

**NOMINATIONS OF THOMAS B. LEARY TO BE
A COMMISSIONER ON THE FEDERAL TRADE
COMMISSION; AND GREGORY L. ROHDE TO
BE ASSISTANT SECRETARY OF COMMERCE FOR
COMMUNICATIONS AND INFORMATION**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

SEPTEMBER 9, 1999

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

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THURSDAY, SEPTEMBER 9, 1999

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

The committee met, pursuant to notice, at 2:21 p.m., in room SR-253, Russell Senate Office Building, Hon. John Ashcroft, presiding.

Staff members assigned to this hearing: Virginia Pounds, Republican professional staff; and Jonathan Oakman, Democratic staff assistant.

**OPENING STATEMENT OF HON. JOHN ASHCROFT,
U.S. SENATOR FROM MISSOURI**

Senator ASHCROFT. Good afternoon. I am grateful for your attendance here today.

The Commerce Committee meets today to examine qualifications of two individuals who have been nominated by the President of the United States to serve this great Nation in important governmental responsibilities.

This committee takes its advice and consent role very seriously, and I will note that each of the nominees has responded in detail to the committee's request for biographical and financial data, and we are grateful for your having so responded. I have had the opportunity to review your responses to the committee's questionnaire and I know that the chairman looks forward to moving your nominations quickly.

Our first nominee is Greg Rohde who has been nominated to be Assistant Secretary of Commerce for Communications and Information and Administrator of the National Telecommunications and Information Administration.

Our second nominee will be Thomas Leary who has been nominated to be a Commissioner on the Federal Trade Commission.

I would like to take this opportunity to thank both of the nominees for being here today. I know that your nomination is a great honor and that your families are very proud.

I would like quickly to welcome the family members and special guests of our nominees who are in attendance today. I thank you all for coming.

We will begin with a panel of our distinguished colleagues from both the House and Senate, here to introduce Mr. Rohde and to support his nomination. Before I do, I would ask if the Senator from Oregon would have any remarks.

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

Senator WYDEN. I would and I will be very brief, Mr. Chairman. I want to welcome both of the nominees. I think we have got two first-rate individuals. I was very pleased to be a strong and early supporter of Greg Rohde for this position. I think he will do an outstanding job.

Just so he knows, I am going to want to explore with him a little bit this morning how we can get the Federal Communications Commission off the dime and actually implement section 706 of the 1996 Telecommunications Act. As he knows, I sat on the Communications Subcommittee for a long, long time, and this issue, of course, is critical to the program that was held this morning, Senator Daschle's excellent program, to get high speed Internet access to rural communities. The Federal Communications Commission is authorized, directed to implement section 706 of the Telecommunications Act, and frankly, getting the FCC to move on broadband is sort of like trying to coax a dog off a meat wagon. It is just impossible to get them to act, and I am very hopeful that we will see some action on that and that is an issue I would like to explore with Mr. Rohde. But he will be an outstanding nominee.

Then with respect to our other nominee, Mr. Thomas Leary, Commissioner-Designate of the Federal Trade Commission, I am going to want to talk to him about his views with respect to bringing back some competition to the market for gasoline on the west coast. Oregon is now paying the highest gasoline prices in the Nation. In fact, the whole west is now getting shellacked in terms of gasoline prices. We are facing the prospect of another big merger in the gasoline market. The BP-Arco merger that is being discussed in Alaska in my view would be poison for the west coast of the United States.

I have asked the Federal Trade Commission to investigate pricing in the west. They have put subpoenas into the hands of the major oil companies at this time, so there are some limitations on what Mr. Leary is going to be in a position to say, but I would certainly like to discuss some of the policy issues with respect to gasoline pricing with him.

But my sense is we have two outstanding individuals before us today, Mr. Chairman, and I look forward to supporting them and to hearing from them. Thank you.

Senator ASHCROFT. Thank you very much, Senator Wyden.

It is my pleasure now to call upon the Senator from Montana.

STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Senator BURNS. Thank you, Mr. Chairman. Nice to have a couple of nominees before us that we can all enthusiastically support.

Greg's mom is here. She is from Hill County, Montana.

[Laughter.]

If folks do not know what that is, that is the largest town on the Milk River.

[Laughter.]

If that does not help you any, it is called Havre. And it is nice to have her here today with Greg.

I also want to say that we have worked with Greg a long time here on this committee on telecommunications issues, and I do not know of anybody that has been any more helpful in furthering legislation on a bipartisan basis than Greg has. I cite the passage of the ORBIT bill and several landmark pieces of legislation, the 1996 telecom bill, which played extremely important roles in shaping and fashioning that legislation.

One always has to wonder why our inflation has not run away and yet our economy continues to boom. I want to state emphatically here today that the passage of the 1996 bill probably has extended this economic cycle much further than we even thought was possible, and I think maybe we will have to take a look in our productivity and our technologies. What this is providing is something that some of us recognized many, many years ago, and Greg was one of those. Of course, representing a rural State, understanding that distance is our biggest enemy when it comes to infrastructure and the growth of rural America, a very keen understanding, and that also was extremely helpful in shaping that legislation.

So, we welcome him here today.

Larry Irving and I have always had a great working relationship. We hate to see Larry move on—but we understand that—because I think he has done a commendable job at the Commerce Department. And I think Greg probably is stepping into some shoes now that are going to be hard to fill, but I have no doubt that he will be able to do that.

So, we welcome him here to this committee and I support his nomination wholeheartedly, as I do the nomination for our Federal Trade Commission.

So, Mr. Chairman, thank you for allowing me those words because I really feel like that this is really a good nomination. Thank you.

Senator ASHCROFT. Thank you.

We will begin with a panel of distinguished colleagues from both the House and Senate here to introduce Mr. Rohde and to support his nomination. Senator Conrad from North Dakota is the senior Senator from North Dakota. He will be followed by Senator Dorgan who is Greg Rohde's current employer or boss. Congressman Earl Pomeroy of North Dakota, Mr. Rohde's Congressman, and Congressman Chip Pickering from Mississippi. He is serving his second term in the House and knows Mr. Rohde from a time when Chip worked for Senator Lott and did Commerce Committee work. So, it is a pleasure to introduce you in that order unless you have arranged among yourselves to follow some other order. Senator Conrad.

Senator CONRAD. Mr. Chairman, I would like to defer to my colleague, Senator Dorgan, who is Greg's employer and I think Greg would attest to the fact that Byron is his boss.

[Laughter.]

**STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM
NORTH DAKOTA**

Senator DORGAN. Only in an unguarded moment.

[Laughter.]

Mr. Chairman, as a member of this distinguished committee, it is unusual to get this view of the committee. I will reserve comment for the moment, but I am really pleased to be here.

Greg Rohde, I hope, will be from this nomination the next Assistant Secretary of Commerce running NTIA and related functions. I am delighted to be joined by my colleagues from North Dakota, the entire North Dakota congressional delegation.

[Laughter.]

And my friend, the Congressman Chip Pickering, who has been willing to come today to provide testimony as well.

Greg Rohde and I have worked together for over 10 years and worked on a wide variety of issues. Greg, as all of us on this committee know, played a significant role in organizing the farm team and working on the Telecommunications Act with me and with many other members of this committee. He is talented, dedicated, very skilled, very knowledgeable. I do not just come to a table and endorse everybody for these kinds of positions, but I certainly give him my unqualified endorsement. He is going to be a real asset in this job.

He is, if you do not know, also an All-American athlete. He was All-American at cross country as a younger man, and likely has lost a little of that time.

[Laughter.]

But that will not disadvantage him. It did not in my office and will not in this administration.

But I want to say that in a town of many factions and in a town with a fair amount of partisanship, in a town where there are many aggressive battles, it is quite remarkable to be able to see someone be able to operate the way Greg Rohde has operated, creating and making friends on all sides of the aisle with all kinds of viewpoints. He has carved out I think a reputation, justly deserved, for excellence. You would hear Senator Lott say good things about Greg Rohde. You would hear Senator Daschle say good things about him. We would hear Senator McCain say good things about him. We just heard good things from the members on the dais today. And that is not an accident.

This appointment I think is an important step for this country. It is an important step for those of us that care about telecommunications policy. I just finished this morning with some of my colleagues, including Senator Daschle, a CEO summit on the build-out of broadband capability in our country. It is very important. The movement of Greg Rohde to this Assistant Secretary job will be critical to resolving some of these issues that will be resolved by public policy. Yes, some in the FCC, but by public policy generally working between the administration and this Congress.

Greg's family is here today. I have known his mother as long as I have known Greg. I must say that she overcame that problem of being born in Montana.

[Laughter.]

She has been a wonderful citizen of North Dakota and good friend to all of us and a wonderful mother to Greg. She is, I am sure, as proud today as I am. We are joined not only by his mother, but other family and his fiancée.

Let me again say that this is in the end for this committee not about friendship at all. It is about public policy and it is about making our country a better place in which to live. The willingness of good men and women to offer themselves for public service is something all of us cherish, and I think Greg Rohde is one of those unique people who have offered themselves to public service. This country I think will be justifiably proud of that service.

Senator ASHCROFT. Senator Conrad.

STATEMENT OF HON. KENT CONRAD, U.S. SENATOR FROM NORTH DAKOTA

Senator CONRAD. Thank you, Mr. Chairman, Senator Burns, Senator Wyden.

It is good to be here to strongly endorse the candidacy of Greg Rohde for what is really an important position not only to this Department but I think really to the country. Greg Rohde is simply outstanding. I think every member of this committee knows that. I think any member who has worked with Greg Rohde knows that. He demonstrates a professionalism and an integrity that really are first-rate, and I think he is going to make a very positive contribution to this position.

I have found that Greg is one of those few people that can take these extraordinarily complex telecommunications issues and make them understandable to people who do not work with it frequently. I am not a member of this committee, but I have found that he has a rare talent for explaining the key elements of these telecommunications issues to me and to my staff. I have always had very high regard for him.

His demonstrated performance, as Senator Dorgan's staff member on this committee, I think is well known by the other members of the committee.

One other thing I wanted to mention. Greg has a degree in theology, and I think that is also going to be useful because he has access to a higher power.

[Laughter.]

And he really is a very rare person of very high integrity, tremendous professional skills, and I am very pleased to be here to enthusiastically endorse his candidacy.

I thank the chairman and thank the members of the committee.

Senator ASHCROFT. Congressman Pomeroy.

STATEMENT OF HON. EARL POMEROY, U.S. REPRESENTATIVE FROM NORTH DAKOTA

Mr. POMEROY. Thank you, Mr. Chairman. It is very good to be here. Senator Wyden, we still miss you in the House. Senator Burns, your comments were so well taken, I will forego the customary Montana joke.

[Laughter.]

Senator BURNS. Do you want Wyden back?

[Laughter.]

Mr. POMEROY. I think if there were three things that kind of sum up Greg's wonderful potential for this position, it would be his knowledge, his work ethic, and his integrity. And I cannot think of three more important attributes that you might look to.

I can certainly speak to the knowledge part and ascribe myself fully to Senator Conrad's remarks when he speaks of Greg's unique ability to take the tremendous technical sophistication of these issues and put them in a way that someone without the background can understand. Across the North Dakota delegation, we share the wealth, which means on more than one occasion I have been on the phone to Greg doing telecom remedial learning, and he has just simply been excellent. We are all very proud of the expertise that one of our own has now achieved on this breaking, terribly important area.

Work ethic and personal energy unmatched. He still runs like a rabbit, and I think that just captures the kind of vitality that he has. A very, very hard worker, as you know.

Integrity. Unquestioned integrity. Certainly in a public responsibility of this nature, that is very important and Greg offers it in spades.

This is a tremendously important post for us in rural America, and so we are particularly concerned about it and urge your favorable consideration. I am very heartened by what I have heard from you all today. We really care about this one and think it is just an excellent opportunity for the country.

Thank you.

Senator ASHCROFT. I am pleased now to call on Congressman Chip Pickering from Mississippi, not someone that Greg has worked for, but someone he has worked with. I am delighted to have you come and present your remarks in behalf of Mr. Rohde.

**STATEMENT OF HON. CHARLES W. "CHIP" PICKERING,
U.S. REPRESENTATIVE FROM MISSISSIPPI**

Mr. PICKERING. Thank you, Senator Ashcroft, Senator Burns, Senator Wyden. It is good to be back over on the Senate side in the Commerce Committee where I have many great memories and experiences. I still have memories of working together to draft the Telecommunications Act, Senator Burns, that you talked about in 1996 and what we are seeing now as a result of that. But one of the great experiences was working together with staff, both Republicans and Democrats, trying to find common ground to move that policy forward.

Today I am here—it is a privilege to be here—to talk about Greg Rohde and to encourage and endorse his confirmation and nomination for the position that he is being considered for because I saw firsthand not only the dedication and the integrity but the work ethic. He did have a great spirit about him, and we have had not only political and philosophical but theological conversations that hopefully will guide him as he goes forward.

[Laughter.]

You talked about being quick as a rabbit. In telecommunications, you need to be quick as a rabbit to survive in a rapidly changing environment.

But it was here in this room that I learned firsthand that public policy and constituent politics work very much in an integrated sense of what we eventually end up doing and that we have to be guided by our principles, but we have to be able to reach across the aisles to find the common positions and the common ground. And that working together is in the best spirit and the best legacy of this committee.

Now, I do have some bad news for Greg. I thought, by going over to the House and becoming a Member of Congress, I would actually gain in influence, but I have learned that being a Member is somewhat less than a Senate staffer as far as influence.

[Laughter.]

So, Greg, my one advice is to always remember, even though you may be the Assistant Secretary, that you still must answer and be accountable to the Commerce Committee here in the Senate and in the House. Your role is to implement. So, we look forward to working with you.

[Laughter.]

It is a great privilege also to be with the entire North Dakota delegation, and when North Dakota and Mississippi join forces, the south and the midwest, we can do some tremendous things. One of the things this committee is known for is balancing the issues of rural and urban, and I can think of no one better qualified than the advocate and one of the leaders of the farm team in Greg Rohde of being able to promote competition, to see that vision implemented, but also to make sure that the technology and the advantages that come with this new world benefit rural America. We have a true friend in Greg Rohde in being able to accomplish that whether it is in education, telemedicine, and all of the exciting technological applications that we are seeing in the marketplace.

In short, I am very proud to endorse and urge the committee's approval of Greg Rohde. We cannot have a better person or friend from this area, from this committee, and with a better knowledge and understanding and character to do a great job for all of us.

So, Mr. Chairman, I appreciate the time you have given me and look forward to seeing Greg Rohde confirmed. Thank you very much.

Senator ASHCROFT. Thank you very much. To all of you who are members of the panel who have been so kind and willing to remark favorably upon this nominee, I would now suggest that you proceed to your next pursuit, whether it be on this panel or not, and I would invite Mr. Rohde to come forward.

It has already been mentioned that Mr. Rohde's mother, Ms. Gladys Rohde, from Bismarck, North Dakota, through Hill County, Montana, has come and his brother Bryan are both here today. Would you please stand? Brother Bryan, thank you very much. It is nice to welcome you. Thank you very much for being here.

[Applause.]

**STATEMENT OF GREGORY L. ROHDE, ASSISTANT SECRETARY
FOR COMMUNICATIONS AND INFORMATION-DESIGNATE, U.S.
DEPARTMENT OF COMMERCE**

Mr. ROHDE. Thank you, Mr. Chairman. I cannot tell you how happy I am to finally find a seat in this room behind a microphone.

[Laughter.]

There has been a lot I have wanted to say over the last 6½ years.

[Laughter.]

But Shakespeare said, "Brevity is the soul of wit." I guess after such a wonderful introduction and gracious remarks, it might also be the essence to confirmation, so I will keep my remarks very brief.

First of all, I want to begin by thanking Chairman McCain and you, Mr. Chairman, for scheduling this hearing. Senator McCain and his staff have been extremely supportive, gracious, and cooperative to me in this process. They have been so helpful that it has caused me to wonder if they may have a variety of reasons for wanting me to leave my present job, but I am very grateful for their support and help.

I want to thank President Clinton for nominating me for this post and also Vice President Gore and Secretary Daley for their support in this nomination. If I am confirmed, I will consider it a very high honor to serve in this administration, and I very much would look forward to working with the excellent staff in NTIA and the Commerce Department.

I also want to thank Senator Daschle. Senator Daschle has been very helpful and supportive to me in this process, and I am very grateful for that.

I am also grateful for Congressman Pickering for coming over. As he said, Chip and I had the privilege of working together on, among other things, the Telecommunications Act of 1996. During the development of that legislation, as everybody in this room knows, we had a lot of battles, a lot of dust-ups, a lot of deadlocks, and a lot of difficulties. During that process, it was Chip and Senator Lott who were among the first to jump into the middle of the controversy to reach out and try to break the deadlocks and try to move the process forward. So, I learned a great deal from Chip and his boss about bipartisanship and I really enjoyed working with them.

I am also extremely grateful for the North Dakota delegation, for Senator Dorgan, Senator Conrad, and Congressman Pomeroy, for coming here and supporting me.

One of the little known facts about the North Dakota delegation here in Washington is that when Senator Dorgan first ran for Congress in the 1970's, Kent Conrad was his campaign manager and Earl Pomeroy drove the car.

[Laughter.]

It gives you an idea of how tight this delegation is.

Senator DORGAN. I lost that race.

[Laughter.]

Mr. ROHDE. Yes, but you corrected the problem.

I have had the privilege of working for Senator Dorgan for over 10 years, and not a day goes by that I do not forget what an incredible privilege it has been not only to work with him but also to work in the North Dakota delegation. It is an extremely wonderful opportunity to be able to associate myself with people like Senator Dorgan and Senator Conrad and Congressman Pomeroy and be so proud to be part of the work that they do. As Senator Conrad men-

tioned, I have a degree in theology. When I started working for Senator Dorgan, I had never taken a political science class, I had never taken a law class. Everything I have learned about politics and public service has been through his excellent example and the example of Senator Conrad and Congressman Pomeroy.

I also want to say a couple of words about my predecessor, Larry Irving, who I think has served at NTIA with great distinction and with great honor. Larry has been a personal friend of mine for the last 6 years, as well as a professional colleague. I consider it a great honor to have the challenge to try to build upon the legacy that he has set.

I am nothing less than thrilled at the prospect of working at NTIA. The reason is that NTIA is really at the very heart of Federal policymaking for telecommunications and information services. This is an industry where the maxims are innovation, growth, and opportunity. It is an industry like no other. It is driving our economy. It is creating enormous efficiencies and creating great benefits to consumers.

I grew up on the upper banks of the Missouri River in the Dakotas, and when I was in junior high and high school, I used to run the rural roads south of Bismarck. I remember, as I would be training for track out there, I would run underneath all these signs for Lewis and Clark, pointing out historic places of the expedition. About 60 miles north of my hometown of Bismarck is the Knife Indian River Village. In 1805, Meriwether Lewis wintered there (and it does get cold) and wrote his mid-trip report to Thomas Jefferson. From North Dakota, it took 5 months for that report to reach President Jefferson's desk in Washington, DC. Today school students in Stanton High School, which is adjacent to the Knife River Indian Village, can travel through cyberspace and send e-mails to Senator Dorgan's office in Washington within an instant. They can download volumes of data within minutes. The changes in telecommunications have been enormous and the implications have been incredible.

My mother, who is here today, grew up on a little farm 14 miles north of Havre, Montana, where her father homesteaded in the early 1900's. That farmhouse had no electricity and no phone service until the 1950's when a local cooperative secured REA financing in order to string a wire out there to provide telephone service and electrical service.

My mother told me that when she was a young girl, she used to listen to a radio that my grandfather would hook up to a battery that was the size of a microwave in order to listen to the grain report. Although the price of wheat has not changed a whole lot since then—it is still about \$2 a bushel—

[Laughter.]

Mr. RÖHDE [continuing]. Technology has changed tremendously. My brother-in-law, who currently farms outside of Grand Forks, North Dakota, now follows the market on line or on direct satellite links that are hooked up to a local grain elevator in Larimore, North Dakota.

The change in recent years has been dramatic. In 1993, when my predecessor, Larry Irving, took his oath of office and began service at NTIA, the Internet was nothing more than a research tool used

by a few thousand academics. There was no such thing as household access to the Internet. Today over 26 percent of American households have access to the Internet at home and there are over 179 million users of the Internet.

And e-commerce, which was not even in the lexicon of the most technically savvy members of this committee or anywhere else in 1993, is a \$9 billion industry today.

In 1993, there were 16 million cellular users. There was no PCS. Today there are 60 million wireless users, and many of those people are receiving services at about half the rates of what they were paying just 6 years ago.

In 1993, there was no such thing as DBS. The satellites were just being launched. Today there are over 10 million subscribers and DBS has become a very formidable competitor to the cable industry.

In my mind, the Commerce Committee has provided the right framework to develop policies that are going to foster innovation and creativity in the marketplace and ensure that all these benefits in the telecommunications and information industries will spread throughout all of our society. That framework is the Telecommunications Act of 1996.

NTIA's responsibility, in my mind, is to utilize the tools that are in that Act; the tools of universal service and competition, to promote and foster growth and innovation and access to all these telecommunications services. I remain firmly committed to the dual maxims of the act of competition and universal service as the way to deliver a coherent policy in telecommunications.

Certainly the Act has had a number of struggles in its implementation, and we have a long way to go before we can declare the Telecommunications Act a complete success, but wonderful things are happening. The competitive model producing incredible results. The wireless industry is one example where consumers in many markets of this country have multiple choices. The results are that rates go down, and consumers have choices and better service.

We have over 6,000 independent ISP's in this country which have thrived and developed in an open, competitive market.

The long distance industry is another example. We are now looking at competition over nickel rates, something that was unheard of 10 years ago.

The competitive model works and it is producing incredible results.

Even under the Telecommunications Act, we still are struggling in many areas to transform a number of sectors of the industry from monopoly markets into competitive ones. Local competition is one of those areas. Still 96 percent of Americans do not have a choice in local phone service, but we are making some progress.

Back in 1995 when this committee was meeting in this very room (as we developed the Telecommunications Act), there were less than a dozen competitive local exchange carriers. Today there are over 150, and those 150 are offering competitive local phone service in over 90 percent of the local exchange markets in this country. Much to my surprise, one of those markets is, of all places, Regent, North Dakota, where citizens there have access to a fixed wireless competitor.

These kinds of things never would have happened without the Telecommunications Act. But, as many members of this committee know, the Telecommunications Act was not simply about promoting competition. It was also about preserving universal service and building upon our Nation's commitment to universal service that has existed for years. I remain deeply committed to developing policies that are built on these two fundamental pillars.

The Telecommunications Act is especially important as we move into the debates about the new generations of services, especially when it comes to broadband capabilities and the kinds of new services that can be offered through such capability, such as high speed Internet access. The Telecommunications Act is going to be our map for that future.

When Thomas Jefferson bought the Louisiana Territory, the purchase was not just simply a great bargain land deal in his mind. Jefferson saw the West as a great new opportunity. He saw it as America's future. His instructions to Meriwether Lewis and William Clark, when they left Washington in 1803 on July 4th, were to explore the rivers of commerce of this new continent. Today I see broadband as the new continent, providing many more new rivers of opportunity for us to explore. As we move forward and explore these new rivers of commerce, we need to do it with our traditional American values of openness, equal opportunity, and making sure that all Americans can participate.

Usually at about this time, the red light goes on, but I think maybe some of my friends in the corner did not turn the timer on.

[Laughter.]

So, I will conclude my remarks by saying a couple of things. One is that I want to recognize some very special people here, and those are the folks that sit on the back bench behind the dais. For the last six and a half years, you have all been my friends. You have been my colleagues and you have been my teachers. But more importantly, you have been my friends. We have spent many, many hours, long nights, weekends, and holidays, in this room, in our conference rooms, and our offices. If I am confirmed and I move on, I will take many great memories from the Senate, but one of the most important memories I will take will be the time I spent with my friends and colleagues here and the witness that I have had of your great dedication to public service and to the constituents that you represent. It has been an absolute pleasure to serve with all of you, as well as all the members of this committee.

With that, I will be happy to take any questions.

[The prepared statement and biographical information of Mr. Rohde follow:]

PREPARED STATEMENT OF GREGORY L. ROHDE, ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION-DESIGNATE, U.S. DEPARTMENT OF COMMERCE

Mr. Chairman, thank you for holding this hearing. It is indeed an honor to appear before this Committee today on the matter of my nomination to be Assistant Secretary of Commerce for Communications and Information and Administrator of the National Telecommunications and Information Administration (NTIA). I have had the distinct privilege of working with the Members of this Committee for the past six and a half years. My work with the Committee Members and staff has been one of the most fonntative and enjoyable experiences of my life. I have benefitted tremendously for having witnessed daily the integrity of the Senators of this Committee and their uncompromising commitment to the public good. I have had a fortunate

opportunity to see how well our Nation is served by all of you and I am honored to have had the opportunity to work here. I believe that the many things I have learned working with the Members of this panel has prepared me well to serve as Administrator of NTIA if confirmed.

I wish to thank President Clinton for nominating me to serve in the Department of Commerce. I also want to thank Vice President Gore and Secretary Daley for their gracious support of me. I am grateful for the opportunity to serve the public in this capacity and I will seek through my actions and efforts to be worthy of this office and the confidence that has been bestowed upon me.

I also want to express my admiration and gratitude to Larry Irving who has served, with distinction as the Assistant Secretary of Commerce for more than 6 years. He is a model public servant and he deserves the highest of praise for his dedication to the public, particularly the “have nots” among telecommunications consumers, and for the many talents he brought to that effort. He has left big shoes to fill. NTIA and the nation will long be indebted to Mr. Irving for the energy and passionate leadership he has provided on many telecommunications and information issues. It will be a challenge and an honor to build upon his legacy.

I am nothing less than thrilled about the opportunity to serve in NTIA. Who wouldn't be? Telecommunications and information technologies and services are evolving and growing at an unrivaled pace, creating new avenues of opportunity in so many aspects of our lives. At the turn of the century, natural resources such as oil fueled the engine of our economy. Today, telecommunications and information technologies have our economy roaring. This is a growth industry like no other, even in our booming economy. The opportunities flowing from telecommunications and information technologies are bounded only by our collective imagination. According to the recent Commerce Department report *The Emerging Digital Economy II*, information technologies have accounted for more than one-third of our nation's economic growth during this period of unprecedented expansion. Telecommunications and information industries are creating jobs, cutting inflation, and bringing new efficiencies to the American economy. This revolution, however, is not just about the creation of wealth, but about enhancing the social well being of all citizens. It is about improving the way we teach and learn in schools. It is about extending the reach of health care. And, it is about fostering public safety and bringing people together.

The information revolution is by no means limited to the great expanse between the Atlantic and Pacific oceans—it is worldwide. America is once again leading the way by championing a competitive marketplace that is a magnet for capital investment. The economic challenge the telecommunications revolution poses for policy makers today is how to foster innovation and investment in the U.S. telecommunications and information industries using a competitive model and assert our leadership in the new global digital economy. The social challenge is how to ensure privacy and universal access.

Technology transforms human society. Today, at the advent of the next millennium, telecommunications and information technologies are transforming our world at an unprecedented pace. From the time of the ancient Greeks to the invention of the telegraph, technology and information did not even belong in the same sentence. When Lewis and Clark set out to explore the territory acquired under the Louisiana Purchase, information traveled at the speed of a horse. Meriwether Lewis' mid-trip report to President Jefferson from the Corps of Discovery's winter home in North Dakota in 1805 took 5 months to get to Jefferson's desk in Washington. Today, high speed Internet access can allow students in Stanton, North Dakota, adjacent to the Knife River Indian Village where Lewis and Clark spent a chilly winter, to travel across cyberspace, download volumes of data and information in an instant, and communicate in real time around the globe.

The changes in my own lifetime have been astonishing. I was born at the time President Kennedy launched the modern space program and began the race to the moon. Now there is more computing power in most of the laptop computers carried around every day by millions of people than there was on the Apollo mission that landed on the moon 30 years ago. Supercomputers that took rooms to house in the 1980's can now fit inside a desktop computer that can be bought off the shelf. In 1975, there were 50,000 PC's sold. Today, there are twice that number sold every day. Technology is evolving so rapidly that computers and wireless phones are outdated the moment they appear in the store. It is astonishing that over 75% of the revenues generated by computer companies today come from products that did not exist two years ago.

My mother, who is here today, grew up in a small farm house outside of Havre, Montana, where my grandfather homesteaded in the early 1900's. The house had no electricity or phone service until a local cooperative was able to string a wire to

his house 14 miles north of Havre, with the help of REA (Rural Electrification Administration) financing. The farm house had kerosene lamps and windmills for power. As a young girl, my mother used to listen to the grain report on a radio my grandfather rigged up to a large battery the size of a microwave oven. Although the price of wheat has not changed much since then—it is about \$2 per bushel, about the same it was in the 1940's—telecommunications technology has changed enormously. Today, my brother-in-law who farms outside of Grand Forks, North Dakota, follows the grain market online or through satellite feeds direct from the market.

The rapid pace of change in telecommunications and information technology provides unprecedented opportunities to connect people with each other, create jobs, improve the quality of life, and rectify social, economic, and personal challenges resulting from disabilities, economic disadvantage, or geographic isolation. Geographic distance can be a thing of the past with an advanced telecommunications network. Storefront businesses on a small town's main street can become worldwide distribution centers and small country libraries equipped with computers linked to high speed modems will no longer be limited to their local collections, but will enable students to access all the great books and minds of the world with the click of a "mouse."

But all this bounty comes with new challenges. Technological advances in telecommunications and information services also pose new threats to national security, public safety, and personal privacy. Moreover, the globalization of the new digital economy increases our dependency on information technology and electronic commerce, challenging our nation's schools to supplement blackboards with computer terminals so they can train a workforce for the new digital economy.

Addressing the challenges of the information age while capitalizing on its opportunities is the central mission of NTIA. The agency also shares in the mission of the Commerce Department to promote commerce and NTIA is the agency uniquely focused on the promotion of commerce through information and communications systems. Indeed, NTIA is the electronic commerce agency whose function is to: (1) promote technological innovation and investment; (2) protect security and privacy; and (3) develop technological applications to advance the social, economic, and equal opportunity goals of our democracy.

In the era of electronic commerce, NTIA needs to advance policies that will foster infrastructure investment and ensure universal access to advanced telecommunications networks that make electronic commerce possible. This mission can only be accomplished through faithful adherence to the twin principles of competition and universal service. Furthermore, the agency's spectrum management responsibilities must ensure the efficient federal use of this important resource and promote the development of new wireless technologies by the private sector.

NTIA has a primary responsibility to protect national security and public safety in telecommunications and information networks and technologies. The information age brings with it a new generation of electronic terrorists, hackers, and intruders into personal privacy. The agency's spectrum management and research functions play a critical role in the defense and stability of our nation's telecommunications and information infrastructure. In addition to national security concerns, the telecommunications and information infrastructure need to be protected so that consumers can feel as comfortable about their personal privacy while shopping online as they are while shopping at the local mall. Through non-regulatory support and guidance, NTIA helps to make the Internet a user-friendly tool that consumers can trust.

We, as a nation, also need to invest in the future by creating a technologically advanced educational system that will ensure our place as the world's leader in the new digital economy. Shortly after the turn of the millennium, about half of the entire workforce of the United States is going to be employed either by information technology producers or by businesses that are intense consumers of information technologies. The agency's grant programs are designed to identify and promote innovative applications of new technologies that improve education, community development, and electronic commerce. NTIA has the additional responsibility of advancing policies to help the U.S. retain its global leadership in the new digital economy and enable all Americans to participate in the benefits of the information revolution. The agency's demonstration grant programs and its promotion of competition and universal access form the foundation of that vision of leadership and inclusiveness.

We are only beginning to see the potential of the dynamic force of policies based on the new vision of competition and universal service—the dual maxims under the Telecommunications Act. I am convinced that an open, competitive environment will most effectively foster innovation and investment in the telecommunications and information industries in this country and deliver services at the lowest prices. Spawned in large part by the Telecommunications Act of 1996, many segments of

the telecommunications industry are currently in the midst of a transition from a monopoly environment to a deregulated competitive one. If confirmed, I will work to advance competition and universal access faithful to the framework created under the Telecommunications Act.

Certainly there have been implementation struggles with respect to some of the provisions of the Telecommunications Act and there are many challenges that lie ahead before the Act can be declared a complete success. The Act has spurred unprecedented consolidation in some areas of broadcasting and telephony. Some of these alliances are going to help foster competition in the new era where the old distinctions are giving way to a new structure. In some cases, however, consolidation poses new challenges to ensure a competitive marketplace and will require creative and innovative policy responses to preserve the important tenants of diversity and localism.

Nevertheless, the Act has given rise to many positive developments and promises many more for the future. There were only about a dozen competitive local exchange carriers (CLECs) in existence in 1995 when the Telecommunications Act was written. Today there are more than 150 CLECs with a total market capitalization of more than \$40 billion and are competing in about 90% of all the local exchanges in the country. While CLEC penetration is still only about 4 percent, local competition is happening. To my surprise, there is local competition even in Regent, North Dakota. That simply would not have been possible without the Act.

Just prior to the enactment of the Telecommunications Act, telecommunications services generated about \$200 billion in revenues. Today, the industry has grown to about \$250 billion. The capital markets are investing billions into telecommunications and information companies and consumers are presented with more choices and opportunities than ever. Information technology industries and electronic commerce (a classification hardly in the common lexicon until just a couple of years ago) account for more than one-third of the growth in the gross domestic product over the past three years. The Act has certainly played a role in stimulating the investment and opportunity that has expanded the overall economy.

Vice President Gore characterized it best at the signing ceremony of the Telecommunications Act when he said that the Act was "not a mid-course correction" but rather "a new flight path to an entirely new world." That new world is an era of fascinating technologies, broadband capability, and advanced telecommunications and information services that create unprecedented opportunity for communication and connection.

The roll out of advanced telecommunications services such as high speed Internet access is due, in part, to the pro-competitive policy established under the Telecommunications Act. New competitive local exchange carriers alone have the infrastructure available to provide broadband services to 25 million customers. The incumbents are not showing any signs of ceding broadband delivery to the newcomers and themselves are investing billions to provide DSL (digital subscriber line) services to millions of customers. Cable modem service is available to 32 million households "which is about 30% of all homes passed by cable" and on average there are about 2,500 new cable modem customers each day.

We have seen that competition is the most efficient means to spur innovation and lower prices. While consumer choice in local phone service or cable service is still more the exception than the rule, continuing down the road to competition is the best path for telecommunications policy to follow. Competition in broadcasting, cable, satellite and other media industries will also provide the most efficient means to curtail prices, expand choices, and create opportunity for new ownership and diversity. The competitive model should also be carried to the international area, where the U.S. needs to lead the way to help create an open, competitive global environment.

I am also very mindful, however, that the information wave sweeping across the country is not sweeping up everyone. According to a recent Commerce Department report, *Falling Through the Net*, ninety-four percent of U.S. households have access to basic phone service. But computer access at home is only around 40% and a mere one-quarter of all American households have access to the Internet. While the overall numbers are impressive and indicate that we live in a Nation that provides vast opportunity through telecommunications and information services, it is important to note that access to these opportunities still lags behind for people in some segments of our society. People living in rural areas, minorities, and low-income families, for instance, tend to have less access than others. Telecommunications policy must, before all else, be grounded in the value of enhancing the social and economic well being of all citizens. The telecommunications revolution cannot become telecommunication nihilism. The growth of telecommunications and information serv-

ices must enhance value and meaning in peoples lives and be built upon the values of our democracy, including equal opportunity.

One of the principle tenants of the Act was a policy obligation that “access to advanced telecommunications and information services should be provided in all regions of the Nation.” The Act provided all Americans with an assurance that they will not be left behind. If we, as a Nation, want to ensure that access to the Internet and advanced telecommunications and information services will be a shared benefit throughout the Nation, we will need to implement a policy of inclusion, such as that envisioned under the Act. In my judgment, bridging the gap in access will require a faithful implementation of the principles of both competition and universal service—the driving forces to investment for advanced capability. Broadband is more than just greater bandwidth—it is an expansion of opportunity. It is the new frontier that can allow more Americans the chance to participate and succeed in our democracy. Broadband access will enable small, previously isolated communities to create thriving businesses—making location virtually irrelevant. Broadband will help exorcize the demon of distance that has been the scourge of rural communities in their pursuit of equity and opportunity.

If confirmed, one of my top priorities will be to advance a strategy to stimulate broadband deployment using the pro-competitive tools and universal service assurance provided under the Telecommunications Act. Federal policy should strive to stimulate open, competitive markets and at the same time establish mechanisms to prevent certain classes of people—whether rural, minority, or low-income—from falling behind. Ubiquitous deployment of broadband capability will help to uncover the human capital that has historically been buried by geographic and other barriers that can be stripped away by new communications technologies and services. Abraham Lincoln learned his lessons by writing on the back of a shovel with a piece of chalk. While he managed to succeed, how many more great leaders and contributors to our society remain hidden because of isolation from great libraries and laboratories? If all Americans have better learning and training tools than shovels, how many more Lincoln’s, Martin Luther King’s, or an astronaut like Eileen Collins will arise? Without ubiquity, there is less opportunity for the diversity of our nation’s human capital, which has always been the source of America’s greatness.

Thomas Jefferson saw the West as America’s future. To Jefferson, the purchase of the Louisiana territory was much more than a bargain land acquisition. It was an opportunity to unleash the national energy to explore, establish new avenues of commerce, and build a new way of life for a young nation. His instructions to Lewis and Clark when they began their expedition in 1803 was to explore the “rivers of commerce” of the continent. Two centuries later, broadband capability is creating new rivers of commerce for us to explore and fulfill the hopes and dreams of a nation that believes in the values of democracy, equal opportunity and freedom. The consumers, producers, and policy makers of the information age are looking towards the future, much like Lewis and Clark did as they rowed their keelboat up the Mississippi and Missouri rivers. While we are not certain about what lies ahead, the idea of broadband, like the image of the Western frontier, seizes our imagination. Somehow, we know that this previously uncharted territory holds great promise and opportunity.

In concluding my remarks, I want to express my deep appreciation to all the Senators who have supported me to become the Administration’s nominee for this position, including all the Senators on this Committee. I especially want to thank Senator Daschle for all of his support and help. And finally, no words are adequate to express my profound gratitude to Senator Dorgan for not only supporting me as a nominee but for the granting me the honor and privilege of working for him for the past ten years. Senator Dorgan took a big risk ten years ago by giving a Seminarian a chance to work in the world’s greatest deliberative body, Congress. He has been my mentor and friend ever since and I will always treasure and call upon all that I have learned from him.

If confirmed, I intend to work to create a cooperative, inclusive approach to policy making within the Administration and with Congress. As one of the many staffers who had the privilege of working on the Telecommunications Act, I understand that a bipartisan and inclusive process can achieve the best results and accomplish the difficult task of crafting consensus and compromise that balance a diversity of interests. I have truly enjoyed working with the Senators and staffers on the Senate Commerce Committee and I hope that, if confirmed, I will have the opportunity to continue working closely with you on telecommunications and information service policy issues.

Mr. Chairman, thank you once again for scheduling this hearing. You and your staff have been very cooperative and helpful to me in this process and I am very grateful.

I will be happy to answer any questions from the panel.

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names or nicknames used.) Gregory Lewis Rohde.
2. Position to which nominated: Assistant Secretary of Commerce for Communications and Information and Administrator of the National Telecommunications and Information Administration.
3. Date of nomination: August 3, 1999.
4. Address: (List current place of residence and office addresses.) Home: 509 15th Street, N.E. Mandan, North Dakota 58554. D.C. Residence: 222 10th Street, S.E. Washington, D.C. 20003. Office: 713 Hart Washington, D.C. 20510.
5. Date and place of birth: November 7, 1961 Pierre, South Dakota.
6. Marital status: (Include maiden name of wife or husband's name.) Single.
7. Names and ages of children: (Include stepchildren and children from previous marriages.) None.
8. Education: (List secondary and higher education institutions, dates attended, degree received and date degree granted.) Graduate: Bachelor of Sacred Theology, the Catholic University of America, Washington, D.C., 1988. Undergraduate: Bachelor of Science in Education with majors in Philosophy and Sociology, North Dakota State University, Fargo, North Dakota, 1985. Attended Colorado University, Boulder, Colorado, 1980 - 1982. High School: Diploma. Century High School, Bismarck, North Dakota, 1980.
9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.) Senior Legislative Assistant to U.S. Senator Byron L. Dorgan, Washington, D.C.; (February 1993 - present). Serves as chief policy advisor for all areas of jurisdiction under the Senate Committee on Commerce, Science, and Transportation, of which Senator Dorgan is a member. Team Coordinator for the Health Care Financing Administration Section in the Health and Human Services Cluster for the Presidential Transition Team of the Clinton-Gore Administration, Washington, D.C. (December 1992 - January 1993). Drafted briefing materials for the President, Vice President, and Cabinet nominee on all issue and personnel matters related to the Health Care Financing Administration (HCFA) in the Department of Health and Human Services (HHS); interviewed senior HHS and HCFA officials and constituency organizations to prepare guidance to incoming Administration officials on administrative and substantive issue matters within HHS and HCFA. Campaign Manager for the Nicholas Spaeth for Governor Campaign (D-North Dakota), Bismarck, North Dakota (January 1992 - November 1992). Managed all aspects of the state wide campaign, including the campaign staff directed fund raising; coordinated media strategy; worked with local, state, and federal Democratic party officials; and represented the candidate in public speeches and press conferences. Legislative Assistant to Representative Byron L. Dorgan, Washington, D.C. (May 1988 - January 1992). Served as chief policy advisor for health care, social security, and human resource issues on the House Committee on Ways and Means, of which Rep. Dorgan was a member. Additional legislative areas of responsibility included education, judiciary, environment, and transportation. Responsibilities included drafting legislation, speeches and correspondence for the Senator; legislative negotiations; public speaking on behalf of the Senator; and serving as a liaison to Executive branch agencies and departments. Instructor at Mackin Catholic High School, Washington, D.C. (September 1987 - May 1988). Served as classroom instructor for high school social justice classes for senior students, developed curriculum; and managed student community service projects.
10. Government experience: (List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.) See above.
11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.) None.
12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.) None.
13. Political affiliations and activities: (a) List all offices with a political party which you have held or any public office for which you have been a candidate. None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years. None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years. None.

14. Honors and awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.) Academic scholarship to Colorado University and North Dakota State University for track and cross-country. All-American High School Athlete, Track, 1980.

15. Published writings: (List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.) None.

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of on topics relevant to the position for which you have been nominated. I have only provided extemporaneous remarks, mostly in appearances with Senate colleagues, under my current capacity as a Legislative Assistant to Senator Dorgan.

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

Yes, I believe I was chosen because of my experience of working directly on the issues under the jurisdiction of the agency and my demonstrated ability to work cooperatively and in a bipartisan manner with the executive and legislative branches of government and the various stakeholders affected by the agency.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

As a senior legislative assistant for Senator Dorgan, I have worked extensively in the area of telecommunications policy for the past 6 and a half years, including working on the Telecommunications Act of 1996 and other significant areas of telecommunications legislation. In particular, my experience in working with the Congress on key legislative initiatives in a bipartisan manner enables me to ensure a close, cooperative relationship between the executive and legislative branches on key areas of telecommunications policy.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers. None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. None.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated? None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. None, other than under my current capacity as a legislative assistant to Senator Dorgan.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.) I will consult with the General Counsel of the Department of Commerce and, if appropriate, divest myself of conflicting interests,

recuse myself or obtain a conflict of interest waiver under 18 U.S.C. Sec. 208(b) if the interest is not substantial.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details? No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. None.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee? Yes.

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress. If confirmed, I will do my best to ensure that all regulations accurately conform to the plain reading of the law and I pledge routinely to consult with the appropriate committees in the Congress regarding regulations promulgated by the agency. Before final regulations are issued I will work to ensure such regulations are accurate and faithfully implement the letter and intent of the law.

5. Describe your department/agency's current mission, major programs, and major operational objectives. NTIA is the Executive Branch's principal policy and planning voice on domestic and international telecommunications and information technology issues. NTIA works to spur innovation, encourage competition, promote universal service, help create jobs and provide consumers with more choices and better quality telecommunications products and services at lower prices.

NTIA administers the Telecommunications and Information Infrastructure Assistance program (TIIAP), which is a competitive, merit-based grant program that provides matching grants to bring benefits of advanced telecommunications technologies through innovative projects demonstrating practical applications of advanced telecommunications and information technologies to rural and underserved areas. NTIA also administers the Public Telecommunications Facilities Program (PTFP), which assists, through matching grants, in the planning and construction of public telecommunications facilities and distance learning facilities utilizing non-broadcast technologies.

The Institute for Telecommunication Sciences (ITS) is the research and engineering branch of NTIA. ITS supports NTIA objectives, such as promoting advanced telecommunications and information infrastructure development in the United States, enhancement of domestic competitiveness, improvement of foreign trade opportunities for U.S. telecommunications firms, and facilitation of more efficient and effective use of the radio spectrum. ITS also serves as a principal Federal resource for solving the telecommunications concerns of other Federal agencies, state and local Governments, private corporations and associations, and international organizations.

Spectrum management is a critical responsibility of NTIA and vital to national security and public safety. The Office of Spectrum Management (OSM) is responsible for managing the Federal Government's use of the radio frequency spectrum. OSM establishes and issues policy regarding: allocations and regulations governing the Federal spectrum use, plans for the peacetime and wartime use of the spectrum; preparation for, participation in, and implementation of international radio conferences, assignment of frequencies; maintenance of spectrum use databases; review of Federal agencies' new telecommunications systems and certification that spectrum will be available; providing the technical engineering expertise needed to perform specific investigations; participation in all aspects of the Federal Government's communications related to emergency readiness activities and participation in Federal Government telecommunications and automated information systems security activities.

6. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualified you for the position for which you have been nominated. I have been intimately involved in the issues falling under NTIA's jurisdiction, including the development and implementation of the landmark Telecommunications Act of 1996, for the past 6 and ½ years. My work, which has included participating in the Senate Commerce Committee's oversight role of NTIA, involved working directly with the agency's programs and functions. This experience has provided me with a good knowledge of the agency, its employees, programs and functions.

2. Why do you wish to serve in the position for which you have been nominated? I believe NTIA has an exciting and challenging mission to promoting innovation and development of telecommunications and information technologies and services. I want to help carry out that mission. I am eager to help America prepare for the new global digital economy and I believe this agency can be of great assistance to U.S. consumers and industry so they may excel and benefit in the new economy.

NTIA has a very important role to play to promote competition and universal service in telecommunications and information services, which are becoming more and more essential to the social, economic, and cultural well-being of American citizens and people throughout the world. Advances in telecommunications and information services provide unprecedented opportunities to create jobs, connect people with each other, improve the quality of life, and ameliorate social and personal challenges of the past which resulted from disabilities, geographic isolation, or economic disadvantage. I desire to utilize the talents and resources of the agency to promote the development of telecommunications and information services and the benefits such services can provide to people.

3. What goals have you established for your first two years in this position, if confirmed? First, protecting national security and enhancing public safety are primary functions of NTIA and one of my goals is to further these objectives through efficient management of radio spectrum and enhancing the security of telecommunications networks.

Second, I desire to foster job creation and innovation by promoting competition and universal service in telecommunications and information technologies. Information technologies account for more than a third of the present economic boom our nation is experiencing; creating new jobs, cutting inflation, and instituting unprecedented efficiencies. Within a decade, about half of the entire U.S. workforce will be employed by information technology producers or intense users of information technologies. I intend to direct the functions and programs of NTIA to promote the expansion and the availability of advanced services, such as high speed Internet access, through competition and universal service.

Third, consumers need to be comfortable using telecommunications and information services and assured that their personal privacy is protected. One of my goals is to improve privacy protection in telecommunications and information services by working with the industry and the Congress to establish the right balance between private sector initiative and government guidance.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills? In more than a decade of service in the Congress and campaign management experience, I have gained certain valuable skills that will help me serve at NTIA. Nevertheless, I recognize and appreciate that there are many significant differences between working in the Executive and Legislative branches of government and, if con-

firmed, I will identify and install experienced staff to ensure efficient functioning of the agency.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when should society's problems be left to the private sector, and what standards should be used to determine when a government program is no longer necessary. With respect to telecommunications and information services, I believe that governmental regulations should be as minimal as possible.

In my judgment, competition, not regulation, is the most efficient and effective means to spur innovation and lower prices. Competition is already thriving in many areas, but many other areas are still in transition to a competitive market. Where robust competition exists in open markets, governmental interference ought to be avoided. A governmental role is necessary under some circumstances, such as in areas where markets are transitioning from a monopoly-controlled environment to a competitive one. Governmental action in these instances must be clear, fair, understandable, competitively neutral, and directed toward obtainable goals that are designed to foster competition and allow market forces to work. Once an open competitive market does exist, governmental regulations must adjust accordingly.

A governmental obligation also exists to ensure universal access in areas where market forces fall short. Yet steps to "preserve and advance" universal service ought to work in tandem with competition, not hinder it; consistent with the balance established under the 1996 Telecommunications Act to ensure universal service and access for all Americans and promote competition.

Finally, I believe that government can play an important role in working with industry and consumer advocates to develop private sector initiatives to address society's problems as the first and preferred solution.

6. *In your own words*, please describe the agency's current missions, major programs, and major operational objectives.

NTIA is the principal agency to develop and articulate Administration domestic and international telecommunications and information policies. NTIA plays a lead role in working with Congress and advocates the Administration's positions before the Federal Communications Commission (FCC) and other independent regulatory agencies on telecommunications and information issues. Policy objectives advanced by NTIA should be consistent with the goals of competition, universal service and diversity.

NTIA has a primary responsibility to protect national security and public safety with respect to telecommunications networks and services. The agency fulfills this responsibility in its management of federal spectrum and its research and grant programs which are designed to foster innovation and development of new technologies and applications of new technologies in the area of telecommunications and information services. NTIA's management of federal spectrum provides for efficient use of this public resource for national security and public safety purposes, while balancing these needs with the need to make spectrum available for private sector industry innovation and development.

NTIA provides the leadership for the United States to be a world leader in the new global digital economy. The agency works to advance the goals of competition and universal service in telecommunications and information services, including advanced services, and investing in innovative applications and research. The Telecommunications and Information Infrastructure Assistance Program (TIIAP) and the Public Telecommunications Facilities Program (PTFP) provide matching grants to develop essential telecommunications and information services that would otherwise not occur. TIIAP identifies innovative demonstration projects in underserved areas which provide practical applications of new technologies for educational, health, and community needs. PTFP supports planning and construction of facilities for public broadcasting stations in order to strengthen the ability of public broadcasting to serve the public and distance learning facilities utilizing nonbroadcast technologies.

Through these grant programs, the Institute for Telecommunications Services (ITS), and the Office of Spectrum Management, the agency helps to foster innovation and development of new technologies and applications.

7. In reference to question number six, what forces are likely to result in changes to the mission of this agency over the coming five years. The rapid pace of growth and development of telecommunications and information technologies pose new challenges to protect national security, public safety, and personal privacy. NTIA needs to maintain a flexible and evolving mission to continually update its functions and programs to the rapid pace of change in technology.

Further, the globalization of markets and the growth of telecommunications and information services impose an increasing dependency on technology and e-com-

merce. NTIA needs to be a vigorous advocate for the U.S. market in telecommunications and information technologies and e-commerce and utilize its programs and research functions to enhance U.S. competitiveness.

8. In further reference to question number six, what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three challenges facing the department/agency and why? NTIA resources need to keep pace with technical advances. A reduction in resources in the agency could impose serious difficulties in carrying out the agency's mission. In my judgment, the following are the top three challenges facing the agency at this time:

(1) Balancing budgetary constraints with the growth in technology is a significant challenge facing NTIA. The telecommunications and information industries, fueled by rapid technological advancement, are among the fastest growing aspects of our nation's economy. Among the consequences of this technological explosion are new challenges to protect national security, public safety, and personal privacy. NTIA's resources need to keep pace with the industry and technologies which relate to the agency's mission.

(2) Efficient spectrum management is a continuing challenge to the agency as it attempts to balance the objectives of protecting national security and public safety with allocating the limited resource of spectrum for private development. The agency and the statute are resilient, but the agency needs to remain focused on the increasing pressures to allocate spectrum for private development and not threaten national security and public safety needs.

(3) Another challenge facing the agency is how to assert leadership in maintaining the appropriate balance between deregulation/private sector initiative and governmental involvement in the area of protecting privacy and security over telecommunications networks and services. While private sector-led solutions are preferable to regulation, NTIA needs to work with industry to provide guidance and help define what governmental actions, if any, are necessary to protect national security and individual privacy.

9. In further reference to question number six, what factors in your opinion have kept the department/agency from achieving its missions over the past several years? The agency has done a good job in carrying out its mission and the programs under its administration have been run efficiently and mindful of the need to target taxpayer resources to areas of greatest need. But, resources for the agency have remained relatively level while the challenges to address rapid changes in the industry have grown dramatically.

10. Who are the stakeholders in the work of this agency? First and last, the American people are the primary stakeholders. The national security and public safety communities are major stakeholders and NTIA also has significant implications on companies that provide telecommunications and information services, the businesses and consumers that rely upon those services, and the general public which benefits through economic efficiency, job creation, and public safety enhancement.

11. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question number ten. I believe that it is imperative that NTIA maintain a very close relationship with national security, public safety and consumer organizations and all the various industry segments. Given the deregulatory environment which is characteristic of the competitive aspects of the telecommunications and information industries, NTIA needs to work closely with industry and consumers to establish as many solutions as possible that do not require federal regulation. Further, a cooperative bi-partisan relationship with the Legislative Branch is necessary.

12. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector.

(a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls?

I believe that proper financial management is essential and cannot be compromised and it is my responsibility to ensure proper management for the agency.

(b) What experience do you have in managing a large organization?

More than a decade of work in the Congress has prepared me to work on complex issues in large organizations.

13. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals.

(a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals.

The benefits are good, effective management, efficient allocation of resources, and successful completion of the agency's mission. Reporting keeps the agency focused on the right priorities and identifies where resources should be directed.

(b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs? Regulations issued by your department/agency comply with the spirit of the laws passed by Congress.

In my experience in working in Congress, I understand the importance of working closely with the Committee and the sponsors of legislation that becomes law to ensure that regulations and implementation remain faithful to the letter and intent of the statute. If confirmed, I will do my best to ensure that all regulations accurately comport with the language and the spirit of the law and I pledge to routinely consult with the appropriate committees in the Congress. Before regulations are finalized I will work with the appropriate Committees and the stakeholders to ensure such regulations are accurate and faithfully implement the letter and intent of the law.

18. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views.

The telecommunications and information industries are in a period of rapid growth and change, driven in part by the enactment of the Telecommunications Act of 1996. In my judgment, it is in the best interests of the industry and consumers to have a stable, predictable regulatory and legal environment to allow the marketplace to excel. Broad sweeping legislative changes at this time could disrupt the path of growth of the industry. However, that does not suggest that regulations implementing the statute ought not be revised or adjusted. There have been many bumps in the road to implementing the sweeping changes under the Telecommunications Act and many challenges lie ahead. It seems to me that NTIA needs to work in close cooperation with the Congress to advocate policies before independent regulatory agencies, such as the FCC, to implement the law in a manner that is faithful to the Act.

There are areas, such as in protecting national security, public safety, and personal privacy, where rapidly changing technologies are imposing unprecedented challenges. While I do not advocate any particular legislation at this time, I do believe that it is important that NTIA needs to work closely with the Congress in a bi-partisan manner to monitor and assist private sector initiatives and, if necessary, develop any appropriate legislation.

19. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a time frame for their implementation.

Yes. Early in my tenure, I intend to examine the NTIA strategic plan and meet with NTIA senior managers to ensure the agency's goals and objectives address Congressional, Administration, and Departmental priorities and are reflected in an appropriate distribution of discretionary resources.

Senator ASHCROFT. Well, thank you very much for your presentation and your remarks. You have been most gracious and we appreciate not only your service but the way in which you present yourself.

You have had a lot of opportunity to look around. You have observed things while we were in the process of changing things. Managing change is perhaps the greatest of all the privileges we have because we have the opportunity, if we do not think things are working well, to change them.

Do you have any changes in mind for the National Telecommunications and Information Administration in the way it would operate and what it would do?

Mr. ROHDE. I think the best way to answer that is to say that I think circumstances are quite different today than they were in 1993 at the beginning of this administration. I believe that we are on the cusp of some watershed events in the area of telecommunications policy. I think, to the extent that there are changes, they will be in terms of emphasis and focus. Because of what is going

on in the industry such as some of the very significant decisions on 271 applications, on the debate over broadband access, the debates over privacy, NTIA is likely to have a greater focus on these areas and you may see a little more activity in these areas.

Senator ASHCROFT. Since you have responsibility of advising the administration on telecommunications and information technology, what kind of advice will you be giving them regarding broadband and the availability of broadband? In particular, do you see technology as solving the broadband challenge by providing it without significantly greater infrastructure in terms of hard line communication? Or how would you see that working out?

Mr. ROHDE. Technology is what is driving the broadband debate. It is new technology such as digital subscriber line service that are providing this greater capability and the technology that is retrofitting the cable systems that is driving the whole broadband debate. In my mind, broadband deployment is thriving in competitive environments. I think that competition will drive investments. However, I also understand that there are markets in this country where competition will not be the driving force for broadband deployment, and that is where universal service plays a role.

With respect to the broadband debate, I think the framework in the Telecommunications Act got it right. It is a framework to create open, competitive markets and preserve and advance universal service to make sure that benefits of broadband deployment are spread throughout the country.

Senator ASHCROFT. Do you see broadband as being provided through hard wire access, or do you see that coming as part of the wireless capacity? I think that makes a big difference because if you can have the wireless stuff, those who own the wires now are not in a unique position.

Mr. ROHDE. I think it is going to come through both. Right now most of what we refer to as broadband capability is coming over wires, but there are wireless technologies out there in the development stage that can provide broadband. There are, for example, a number of satellite providers that already have licenses from the FCC and are seeking licenses to deploy wireless broadband access. So, I think broadband is going to come through a variety of technologies.

It is important that public policy be technologically neutral, as the Telecommunications Act requires, so that we promote a variety of technologies to meet a variety of circumstances.

Senator ASHCROFT. There are Members of Congress and of industry that are critical of the way that the Government uses the spectrum that it occupies. Their belief is that Government is holding on to spectrum that it does not need, given the fact that technology has made spectrum use far more efficient.

As the Administrator of the NTIA, how would you address these concerns, and in what way would you respond to Government when it says, well, we just need all the spectrum we have had historically? What sort of considerations would enter your mind in your advice-giving capacity in evaluating those situations?

Mr. ROHDE. First of all, I think it is important to point out that currently about 93 percent of all the spectrum that is used in this country is shared spectrum between the Government and private

users. About 1.4 percent is exclusively Government use, and a little over 5 percent is exclusively nongovernment use. The NTIA, through the instructions of the OBRA 1993 and the OBRA 1997 acts, has already allocated over 255 megahertz to the Federal Communications Commission to make available for private use.

Many of the debates that we are in currently and will be in in the future are going to involve sharing questions and interference issues. NTIA has a responsibility to try to resolve these in a manner that protects the national security and public safety as well as allow for private sector innovation and use. I think also NTIA has a number of assets it can bring to these debates. It has a wonderful research lab in Boulder, Colorado that can help try to resolve a lot of these interference issues.

I think the agency has a dual responsibility. It has the responsibility to ensure national security and public safety with the Federal users, but it also has a responsibility to promote the innovation of new technologies. The approach that I want to bring to this matter is that I do not want the agency to just say no all the time. I want it to try to work out the interference sharing issues so that we do not have to sacrifice public safety and national security for the sake of developing new technologies, that these can work hand in hand.

Senator ASHCROFT. Senator Dorgan.

Senator DORGAN. Mr. Chairman, having worked for so long with Greg, I have no need to inquire of his views.

[Laughter.]

I would simply say I read a press report in which there was some speculation that if his nomination came to the Congress, that he should not necessarily be blamed for the positions I had taken while a member of the Commerce Committee.

[Laughter.]

So, I absolve you of all of that.

[Laughter.]

I think Greg has provided a statement that really reflects, for all of the members of this committee, the value of his ability and intellect that he has offered to me for so many years. So, I do not have any questions. Thank you, Greg, and thank you for a wonderful statement.

Senator ASHCROFT. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

As I said earlier, I think Greg Rohde is going to do a terrific job in this position. I think he probably, last night, was worried that I was going to ask about 150 questions about the Internet Tax Freedom Act.

[Laughter.]

Mr. ROHDE. You already know how I would respond.

Senator WYDEN. And also, we all know it is Senator Dorgan's fault, as he just said.

[Laughter.]

I only wanted to have followup on this broadband issue, and I think you could tell from my opening statement that I would be interested in your thoughts about how the administration would proceed at this point with respect to carrying out section 706 of the act.

The act, as you know, puts the focus on really getting a broadband capability into every nook and cranny in the country, and the reason that we had this excellent conference this morning, put together by Senator Daschle and Senator Dorgan, is that obviously a lot of these rural communities, from the standpoint of communications, are being turned into sacrifice zones. They are just being left out. My concern is that the Federal Communications Commission just seems absolutely unwilling to get off the sidelines and get serious about implementing the act.

In fact, in February basically—and I quote here—they said the deployment of broadband capability is reasonable and timely. They said this year that everything is just hunky-dory, and I think when we go out to rural communities in Oregon and North Dakota and other places, they say, well, they may think everything is reasonable and timely in Washington, D.C., but it certainly is not in rural Oregon and other parts of the country.

I think just by way of a friendly question, obviously, is I would be interested in your thoughts this afternoon what you would say to Chairman Kennard and the FCC in terms of actually getting them off the sidelines to carry that out.

Mr. ROHDE. Thank you.

Well, first of all, before I directly answer your question, I would really like to commend you and Senator Dorgan and Senator Daschle and others who have really entered this debate and are really driving the aspect of the debate about making sure that broadband comes to a lot of rural areas.

There are a lot of issues out there. There are a lot of very significant constituencies behind aspects of this debate that are pushing their agenda with respect to their solution for getting broadband out there. I think the work that you and other Democratic Senators are doing is really helping to drive that debate in the right direction and is having a big impact on how the Federal Communications is going to look at these issues.

To directly answer your question, what I would say to Chairman Kennard and my advice the administration is I think broadband deployment is a very high priority. I think the administration needs to be heavily engaged in this debate and I think NTIA needs to work very closely with the FCC. The FCC under 706 is charged with looking at ways in which to encourage the deployment of broadband services. Also advance services are mentioned elsewhere in the act, such as in section 254 and section 271. As you know, the FCC is looking at universal service reforms under section 254 right now.

So, I agree with you, Senator, that we need to be very aggressive. We need to push very hard for the Commission to be focused on broadband deployment. It is not the time to delay consideration. We should not act too quickly to disrupt the positive things going on in the marketplace, but yet decisions need to be made now about how this broadband is going to be deployed in a manner to accomplish the goals we want, such as ubiquitous deployment.

Senator WYDEN. I am looking forward to seeing you in this new position.

I do not have any other questions, Mr. Chairman.

Senator ASHCROFT. Senator Burns.

Senator BURNS. Greg, congratulations on your nomination.

Mr. ROHDE. Thank you.

Senator BURNS. I appreciate that very much.

I want to ask you one question. As we see wireless continue to grow in rural areas and we see competition in rural areas where probably as near as 5 or 6 years ago we did not think there would ever be any competition in rural areas for the simple reason that the co-ops and the independents were there, do you see a time when universal service becomes more of a detriment to allowing competition into a market? Do you see a time when the universal service will have to be looked at again? There is a point of diminishing returns. We have seen in the competitive areas what competition has done. Do you see when universal service becomes a detriment?

Mr. ROHDE. Well, Senator, as you know, the Telecommunications Act called for reform of universal service, and the instructions of the act are to "preserve and advance universal service." I know the intent of this committee—which paid a great deal of attention to those provisions of the bill—understood that universal service needed to be reformed in order to accommodate a competitive model. Traditionally, local phone service has been provided by Government sanctioned monopolies that have been regulated largely at the State level. Congress, in passing the Telecommunications Act, said that it wanted to change that model and move to a competitive model. As a result, universal service needs to be reformed in order to accommodate competition and deal with competition..

Can universal service in instances be a barrier to entry? Yes, it can be. That is why we need the reform. But at the same time to the local incumbent, needs the reform as well because if competition rolls out without any adjustments to universal service and we have what we call cherry-picking going on, the local incumbent who may only have a few thousand in their subscriber base could see a substantial portion of their revenues whittled away. So, we need to have a reformed universal service system consistent with the act that accommodates competition and also helps the incumbent carrier survive competition.

Senator BURNS. I ask that question because there are two or three different models out there, but I think we have to be very agile here in Government and to make sure that policy is reformed.

I had the feeling, whenever we passed the 1996 Act, that maybe some of us would like to go a little bit further, as you well know, but it ended up to be an act that was more of a transition law than anything else because we were taking entities that had been under the umbrella in the regulatory environment since 1935 and we were trying to regulate 1990's technology with a 1935 bill. In fact, the whole world was going off and leaving us in the dust because things are going to happen no matter what the policy of this Government. Once you go home, you find out how irrelevant Washington really is when it comes to the innovative juices of how we do things in this country.

So, that was my question because I think no matter who the administration is, it has to be very agile and aware of when that policy change may have to take place.

Congratulations again.

Mr. ROHDE. Thank you very much, Senator.

Senator BURNS. You bet.

Senator ASHCROFT. Senator Brownback from Kansas.

Senator BROWBACK. Thank you very much, Mr. Chairman. I am not here to ask any questions but just to support the nominee. I am delighted that he has been nominated to the post. His work, the Senator's work they have done on universal service has been outstanding certainly from a rural State's perspective like mine and like what was in North Dakota. Your work in the 1996 Act in particular I want to recognize.

I think these are critically important fights and I hope, as you go into this new position, you continue to fight for rural interest and rural areas. That is parochial for me to say, but I think it is very important for the country so that we just do not create two different economies when we go to more and more information needs that the rural areas continue to be able to have that. We have historically done that as a country, whether it be rural electrification or telephony or other things, but we have got continuing needs to make sure that we do not create two societies between rural and urban.

I applaud your past work in there and I just encourage you to continue it.

Mr. ROHDE. Thank you very much.

Senator BROWBACK. Thank you, Mr. Chairman.

Senator ASHCROFT. Thank you very much, Senator Brownback.

Thank you very much, Mr. Rohde, for your attendance here, for your service to the committee, and for your service to the Senate. We look forward to your service to the country.

Mr. ROHDE. My pleasure. Thank you very much.

Senator ASHCROFT. At this time I would like to call Mr. Thomas Leary. I would also like to mention that Mr. Leary's wife, Stephanie Abbott, is in the audience and welcome you. Thank you very much for being here.

Some of you have wondered when these items might be scheduled for an executive session and reported to the Senate. The chairman of the committee, through his staff director, has indicated that he plans to expedite this and to move these nominations as soon as possible.

Senator DORGAN. Mr. Chairman?

Senator ASHCROFT. Yes.

Senator DORGAN. Mr. Chairman, I am going to have to leave, but before I did, I wanted to offer my support for Mr. Leary's nomination. I think he has excellent qualifications. I regret I am not able to stay and make a longer comment, but let me say I am pleased he is here. I am pleased he is offering himself for service to our country and I think that service will greatly benefit America.

Senator ASHCROFT. Thank you very much, Senator.

Mr. Leary currently is a partner at Hogan & Hartson, although he frequently litigated consumer fraud issues before the Federal Trade Commission, his practice has focused primarily on antitrust litigation. Prior to his move to Washington, he served as an associate and then a partner at White & Case and then Assistant General Counsel for General Motors. He received his bachelor degree

at Princeton, his law degree at Harvard, and a Harvard degree and a Princeton education is a thing of note.

We welcome you to the committee and may I suggest that we just observe a moment of not silence, until the doors close, and then I would invite you to proceed.

[Pause.]

**STATEMENT OF THOMAS B. LEARY, COMMISSIONER-
DESIGNATE, FEDERAL TRADE COMMISSION**

Mr. LEARY. Mr. Chairman and members of the committee, I just have a very brief opening statement and at the beginning I really want to express my gratitude to this committee for the courtesy you have extended to me in scheduling this hearing so quickly after the summer recess.

And I also want to thank all of the people who have helped me to get to this stage in the process, a lot of whom I know and, frankly, a lot of whom I do not. As a Republican nominee in a Democratic administration, as you can imagine, I have needed a lot of help from people in both political parties. I particularly want to express my gratitude both to Senator Lott and to Senator McCain who have done so much for me, in addition to the people who are here now, and also to the President who appointed me and to the people in the White House who have been unfailingly courteous and helpful to me.

I also am honored that my wife is here and that some of my present colleagues and some of my colleagues-to-be are here, including Commissioner Orson Swindle who has been good enough to accompany me. I appreciate his presence and support.

Like other nominees, I responded to the best of my ability to your written questions, and I would like to respond today, as best I can, to any additional questions that you may have.

I want to make clear that, as far as I am concerned, this commitment to be responsive does not end with this appearance. To the extent that it is proper for me to do so, I want to be responsive on an ongoing basis to members of this body and the other one and to people in the administration. I think I made clear in my written submissions that I have a very firm belief that agency independence is not the same thing as agency isolation, and I hope to have the opportunity to work with you all in the future.

I have a fundamental belief in the vigor and adaptability of the free market system.

Senator ASHCROFT. May I ask you to suspend your remarks for a minute? I would like to go and ask the folks in the hall if they would—

[Pause.]

I apologize. Your appointment and the responsibility to which the President has appointed you is a very serious one and it is important that we be able to hear what you have to say and for you to be able to say it without reference to—no matter how joyful the celebration is.

Mr. LEARY. I appreciate it, Senator.

Senator ASHCROFT. I wish you would proceed. I apologize.

Mr. LEARY. Let me just repeat. I want to express my fundamental belief in the vigor and the adaptability of the free market

system, and I do not see the mission of the FTC as being in any way inconsistent with that basic belief.

Obviously, I cannot comment on individual matters that are now or may in the immediate future come to the Commission for consideration, but I promise you an open mind. I think one of the benefits of advancing years is that it becomes increasingly easy to admit from time to time that initial impressions I have may just be mistaken. In that spirit I want to entertain this new challenge and I welcome your help.

That concludes my remarks, Senator.

[The prepared statement and biographical information of Mr. Leary follow:]

PREPARED STATEMENT OF THOMAS B. LEARY, COMMISSIONER-DESIGNATE,
FEDERAL TRADE COMMISSION

Mr. Chairman and Members of the Committee:

At the outset, I would like to express my gratitude to this Committee for the courtesy you have extended to me in scheduling this hearing so quickly after your return from the summer recess. I would also like to take this opportunity to thank all of those people who have helped me get to this stage in the process. I am familiar with some of the efforts made on my behalf, but I am no less grateful for the many efforts that I know nothing about.

I am pleased to respond today, as best I can, to any questions or concerns that you may want to express. And I want to make an open commitment to be similarly forthcoming in the future if I am confirmed. My written submissions set out my firm belief that agency independence is not the same thing as agency isolation, and I really hope to have the opportunity to work with you in the future.

I have no preconceived agendas, and I promise you an open mind. One of the side benefits of advancing years is that it becomes easier to admit that some of my first reactions may just be wrong. I want to approach this challenge in that spirit, and I welcome your help.

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names or nicknames used.) Thomas Barrett Leary ("Tom").
2. Position to which nominated: Commissioner, Federal Trade Commission.
3. Date of nomination: July 28, 1999.
4. Address: (List current place of residence and office addresses.) Home: 615 E Street, N.W. Washington, D.C. 20003. Office: Hogan & Hartson L.L.P. 555 13th Street, N.W. Washington, D.C. 20004.
5. Date and place of birth: July 15, 1931; Orange, New Jersey.
6. Marital status: (Include maiden name of wife or husband's name.) Married to Stephanie Lynn Abbott.
7. Names and ages of children: (Include stepchildren and children from previous marriages.) Thomas Abbott Leary (41), David Abbott Leary (39), Alison Leary Estep (35).
8. Education: (List secondary and higher education institutions, dates attended, degree received and date degree granted.) Harvard Law School—1955-58 (JD 1958); Princeton University—1948-52 (AB 1952).
9. Employment record: (List *all* jobs held since college, include the title or description of job, name of employer, location of work, and dates of employment.) Partner, Hogan & Hartson, Washington, D.C. 1/1/83 to Present; Assistant General Counsel General Motors Corp. Detroit, Michigan, 9/77-12/82; Attorney-in-Charge, Antitrust General Motors Corp. Detroit, Michigan, 10/71-9/77; Partner, White & Case New York, New York, 1/69-10/71; Associate, White & Case, New York, New York, 7/58/-12/68; Worker on Road Gang, Coronado, California, Summer 1956; Officer, U.S. Naval Reserve, Active Duty, U.S. and WestPac, 10/52-8/55; Officer Candidate, Newport, Rhode Island, 6/52-10/52.
10. Government experience: (List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.) None.
11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, com-

pany, firm, partnership, or other business enterprise, educational or other institution.) Partner, Hogan & Hartson 1983-Present; Assistant General Counsel, General Motors Corp., 1977-82; Partner, White & Case, 1969-71;

[Note: I was a non-officer employee on the Legal Staff of General Motors from 1971-77, and an associate of White & Case from 1958-68.]

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.)

Member, American Bar Association, 1959-Present; Council, ABA Antitrust Section, 1979-83; Chairman, Antitrust Committee, ABA Business, Law Section, 1991-94; Member, D.C. Bar Association, 1983-Present; Board Member, Lawyer Counseling, approx. 1985-Present; Committee, D.C. Bar, (separate terms); Member, Michigan Bar Association, 1971-82; Member, New York State Bar Association, 1958-71; Council, New York Bar, Antitrust Section approx., 1969-71; Board Member, National Council on Alcoholism, Detroit, Michigan, approx. 1978-82.

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate. None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years. None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years. Two gifts totaling \$500 to Republican National Committee in 1998; One gift of \$500 to Bush campaign in 1988; Following amounts to Hogan & Hartson PAC: 1999—\$500; 1998—\$500; 1997—\$500; 1996—\$500; 1995—\$550; 1994—\$625.

14. Honors and awards: (List *all* scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.) National Defense, Korean Theater, and UN Medal for service with U.S. Navy in Far East in 1953-54.

15. Published writings: (List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.)

Book Chapters:

Chapter 10, Prevention of Liability for Antitrust Violations, in BNA/ACCA Compliance Manual: Prevention of Corporate Liability (1993)

Chapter 1, Antitrust Problems in International Trade—The Congressional Response, in Southwest Legal Foundation, Private Investors Abroad—Problems and Solution in International Business in 1985 (1986)

Articles and Columns:

How to Avoid Negotiations on Second Requests: A Comment, Antitrust 41 (Summer 1999) (Co-authors: Janet McDavid and Philip Larson)

The Uncertain Future of Food Advertising, Frozen Food Report 16-17 (July/August 1995)

The Defense of Mergers in the Defense Industry, Antitrust 4 (Summer 1993) (Co-author: Janet McDavid)

Avoiding Corporate Punishment, Snack World 12 (October 1991)

The U.S. Sentencing Commission Guidelines, Preventive Law Reporter (September 1991)

New Antitrust Legislation, Snack World 12 (March 1991)

State Indirect Purchaser Laws Should Be Preempted, Antitrust 25 (Fall/Winter 1990)

Antitrust Planning in an Era of Uncertainty, CCH Business Strategies ¶ 2450 at 15,201 (1984)

Use and Misuse of Economic Experts, 52 Antitrust Law Journal 823-31 (Summer 1983)

Is There a Conflict in Representing a Corporation and Its Individual Employees, 36 Business Lawyer 591-95 (March 1981)

Other (Panel Comments and Letters)

Letter, *McArthur Draws Sharp Response*, Antitrust 48 (Spring 1989)

Panel, *The Merger Transaction*, 56 Antitrust Law Journal 607-55 (Fall 1987)

Panel, *Antitrust Litigation, A Corporate Counsel's Perspective*, 51 Antitrust Law Journal 447-58 (Summer 1982)

Panel, *Practical Aspects of Internal Antitrust Investigations*, 51 Antitrust Law Journal 123-51 (Winter 1982)

Panel, *Do the [no-fault monopoly] Proposals Make Any Sense From a Business Standpoint?*, 49 Antitrust Law Journal 1281 (Summer 1981)

Panel, *Current Issues in the Attorney-Client Relationship*, 36 Business Lawyer 597-603 (March 1981)

Panel, *Experience Curve Theory*, in Conference Board Information Bulletin 28 (1980)

Panel, *What Is the Real Issue?*, in ABA, *Industrial Concentration and the Market System* 278 (1979)

Panel, *A Managerial View of Corporate Compliance*, 46 *Antitrust Law Journal* 481-507 (Spring 1977)

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of on topics relevant to the position for which you have been nominated. Most of my speeches are based on handwritten notes, which I do not retain. One speech delivered during the last five years was transcribed, and I have the text of two others. (See Attachments A and B)

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

I understand that Senator Trent Lott asked the President to nominate me to fill the vacant Republican seat on the Commission. I understand that I also have been recommended by others.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

For almost 40 years, I have advised clients on antitrust and consumer deception matters. I have litigated these matters in federal courts and have represented clients in internal deliberations at the Department of Justice and the Federal Trade Commission. I have written and spoken publicly on these issues, and have on occasion lobbied and prepared comments for clients with respect to pending antitrust legislation. I am a lifelong Republican but, at the same time, have had for many years a congenial professional relationship with the current Democratic chairman of the Commission.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers. As stated in response to the financial disclosure question G1, I presently have a deferred compensation arrangement with Hogan & Hartson. This compensation would be paid in one lump sum *before* I assumed a government position, and I would have no ongoing financial connection with the firm. I also have a vested pension based on my 11 years of service with General Motors Corp., which amounts to \$1,040 per month. The pension is not contingent on any activities I may undertake, and I have no other relationship with General Motors.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. None.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. I have represented clients in various matters before the Federal Trade Commission during the past 10 years, and am aware of—and will abide by—the applicable conflict rules for these situations. I am not personally representing clients on any matters now pending before the Commission, and have been screened off from any pending FTC matters that are being handled by others in the firm.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. During the years 1989 through 1995, I was registered as a lobbyist for The

Business Roundtable with respect to antitrust legislation generally and certain specific bills that were under consideration at that time. My activities focused on the Senate and House Judiciary Committees.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.) Other than the matters disclosed, I am not aware of any potential conflicts of interest. I will, of course, abide by any applicable conflicts rules.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details. I was involved in litigation from the years 1991 to 1994, as a result of a domestic dispute with a woman to whom I had been engaged between my marriages. Consolidated lawsuits, titled *Leary v. Skarstrom*, No. 91-CA12217RP, and *Skarstrom v. Leary*, No. 91-CA12809, are a matter of public record in the Superior Court of the District of Columbia.

I was represented in these actions successively by a domestic relations lawyer, Ms. Susan Friedman, Kuder Smollar & Friedman, 1925 K Street, N.W. Washington, D.C. 20006 (202-331-7522), and by a trial lawyer, Mr. Steven Gordon, Holland & Knight, 2100 Pennsylvania Avenue, N.W., Suite 400, Washington, D.C. 20037 (202-955-3000). These lawyers have been notified that I waive all privilege with respect to this matter, and have been instructed to answer any questions.

The actions were settled in June 1994, and general releases were exchanged. There are no ongoing obligations of either party.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. None.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. Please describe how your previous professional experience and education qualifies you for the position for which you have been nominated. See response to Questions A9, A15, A17(b), and F3.

2. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills? I have had extensive dealings with the Federal Trade Commission from the "outside," but I have never worked on the "inside." There is a great deal about the day-to-day operation of the Commission that I do not know, and the Commission has enforcement responsibilities in some areas that I have not encountered in my legal practice. Fortunately, commissioners are able to select their own attorney and eco-

conomic advisors, and I intend to select some people who have had extensive experience within the agency.

In addition, I am fortunate in that a number of present and former Commission employees are personal friends. They have been generous in their offers to brief me on Commission processes and procedures if I actually am confirmed.

3. Why do you wish to serve in the position for which you have been nominated? There are a number of reasons, some related to my perception of the public interest and some that are purely personal.

I did not initially seek the position but was urged to be a candidate by a number of people, from both political parties, who are interested in the work of the Federal Trade Commission. I have not been politically active, in the sense of participation in campaigns, but I have actively participated for many years in public debate over antitrust policies and processes. Although my lifelong immersion in antitrust issues is not a prerequisite for FTC service -- and many commissioners have served and are serving very ably without it -- I believe that my experience should help me to be an effective member of the collegial group.

Antitrust issues, particularly as they relate to large global mergers, will continue to be important for the foreseeable future. I have been involved in these issues as a lawyer for individual clients, and I would welcome the opportunity to help shape antitrust policy more directly on the Commission. Based on my experience, I have some modest ideas about ways to make the Commission more effective, and I would like to help put these into effect.

On a purely personal level, I have always believed, as a private citizen, that it is a privilege to have an opportunity for public service. Because of family responsibilities, it would have been difficult for me to take advantage of that opportunity earlier in my life—but I can now, and I don't want to miss it.

4. What goals have you established for your first two years in this position, if confirmed? The resources of both the Federal Trade Commission and the Antitrust Division of the Department of Justice are stretched to the limit today because of the explosion of merger activity. The Hart-Scott-Rodino Act, which established the thresholds for pre-merger reporting, was passed over 20 years ago and Congress never anticipated that the agencies would have to review so many mergers, both large and relatively small.

In addition, despite recent improvements in the pre-merger enforcement program, some internal processes are still overly burdensome. There is a substantial waste of both public and private resources, and, perhaps more important, the agencies have insufficient resources to pursue really significant matters as effectively as they could because they are required to deal with many that are insignificant. There is broad agreement that some reform is necessary, but comprehensive changes are inhibited by the agencies' present dependence on pre-merger filing fees.

As one of five peer commissioners with an equal vote, I cannot do much without consensus. But if I am confirmed, I intend to work for constructive change in the pre-merger reporting process. Some changes can be achieved by the antitrust enforcement agencies on their own; some will require congressional action. I believe that my previous association with the business community, and consequent credibility in that group, may help to make the needed changes workable and acceptable.

I would also like to encourage discussion of a more efficient allocation of enforcement tasks both between the two federal agencies and between federal and state authorities. They have individual strengths and weaknesses, but they have broadly overlapping jurisdictions. Significant improvements have been made in the allocation of responsibility, but I believe enforcement can be rationalized in an even more systematic and efficient way. This is a long-term project, but I would like to see it advance.

I support an even more intensive effort to enlist the help of the business community in self-regulatory programs. There are always dangers in this approach because concerted business initiatives aimed at "unethical" practices can easily be transmuted into illegal agreements to limit vigorous competition. The Commission, however, is specially qualified to support these initiatives because of its in-house expertise in both the competition and consumer deception areas.

Finally, I recognize that any government agency must, to some degree, enlist support for its mission among the people that it regulates. This should not be confused with "regulatory capture" or a process that would temper outcomes to please particular constituencies. I am also not primarily concerned with support for the Commission as an institution. What I mean is support for the laws and principles that the Commission upholds. Like other incumbent commissioners and their predecessors, I expect to give a lot of speeches to groups affected by the Commission's work.

It is equally important to listen. Commissioners can listen in relatively formal settings, as they did during the hearings on Global and Innovation Competition three years ago, but it is also important to solicit outside opinions in a less formal way. I expect a lot of my time will be spent listening.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when should society's problems be left to the private sector, and what standards should be used to determine when a government program is no longer necessary. In my view, the primary roles of any national government are to defend that country's citizens against external threats and to ensure that internal differences are settled by rules of law rather than by force. Most people probably agree that these roles are basic; opinions differ, however, on what the rules of law should be. My fundamental position on this issue is that government should intervene only when free market institutions, for some reason, fail to work the way they should. In some situations, however, involving so-called "externalities" (like environmental harm), market forces alone will not work, even in principle.

In the last century, particularly, government regulation has expanded dramatically, and it is still expanding. My personal view is that there always should be a presumption against expansion of government regulations—that it should be the last alternative "solution," rather than the first. We need to recognize that public institutions are likely to be just as imperfect as private ones and that all regulations—even if well crafted and well implemented—are likely to have unintended side effects. At the same time, however, regulators cannot be paralyzed by the search for an objectively perfect solution. There really is no such thing as pure "public interest"; regulatory decisions always have to strike a pragmatic balance between competing private interests.

The issue of when it is appropriate to phase out government regulation, and possibly entire government departments, is one that could be addressed in a more systematic way than it has been in the past. Government regulation imposes immense burdens on private citizens, just like direct government expenditures. At the same time, both regulation and direct expenditures confer substantial benefits. For regulatory agencies, both the ultimate burdens and benefits can far exceed the dollar appropriations for running the agency.

Direct expenditures, however, are disciplined not only by scrutiny of individual programs but also by a bottom-line budget, which forces the Executive Branch and the Congress to choose between competing priorities. Regulatory burdens are not subject to this overall discipline. It would be useful to monitor the overall regulatory burden in a more systematic way in order to supplement existing cost-benefit comparisons and to facilitate the termination of some old programs that are of less compelling benefit than some newly-created programs. (I recognize, of course, that it is not an easy task to quantify regulatory burdens, but incremental and comparative effects, rather than absolute numbers, are of primary importance. A methodology does not have to be perfect, so long as it is consistent.)

These are general observations outside the immediate scope of the position for which I am being considered, but the question seemed to ask for them. With regard to the Federal Trade Commission specifically, I believe that the agency imposes relatively small regulatory burdens and can confer substantially higher benefits. This opinion may simply reflect my occupational bias; most people tend to believe in the importance of their chosen fields of labor. I would also support an objective burden analysis of the work of the Federal Trade Commission.

Incidentally, the FTC, as a matter of internal practice, now imposes time limits on regulatory decrees, and is engaged in an ongoing program to "sunset" unneeded regulations.

6. *In your own words*, please describe the agency's current missions, major programs, and major operational objectives. The Federal Trade Commission traditionally is considered to have two primary missions that are reflected in its two operating branches: the Bureau of Competition and the Bureau of Consumer Protection. The former Bureau focuses on "antitrust" issues; the latter Bureau focuses on practices that are unfair or deceptive to consumers. In my view, however, the two bureaus deal with two aspects of the same fundamental objective: namely, the preservation of effective consumer sovereignty. Consumer sovereignty is impaired if companies with market power can raise prices above competitive levels, and it is also impaired when false advertising distorts product choices. There are considerable advantages to having both of these problems addressed by a single agency.

The major program on the "antitrust" side, as mentioned above, is prevention of potentially anti-competitive mergers. The workload in this area has recently tended to overshadow attention to non-merger anti-competitive practices and competition

advocacy before other government agencies. Reform of the pre-merger notification process could help to restore a better balance.

On the consumer protection side, the Commission increasingly sets priorities by identifying those practices that cause the greatest consumer injury. I understand that, in this area, the Commission also relies to a considerable degree on consumer complaints, and that there are recent initiatives to facilitate consumer communications via 1-800 numbers and the Internet.

7. In reference to question number six, what forces are likely to result in changes to the mission of this agency over the coming five years? The two separate but inter-related missions of the Federal Trade Commission are likely to remain intact for the next five years. There were proposals for major change in the early 1970s and 1980s that failed politically, and I believe there is even less pressure for wholesale restructuring today. In part, this is the result of sensitive leadership at the agency during the last decade.

Redeployment of agency resources is not likely to come from outside political direction, but rather from internal agency initiatives. As mentioned, one likely area would be reform of merger reviews. Another area of increasing concern is the challenge of new technology for both the competition and consumer protection missions. Uncertainties about the long-term effects of government intervention or, alternatively, of benign neglect are persistent and perhaps growing. Economic and behavioral understanding is expanding all the time, but technological change may be moving faster.

Similarly, the rapid disappearance of trade barriers and true globalization of commerce raise myriad issues of substantive policy and of process. The Commission will not only have to deal with new competitive and consumer issues but find new ways to address these issues. The world of commerce is not only growing more uncertain, but the stakes are getting higher and U.S. regulators are not the only significant players. (The recently-formed International Competition Advisory Committee has begun to study these issues in detail.)

8. In further reference to question number six, what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three challenges facing the board/commission and why? The Commission is future-oriented in the sense that its primary focus has always been on prospective improvements in the competitive process. The greatest constraint is therefore the inherent inability of human beings, singly or collectively, to predict the future. Military leaders are sometimes accused of preparing to fight the last war, and others in government can also be overly fixated on old problems, simply because they are familiar. The challenges identified in response to the previous question require a formidable expenditure of effort, but money and more people alone will not solve the problems. They require imagination and a modest recognition that experts can always be wrong.

I believe the major challenges for the Commission are the following:

(1) Immersion in immediate problems, in both private and public institutions, always tends to preempt long-term planning. Overwhelmed as they are with current burdens, the leaders of the Commission always need to set aside some time to address the challenges of the future and to test their views in public debate.

(2) Acquisition of the necessary economic understanding to cope with a fast-changing world is, as mentioned, a formidable task. Any regulator must always be open to the possibility that long-held tenets are simply wrong but, at the same time, must be appropriately skeptical of transitory fads and fashions. Achieving an appropriate balance is not easy.

(3) The Commission was originally designed by Congress to have a strong educational mission. It has made significant improvements in recent years, but needs to find ways to even better implement that original intent. Education of the private bar can have a particularly potent effect on law enforcement because private counselors then, in effect, enforce the law for you.

9. In further reference to question number six, what factors in your opinion have kept the board/commission from achieving its missions over the past several years? I am not prepared to say that the Federal Trade Commission has failed to achieve its mission in recent years. On balance, I believe it has done a pretty good job, in part because its goals have been set prudently.

As a purely subjective matter, I give the Commission higher marks on the anti-trust side than on the consumer protection side -- not because of a lack of commitment or imagination but because the variety of possible consumer frauds is almost infinite and because the perpetrators are myriad and transient.

There are no easy solutions to this problem, but it is of greater importance than people may appreciate. The ultimate damage done by fraud and deception is not measured simply by the losses of particular disappointed buyers; these activities can

also engender cynicism and disillusionment about the entire commercial system, even among people who have not been duped. Honest sellers have a stake in honest advertising that goes far beyond protection of their particular market position against dishonest competitors. We need to find even better ways to enlist the help of the private sector.

10. Who are the stakeholders in the work of this agency? The ultimate stakeholders in the work of the agency are ordinary consumers, which is to say the general public. Both the Competition and the Consumer Protection wings are dedicated to the preservation of open and honest competition for the benefit of consumers.

Obviously, survival of open and honest competition depends on the continued presence of competitors. Competition is not dependent on the survival of a particular competitor or group of competitors, however, so long as the opportunity exists for others to take their place. Competitors are therefore not the primary stakeholders that consumers are, but, in some circumstances, persistent injury to particular competitors will cripple the competitive process.

11. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question number ten? The Commission's consumer stakeholders are an immense and diffused group, largely unacquainted with what the Commission does, so it is not practical to depend solely on direct communication of their views. Commissioners have to rely for guidance on agency expertise and the views of various surrogates.

The agency has internal expertise both in the dynamics of a competitive market system and in the principles of consumer protection. It can apply this expertise in determining whether particular practices are anti-competitive or deceptive—for the ultimate benefit of consumers but often without their direct input.

Consumer interests are also represented by various surrogates and it is appropriate for commissioners to consider their views in formulating policy. Representatives of business or consumer organizations, for example, often have useful information to contribute.

Congress and the Executive Branch, as representatives of people/consumers at large, also have played an important role in the development of Commission policy. Congress can intervene directly through the appropriation process, through the formal oversight process, and in less formal ways. To the extent that a commissioner is acting in a quasi-judicial capacity, there may be legal constraints on communications that can be entertained, but commissioners are otherwise able to communicate freely with interested officials, including representatives of other agencies with some consumer protection responsibilities.

I personally do not believe that antitrust issues are somehow beyond the purview of other government policy-makers. So-called "independent agencies," like the Federal Trade Commission, are designed to be insulated to a degree from partisan politics, but this does not mean that commissioners should be indifferent to the concerns of elected or appointed officials.

12. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you? No employee complaints have ever been brought against me.

I have never thought of myself as subscribing to a particular "supervisory model," but I have been guided by a few basic principles that I derived from various sources. For example, I believe in delegation of authority and trust in the competence of those who report to me because people perform better when they are given responsibility and because, frankly, it makes my life a lot easier. I do not believe in management by intimidation; in my experience, the best managers invariably are those who lead by example and by fostering a sense of teamwork. I learned in the military that you never, ever, criticize a junior in the presence of that junior's own subordinates. And I learned from my father that you should always treat subordinates with particular courtesy because they usually are not in a position to defend themselves if you behave otherwise.

13. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe. My experience with committees of Congress has been limited to preparation of statements for congressional hearings and occasional lobbying calls on Members or their staff. See response to Question C(4) above.

14. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your board]commission comply with the spirit of the laws passed by Congress. My views on the future working relationships are set out in response to Questions E4, F-10 and F-11 above.

The principal spokesman for the Commission in its dealings with Congress is, of course, the Chairman. As explained, however, I firmly believe in the value of con-

gressional oversight and will cooperate to the maximum extent, both inside the agency and outside, if requested.

15. In the areas under the board/commission jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views.

As indicated, I believe that reform of the pre-merger notification process should be given high priority. Although the Commission can take a number of steps internally, some congressional action will be required if, for example, threshold reporting levels are raised to take account of changes in the value of the dollar (or overall size of the economy). In addition, I believe it would be desirable to phase out the agency's reliance on pre-merger filing fees as a funding source. I recognize that any such step involves larger appropriation issues, but the overall effect on the budget could be neutral.

16. Please discuss your views on the appropriate relationship between a voting member of an independent board or commission and the wishes of a particular president. The short answer is that an independent agency like the FTC—with bipartisan members serving staggered terms—is structured the way it is precisely to avoid subordination to the wishes of a particular president. I endorse the basic scheme without reservation. It is necessary to add, however, that commissioners should not function in total isolation. It is obviously inappropriate to entertain off-record communications from anyone when a matter is in adjudication, and there are established procedures for outside comment in administrative rulemaking. On broad policy questions, however, a commissioner should give respectful consideration—which is not the same thing as deference—to the views of other people in both the executive and legislative branches.

I also believe I have an obligation to be consistent. I assume that I have been proposed and nominated, and hopefully will be confirmed, because my philosophical views on the relevant issues lie in the mainstream. In my opinion, any sudden reversal of form would be a betrayal of trust.

Senator ASHCROFT. I am very pleased to have you here. The FTC, of course, has a very important responsibility. It was a pleasure to know that a member of the Commission has attended you here, Orson Swindle, and we are pleased and honored to have him here.

Have you got any ideas for the ways in which you think the FTC could improve its performance or the changes that you would like to see happen at the FTC?

Mr. LEARY. Well, Senator, as I have discussed with some people, I have a number of notions. I think that my top priority for the Commission's possible constructive changes would be reform of the premerger notification process. At the moment, the advance notification of mergers requires notification of mergers at a dollar level that was set over 20 years ago. It has not been indexed for inflation and it has not been indexed for the massive growth of the economy in the last 20 years, so that the antitrust agencies, both the FTC and the Department of Justice, are today reviewing relatively minor transactions, which not only imposes a burden on the private sector but, equally important, imposes a burden on the public sector. There are a number of initiatives underway right now for careful study of this situation with some hope for achieving constructive change in the relatively near future, and I am optimistic that it can be done. That would be my top priority.

Senator ASHCROFT. Is it possible that by requiring submissions which are really not above a threshold of necessity that we bog the agencies down and divert resources from their focus?

Mr. LEARY. That is my biggest concern, Senator. The Federal Trade Commission, as you may know, has two wings: one, the consumer protection wing, and the other, the so-called competition or antitrust wing. The competition/antitrust resources are to a tremendously large degree preempted by the need to attend to these

merger filings, and I think it distracts from other things that the agency might usefully accomplish.

Senator ASHCROFT. I think you have mentioned changing the pre-reporting process for mergers.

Mr. LEARY. Yes.

Senator ASHCROFT. One thing would be to probably delete some of those filings which have grown by inflation into the category but do not deserve the chance to be there. Are there other—

Mr. LEARY. There may be other categories of filings that may ultimately prove to be unnecessary. Let me just give one example of an idea, which I do not know to be practical or not because I have not tested it out in debate. But one possibility would be to have a very, very simplified process for mergers where there does not appear to be any horizontal overlap; that is, the two businesses are not in any respect competitors or de minimis competitors. And maybe there is some way where a whole class of transactions could be given a more summary treatment.

Senator ASHCROFT. Let me just yield some of the time now to other Members of the Senate who are here. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman. Mr. Leary, I think you heard me say earlier that my constituents have the dubious honor of paying the highest gasoline prices in the United States now, consistently near \$1.60 per gallon. We see the Federal Trade Commission as our last line of defense against anticompetitive practices that are contributing to this price situation. We are particularly concerned that with the possibility of additional oil company mergers, that would mean even fewer choices and even less competition for the consumers.

Now, you may be aware that the Federal Trade Commission has been very responsive when I and Senator Boxer, who has faced many of the same problems in California, have brought information to the Commission's attention. We are pleased that you are moving forward on this. It has been reported in the press that subpoenas are in the hands of the oil companies with respect to this matter.

What I would like to do is ask you a few theoretical questions so as to be able to assess your views with respect to competition in the gasoline business.

Now, I am sure you are familiar with the Robinson-Patman statute which makes it illegal to discriminate in price between different purchasers of commodities of like grade and quality. In fact, the Supreme Court has ruled that an oil company engaged in illegal price discrimination by selling the same grade and quality of gas at different prices to different buyers. In fact, there was a Supreme Court case on that, the *Texaco v. Hasbrook* case.

In the Pacific Northwest right now we have oil companies charging gasoline dealers different prices for the same grade and quality of gas. In fact, the CEO of Arco recently admitted to me during a hearing before the Senate Energy Committee that Arco charges purchasers different prices by using a practice known as zone pricing. The Arco CEO, Mr. Bolan, stated that Arco was charging purchasers different prices to meet competitive pressure.

But this defense, the meeting competition defense, under the Robinson-Patman Act only applies when a seller is lowering prices to meet competition. That is certainly not what we have going on

in the Pacific Northwest. We have been seeing these constant increases in gasoline prices for many months now, probably the last 6 months.

My question then is, if there is a Federal law prohibiting price discrimination and the oil companies are not lowering prices to meet competition, what theory could possibly justify zone pricing?

Mr. LEARY. Senator, obviously, as you know, I am constrained not to discuss any particular matter that is presently before the Commission.

Senator WYDEN. I am asking you only about theory.

Mr. LEARY. As a matter of principle or matter of theory?

Senator WYDEN. Right.

Mr. LEARY. I agree with you 100 percent that the meeting competition defense does not apply to meeting the competition of somebody who is offering a higher price. That is not what the meeting competition defense is meant to achieve.

As far as zone pricing is concerned, whether that is legal or not depends upon whether there is an effect on competition between the favored and the disfavored customers. In other words, the Robinson-Patman Act—there may be some misunderstanding about it—does not prohibit selling at different prices to someone in California than to someone in New York because those two people are not in competition with one another.

The issue will be whether or not there is a competitive nexus or a competitive effect between the dealer that gets the high price and the dealer that gets the low price. You have to look at what the impact is really along the demarcation line because the people who are far apart are not going to be either advantaged or disadvantaged by the lower price. I am speculating now because obviously I am not familiar with the facts of the case, but that may well be an issue here.

There are also questions under the Robinson-Patman Act about different prices for people who take different volumes. There are also questions about whether or not people get different prices because they have other purchase terms that differ, and all of those complications may be present.

Senator WYDEN. Well, we certainly do not question that California and New York are in different zones.

Mr. LEARY. Right.

Senator WYDEN. What we have found in our State and have turned over invoices and documents to the Commission—you may have heard—is evidence of this pricing discrimination on the basis of zones where the people are located very, very closely to each other.

Mr. LEARY. That could well be true, Senator.

Senator WYDEN. All right.

My second question is in my State as well there is very limited competition in the gasoline business. We have seen a 29 percent decrease in the number of gas stations since 1990. The independents have been virtually squeezed out. Right now four oil companies currently control 80 percent of the retail market.

In addition, if the proposed merger between BP and Arco is allowed to go forward, BP and Arco would have a virtual monopoly over oil supply on the west coast. They would control not only 70

percent of the Alaska North Slope crude, they would have the virtual strangle hold on the delivery system that brings the gas to west coast markets.

Now, supporters of this sort of merger want the FTC to look only at local retail markets where there is little overlap between current operations such as the BP and Arco operations. My sense is it is not that simple.

Again, I would like to know whether in theory you think that it is appropriate for the FTC to look at the entire array of operations, the retail operations, to determine if there are anticompetitive concerns from a merger like this.

Mr. LEARY. Again, Senator, without commenting on the specific case, it is certainly appropriate for an agency to look at both the supply side as well as the demand side. The agency guidelines specifically provide for looking at supply side concentration as well as demand side concentration.

Senator WYDEN. Mr. Chairman, I have just a couple of other questions, and I appreciate your indulgence because this is probably one of the top two concerns in my State and I appreciate your letting me pursue this.

Mr. Leary, you might be aware that earlier this year I raised concerns with the Commission about the potential merger between Barnes & Noble, the very large retail bookseller, and Ingrahm, the major wholesaler. Not only having a dad in the publishing business but from a State with perhaps the largest number of small bookstores in the country, I had a lot of constituents up in arms about this. I asked the Federal Trade Commission to investigate. They did and there was a staff recommendation that the merger not be allowed to go forward. And as you know, Barnes & Noble eventually pulled out.

Mr. LEARY. Yes.

Senator WYDEN. The BP-Arco situation is obviously not identical in all particulars because there are refineries in between the crude oil supply and the retail gasoline supply.

But again in theory, would you agree that there are similar anticompetitive concerns raised if you would have a mega-merger like BP and Arco controlling the crude oil supply for the west coast and also that firm having retail operations?

Mr. LEARY. Senator, again speaking as a matter of principle, that could be a matter of concern. Yes, indeed.

Senator WYDEN. One last question, if I might.

Given the spree of mega-mergers with last year BP acquiring Amoco, Exxon and Mobil having a merger in the works that is now under review by the Commission, the ink barely dry on BP-Amoco, and they are already off acquiring Arco, we are seeing this sort of communications-utilities industry after industry. What I am hearing from my constituents is that with so many sectors now being dominated by fewer and fewer hands, there is just virtually no local accountability in some of these key areas as it relates to health and communications and energy.

My question is, when the FTC looks at these mega-mergers, should it look only at what the combined companies' share of the market will be after the merger, or should issues like how the

merger affects customer service and other consumer considerations be included before a merger is approved?

Mr. LEARY. Senator, my answer to the question, the short answer, is yes. I believe that service and product quality are dimensions of competition just like price, and I might say frequently neglected dimensions of competition, again speaking generally.

Senator WYDEN. Well, let me just tell you, I am sure you did not expect a member of this committee to go into this kind of detail with you this afternoon, but you can probably tell this is an area I am very interested in, have been since the days when I was director of the Gray Panthers at home in Oregon. I happen to think that the Commission that you have been nominated to serve on is one of the most important places in the Government because it is one of the last lines of defense for consumers in these key areas. I think Bob Pitofsky is doing an excellent job. He has been very responsive to us, and I think you have been very thoughtful in terms of how you have tackled some very complicated issues that I am sure you did not anticipate this afternoon.

I look forward to seeing you serve at the Commission and to working very closely with you on these matters.

I want to thank Chairman Ashcroft for indulging me this afternoon to be able to ask these questions.

Senator ASHCROFT. Well, thank you, Senator Brownback.

Senator WYDEN. And my colleague from my birthright, Kansas.

Senator BROWNBACK. One of our great representatives from Wichita, one of three or four I think that are from Wichita.

Mr. Leary, I do not have any particular questions for you. I want to congratulate you on going into this position.

I want to draw your attention to one particular issue that is coming up in front of the FTC, a study that they are doing on the marketing of violence to children. We have held a hearing in this room on that topic. I met with the Chairman about that issue. I think it is a very important topic, obviously, and that is why I raise it with you.

I just got back from southern California and some meetings with entertainment industry people, and they talk there about trying to attract a certain set of eyeballs on watching television. Now, there they were talking about, they were saying Madison Avenue is driving us to try to get as many people from the age 18 to 34 and really the age of 18 to 24 and really male is what they want watching that television. So, that is why we put all the sex and violence on because you want to keep them from channel surfing, so let us put that up.

I do not know the accuracy of any of those statements that people made to me. I just know that overall that this society has grown far too coarse and really vulgar and rough, and a lot of it is put out through the microphone of a mass media or an entertainment industry.

And if it is particularly targeted below that age 18 audience, then I think there is a reason for us to look more thoroughly and directly and caustically and critically at the industry that is doing that. I suspect that they are in particular areas, video games, movies, particularly like teen slasher movies that are movies that are set in high school, teen idol starts on it, and yet rated R, which

teens are not even supposed to be able to go in to them. Yet, I am not sure who all else would go to a movie or who it is really targeted toward. There is even marketing of some of the more violent video games in toy stores right next to places where 10- and 11-year-olds reach and shop.

If that is a targeted area by the industry, I think that is an area of concern and one that really needs to be looked at critically. I would just ask that you take some real time and focus on it because this is overall a very important topic to the American culture and society as we try to really pull back from the abyss and move to a better place where our families feel like the culture is a little more supportive instead of all the time on them and trying to harm them.

Mr. LEARY. Senator, I am aware of this assignment, and I can assure you that I take it very, very seriously. My own children are a little too old now to be directly involved in this, but I have grandchildren coming along and I am concerned about them, as well as children everywhere.

Senator BROWNBACK. Well, my kids are younger, so I go to the store. But go with your grandkids sometime to look at records or video games just some day on a weekend just to get a look yourself, or look in some of the magazines or see the video games that they are playing just to take a look. Your grandkids may be better than mine are, but you may be shocked at what you see.

Thanks. Thank you, Mr. Chairman.

Senator ASHCROFT. Thank you, Senator Brownback.

I want to thank Mr. Leary for coming before the committee today. I want to thank Commissioner Swindle for being with us today and thank him for his participation. I want to thank all the Members of the Senate who came to participate in this hearing.

Let me just indicate, as I indicated earlier, that the chairman has indicated, through his staff director, that it is his intention to move these through an executive session as soon as possible so that we will try and report these items promptly.

[The prepared statement of Senator Stevens and the letter of Mr. Rowe may be found in the appendix:]

Senator ASHCROFT. It appears as if no other Senators have pressing inquiries. With that, I adjourn this hearing. Thank you very much.

[Whereupon, at 3:36 p.m., the committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF HON. TED STEVENS U.S. SENATOR FROM ALASKA

Mr. Chairman. It is nice to see a hard working young man move forward in his career. My former chief of staff, Greg Chapados, was the head of NTIA during the Bush administration, so I know the pride that Senator Dorgan must feel in seeing Greg Rohde before us today.

NTIA is an important agency and has been well led by Larry Irving and his staff. With the changes we are all experiencing in the world of telecommunications, it is good to know that bright young professionals such as Mr. Rohde will continue the excellent leadership of this agency.

Greg, I want to thank you publicly for your tireless efforts in support of universal service. Many of you know that Greg was instrumental in helping to bring the Telecommunications Act of 1996 together. What you may *not* know is that Greg took a leadership role at the staff level to fight for the concept of universal service. And since the Act, he has been a true leader in ensuring that the concerns of rural areas are considered in the various telecommunications bills this committee considers.

Greg, your knowledge of rural issues and of universal service will be of even more importance over the coming months. I believe the concept of universal service is under attack and I hope you will be a strong voice in this administration for furthering the goals we both sought to achieve in the Telecommunications Act. Thank you.

September 3, 1999

The Honorable Conrad Burns
Chairman
Communications Subcommittee
Senate Commerce Committee
United States Senate
Washington DC 20510

Re: Nomination of Greg Rohde as Assistant Secretary for Communications and Information, U. S. Department of Commerce

Dear Senator Burns:

I am delighted to support the nomination of Greg Rohde as Assistant Secretary for Communications and Information at the United States Department of Commerce. I request that you introduce this statement into the record of his confirmation hearing.

As you know so well, Mr. Rohde is one of the most knowledgeable and experienced telecommunications hands in Washington. He played a key role in development and passage of the 1996 Telecommunications Act, and especially in ensuring a central role for universal service in Section 254.

As do his colleagues on Capitol Hill, state public utility commissioners rely on Greg's wisdom and good counsel. We appreciate his problem-solving approach and his ability to move beyond the arguments that bog down so many others.

It is no secret that Greg Rohde is passionate about providing excellent telecommunications service to rural America. My work with Greg persuades me that he is equally committed to using the Telecommunications Act's tools to serve urban America. In the past, I've talked with Greg about his vision, which I believe is your vision and is the vision of the Commerce Committee. I am eager to get him "on the job" at the Department of Commerce so that we can work with him on universal service, competition, and technology, and on specific projects such as the Section 706 federal-state conference.

There are big shoes to fill as Assistant Secretary for Communications and Information. I am confident that Greg Rohde is an ideal choice to fill them.

Sincerely,
Bob Rowe
Chairman,
NARUC Telecommunications Committee

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