in the interviews is evidence of our efforts to bring solutions to the public and the industry. We feel that any new information, especially from an industry member who is willing to share information, should not be ignored.

We hope that the Committee on Commerce, Science, and Transportation will evaluate these issues carefully and urge an immediate improvement in the FCC's responsiveness and effectiveness. We hope you are able to investigate why we have been treated in this manner and why the FCC has not been able to give clear answers to our company, to your office, and to the public. Again, thank you for the opportunity to express our concerns to your committee. Please contact us if you would like more information or if you have any questions.

Sincerely,

DAVID NGHIEM, PH.D.,
President & CEO, USA Wireless, Inc.

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